

IMAI, TADLOCK, KEENEY & CORDERY, LLP

R. RANDY WERTZ

rrwertz@itkc.com

220 Montgomery Street, Suite 301

San Francisco, California 94104

Telephone: (415) 675-7000

Facsimile: (415) 675-7008

YOUNG BASILE HANLON & MACFARLANE, P.C.

JEFFREY D. WILSON (PRO HAC VICE)

wilson@youngbasile.com

NATASHA R. MENEZES (PRO HAC VICE)

menezes@youngbasile.com

3001 W. Big Beaver Road, Suite 624

Troy, Michigan 48084

Telephone: (248) 649-3333

Facsimile: (248) 649-3338

Attorneys for Defendants

IXL Learning, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

ADRIAN SCOTT DUANE,

Plaintiff-Intervenor,

v.

IXL LEARNING, INC.,

Defendant.

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

DEFENDANT'S NOTICE OF EXHIBITS

1 Defendant IXL Learning, Inc. hereby submits Exhibits A through BB in connection with its
2 Motion for Summary Judgment and Memorandum of Law in Support of its Motion for Summary
3 Judgment (ECF No. 70) and Declaration of Natasha R. Menezes in Support of Defendant's Motion for
4 Summary Judgment.

5
6 Dated: August 2, 2018

Respectfully submitted,

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

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

11
12 -and-

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

15 Attorneys for Defendant
16 IXL Learning, Inc.

PROOF OF SERVICE

STATE OF MICHIGAN, COUNTY OF OAKLAND
U.S. Equal Employment Opportunity Comm. v. IXL Learning, Inc.
Case No.: 3:17-CV-02979-VC

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 August 2, 2018, I served the foregoing document(s) described as **Defendant's Notice of Exhibits** 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 Equal Employment Opportunity Commission 350 The Embarcadero, Suite 500 San Francisco, CA 94105 P: (415) 625-5640 F: (415) 625-5657 ami.sanghvi@eeoc.gov	Attorneys for Plaintiff US EEOC
David Marek The Marek Law Firm 228 Hamilton Avenue Palo Alto, CA 94301 P: (917) 721-5042 david@marekfirm.com	Attorneys for Proposed 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 FILING)** I caused such document to be delivered via electronic filing and service of court via Notice of Electronic Filing ("NEF").

☒ (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 August 2, 2018 at Troy, Michigan.

/s/ Jeffrey D. Wilson
 Jeffrey D. Wilson

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---000---

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

I N D E X

PAGE

EXAMINATION BY MS. SANGHVI

6, 220

EXAMINATION BY MR. MAREK

195

E X H I B I T S

DEPOSITION

PAGE

Exhibit 53 PowerPoint presentation document 16
 Bates stamped IXL-1394 through
 IXL-1464

Exhibit 54 Defendant's Objections to 18
 Plaintiff's Rule 30(b)(6) Deposition
 Notice

Exhibit 55 One-page document showing 21
 terminations Bates stamped IXL-1240

Exhibit 56 Defendant's Answers to Plaintiff's 29
 First Set of Interrogatories

Exhibit 57 Notice of Corporation Deposition 31
 Pursuant to Fed.R. Civ.P.30(b)(6)

Exhibit 58 Equal Employment Opportunity EEO-1 58
 reports Bates stamped EEOC_000724
 through EEOC_000726

Exhibit 59 One page e-mail printout from 75
 Karen Penner to Jim Coulon and
 Kevin Davis dated May 22nd, 2015
 Bates stamped IXL-1828

Exhibit 60 Printout from Glassdoor.com 80
 with the subject of the review as
 Toxic Work Culture Dated February
 24th, 2018

1	E X H I B I T S (Continued)		
2	DEPOSITION		PAGE
3	Exhibit 61	One-page e-mail printout from	87
4		Karen Penner to Paul Mishkin and	
5		Lenore Ockerberg with the subject	
6		of Glassdoor mischief with a Bates	
7		stamped IXL-1349	
8	Exhibit 62	Two-page document from the	91
9		Employment Development Department,	
10		State of California	
11	Exhibit 63	Two-page Gchat messages between	93
12		Maricela Prado and Paul Mishkin	
13		Bates stamped IXL-1920 and IXL-1921	
14	Exhibit 64	One-page invoice Bates stamped	102
15		IXL-0850	
16	Exhibit 65	EEOC notice of charge of	104
17		discrimination dated May 4th, 2015	
18		Bates stamped IXL 0079 and IXL 0080	
19	Exhibit 66	Letter of determination from the	105
20		EEOC on April 22nd, 2016 Bates	
21		stamped EEOC_0001 and EEOC_0002	
22	Exhibit 67	One-page document from the EEOC	106
23		Bates stamped EEOC_000201 dated	
24		July 28th, 2016	
25	Exhibit 68	One-page e-mail communication	123
		between Scott Duane and Paul	
		Mishkin on January 7th, 2015	
		Bates stamped IXL-1663	

DEPOSITION OF PAUL MISHKIN

BE IT REMEMBERED, that pursuant to Notice, and on the 7th day of March, 2018, commencing at the hour of 9:53 a.m., in the offices of U.S. Equal Employment Opportunity Commission, The Phillip Burton Federal Building, 450 Golden Gate Avenue, 5 West, San Francisco, California, before me, DIANA L. GONZALEZ, a Certified Shorthand Reporter, personally appeared PAUL MISHKIN, produced as a witness in said action, and being by me first duly sworn, was thereupon examined as a witness in said cause.

---o0o---

APPEARANCES:

For the Plaintiff:

AMI SANGHVI
U.S. Equal Employment Opportunity Commission
The Phillip Burton Federal Building
450 Golden Gate Avenue, 5 West
San Francisco, California 94102
(415) 522-3071
ami.sanghvi@eeoc.gov

For the Plaintiff-Intervenor:

DAVID MAREK
The Marek Law Firm, Inc.
228 Hamilton Avenue
Palo Alto, California 94301
(650) 721-5042
david@marekfirm.com

1 For the Defendant IXL Learning, Inc.:

2 JEFFREY D. WILSON
3 Young Basile
4 3001 West Big Beaver Road, Suite 624
5 Troy, Michigan 48084
(248) 649-3333
wilson@youngbasile.com

6 Also Present:

7 ROBERTA STEELE, EEOC
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 PAUL MISHKIN,
2 sworn as a witness,
3 testified as follows:

4 EXAMINATION BY MS. SANGHVI:

5 Q. Can you please state your name for the record.

6 A. Paul Mishkin.

7 Q. What is your address?

8 A. 2510 Waverley Street, Palo Alto.

9 Q. What is your date of birth?

10 A. December 5th, 1971.

11 Q. And your primary phone number?

12 A. (650) 888-9494.

13 Q. Mr. Mishkin, do you understand that you're
14 testifying under oath today?

15 A. I do.

16 Q. What is your understanding of what that oath
17 means?

18 A. Being truthful.

19 Q. Do you understand that you've been designated
20 by IXL to speak for -- in what we'll mark in this -- at
21 least I understand that we'll be here for the day. The
22 first part of your deposition today will designate you
23 as the 30(b)(6) deposition, at which point you are
24 answering for IXL.

25 Do you understand that?

1 A. I do.

2 Q. So in the course of this interaction, if I ask
3 you what do you know about what HR was responsible for
4 in 2014, what I'm really asking is what did IXL know
5 about what HR was responsible for in 2014.

6 Do you understand that?

7 A. I do.

8 Q. And then later today we'll take your deposition
9 in your personal capacity as the CEO and founder as
10 well.

11 Can you state for the record your educational
12 background?

13 A. Sure. I have a bachelor's degree in computer
14 science from Harvard.

15 Q. What year did you obtain that degree?

16 A. 1994.

17 Q. Did you have any further education?

18 A. No, I didn't.

19 Q. Have you received -- did you go to graduate
20 school of any sort?

21 A. No.

22 Q. Have you pursued any other formal education
23 through university, I'll say?

24 A. Taking community college extension courses.

25 Q. What type of courses were those?

1 A. Marketing, art, foreign language.

2 Q. Where were those community courses -- community
3 college courses taken?

4 A. Berkeley extension, Cañada College. That's
5 what I can remember right now.

6 Q. And approximately the time frame for taking
7 those courses?

8 A. Maybe between 1995 and probably not any more
9 recently than eight years ago.

10 Q. Did you ever attend the Harvard Graduate School
11 of Education?

12 A. I took a class there.

13 Q. What class was that?

14 A. It was called advanced educational software
15 design.

16 Q. When did you take that class?

17 A. That would have been while I was an undergrad.
18 I'm not sure which year.

19 Q. Did that class result in any formal
20 certification of any type?

21 A. No.

22 Q. How long was that class?

23 A. I can't remember if it was a semester or a
24 whole year.

25 Q. I'm going to go through a few introductory

1 statements just before we get started really.

2 Let me ask you first, have you ever been
3 deposed before?

4 A. I have.

5 Q. In what context?

6 A. We had a -- a case against Mattel, the toy
7 company, for trademark infringement. They're infringing
8 on our IXL trademark.

9 Q. When, approximately, did -- well, let me ask
10 you, were you the defendant or the plaintiff in that
11 lawsuit?

12 A. We were the plaintiff.

13 Q. When was that suit filed?

14 A. I can't remember exactly.

15 Q. Where was the suit filed?

16 A. That I don't know.

17 Q. Was it in a court of law or was it a less
18 formal proceeding?

19 A. I -- I guess I don't understand the
20 distinction.

21 Q. Was it an arbitration setting of some sort or
22 was it in --

23 A. Oh, it was in -- it was an actual legal
24 proceeding.

25 Q. Who was the company that you sued?

1 A. That was Mattel.

2 Q. What was the outcome of that lawsuit?

3 A. We settled.

4 Q. Was the -- do you recall if the lawsuit was in
5 the last ten years?

6 A. I believe it probably was.

7 Q. How many depositions did you have to sit for?

8 A. I think just one.

9 Q. Were you testifying in your individual
10 capacity?

11 A. I don't -- I don't remember.

12 Q. And where was that deposition held?

13 A. It was in Palo Alto.

14 Q. Do you know if it was a state proceeding or a
15 federal proceeding?

16 A. I don't know.

17 Q. Who represented you in that proceeding?

18 A. His name was Bob Meylan, M-e-y-l-a-n. And the
19 other attorney was Steven Weinberg.

20 Q. Your other attorney --

21 A. Uh-huh.

22 Q. -- or the other --

23 A. They worked together.

24 Q. I'm sorry, you might have said this. The case
25 settled; is that correct?

1 A. Uh-huh.

2 Q. Other than that one deposition, have you been
3 deposed in any other circumstances?

4 A. I don't think I have, but I can't remember for
5 sure.

6 Q. And did you ever have the occasion to testify
7 in court with relation to the proceeding against Mattel?

8 A. We had a meeting with the judge, but it wasn't
9 an actual, you know, official proceeding.

10 Q. Have you testified in any other legal
11 proceedings?

12 A. Well, the NLRB case.

13 Q. You're referring to the NLRB action regarding
14 Scott Duane, correct?

15 A. Right.

16 Q. Anything else?

17 A. That's all I can remember.

18 Q. So a few ground rules for us to make it go a
19 bit easier today is if you don't understand any of my
20 questions, feel free to say so. I'm happy to rephrase
21 it for you.

22 Do you understand that?

23 A. Uh-huh.

24 Q. I'll say the next one right away. If I ask you
25 a question, please make sure that you answer with words

1 rather than a gesture or a sound or --

2 A. Yes.

3 Q. Thank you.

4 This is just for the benefit of the court
5 reporter, who's transcribing your words today and my
6 words as well.

7 The examination and cross-examination proceeds
8 just as it would at trial, and therefore you cannot
9 consult with anyone while a question is pending or
10 consult with anyone during your deposition.

11 Before the deposition can be used in court, you
12 will have the opportunity to read it over and correct
13 any mistakes. Do you understand that?

14 A. I do.

15 Q. And we will take breaks as needed, but my only
16 request is that we not take a break while a question is
17 pending. At the very end of your answer, feel free to
18 let me know when you need a break, and I'm happy to
19 accommodate that.

20 Do you understand?

21 A. I do.

22 Q. So what is your understanding for why you're
23 here today?

24 A. I'm here to give testimony on behalf of the
25 company and on behalf of myself too.

1 Q. And do you understand that this is a deposition
2 related to the EEOC and Scott Duane's lawsuit against
3 IXL?

4 A. I do.

5 Q. Did you receive -- excuse me. Let me rephrase
6 that.

7 Did IXL receive any EEOC charge of
8 discrimination by Adrian Scott Duane in March of 2015?

9 A. I'm -- I'm not sure exactly how to -- what the
10 terminology means.

11 Q. Are you familiar with the Equal Employment
12 Opportunity Commission?

13 A. Uh-huh. Yes.

14 Q. And what is your understanding of the Equal
15 Employment Opportunity Commission?

16 A. An organization that can handle employee
17 complaints.

18 Q. And do you have an understanding of the nature
19 of those employee complaints that are made to the EEOC?

20 A. Could be complaints about discrimination.

21 Q. Do you understand that the EEOC is a federal
22 agency?

23 A. I do.

24 Q. Do you understand that the process by which an
25 employee initiates a complaint with the EEOC is often

1 referred to as a charge of discrimination?

2 A. I guess that makes sense to me.

3 Q. So my question is, did IXL receive a charge of
4 discrimination from the EEOC that was made by Adrian
5 Scott Duane against IXL?

6 A. I suppose I'm aware of there -- there being an
7 investigation. I just, you know, don't -- not really
8 totally clear on the terminology.

9 Q. What did you do to prepare for today's
10 deposition as -- with respect to your role as a 30(b)(6)
11 designee?

12 A. Well, I met with Jeff and talked about what
13 that meant to testify on behalf of the company.

14 Q. Other than meeting with Mr. Wilson -- when you
15 say Jeff, you're referring to Mr. Wilson?

16 A. That's right.

17 Q. Other than meeting with Mr. Wilson, did you
18 review any documents prior to your deposition today?

19 A. I did.

20 Q. What documents did you review?

21 A. We looked at -- I looked at something showing a
22 list of topics that I would be expected to talk about.
23 Also looked at transcripts from NLRB, the EEOC
24 interview.

25 Q. Any other documents?

1 A. We looked at a few e-mails also.

2 Q. Anything else that you did to prepare for
3 today?

4 A. Not that I can think of.

5 Q. Are you -- do you understand that one of the
6 matters that you've been designated to testify about is
7 defendant's organizational structure, including, in
8 particular, how defendant handled operations and human
9 resources functions?

10 A. Yes.

11 Q. What did you do to prepare to testify to that
12 topic?

13 A. I looked at an organizational chart.

14 Q. Where was that organizational chart located?

15 A. In, I think, documents that we submitted.

16 Q. When you say "documents we submitted," you're
17 referring to the discovery production made to the EEOC
18 related to this case?

19 A. That's right.

20 Q. Was it a document that was part of the slide
21 deck?

22 A. I don't know.

23 MS. SANGHVI: I'm going to mark into evidence
24 Exhibit 53, a large document beginning at IXL-1394 and
25 ending at IXL-1464. Appears to be a PowerPoint

1 presentation.

2 (Document marked Deposition Exhibit 53
3 for identification.)

4 BY MS. SANGHVI:

5 Q. Mr. Mishkin, are you familiar with this
6 PowerPoint presentation?

7 Well, actually, let me ask you this. What do
8 you understand this document to be?

9 A. I actually don't know what it is.

10 Q. I'll give you a moment to look it over.

11 A. (Witness reviewing document.)

12 So it looks like a welcome presentation.

13 Q. Is this the document that you had referred to
14 when you said you looked at an organizational chart in
15 documents that were submitted to the EEOC?

16 A. So as I'm paging through, I see there's an
17 organizational chart.

18 MR. WILSON: Take your time.

19 THE WITNESS: So I don't know if that's the one
20 I saw or not.

21 BY MS. SANGHVI:

22 Q. Can you turn to -- I'll just direct your
23 attention to starting at Bates number IXL-1404. That
24 slide is -- is it accurate to say that slide is titled
25 an organizational chart?

1 A. Yes.

2 Q. Does that appear to be a current organizational
3 chart for IXL?

4 A. No.

5 Q. Why not?

6 A. Because there have been changes of some of the
7 people on here and are not with the company anymore.
8 There are new people who joined that would probably be
9 in a chart like this.

10 Q. So the chart that you referred to to prep for
11 today was different than this chart?

12 A. I did see this -- this chart.

13 Q. And I'm --

14 A. Or this slide. I saw -- I saw something that
15 looked more like this page, 1408, and some of the pages
16 in this section.

17 Q. Do you recall whether the chart that you looked
18 at to prepare for your deposition today reflected
19 individuals who are no longer working at the company?

20 A. It did.

21 Q. Are you aware of -- does IXL have any current
22 organizational chart?

23 A. That information exists. I don't know exactly
24 what it might look like.

25 Q. Would you say you are prepared to testify as to

1 the current organizational structure at IXL?

2 A. I am.

3 Q. Are you familiar with one of the EEOC's topics
4 for which you were designated to testify included the
5 reasons for termination for certain employees?

6 A. Yes.

7 Q. And what employees do you believe you are
8 prepared to testify about with regards to their
9 termination?

10 A. The ones the document mentioned, which were
11 Scott Duane, Jessica Morse, Lenore Ockerberg and -- I
12 forget who the fourth one was.

13 MS. SANGHVI: Let's move this along here. I'm
14 going to mark as Exhibit 54 defendant's objections to
15 plaintiff's 30(b)(6) deposition notice.

16 (Document marked Deposition Exhibit 54
17 for identification.)

18 BY MS. SANGHVI:

19 Q. Mr. Mishkin, have you seen this document
20 before?

21 A. (Witness reviewing document.)

22 I have.

23 Q. If you turn to page 6 of the document, you see
24 matter number two, the resources by IXL from 2013 to
25 present. Are you prepared to testify as to that today?

1 A. If I have to.

2 MR. WILSON: You said number two?

3 MS. SANGHVI: Yes.

4 MR. WILSON: We have objected to that.

5 MS. SANGHVI: The objection is noted. I'm just
6 asking if he's prepared to testify.

7 BY MS. SANGHVI:

8 Q. And if you look to page 7 of the document,
9 matter number three is asking about from July 2013 to
10 present any facts relating to internal investigations
11 regarding allegations of discrimination, harassment or
12 retaliation.

13 Do you see that?

14 A. I do.

15 Q. And are you prepared to testify to that matter?

16 A. Yes.

17 Q. What did you do to prepare your testimony to
18 that?

19 A. I -- I already have knowledge about this.

20 Q. Did you consult any documents?

21 A. No.

22 Q. Did you speak to anyone other than your
23 attorney?

24 A. No.

25 Q. Other than your memory as it stands, did you do

1 anything to prepare for this topic?

2 A. No.

3 Q. Look at matter number four, that's what we were
4 just talking about prior to the introduction of the
5 exhibit. It identifies a document and specifically asks
6 for the facts regarding the termination decisions of
7 Mr. Scott Duane, Mr. Jessica Morse, Ms. Lenore Ockerberg
8 and Mr. Bradley Marshall; is that correct?

9 A. I see that, yes.

10 Q. Are you prepared to testify as to matter number
11 four?

12 A. I am prepared.

13 Q. What did you do to prepare your testimony for
14 matter number four?

15 A. In the case of Lenore, I talked to Jennifer Gu,
16 who is our chief operating officer.

17 Q. When did you have this conversation with
18 Mr. Gu?

19 A. Yesterday.

20 Q. How long was that conversation?

21 A. Two or three minutes.

22 Q. Did you review documents in those two or
23 three minutes?

24 A. No.

25 Q. Other than the two- to three-minute

1 conversation with Ms. Ockerberg, did you do anything
2 else to prepare your testimony for matter number four?

3 A. I looked at a chart that listed all the
4 terminations the company had done over a certain period
5 of time that included these four people.

6 MS. SANGHVI: I'm marking as Exhibit 55 a
7 one-page document bearing Bates number IXL-1240.

8 (Document marked Deposition Exhibit 55
9 for identification.)

10 BY MS. SANGHVI:

11 Q. Mr. Mishkin, do you recognize the document that
12 has been marked as Exhibit 55?

13 A. I do.

14 Q. What is this document?

15 A. This is the document I just mentioned showing
16 all terminations at IXL over a certain period of time.

17 Q. Did you create this document?

18 A. I did not.

19 Q. Do you know who did?

20 A. No, I don't.

21 Q. Do you know why this document was created?

22 A. No.

23 Q. How did you review this document?

24 A. Just looking at it.

25 Q. Was it sitting in a -- on your computer

1 somewhere?

2 A. No.

3 Q. I'm just asking how you came about to this
4 document?

5 A. It was in files. So it's a -- that Jeff and I
6 reviewed last night.

7 Q. Do you have any reason to believe that this
8 document is inaccurate?

9 A. I don't.

10 Q. Is it fair to say that this document reflects
11 individuals who were terminated from December -- excuse
12 me, for -- from -- as early as July 2013 and as late as
13 June of 2015?

14 A. That's -- yes, that's the range of dates.

15 Q. So other than your two- to three-minute
16 conversation with Ms. Gu and your review of this chart,
17 did you do anything else to prepare your testimony for
18 matter number four?

19 A. No.

20 Q. Matter number five asks for -- about the
21 drafting adoption, subsequent modifications and
22 dissemination of IXL's employee benefits booklet, which
23 bears Bates number IXL-1241.

24 Did you review the employee benefits booklet at
25 Bates number IXL-1241?

1 MR. WILSON: Objection; we already
2 identified -- or, sorry, stated in our written
3 objections that someone else will be the designee for
4 that matter.

5 BY MS. SANGHVI:

6 Q. Prior to this deposition, did you review
7 IXL-1241, the employee benefits booklet?

8 MR. WILSON: Objection; form.

9 THE WITNESS: I looked at a page or two of it.

10 BY MS. SANGHVI:

11 Q. And what did you conclude after looking at a
12 page or two of it?

13 MR. WILSON: Objection; form.

14 THE WITNESS: Nothing in particular.

15 BY MS. SANGHVI:

16 Q. So is it fair to say you're not prepared to
17 testify as to matter number five?

18 MR. WILSON: I object. Mr. Mishkin is not
19 designated as the witness -- corporate representative
20 so --

21 MS. SANGHVI: I understood. I want to make the
22 record clear.

23 MR. WILSON: Okay. I understand that. I don't
24 want the witness to be unclear on you asking him why
25 he's not prepared to testify about matters he's not

1 designated for. So that's my standing objection to any
2 of these.

3 And with that said, go ahead and answer.

4 MS. SANGHVI: Just to be clear, can you read
5 the last question back.

6 (Record read.)

7 THE WITNESS: No, I'm not ready to testify
8 about matter number five.

9 BY MS. SANGHVI:

10 Q. Matter number six seeks information relating to
11 the drafting, adoption and presentation of the
12 PowerPoint presentation produced at IXL-1394.

13 Do you see that?

14 A. Is that --

15 Q. It's matter number six.

16 A. Oh, I see that.

17 Q. Did you review IXL-1394?

18 MR. WILSON: Objection.

19 BY MS. SANGHVI:

20 Q. I can represent to you that that's the exhibit
21 already marked 53.

22 A. Well, except for maybe the few pages I might
23 have seen about the org chart, I have not reviewed it.

24 Q. So is it fair to say you are not prepared to
25 testify to matter number six?

1 MR. WILSON: Objection.

2 THE WITNESS: I am not ready to testify about
3 matter number six.

4 BY MS. SANGHVI:

5 Q. If you see matter number seven regarding the
6 drafting, adoption and dissemination of IXL's employees'
7 polices, practices, procedures and guidance relating to
8 discrimination, retaliation or harassment based on sex
9 and disability covering the period of July 2013 to date,
10 are you prepared to testify to matter number seven?

11 MR. WILSON: Objection. Mr. Mishkin is not
12 designated as the corporate representative for matter
13 number seven, and we've made that clear in writing. I
14 take exception to asking him whether he's prepared to
15 discuss a topic he's not identified -- designated to be
16 the witness on and you're asking him in a representative
17 capacity. I think it's an unfair question.

18 MS. SANGHVI: Your objection is noted it.

19 BY MS. SANGHVI:

20 Q. Please continue.

21 MR. WILSON: Not only noted, if you're going to
22 continue with this, going through all these topics he's
23 not expressly identified as the corporate designee
24 about, I think this is bordering on harassment. I think
25 you're building a record of him not being prepared to

1 testify about topics he is not designated to testify
2 about.

3 He's -- this is not his individual deposition,
4 as you laid it out, said the first part will be his
5 representative capacity. If you're going to continue to
6 ask him questions about topics that someone else is
7 going to be the designee on, that's unfair and it's
8 harassing. And I'd ask that you move on to what he's
9 here to testify about.

10 MS. SANGHVI: Your objection is noted.

11 BY MS. SANGHVI:

12 Q. Did you review any handbooks and presentations
13 prior to your testimony today?

14 A. I'm not sure what to add other than what I've
15 said already.

16 Q. I don't know that you've told me whether you've
17 reviewed any employee handbooks.

18 A. I've looked at portions of an employee
19 handbook.

20 Q. Anything -- and that was one employee handbook,
21 correct?

22 A. That's right.

23 Q. Have you had any training while at IXL
24 regarding anti-discrimination policies?

25 A. I'm not sure.

1 Q. Are you familiar with IXL's remote work
2 policies and practices for employees during the calendar
3 years of 2014 and 2015?

4 A. I suppose depends on the particular questions.
5 I may have some familiarity.

6 Q. If you turn to page 11, you'll see that you
7 have been designated to testify on defendant's
8 established remote work policies and practices for
9 employees calendar years 2014 and 2015.

10 Do you see that with regards to matter number
11 12?

12 A. I do.

13 Q. Are you familiar -- do you understand that IXL
14 has designated you to testify on this matter?

15 A. I do.

16 Q. What did you do to become knowledgeable about
17 IXL's remote work policies and practices for employees
18 during calendar years 2014 and 2015?

19 A. I'm knowledgeable enough already to testify
20 about this.

21 Q. Did you review any documents?

22 A. No, I didn't.

23 Q. Did you consult anyone other than your
24 attorney?

25 A. No.

1 Q. Are you familiar with defendant's agreements
2 and/or contracts for services from Glassdoor.com
3 including defendant's expectations for engaging with
4 that service as defined -- as explained in matter number
5 13?

6 A. Yes.

7 Q. What did you do to review those agreements --
8 did you review those agreements and/or contracts?

9 A. No.

10 Q. Did you review any documents to prepare your
11 testimony with regards to matter number 13?

12 A. No.

13 Q. Did you consult with anyone to prepare your
14 testimony with regards to matter number 13?

15 A. I did not.

16 Q. Are you familiar with the EEOC request for
17 interrogatories in this case?

18 A. I don't know if I am or not. I'd have to see
19 it.

20 Q. Did you see that matter number 15 designates
21 you to testify on the facts underlying defendant's
22 answers to plaintiff's first set of interrogatories?

23 A. I see that.

24 Q. My question is, did you review any answers to
25 EEOC's first set of interrogatories to prepare for your

1 deposition today?

2 A. I don't know if I did or not. I think I'd
3 recognize it if I saw it.

4 MS. SANGHVI: Can we go off the record for one
5 second.

6 (Off the record from 10:34 to 10:45.)

7 MS. SANGHVI: So I am going to mark Exhibit 56.
8 I'll ask the court reporter to mark Exhibit 56. It is
9 defendant's answers to plaintiff's first set of
10 interrogatories.

11 (Document marked Deposition Exhibit 56
12 for identification.)

13 MS. SANGHVI: I'll just state for the record
14 that it is a -- the document consists of ten pages.

15 BY MS. SANGHVI:

16 Q. Are you familiar with this document,
17 Mr. Mishkin?

18 A. I am.

19 Q. Did you review it in the preparation for your
20 deposition today?

21 A. No, I did not.

22 Q. What is your familiarity with this document?

23 A. Having seen this in the past.

24 Q. Did you see -- did you provide information that
25 is contained in this document?

1 A. I participated in answering this, yeah.

2 MR. WILSON: And just an admonition to you,
3 Paul. Certainly answer the questions to the extent you
4 might veer into, hey, and I had this discussion with an
5 attorney -- one of our attorneys. Before you do that,
6 let's make sure that you aren't doing that.

7 BY MS. SANGHVI:

8 Q. Mr. Mishkin, I want to make sure that we
9 preserve your attorney-client privilege, so I'm not
10 going to be asking you about any conversations that you
11 had with your attorneys.

12 A. Okay.

13 Q. But you did not review this document
14 immediately prior to your deposition today; is that
15 correct?

16 A. No, I didn't.

17 Q. And did you discuss with anybody to -- with
18 regards to matter number 15 in advance of your
19 preparation -- in advance of your deposition today?

20 MR. WILSON: 15. She's not talking about the
21 interrogatory, she's talking about 15 -- topic 15.

22 BY MS. SANGHVI:

23 Q. Let me clarify my question. You were
24 designated to testify to the facts underlying the
25 answers to these interrogatories; is that correct?

1 A. Yes, I believe so.

2 MR. WILSON: I'm pointing at 15 that you
3 referenced on Exhibit No. 54. Go ahead.

4 BY MS. SANGHVI:

5 Q. So now that you are familiar with defendant's
6 answers to plaintiff's first set of interrogatories, my
7 question is what you did to prepare your testimony today
8 regarding the facts underlying defendant's answers to
9 plaintiff's first set of interrogatories?

10 MR. WILSON: Objection; form.

11 Go ahead.

12 THE WITNESS: I haven't done any preparation
13 particularly for today.

14 MS. SANGHVI: Just for sake of the record,
15 there's really no need for you to look at this document.
16 I'm going to mark as Exhibit 57 the EEOC's original
17 notice of 30(b)(6) deposition.

18 (Document marked Deposition Exhibit 57
19 for identification.)

20 BY MS. SANGHVI:

21 Q. Mr. Mishkin, I'm going to ask you to describe
22 your role at IXL.

23 A. I'm the CEO of IXL.

24 Q. Have you always held the position of CEO at
25 IXL?

1 A. Yes.

2 Q. Did you start the company?

3 A. Yes.

4 Q. When?

5 A. It was in 1998.

6 Q. And in 1998 was the company started as IXL

7 Learning?

8 A. It was started as Quia Corporation, Q-u-i-a.

9 Q. What was the original intent of the business?

10 A. Educational technology.

11 Q. Can you expand on what you understood that to
12 mean in 1998?

13 A. In 1998 we -- well, our first product was
14 online tools for teachers and students.

15 Q. What type of tools?

16 A. Creating customized study materials, games,
17 creating quizzes surveys, having -- we call it a class
18 page, a page for teachers to communicate with their
19 students.

20 Q. Did that evolve from 1998 to present?

21 A. That particular product evolved. We added to
22 it over time.

23 Q. When did Quia Corporation become IXL learning?

24 A. I don't remember the year that we officially
25 changed the company name.

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 Q. In 2017?

2 A. Yes.

3 Q. Is there a board of directors for IXL?

4 A. Yes.

5 Q. How many people are on the board of directors?

6 A. Two people.

7 Q. And who are those two people?

8 A. I'm one of them. The other is John Harrington.

9 Q. What is your role on the board of directors?

10 A. Chairman.

11 Q. What is Mr. Harrington's role on the board of
12 directors?

13 A. He's secretary.

14 Q. What role does the board of directors play to
15 IXL?

16 A. Meeting quarterly, approving options, grants,
17 other important corporate decisions, reviewing
18 financials.

19 Q. Is Mr. Harrington also an employee of IXL?

20 A. He's our chief financial officer.

21 Q. When did the board of directors -- when was the
22 board of directors created?

23 A. I don't know.

24 Q. Was it in the last five years?

25 A. No.

1 Q. Was it in the last ten years?

2 A. No.

3 Q. Was it in the last 15 years?

4 A. I don't know.

5 Q. Was it somewhere between -- IXL is 20 years
6 old; is that correct?

7 A. Right.

8 Q. So it's somewhere between 10 and 20 years ago
9 the board of directors was created?

10 A. Yes.

11 Q. Did it always consist of yourself and John
12 Harrington?

13 A. I don't believe so.

14 Q. Who did the board of directors consist of prior
15 to that?

16 A. I don't remember.

17 Q. Does IXL have a management committee?

18 A. Not that I'm aware of.

19 Q. Is there an executive team at IXL?

20 A. Yes.

21 Q. Who is in the executive team?

22 A. I think it depends on how you define it.

23 Q. How do you define executive team?

24 A. Executives.

25 Q. So who are the executives at IXL?

1 A. So besides me there's, Jennifer Gu, our chief
2 operating officer; John Harrington, our CFO; Jim Coulon,
3 who is our VP of sales; Kate Mattison, our vice
4 president of product; Terri Coats, who's our vice
5 president of -- I forget her exact title, but she's in
6 charge of the renewal part of sales.

7 Those are all the VP level -- or higher people
8 that I can remember.

9 Q. You don't have a CTO at IXL?

10 A. We do have a CTO, yes.

11 Q. Who's that?

12 A. That's Joe Kent.

13 Q. And what are the teams at IXL?

14 A. It would be easier to look at an org chart than
15 to do it from memory.

16 Q. Did you bring one with you, sir?

17 A. No.

18 Q. You recall reviewing one prior to this
19 deposition; is that correct?

20 A. I do.

21 Q. And you were designated to speak to the
22 organizational structure of your company; is that
23 correct?

24 A. That's right.

25 Q. So I'll ask you again, what are the teams that

1 are at IXL?

2 A. You know, it's -- it's a lot of them --
3 employees. I don't know that anyone could really keep
4 all this information in their head.

5 Q. Is there an engineering team at IXL?

6 A. Yes.

7 Q. And what does that engineering team consist of?

8 A. Engineers and engineering managers.

9 Q. Anyone else?

10 A. There are other people involved in engineering
11 such as QA, quality assurance. I'd have to look at an
12 org chart to tell you exactly how they fit into the
13 engineering team.

14 Q. If you can turn to IXL-1414. It's your
15 testimony that you don't -- that this presentation --
16 PowerPoint presentation is not correct, is that correct,
17 because you've noticed people who are no longer working
18 there?

19 A. This is a past. This is past information,
20 right. There have been changes.

21 Q. But looking at this line that bears the title
22 of software engineering, does that help to refresh your
23 recollection at all?

24 A. It's helpful, yes.

25 MR. WILSON: Do you have a color copy of this?

1 MS. SANGHVI: I don't believe you produced us a
2 color copy of it, though I'd be happy to receive one.

3 MR. WILSON: Can we go off the record?

4 MS. SANGHVI: Yes.

5 (Off the record from 11:06 to 11:08.)

6 MR. WILSON: I guess I jumped the gun. I
7 thought there were going to be questions about the text
8 in these boxes, which are difficult to read. So I
9 apologize for interrupting the depo.

10 BY MS. SANGHVI:

11 Q. Mr. Mishkin, you, I believe, had just answered
12 that seeing this slide about software engineering helps
13 to refresh your recollection a little bit about how your
14 engineering team is structured.

15 Can you provide any additional information on
16 how your engineering team at IXL is structured?

17 A. I -- I could. Do you want me to?

18 Q. Yes, please.

19 A. So, you know, there are different subgroups
20 that work on different aspects of the product.

21 By the way, this is reminding me that we do
22 have one more minor product that I didn't mention
23 before, which is called Sugarcane.

24 Q. What is Sugarcane?

25 A. Sugarcane is a website that let's people create

1 their own study tools, so it's similar to the Quia Web
2 product. It's more modern, newer version of that.

3 So in general, we have engineers who work on
4 different components of IXL. There are engineers who
5 work on what we sometimes call generators, which are the
6 modules that allow our questions to be created and
7 displayed. And that's opposed to engineers that work on
8 the product itself. So it's kind of the former group
9 works on -- more on the context side and the latter
10 group more about general product features.

11 We have a mobile group that -- that works on
12 our apps. We have an IT group. We have an
13 infrastructure group that works on more shared resources
14 or tools that might be used company-wide, not
15 necessarily part of the IXL product. And the Sugarcane
16 group, a small group that works on that product.

17 That's not necessarily complete, but those are
18 some of the groups within engineering.

19 MS. SANGHVI: Just for the record, since we're
20 here right now, Mr. Wilson, if you could provide to the
21 EEOC a native version of this document so that we also
22 have it in color, it would facilitate easy reading.

23 MR. WILSON: To the extent we haven't done so,
24 and I'm not certain that we haven't, are you asking to
25 do it like by e-mail right now so that you could put it

1 on a screen?

2 MS. SANGHVI: No, just in the future, if you
3 could.

4 MR. WILSON: Because if we provide this to
5 you -- you said we haven't already. If we provide it in
6 color and you print it out in a black-and-white printer,
7 it's going to be difficult to read because of the purple
8 shading and everything else.

9 MS. SANGHVI: Understood.

10 MR. WILSON: So if you'd like us to like
11 desaturate and change the color scheme and re-send it,
12 I'll be happy to do that so that it can be printed out
13 legibly on a black-and-white printer. I'd be happy to
14 do that, if you like.

15 MS. SANGHVI: Well, we can discuss the details
16 of that.

17 MR. WILSON: Okay.

18 BY MS. SANGHVI:

19 Q. I believe we were discussing the teams at IXL.
20 Is there a curriculum development team?

21 A. There is a team that is in charge of designing
22 the curriculum aspect to the product.

23 Q. And what job categories are generally in that
24 team?

25 A. That team would include curriculum designers,

1 and there's also a team that handles interaction design.

2 Q. What does interaction design mean?

3 A. That's the actual design of the components that
4 students interact with.

5 Q. Anyone else? Any other job categories, excuse
6 me?

7 A. There are people who align our content to state
8 and national standards. There are -- there are people
9 who work with illustrators to manage the process of
10 having illustrations developed for the product. Again,
11 it's not necessarily a complete list, but those are some
12 of the roles that I can remember right now.

13 Q. Curriculum designers, was that role at some
14 point called product analyst?

15 A. It was.

16 Q. Am I correct to understand that at some point,
17 IXL underwent a name change of certain categories?

18 A. Yes.

19 Q. Approximately when did that happen?

20 A. It happens periodically. No -- no one point in
21 time.

22 Q. Most recently when did it occur?

23 A. It -- it's not really a process. It's just
24 occasionally it might make sense for a role to have a
25 different title, and I don't know when that most

1 recently happened.

2 Q. And do you recall the reason for -- why it made
3 sense for a role to be called a different title?

4 A. I do for -- for this one.

5 Q. And what was the reason?

6 A. The reason --

7 Q. And just to clarify, what was the reason for
8 changing the product analyst role to the curriculum
9 designer role?

10 A. The term "curriculum designer," we felt it
11 made -- it was more understandable to someone who might
12 be interested in applying for that job.

13 Q. Is there a product -- sorry. Have you told me
14 everyone, as you sit here today, that you can remember
15 is a part of the curriculum development team -- the job
16 categories that are part of the curriculum development
17 team?

18 A. Well, there are management roles too.

19 Q. Is there a product management team?

20 A. There is.

21 Q. And what does the product management team do?

22 A. That team mostly is in charge of designing
23 parts of the product that are shared across all subject
24 areas.

25 Q. So what job categories are involved in the

1 product management team?

2 A. That team would have product designers, product
3 managers. That team has a UI department, which would
4 include UI designers, user interface designers.

5 Q. Anyone else?

6 A. I doubt that's a complete list, but that's what
7 I remember right now.

8 Q. Is there a customer success team?

9 A. There is.

10 Q. What does the customer success team do?

11 A. I'm hesitating a little because this team has
12 undergone some changes recently. But customer success
13 includes working with customers after sales have been
14 made.

15 Q. Who are the customers that you're referring to?

16 A. Customers would be teachers, school
17 administrators, even district administrators who have
18 purchased IXL, and also families, parents, who are using
19 the product with their kids.

20 Q. Which categories are involved with the customer
21 success team?

22 A. This is a team that has had some changes
23 recently. I don't know what the current set of job
24 titles are.

25 Q. Is there something that would help you refresh

1 your recollection?

2 A. Current org chart with job titles would allow
3 me to speak more fully about it.

4 Q. And it's your testimony that that job -- an org
5 chart exists, correct?

6 A. That information exists, whether it's in the
7 chart or a table or a spreadsheet, yes.

8 Q. Where does that information exist?

9 A. On our computer system somewhere or perhaps in
10 Namely.

11 Q. What is Namely?

12 A. Namely is our online HR software.

13 Q. Is there an educational sales team?

14 A. Yes.

15 Q. What does that team do?

16 A. That team handles sales to -- to schools and to
17 school districts.

18 Q. And what job categories are in the educational
19 sales team?

20 A. There would be sales reps, sales managers, the
21 two VPs I mentioned, Jim and Terri.

22 Q. Anyone else?

23 A. Perhaps some people in more coordination type
24 of roles.

25 Q. Is there a marketing team?

1 A. There is a marketing team.

2 Q. What does the marketing team do?

3 A. Marketing team handles online marketing of the
4 product, creating collateral for the sales team, social
5 media, other types of marketing.

6 Q. And what job categories are on the marketing
7 team?

8 A. Marketing managers. I don't know the specific
9 titles, but people who report to them helping with
10 online marketing, social media.

11 Q. Anything else?

12 A. I think there is. Not that I -- I'm not
13 remembering every role clearly right now, though.

14 Q. Are there any other teams that we haven't
15 talked about?

16 A. There's a finance team.

17 Q. What does the finance team do?

18 A. The finance team handles billing, invoicing,
19 collections, preparing financial reports, things of that
20 nature.

21 Q. Any other teams that we haven't talked about?

22 A. There might be. There's an operations team.

23 Q. Who's at the head of the operations team?

24 A. That is Tatum Radcliffe.

25 Q. What does the operations team manage?

1 A. Operations team manages facilities, office
2 space, office -- some -- some office maintenance,
3 planning -- planning a holiday party. Generally related
4 to employees' spaces within the office and comfort
5 within the office.

6 Q. How big is the operations team?

7 A. I don't know offhand.

8 Q. Other than Tatum Radcliffe, are you aware of
9 anybody else on the operations team?

10 A. Yes.

11 Q. Who?

12 A. Gabi -- I'm not recalling her last name right
13 now -- reports to Tatum. I'm not recalling right now.

14 Q. Is there a human resources team?

15 A. Yes.

16 Q. What does human resources do?

17 A. Human resources handles issues relating to
18 employees, hiring employees, getting employees into our
19 system, working with employees on issues that come up,
20 coaching for employees, training.

21 Q. What do you mean by issues that come up?

22 A. Employees that might have an issue -- an issue
23 with a co-worker or something about -- it could be
24 anything about their working situation that they feel
25 like talking to HR about.

1 Q. Would the HR staff at IXL handle discrimination
2 complaints?

3 A. I suppose that would be something that they
4 would handle if one came up and someone went to HR about
5 it.

6 Q. Who is the head of the HR team?

7 A. Her name is Julia Bushkov.

8 Q. When did Ms. Bushkov assume the role of head of
9 the HR team?

10 A. About a year ago.

11 Q. Who was it prior to Ms. Bushkov?

12 A. Prior to Julia, it was Victoria Keliihoomalu.

13 Q. How long was Ms. Keliihoomalu the head of HR?

14 A. I can't pronounce it either.

15 MR. WILSON: "Victoria."

16 THE WITNESS: Roughly a year. I can't remember
17 exactly.

18 BY MR. MAREK:

19 Q. Who was the head of HR prior to Victoria?

20 A. That was Charla Rodney.

21 Q. When was Ms. Rodney the head of HR?

22 A. I don't remember the dates offhand.

23 Q. How long was she the head of HR?

24 A. For about a year.

25 Q. Does it seem accurate that she was the head of

1 HR between 2015 and 2016?

2 A. That matches what I remember.

3 Q. Excuse me?

4 A. I think that's accurate, yeah.

5 Q. Prior to Ms. Rodney -- excuse me. Does it seem
6 accurate that Ms. Rodney began around February of 2015?

7 A. I just don't remember exactly.

8 Q. Do you know if Ms. Rodney was employed at IXL
9 when you terminated -- when Mr. Duane had his last day
10 of employment on January 8th, 2015?

11 A. She was not at IXL yet.

12 Q. She does appear on some paperwork regarding the
13 unemployment insurance benefits for Mr. Duane, so does
14 it seem accurate that she started in the beginning of
15 2015, sometime in February?

16 A. If that's when that paperwork was -- was done,
17 I think that would make sense.

18 Q. Who was the head of HR prior to Ms. Rodney?

19 A. That was Brad Marshall.

20 Q. What were Mr. Marshall's dates of employment?

21 A. I -- I don't remember.

22 Q. If you refer to Exhibit 55 in front of you,
23 does that refresh your recollection at least as to his
24 last date of employment?

25 A. Yes.

1 Q. And what is that? What is that?

2 A. You want me to read it?

3 Q. Yup.

4 A. September 23rd, 2014.

5 Q. Do you know if Mr. Marshall -- how long his
6 tenure with IXL was?

7 A. I don't remember exactly.

8 Q. Was it less than a year?

9 A. I don't remember exactly.

10 Q. Any other teams that we haven't talked about?
11 Sorry. I'm going to take that back.

12 Prior to Mr. Marshall, who was the head of HR?

13 A. That was Lenore Ockerberg.

14 Q. And how long was Ms. Ockerberg the head of HR?

15 A. Quite a while, but I don't remember exactly.

16 MS. SANGHVI: Would you like to take a break?

17 MR. WILSON: Can we take -- and I need to use
18 the restroom.

19 MS. SANGHVI: Off the record.

20 (Break taken from 11:33 to 11:43.)

21 BY MS. SANGHVI:

22 Q. So we were just discussing Ms. Ockerberg's
23 tenure with IXL. Do you know when she began at IXL?

24 A. No, I don't remember her start date.

25 Q. When was she terminated? I'm sorry, I'm going

1 to take that back.

2 Was she terminated?

3 A. She was.

4 Q. When was that?

5 A. So that was April 28th, 2015.

6 Q. What was the reason for her termination?

7 A. It was conduct.

8 Q. What was the conduct that led to her
9 termination?

10 A. Toward the end she was openly going around the
11 office telling people that she was hoping that she would
12 be fired and the company would give her a generous
13 separation package. She also was using company funds
14 to -- to buy some software that was for personal use.

15 Q. How did you come to learn about this use of
16 company funds for personal use?

17 A. I heard that from Jennifer Gu.

18 Q. And how did Ms. Gu learn about the use of
19 company funds for Ms. Ockerberg's personal use?

20 A. I believe she heard it from Tatum Radcliffe.

21 Q. Other than hearing it from other individuals,
22 did IXL have any evidence of Ms. Ockerberg's use of
23 company funds for her personal use?

24 A. I don't know.

25 Q. Were you involved in the decision to terminate

1 Ms. Ockerberg?

2 A. I was.

3 Q. Who else was involved?

4 A. Jennifer Gu was involved also.

5 Q. Anyone else?

6 A. I don't believe so.

7 Q. Who communicated that decision to

8 Ms. Ockerberg?

9 A. I can't remember if it was me or Jennifer.

10 Q. Is it fair to say that Ms. Ockerberg had been
11 an employee with IXL for at least ten years?

12 A. That sounds close. I don't know the exact
13 number of years.

14 Q. Approximately ten years seems correct to you,
15 though?

16 A. Give or take a couple of years either way,
17 yeah.

18 Q. What reason did you give Mr. Ockerberg for her
19 termination?

20 A. I don't remember.

21 Q. Is there something that would help you refresh
22 your recollection?

23 A. Not that I can think of.

24 Q. Is there something that would help you refresh
25 your recollection as to whether IXL had evidence

1 demonstrating that Ms. Ockerberg used company funds for
2 personal use?

3 MR. WILSON: Objection; form.

4 Go ahead.

5 THE WITNESS: Not -- not that I know of.

6 BY MS. SANGHVI:

7 Q. Did you ask Ms. Gu when you had that two- to
8 three-minute conversation with her about Ms. Ockerberg?

9 A. No.

10 Q. What did you talk about with Ms. Gu in those
11 two to three minutes?

12 A. I asked her for a reminder of what happened
13 with Lenore at the end.

14 Q. And what did she tell you?

15 A. She reminded me of the way Lenore was acting,
16 what she was telling other people about wanting to be
17 fired. General conversations like that.

18 Q. Did she remind you about the use of company
19 funds for personal use?

20 A. No.

21 Q. You remembered that on your own?

22 A. I did.

23 Q. As you sit here today, are you aware of any
24 documents that would go to -- that would demonstrate,
25 excuse me, that Ms. Ockerberg used company funds for

1 personal use?

2 MR. WILSON: Objection; form.

3 THE WITNESS: No.

4 BY MS. SANGHVI:

5 Q. Did you provide Ms. Ockerberg an opportunity to
6 rebutt the accusation?

7 A. I don't remember clearly what discussions with
8 her were like at that time.

9 Q. Did you consider Ms. Ockerberg a friend after
10 approximately ten years of employment with her?

11 A. I'm just thinking, how do you define friend?

12 Q. How do you define friend?

13 A. She was someone I liked on a personal level.

14 Q. Was anyone else aware of the reason for
15 Ms. Ockerberg's termination?

16 MR. WILSON: Objection; form.

17 THE WITNESS: I couldn't say. I don't know.

18 BY MS. SANGHVI:

19 Q. Do you believe Ms. Maricela Prado -- are you
20 familiar with who Maricela Prado is?

21 A. I am.

22 Q. Who is Ms. Prado?

23 A. Maricela was our HR coordinator.

24 Q. At the time that Ms. Ockerberg was terminated
25 in April of 2015, is it accurate that Ms. Rodney was the

1 head of HR?

2 A. I'm thinking of the timeline. I think that
3 makes sense. I'm not a hundred percent positive.

4 Q. You testified earlier that Ms. Rodney started
5 around February of 2015 and was employed for
6 approximately one year, which puts her to the beginning
7 of 2016.

8 So my question is, in April of 2015, is it
9 accurate to say that Ms. Rodney was likely the head of
10 HR?

11 MR. WILSON: Objection; form, asked and
12 answered.

13 Go ahead.

14 THE WITNESS: She likely was.

15 BY MS. SANGHVI:

16 Q. And so then what was Ms. Ockerberg's role?

17 A. Lenore was also in charge of operations.

18 Q. So I think you've testified that prior to Brad
19 Marshall, Lenore Ockerberg had been the head of HR for
20 quite a while.

21 Can you explain the shift from Ms. Ockerberg in
22 a HR role to the director of operations?

23 A. Uh-huh. At -- at a certain point we -- she had
24 been doing -- she had been in charge of both, both
25 roles. And we -- we split it out so that Lenore would

1 be in charge of operations and we would have a separate
2 HR role.

3 Q. Approximately when was that?

4 A. I don't really remember.

5 Q. Is there something that will help you refresh
6 your recollection?

7 A. Not that I can think of. I'm looking at the
8 org chart in this document, and it shows Brad Marshall
9 and Lenore both reporting to Jennifer Gu. So that tells
10 me that it must have happened maybe when Brad joined or
11 around that time.

12 MR. WILSON: For the record, you are referring
13 to page IXL-1408, Exhibit 53.

14 BY MS. SANGHVI:

15 Q. And was that Ms. Ockerberg's choice to move
16 more into operations?

17 A. I don't believe so.

18 Q. Whose decision was it?

19 A. It was something that Jennifer and I discussed
20 and agreed upon.

21 Q. And do you recall communicating that decision
22 to Ms. Ockerberg, that she would be taking on more of an
23 operations role rather than an HR role?

24 A. I don't recall communicating that myself.

25 Q. Do you know if anyone did?

1 A. I -- I assume she must have found out somehow.

2 Q. Did IXL communicate to Ms. Ockerberg that she
3 would be taking on an operations role rather than an HR
4 role?

5 A. I don't know what conversation was -- was had
6 with her, but I assume that must have happened.

7 Q. So Mr. Marshall's last date of employment you
8 testified was September 23, 2014. Why was -- why did
9 Mr. Marshall separate his employment with IXL?

10 A. Brad was terminated because he wasn't keeping
11 up with projects, was not being productive.

12 Q. Was IXL aware of any errors that Mr. Marshall
13 had committed in his performance of -- as HR director?

14 A. Errors? I'm sure there were minor mistakes.

15 Q. Did IXL terminate Mr. Marshall due to any
16 errors with how he performed his human resources
17 director role?

18 A. No, I don't believe so.

19 Q. Did IXL ever have the occasion to speak with
20 Mr. Marshall about a complaint from an employee about
21 him?

22 A. I don't know if anyone at the company talked to
23 him about a complaint.

24 Q. Is IXL aware of any complaints about
25 Mr. Marshall's performance as an HR director?

1 A. We're aware of -- I'm aware of a complaint.

2 Q. When did you become aware of a complaint?

3 A. I don't remember exactly.

4 Q. What complaint are you referring to?

5 A. There was a complaint that I heard about that
6 someone didn't like the way that Brad asked them for
7 ethnicity information for an EEOC form.

8 Q. Did you learn about that complaint during
9 Mr. Marshall's tenure as HR director?

10 A. I did.

11 Q. How did you learn about that complaint?

12 A. Someone told me about it. I don't remember
13 who.

14 Q. What did IXL do once it had knowledge of this
15 complaint against Mr. Marshall?

16 A. I don't know how that was handled.

17 Q. Did IXL speak with Mr. Marshall about the
18 complaint?

19 A. I don't know.

20 MS. SANGHVI: I'd like to mark as one exhibit
21 a -- three documents that are Bates numbered EEOC --
22 there should be a underscore -- 000724, EEOC under score
23 0002725 and EEOC 000726. Mark that as Exhibit 58.

24 (Document marked Deposition Exhibit 58
25 for identification.)

1 MS. SANGHVI: The documents are entitled Equal
2 Employment Opportunity EEO-1 reports. Sorry, can I
3 correct that. They're not titled that. They are Equal
4 Employment Opportunity EEO-1 reports for the years of
5 2014, 2015 and 2016.

6 BY MS. SANGHVI:

7 Q. Mr. Mishkin, have you ever seen this document
8 before?

9 A. (Witness reviewing document.)

10 I've seen this type of document before.

11 Q. When did you see this type of document before?

12 A. I have seen these at points in the past, not
13 necessarily every -- every year, but I've been exposed
14 to this.

15 Q. Is human resources responsible for submitting
16 information to the government to stay in compliance with
17 EEO-1 obligations?

18 MR. WILSON: Objection; form, foundation.

19 THE WITNESS: That is something our HR
20 department does.

21 BY MS. SANGHVI:

22 Q. So prior -- you were talking about a complaint
23 being lodged against Mr. Marshall because someone didn't
24 like the way Mr. Marshall asked about ethnicity for an
25 EEO-1 form; is that correct?

1 A. That's right.

2 Q. Is it your understanding that it was
3 Mr. Marshall's attempt to create an EEO-1 report?

4 A. That's my understanding.

5 Q. And when was the first year that IXL was
6 required to submit EEO-1 data?

7 MR. WILSON: Objection; form, foundation.

8 THE WITNESS: I don't know.

9 BY MS. SANGHVI:

10 Q. In 2014 Mr. Marshall was responsible for
11 providing the EEO-1 data?

12 A. That's correct.

13 Q. And in 2015 was a combination of Mr. Marshall
14 and then Ms. Rodney responsible for submitting the EEO-1
15 data?

16 MR. WILSON: Form and foundation.

17 THE WITNESS: I don't -- I don't know.

18 BY MS. SANGHVI:

19 Q. Do you see at the bottom of the second page of
20 your exhibit where it says certifying official, Brad
21 Marshall, and then EEO-1 report contact person, Charla
22 Rodney?

23 A. I do see that.

24 Q. Do you see that Brad is under certification
25 section?

1 A. Yes.

2 Q. Do you have any reason to believe that
3 Mr. Marshall and Ms. Rodney were not authorized to
4 certify IXL's 2015 EEO-1 survey?

5 A. Well, I don't know how the process works in
6 detail, but Brad's last day of employment was in 2014,
7 so I'm not sure what this means, though.

8 Q. And the last page of the exhibit, do you see
9 that Victoria Keliihoomalu was the certifying official
10 for the 2016 EEO-1 survey?

11 A. Did I hear 2016?

12 Q. `16.

13 A. I see that, yes.

14 Q. Was Ms. Victoria responsible -- in 2016
15 responsible for providing this data to the EEOC?

16 A. Yes, she was.

17 Q. Do you have any reason, as you sit here today,
18 to believe that the information contained in these three
19 EEO-1 reports is inaccurate?

20 A. No.

21 Q. Can you authenticate that Exhibit 58 is a true
22 and accurate copy of the EEO-1 reports submitted to EEOC
23 in the years 2014, 2015 and 2016?

24 MR. WILSON: Objection; foundation.

25 THE WITNESS: I guess I didn't hear. Could

1 you --

2 BY MS. SANGHVI:

3 Q. Can you authenticate that Exhibit 58 is a true
4 and accurate copy of the EEO-1 report submitted to the
5 EEOC in the years 2014, 2015 and 2016?

6 MR. WILSON: Same objection.

7 Go ahead and answer.

8 THE WITNESS: I mean it's probably a procedural
9 thing, but there's so many numbers on it that I guess
10 without knowing where it was from, I wouldn't be able to
11 say.

12 BY MS. SANGHVI:

13 Q. I just want to make sure I understand. You
14 have no reason to believe that the information contained
15 here is inaccurate, correct?

16 A. That's correct.

17 Q. What was the reason provided to Mr. Marshall
18 for his termination?

19 A. I don't know. I met with him, but I don't
20 remember specifically what I told him except that it was
21 focused around the job performance.

22 Q. Did Mr. Marshall seek unemployment insurance
23 benefits from IXL?

24 MR. WILSON: Objection; form, foundation.

25 THE WITNESS: I don't know from memory.

1 BY MS. SANGHVI:

2 Q. Going back a little bit, did IXL provide
3 Ms. Ockerberg with a severance payment?

4 A. I can't remember for sure. I think we did.

5 Q. Who would know for sure?

6 A. Our HR director, Julia Bushkov.

7 Q. Is IXL headquartered in San Mateo?

8 A. Yes.

9 Q. Are there any other IXL offices?

10 A. There are.

11 Q. Where are they located?

12 A. There's one located in the Raleigh, North
13 Carolina area, and we also have an office in Goleta,
14 California.

15 Q. Where was that?

16 A. Goleta. It's near Santa Barbara.

17 Q. When did the Raleigh, North Carolina office
18 open?

19 A. I don't remember exactly.

20 Q. Was it in the last ten years?

21 A. Yes.

22 Q. Is it possible it was in the last five years?

23 A. It was.

24 Q. Who was responsible for opening up that office?

25 A. I don't know that there was any one person

1 responsible for opening that office.

2 Q. Approximately how many people are employed in
3 that office?

4 A. I believe it's maybe a little bit less than a
5 hundred. Maybe 80 or 90.

6 Q. And in the Goleta, California office, when was
7 that opened?

8 A. We -- I don't know from memory.

9 Q. Was it in the last five years?

10 A. It was.

11 Q. Is it possible it was in the last three years?

12 A. How many years?

13 Q. Three.

14 A. I believe so.

15 Q. Approximately how many people are employed in
16 the Goleta, California office by IXL?

17 A. It's a small number. Approximately four.
18 Three to five maybe.

19 Q. How does IXL determine salary raises?

20 A. I'm sorry, salary and raises?

21 Q. Salary raises. Let me back up.

22 Does IXL provide salary increases to its
23 employees?

24 A. Generally, yes.

25 Q. Is there a procedure by which salary increases

1 are determined?

2 A. There is.

3 Q. What -- can you describe that procedure?

4 A. The current or most recent procedure is we do
5 raises once a year. And managers write summaries of
6 their employees who are eligible for raises. You have
7 to be at the company for a certain period of time to be
8 eligible. And I meet with Jennifer Gu and we review the
9 performance evaluations of employees and use that
10 information to -- in part to determine what appropriate
11 raises would be.

12 Q. Do you receive a recommendation from the
13 manager?

14 A. We do from some managers, not necessarily from
15 all managers.

16 Q. Just so I understand, the managers write
17 employee summaries for all of their employees, and you
18 review all of the performance evaluations or just anyone
19 who's been there over a certain period of time?

20 A. We receive evaluations not necessarily for
21 everyone, but it does often include people who are not
22 eligible for raises. To save time, we don't necessarily
23 review the ones who are not eligible.

24 Q. And what determines eligibility for a raise?

25 A. There's a certain amount -- certain period of

1 time that you have to be at the company, roughly ten
2 months, I believe.

3 Q. Other than yourself and Ms. Gu, is anyone else
4 involved in those decisions to provide salary increases
5 to IXL employees?

6 A. Well, I suppose managers who make
7 recommendations or simply writing performance reviews
8 are involved in some sense.

9 Q. And does IXL generally set aside a set amount
10 of money for salary increases?

11 A. No, we don't.

12 Q. When does this process generally happen in the
13 calendar year?

14 A. Recently we've been aiming for raises to take
15 effect January 1st. So this process happens towards the
16 end of the calendar year.

17 Q. How long does the process generally take?

18 A. It takes multiple meetings, a few hours at a
19 time.

20 Q. You said recently aiming for January 1st
21 effective date for salary increases. How recent?

22 A. I don't remember how we started tracking the
23 time for January 1st.

24 Q. Do you know if in January 2015 you were aiming
25 to have salary increases in place by January 1st?

1 A. I don't know.

2 Q. Is there any document that would help you
3 refresh your recollection as to that point?

4 A. I suppose this information would be in payroll
5 records somehow.

6 Q. Is there any documents memorializing this
7 effort to aim for effective dates of salary increases
8 for January 1st, so I can understand at what point that
9 started?

10 A. Nothing that I can think of.

11 Q. And currently -- in this past year, in 2018,
12 did employees receive salary increases on January 1st,
13 effective January 1st?

14 A. I'm actually not certain that we did it in
15 time. I think we probably did.

16 Q. What is the range for a salary increase, if
17 there is one?

18 A. I'm trying to interpret the question. Do you
19 mean do we go in with a certain range in mind?

20 Q. Is there a certain percentage within which you
21 work to determine what a salary increase would be?

22 A. Sometimes there are some numbers in mind. It
23 really -- really depends.

24 Q. What is an average salary increase given by
25 IXL, what percentage?

1 A. I am sure it varies from year to year. It's
2 something that would involve some calculation.

3 Q. Could it be as high as an average of 10
4 percent?

5 A. I would doubt that the average is that high.

6 Q. Who would be able to calculate that average?

7 A. Our controller.

8 Q. I'm not sure that I know who that is. Can you
9 tell me the name of that person?

10 A. His name is Joseph Zhou, Z-h-o-u.

11 MR. WILSON: I'm sorry, spell that again.

12 THE WITNESS: Z-h-o-u.

13 MR. WILSON: I thought you said C. Z, as in
14 zebra.

15 BY MS. SANGHVI:

16 Q. Does IXL give bonuses to employees?

17 A. We do give bonuses to some employees.

18 Q. How does IXL determine which employees get
19 bonuses?

20 A. Managers are more likely to have bonuses; other
21 roles where bonuses are more traditional like sales
22 bonuses.

23 Q. Does IXL currently give bonuses to curriculum
24 designers?

25 A. No, we don't.

1 Q. Did it at any point give bonuses to curriculum
2 designers or in their formerly known role as product
3 analysts?

4 A. Yes.

5 Q. When did the practice of giving bonuses to
6 curriculum designers or product analysts stop?

7 A. So the practice was actually a company-wide
8 bonus, and I don't remember which year we stopped doing
9 that.

10 Q. Who would know?

11 A. Joseph Zhou would also know this.

12 Q. Do you believe there are any documents
13 reflecting the termination of the company-wide bonus?

14 A. Could be something announcing it, explaining
15 it.

16 Q. That would be an e-mail?

17 A. I wouldn't know.

18 Q. As you sit here today, I believe you're
19 testifying that you believe that there could be
20 something announcing the termination of the company-wide
21 bonus. What I'm trying to understand is where would
22 that document exist?

23 A. I think it would involve some -- some
24 searching.

25 Q. Where would you search?

1 A. I suppose, you know, the first step would be
2 figuring out when we did this, looking back with Joe's
3 help of records when bonuses ended and -- and looking
4 for e-mails, I suppose.

5 Q. It's currently generally managers and the sales
6 team who receive bonuses; is that correct?

7 A. Not necessarily managers in general. Senior --
8 some senior managers.

9 Q. And what is it dependent upon?

10 A. It -- it varies by role, what the particular
11 role is and what compensation -- the compensation
12 structure for that role.

13 Q. Why did IXL stop providing company-wide
14 bonuses?

15 A. We stopped because it was -- they were twice
16 per year and it was too much of a burden on Jennifer and
17 on me to determine these every -- every six months.

18 Q. What was the process by which you did determine
19 them every six months?

20 A. It was a similar process to what I described
21 for salary adjustments.

22 Q. Is there -- are there formal structures in
23 place that -- individuals moving from one level to a
24 higher level?

25 A. Could you tell me what you mean by formal

1 structures?

2 Q. Do you have some sort of promotion process in
3 place at IXL?

4 A. I'm still not sure I understand.

5 Q. Certain technology companies use a system of an
6 employee being required to put together a promotion
7 packet and then submitting that to a committee for a
8 review. I would call that a promotion process, if you
9 will.

10 So I'm curious to know whether there's any
11 similar type promotion process in place?

12 A. Nothing -- nothing like what you just
13 described.

14 Q. Is there anything -- any type of system at all?

15 A. Managers recommending an employee for
16 promotion. Jennifer and I generally discuss and approve
17 those, uh-huh.

18 Q. Does -- when a position becomes available, does
19 IXL generally post positions for applicants to apply to
20 that or how --

21 A. We generally do.

22 Q. And where are those postings made?

23 A. They're made on our website, and there are a
24 variety of other places that we submit job posts.

25 Q. Similar online locations you mean?

1 A. That's right.

2 Q. Speaking more specifically, in 2013 I believe
3 David Keyes moved from a product analyst role to a
4 senior product analyst role in which he had management
5 responsibilities in approximately January of 2014.

6 Do you remember that?

7 A. Not -- not in detail, no.

8 Q. More recently Kate Mattison was promoted to, I
9 think, VP of curriculum design. Do you recall that?

10 A. I do.

11 Q. Was the VP of curriculum design a position that
12 was posted?

13 A. I don't know.

14 Q. Who would know?

15 A. Julia Bushkov would know.

16 Q. Ms. --

17 A. I may have called -- I may have used the wrong
18 title for Kate before. I may have said VP of product.
19 She's VP of curriculum.

20 Q. Ms. Keliihoomalu, who was a former HR director
21 for IXL, why did she stop working at IXL?

22 A. She was terminated.

23 Q. Why was she terminated?

24 A. She was terminated because we -- she caused
25 some employee records to be released to a phishing scam.

1 Q. In an e-mail phishing scam; is that correct?

2 A. That's right.

3 Q. Had she been warned about this previously, or
4 was this her first offense?

5 A. That was the first time it happened.

6 Q. Did Ms. Keliiahoomalu seek unemployment
7 insurance benefits?

8 A. She did.

9 Q. Did IXL oppose those benefits?

10 A. I believe we did.

11 Q. What was the outcome of that opposition?

12 A. My memory is that she -- she did receive the
13 benefits.

14 MS. SANGHVI: It's 12:30. I know that's
15 generally when we like to a break. So I suggest we go
16 off the record.

17 (Lunch recess taken from 12:30 to 1:40.)

18 BY MS. SANGHVI:

19 Q. Mr. Mishkin, since July 2013 to present, has
20 IXL needed to conduct any workplace investigations
21 relating to employees' or ex-employees' allegations of
22 discrimination?

23 A. I don't believe so.

24 Q. Since July 2013 to present, has IXL conducted
25 any workplace investigations relating to employees' or

1 ex-employees' allegations of harassment?

2 A. No.

3 Q. Since July of 2013 to present, has IXL needed
4 to conduct any workplace investigations relating to
5 employees' or ex-employees' allegations of retaliation?

6 A. No.

7 Q. Has IXL ever had a female employee complain
8 that she was not paid equal to a male peer?

9 A. Not that I'm aware of.

10 Q. Has IXL ever had a female employee suggest that
11 the company do more to retain female staff?

12 A. I don't have any recollection of something like
13 that.

14 Q. Has IXL ever had an employee complain about
15 harassment of any kind?

16 A. Not that I'm aware of.

17 Q. Has anyone ever complained about discrim -- has
18 any employee ever complained about discrimination at
19 IXL?

20 MR. WILSON: Objection; form, foundation.

21 Go ahead.

22 THE WITNESS: No. Scott Duane.

23 BY MS. SANGHVI:

24 Q. Other than anyone other than Mr. Duane?

25 A. I don't believe so.

1 Q. Is IXL aware of any other claims on
2 Glassdoor.com about otherwise discriminatory behavior at
3 IXL?

4 A. I'm not aware of any.

5 MS. SANGHVI: I'd ask the court reporter mark
6 Exhibit 59. It's a one page e-mail printout with
7 IXL-1828. It's an e-mail from Karen Penner to Jim
8 Coulon and Kevin Davis dated May 22nd, 2015.

9 (Document marked Deposition Exhibit 59
10 for identification.)

11 BY MS. SANGHVI:

12 Q. Mr. --

13 A. By the way, can I correct something that I got
14 wrong earlier in the day. I mean it seems trivial, but
15 you had asked me about educational courses I've taken,
16 so it -- I've also taken music courses with Berkeley --
17 Berkeley extension. I think that was within the last
18 eight years. We talked like about an eight-year time
19 frame.

20 Q. Were you learning an instrument?

21 A. No. Learning music theory.

22 Q. If you look at Exhibit 59 -- first, can you
23 tell me who's Karen Penner?

24 A. Karen was in charge of recruiting.

25 Q. Is she still employed with the company?

1 A. No, she's not.

2 Q. When did she stop being employed with the
3 company?

4 A. I don't remember the exact date.

5 Q. Was it after January 2015?

6 A. I believe so.

7 Q. Why was -- was is Ms. Penner no longer working
8 at IXL?

9 A. Job performance.

10 Q. Was Ms. Penner terminated?

11 A. She was.

12 Q. What about her job performance led to her
13 termination?

14 MR. WILSON: Objection; form, foundation.
15 Go ahead.

16 THE WITNESS: I don't have a lot of information
17 about the details.

18 BY MS. SANGHVI:

19 Q. Who would?

20 A. Jennifer Gu would.

21 Q. Does this appear to be an e-mail printout to
22 you?

23 A. It appears to be an e-mail printout with the --
24 an image.

25 Q. Jim Coulon, you had told me previously, is a

1 member of the executive team at IXL, correct?

2 A. Yes. That's right.

3 MR. WILSON: I'm sorry, I have a question. I
4 think -- I don't want this to sit. You said, "Does this
5 appear to be an e-mail to you?"

6 MS. SANGHVI: No, I said e-mail printout.

7 MR. WILSON: "To you." I just -- to you, like
8 does it appear to you to be an e-mail printout. And I
9 just didn't -- he said yes, and I know that's not what
10 you meant. You don't need to ask the question again,
11 because I just wanted to state that. 'Cause I thought,
12 oh, his name isn't on there. I don't think you need to
13 do anything. I just want it noted for the record.
14 Thank you.

15 BY MS. SANGHVI:

16 Q. Mr. Mishkin, did you receive this document at
17 any point -- excuse me, did you receive what appears to
18 be the image attached to this e-mail regarding the
19 regional sales interview?

20 A. No.

21 Q. Did anyone -- do you see at the third paragraph
22 of that image this individual, Gary Flores -- I'm
23 assuming from the subject line of this e-mail -- was
24 complaining that he was not offered a job because of his
25 age? Do you see that?

1 A. I see that.

2 Q. What, if anything, did IXL do with regards to
3 this complaint on Glassdoor.com about age
4 discrimination?

5 A. I don't know.

6 Q. Who would know?

7 A. I don't know who would know.

8 Q. Jim Coulon is a member of the executive team at
9 IXL, correct?

10 A. That's right.

11 Q. Is it correct that he would have been
12 responsible for interviewing individuals seeking to gain
13 employment in the sales department?

14 A. I don't know necessarily that he would
15 interview people himself. Probably sometimes. I don't
16 know necessarily about all the time.

17 Q. Is he responsible for hiring of individuals to
18 the sales department?

19 MR. WILSON: Objection; foundation.

20 THE WITNESS: It's hard to interpret that.
21 He's the head of the sales department.

22 BY MS. SANGHVI:

23 Q. As the head of the sales department, does
24 Mr. Coulon play any role in hiring individuals who work
25 in that department?

1 MR. WILSON: Objection; foundation.

2 Go ahead.

3 THE WITNESS: Well, he plays a role in that
4 he's the head of the department.

5 BY MS. SANGHVI:

6 Q. As CEO of IXL, does it concern you that an
7 individual alleged age discrimination in your
8 interviewing process?

9 A. That -- that -- do you mean this particular
10 review that we're looking at?

11 Q. Yes. I think my -- my question was, as the
12 CEO, does it concern you that an individual alleged age
13 discrimination in the interviewing process at IXL?

14 A. This single example doesn't concern me.

15 Q. Why not?

16 A. Because people get upset when they don't --
17 when they apply for a job and they don't get it. That
18 often happens. And, you know, there's no reason for me
19 to think that this is -- that this is accurate.

20 Q. Are you aware of any steps taken to determine
21 whether or not it was accurate?

22 A. I'm not. I don't know either way.

23 MS. SANGHVI: I'm marking an exhibit as -- a
24 one-page exhibit. I can represent it's a printout from
25 Glassdoor.com with the subject of the review of toxic

1 work culture dated February 24th, 2018. Marking that as
2 Exhibit 60.

3 (Document marked Deposition Exhibit 60
4 for identification.)

5 BY MS. SANGHVI:

6 Q. Mr. Mishkin, what does this look like to you?

7 A. It looks like a review on Glassdoor, a
8 printout.

9 Q. Can you tell what the date of this review is?

10 A. There's a date toward the bottom that says
11 February 24th, 2018.

12 Q. Have you ever seen this review?

13 A. I haven't.

14 Q. Does anybody in the HR department periodically
15 review new Glassdoor.com posts currently?

16 A. Not as an official part of their job.

17 Q. From time to time, are you shown -- in the last
18 six months, have you been told about any Glassdoor.com
19 posts?

20 A. No.

21 Q. Do you occasionally go on Glassdoor.com to look
22 at reviews?

23 A. I haven't in a while.

24 Q. When's the last time you did?

25 A. I think I've seen one or two recently just from

1 looking at our Glassdoor page, but didn't really go
2 there with the purpose of reading a lot of reviews.
3 Just might have seen the first two or three that were on
4 the page.

5 Q. Now seeing this review, what steps, if any,
6 will IXL take upon reading this?

7 MR. WILSON: Objection; form, foundation, and
8 irrelevant.

9 BY MS. SANGHVI:

10 Q. Go ahead. You can answer.

11 A. I mean I'm just seeing it for the first time
12 right now. I haven't even read the whole thing yet, so
13 it would be hard for me to say.

14 Q. I'll give you a moment to read it over. Let me
15 know when you're done.

16 A. (Witness reviewing document.)

17 Okay. I'm done.

18 Q. Now having had an opportunity to review this,
19 as the CEO of IXL, what is your reaction to this?

20 MR. WILSON: Objection; relevance.

21 THE WITNESS: Negative reaction, I suppose.

22 BY MS. SANGHVI:

23 Q. Can you expand on negative reaction?

24 A. Well, it's a negative review of IXL, so that
25 can't be something I would be happy about.

1 Q. As you sit here today, are there certain steps
2 that you can think of needing to take for the company to
3 respond to this review?

4 MR. WILSON: Objection; form, foundation.

5 THE WITNESS: I -- I think you're asking me
6 to -- what you're asking is what am I going to do about
7 this, and it's -- it's a difficult question to answer in
8 just a minute or two.

9 BY MS. SANGHVI:

10 Q. Would you consult somebody about a review like
11 this?

12 MR. WILSON: Objection; form.

13 THE WITNESS: I don't know yet.

14 BY MS. SANGHVI:

15 Q. I'm going to move on to IXL's remote work
16 policies.

17 Does IXL have any official policies or
18 procedures regarding working from home currently?

19 A. Our policy is it's up to individual managers.

20 Q. Are individual managers given any guidance by
21 the company regarding remote work policies?

22 A. That they can make decisions based on what's
23 best for their team.

24 Q. In 2014 did IXL have the same policy that
25 remote work arrangements were up to individual managers?

1 A. We did.

2 Q. Then again in 2015, did IXL have the same
3 policies that remote work arrangements were up to
4 individual managers?

5 A. Yes.

6 Q. Is there any documentation IXL requires when a
7 manager permits an employee to work from home?

8 A. Not that I'm aware of. I'm not sure.

9 Q. Speaking specifically to the time frame of 2014
10 and 2015, and I'm asking if there's any documentation
11 that IXL required for remote work policies?

12 MR. WILSON: Objection; form.

13 THE WITNESS: Not that I'm aware of.

14 BY MS. SANGHVI:

15 Q. Where would you look to determine that?

16 A. I would ask our HR director if there are any
17 records.

18 Q. And in preparation for this deposition, did you
19 ask the HR director to be prepared for topic 12?

20 A. Let me look at topic 12. Is that 56?

21 Q. It's 57. 56. Either one.

22 A. This one (indicating)?

23 Q. No, 56. Excuse me, 57 will have it or 54 will
24 have it as well, yes.

25 A. (Witness reviewing document.)

1 Q. I'm just asking if you spoke to the HR director
2 to prepare to speak about IXL's remote work policies and
3 practices during calendar years 2014 and 2015 prior to
4 your deposition today?

5 A. We did not talk about that, about official
6 documents required. So I'm not aware of any.

7 Q. Just a few minutes ago you had made a reference
8 to looking at IXL's page on Glassdoor.com. Can you
9 explain that further? What do you mean by when you look
10 on IXL's page?

11 A. It's what you would see if you -- if you query
12 IXL-Glassdoor, it would send you to Glassdoor and you
13 would see a profile of the company. And on that first
14 page there would be some -- some -- some of what you
15 just showed me, some reviews or interview summaries or
16 things like that.

17 Q. Does IXL pay for a subscription for services
18 from Glassdoor.com?

19 A. We do.

20 Q. What are those services that IXL receives from
21 Glassdoor?

22 A. It let's us have an expanded profile page, so
23 not having to just have a default profile page that
24 every company gets. Let's us post images, videos,
25 other -- other information.

1 Q. Just logistically, how do you post the images
2 or videos? Do you have a log-on to your profile,
3 expanded profile page?

4 A. There is a log-on. I don't have it personally
5 but -- yeah.

6 Q. But IXL is able to control what images and
7 videos --

8 A. That's right.

9 Q. -- are posted on --

10 A. That's right.

11 Q. I'm just going to finish my question.

12 IXL is able to control what images and videos
13 are posted on the expanded profile page on
14 Glassdoor.com?

15 A. At least have some control over that. There
16 may be user uploaded images. I'm not sure. I don't
17 know every feature of the site.

18 Q. Other than the expanded profile page, are there
19 other services that you receive through your
20 subscription to Glassdoor.com?

21 A. There may be. I'd have to look at the
22 subscription agreement to really be able to go through
23 them thoroughly.

24 Q. Did you review the subscription agreement prior
25 to your deposition today?

1 A. No, I didn't.

2 Q. Did you understand that you were designated to
3 testify as to this topic?

4 A. I do.

5 Q. As you sit here today, without having reviewed
6 the subscription agreement, is there anything else that
7 you understand IXL receiving through its description to
8 Glassdoor?

9 A. Not that I'm aware of.

10 Q. For Glassdoor even if -- if you did -- are
11 you -- sorry. Start over.

12 When did the company's subscription agreement
13 with Glassdoor begin?

14 A. I don't know exactly when.

15 Q. Why does IXL maintain a subscription with
16 Glassdoor?

17 A. It's an important site for us to -- for
18 recruiting and that would allow us to have a more
19 welcoming page and have more control over information
20 that we're able to share with job seekers.

21 Q. And IXL is aware that a feature of Glassdoor,
22 its website, is that it allows current and former
23 employees to post employee reviews and share salary
24 information, correct?

25 A. That's correct.

1 Q. IXL has also been aware since at least 2013
2 that there's no way to remove a negative post, correct?
3 Excuse me, no way to remove a negative post by a current
4 or former employee; is that correct?

5 A. I -- I don't know. I don't know if that's
6 correct or not.

7 MS. SANGHVI: I'm going to mark as Exhibit 61,
8 a one-page e-mail printout from Karen Penner to Paul
9 Mishkin and Lenore Ockerberg with the subject of
10 Glassdoor mischief with a Bates number IXL-1349.

11 (Document marked Deposition Exhibit 61
12 for identification.)

13 BY MS. SANGHVI:

14 Q. Mr. Mishkin, did you receive this e-mail?

15 A. Give me a minute to read it.

16 I don't really remember it, but it -- I assume
17 that I did.

18 Q. You're listed in the "to" field, correct?

19 A. That's why I'm assuming.

20 Q. And you have no reason to believe that this is
21 an inaccurate depiction of your --

22 A. No.

23 Q. -- having received it, correct?

24 A. No, I don't. Correct.

25 Q. This is how it was produced to us, but it looks

1 like it is encompassing some thread of a discussion
2 going back and forth. If you look towards the bottom of
3 that chunk of text, it looks like on July 30th, 2013 at
4 10:24 p.m. you wrote, "Hi, Karen. I'm almost certain
5 with the 'new low' and 'fed up' reviews are the same
6 person. Unfortunately -- or maybe fortunately -- I know
7 who this person with a vendetta is. What do you think
8 about bringing this up with Glassdoor and asking them to
9 investigate?"

10 Do you see that?

11 A. I do.

12 Q. So what steps -- let me ask you, who did you
13 think the "new low and fed up" reviews were by?

14 A. I don't remember anymore.

15 Q. Do you remember if it was a current or former
16 employee?

17 A. Did I think at the time it was a current -- a
18 current or former employee at the time?

19 Q. Yes. At the time that you wrote this e-mail.

20 A. I think -- I think I thought it was a current
21 employee on the book development team, but I don't
22 remember who that was. We don't even have that team
23 anymore.

24 Q. So if you knew who -- if you had to guess as to
25 who that individual was, what steps did IXL take with

1 regards to these two negative posts?

2 A. Well, I think what I'm asking -- one step would
3 be -- what this shows me asking Karen, I believe, which
4 was is there a way when it -- if there are duplicative
5 posts by the same person to flag them and be able to
6 take them down.

7 Q. And what did IXL learn regarding
8 Glassdoor.com's ability to or willingness to take action
9 when they hear about what you were complaining about?

10 A. I don't really remember what came of that.

11 Q. Who would know?

12 A. Well, this e-mail suggests -- shows that I was
13 asking Karen, so I don't know whether she followed up on
14 that or not. But she's someone who might know.

15 Q. I'm just noting a lit bit above it says on July
16 31st, 2013 at 5:59 p.m. Ms. Penner seems to have
17 responded to your e-mail and said, "I tried flagging
18 reviews, and it's on a case-by-case basis. New low" --
19 carrot -- "was the one they didn't take down."

20 Do you see that?

21 A. Okay. I do, I see that.

22 Q. So does that refresh your recollection that IXL
23 was aware that there would be circumstances in which a
24 negative post would not be removed by Glassdoor.com?

25 A. Well I knew that they -- that that was true,

1 that IXL did not have control over taking down negative
2 posts.

3 Q. As you sit here today, you have no recollection
4 about what you did regarding that current employee who
5 you knew -- or assumed to think you knew was posting
6 negative posts, correct?

7 A. I don't really remember having a clear idea of
8 who that person was.

9 Q. I think earlier you testified you believed it
10 was somebody in the book department, a team that no
11 longer exists; is that correct?

12 A. Well the team doesn't exist anymore. And I
13 remember thinking that it was somebody on that team.

14 Q. So did IXL take any steps to determine who it
15 was that made those posts?

16 A. I don't remember doing that.

17 Q. Was anyone terminated for the "new low and fed
18 up" posts?

19 A. No.

20 Q. Just so I understand Glassdoor correctly, even
21 if IXL did not pay a subscription to IXL -- excuse me,
22 to Glassdoor, individuals could still post about the
23 company, correct?

24 A. That's right.

25 Q. Moving now to topic number four regarding the

1 specific terminations of individuals. I'm going to
2 focus on the ones that we haven't discussed so far.

3 A. Okay.

4 Q. Did Mr. Duane -- excuse me, did IXL terminate
5 Adrian Scott Duane?

6 A. Yes.

7 Q. When?

8 A. For poor judgment.

9 Q. When was that termination?

10 A. When? That's January 8th of 2015.

11 Q. Now why was Mr. Duane terminated on January
12 8th, 2015 by IXL?

13 A. He was terminated for what he wrote on
14 Glassdoor.

15 Q. Did Mr. Duane seek unemployment benefits after
16 he was terminated?

17 A. I don't know whether he did or not.

18 MS. SANGHVI: I'm going to mark this as 62.
19 It's a two-page document from the Employment Development
20 Department, State of California.

21 (Document marked Deposition Exhibit 62
22 for identification.)

23 BY MS. SANGHVI:

24 Q. Mr. Mishkin, I'm showing you a two-page
25 document that starts at Bates number IXL-1918. Does

1 that refresh your recollection whether Mr. Duane sought
2 unemployment insurance benefits from IXL?

3 A. It does.

4 Q. And looking specifically at the second page,
5 does it refresh your recollection as to whether IXL
6 opposed Mr. Duane's application for unemployment
7 insurance?

8 A. Yes, it does.

9 Q. What was the reason for the opposition to
10 Mr. Duane's application for unemployment insurance?

11 A. I'm not sure I know how to figure that out from
12 this form.

13 Q. Who was responsible for filling this form out?

14 A. That would have been Maricela.

15 Q. Did you provide Ms. Prado with guidance on
16 opposing Mr. Duane's application for unemployment
17 insurance?

18 A. I do remember that we talked about it.

19 Q. And what do you remember about that
20 conversation?

21 A. I remember discussing should we oppose it,
22 what -- what to write.

23 MS. SANGHVI: I'm going to mark as Exhibit 63 a
24 two-page document starting at IXL-1920. It appears to
25 be a printout of a Gchat messages between Maricela Prado

1 and Paul Mishkin.

2 (Document marked Deposition Exhibit 63
3 for identification.)

4 BY MS. SANGHVI:

5 Q. Take a minute to look this over.

6 A. (Witness reviewing document.)

7 Okay.

8 Q. Does this refresh your recollection as to the
9 process you went through to oppose Mr. Duane's
10 application for unemployment insurance?

11 A. It does.

12 Q. So can you explain that to me a bit?

13 A. It -- well, it refreshes my memory because it's
14 a chat between Maricela and me where we were discussing
15 what to do about it.

16 Q. You have at the top of this -- this is, I
17 believe, you, "I still want to talk about Scott." And
18 then you wrote, "Let's talk just you and me."

19 Was it your intention that Ms. Ockerberg not be
20 a part of those conversations?

21 A. I don't remember what I meant by that.

22 Q. Down further on the page you said, "Before we
23 meet, could you become more familiar with reasons why an
24 employee may or may not be eligible for unemployment."

25 Do you see that?

1 A. I do.

2 Q. By the time you wrote this message, had you
3 made a determination as to whether or not you would
4 oppose Mr. Duane's unemployment insurance application?

5 A. I just do not remember.

6 Q. Then it seems like you did have a meeting with
7 Lenore Ockerberg and Maricela Prado; is that correct?

8 A. I'm trying to figure that out here.

9 Q. I'm just gathering that from the fact that at
10 the bottom of the first page Ms. Ockerberg says, "Are
11 you ready for us?" And you said, "Yes."

12 A. I'm just confused because I don't remember the
13 three-way chats being a feature that we had, so I'm
14 wondering why there's a message from Lenore in here.
15 It's hard to figure out because the message from Lenore
16 doesn't seem to really fit in with the conversation
17 before it.

18 Q. A few lines above it looks like the meeting was
19 scheduled today at 2:30, is that correct, and then you
20 ask Ms. Prado to become familiar with reasons why an
21 individual may or may not be eligible for unemployment?

22 A. I see that.

23 Q. And then Ms. Prado said, "Yes, I'm on my way
24 back from lunch. See you at 2:30."

25 The timestamps befuddles me a bit, but that --

1 the next thing is Ms. Ockerberg saying, "Are you ready
2 for us," which is why I'm asking you do you remember
3 meeting with Ms. Ockerberg and Ms. Prado with regards to
4 Mr. Duane's unemployment insurance application?

5 A. I -- I don't actually remember it. This
6 suggests we had a meeting. I just don't remember any
7 details about the meeting.

8 Q. And you also directed the opposition text to
9 include, "Scott Duane was terminated for misconduct,
10 specifically for posting a defamatory and insulating
11 online review that damages the company's reputation,"
12 correct?

13 A. I can see that I suggested that. I said let's
14 use that as the text.

15 Q. And then on Exhibit 62, that is the text that
16 was used, correct?

17 A. Okay. I see that under the reporting -- the
18 reporting facts section.

19 MR. WILSON: Can you tell me when you'll be
20 done with this document -- I don't want to jump in --
21 when you're done examining the witness on this document?
22 BY MS. SANGHVI:

23 Q. So is it your testimony, then, that IXL
24 directed -- or IXL opposed Mr. Duane's application for
25 the reasons stated on the application -- on the document

1 from the Employment Development Department?

2 A. The thing I'm struggling with a little bit is
3 that I -- I'm seeing a text in the reporting facts
4 section and I'm trying to think how to connect that to a
5 post, like is this the right document where one opposes
6 claiming unemployment insurance or is that a different
7 kind of document.

8 Q. So my question is based on the -- the fact that
9 I refreshed your recollection about speaking with
10 Ms. Prado about Mr. Duane's application for unemployment
11 insurance and the fact that I believe you testified that
12 the company did oppose his seeking that unemployment
13 insurance, whether this appears to be the reason why IXL
14 opposed Mr. Duane's attempt to collect unemployment
15 insurance?

16 A. That makes sense to me, yes.

17 MS. SANGHVI: Off the record.

18 I'm sorry, do you want it off or on?

19 MR. WILSON: Off is fine.

20 (Off the record from 2:28 to 2:29.)

21 BY MS. SANGHVI:

22 Q. Did IXL terminate Jessica Morse?

23 A. Yes.

24 Q. When?

25 A. January 30th, 2015.

1 Q. What was the reason for Ms. Morse's
2 termination?

3 A. It was performance and also conduct.

4 Q. Why did IXL terminate Ms. Morse because of her
5 performance? What about her performance led to IXL
6 terminating Ms. Morse?

7 A. She was having a hard time doing the work for
8 her -- for her role. And just time had gone by and it
9 was clear she just wasn't going to be able to do the job
10 well.

11 Q. Who was her manager?

12 A. Her manager would have been David Keyes.

13 Q. Who terminated Ms. Morse?

14 A. I did.

15 Q. Was it common for you to terminate an employee
16 that was managed by somebody else?

17 A. I wouldn't say -- I wouldn't say so, no.

18 Q. So why in this instance did you terminate
19 Ms. Morse if her direct manager was David Keyes?

20 A. I did it because Jessica had been on a video
21 project which was an experimental project that we had
22 been working on and that we had hired her for. And she
23 had a different manager while she was on that project,
24 which was Isidora Milin.

25 And when that project was canceled -- well, I

1 was involved -- I was involved in that project so I had
2 worked with her on that project. And then we wanted her
3 to transition into -- we wanted to have a role for her
4 to transition into. So that -- that was the product
5 analyst role on David's team. And I had at least a
6 couple meetings with her talking about -- talking about
7 product designs, giving her some guidance on how to --
8 what's expected of that role.

9 And it didn't make sense for David to do it
10 because he hadn't been managing her that long and it
11 would have been difficult for him to discuss with her
12 some of the observations that I had made.

13 Q. About her performance; is that correct?

14 A. Right.

15 Q. I believe you said that she was terminated for
16 performance as well as conduct. What about her conduct
17 led to IXL terminating Ms. Morse?

18 A. Conduct, she was -- she was difficult to work
19 with, stubborn, to be honest arrogant, and unwilling to
20 accept suggestions, be open to learning new things.

21 Q. Did IXL place Ms. Morse on a performance
22 improvement plan of any kind prior to terminating her?

23 A. No, I don't believe so.

24 Q. Did IXL utilize performance improvement plans
25 for underperformers in January of 2015 or in that time

1 frame?

2 MR. WILSON: Objection; form.

3 Go ahead.

4 THE WITNESS: Not necessarily all the time, but
5 we did have a process for doing performance improvement
6 plans.

7 BY MS. SANGHVI:

8 Q. So why wasn't Ms. Morse placed on a performance
9 improvement plan prior to her termination?

10 A. I wouldn't say it -- it would make sense in
11 that case -- it would have made sense in that case. She
12 had transitioned from one role to another role, and it
13 was clear because of attitude and just lack of ability
14 that improvement was very unlikely to be possible.

15 Q. Was it your decision to terminate Ms. Morse?

16 A. It was.

17 Q. Did you consult with anyone regarding that
18 decision?

19 A. I know I talked to David about -- about that.
20 Possibly Kate; I don't remember.

21 Q. Are you aware that Ms. Morse was very friendly
22 with Mr. Duane?

23 A. No, I wasn't aware of that.

24 Q. Did Ms. Morse's termination have anything to do
25 with Mr. Duane's post on Glassdoor.com?

1 A. It didn't.

2 Q. Did Ms. Morse seek unemployment insurance
3 benefits?

4 A. I don't know.

5 Q. Again, would Ms. Bushkov be the appropriate
6 person with that knowledge?

7 A. She would be.

8 Q. As you sit here today, do you have any reason
9 to -- do you have any recollection of opposing
10 Ms. Morse's unemployment insurance in the way that you
11 had opposed Mr. Duane's?

12 A. I don't have any recollection of being involved
13 in that.

14 Q. I think -- going back to something we talked
15 about earlier, I think you had mentioned that Ms. --
16 that Victoria K had divulged employee information
17 through an e-mail phishing scam.

18 What type of employee information did she
19 disclose?

20 A. It was W-2 forms.

21 Q. And where were they disclosed? Or --

22 A. To some -- someone who was impersonating me
23 over e-mail.

24 MS. SANGHVI: I think that we are nearing the
25 end of the 30(b)(6) section. I would like to state on

1 the record that I believe there were multiple areas that
2 Mr. Mishkin was designated to testify and was not fully
3 prepared to testify to. At this point I need to
4 evaluate what options and what recourse is necessary, if
5 at all. But I'd like to state that on the record.

6 MR. WILSON: For the record, I'll state that
7 the areas that he was designated to give the company's
8 position on he was prepared to do so in a number of
9 ways. I didn't jump in, I didn't say anything; but, for
10 example, showing him a document that he could rely upon
11 to give specific information is a typical way to conduct
12 a 30(b)(6) when the person isn't required to sort of
13 memorize all facts and data.

14 And so there may be instances where we disagree
15 on it, but I will note that there were a number of times
16 when he said, "I would need to look at" -- like the --
17 the Glassdoor subscription, for instance, documents
18 related to that, he wasn't shown anything. And so if --
19 to the extent that there's an argument that he wasn't
20 prepared to discuss the Glassdoor documentation or
21 subscription, I would disagree with that.

22 But that's my position, and I guess we'll deal
23 with it down the road if you want. Let's --

24 MS. SANGHVI: I'm not done. I was nearing the
25 end, making a record. But I have a response to that.

1 I'm going no mark into evidence document 64.
2 It is an invoice, one-page document, bearing Bates
3 number IXL-0850.

4 (Document marked Deposition Exhibit 64
5 for identification.)

6 BY MS. SANGHVI:

7 Q. Mr. Mishkin, are you familiar with this
8 document?

9 A. (Witness reviewing document.)

10 I don't recognize it. It looks like a
11 Glassdoor invoice, though.

12 Q. Is that your signature towards the bottom?

13 A. No, it's not.

14 Q. Can you read the words next to it?

15 A. It says, "Approved by Paul's e-mail."

16 Q. Do you know whose signature that is?

17 A. I don't.

18 Q. Does this appear to be an invoice from
19 Glassdoor.com for IXL Learning describing services
20 provided in the EEP info site package and the job ads
21 employer SMB unlimited?

22 A. It does.

23 Q. Is there a total amount billed to the company
24 on this document?

25 A. It says the total due is \$10,500.

1 Q. Does this refresh your recollection as to IXL's
2 subscription for services from Glassdoor.com?

3 A. It has more detail here about the packages that
4 we were using.

5 Q. It appears that this start date indicates
6 January 1st, 2013. Did IXL have a subscription with
7 Glassdoor prior to January 1st, 2013?

8 A. I need to know if there were any earlier
9 invoices to say for sure, but that sounds about the time
10 that I believe we started.

11 Q. Earlier when you were testifying about the
12 agreements and/or contracts for services from Glassdoor,
13 you had referenced being able to see the agreement with
14 Glassdoor.

15 Does this help you remember what contracts --
16 what agreements you had for services from Glassdoor?

17 A. This has a little more information, but I think
18 it was a fairly -- fairly elaborate combination of
19 things. So I don't even know that everything is listed
20 here.

21 Q. What do you think is missing?

22 A. I don't know. It's a combination of things
23 I've mentioned, smaller -- smaller features, using
24 Glassdoor's terminology. It's -- it's kind of -- their
25 marketing language, and I -- I don't know what the

1 complete description of the service would be as a -- as
2 they described it, you know, every aspect to it that
3 they would have enumerated.

4 Q. Are you aware of a document that would have
5 done that, enumerated, as you said, every aspect of the
6 agreement?

7 A. I imagine there must be more detail than this
8 somewhere on their website or somewhere else. This
9 can't be it.

10 Q. Prior to testifying today, have you had the
11 occasion to review any documents like that?

12 A. I have looked at Glassdoor proposals before,
13 you know, not really analyzing them word by word,
14 though.

15 Q. You had mentioned that Mr. Duane was the only
16 person who had -- only employee, excuse me, that had
17 complained of discrimination, is that correct, from
18 July 2013 to present?

19 A. As far as I'm aware, yes.

20 MS. SANGHVI: I'm going to mark this document
21 as Exhibit 65. It's a notice of charge of
22 discrimination, begins at IXL space 0079. It's EEOC
23 notice of charge of discrimination dated May 4th, 2015.

24 (Document marked Deposition Exhibit 65
25 for identification.)

1 Actually can we go off the record for a second.

2 (Off the record from 2:48 to 2:50.)

3 BY MS. SANGHVI:

4 Q. Mr. Mishkin, did IXL receive an EEOC charge of
5 discrimination by Adrian Scott Duane in May of 2015?

6 A. We did.

7 Q. Was one of the allegations raised in that
8 charge retaliation?

9 A. Yes.

10 MS. SANGHVI: I'm going to mark this as 66. It
11 is a two-page document from the EEOC bearing Bates
12 number EEOC under score 00001.

13 (Document marked Deposition Exhibit 66
14 for identification.)

15 BY MS. SANGHVI:

16 Q. Mr. Mishkin, did IXL receive a letter of
17 determination from the EEOC on April 22nd, 2016
18 indicating that the EEOC had found reasonable cause to
19 believe that IXL violated the retaliation provisions of
20 Title 7 and the ADA?

21 A. Let me just review this.

22 Yes.

23 MS. SANGHVI: I'm marking this document, a
24 one-page document, from the EEOC Bates numbered EEOC
25 under score 000201. The document is dated July 28th,

1 2016. Marking this as 67.

2 (Document marked Deposition Exhibit 67
3 for identification.)

4 BY MS. SANGHVI:

5 Q. Before I take your attention to document 67, in
6 late June 2016, did the EEOC communicate with IXL to
7 provide IXL the opportunity to remedy the discriminatory
8 practices described in the EEOC's letter of
9 determination that we just marked as Exhibit 66?

10 MR. WILSON: Objection; foundation.

11 If you want my stipulation, you can, but there
12 is all attorney to -- go ahead. I don't want to bog
13 things down.

14 THE WITNESS: I mean it -- I -- I'm not sure
15 how to answer because it -- it was sent to Jeff, and I'm
16 trying to match up the language in here also with what
17 you just said. It's a little bit hard for me to
18 interpret.

19 MR. WILSON: If it would speed things along, I
20 can make certain stipulations, if you want.

21 MS. SANGHVI: Sure. Your answer doesn't
22 suggest that's what I needed to establish.

23 MR. WILSON: Go ahead.

24 BY MS. SANGHVI:

25 Q. Not looking at document 67, apart from that, in

1 late June of 2016, was IXL aware of the fact that EEOC
2 communicated to provide IXL the opportunity to remedy
3 the discriminatory practices it found in the letter
4 of -- it noted in the letter of determination?

5 MR. WILSON: Objection; foundation.

6 Go ahead.

7 THE WITNESS: By remedy, are we talking about
8 mediation?

9 BY MS. SANGHVI:

10 Q. The EEOC has referred to it as conciliation
11 efforts. Do you recall EEOC's conciliation efforts in
12 late June 2016?

13 A. I -- I remember that, late June. I don't know,
14 but I remember that.

15 Q. And then turning your attention to document 67,
16 did IXL receive a notice from the EEOC that conciliation
17 had failed in late July 2016?

18 A. So this notice is from July 28th. It was to
19 Jeff Wilson and it does discuss efforts to conciliate
20 being -- having been unsuccessful.

21 Q. So did IXL receive notice from the EEOC that
22 conciliation had failed in late July 2016?

23 A. Are you asking me if we actually received this
24 particular letter at the IXL office?

25 Q. No. I'm asking if IXL received a notice, not

1 this -- this letter is meant to refresh your
2 recollection. Because earlier I had asked you about the
3 details about the charge, and you weren't remembering
4 them.

5 So I'm asking you now whether this document
6 refreshes your recollection that IXL received notice
7 from the EEOC that conciliation had failed in late July
8 of 2016?

9 A. It seems to be what this document is saying.

10 Q. I'm not asking what the document is saying.
11 I'm just asking if IXL had notice.

12 A. I guess through this document being sent to
13 Jeff is notice to us.

14 MS. SANGHVI: I think this concludes the
15 30(B)(6) deposition portion of the deposition. I
16 propose we take a break and begin again.

17 (Break taken from 2:58 to 3:17.)

18 BY MS. SANGHVI:

19 Q. Mr. Mishkin, now we are -- a bit of a strange
20 transition I understand, but we're moving now into the
21 portion of the deposition that we'll designate as your
22 personal deposition. You're testifying as the CEO,
23 obviously, of IXL still, but in your personal capacity
24 based on your personal knowledge.

25 Do you understand that?

1 A. I do.

2 Q. I'm going to get a little bit more personal
3 information about you that I did not get in the prior
4 section.

5 Are you currently married?

6 A. No.

7 Q. Do you have any children?

8 A. I do.

9 Q. How many?

10 A. One.

11 Q. How old?

12 A. 17 months.

13 Q. Have you been married before?

14 A. I have.

15 Q. Who were you married to?

16 A. Jennifer Gu.

17 Q. That's the COO of IXL, correct?

18 A. That's right.

19 Q. When were you and Ms. Gu married?

20 A. Roughly around the year 2000.

21 Q. Then did you get divorced?

22 A. We did.

23 Q. When was that?

24 A. Approximately 2004.

25 Q. And there are no children from that marriage,

1 correct?

2 A. That's correct.

3 Q. What is -- what are IXL's document retention
4 policies for documents saved on company managed devices
5 and drives?

6 A. I'm not sure I'm the best person to answer
7 that.

8 Q. Who would be?

9 A. Gary Yee.

10 Q. Anyone other than Mr. Yee?

11 A. Potentially his managers, James Lam or Joe
12 Kent.

13 Q. Do you believe there is a document retention
14 policy for documents saved on company managed devices
15 and drives?

16 A. Yes.

17 Q. Who's responsible for establishing -- I'll
18 refer to that sort of generally as IT-related policies.

19 A. That would ultimately be Joe Kent.

20 Q. In your capacity as CEO, have you had the
21 occasion to review IT-related policies?

22 A. I have.

23 Q. Which ones specifically?

24 A. Nothing is coming to mind right now.

25 Q. Is there a place where these policies are

1 located?

2 A. I'm not sure.

3 Q. Generally, if there was a new policy created
4 relating to IT, would you be the person responsible for
5 reviewing that before it was finalized?

6 A. Not necessarily.

7 Q. Who would be?

8 A. I think it would depend on the significance of
9 the policy.

10 Q. Am I correct in understanding that there are
11 some policies that would just be finalized by the IT
12 department and not require your review?

13 A. That's right.

14 Q. Are you familiar with IXL's e-mail retention
15 policy?

16 A. I'm familiar that we have one.

17 Q. What is it?

18 A. I don't -- don't know enough to be able to
19 explain it.

20 Q. Would you consider an e-mail retention policy
21 to fall under the umbrella of an IT-related policy?

22 A. I would.

23 Q. As you sit here today, you believe you have
24 reviewed an e-mail retention policy, you just don't
25 recall what it said; is that correct?

1 A. I -- I know that we were required to save
2 documents and e-mails for this case that I was involved
3 in those discussions.

4 Q. At any time after January 8th, 2015, did you
5 notify either Joe Kent or anyone in the IT department to
6 suspend any document or e-mail retention policies that
7 they might have in place?

8 A. No, I didn't.

9 Q. Did you notify IXL's staff to retain any and
10 all materials that might be relevant to Mr. Duane's
11 employment and/or termination?

12 A. I believe I did.

13 Q. How did you notify IXL staff?

14 A. I don't recall the specifics of it, but other
15 than making sure that it happened.

16 Q. Is there something that would help to refresh
17 your recollection as to that?

18 A. If there's some kind of document where this is
19 talked about, that would help.

20 Q. If you were to notify staff of a policy such as
21 retain anything relevant to Mr. Duane's employment,
22 would you have done so in a memorandum or e-mail?

23 MR. WILSON: Objection; form.

24 Go ahead.

25 THE WITNESS: We don't really use memorandums.

1 So if those are the only two choices, I would have to
2 say e-mail.

3 BY MS. SANGHVI:

4 Q. Can you outline the different ways in which you
5 communicated with your staff so I can make sure that I
6 use the right parameters?

7 A. E-mail, verbally, chat in the past. I don't
8 really do that anymore. Google documents, I mean if
9 that's notifying staff. Working on some sort of
10 collaborative document, maybe that could be a way.
11 That's what comes to mind.

12 Q. So specifically related to -- you've testified
13 that you believe you notified IXL staff to retain
14 materials that might be relevant to Mr. Duane's
15 employment and/or termination.

16 A. That's right.

17 Q. Of the communication methods you've outlined
18 for me, as you sit here today, how do you believe you
19 would have made that communication?

20 MR. WILSON: Objection; form.

21 Go ahead.

22 THE WITNESS: I -- I just don't remember
23 exactly. It would have -- could have been e-mail, could
24 have been in person, could have been a combination.

25 BY MS. SANGHVI:

1 Q. Do you remember which staff you notified?

2 A. I don't.

3 Q. Did you yourself retain any materials related
4 to Mr. Duane's employment and/or termination?

5 A. I did.

6 Q. What type of material did you retain?

7 A. I retained e-mails. I'm trying to think if
8 there was anything else. That's all I'm remembering
9 right now.

10 Q. And that would be any e-mails either to you or
11 from you related to Mr. Duane's employment and/or
12 termination, correct?

13 A. That's right.

14 Q. Mr. Duane was hired as a product analyst in
15 July of 2013, correct?

16 A. I need to see his offer letter to comment on
17 the exact dates.

18 Q. I'm going to put in front of you a document
19 that has been previously marked as Exhibit 17.

20 A. (Witness reviewing document.)

21 Q. If you look at the last two pages of
22 Exhibit 17, does that appear to be the offer letter?

23 A. That does appear to be the offer letter.

24 Q. Does that refresh your recollection that
25 Mr. Duane started around July of 2013 as a product

1 analyst in the math department?

2 A. It refreshes my memory that he was hired as a
3 product analyst. I -- I'm looking for a start date.
4 Oh, July 1st. This tells me that that's what we
5 proposed or approximate that date. I wouldn't know if
6 he -- it was actually when he started or if he delayed
7 it for some reason.

8 Q. If I -- do you have any reason to disagree with
9 the representation that Mr. Duane began working as a
10 product analyst on -- in July 2013?

11 A. No, I don't.

12 Q. When did Mr. Duane stop being an IXL employee?
13 Do you have any reason to disagree with the
14 representation that Mr. Duane stopped being an employee
15 of IXL on January 8th, 2015?

16 A. No. I agree with that.

17 Q. Did you meet Mr. Duane as soon as he started
18 working at IXL?

19 A. I don't -- I don't remember meeting Scott, but
20 I can't say for sure whether or not I met him.

21 Q. Do you remember the first time you met him?

22 A. I can't remember. No, I can't remember when
23 I -- when I met him for the first time, if it was
24 actually in my meeting with him at the end or if I
25 had -- if I had met him before.

1 Q. Did you become aware that Mr. Duane was on a
2 leave of absence at some point in late 2014?

3 A. I know I knew about that after the fact. I
4 don't remember whether I knew that that was happening
5 while it was going on.

6 Q. What is your memory of learning about it after
7 the fact?

8 A. I remember a situation of -- the situation of
9 him returning from leave and there being some -- that
10 there are was some discussion about working
11 arrangements.

12 Q. Had he already returned from leave, or are you
13 recalling a period of time in which he was seeking to
14 return to leave but had not -- returned from leave but
15 had not yet returned to work?

16 A. I have -- I don't know. I don't remember
17 exactly how it -- how it lines up.

18 Q. Do you recall Mr. Keyes calling you to seek
19 your advice on an e-mail response that he received from
20 Scott Duane?

21 A. I have some vague memories about discussing --
22 discussing something with -- with David relating to
23 Scott's working arrangements.

24 Q. And when do you recall having that
25 conversation?

1 A. I don't remember the dates.

2 Q. Do you remember if it was close to the holidays
3 in 2014, the December holidays, I should clarify, in
4 2014?

5 A. It's hard to remember dates. I think these
6 dates ought to be in documents somewhere. It would just
7 help to see them.

8 Q. I agree with you.

9 Mr. Keyes has testified that he called you
10 after receiving an e-mail from Scott Duane. Do you have
11 any reason to dispute that testimony?

12 A. I don't. If that's what David remembers.

13 Q. Do you recall a conversation in which David was
14 expressing questions about how to respond to an e-mail
15 from Mr. Duane?

16 A. I don't. I just don't remember that very
17 clearly at all.

18 Q. I'm going to show you a document marked
19 Exhibit 26.

20 A. (Witness reviewing document.)

21 Q. You will see that this represents an e-mail
22 thread between Scott Duane and David Keyes beginning on
23 Friday, December 19th, 2014 and going through
24 December 24th, 2014.

25 A. Okay. I see that.

1 Q. Does reading Mr. Duane's e-mail dated
2 December 23rd, 2014 at the bottom of the first page,
3 going through the second page, does seeing that e-mail
4 refresh your recollection as to whether or not Mr. Keyes
5 had called you to discuss how to respond to this e-mail?

6 A. (Witness reviewing document.)

7 It's hard to really remember other than just a
8 vague recollection that -- that David discussed this
9 with me, that I just don't -- I don't remember any
10 details about that.

11 Q. When you say that David discussed this, what do
12 you mean by "this"?

13 A. That he discussed -- that he was, you know,
14 working through arrangements with Scott and wanted to
15 talk to me about it.

16 Q. Did Mr. Keyes then send you a copy of the
17 e-mail to review electronically?

18 A. If he did, I don't remember that.

19 Q. What did you instruct Mr. Keyes to do in that
20 conversation where you discussed working through -- his
21 trying to work through arrangements with Scott?

22 A. Well, I don't remember that I instructed him to
23 do anything. I remember we communicated about it
24 somehow and things kind of seemed fine to me.

25 Q. After speaking with Mr. Keyes, do you recall

1 consulting anyone else about the arrangements with Scott
2 that Mr. Keyes was trying to establish?

3 A. I don't remember anything right now.

4 Q. Mr. Keyes, do you have any reason to --

5 MR. WILSON: "Mr. Mishkin."

6 MS. SANGHVI: Sorry.

7 BY MS. SANGHVI:

8 Q. Do you have any reason to dispute Mr. Keyes'
9 testimony that he sent you a draft of his proposed
10 response to Mr. Duane?

11 A. It's not something I remember. I -- it doesn't
12 mean I disagree with David, but I just -- I just don't
13 have a clear memory of that.

14 Q. That question was about Mr. Keyes sending you a
15 draft. Do you have any memory of actually reviewing a
16 draft from Mr. Keyes that --

17 A. I don't have a -- I don't have a memory of him
18 sending or reviewing. I just don't know whether I did.
19 I don't remember not doing it. It just -- it's not just
20 something sticking in my mind.

21 Q. Around late December 2014, did you -- were you
22 aware that Ms. Ockerberg had advised Mr. Keyes that the
23 company could risk being sued if they did not allow
24 Mr. Duane to work from home since they allow other
25 product analysts to work remotely?

1 MR. WILSON: Objection; form.

2 THE WITNESS: I'm hearing that. It's not
3 bringing any memories. I don't know whether that
4 happened or not.

5 BY MS. SANGHVI:

6 Q. I'll show you a document that had been
7 previously marked as Exhibit 13, a chat conversation
8 between David Keyes and his manager Kate Mattison in
9 which he said he -- he said to Ms. Mattison on
10 December 22nd, "Lenore said that since we allow other
11 PAs to work remotely, that we could risk getting sued if
12 we didn't allow Scott to do so as well given his medical
13 condition."

14 A. Okay.

15 Q. Do you recall a conversation to Ms. Ockerberg
16 to that effect?

17 A. I don't.

18 Q. Did you have a conversation with Mr. Keyes to
19 that effect?

20 A. By that -- to that effect, do you mean did I
21 say something like this?

22 Q. Or did Mr. Keyes inform you that he had
23 received advice from Ms. Ockerberg to this effect?

24 A. If he did, I don't remember.

25 Q. Who scheduled the meeting with Mr. Duane on

1 January -- excuse me. Did you have a meeting with
2 Mr. Duane on January 8th, 2015?

3 A. January?

4 Q. -- 8th, 2015.

5 A. I did.

6 Q. Who scheduled that meeting with Mr. Duane on
7 January 8th, 2015?

8 A. I reached out to Scott to set up a meeting with
9 him. So presumably me.

10 Q. What was the purpose for scheduling that
11 meeting?

12 A. I scheduled the meeting, reached out to Scott,
13 because David had told me that he had talked to -- he
14 had talked to Scott, that they were in -- they were in a
15 good place, but he thought that it would be useful
16 for -- for Scott to get to share some concerns with me
17 directly.

18 Q. Did you understand what he meant by -- did
19 David say that they were in a good place?

20 A. That's what I remember hearing.

21 Q. Do you understand the context of that?

22 A. I -- I think it -- I guess it related to the
23 fact that the -- there had been this conflict between
24 them, or whatever you would call it, about Scott's
25 scheduled return to work.

1 Q. Mr. Keyes had told you that Scott had raised an
2 issue related to discrimination, correct?

3 A. I -- I remember -- you know, I remember talking
4 about it. I just -- you know, the substance of what was
5 discussed is kind of hazy for me now.

6 Q. Mr. Mishkin, do you remember providing
7 testimony under oath at the NLRB proceeding?

8 A. I do.

9 Q. And that proceeding took place November 5th of
10 2015, which is less than ten months from the time that
11 Mr. Duane had been terminated, correct?

12 A. I can accept that.

13 Q. And in that hearing you testified in response
14 to the question of: What was your intent in scheduling
15 this meeting?

16 You answered: David had told me that he
17 thought it would be a good idea for me talk to Scott and
18 he told me that Scott had raised an issue related to
19 discrimination, so I wanted to talk about those
20 things -- I wanted to talk to Scott about those things.

21 Do you have any reason to believe that that
22 testimony is not true?

23 MR. WILSON: Objection; form.

24 THE WITNESS: No, I'm sure it was accurate.

25 BY MS. SANGHVI:

1 Q. Does that refresh your recollection as to why
2 you scheduled a meeting on January 8th with Mr. Duane?

3 A. I think I already told you why I scheduled a
4 meeting. I'm not sure how what you just read to me is
5 different.

6 Q. Does that refresh your recollection that
7 Mr. Keyes told you that Scott had raised an issue
8 related to discrimination?

9 A. It does, uh-huh.

10 Q. So when you scheduled -- I'm going to mark this
11 as Exhibit 68. It's a one-page document bearing Bates
12 number IXL-1663. It's an e-mail communication between
13 Scott Duane and Paul Mishkin on January 7th, 2015.

14 (Document marked Deposition Exhibit 68
15 for identification.)

16 BY MS. SANGHVI:

17 Q. On January 7th, 2015 at 4:27 a.m., did you
18 schedule a meeting with Mr. Duane for the following day
19 on January 8th, 2015 for 11:00 a.m.?

20 A. (Witness reviewing document.)

21 It looks like January 7th at 4:27 a.m. I
22 proposed a meeting with Scott the next day to talk about
23 that.

24 Q. And you wrote in that e-mail, "Discrimination
25 of any type, including disability discrimination, is

1 unacceptable to me and to IXL, and I need to understand
2 what has been occurring so that I can take action
3 immediately to correct it."

4 Do you see that?

5 A. I do.

6 MR. WILSON: Can I have a copy, please.

7 MS. SANGHVI: Sorry.

8 BY MS. SANGHVI:

9 Q. Does that refresh your recollection that --
10 about what Mr. Keyes had told you?

11 A. It tells me that he must have told me that --
12 what Scott wanted to talk to me about involved
13 disability discrimination.

14 Q. Do you know when -- where you were when
15 Mr. Keyes told you that information?

16 A. I don't.

17 Q. Do you recall being in a meeting with
18 Ms. Prado, Ms. Ockerberg and Mr. Keyes on January 6th,
19 2015?

20 A. I -- I don't know either way.

21 Q. So as you sit here today, you have no
22 recollection of that meeting, correct?

23 A. Of the -- sorry, of there being a meeting on
24 January 6th?

25 Q. Yeah. So let's take this step by step. You

1 scheduled a meeting with Mr. Duane for January 8th,
2 2015, correct?

3 A. Yes.

4 Q. You scheduled that meeting on January 7th,
5 correct?

6 A. That's right.

7 Q. I'm trying to understand what led to the
8 scheduling of that meeting? You told me that Mr. Keyes
9 had informed you that Scott Duane had raised some
10 concerns about disability discrimination; that's
11 correct?

12 A. That's correct.

13 Q. And what I'm trying to understand is the
14 context in which you learned that information from
15 Mr. Keyes. And I'm asking specifically whether it was
16 in a meeting with Mr. Keyes, Ms. Prado and
17 Ms. Ockerberg?

18 MR. WILSON: Objection; form.

19 THE WITNESS: I -- my memory is that that was
20 something David told me in a conversation between the
21 two of us.

22 BY MS. SANGHVI:

23 Q. Where do you remember that conversation taking
24 place?

25 A. I -- it's really hard to remember details like

1 that.

2 Q. Mr. Mishkin, I generally do this at the very
3 beginning of my depositions and I failed to do so today,
4 but for my record I need to do it.

5 Are you taking any medication that would impair
6 your ability to testify truthfully today?

7 A. No.

8 Q. Are you on any substances that would impair
9 your ability to testify truthfully today?

10 A. No.

11 Q. Can you think of any reason why you would be
12 impaired in your ability to testify truthfully?

13 A. I cannot.

14 Q. Do you have any reason to disagree with
15 testimony that you were in a meeting on January 6th with
16 Ms. Prado, Ms. Ockerberg and Mr. Keyes in the sixth
17 floor conference room?

18 MR. WILSON: Objection; form.

19 Go ahead.

20 THE WITNESS: I -- you know, the -- we're
21 talking about meetings three years ago at this point,
22 and I'm just not able to remember these kind of details
23 where meetings took place, you know. I can -- I just
24 don't remember.

25 BY MS. SANGHVI:

1 Q. What would help you remember? Do you keep a
2 calendar?

3 A. I have a Google calendar now. I don't know
4 whether I used it back then. I may or may not. I don't
5 know.

6 Q. When you need to meet with employees, do you
7 generally send them an e-mail?

8 MR. WILSON: Objection; form.

9 THE WITNESS: I don't know that there's any
10 general. Sometimes.

11 BY MS. SANGHVI:

12 Q. Where is your office in relation to Mr. Keyes'
13 office?

14 A. Currently my office is on the sixth floor, and
15 David is on -- I think he may have just moved to the
16 fifth floor. I think at the time my -- I think at the
17 time my office -- well, I know my office was on the
18 sixth floor. I think David's may have been -- I think
19 David's should have been on the fourth floor back then.

20 Q. Where was Ms. Ockerberg?

21 A. She was also on the sixth floor.

22 Q. Where was Ms. Prado?

23 A. Sixth.

24 Q. So is it possible if you wanted Mr. Keyes to
25 come up for a meeting with the three of you on the sixth

1 floor, you would have e-mailed him?

2 A. I don't -- I don't know.

3 Q. I'm asking if it's possible.

4 A. Is it possible? Sure.

5 Q. Did Ms. Ockerberg offer any advice to you on
6 January 6th, 2015 with regards to disability
7 discrimination complaints that Mr. Duane was raising?

8 A. If she did, I don't -- I don't remember.

9 Q. Did Maricela Prado offer you any advice with
10 regards to disability discrimination complaints that
11 Mr. Duane was raising on January 6th, 2015?

12 A. Again, it -- if she did, I also don't remember.

13 Q. As you sit here today, do you have a memory
14 about what you wanted to discuss with Mr. Duane when you
15 scheduled the meeting?

16 A. I do. I remember that I wanted to keep an open
17 mind, just hear what he had to say. I was trying not to
18 make any judgments beforehand.

19 Q. Did you collect any information prior to
20 meeting with Mr. Duane on January 8th?

21 MR. WILSON: Objection; form.

22 THE WITNESS: I -- I don't remember.

23 BY MS. SANGHVI:

24 Q. When you say you were trying to keep an open
25 mind and trying not to make judgments, what does that

1 mean to you?

2 A. That meant I just wanted to hear what Scott had
3 to say.

4 Q. I'm going to show you a document that has been
5 previously marked Exhibit 28.

6 Mr. Mishkin, do you recognize this document?

7 A. (Witness reviewing document.)

8 I don't.

9 Q. Looking at the header it's an e-mail from
10 Maricela Prado to you dated January 6th, 2015,
11 10:33 a.m.

12 A. I see that.

13 Q. Do you have any reason to believe that this is
14 an inaccurate representation of an e-mail that Ms. Prado
15 sent to you?

16 A. I don't.

17 Q. Do you see that Ms. Prado has compiled initial
18 e-mails between Scott and her beginning after Brad's
19 last day for your review?

20 A. I can see that.

21 Q. Do you -- why did Ms. Prado send you this
22 document?

23 A. I don't know.

24 Q. Did you ask Ms. Prado to send this document?

25 A. I don't remember asking for this.

1 Q. Did you think that seeing these communications
2 would allow you to keep an open mind in your meeting
3 with Mr. Duane?

4 MR. WILSON: Objection; form.

5 THE WITNESS: I don't know that I even would
6 have read or paid attention to this.

7 BY MS. SANGHVI:

8 Q. Why not?

9 A. You know, I -- I kind of have a vague memory of
10 getting a long batch of information and just not
11 necessarily -- not necessarily reading it. Yeah, I just
12 don't remember paying much -- much attention to this.

13 Q. Did you ask for an HR representative to be
14 present at your meeting with Mr. Duane on January 8th as
15 of when you had originally scheduled it?

16 A. No, I didn't.

17 Q. Why not?

18 A. I -- I just -- I don't have a reason why not.

19 Q. You knew that there was an employee coming to
20 speak to you about disability discrimination, and you
21 did not want an HR representative there; is that
22 correct?

23 MR. WILSON: Objection; asked and answered.

24 THE WITNESS: That is correct.

25 BY MS. SANGHVI:

1 Q. So I'm trying to understand what your thinking
2 was for not having a representative there?

3 MR. WILSON: Asked and answered.

4 THE WITNESS: My thinking for not having a
5 representative there? I -- I didn't even think about
6 that choice.

7 BY MS. SANGHVI:

8 Q. So at this point I think we've established that
9 you received this e-mail, Document 28, the morning of
10 January 6th, at some point thereafter you scheduled a
11 meeting with Mr. Duane, early morning January 7th, that
12 was scheduled for January 8th, correct?

13 A. That's right.

14 Q. What happens after you scheduled a meeting with
15 Mr. Duane and he confirms the meeting on January 8th?

16 A. I'm sure I did a lot of other kinds of work and
17 had the meeting with Scott on -- on January 8th.

18 Q. Before you met with Scott, at some point did
19 you become aware of a negative post about IXL on
20 Glassdoor.com?

21 A. I did.

22 Q. How did you learn about a negative post on
23 Glassdoor.com?

24 A. Someone showed it to me or e-mailed it to me.
25 Karen or Maricela.

1 Q. Showing you a document that has been previously
2 marked Exhibit 29, is this the e-mail that you're
3 referring to where you were e-mailed a copy of the
4 negative review?

5 A. (Witness reviewing document.)

6 This is it.

7 Q. So Ms. Prado e-mailed you on January 7th at
8 around 11:04 -- at 11:04 a.m., correct?

9 A. That's what it says here.

10 Q. Do you know when you read it?

11 A. I don't.

12 Q. When you first read the post, what was your
13 immediate reaction?

14 A. My reaction was that it was just entirely
15 inappropriate, unethical, that it was deliberately aimed
16 at damaging the company.

17 Q. What did you do immediately after reading the
18 post?

19 A. Probably just thought about it a little bit.

20 Q. After having the opportunity to think about it
21 a little bit, what did you do next?

22 A. Probably wondered who is -- is this from Scott,
23 how do they know.

24 Q. So you see where Ms. Prado says, "I hate to
25 assume who this is from, but please read this review

1 from Glassdoor for yourselves."

2 Did you come to a conclusion who it was from --
3 who it was by, excuse me, who the Glassdoor review was
4 by?

5 A. Well, when they first sent it, I could tell
6 that they were suggesting that it was from Scott, but I
7 didn't -- I didn't have a definite opinion on -- of my
8 own about that.

9 Q. How could you tell that Mr. Prado was
10 suggesting that it was from Scott?

11 A. Well, in this e-mail it's -- it's kind of
12 attached on to some other information about Scott, so I
13 think that implies that she's saying that it's from
14 Scott.

15 Q. Did you understand that the person was
16 complaining that if you work for IXL and you're not
17 white or Asian, that you'll be discriminated against?

18 MR. WILSON: Objection; form.

19 THE WITNESS: I understood that this is a post
20 that's making a lot of false allegations about the
21 company.

22 BY MS. SANGHVI:

23 Q. How did you come to an understanding that the
24 post was making false allegations about the company?

25 A. From reading it.

1 Q. Other than reading it, did you take any other
2 steps to understand the -- that the post was raising
3 false allegations about the company?

4 A. No.

5 Q. If you look at the fourth paragraph of the post
6 that begins, "There are no politics if you fit in," do
7 you see that paragraph?

8 A. I see it. Uh-huh.

9 Q. Did you understand from that paragraph that the
10 person was complaining that if you work for IXL and
11 you're not white or Asian, that you'll be discriminated
12 against?

13 MR. WILSON: Objection; form, foundation.

14 THE WITNESS: I understood -- I interpreted
15 that as, you know, a damaging statement, untrue about
16 the company's culture aimed at poten -- directly at
17 potential job seekers. Just kind of absurd.

18 BY MS. SANGHVI:

19 Q. When you say it's untrue, that there are
20 statements that are untrue, can you identify for me from
21 the beginning which statements you perceived as untrue?

22 A. "Micromanaged, easy unchallenging work," that's
23 definitely untrue. "The company isn't going anywhere
24 right now," that's definitely untrue. "They play to the
25 traditional classroom," that's certainly untrue. "Don't

1 expect a challenge here," untrue. "Gives their
2 employees boring, menial work to fill the day," that's
3 certainly untrue. "The CEO is overly involved in every
4 product, every decision, every everything." Well, we
5 don't have very many products, so it -- "overly
6 involved," untrue. Obviously, I'm "involved in every
7 product, every decision, every everything," that's
8 ridiculous. That's untrue. That "there are no politics
9 if you fit in," that's -- I -- that's -- that's
10 generally very apolitical place in general, doesn't have
11 much to do with fitting in.

12 "If you're not a family-oriented white or Asian
13 straight or mainstream gay person with 1.7 kids who
14 really likes softball then you're likely to find
15 yourself on the outside" is most certainly untrue.

16 "Treatment in the workplace, in terms of who
17 gets flexible hours, interesting projects, praise
18 promotions, and a big yearly raise, is different and
19 seems to run right along these characteristics," that's
20 untrue.

21 "There is essentially no HR knowledge or staff
22 at this company," that's untrue. "Know your rights when
23 you work here, because they don't, and they don't care
24 to learn," that's not true. "Most management has no
25 idea what the word 'discrimination' means, nor do they

1 think it matters," that's untrue. "Don't pull the bait
2 and switch on employees," that's untrue. "Build a
3 culture that encourages respect for people of all walks
4 of life," the implication that -- that is not what is in
5 place at IXL is untrue. I think I probably just read
6 almost the whole post.

7 I am not -- by the way, let me add, "I have
8 been working at IXL Learning full time, more than three
9 years," knowing that this is from Scott, this is also
10 untrue.

11 Q. To the first three things that you noted, those
12 are in the pros section, do you think those are not
13 positives of IXL?

14 A. No. I -- "easy, unchallenging work" is not
15 really a positive thing to say, you know, especially
16 when you combine that with gives "employees boring,
17 menial work to fill the day."

18 Q. So let's focus a bit on the paragraph about the
19 "politics if you fit in" for a moment.

20 Setting aside your belief that it was untrue,
21 is it accurate that you read this post to say that if
22 you are not white or Asian or mainstream gay with 1.7
23 kids, if you do not like sports and if you don't have
24 kids, then you won't be discriminated against?

25 MR. WILSON: Objection; form.

1 THE WITNESS: Can you ask me that again?

2 BY MS. SANGHVI:

3 Q. Maybe it's easier if I ask you if you recall
4 testifying at the NLRB hearing that your interpretation
5 of what Mr. Duane was saying was that if you're not --
6 if you work for IXL and you're not white or Asian, if
7 you're not straight or mainstream gay, if you don't like
8 sports, if you don't like kids that you'll be
9 discriminated against. Do you recall testifying to that
10 effect?

11 MR. WILSON: Objection; form and foundation.

12 THE WITNESS: I -- I mean taking it literally
13 it's -- it's really saying that if you don't fit these
14 categories, you will be on the outside, you will be
15 treated differently.

16 BY MS. SANGHVI:

17 Q. So if somebody is treated differently in the
18 workplace because of their race or sexual orientation,
19 does that constitute discrimination in your mind?

20 MR. WILSON: Objection; calls for a legal
21 conclusion.

22 THE WITNESS: I mean separating it from this
23 post, absolutely.

24 BY MS. SANGHVI:

25 Q. So why in the context of this post did you not

1 view this as a claim of discrimination?

2 A. I view this as and angry rant meant to hurt the
3 company. It's not -- it's not any kind of legitimate
4 claim.

5 Q. Do you know the ratio demographic of your
6 company -- what the ratio demographic of your company
7 was in 2014?

8 A. I could talk about that if we could look at
9 that report that we saw earlier.

10 Q. Let's turn our attention to Exhibit 58.

11 Let me ask you first, Mr. Mishkin, when you
12 decided that this was an untrue statement, did you
13 consult any documents regarding the ratio demographic of
14 the company?

15 A. No, I didn't.

16 Q. Is it true that of the 184 employees that were
17 employed at IXL in 2014, 113 of them were white?

18 A. That's true.

19 Q. Is it true that of the 184 employees employed
20 at IXL, 48 of them were Asian?

21 A. That is true.

22 Q. So 161 of the 184 employees employed at IXL in
23 2014 were in fact white or Asian, correct?

24 A. That's correct.

25 Q. You didn't consult that information --

1 MR. WILSON: Objection.

2 BY MS. SANGHVI:

3 Q. -- when deciding -- what's the objection, Jeff?

4 MR. WILSON: I thought you finished. But you
5 already asked him that twice.

6 MS. SANGHVI: I wasn't done with my question.

7 MR. WILSON: Exactly. That's why I stopped.

8 BY MS. SANGHVI:

9 Q. Can you accept that this is the representation
10 of one individual's perception of his workplace?

11 MR. WILSON: Objection; form.

12 THE WITNESS: Are you asking me whether he
13 actually believed this?

14 BY MS. SANGHVI:

15 Q. No. I'm asking if you considered that this was
16 the perception of one employee in your workplace?

17 A. I'm having a hard time figuring out what that
18 means.

19 Q. When you first read this on January 7th, 2015,
20 I think you have testified that you believed it was an
21 untrue statement, damaging to the company.

22 What I'm asking you is, did you at that time
23 consider for a moment that this is the perception of one
24 individual at the company?

25 A. I'm just having a hard time understanding the

1 word "perception." Do you mean a true perception, as in
2 he actually believed this?

3 Q. Yes. Did you think it was possible that an
4 employee such as Scott Duane believed this?

5 A. I'm sure I must have given that some thought.

6 Q. And what was your conclusion?

7 A. My conclusion was -- was that I -- I didn't see
8 how that could be possible.

9 Q. Why is that?

10 A. Because it's so filled with false information,
11 statements that no intelligent sensible person could --
12 could believe and -- and it seemed very crafted too. I
13 mean just very much designed to turn away app -- you
14 know, to scare away applicants to the company.

15 Q. Did IXL have any policies about posting
16 negative posts on Glassdoor.com?

17 A. No, we didn't.

18 Q. So after reading this and coming to the
19 conclusion that this was an untrue and absurd statement,
20 as you testified, what did you do next?

21 A. I suppose I would have thought about what's --
22 what's the right thing to do about it.

23 Q. What was your next action?

24 A. I don't know about my exact next action. I
25 know that I -- I had a discussion with, I believe, David

1 and Maricela, possibly Lenore, later that day to -- to
2 talk about it.

3 Q. Where was that meeting held?

4 A. I remember meeting in my office.

5 Q. Who called that meeting?

6 A. That would have been me, yeah.

7 Q. What was the purpose of calling that meeting?

8 A. To talk about this -- this review and just
9 discuss it.

10 Q. Did you start the meeting?

11 A. What does that mean? Did I speak first?

12 Q. Right.

13 A. I don't remember who spoke first, but it was --
14 I was the one who wanted to have the meeting.

15 Q. Do you remember when that was, when in the day?

16 A. It would have been -- well, it certainly would
17 have been before I met with Scott. I don't -- I think
18 it probably was the day before. I don't remember
19 exactly.

20 Q. What did you discuss at that meeting?

21 A. I remember -- I remember discussing do we
22 absolutely know for sure that it was Scott. There was
23 something about his writing -- something about his
24 writing style had made it pretty clear that it was him,
25 and we talked about it also and there -- there was

1 agreement that this had to be Scott.

2 I remember maybe discussing a little bit, just
3 kind of some frustration, what do we do, talking about
4 logistics a little bit, how to handle the -- the actual
5 termination.

6 Q. So at this meeting you decided to terminate
7 Mr. Duane, correct?

8 A. That's right.

9 Q. Sorry, just to clarify. At this meeting on
10 January 7th, you decided to terminate Mr. Duane,
11 correct?

12 A. That's right.

13 Q. What about the logistics did you discuss?

14 A. We would have discussed clearing out Scott's
15 desk, disabling access to company networks, things like
16 that, yeah.

17 Q. Did you -- who was responsible for clearing out
18 Scott's desk?

19 A. That would have been something that Lenore
20 and/or Maricela would have been in charge of.

21 Q. Also, just so I understand it, at this point in
22 time in January of 2015, there was no HR director and
23 therefore Ms. Ockerberg was consulting on HR matters; is
24 that correct?

25 MR. WILSON: Objection; form.

1 THE WITNESS: That's -- that's what I remember,
2 yes.

3 BY MS. SANGHVI:

4 Q. So you directed either Lenore or Maricela to
5 ensure that somebody cleared out Scott's desk during
6 your meeting with them on January 8th at 11:00 a.m.?

7 MR. WILSON: Objection; form.

8 THE WITNESS: I wouldn't say directed, but that
9 was the decision that was made by the group that the
10 group agreed upon.

11 BY MS. SANGHVI:

12 Q. Did you ask Ms. Prado in her capacity as an HR
13 representative to prepare Mr. Duane's off-boarding
14 paperwork?

15 A. I don't remember asking her about that.

16 Q. Who was responsible for communicating with IT
17 to disable access to company networks?

18 MR. WILSON: Objection; form.

19 THE WITNESS: I got a little confused there.
20 Before did you say off-boarding paperwork?

21 BY MS. SANGHVI:

22 Q. Yes.

23 A. Okay. So IT is a separate question?

24 Q. Yeah.

25 A. That would have also been something that Lenore

1 or Maricela would have taken care of.

2 Q. After that meeting, what did you do?

3 A. The rest of the day I -- I can't remember.

4 Q. Did you talk in that meeting about still
5 proceeding with the scheduled meeting with Mr. Duane on
6 January 8th at 11:00 a.m.?

7 A. Yes.

8 Q. And what was that discussion?

9 A. Well, I still wanted to hear what he had to
10 say.

11 Q. Why is that?

12 A. Because discrimination is not something that I
13 would ever tolerate at the company. And if there had
14 been an instance of discrimination, I wanted to know
15 about it so I could take action about it.

16 Q. Would it have changed your decision to
17 terminate Mr. Duane?

18 A. It would not have.

19 Q. Did you speak to anyone at IXL regarding
20 Mr. Duane's termination the morning of January 8th prior
21 to your meeting with Scott Duane?

22 A. I can't remember whether I did or didn't.

23 Q. Did you speak with Jennifer Gu about your
24 planned termination of Mr. Duane?

25 A. I probably did, but I don't remember any

1 conversation, though.

2 Q. Did you need to seek her input when terminating
3 employees?

4 A. No.

5 Q. Did you speak with anyone on the executive team
6 about your decision to terminate Mr. Duane before you
7 did it?

8 A. Sorry, I need to go look back and see who was
9 on that executive team back then.

10 I'm just thinking a minute if I would have --

11 Q. We have to sort of have to put everything into
12 the record. So let the record reflect that Mr. Mishkin
13 is referring to IXL-1406, which is Exhibit 53.

14 A. I don't believe that I did.

15 Q. So then you had a meeting with Mr. Duane on
16 January 8th at 11:00 a.m., correct?

17 A. I did.

18 Q. Was anyone else present in that meeting?

19 A. No.

20 Q. Where was that meeting held?

21 A. In my office.

22 Q. Describe how that meeting began.

23 A. Scott came in, sat down. I -- I think I asked
24 him or told him I hope he's -- he's feeling well, and I
25 asked him how are things with David. I remember him

1 saying things with David were fine now, and I asked
2 him -- I asked him to talk about -- I don't remember how
3 I phrased it -- to talk about the things that he
4 experienced that he wanted to share with me. May have
5 asked him about did he have an experience with
6 discrimination that he wanted to talk about.

7 He talked about that in his -- his telling of
8 it, David denying his request to work from home and said
9 that that was illegal. And we talked about that a
10 little bit.

11 I -- I remember asking him, you know, didn't --
12 "Wasn't it true that you're less productive when you
13 were working from home before and there was a track
14 record of not being productive on work from home days?"
15 And he said, yes, that that was true. And he also said
16 that it didn't matter that -- I asked him, "Wasn't it
17 appropriate for David to bring that up with you?" And
18 he said it -- it was, but it was still illegal for him
19 to not agree immediately to what he was asking for.

20 Q. Did you have an understanding on the accuracy
21 of his statement that it was illegal to not grant him
22 his work-from-home accommodation?

23 A. At -- well, I -- I don't know about what you
24 just said, not grant them. I -- I think it was a back
25 and forth discussion between David and Scott. And I

1 know by the time that I was having this meeting with
2 Scott, I had done -- I had done research and, you know,
3 I knew that what David -- I knew that there was nothing
4 illegal about what had happened.

5 Q. What research had you done?

6 A. I'd done research on my own online just, you
7 know, reading about how the laws work.

8 Q. Do you remember what information you were
9 accessing about --

10 A. I remember getting information from a variety
11 of sources. I don't remember particular sites.

12 Q. Had you consulted HR on this point?

13 A. I -- I can't remember if -- can't remember if I
14 had or if I hadn't. I remember wanting to get a
15 definitive answer for -- for myself by doing my own
16 research.

17 Q. Did you feel like you would not get a
18 definitive answer from HR?

19 A. I felt like it was a legal issue, legal aspects
20 to it, and, you know, I just wanted to be absolutely
21 sure.

22 Q. I think earlier you had testified that it
23 was -- one of HR's responsibilities was dealing with
24 complaints from employees. So I'm just curious why
25 you -- didn't correct me if I'm mischaracterizing -- why

1 you didn't either feel comfortable or want to go to HR
2 given the legal aspects?

3 A. I said earlier that that's one of HR's
4 responsibilities. It doesn't necessarily mean that
5 they're going to handle every single complaint that
6 there ever is in the company. You know, I've also been
7 CEO of this company for almost -- well, at the time
8 maybe 17 years, dealt with a lot of situations and have
9 a lot of confidence in my own ability to figure out
10 certain situations.

11 Q. Do you have any legal training?

12 A. No, I don't.

13 Q. Have you ever completed any HR certification?

14 A. Nope.

15 Q. How did you go about conducting this research?

16 A. By doing Internet search.

17 Q. Did you start with Google, just Googling
18 something?

19 A. I'm sure I used Google. I also used common
20 sense?

21 Q. Can you -- what does that mean, you also used
22 common sense?

23 A. Common sense would tell you that it doesn't
24 make sense for an employee to make a unilateral demand
25 for there not to be a discussion. I mean that would

1 be -- it literally makes no sense whatsoever.

2 Q. And this research that you did, was it done at
3 IXL?

4 A. Yes.

5 Q. You think on January 7th or the morning of
6 January 8th?

7 A. I don't know.

8 Q. Was it done on your IXL computer?

9 A. Presumably, yeah, it would have been.

10 Q. Do you still have the same computer?

11 A. I do.

12 Q. You said earlier that not every complaint was
13 going to be handled by HR, and given your long history
14 as CEO there was certainly some that you would be able
15 to handle independently.

16 Is that an accurate description of what you
17 said?

18 MR. WILSON: Objection; form.

19 THE WITNESS: It sounds like you're trying to
20 put it into two categories. I don't know that I would
21 do that.

22 BY MS. SANGHVI:

23 Q. I guess I'm trying to understand, when you made
24 that statement, which types of complaints would you take
25 to HR and which would you handle independently?

1 A. I'm not sure how to generalize about this one
2 particular instance and turn it into different
3 categories of complaints that would involve it -- you
4 know, go to HR or not go to HR.

5 When I said that before, I'm talking about
6 employees having issues with other employees and talking
7 to a manager about it, resolving it on their own. I
8 don't think every single issue has to go to HR.

9 Q. I'm just trying to understand if there are
10 certain categories, as you sit here today, that you
11 think, well, that one definitely should go to HR?

12 A. I don't think it with -- no, I wouldn't agree
13 with that.

14 Q. I'm just asking if you can think of any right
15 now, as you're sitting here right now?

16 A. Oh, would I think of different categories that
17 would go to HR? I think category -- I think complaints
18 that are more serious that also need HR's -- HR needs to
19 help to resolve them.

20 Q. You did not consider Mr. Duane's complaint as a
21 serious complaint; is that correct?

22 MR. WILSON: Objection; form.

23 THE WITNESS: No, that's not true.

24 BY MS. SANGHVI:

25 Q. Do you remember reading the Americans with

1 Disabilities Act at the time you conducted this
2 research?

3 MR. WILSON: Objection.

4 THE WITNESS: I don't remember whether I did or
5 didn't.

6 BY MS. SANGHVI:

7 Q. Are you familiar with the Americans with
8 Disabilities Act?

9 A. I'm familiar with that, yes.

10 Q. What is your understanding of how the Americans
11 with Disabilities Act applies to employment
12 discrimination?

13 MR. WILSON: Objection; form, foundation --

14 THE WITNESS: My understanding is that --

15 MR. WILSON: Objection; form, foundation, calls
16 for a legal conclusion.

17 Go ahead.

18 THE WITNESS: My understanding is that it
19 requires employers to make reasonable accommodations for
20 employees with disabilities.

21 BY MS. SANGHVI:

22 Q. What is your understanding of what the
23 interactive process entails?

24 A. It's a discussion between an employee and a
25 manager about ways to accommodate an employee with

1 disabilities needs.

2 Q. Do you have an understanding of what
3 limitations there are about what a manager can ask for
4 of an employee in the context of an interactive process?

5 A. Not off the top of my head.

6 Q. So we were talking about the meeting on
7 January 8th, 2015 in your office with Mr. Duane. You've
8 outlined that Mr. Duane raised his concern that being
9 denied his request -- requested accommodation was
10 illegal.

11 And you engaged in a little bit of conversation
12 around that; is that correct?

13 A. He made the claim that it was illegal, yes.

14 Q. And what was your response?

15 A. Like I said, I -- I asked him -- you know, we
16 talked about his productivity, I asked him wasn't it --
17 wasn't it reasonable for David to -- to make this
18 suggestion.

19 Q. What was his response?

20 A. His response was that it was still illegal.

21 Q. Did you discuss anything else with regards to
22 that topic?

23 A. I'm thinking about where the topic ends. He --
24 he said that he had observed many other illegal things
25 at the company, so I asked him about what those were.

1 He said that in a new hire orientation, Maricela had
2 gotten to a section that related to disability benefits
3 and Scott had said that Maricela said to him and the
4 other one or two people in the room, "You look like
5 healthy young guys, I can skip this section."

6 And he also said that -- he said that that made
7 him feel uncomfortable. He also said that he -- that
8 Karen Penner had told him what he considered personal
9 information about one of her direct reports who was
10 taking some time off for -- for medical procedures.

11 Q. Anything else?

12 A. I asked him if there was anything else, and
13 he -- he didn't have anything else to add.

14 Q. Did Mr. Duane bring up the fact that Brad
15 Marshall provided him incorrect information?

16 A. He did say that.

17 Q. And what did he say about that?

18 A. I don't remember any particulars.

19 Q. Did you ask him any particulars?

20 A. I don't remember if I asked him. Yeah, I don't
21 remember.

22 Q. Was this -- was Mr. Duane's allegation the
23 first time you were made aware of Mr. Marshall's errors
24 as a human resources manager?

25 MR. WILSON: Form.

1 THE WITNESS: I can't remember if it was or
2 not.

3 BY MS. SANGHVI:

4 Q. Just for the record, I'll clean that up.

5 Was Mr. Duane's allegation for the -- the first
6 time that you were made aware of Mr. Marshall giving
7 incorrect information?

8 A. I can't remember if it was or not.

9 Q. But you had already by this point fired
10 Mr. Marshall from the position of HR manager, correct?

11 A. That's right.

12 Q. Mr. Marshall had supervised Ms. Prado who
13 remained at IXL, correct?

14 A. Correct.

15 Q. And other than consultation from Ms. Ockerberg,
16 Ms. Prado remained the sole HR representative from
17 September 2014 till about February 2015 when Ms. Rodney
18 began, correct?

19 MR. WILSON: Objection; form.

20 THE WITNESS: I can't remember whether there
21 was anyone on the HR team besides Maricela or Lenore for
22 that period.

23 BY MS. SANGHVI:

24 Q. You weren't concerned that Ms. Prado might be
25 functioning under the same incorrect information that

1 Mr. Marshall might have provided?

2 MR. WILSON: Objection; argumentative.

3 Go ahead.

4 THE WITNESS: I think I was focused on
5 different things at the time.

6 BY MS. SANGHVI:

7 Q. You were focused on, what does that mean? What
8 were you focused on?

9 A. As Scott was saying this, I was obviously
10 thinking about what he was saying. You know, him saying
11 that it was illegal, there are many other illegal things
12 at the company, so I was -- that's a bold statement, so
13 I wanted to hear what was illegal.

14 And I remember being puzzled at the time --
15 yeah, just generally trying to make sense of -- of what
16 he had -- what he had just told me following such
17 emphatic statements.

18 Q. So he said that he had seen many illegal
19 things. One of the examples that he was providing was
20 that Brad Marshall provided incorrect information,
21 correct?

22 A. That's right.

23 Q. And that puzzled you?

24 A. It puzzled me -- it puzzled me because he was
25 describing some kind of mistake. And I remember having

1 some awareness, and I don't remember if it was -- I
2 don't remember if Scott told me or if I had heard it
3 before, but there was some incorrect number given to
4 him. So I -- I knew that -- I knew that there was some
5 mistake that had been made, and I was just trying to fit
6 that in with the statement that -- that -- that had been
7 illegal.

8 Q. Did it at all change your opinion of your
9 conclusion that the statement in his Glassdoor post,
10 that HR -- that "there is essentially no HR knowledge or
11 staff at this company," that -- you had said earlier
12 that was untrue.

13 Did Mr. Duane providing information and your
14 having some vague memory that in fact Mr. Marshall did
15 provide some incorrect information change your opinion
16 about the truthfulness of that statement?

17 MR. WILSON: Form.

18 THE WITNESS: No, it didn't.

19 BY MS. SANGHVI:

20 Q. Was there any other information exchanged about
21 Mr. Marshall's provision of incorrect information
22 between you and Mr. Duane at that meeting?

23 A. I can't remember.

24 Q. Didn't Mr. Duane also raise to you that
25 Mr. Prado and Ms. Keyes -- he believed Ms. Prado and

1 Ms. Keyes could use some more training, specifically
2 about disability issues?

3 A. I'm sorry, I didn't hear.

4 Q. Did Mr. Duane raise to you that Ms. Prado and
5 Mr. Keyes could use more training, specifically training
6 about disability issues?

7 A. That sounds -- I remember a comment along those
8 lines.

9 Q. What did you say in response?

10 A. I told him in general about his -- his
11 responses, that I would talk to the people that he
12 mentioned.

13 Q. But did you follow up about the specific
14 allegation that this HR person and this manager could
15 use more training about disability issues?

16 A. I know I followed up somehow, but I don't
17 remember exactly what I did.

18 Q. Did you follow up with Mr. Duane after he made
19 that allegation?

20 A. You mean in that meeting?

21 Q. Yes.

22 A. No, because it -- it was in that meeting that
23 he -- he told me this, and I told him that I would
24 follow up with the people that he had mentioned
25 obviously after the meeting.

1 Q. Any other comments that Mr. Duane made to you
2 in the meeting on January 8th about feeling
3 discriminated against?

4 A. There may have been something touching on that
5 topic. After -- after I asked him about what we -- you
6 and I just talked about, I -- I showed him the Glassdoor
7 review, and we began talking about that.

8 Q. We'll come back to that in a moment.

9 But just following up on -- you said one of the
10 first things that Mr. Duane highlighted for you is that
11 Ms. Prado skipped a slide during a presentation to new
12 employees.

13 Was this the first time that you had heard this
14 allegation?

15 A. I can't remember if it was or not.

16 Q. What did you say in response to Mr. Duane when
17 he explained that scenario to you?

18 A. It -- it's tough because I feel like you're
19 trying to get me to remember this meeting down to the
20 second, which I can't. But what I remember is that
21 there was a set of things that he said, and I told him
22 that I would talk to the people that were mentioned and
23 that I would follow up.

24 Q. But as you were in the meeting with him on
25 January 8th, did you know whether it was true that

1 Ms. Prado in fact skipped a slide during the new
2 employee orientation because she was talking to a group
3 of young healthy guys who didn't need to know about
4 disability needs?

5 A. I didn't know whether that was true or not.

6 Q. Did you think that a comment by an HR
7 representative making assumptions about employee medical
8 situations was potentially discriminatory?

9 MR. WILSON: Objection. I object to that;
10 form, foundation, calls for a legal conclusion.

11 THE WITNESS: I thought it was kind of a
12 ridiculous statement about someone just being -- being
13 human and having a personality.

14 BY MS. SANGHVI:

15 Q. So is it then fair to say that even if it was
16 true, it wouldn't have changed your mind about
17 terminating Scott?

18 MR. WILSON: Objection; form.

19 THE WITNESS: It was -- to clarify, if it was
20 true that Maricela skipped a slide?

21 BY MS. SANGHVI:

22 Q. Yes.

23 A. No, it wouldn't have changed my mind.

24 Q. Would it have been a demonstration of a lack of
25 HR knowledge?

1 MR. WILSON: Objection; form, foundation.

2 THE WITNESS: This sounds like you're making a
3 very big deal out of a minor --

4 MR. WILSON: Just answer.

5 MS. SANGHVI: Please don't interrupt.

6 MR. WILSON: I just said just answer the
7 question. Counsel, don't jump on everything I say. I
8 asked the witness to answer the question.

9 MS. SANGHVI: And I'm asking you not to
10 instruct your witness during my questioning.

11 MR. WILSON: I didn't instruct him to do
12 anything other than answer your question.

13 MS. SANGHVI: You also interrupted him in the
14 middle of his answer.

15 MR. WILSON: Proceed. Proceed.

16 THE WITNESS: I forgot what the question was.

17 MS. SANGHVI: I think you've answered it.

18 BY MS. SANGHVI:

19 Q. With regards to Ms. Penner's comment, was
20 this --

21 A. Can we go back to that?

22 Q. Yes.

23 A. I -- I don't even know what I just agreed to.
24 I mean I -- I wasn't at the -- the new employee
25 presentation, I don't even know what skipped a slide

1 means. I mean my understanding at the time was that she
2 didn't spend very much time on a slide. So I -- I'm
3 just -- I'm really confused right now. I'm confused
4 about what you're asking. I'm confused about what I
5 answered and if I even was answering what you were
6 asking.

7 Q. It was certainly a confusing moment on the
8 record.

9 We were going through all the different things
10 that Mr. Duane had raised in this meeting; is that
11 correct?

12 A. Right.

13 Q. One of those things that Mr. Duane had raised
14 was that he -- that he felt was problematic was that
15 Ms. Prado in a new -- in his new employee orientation
16 came to the slide about disability leave, and she said,
17 "I'm talking to a group of young healthy guys, I'm going
18 to skip this. You don't need to know information about
19 that because you're young healthy guys," something to
20 that effect.

21 A. Okay.

22 Q. Do you remember with Mr. Duane having raised
23 that to you in the meeting on January 8th?

24 A. I do.

25 Q. Then what I was trying to understand from you

1 was -- and you also told me that at that time you did
2 not know whether it was true or untrue --

3 A. Correct.

4 Q. -- if Ms. Prado had in fact made that statement
5 during the new employee orientation, correct?

6 A. Correct.

7 Q. I believe I also asked if it -- if you knew at
8 the time -- as you were sitting in the meeting on
9 January 8th, had you known that it was true, that she
10 did in fact skip that slide and make that comment, would
11 it have changed your decision to terminate Scott. You
12 answered "no," correct?

13 A. Yeah. I mean it's -- it's -- it's being picky
14 about words, but I don't know that -- my impression from
15 the meeting, I don't know that Scott said that she
16 skipped a slide. I remember it being that she didn't
17 spend a lot of time on a slide. I mean she couldn't
18 have skipped it if she got to a slide. That means the
19 slide was shown.

20 Q. Do you remember testifying at the NLRB hearing
21 when you were describing incidents that made Mr. Duane
22 uncomfortable, the first -- you said, "The first one
23 that he mentioned was he said that shortly after he was
24 hired, he was in a presentation being given by Maricela
25 Prado about -- about benefits and insurance and things

1 like that. And when Maricela got to a slide about
2 disability benefits, according to Scott, she made a
3 comment, 'You three look like young healthy guys. We
4 can skip this slide.'"

5 A. I remember that.

6 MR. MAREK: Can we take a break?

7 MS. SANGHVI: Yeah, that's fine. We can take a
8 break.

9 Is that okay, Jeff?

10 MR. WILSON: Yes.

11 (Break taken from 5:13 to 5:26.)

12 (Roberta Steele enters proceedings.)

13 BY MS. SANGHVI:

14 Q. Mr. Mishkin, we were talking about Mr. Duane's
15 complaint about Ms. Prado's new employee orientation.

16 Do you recall that?

17 A. Right.

18 Q. When you were in the meeting with Mr. Duane on
19 January 8th, did you know whether it was true or not
20 that Ms. Prado had made that comment?

21 A. Did I know whether it was true whether she had
22 made the comment that, "You're healthy guys, we can skip
23 this slide"? No, I didn't.

24 Q. And would knowing that it was true have changed
25 your mind about terminating Scott?

1 MR. WILSON: Asked and answered, form.

2 THE WITNESS: No.

3 MR. WILSON: Go ahead.

4 BY MS. SANGHVI:

5 Q. Would it have demonstrated a lack of HR
6 knowledge?

7 A. No.

8 Q. You also testified about Mr. Duane disclosing
9 to you that he was upset by Ms. Penner disclosing
10 another employee's personal medical information.

11 Do you recall that testimony?

12 A. I remember him saying that he was upset that
13 Karen had discussed medical issues for one of her direct
14 reports.

15 Q. Do you think it's appropriate for a manager to
16 disclose medical details about a direct report to
17 another employee?

18 MR. WILSON: Objection; form.

19 THE WITNESS: I think it depends on what
20 employee would want, what that employee has already
21 shared. If that employee is fine with it, I don't think
22 there would be a problem.

23 BY MS. SANGHVI:

24 Q. Did you know whether -- did you know the
25 employee that Mr. Duane was talking about whose medical

1 information had been disclosed?

2 A. He said it was Bridget Antle, and I did know
3 Bridget.

4 Q. And did you know whether or not Ms. Antle was
5 open about particular circumstances of her medical
6 condition?

7 A. At the time of my meeting with Scott, I did not
8 know anything about that.

9 Q. Did you think that disclosing an employee's
10 medical details could be discriminatory?

11 MR. WILSON: Form.

12 THE WITNESS: If they're private details, it's
13 certainly inappropriate.

14 BY MS. SANGHVI:

15 Q. Did you know whether Mr. Duane's allegation
16 that Ms. Penner had disclosed details about Ms. Antle's
17 medical condition, did you know whether or not those
18 details were private?

19 A. I didn't know that at the time of my meeting
20 with Scott.

21 Q. Does Ms. -- I think you testified Ms. Penner no
22 longer works for IXL; is that correct?

23 A. That's correct.

24 Q. Was her termination -- did her termination have
25 anything to do with disclosing medical details about

1 direct reports?

2 A. No, it did not.

3 Q. What did it have to do with?

4 A. It had to do with job performance.

5 Q. Who made the decision to terminate Ms. Penner?

6 A. That would have been something that Jennifer Gu
7 and I discussed, and Jennifer made the final decision.

8 Q. Who communicated that to Ms. Penner?

9 A. Jennifer did.

10 Q. Do you know what reason Ms. Penner was
11 provided?

12 A. I don't know exactly what they discussed.

13 Q. Did Ms. Penner apply for and collect
14 unemployment insurance?

15 A. I don't know.

16 Q. Did Ms. Penner receive severance?

17 A. I also don't recall.

18 Q. Would knowing that Ms. Penner had in fact
19 disclosed private medical details about Ms. Antle on
20 January 8th, would knowing that have changed your mind
21 about terminating Mr. Duane?

22 MR. WILSON: Objection; form.

23 THE WITNESS: No, it would not have.

24 BY MS. SANGHVI:

25 Q. You indicated earlier that you had told

1 Mr. Duane that you would speak to Maricela and Karen, is
2 that correct, after the meeting presumably?

3 A. I did tell him that.

4 Q. And did you then have the opportunity to speak
5 with Ms. Prado about her new employee orientation
6 presentation?

7 A. I did.

8 Q. When did you have that conversation with
9 Ms. Prado?

10 A. After meeting with Scott at some point.

11 Q. Within that week?

12 A. I believe so.

13 Q. And who else was present for that conversation?

14 A. My memory is that nobody else was.

15 Q. What was the purpose of that conversation?

16 A. Just to ask her about what he said.

17 Q. Where did you meet?

18 A. I didn't hear, I'm sorry.

19 Q. Where did you meet Ms. Prado?

20 A. The office somewhere.

21 Q. And what did you discuss at that meeting?

22 A. I remember just asking her about it. Yeah,
23 just relaying the comment and asking her about it.

24 Q. And what was Ms. Prado's response?

25 A. I don't remember clearly.

1 Q. Did you conduct any other investigation such as
2 asking her who the other two individuals in that
3 orientation were?

4 A. No, I didn't ask that.

5 Q. Why not?

6 A. I didn't feel the need for that information.

7 Q. Why didn't you feel the need for that
8 information?

9 A. I -- I just -- I just simply didn't. I don't
10 know how to explain any further than that.

11 Q. Did you believe Ms. Prado that she did not skip
12 that -- excuse me, did Ms. Prado in fact confirm that
13 she did not skip that section?

14 A. I don't remember clearly what she told me.

15 Q. Would you have taken any notes at that meeting?

16 A. No.

17 Q. Did you have any follow-up conversations with
18 Ms. Penner?

19 A. I did.

20 Q. And what was that conversation?

21 A. I asked her about -- I shared Scott's comment
22 with her.

23 Q. And when did you share it with her?

24 A. It would have been sometime after the meeting.
25 I don't remember exactly when.

1 Q. Pretty shortly thereafter or much --

2 A. Oh, shortly thereafter, within a few days.

3 Q. Who else was present -- was it a face-to-face
4 meeting?

5 A. It was.

6 Q. Was anyone else present for that meeting?

7 A. No.

8 Q. Where did it occur?

9 A. In our office in San Mateo.

10 Q. Where in your office?

11 A. It might have been her office. It was not my
12 office, I remember that. I don't know for certain.

13 Q. What did you discuss at that meeting with
14 Ms. Penner?

15 A. I told her what Scott said, and she -- she told
16 me that, oh, Bridget is very -- very open about this,
17 that she is -- it related to her having lupus, and that
18 she's an advocate for people with lupus and everybody
19 knows this. And that she had had a minor plastic
20 surgery procedure, cosmetic -- cosmetic procedure at the
21 same time, and she was openly talking about that too.

22 Q. Did you follow up with Ms. Antle?

23 A. I didn't.

24 Q. You referenced, but then we started talking
25 about another topic, the fact that you brought up the

1 Glassdoor post with Mr. Duane; is that correct?

2 A. I did.

3 Q. Can you tell me about what you said first when
4 you brought it up?

5 A. So after Scott had finished talking about the
6 issues that I've shared already, you know, I asked
7 him -- I asked him, "Is there anything else you want to
8 share with me," and he said no.

9 And then I had a printout of the review, and I
10 showed it to him -- or before I said, there's something
11 I'd like to talk about, and I showed him a printout.
12 And, you know, that's how it started.

13 Q. And what did Mr. Duane say in response to
14 seeing the printout?

15 A. Scott said that this wasn't what he was there
16 to talk about that day.

17 Q. And what was your response to that?

18 A. Something along the lines of, yes, but this --
19 that this was something I -- I -- I wanted to talk about
20 now.

21 Q. Did you ask him anything specific about the
22 post?

23 A. I asked him -- I know I asked him about the --
24 the "There are no politics if you fit in section."

25 Q. What do you remember asking him about that

1 section?

2 A. I remember asking him what he meant by that.

3 Q. And what was Mr. Duane's response to your
4 question?

5 A. I remember him -- I remember him saying that as
6 a queer person he -- he didn't fit in. You know, I
7 remember also just -- I think expressing some of my own
8 feelings about just that -- that statement and how
9 that -- that doesn't match at all with -- with the
10 culture at IXL and -- and -- and my values and the
11 values I want to have for the company.

12 And I remember him apologizing. I remember him
13 saying he's sorry, he was angry when he wrote it. I
14 remember him offering to take it down. And I remember
15 asking him, you know, what he -- after he said that
16 about not fitting in, are you asking if -- if he's
17 talking about discrimination or is he talking about
18 friendships, because it sounded to me like he was
19 talking about friendships. And he said that those
20 things blend together.

21 Q. First, what did you understand Mr. Duane to
22 mean when he said that discrimination and friendship
23 blend together?

24 A. I -- I don't know what he meant by that.

25 Q. Did you ask him?

1 A. It was -- no, I didn't ask him.

2 Q. Why not?

3 A. I felt like I wasn't going to get a straight
4 answer from him.

5 Q. Why did you feel like you weren't going to get
6 a straight answer out of him?

7 A. Because I -- I believe that he had done this to
8 hurt the company, that he had an agenda, and that this
9 was not an honest heart-to-heart meeting.

10 Q. You came to the conclusion that this was not an
11 honest heart-to-heart meeting based on what exactly?
12 Based on his behavior at the meeting or based on the
13 post?

14 A. Based on -- based on his behavior at the
15 meeting.

16 Q. What about his behavior at the meeting led you
17 to believe that you were not having an honest
18 heart-to-heart conversation with Mr. Duane?

19 A. A big sign was when I -- when I began asking
20 him about the post and he immediately apologized and
21 blamed it on him being angry and offering to take it
22 down. And that was -- that was confirmation for me that
23 this was -- this was something done maliciously. And it
24 was also based on the fact that when I started asking
25 him about the post, he was not -- he simply -- he wasn't

1 addressing what he wrote in the post. So he made a
2 general statement about being queer, not feeling that he
3 fit in and it -- it was clear that there just was -- I
4 wasn't going to be able to have a conversation with him
5 where we got into the details of the post, that it was
6 just simply an angry outburst, that he had no -- he had
7 no basis for it.

8 Q. In the post he does say that -- he does
9 reference the notion of fitting in, correct?

10 A. He -- he -- I see the phrase, "fit in."

11 Q. And he does also raise the assertion that, "If
12 you're not a family-oriented white or Asian, straight or
13 mainstream gay person with 1.7 kids," onwards, "you're
14 likely to find yourself on the outside."

15 So why wasn't he -- why did you conclude that
16 he wasn't addressing what he wrote in the post?

17 A. I was concluding that because the post says --
18 the post implies that -- well, it says if you don't fit
19 in, if you're not in these categories, you get different
20 treatment, different hours, different projects. I'm
21 reading it right now. Different levels of praise, it
22 affects your promotion, it affects your raise.

23 And what he said simply was that as someone
24 that he himself identified as different, so he
25 identified himself in that meeting as queer, he said

1 that that made him not fit in. So that doesn't address
2 the post, that just addresses fitting in.

3 Q. You do see this post as raising a
4 discrimination complaint, correct?

5 MR. WILSON: Objection; form, argumentative.

6 THE WITNESS: I see it as a general insinuation
7 that -- that there is different treatments depending on
8 certain characteristics.

9 BY MS. SANGHVI:

10 Q. And is different treatment based on certain
11 characteristics the definition of discrimination?

12 MR. WILSON: Objection; asked and answered,
13 form.

14 THE WITNESS: If there's different treatment
15 based on protected categories such as races or
16 promotions, that is -- that would be discrimination.

17 BY MS. SANGHVI:

18 Q. And are there any protected categories that
19 Mr. Duane raised in this post?

20 A. There are -- sure, raised sexual identity.
21 Those are protected categories.

22 Q. So he's raising protected categories and noting
23 differential treatment based on those categories.

24 So I'll ask you again, Mr. Mishkin, didn't you
25 understand Mr. Duane to be raising a discrimination

1 complaint through this post?

2 MR. WILSON: Objection; argumentative, asked
3 and answered repeatedly.

4 THE WITNESS: My -- my answer is no.

5 BY MS. SANGHVI:

6 Q. I'm going to refer back to your testimony at
7 the NLRB when you were specifically talking about this
8 section of the Glassdoor post. Your testimony about
9 this paragraph was, "I wanted -- I mean I wanted to know
10 more about" -- this is you testifying. "So I started
11 asking him more about it. I said what you're saying --
12 you know, what you're saying here is that if you're not,
13 if you work for IXL and you're not white or Asian, if
14 you are not straight or mainstream gay, if you don't
15 like sports, if you don't have kids, that you'll be
16 discriminated against. I told him that's the claim
17 you're making here."

18 Do you remember testifying to that?

19 A. I do.

20 Q. So do you have any reason to believe that
21 testimony given was not true?

22 A. That is true, what I said to Scott.

23 Q. If you didn't follow up with him about his
24 comment that friendship and discrimination blend
25 together, how did you know what he meant by that?

1 A. I suppose I can't know all of the intricacies
2 of what he meant by that.

3 Q. Did you ask him for any examples of why as a
4 queer person he felt that he didn't fit in at IXL?

5 A. I didn't.

6 Q. You also testified earlier that you felt like
7 the statements didn't match your values. How did it go
8 against your values?

9 A. My values are to create an environment where
10 irrelevant things like someone's race, you know, sexual
11 identity, attributes like that are -- are simply -- are
12 simply not a factor in how they're evaluated in the
13 workplace.

14 Q. And how do you know whether your values were in
15 fact reflected in your managers' decisions to --

16 A. I'm sorry, I didn't hear.

17 Q. How do you know whether your values were in
18 fact reflected in your managers' decisions to give
19 flexible hours, interesting projects, praise,
20 promotions, a big yearly raise?

21 A. I know because I've been running the company
22 for a long time, and I can't remember a single example
23 in my nearly 20 years of doing this where any of these
24 factors were -- were ever brought up as when it came to
25 discussing promotions, raises, any kind of career

1 advancements. I'm struggling to even think of any
2 example when it came up in -- in -- in any conversation
3 about -- about an employee.

4 Q. But you were not involved in every decision,
5 correct, that a manager makes about their employees?

6 A. That's correct.

7 Q. So is it possible that some of your managers
8 may favor a certain class of individuals over another?

9 A. It's very, very hard for me to imagine that
10 I -- I have -- that I have any manager like that.

11 Q. Is it possible that despite your values, an
12 employee may feel discriminated against nonetheless?

13 MR. WILSON: Objection; form.

14 THE WITNESS: Do you mean that they may be
15 discriminated against or feel -- mistakenly feel
16 discriminated against?

17 BY MS. SANGHVI:

18 Q. Let's go with mistakenly feel discriminated
19 against.

20 A. So you're asking me if an employee could for
21 some reason make a mistake and think that they were
22 being discriminated against?

23 Q. I'm asking if an employee can perceive
24 discrimination despite your values that you've outlined
25 for us. Is that possible?

1 MR. WILSON: Form.

2 THE WITNESS: So you mean can an employee --
3 can an employee think that they're being discriminated
4 against even if it's not happening?

5 BY MS. SANGHVI:

6 Q. Yes. Can an employee think that they're being
7 discriminated against even if they are not actually
8 legally being discriminated against?

9 A. I suppose that's possible.

10 Q. And would you agree that as CEO it would be
11 your responsibility to investigate whether that claim of
12 discrimination is in fact true?

13 A. Are you talking about Scott or in general?

14 Q. I'm talking about if you were brought -- I'm
15 first going to talk about in general, and then we'll ask
16 about Scott.

17 In general, if you were in a hypothetical where
18 you were brought an employee, as we just discussed, who
19 felt that they were discriminated against, is it your
20 responsibility to investigate whether that claim of
21 discrimination is in fact true?

22 A. That's something I would take very seriously,
23 yes.

24 Q. And would you investigate it?

25 A. I would or HR would.

1 Q. So Mr. Duane brought to you a claim of
2 discrimination, correct?

3 A. He brought a claim to David, David suggested
4 that it would be helpful for me to meet with Scott, and
5 I set up a meeting to hear him out.

6 Q. And he also raised a claim of discrimination in
7 his Glassdoor.com post, correct?

8 MR. WILSON: Objection.

9 THE WITNESS: I -- I don't think that's a
10 correct way of characterizing that.

11 BY MS. SANGHVI:

12 Q. You were aware of Mr. Duane's allegation of
13 discrimination, correct, when you had a meeting with him
14 on January 8th, 2015?

15 A. If you're talking about what he told David
16 Keyes, I was aware that there was -- that concern on his
17 part about discrimination.

18 Q. And you were also aware that on his Glassdoor
19 post, he was making a claim of discrimination, correct?

20 MR. WILSON: Objection; asked and answered.

21 THE WITNESS: No, I -- I don't agree with that.

22 BY MS. SANGHVI:

23 Q. So are you changing your testimony from your
24 prior sworn testimony at the NLRB?

25 MR. WILSON: Objection; argumentative.

1 THE WITNESS: I am not sure -- I don't
2 understand how this would be a change.

3 BY MS. SANGHVI:

4 Q. I'm not sure if it would help you to see the
5 language. So I'm -- I'm not going to mark this entire
6 thing as an exhibit. I'm just going to show you this.
7 It's a proceeding. And that is your testimony. It
8 starts here, if that helps (indicating).

9 A. (Witness reviewing document.)

10 Okay, I can read that.

11 Q. So as you were in the January 8th with
12 Mr. Duane, were you aware that he was raising multiple
13 claims of discrimination against IXL? He was claiming
14 it.

15 A. I think what I'm struggling with is different
16 meanings of the word "claim," is -- is -- the formal
17 claim of discrimination versus more informal usage, you
18 know. Your -- your -- this is something you're
19 claiming, you know.

20 Q. How did you mean it when you said it?

21 A. When I said it, I honestly meant it probably
22 more of a mathematical sense, so this is -- this is what
23 you wrote, you know, that's -- that's your proposition.
24 And I said that I -- I wanted to hear the evidence.

25 Q. But you didn't ask him for specific examples

1 about the evidence, right?

2 A. It was completely clear to me after he -- based
3 on how the meeting had gone up to that point and the way
4 he responded to that question, it was -- yeah, it was --
5 it was obvious to me that there -- he -- he had nothing
6 to back this up.

7 Q. So you didn't investigate any of his
8 propositions of discrimination, correct, prior to
9 terminating him?

10 MR. WILSON: Objection; form, foundation.

11 THE WITNESS: I didn't need to investigate
12 them.

13 BY MS. SANGHVI:

14 Q. And why didn't you need to investigate them?

15 A. Because I know they're untrue.

16 Q. Did you consult all of your managers before
17 deciding to terminate Mr. Duane?

18 A. No.

19 Q. Did you review the promotion decisions for
20 employees in the past year before deciding to terminate
21 Mr. Duane?

22 A. I had reviewed them all, but not -- I -- I had
23 reviewed them all.

24 Q. After reading the post, did you review the
25 promotion decisions from employees in the past year?

1 A. No.

2 Q. After reading the post, did you review the
3 decisions regarding raises for your employees in the
4 past year?

5 A. Not after reading the post.

6 Q. And you had not consulted any EEO-1 data to
7 understand ratio demographic of your workforce, correct?

8 MR. WILSON: Objection.

9 BY MS. SANGHVI:

10 Q. -- after reading the post?

11 MR. WILSON: That's the fourth time you've
12 asked that question.

13 THE WITNESS: I did not do that after reading
14 the post.

15 MR. WILSON: This is getting really
16 argumentative. We've -- we have gone now for over --
17 well over an hour. We've gone over the same argument.
18 At some point you've got to just move on. That's my
19 objection.

20 MS. SANGHVI: Are you done for the record?

21 MR. WILSON: That's my objection.

22 BY MS. SANGHVI:

23 Q. Did you believe Mr. Duane's post was
24 defamatory?

25 A. I did.

1 Q. Why did you believe Mr. Duane's post was
2 defamatory?

3 A. I believed it was defamatory because most of it
4 is -- it's obvious false statements, and I -- and I
5 believed it was intentional and particularly seeing
6 the -- the place where it was posted and the manner in
7 which it was written directly to job seekers.

8 Q. Did you pursue legal action against Mr. Duane
9 for defamation?

10 A. No.

11 Q. Why not?

12 A. I thought -- knowing how important -- I guess I
13 worried about making -- making the situation worse and
14 Scott possibly engaging in -- in more of this type of
15 behavior.

16 Q. Without telling me the contents of any
17 discussion you had with an attorney, did you consult an
18 attorney about a potential defamation claim against
19 Mr. Duane?

20 MR. WILSON: That does reveal a communication
21 with counsel about potential defamation. I don't know
22 how he can -- object. I don't know how he can answer
23 that without, you know, revealing the contents of what
24 he talked about. I'd ask if there's a way that you
25 could rephrase it.

1 BY MS. SANGHVI:

2 Q. Did you ever consider legal action against
3 Mr. Duane for defamation?

4 A. I did. I did consider it.

5 Q. What actions did you take in consideration of
6 legal action?

7 A. I can't remember.

8 Q. Is there anything that would help you remember?

9 A. Not that I can think of.

10 Q. Does IXL have a policy that employees must talk
11 to management about workplace concerns before raising
12 them to their parties?

13 A. We do not.

14 Q. So Mr. Duane did not violate any company policy
15 by posting his workplace concerns to Glassdoor, correct?

16 A. I'm stuck on his workplace concerns. If
17 there's a policy against -- in general against writing a
18 Glassdoor review, then, no, there isn't.

19 Q. Are employees able to publicly post a
20 discrimination complaint against Glassdoor -- excuse me,
21 against IXL?

22 A. There's no policy against that.

23 Q. Is there a company policy that employees must
24 demonstrate good judgment in their online media
25 presence?

1 A. There's no company policy.

2 Q. Is there any company policy about employees
3 demonstrating good judgment in general?

4 A. That's something I would hope you wouldn't need
5 to have a policy about. That's common sense.

6 Q. So the answer is no, there is no policy?

7 A. I don't know if there is or isn't.

8 Q. If there was one, where do you think it would
9 be?

10 MR. WILSON: Form.

11 THE WITNESS: It would be in the employee
12 handbook.

13 BY MS. SANGHVI:

14 Q. Is there a company policy that employees must
15 demonstrate certain ethical values?

16 A. Like I said, I would hope companies wouldn't
17 have to have policies about this. Do we have an
18 official policy about this? I don't know whether we do
19 or don't.

20 Q. Where would it be if there was one?

21 A. The employee handbook would be the place to
22 look.

23 Q. I believe you've testified that Mr. Duane
24 showed poor ethical value by making his Glassdoor.com
25 post. Can you explain that a little bit?

1 A. It's a -- reflects very poor ethics because
2 it's an intentional attempt to sabotage the company that
3 he's working for, you know. At the time, still today,
4 even more so then recruiting -- you know, finding enough
5 employees is -- is extremely difficult for a lot of
6 roles. There's a lot of competition and -- and it's
7 just a well known fact within the company that --
8 that -- how important recruiting is to us.

9 So to -- to draft -- to draft a post like this
10 and to choose all the possible places you could do this,
11 the -- the one spot that hurts us most as a company, the
12 site that perspective job applicants are -- are reading,
13 that's -- I mean it's -- it's treacherous.

14 Q. In January of 2015, IXL had approximately --
15 almost 200 employees; is that right?

16 A. That sounds right.

17 Q. And three years later today, how many employees
18 does IXL employ?

19 A. I believe it's about 420 now, approximately.

20 Q. So in the past three years, IXL has nearly
21 doubled in size, correct?

22 A. That's correct.

23 Q. Would you agree that IXL employees are smart,
24 talented employees?

25 A. I would agree with that, in general.

1 Q. And are the new people that IXL has hired since
2 January 2015, individuals that you believe possess and
3 bring strong talent to the company?

4 A. I can't necessarily say that for every last
5 person, but we try our best.

6 Q. Do you feel like you've succeeded as a company
7 in bringing strong talent?

8 A. I do.

9 Q. Do you have any specific examples of how
10 Mr. Duane's post has harmed the company's recruitment
11 efforts?

12 A. You mean examples of people who might have seen
13 this and decided not to apply?

14 Q. No. Examples -- I imagine you wouldn't be
15 aware of that. So I'm asking about examples that you
16 are aware of how Mr. Duane's post has harmed IXL's
17 recruitment efforts?

18 A. I don't have any examples that I'm aware of.

19 Q. Do you believe that an employee is entitled to
20 make an anonymous discrimination complaint?

21 A. In general, yes.

22 Q. And if an employee makes an anonymous
23 discrimination complaint, is the company required to
24 investigate it?

25 MR. WILSON: Objection; form and foundation.

1 THE WITNESS: That would be an appropriate
2 thing to do.

3 BY MS. SANGHVI:

4 Q. I'm sorry?

5 A. That would be an appropriate thing to do.

6 Q. If human resources received an anonymous
7 complaint that you as a CEO had discriminated against
8 someone because of that employee's sex, is it
9 appropriate to not investigate that complaint simply
10 because HR knows that it goes against your values and
11 the values that you have worked hard to cultivate?

12 MR. WILSON: Objection; form.

13 THE WITNESS: Could we break that into two
14 questions?

15 BY MS. SANGHVI:

16 Q. If -- how -- why do you -- why don't you
17 explain to me why you want to break it into two
18 questions?

19 A. I just -- there -- there are multiple negatives
20 and it was hard for me to follow that.

21 Q. I'm going to ask you to think of a
22 hypothetical. Human resources receives an anonymous
23 complaint from an employee alleging that you have
24 discriminated against someone because of that employee's
25 sex. It is well known to human resources that

1 discrimination on the basis of sex goes against your
2 values and the values that you have worked very hard to
3 cultivate at IXL.

4 Given that knowledge, is it appropriate for
5 human resources to simply not investigate that
6 complaint?

7 MR. WILSON: Form.

8 THE WITNESS: I would say the appropriate thing
9 to do would be still to investigate the complaint.

10 BY MS. SANGHVI:

11 Q. What about if human resources felt pretty
12 certain that it wasn't a truthful complaint?

13 MR. WILSON: Form.

14 THE WITNESS: I would want it to be
15 investigated enough that they can have as clear an
16 answer as they're going to get.

17 BY MS. SANGHVI:

18 Q. Was Mr. Duane's post the first negative post by
19 a current employee on Glassdoor?

20 A. I don't know whether it was or wasn't.

21 Q. You testified earlier that you occasionally
22 review Glassdoor.com posts, correct?

23 A. I testified that I do see them occasionally
24 when -- when it is at the site.

25 Q. So as you sit here today, prior to seeing

1 Mr. Duane's post, had you ever seen a negative post on
2 Glassdoor.com?

3 A. I have.

4 Q. So if it wasn't the first negative post --
5 excuse me, was Mr. Duane the only employee that you have
6 terminated because of a negative Glassdoor post?

7 MR. WILSON: Form.

8 THE WITNESS: So you asked me before was this
9 the first current employee who wrote a negative post.
10 This is the first current employee who I actually knew
11 who it was and not necessarily connected to that.

12 The answer to what you just asked me was, yes,
13 this is the first employee who was terminated because of
14 Glassdoor posting.

15 BY MS. SANGHVI:

16 Q. And since January of 2015, has anyone been
17 terminated because of a Glassdoor post?

18 A. No.

19 Q. Have there been, since January 2015, any
20 negative posts by current employees?

21 MR. WILSON: Form, foundation.

22 Go ahead.

23 THE WITNESS: I don't know the answer to that.

24 BY MS. SANGHVI:

25 Q. I believe I put in front of you earlier today a

1 Deposition Exhibit 60. Is that post made on
2 February 24th of 2018 by a current employee?

3 A. Sorry. I can't find it.

4 I see it. This is a post where the individual
5 making the post identifies as a current employee, it
6 doesn't mean it's true.

7 Q. Other than the one other instance, the "new low
8 and the fed up" reviews that you had a hunch as to who
9 it was, have you ever had an idea about the author of a
10 negative Glassdoor post?

11 A. I can't think of any other examples.

12 Q. Did you --

13 A. I'm sorry. I can think of -- I can think of an
14 example when it -- it was suspected that it was a
15 particular former employee. I can't think of any other
16 examples of current employees.

17 Q. And for the particular former employee, what,
18 if anything, did Glassdoor -- sorry, what, if anything,
19 did IXL do in response to that knowledge?

20 A. We didn't do anything.

21 Q. After terminating Mr. Duane on January 8th,
22 2015, did you instruct your managers to be vigilant
23 about any favorable treatment along certain
24 characteristics?

25 A. I didn't.

1 Q. Did you take any steps to -- excuse me.

2 After January 8th of 2015, did you take any
3 steps to ensure that IXL management was knowledgeable
4 about what constituted discrimination in the workplace?

5 MR. WILSON: Objection; form.

6 THE WITNESS: Did I personally take any steps?
7 Not that I can remember.

8 BY MS. SANGHVI:

9 Q. Did you ask human resources to take any steps
10 to that effect?

11 A. Not -- I don't remember doing that.

12 Q. Has IXL made any active efforts to change the
13 demographics of its workforce since 2015?

14 A. I don't know.

15 Q. Do you know what constitutes protected
16 opposition activity under Title 7?

17 MR. WILSON: Objection; calls for a legal
18 conclusion.

19 THE WITNESS: I have some understanding.

20 BY MS. SANGHVI:

21 Q. What is your understanding?

22 A. That employees mustn't be retaliated against
23 for opposing this discrimination of -- based on certain
24 classes.

25 Q. And do you know what constitutes protected

1 opposition activity under the ADA, the Americans with
2 Disabilities Act?

3 MR. WILSON: Same objection.

4 THE WITNESS: Could you repeat it again?

5 BY MS. SANGHVI:

6 Q. Do you know what constitutes protected
7 opposition activity under the Americans with
8 Disabilities Act?

9 A. I have a general sense of protected opposition
10 activity, not in particular related to this act.

11 Q. What is your general sense?

12 A. That it -- in general, opposition activity is
13 employees -- well, expressing opposition, you know,
14 being opposed to practices at a workplace and being able
15 to express those views freely without the company
16 retaliating against them.

17 Q. What's the basis of your general knowledge?
18 Was it the Google search that you spoke about earlier or
19 some other basis?

20 A. Learning about this, reading about this in many
21 occasions over my career.

22 Q. And when you say learning about this, have you
23 sat through trainings?

24 A. I can't remember particular trainings. I just
25 remember I've been exposed to this information and

1 have -- have sought out through this type of information
2 many times over the years.

3 Q. Your managers are required to sit through
4 certain discrimination trainings. Have you ever sat
5 through one of those trainings?

6 A. I can't remember if I've sat through -- sat
7 through -- I hope they do more than sit through. I
8 can't remember if I've -- whether I've attended these
9 trainings.

10 (Roberta Steele leaves proceedings.)

11 BY MS. SANGHVI:

12 Q. Have you ever performed an online training
13 related to anti-discrimination policies or laws?

14 A. I can't remember.

15 Q. You mentioned a few times your concern that the
16 forum -- or the place where Mr. Duane made his post and
17 how it was treacherous, I think, that it was done in a
18 place that was -- where employees -- potential employees
19 go. I'm curious who's IXL's biggest customer?

20 MR. WILSON: I object to that. And I -- okay.
21 At some point -- I instruct the witness at some point to
22 tell us if there's any trade secret or proprietary
23 information so we can mark it on the record
24 appropriately. You can do it after or before you say
25 it, okay? That question doesn't -- I don't think should

1 reveal that.

2 Go ahead.

3 THE WITNESS: So I'm hesitating a little bit
4 because I'm not sure whether to classify them as a
5 customer or a partner. But the organization that we
6 receive the greatest amount of revenue from is Cengage
7 Learning, which is a publisher that we work with on our
8 older Quia Books product, C-e-n-g-a-g-e.

9 BY MS. SANGHVI:

10 Q. If a current employee were to write a letter to
11 Cengage outlining perceived discrimination at IXL, would
12 you be within your rights to terminate that employee?

13 MR. WILSON: Objection; requests a legal
14 conclusion and is an incomplete hypothetical.

15 THE WITNESS: I -- yeah, I mean that is a legal
16 issue. I -- I don't -- I don't know what my rights or
17 IXL's rights would be in that situation.

18 MS. SANGHVI: I have nothing further until
19 after Mr. Marek.

20 EXAMINATION BY MR. MAREK:

21 Q. Are you gay?

22 A. No.

23 Q. Transgender?

24 A. No.

25 Q. Have you ever had any kind of gender

1 reassignment surgery?

2 A. No.

3 Q. Do you know anyone who's ever had gender
4 reassignment surgery?

5 A. Well, I know Scott Duane.

6 Q. Other than Scott?

7 A. Not that I'm aware of.

8 Q. Have you ever had a conversation with someone
9 about getting gender reassignment surgery?

10 A. Not that I can recall.

11 Q. Have you ever watched a show on gender
12 reassignment surgery on television or the internet?

13 A. I've seen a show recently called Jazz, I think,
14 where that topic was discussed.

15 Q. This was after Mr. Duane was terminated?

16 A. Yes.

17 Q. And at Harvard, any classes on gender
18 reassignment?

19 A. No.

20 Q. Are there any reasons that you could provide
21 why you believe you in particular do not discriminate
22 against gay people?

23 A. I'm trying to figure out your question.

24 Reasons why -- could you repeat it?

25 Q. Are there any reasons why you in particular do

1 not discriminate against gay people?

2 A. I -- I think that would be just a wrong thing
3 to do.

4 Q. Any other reasons for you, or just you don't
5 think it would be right?

6 A. I mean that -- that overrides everything for me
7 beyond the fact of course it's -- of course it's
8 illegal.

9 Q. Do you ever do anything that you don't think
10 would be right?

11 MR. WILSON: Objection; form.

12 THE WITNESS: It's really hard for me to
13 understand that question.

14 BY MR. MAREK:

15 Q. Do you ever do anything that you don't think is
16 right?

17 A. I don't know how to get my mind around that.
18 I -- I mean I suppose so.

19 Q. What are examples?

20 A. I mean I -- I feel silly talking about this.
21 Not eating healthier, not getting enough exercise. I
22 just -- it's just a vague question.

23 Q. Can you look at Exhibit 55. Lenore Ockerberg,
24 she got fired because she used company funds to buy a
25 personal software; is that right?

1 A. That was part of the reason.

2 Q. And the other reason is you thought she wanted
3 to leave; is that right?

4 A. The other reason was that she was being very
5 vocal about the fact that she wanted to leave -- to be
6 fired.

7 Q. Is using the company funds to buy personal
8 software, is that legal?

9 MR. WILSON: Objection; calls for a legal
10 conclusion.

11 Go ahead.

12 THE WITNESS: I -- I don't know how to say
13 whether it's legal or not.

14 BY MR. MAREK:

15 Q. Did you do any research when that came up to
16 determine if it was legal?

17 A. I didn't.

18 Q. Other than the legal research you've described
19 that you did with respect to Mr. Duane, have you done
20 any other legal research with respect to employee
21 issues?

22 A. I -- I know that I have. I'm not able to
23 remember specific examples right now.

24 Q. Is using company funds to buy personal software
25 ethical?

1 A. That's not ethical.

2 Q. Now, next to her name on this list it says she
3 was fired for performance. Do you see that? The
4 conduct, I'm sorry. Do you see that?

5 A. Conduct.

6 Q. It doesn't say ethics, though, right?

7 A. No.

8 Q. But Scott says ethics, right?

9 A. Scott says judgment and ethics.

10 Q. Why -- what did Scott do that was less ethical
11 than what Ms. Ockerberg did?

12 A. I -- I'm thinking how to compare these two.
13 Lenore's case, that was part of it. The larger factor
14 was -- was her conduct, particularly for her role as
15 operations manager with direct reports, someone that
16 people in the company had respect for, looked up to. To
17 go around talking this way I think that matches up
18 pretty well with the word "conduct."

19 Q. What about using company funds to purchase
20 personal products?

21 MR. WILSON: Objection; asked and answered.

22 BY MR. MAREK:

23 Q. How do you compare that to what Scott did?

24 A. Compare on -- on what measurement?

25 Q. You made this list, not me. How do you compare

1 it?

2 MR. WILSON: Objection to form.

3 THE WITNESS: I think -- I think Scott's was a
4 much -- much more serious offense.

5 BY MR. MAREK:

6 Q. You think Scott's post on Glassdoor was more
7 serious than using company funds to purchase personal
8 products; is that correct?

9 MR. WILSON: Objection; asked and answered.

10 Go ahead.

11 THE WITNESS: Comparing these two specific
12 instances, I do.

13 BY MR. MAREK:

14 Q. Hold on. Because it was asked and answered
15 what was your answer? Just "yes" or "no"?

16 MR. WILSON: That's my objection.

17 MR. MAREK: Your objection is he answered. Now
18 I want to hear his answer. I didn't get.

19 THE WITNESS: May I hear the question again.

20 BY MR. MAREK:

21 Q. Which is more serious, what Scott did or using
22 company funds to purchase personal products?

23 A. So you're trying to compare Scott to a general
24 situation?

25 Q. I'm just asking you which is more serious.

1 Your counsel said you answered it. What was your
2 answer?

3 MR. WILSON: That's my objection.

4 THE WITNESS: I don't know how to compare a
5 specific example to a general -- to a general case.

6 BY MR. MAREK:

7 Q. I don't know what that means. Which is the
8 general and which is the specific?

9 A. You're asking me to compare what Scott did to a
10 general situation of someone using company funds to
11 purchase software for personal use.

12 Q. That's fine. So which is more serious I'm
13 asking.

14 A. Well, for this specific case of Scott and what
15 he did, I would consider that more serious than the
16 specific case of Lenore and what she did.

17 Q. Why? Was it based on how much money she took?

18 A. I think -- I'm trying to find a way to say it.
19 I think intention has a lot to do with it.

20 Q. Did she intentionally use company money to buy
21 personal products?

22 A. I don't know how to get into her -- her head at
23 the time.

24 Q. Well, what did you conclude when you fired her?
25 Did you believe it was intentional or unintentional?

1 A. We concluded that it was something that was
2 not -- not appropriate.

3 Q. Was it intentional or unintentional?

4 A. I don't know the answer to that.

5 Q. What did you conclude when you fired her?

6 MR. WILSON: Objection.

7 MR. MAREK: And don't say asked and answered.
8 Asked is not the same as asked and answered. I'll admit
9 I've asked it three times. I don't have an answer yet.
10 If you think it's answered, do you want to say it on the
11 record what his answer is?

12 MR. WILSON: He just said "I don't know."

13 BY MR. MAREK:

14 Q. Was it intentional --

15 MR. WILSON: He just said "I don't know."

16 MR. MAREK: Jeff, when he fired her, did he
17 conclude that it was intentional or unintentional. If
18 you know the answer, I'll take it from you.

19 THE WITNESS: The answer is I don't know.

20 BY MR. MAREK:

21 Q. You don't know what you concluded at the time,
22 or at the time you didn't know?

23 A. At the time I -- I didn't know.

24 Q. So you -- you -- did you try to make a decision
25 at the time and you were unable to?

1 A. The overriding factor was -- was her discussing
2 wanting to be -- wanting to be fired by the company.
3 That was a much more important factor in that decision
4 than using company funds for software that was intended
5 for personal use.

6 Q. Wouldn't it be a crime, though, to use company
7 funds to buy personal things?

8 MR. WILSON: Objection; calls for a legal
9 conclusion.

10 THE WITNESS: I -- I don't -- I don't know how
11 to answer that. I don't have the background to answer
12 that.

13 BY MR. MAREK:

14 Q. Do you have a company policy that prohibits
15 people from using company funds to buy personal
16 possessions?

17 A. I don't know if we do.

18 Q. Is it a crime for someone to go into your house
19 and take your stuff?

20 MR. WILSON: This is argumentative.

21 MR. MAREK: What's argumentative, Jeff, is for
22 your client to come in here and say that he fired
23 someone for stealing and now backing off that.

24 MR. WILSON: Do you have any more questions?

25 MR. MAREK: A lot.

1 MR. WILSON: Let's move along.

2 THE WITNESS: That's not what I said.

3 MR. WILSON: You're badgering and you're being
4 abusive to the witness when he's told you he doesn't
5 know. And, frankly, for the record you seem to be
6 equating two people who were terminated and you're
7 saying, well, one was terminated but the description was
8 different on a form.

9 MR. MAREK: I don't mind -- I will engage you
10 and I'll discuss it with you all night.

11 MR. WILSON: Good. That's what I'm trying to
12 say.

13 MR. MAREK: So we'll go back and forth. I
14 don't agree that that's what I'm doing. I think I have
15 a witness who's told me that he thinks it's, number one,
16 a more serious offense that an employee says she doesn't
17 want to work here and that she stole stuff, and, number
18 two, that a post on Glassdoor is more serious than
19 theft.

20 BY MR. MAREK:

21 Q. So I'm trying to understand your moral judgment
22 in particular, since a lot of what you testified to is
23 that the reason you made the decision you did was
24 because something Scott did violated your morality. So
25 I'm trying to get a sense of your morality, where you

1 put criminal product, where you put not wanting to work,
2 where you put a Glassdoor post. I'm trying to flush
3 that out so we have a sense of your moral compass, which
4 seems to have been a big part of what happened here on
5 January 8th.

6 A. So what's the question?

7 Q. If someone went into your house and took your
8 stuff, do you think that's a crime?

9 A. Without my permission, I assume.

10 Q. You -- you -- you know that even though you're
11 not a lawyer, right?

12 A. I just -- I just want a straightforward
13 question.

14 Q. That's my question. Do you know that without
15 being a lawyer, are you able to know that?

16 A. No, I'm asking you to clarify your question.
17 You're asking if someone went into my house without my
18 permission and took my stuff, that would be theft.

19 Q. And if somebody used your company's assets to
20 buy things for themselves without authorization, is that
21 a crime?

22 A. In general, yes, that -- that sounds like it
23 would be a crime.

24 Q. Is that what Ms. Ockerberg -- is that what you
25 believed she had done when you fired her?

1 A. It was more nuance than that, this particular
2 aspect.

3 Q. How was it more nuance than that?

4 A. What I remember about this is that it was an
5 issue of soft -- software that she said she was buying
6 for the company, that there were allegations that it was
7 either most -- either all for personal use or mostly for
8 personal use or that personal use was what drove the --
9 the decision to buy it.

10 Q. So who made those allegations?

11 A. I heard it from Jennifer Gu, who had heard it
12 from, I believe, Tatum Radcliffe who reported to Lenore.

13 Q. How long after you heard those allegations was
14 she fired?

15 A. I don't remember.

16 Q. How many people from the HR department left the
17 company either voluntarily or involuntarily between
18 2013 -- January 1, 2013 and January 8, 2015?

19 A. Sorry, January 1, 2013 to January 1, 2015?

20 Q. Right. January 8th.

21 A. January 8th, 2015.

22 Q. Let me do it this way. I know a few. So
23 Victor Keliihoomalu, she left, right?

24 A. She left the company.

25 Q. And she was fired because she gave out W-2s; is

1 that right?

2 A. That's correct.

3 Q. And the W-2s contained Social Security numbers,
4 right?

5 A. That's right.

6 Q. Is that a crime?

7 A. To fall for a scammer?

8 Q. Is that -- did you look into that? Is that a
9 crime to give out -- to release people's private
10 information like that, if you know?

11 A. I don't know whether that's a crime or not.

12 Q. At the time you learned about it, did you hire
13 or find -- you know, take any steps to determine if that
14 was a crime?

15 A. No.

16 Q. Did you take any steps to retrieve that
17 information?

18 A. It didn't seem like any were possible.

19 Q. Brad Marshall, he was in human resources and he
20 got fired, right?

21 A. That's correct.

22 Q. And Lenore Ockerberg didn't get fired, but got
23 taken out of human resources; is that right?

24 A. Lenore at some point was -- became no longer in
25 charge of human resources.

1 Q. Did she remain in human resources at all?

2 A. No.

3 Q. Other than those three -- and I realize Lenore
4 is not -- at that time wasn't fired. But other than
5 those three, anyone else from HR who was removed from
6 the HR arena in that time period that you can think of?

7 A. No.

8 Q. Was Maricela fired, was that a voluntary or
9 involuntary termination?

10 A. That was voluntary.

11 Q. How many people, if you can remember, were in
12 HR total at the time January 8th, 2015?

13 A. I can't remember.

14 Q. Less than five?

15 A. I -- I don't remember clearly.

16 Q. But with -- with that, what we've just gone
17 over, at least those three people, that's as much as I
18 know right now, and given that -- the size of the HR
19 department, do you agree that your HR department had
20 some performance problems as of January 8th, 2015?

21 A. No, I don't necessarily agree with that.

22 Q. How long into the meeting on January 8th was it
23 until you told Scott that he was fired?

24 A. I told him near the very end because he chose
25 to end the meeting after that. I don't remember how

1 long the meeting lasted.

2 Q. 15 minutes?

3 A. Probably longer than that.

4 Q. And so for that time period -- you had already
5 arranged to have his stuff taken out though, right?

6 A. Right.

7 Q. So the decision had been made, right?

8 A. It had.

9 Q. But you didn't tell him, you had a whole
10 conversation with him for 15 plus minutes without
11 telling him?

12 A. Yes.

13 Q. Do you think that's dishonest of you?

14 A. Not at all.

15 Q. When you -- was that a -- was that a planned
16 way to have that meeting?

17 A. Was what exactly?

18 Q. That you were going to talk to him for all this
19 time without telling him that he was going to be fired
20 and then -- and then spring it on him at some point?
21 Was that part of a plan that you came up with?

22 MR. WILSON: Form.

23 THE WITNESS: I can't -- I can't agree with the
24 way that you're characterizing it.

25 BY MR. MAREK:

1 Q. How come?

2 A. You're presenting it as something nefarious.
3 It was very simple. I wanted to talk to Scott first
4 about the issues that he had brought up with David. And
5 when that was over, I wanted to talk to him about the
6 Glassdoor post.

7 Q. So that was the plan, you planned to talk to
8 him first for some period of time before telling him he
9 was going to get fired and then tell him he was going to
10 get fired; is that right?

11 A. There was no thought of a period of time in the
12 planning. The planning was I wanted to talk to him
13 about one topic first, and I wanted to talk to him about
14 the other topic second.

15 Q. When you were preparing that, do you think you
16 were sort of being crafty or clever about it such that
17 you were going to talk to him and then spring this thing
18 on him, or did you not think about it that way?

19 A. No, I don't think it was crafty or clever.

20 Q. Why did you want to spend those 15 minutes
21 before telling him he was fired talking to him?

22 A. Because he raised issues of discrimination with
23 David, and I wanted to take that seriously and hear what
24 he had to say about it.

25 Q. But I thought you testified here that you knew

1 you didn't discriminate at your company?

2 A. I never made a generalized statement like that.

3 Q. So you -- at that time going into the meeting
4 you held open the possibility that maybe there was
5 discrimination at IXL?

6 A. What had been raised was disability
7 discrimination and I had skepticism, but I was also
8 really trying to put those thoughts out of my mind and
9 be very open to whatever I heard about it from Scott,
10 and I wanted to hear him talk about it.

11 Q. You had already done legal research you've
12 testified about, right?

13 A. Legal research about what?

14 Q. You testified you did legal research. I'm
15 going to ask you what it's about in a minute. You said
16 this is the only legal research you remember doing.

17 So you knew the legal research I'm referring
18 to, right?

19 A. I had looked into the issue before, yes.

20 Q. And aren't -- didn't you say that after you did
21 the legal research, you were able to determine that
22 there was no discrimination?

23 A. I had looked into the issue of the process
24 whereby an employee can ask for accommodation and what
25 the company's obligations are to accommodate employee

1 and how that -- how the process works.

2 MR. MAREK: I'm going to make a request Jeff
3 that we get the information from his computer from
4 January 7th or 8th on the legal research that he did.

5 MR. WILSON: His browser history?

6 MR. MAREK: Yes.

7 MR. WILSON: From --

8 MR. MAREK: You know --

9 MR. WILSON: Wait a minute. Time out.

10 MR. MAREK: 2015, January 7th or 8th 2015.

11 MR. WILSON: So --

12 MR. MAREK: We have an exact --

13 MR. WILSON: So we'll see if there's browser
14 history preserved from that point in time and we'll
15 respond in writing.

16 MR. MAREK: That's all I can ask.

17 BY MR. MAREK:

18 Q. So after -- even after you did the legal
19 research, you still thought it was possible that maybe
20 there was discrimination at your company?

21 A. The -- the way you're describing it is just --
22 I feel like it's already being changed into a different
23 story.

24 I simply wanted to hear what Scott had to say.
25 I knew that Scott had some things that David thought he

1 would like to talk to me about, and I wanted to hear
2 what those were.

3 Q. But this occurred after you did your legal
4 research and concluded there was no discrimination at
5 your company, correct?

6 A. No. I didn't conclude that. I just told you I
7 did research into what's the -- what's appropriate when
8 an employee is asking for accommodation and how does
9 that process work.

10 Q. So let's -- so prior to the meeting with Scott,
11 had you concluded that there was no discrimination at
12 IXL?

13 A. No, I hadn't.

14 Q. So you met with Scott because you were still
15 going to make that determination?

16 A. I -- I met with him to make myself available
17 and -- yes, to possibly hear information related to
18 discrimination.

19 Q. Explain what your understanding was of the
20 conversation that he and David had about the
21 accommodation?

22 A. My -- my understanding now or my understanding
23 then?

24 Q. Then.

25 A. It's hard to remember. I -- I just -- I don't

1 really remember very clearly.

2 Q. What did you do prior to the meeting on the 8th
3 to refresh your recollection on that exchange?

4 A. All I remember is I had -- I had awareness of
5 it, and I don't particularly remember how -- how that
6 came about.

7 Q. Did Scott's post make you angry?

8 A. It's hard -- it's hard to be specific about
9 emotions like that.

10 Q. Of your own emotions even you're saying? Your
11 own emotions, it's hard for you to --

12 A. Did I feel angry?

13 Q. Yeah.

14 A. I don't know if I did or not.

15 Q. But you were able to conclude that Scott was
16 angry when he wrote the post?

17 A. Scott told me himself that he was angry.

18 Q. What's the basis of that conclusion?

19 A. I concluded that it was malicious and -- I
20 suppose that's the essential thing.

21 Q. But you've testified that you said it was an
22 angry rant.

23 A. Right.

24 Q. What do you base that conclusion on?

25 A. That it reads like an angry rant and that that

1 was confirmed by Scott in my meeting with him.

2 Q. And do you discount the truthfulness of what he
3 wrote because you thought he was angry when he wrote it?

4 A. I'm not sure how -- how those are connected.

5 Q. Can you discount the truthfulness of what he
6 wrote because you believed he was angry when he wrote
7 it?

8 A. I -- I just told you that it was malicious.
9 And when I met with Scott, he told me that -- he
10 apologized, he told me that he was angry when he wrote
11 it, and he offered to take it down. And that in part
12 confirmed my original interpretation of the post, that
13 it was meant -- meant to harm us, that it wasn't
14 reasonable, it matched up with what I had originally
15 believed about the post.

16 Q. So then did you discount the truthfulness of
17 what he wrote because you believed he was angry when he
18 wrote it?

19 A. No.

20 Q. So you thought it was un -- you have said you
21 thought it was untrue, right?

22 A. It's untrue.

23 Q. And you also thought he was angry when he wrote
24 it, right?

25 A. It's not that I thought, he told me this

1 directly.

2 Q. But you say you thought he was honest on
3 January 7th? Because it sounds like he's a very honest
4 person from what you've said here today.

5 A. When did I say he was honest?

6 Q. You said he told you something and you believed
7 him. That would make him honest, right?

8 A. You're asking if him telling me that he was
9 angry when he wrote it?

10 Q. You believed him when he said that; is that
11 right?

12 A. Yes.

13 Q. So why do you believe him?

14 A. Why wouldn't I?

15 Q. I don't know. You don't believe what he wrote
16 in his post. So why do you believe that? Why are you
17 selecting to believe some things he says but not others?
18 What's that based on?

19 A. In part that I have knowledge about the issues
20 that he wrote in the post. I can't necessarily have
21 knowledge of emotions, Scott's inner emotions.

22 Q. But you said you were also able to conclude
23 that he was angry based on the way it was written,
24 right?

25 A. It does have a very angry tone.

1 Q. Did you think that possibly based on his boss
2 firing him he might have said certain things to try to
3 preserve his job?

4 A. I don't think that.

5 Q. What does malicious mean?

6 A. Done with the intent to harm.

7 Q. And you said he thought to harm you because he
8 was angry and he said he would take it down; is that
9 right?

10 A. Can you ask me that again?

11 Q. You said you thought he meant to harm you
12 because he was angry when -- because he said he was
13 angry and he said he would take it down. Are there
14 other reasons why you thought it was meant to harm you?

15 A. I don't know how you're connecting those two
16 statements up.

17 Q. I think that's what you said. That's what I --

18 A. Can you repeat to me what I said? It doesn't
19 sound like what I said.

20 Q. You thought he meant to harm you because he
21 said he was angry when he wrote it and he said he would
22 take it down.

23 A. I don't remember saying that. I don't think
24 that's an accurate -- we have a record right here.
25 Could we hear? Why not?

1 Q. If you don't mind. Let's read it back then.

2 The phrase I'm looking for is "meant to harm."

3 (Record read.)

4 BY MR. MAREK:

5 Q. So what are the reasons that you thought it was
6 meant to harm?

7 A. How does that even relate to what we just
8 talked about? I mean we can go can back and go through
9 the post again, and I can talk about why it was meant to
10 harm, how it was malicious.

11 Like I'm not trying to be difficult. I really
12 am having a hard time understanding what you're asking
13 me.

14 MR. MAREK: Can you read that question back.

15 (Record read.)

16 BY MR. MAREK:

17 Q. If you want me to, I'll try to clarify. But it
18 seems relatively straightforward. You say you thought
19 the post was meant to harm you --

20 A. Do you want to go back through the post? I
21 just -- we've done that already.

22 Q. Well, if you want to just say the language, I
23 don't think we need to go through word for word. You
24 can give me generally what about -- you've said several
25 things now. I'd like to understand them all.

1 Let's take a break.

2 (Break taken from 7:16 to 7:27.)

3 BY MR. MAREK:

4 Q. Very few more.

5 How come you didn't have Scott take the post
6 down?

7 A. I suppose I -- there didn't seem to be any --
8 any point in asking him at that moment knowing that he
9 was -- he was going to be terminated.

10 Q. I mean he -- he offered to take it down?

11 A. He did.

12 Q. If you're saying that you thought it would be
13 treacherous for your company. Wouldn't it have made
14 sense to say, yes, please take it down?

15 A. His -- his -- to use that word, his actions
16 were treacherous and him taking down the post would not
17 have changed that fact.

18 Q. He takes it down, it would be off the site
19 right, off Glassdoor?

20 A. That's right.

21 Q. I mean you had tried -- we looked at the
22 e-mail. You had tried earlier -- a couple of years
23 earlier to get negative posts taken down, right?

24 A. We saw that e-mail. Right.

25 Q. So you were mindful of the benefit to the

1 company of removing negative Glassdoor posts, right?

2 A. Yes.

3 Q. So then when he offered to do that for you, why
4 not say, "Yes, please do that"?

5 A. It didn't seem worth -- it didn't seem worth
6 asking in that moment knowing -- knowing how the meeting
7 was going to end.

8 Q. Since the meeting, have you ever asked him to
9 take it down?

10 A. Asked Scott to take it down?

11 Q. Yeah.

12 A. No.

13 Q. Have you asked anyone else to take it down?

14 A. No.

15 MR. MAREK: I have nothing further.

16 EXAMINATION BY MS. SANGHVI:

17 Q. I promise, just a few follow-up points.

18 You testified just now to Mr. Marek that Lenore
19 Ockerberg, -- I'm fairly sure I got this right -- became
20 no longer in charge, and you were referring to HR; is
21 that accurate?

22 A. That's accurate.

23 Q. Earlier I think you said it was IXL's decision,
24 not Ms. Ockerberg's, to move her to operations instead
25 of HR?

1 A. She had been in charge of both roles, and we
2 made the decision to have her focus on the operations
3 role.

4 Q. Did you feel as though she was not equipped to
5 handle the HR role for the growing company?

6 A. It made sense to have -- as a growing company
7 to have -- not have someone trying to do -- to do both
8 those roles.

9 Q. But there were two roles. You could have moved
10 her to HR, to operations. What I'm asking is, did you
11 feel as though Ms. Ockerberg was not equipped to handle
12 the HR oper -- the human resources functions for IXL at
13 the time that you decided to move her to operations?

14 A. We thought operations was a better role for
15 her.

16 Q. And I still don't think that's responsive to
17 the question.

18 Did you feel that Ms. Ockerberg was not
19 equipped to handle HR functions at the time that you
20 moved her, and any time thereafter, to operations?

21 A. I felt she wasn't the idle person. Not
22 equipped, I don't know that I would agree with that.

23 Q. What does that mean? Why was she not the ideal
24 person for human resources functions?

25 A. Her interests are more in operations. We felt

1 that was -- that was more natural for her.

2 Q. You're identifying what her strengths were with
3 regards to operations. I'm trying to understand your
4 testimony if she was not the ideal person for human
5 resources functions?

6 MR. WILSON: Objection; form.

7 BY MS. SANGHVI:

8 Q. So can you answer why Ms. Ockerberg was not the
9 ideal person for human resources functions?

10 A. We felt as a growing company we wanted to bring
11 in someone with more HR experience.

12 Q. Did you feel that Ms. Ockerberg lacked the
13 necessary HR experience for managing IXL's human
14 resources functions? I apologize. I can't give you a
15 time frame, because you haven't given me as to when
16 Ms. Ockerberg moved over to operations.

17 But at the time given -- when she moved to
18 operations, did you feel that Ms. Ockerberg -- strike
19 all of that.

20 Can you read the last question back.

21 (Record read.)

22 THE WITNESS: I remember wanting to -- to bring
23 in more outside experience. Lenore had been with IXL
24 for a long time, and had kind of grown -- grown with the
25 company, and the company was growing really fast. It

1 was getting to be a lot to handle, HR and operations
2 together.

3 BY MS. SANGHVI:

4 Q. Focusing on the meeting on January 8th, after
5 Scott had -- I don't think we covered what happened at
6 the end of meeting after you had told Mr. Duane --
7 confronted him about the post, what happened?

8 A. So we -- we talked about the post and at the
9 end I -- I think I may have thanked him again for
10 sharing the information that he shared with me in the
11 beginning of the -- the first part of the meeting. And
12 then I -- I told him I didn't see how there could be a
13 way that we could continue to work together.

14 Q. Did you tell him anything other than you didn't
15 think there was a way to continue working together?

16 A. I don't remember exactly what I said. It's
17 possible.

18 Q. Did you also tell Mr. Duane that what he did
19 was unacceptable and that it showed poor judgment and
20 poor ethical values and that you couldn't trust him?

21 A. I did tell him that.

22 Q. And then what happened?

23 A. When -- at some point he clearly understood
24 that he was being terminated. I don't remember if I
25 actually used the word "termination" or not, but he

1 stood up and said, "You'll be hearing from my lawyer,"
2 and left my office.

3 Q. And did you think you couldn't work together
4 anymore with Mr. Duane because he thought IXL treated
5 certain characteristics of people differently?

6 A. No.

7 Q. There was a back and forth between you and
8 Mr. Marek about what information and what decision you
9 had made prior to the January 8th meeting, and I just
10 want to be -- make sure I'm extremely clear.

11 You had already decided to terminate Mr. Duane
12 prior to the January 8th meeting, correct?

13 A. Yes.

14 Q. And the reason for that termination decision
15 was what?

16 A. It was the Glassdoor posting.

17 Q. And is there anything that Mr. Duane could have
18 told you in that meeting that would have changed that
19 decision for you because it wouldn't have changed the
20 post?

21 A. It's hard to imagine something.

22 Q. You've also made the point with Mr. Marek that
23 the -- that the post was made in a very public forum and
24 it was meant to harm IXL's business, and that's one of
25 the primary reasons you thought it was appropriate to

1 terminate him; is that correct?

2 A. Could you ask me again?

3 Q. Sure. Let me ask you a separate question.

4 Do you believe that an employee that makes a
5 public discrimination complaint that is intended to harm
6 IXL's business should be terminated?

7 A. So it's a public discrimination complaint
8 and -- but the intent is to harm the company?

9 MR. WILSON: Objection; form.

10 THE WITNESS: I would need to have more
11 information.

12 BY MS. SANGHVI:

13 Q. Based on the information you do have, you have
14 a current employee, makes a public discrimination
15 complaint that is intended to harm IXL's business. As
16 the CEO of over 20 -- of essentially 20 years of this
17 company, do you believe that that is a fireable offense?

18 MR. WILSON: Objection; form.

19 THE WITNESS: I don't agree with the way you're
20 characterizing what happened.

21 BY MS. SANGHVI:

22 Q. I'm not characterizing it. I'm asking you a
23 very general question.

24 A. It was general, and then you started to apply
25 it to Scott.

1 Q. No. I'll ask it again.

2 Do you believe that an employee that makes a
3 public discrimination complaint that is meant, intended,
4 to harm IXL's business should be fired?

5 MR. WILSON: Objection; form.

6 THE WITNESS: I'm -- I'm having a hard time
7 wrapping my mind around what would that even be, like
8 I'm -- I -- I can't quite imagine this scenario.

9 BY MS. SANGHVI:

10 Q. Then I'll give you a more detailed
11 hypothetical. If you had an employee -- a current
12 employee that wrote a letter to every school district in
13 the Bay Area making a discrimination complaint and
14 that writing of that letter was intended to harm IXL's
15 business, as a CEO do you believe you're -- it would be
16 appropriate to fire that employee?

17 MR. WILSON: Objection; form.

18 THE WITNESS: That would be a very, very
19 strange way. The would be a very strange thing to do.
20 I don't know how to answer that. I don't know what the
21 answer is. I just think that would be really a bizarre
22 thing for an employee to do.

23 BY MS. SANGHVI:

24 Q. Setting aside the bizarreness of my
25 hypothetical, I'm just looking for a yes or no, do you

1 believe that that employee in the hypothetical that I've
2 just provided you who wrote a public discrimination
3 complaint in a letter to all of the school districts in
4 the Bay Area with the intent to harm IXL's business
5 should be fired?

6 MR. WILSON: Objection; form.

7 THE WITNESS: I don't know the answer right
8 now. I don't know that I can say.

9 BY MS. SANGHVI:

10 Q. Do you think that's somehow different, that
11 hypothetical is different, than what Scott did?

12 A. I do.

13 Q. Why is that?

14 A. Because Scott wrote a long online post with a
15 whole -- whole variety of -- of insults against the
16 company, lies and -- and posted it where, you know --
17 one of the spots where it could hurt us the most.

18 Q. So it was the -- it was your perceived notion
19 that Scott's post was untrue, that makes it different
20 from the hypothetical I posed?

21 MR. WILSON: Objection; form.

22 THE WITNESS: It's -- certainly, yes.

23 BY MS. SANGHVI:

24 Q. So if you believe -- if you believe -- excuse
25 me. If you do not believe a discrimination complaint --

1 actually, scratch that.

2 I think I've exhausted that line of
3 questioning.

4 If Mr. Marek doesn't have anything further, I
5 think we can call it a night.

6 MR. WILSON: All done.

7 (Whereupon, the deposition was concluded at
8 7:45 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SIGNATURE OF DEPONENT

I, the undersigned, PAUL MISHKIN, do hereby
certify that I have read the foregoing deposition and
find it to be a true and accurate transcription of my
testimony, with the following corrections, if any:

PAGE	LINE	CHANGE

[illegible]

PAUL MISHKIN, Date

REPORTER'S CERTIFICATE

I, DIANA L. GONZALEZ, a Shorthand Reporter,
State of California, do hereby certify:

That PAUL MISHKIN, 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 14th day of March 2018.

DIANA L. GONZALEZ, CSR NO. 7935
State of California

Exhibit B



Quote

Glassdoor.com

1 Harbor Drive
Suite 300
Sausalito CA 94965
US
415-339-9105
<http://www.glassdoor.com>

Date 7/30/2013
Quote # Q6669
Valid Until 8/29/2013
Sales Rep Stoddard, Luke
PO #
Terms Due on receipt

Bill To

IXL Learning
Karen Penner
777 Mariners Island Blvd.,
Suite 600
San Mateo CA 94404

Sold To

IXL Learning
Karen Penner
777 Mariners Island Blvd.,
Suite 600
San Mateo CA 94404

Comments

Item	Description	Start Date	End Date	Rate	Quantity	UOM	Amount
Banner Advertising	Custom Banners provided by IXL	9/1/2013	8/31/2014	10.00	600	CPM	6,000.00
EEP - FB Infosite	Free to IXL as Promo	8/1/2013	8/31/2014	0.00	1	Each	0.00
Spotlight Company	Discounted Rate for IXL	9/1/2013	8/31/2014	13.00	461	CPM	5,993.00

Total \$11,993.00

ADDITIONAL TERMS:

You acknowledge having read and further agree to the Enhanced Employer Profile Terms and Conditions found at http://www.glassdoor.com/legal/eeep_terms as of the date of your signature below, including any addenda referenced therein or attached hereto (the "Terms"), which Terms are hereby incorporated by reference. This Service Order Quote ("Quote") and the Terms are collectively referred to as the "Agreement." The Agreement represents the parties' entire agreement and supersedes all prior or contemporaneous agreements, understandings and representations, written or oral, between the parties, with respect to services to be provided by Glassdoor, Inc. You agree to this Agreement by signing this Quote, and if you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind the company or entity to which this Quote is addressed above to the terms of the Agreement. In the event of any conflict between this Quote and the Terms, this Quote shall prevail. The Agreement is effective upon the date Customer executes this Quote.

Glassdoor's acceptance or performance is expressly limited to the terms and conditions stated herein and the Terms. No additional or alternative terms, conditions or modifications proposed by customer shall be binding on a party unless expressly agreed to in writing by such party. Terms and conditions of any purchase or insertion order offered by Customer related to this Agreement that are in addition or alternative to or are inconsistent or conflicting with the terms of this Quote and/or the Agreement are void.

John Barth
Name: John Barth (Jul 31, 2013)

Date: Jul 31, 2013

Title: _____



Glassdoor.com

1 Harbor Drive
Suite 300
Sausalito CA 94965
US
415-339-9105
<http://www.glassdoor.com>

Bill To

IXL Learning
Paul Mishkin
777 Mariners Island Boulevard Suite 650
San Mateo CA 94404

Quote

Date 9/30/2013
Quote # Q7463
Valid Until 10/30/2013
Sales Rep Stoddard, Luke
PO #
Terms Net 30

Sold To

IXL Learning
Paul Mishkin
777 Mariners Island Boulevard Suite 650
San Mateo CA 94404

Comments

Item	Description	Start Date	End Date	Rate	Quantity	UOM	Amount
Glassdoor Essentials	1) Employer Page 2) Unlimited Job Postings/Clicks 3) Facebook Jobs Tab	1/3/2014	1/2/2015	13,000.00	1	Each	13,000.00

Total \$13,000.00

ADDITIONAL TERMS:

You acknowledge having read and further agree to the Enhanced Employer Profile Terms and Conditions found at http://www.glassdoor.com/legal/eeep_terms as of the date of your signature below, including any addenda referenced therein or attached hereto (the "Terms"), which Terms are hereby incorporated by reference. This Service Order Quote ("Quote") and the Terms are collectively referred to as the "Agreement." The Agreement represents the parties' entire agreement and supersedes all prior or contemporaneous agreements, understandings and representations, written or oral, between the parties, with respect to services to be provided by Glassdoor, Inc. You agree to this Agreement by signing this Quote, and if you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind the company or entity to which this Quote is addressed above to the terms of the Agreement. In the event of any conflict between this Quote and the Terms, this Quote shall prevail. The Agreement is effective upon the date Customer executes this Quote.

Glassdoor's acceptance or performance is expressly limited to the terms and conditions stated herein and the Terms. No additional or alternative terms, conditions or modifications proposed by customer shall be binding on a party unless expressly agreed to in writing by such party. Terms and conditions of any purchase or insertion order offered by Customer related to this Agreement that are in addition or alternative to or are inconsistent or conflicting with the terms of this Quote and/or the Agreement are void.

John Barth
Name: John Barth (Sep 30, 2013)

Sep 30, 2013
Date: _____

Title: _____



Insertion Order

Glassdoor
Dept 3436
PO Box 123436
Dallas TX 75312-3436
billing@glassdoor.com
415-339-9105

Date 12/15/2014
IO # Q15859
Valid Until 12/16/2014
Sales Rep Lee, David
PO #
Payment Terms Net 30

Bill To

IXL Learning
John Barth
777 Mariners Island Blvd Ste 600
San Mateo CA 94404-5046

Sold To

IXL Learning
John Barth
777 Mariners Island Blvd Ste 600
San Mateo CA 94404-5046

Comments

Management Approved:
1) 1 free additional month
Must sign by Dec.15, 2014.

Item	Description	Duration in Months	Amount
Glassdoor Essentials	Glassdoor package including Enhanced Profile and optimized Job Ads	13	16,000.00
Total			\$16,000.00

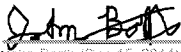
ADDITIONAL TERMS

The services listed above (the "Services") are subject to the Glassdoor Services Terms found at <http://www.glassdoor.com/about/serviceTerms-2014.htm> ("Terms"). The Terms are hereby incorporated by reference. In the event of any conflict between the Additional Terms of this Insertion Order ("IO") and the Terms, these Additional Terms shall prevail. This IO and the Terms are collectively referred to as the "Agreement." As referenced in this Agreement, "Subscription Service" means any Enhanced Profile, Essentials, or Job Slots service; and "Display Ads" means any Banner Advertising, Targeted Display Ads, Homepage Highlight, or Company Spotlight service.

Unless otherwise specified in the Agreement, the start date for the Services will be the date you sign the IO, except that renewals start upon the expiration of the then-current service period. Please allow up to three (3) business days for account provisioning.

Our acceptance or performance under this IO is expressly limited to the terms and conditions stated in the Agreement. Terms and conditions of any purchase or insertion order offered by you related to this Agreement that are in addition or alternative to or are inconsistent or conflicting with the terms of the Agreement are void.

By signing this IO, you acknowledge that (a) you have read and understand the Terms applicable to this IO, (b) you are entering into the Agreement on behalf of the company or entity ("Customer") to which this IO is addressed above, and (c) you have the authority to bind the Customer to the terms of the Agreement. After you sign this IO, you may purchase additional Services under this IO by email agreement with Glassdoor subject to the Terms and the Additional Terms of this IO. The Agreement is effective upon the date you sign the IO.

Signature:  (Dec 15, 2014)

Print Name: John Barth

Title: Technical Marketing Manager

Date: Dec 15, 2014

Email for notices: jbarth@ixl.com

Exhibit C

From: Kate Mattison [kmattison@ixl.com]

Sent: Wednesday, September 11, 2013 10:31 AM

To: David Keyes; Dana Fenson; Rebecca Sanchez; Debbie Chang; Amy Walecka; Edward Levin; Jeremy Mejia

Subject: Fwd: Assistance needed...please write a Glassdoor review

Hi everyone,

Please consider writing a Glassdoor review of IXL Learning. See Karen's email below about our goals for the recruiting season. We are looking for positive and genuine reviews of the employee experience here at IXL.

(If for any reason your review wouldn't be positive overall, please come talk to me! I would definitely want to know.)

Thanks,
Kate

----- Original Message -----

Subject: Assistance needed...please write a Glassdoor review

Date: Wed, 11 Sep 2013 10:32:01 -0700

From: Karen Penner <kpenner@ixl.com>

To: managers@ixl.com

Hi Team,

As we move into our heavy fall recruiting season, we'd like to ask for your help in keeping Glassdoor reviews current and positive. Since many of our applicants are extremely tech savvy, we know that they will be seeking out online reviews of IXL when they consider a new job.

We are working hard on putting a plan in place to ensure that our online presence is a good experience for candidates. Positive and genuine online reviews will help us find better talent for your team. The first step starts with you! Please complete a review on www.glassdoor.com and invite some of your team to do so as well. Our goal is to turn this around within one month (or less).

Your feedback (and the feedback of your team) on this site are vitally important both to our recruitment team internally, and to job seekers considering a job with IXL.

Here is the link to join Glassdoor:

https://www.glassdoor.com/profile/joinNow_input.htm?u=%2Findex.htm

Please submit a review at your earliest convenience so we can start the process of turning this around. (If you can submit a review today that would be ideal). :-)

We really appreciate your help with this process. Thank you in advance for your assistance.

If you have any additional ideas on how to improve IXL's online presence please let me know.

Thanks so much!

Best,

Karen

--

Karen Penner
Corporate Recruiter | IXL Learning
Direct: 650.372.4351 | Main: 855-255-7700 | Fax: 650.372.4072

777 Mariners Island Blvd., Suite 600
San Mateo, California 94404
<http://www.ixl.com>

Exhibit D

IMAI, TADLOCK, KEENEY & CORDERY, LLP

R. RANDY WERTZ

rrwertz@itkc.com

220 Montgomery Street, Suite 301

San Francisco, California 94104

Telephone: (415) 675-7000

Facsimile: (415) 675-7008

YOUNG BASILE HANLON & MACFARLANE, PC

JEFFREY D. WILSON (PRO HAC VICE PENDING)

wilson@youngbasile.com

NATASHA R. MENEZES (PRO HAC VICE TO BE FILED)

menezes@youngbasile.com

3001 W. Big Beaver Road, Suite 624

Troy, Michigan 48084

Telephone: (248) 649-3333

Facsimile: (248) 649-3338

Attorneys for Defendant

IXL Learning, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff, :

v. :

IXL LEARNING, INC., :

Defendant. :

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

Defendant IXL Learning, Inc. ("IXL"), by and through its undersigned attorneys, hereby submits its Answer to Complaint, Affirmative Defenses, and Reliance on Jury Demand as follows:

NATURE OF THE ACTION

Defendant denies that it engaged in the unlawful employment practice of retaliation in violation of Title VII of the Civil Rights Act of 1964, Title V of the Americans with Disabilities Act, or Title I of

1 the Civil Rights Act of 1991. Defendant further denies that it discriminated against its former employee,
2 Charging Party Adrian Scott Duane.

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction pursuant to 28 U.S.C. §§451, 1331, 1337, 1343, and 1345.

5 **ANSWER:** Admit.

6 **JURISDICTION**

7 2. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII,
8 42 U.S.C. § 2000e-5(f)(1) and (3) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

9 **ANSWER:** Defendant admits only that Plaintiff instituted this action pursuant to Section 706(f)(1)
10 and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3) and Section 102 of the Civil Rights Act of 1991,
11 42 U.S.C. § 1981a and denies all remaining allegations.

12 3. This action is also authorized and instituted pursuant to Section 107(a) of the ADA, 42
13 U.S.C. § 12117(a), which incorporates by reference Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

14 **ANSWER:** Defendant admits only that Plaintiff instituted this action pursuant to Section 107(a) of
15 the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Title VII, 42 U.S.C. § 2000e-5(f)(1) and
16 (3) and denies all remaining allegations.

17 4. Venue is proper in the United States District Court for the Northern District of California
18 because the employment practices occurred in Defendant's headquarters in San Mateo, California.

19 **ANSWER:** Defendant admits that venue is proper and that its principal place of business is located at
20 777 Mariners Island Boulevard, Suite 600, San Mateo, California 94404 and denies the remaining
21 allegations.

22 **PARTIES**

23 5. Plaintiff Equal Employment Opportunity Commission (EEOC) is the federal agency
24 charged with the administration, interpretation, and enforcement of Title VII and Title I of the ADA, and
25 is expressly authorized to bring this action pursuant to 42 U.S.C. § 2000e-5(f)(1) and (3) and 42 U.S.C.
26 §12117(a) (incorporating by reference Section 706 (f)(1) and (3) of Title VII).

27 **ANSWER:** Admit.
28

6. At all relevant times, Defendant IXL Learning, Inc. (IXL) has been headquartered in San Mateo, California and has had another office in North Carolina. IXL has at all relevant times engaged in an industry affecting commerce within the meaning of Section 701(h) of Title VII, 42 U.S.C. § 2000e(h) (incorporating by reference Section 2(c) of the Labor Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 et seq.) and Sections 101(5) and 101(7) of the ADA, 42 U.S.C. §§ 12111(5) and (7). Defendant has employed well over fifteen people for at least twenty calendar weeks in the current or preceding year, and is therefore an “employer” under 42 U.S.C. § 2000e(b).

ANSWER: Admit.

7. At all relevant times, IXL has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

ANSWER: Admit.

ADMINISTRATIVE PROCEDURES

8. More than thirty (30) days prior to the initiation of this lawsuit, Adriane Scott Duane filed a charge of discrimination with the EEOC alleging, *inter alia*, that IXL discriminated against him in violation of the retaliation provisions of Title VII and the ADA.

ANSWER: Defendant admits only that Adrian Scott Duane (“Duane”) filed the referenced charge more than thirty (30) days prior to the initiation of this lawsuit and denies the remaining allegations.

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

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

10. On June 22, 2016, EEOC invited IXL to join with the EEOC in informal methods of conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

1 **ANSWER:** Defendant admits only that on June 22, 2016, the EEOC emailed a proposed conciliation
2 agreement. Defendant denies all remaining allegations, including the allegation that it engaged in
3 discriminatory practices.

4 11. The EEOC communicated with IXL to provide IXL the opportunity to remedy the
5 discriminatory practices described in the Letter of Determination.

6 **ANSWER:** Defendant admits only that on June 22, 2016, the EEOC emailed a proposed conciliation
7 agreement. Defendant denies all remaining allegations, including the allegation that it engaged in
8 discriminatory practices.

9 12. The EEOC was unable to secure from IXL a conciliation agreement acceptable to the
10 Commission.

11 **ANSWER:** Defendant admits only that it did not agree to the proposed conciliation agreement and
12 Duane's proposed settlement amount and denies all remaining allegations.

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

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

16 14. All conditions precedent to the initiation of this lawsuit have been fulfilled.

17 **ANSWER:** Denied.

18 **STATEMENT OF CLAIMS**

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

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

22 16. During his employment, Duane perceived IXL's workforce as almost entirely White or
23 Asian. He discussed with coworkers his impressions about the culture at IXL being unwelcoming to
24 employees who are not White or Asian American, who are not able-bodied, and who do not fit into neat
25 categories of gender identity, orientation, and expression.

26 **ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations, and therefore, they are denied.
28

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

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

7 18. IXL provided employees with unlimited sick leave as a benefit of employment.

8 **ANSWER:** Admit.

9 19. In July 2014 Duane notified his supervisor about the need for approximately 6-8 weeks of
10 leave for a surgery in November.

11 **ANSWER:** Defendant admits that in July or August of 2014, Duane advised his supervisor that he
12 was going to need an extended medical disability leave because he was having surgery and would need
13 approximately 2 months off later in the year. Duane never told his supervisor that he was either a
14 cisgender or a transgender, and at no time did Duane's supervisor ask Duane what his specific medical
15 procedures were that related to his disability leave. Defendant denies the remaining allegations.

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

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

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

22 **ANSWER:** Admit.

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

25 **ANSWER:** Admit.

26 23. Duane started approximately eight weeks of approved short-term disability leave on
27 October 30, 2014 in order to undergo and recover from gender confirmation surgery.
28

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

4 24. At the conclusion of his leave, Duane developed post-operative complications, which
 5 required rest in order to effectuate a full recovery.

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

10 25. Duane requested a 50% remote work arrangement in order to accommodate his recovery.
 11 Duane's manager resisted providing the accommodation and instead suggested that Duane take
 12 additional leave until he was able to return.

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

19 **A. IXL Refused To Reasonable Accommodate Duane's Disability.**

20 26. Duane informed IXL that he consulted with an employment attorney who advised that
 21 remote work requests because of a medical condition qualified as a reasonable accommodation under the
 22 Americans with Disabilities Act.

23 **ANSWER:** Admit but Defendant further admits that Duane's email proposed working remotely 50%
 24 of the time with metrics in place to monitor his progress and productivity to IXL's satisfaction, stating in
 25 part as follows:

26 My doctor is happy to provide written documentation, and actually
 27 suggested as much remote time as possible so that things heal quickly,
 28 particularly the complication that has arisen. I completely understand your
 concerns about remote work and productivity, and I also understand that
 your primary responsibility is to make sure the math team meets all of its

goals. But the bottom line is, I want to return to work, and I am certain I can perform the essential functions of my job while working remotely 50%. I'd like to find a solution under which I return on the 30th with this accommodation, or something very close to it. I suggest that we find some metrics that we can put in place so that you can monitor my progress to your satisfaction. I'd also suggest making all office time in the morning, so that you're sure to always have a chance to catch me in person to let me know what you'd like prioritized, etc. If there's anything else you'd like to include, such as weekly productivity review, I'm happy to do that as well.

27. After Duane's self-advocacy, IXL relented and allowed Duane to work from home 50% of the time. IXL informed Duane that it planned to set up a system to monitor his remote work progress.

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

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

28. Duane provided a note from his surgeon supporting his reasonable accommodation request. The surgeon advised that Duane work remotely for at least four more weeks for postoperative healing.

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

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

ANSWER: Denied.

30. That evening Duane posted a message on Glassdoor.com, a jobs recruiting and ratings website, which stated, in relevant part: "There are no politics if you fit in. If you don't –that is, if

1 you're not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who
2 really likes softball – then you're likely to find yourself on the outside. Treatment in the workplace, in
3 terms of who gets flexible hours, interesting projects, praise, promotions, and a big yearly raise, is
4 different and seems to run right along these characteristics.” Duane also posted “[m]ost management
5 do not know what the word ‘discrimination’ means, nor do they seem to think it matters.”

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

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

9 Pros

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

12 The company isn't going anywhere right now. They play to the traditional
13 classroom, which is good for profits. You won't have to worry about the
14 company going under (but don't expect the profits to pass onto you,
15 either).

16 Cons

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

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

27 There is essentially no HR knowledge or staff at this company. Know your
28 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.

Advice to Management

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

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

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

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

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

14 32. On January 7, 2015, CEO Paul Mishkin emailed Duane to set up a meeting for January 8,
15 2015 to discuss his discrimination complaints.

16 **ANSWER:** Admit.

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

20 **ANSWER:** Admit.

21 34. On January 7, 2015, CEO Mishkin decided to fire Duane the following day.

22 **ANSWER:** Denied.

23 35. On January 8, 2015, Duane met with CEO Mishkin and outlined the concerns he had
24 about discrimination.

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

27 36. During the meeting, CEO Mishkin confronted Duane about the Glassdoor.com post. After
28 confirming that Duane had written the post, CEO Mishkin terminated Duane's employment.

1 **ANSWER:** Denied.

2 37. IXL admits that the reason for terminating Duane was the December 30, 2014 post on
3 Glassdoor.com.

4 **ANSWER:** Admit.

5 38. IXL retaliated against Duane by terminating him for engaging in legally protected
6 employment activities by publicly posting on a website his opposition to discrimination at IXL in
7 violation of the Title VII and ADA retaliation provisions. 42 U.S.C. §§ 2000e-3(a), 12203(a).

8 **ANSWER:** Denied.

9 39. As a direct and proximate result of IXL's violation of 42 U.S.C. §§ 2000e-3(a) Duane
10 suffered actual damage, including but not limited to losses in compensation and benefits, humiliation,
11 emotional distress, and loss of enjoyment of life.

12 **ANSWER:** Denied.

13 40. As a direct and proximate result of IXL's violation of 42 U.S.C. §12203(a) Duane
14 suffered actual damage, including but not limited to losses in compensation and benefits.

15 **ANSWER:** Denied.

16 41. IXL's unlawful actions were intentional, willful, malicious, and/or done with reckless
17 disregard for Duane's federally protected rights.

18 **ANSWER:** Denied.

19 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

5 6. This Court lacks jurisdiction because Plaintiff's claims are preempted by the National
6 Labor Relations Act.

7 Defendant reserves the right to amend its Affirmative Defenses.

8 Respectfully submitted,

9 DATED: August 1, 2017

IMAI, RADLOCK, KEENEY & CORDERY, LLP

10 By: /s/ R. Randy Wertz

11 **R. Randy Wertz**
12 rrwerts@itkc.com

13 -and-

14 **YOUNG BASILE HANLON &**
15 **MACFARLANE, PC**

16 **Jeffrey D. Wilson (*Pro Hac Vice Pending*)**
17 wilson@youngbasile.com

18 **Natasha R. Menezes (*Pro Hac Vice To Be Filed*)**
19 menezes@youngbasile.com

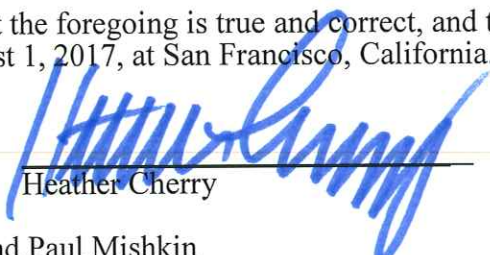
20 Attorneys for Defendant
21 IXL Learning, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on August 1, 2017, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, AND RELIANCE ON JURY DEMAND

I declare under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed on August 1, 2017, at San Francisco, California.


Heather Cherry

Duane, Adrian Scott v. IXL Learning, Inc. and Paul Mishkin
UNITED STATES DISTRICT COURT 3:17-cv-02979-VC

LAW OFFICES
IMAI, TADLOCK, KEENEY & CORDERY, LLP
SUITE 301
220 MONTGOMERY STREET
SAN FRANCISCO, CA 94104
(415) 675-7000

Exhibit E

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 20

In the Matter of:

Adrian Scott Duane, Case No. 20-CA-153625

Charging Party,

and

IXL Learning, Inc.,

Employer.

Place: San Francisco, California

Dates: November 5, 2015

Pages: 1 through 285

Volume: 1

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
7227 N. 16th Street #207
Phoenix, AZ 85020
(602) 263-0885

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.**

A P P E A R A N C E S

On behalf of the General Counsel:

CECILY A. VIX, ESQ.

NATIONAL LABOR RELATIONS BOARD - REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103
Tel. 415-356-5179

On behalf of the Charging Party:

DAVID MAREK, ESQ.

LIDDLE & ROBINSON
800 Third Avenue
New York, NY 10022
Tel. 212-687-8500

On behalf of the Respondent:

JEFFREY D. WILSON, ESQ.

YOUNG BASILE HANLON & MACFARLANE P.C.
3001 West Big Beaver Road, Suite 624
Troy, MI 48084
Tel. 248-649-3333

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Adrian Scott Duane	24	85	155		48/58/69 74
Nina Wu	167	180	189		179
David Keyes	199	223 225			
Paul Mishkin	241	258 277			242

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
General Counsel:		
GC-1 (a) through 1 (o)	10	10
GC-2	10	10
GC-3	43	43
GC-4	45	45
GC-5	50	50
GC-6	52	52
GC-7	60	60
GC-8	65	65
GC-9	165 (Rejected)	165
GC-10	75	75
GC-11	258	258
GC-12	179	179
GC-13	269	269
GC-14	271	271
Joint:		
J-1	14	14
Respondent:		
R-1	104	109
R-2	109	112
R-3	130	133
R-4	142	142
R-5	142	142

E X H I B I T S (Continued)

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
Respondent:		
R-6	144	144
R-7	145	145
R-8	219	220
R-9	242	243

1 P R O C E E D I N G S

2 JUDGE ETCHINGHAM: All right. Good morning. The hearing
3 is now in order. This is a formal hearing before the National
4 Labor Relations Board in the case known as IXL Learning, Inc.
5 and Adrian Scott Duane. It's case number 20-CA-153625.

6 My name is Gerald Etchingham. I'm an Administrative Law
7 Judge with the San Francisco Division of Judges.

8 Once we conclude the hearing, any correspondence should be
9 to my attention in this office as opposed to any other division
10 of judge offices.

11 If I could get the name, address and telephone of counsel,
12 starting with the General Counsel at this time.

13 MS. VIX: Good morning, Your Honor. Cecily Vix. Counsel
14 for the General Counsel. Address is 901 Market, Suite 400,
15 San Francisco, California 94103. Phone number is 415-356-5179.

16 JUDGE ETCHINGHAM: Thank you. Yes?

17 MR. WILSON: Thank you. Good morning, Your Honor. My name
18 is Jeff Wilson. And I'm with the firm of Young Basile at 3 --
19 and I'm representing the Respondent IXL Learning. My office is
20 located at 3001 West Big Beaver Road, Suite 624, Troy, Michigan
21 48084.

22 JUDGE ETCHINGHAM: And your phone number?

23 MR. WILSON: My phone number at work is 248-244-0173.

24 JUDGE ETCHINGHAM: Thank you.

25 MR. MAREK: I'm David Marek, representing the Charging

1 Party. The firm is Liddle & Robinson, L-I-D-D-L-E and
2 Robinson. And the address is 800 Third Avenue, New York,
3 New York 10022. And the phone number is 212-687-8500.

4 JUDGE ETCHINGHAM: All right. Well, thank you. And
5 welcome. As we -- we were discussing off the record, there's
6 some interest in possibly visiting -- revisiting any settlement
7 discussions. And those can certainly take place throughout the
8 trial. And certainly once trial proceeds, the opportunities
9 for settlement will be available at all times on request.

10 If I could move on for introduction of basic pleadings by
11 the General Counsel at this time.

12 MS. VIX: Yes, Your Honor.

13 I'm producing to the parties a copy of the index.

14 Would you like duplicates of all the --

15 JUDGE ETCHINGHAM: Just one.

16 MS. VIX: -- the pleadings or do you want the -- the index?

17 JUDGE ETCHINGHAM: Just one set probably --

18 MS. VIX: One set. Okay.

19 JUDGE ETCHINGHAM: -- is all I need. Yeah. Thanks. And
20 the court reporter can have the rest.

21 And I don't need a separate set, so I --

22 MS. VIX: Okay.

23 JUDGE ETCHINGHAM: If you can trust me with it, I'll be
24 glad to just hand it over to there.

25 MS. VIX: Okay. Thank you.

1 JUDGE ETCHINGHAM: So just for the record, it looks like
2 the General Counsel's formal documents are labeled Exhibits
3 1(a) through 1(m) with the exhibit -- well, it looks like I
4 misspoke. What is it? 1(n). I'm not sure it made your index.

5 MR. WILSON: 1(n)?

6 JUDGE ETCHINGHAM: Yes. It --

7 MS. VIX: Is on this.

8 JUDGE ETCHINGHAM: -- looks like the index itself is 1(o).

9 MS. VIX: And the second page of the index is 1(n).

10 JUDGE ETCHINGHAM: Oh, there it is. Sorry. I didn't pick
11 that up.

12 So the General Counsel's formal documents are from 1, small
13 a, through 1, small o.

14 Any objections to those coming into evidence?

15 MS. VIX: Your Honor, there is one additional document that
16 was filed last night. It's the answer to the second amendment
17 to the complaint. That is not included in the formal
18 documents. Later this morning I could get a copy of that
19 second -- the answer --

20 JUDGE ETCHINGHAM: All right.

21 MS. VIX: -- to the second amendment and present it.

22 JUDGE ETCHINGHAM: Or we can just say what it says. Isn't
23 it basically a couple of admissions on some of the jurisdiction
24 paragraphs, or is that --

25 MR. WILSON: That's -- that was the first --

1 JUDGE ETCHINGHAM: That was the other one? Okay.

2 MR. WILSON: That was the first amendment. And that has
3 been answered and it's included. The second one is substantive
4 amended allegations about policies. And I have the -- on my
5 computer I have the answer to that. It's -- and that's what I
6 was checking, to make sure that it was part of the formal
7 documents.

8 JUDGE ETCHINGHAM: So --

9 MS. VIX: I do have a copy of it with me. Would you like
10 to see it, Your Honor?

11 JUDGE ETCHINGHAM: Sure. And this will be marked 1 --

12 MS. VIX: Let's -- why don't we call in 1 --

13 MR. WILSON: P.

14 JUDGE ETCHINGHAM: P?

15 MS. VIX: P. But then we need to also amend the --

16 JUDGE ETCHINGHAM: The index.

17 MS. VIX: -- index.

18 JUDGE ETCHINGHAM: Right. So it's up to you what you want
19 to do. And we can --

20 MS. VIX: Why don't we call it -- could we call it General
21 Counsel Exhibit 2?

22 JUDGE ETCHINGHAM: Sure. That's easy.

23 All right. And so we're calling GC Exhibit 2 the answer
24 that you were referring to, the most recent, which I guess is
25 your answer to the amendment. It's probably your second -- is

1 it your third answer, your third amended answer?

2 MR. WILSON: Yes.

3 JUDGE ETCHINGHAM: Okay. Any objections to the formal
4 exhibits coming into evidence, Mr. Wilson?

5 MR. WILSON: No objection.

6 JUDGE ETCHINGHAM: How about from you, Mr. Marek?

7 MR. MAREK: No objection.

8 JUDGE ETCHINGHAM: I'm going to assuming your position is
9 the same as the General Counsel's throughout unless you let me
10 know.

11 MR. MAREK: That --

12 JUDGE ETCHINGHAM: So that way --

13 MR. MAREK: That's --

14 JUDGE ETCHINGHAM: -- we'll save a little time.

15 MR. MAREK: That works. Thank you, sir.

16 JUDGE ETCHINGHAM: All right. With no objection, then
17 we'll admit General Counsel's Exhibits 1(a) through 1(o) and
18 Exhibit 2 into evidence at this time.

19 **(General Counsel Exhibit Numbers 1(a) through 1(o) and 2**
20 **Received into Evidence)**

21 JUDGE ETCHINGHAM: And, Ms. Vix, do you plan on using or
22 admitting or offering the rest of your documents with witnesses
23 or do you have others that you want to talk about right now?

24 MS. VIX: No. That will be it, Your Honor.

25 JUDGE ETCHINGHAM: Okay.

1 MS. VIX: There may be a document or two at we proceed that
2 the parties will stipulate to, but -- and we'll introduce as a
3 joint exhibit. But, as of now, this will be it.

4 JUDGE ETCHINGHAM: All right. And how about you, Mr.
5 Marek, do you plan on having any exhibits?

6 MR. MAREK: I -- I don't, Your Honor.

7 JUDGE ETCHINGHAM: Okay. And, Mr. Wilson, at this time do
8 you have any you want to offer into evidence?

9 MR. WILSON: I would like to offer a three-page compilation
10 of just screenshots from the pages of glassdoor.com I've
11 provided to the General Counsel. They're just informational
12 pages about us and there's standard information from that
13 website. I would like to offer that if there's no objection
14 about authenticity, otherwise I will introduce it through a
15 witness.

16 JUDGE ETCHINGHAM: Ms. Vix?

17 MS. VIX: Your Honor, at this point I have not had a chance
18 to review the document that he's proposing. It will probably
19 be fine at a later time, but I will not object to the admission
20 at this point.

21 JUDGE ETCHINGHAM: All right. Well, we've got plenty of
22 time before we get to his side of the case. So certainly at a
23 break, if you could, and we'll just bring it to my attention
24 and we'll revisit that.

25 Is that Respondent's Exhibit 1 or what do you plan to mark

1 it as?

2 MR. WILSON: I -- I would mark it -- I can mark it now as
3 a --

4 JUDGE ETCHINGHAM: I guess if it's stipulated, it might be
5 a joint exhibit. So I guess we can leave it up in the air.

6 MR. WILSON: Let's -- can we hold off?

7 JUDGE ETCHINGHAM: Sure.

8 MR. WILSON: Okay. Thank you.

9 JUDGE ETCHINGHAM: All right. Let's move on to
10 stipulations. Are there any stipulations anyone wants to offer
11 at this time?

12 MS. VIX: No, Your Honor.

13 JUDGE ETCHINGHAM: Perhaps -- Glass Door is involved in
14 this case. It's a website, is my understanding, and it's sort
15 of a job search website perhaps, like monster.com, Craig's
16 List. And so maybe can we have some stipulations just
17 basically what Glass Door does? That there's nothing in
18 dispute?

19 MS. VIX: We -- we do, Your Honor, have a stipulation as to
20 the relationship also between Glass Door and IXL --

21 JUDGE ETCHINGHAM: Okay.

22 MS. VIX: -- which we could introduce as a -- as a joint
23 exhibit at this point. It describes the -- the stipulation
24 describes the relationship and a little bit about what Glass
25 Door is.

1 JUDGE ETCHINGHAM: Okay. As you probably know, I'm coming
2 here fairly fresh to the case. You have much more
3 understanding of the intricacies behind the scenes here. So is
4 it correct for me to assume that IXL was a member or used Glass
5 Door itself?

6 MR. WILSON: Yes. And General Counsel has our stipulated
7 language about the subscription that IXL has with
8 glassdoor.com, and I think that's what she has in her hand.

9 JUDGE ETCHINGHAM: Okay.

10 MS. VIX: We could introduce this at this time, if you'd
11 like.

12 JUDGE ETCHINGHAM: Sure.

13 MS. VIX: Okay.

14 JUDGE ETCHINGHAM: You want to call it --

15 MS. VIX: And we'll call it --

16 JUDGE ETCHINGHAM: -- Joint Exhibit 1?

17 MS. VIX: Joint exhibit? Sure.

18 JUDGE ETCHINGHAM: Have you seen that already, Mr. Wilson?

19 MR. WILSON: Yes.

20 JUDGE ETCHINGHAM: All right. And so just -- if you could
21 just briefly describe it for the record.

22 MS. VIX: Your Honor, Joint Exhibit Number 1 is a one-page
23 document that describes the relationship between IXL Learning
24 and Glass Door. It describes that it's a subscription service
25 and it includes a screenshot from glassdoor.com's website with

1 a data sheet describing the Glass Door essentials package,
2 which is the subscription IXL has with Glass Door.

3 JUDGE ETCHINGHAM: All right. Any objection to Joint
4 Exhibit 1 coming into evidence at this time?

5 MR. WILSON: None.

6 JUDGE ETCHINGHAM: Mr. Marek? I'm sorry.

7 MR. MAREK: No objection.

8 JUDGE ETCHINGHAM: All right. With no objection, we'll
9 admit Joint Exhibit 1 at this time.

10 **(Joint Exhibit Number 1 Received into Evidence)**

11 MR. WILSON: I have a color photo. Would you like me to
12 give it to the court reporter?

13 MS. VIX: Sure.

14 MR. WILSON: Okay.

15 THE COURT REPORTER: And did I get a copy of
16 Exhibit Number 2, General --

17 MS. VIX: Not yet. I will make copies during the break.

18 JUDGE ETCHINGHAM: You can have mine, if it's helpful to
19 have it right now.

20 THE COURT REPORTER: Thank you.

21 MS. VIX: So --

22 JUDGE ETCHINGHAM: And Joint Exhibit 1, could we just write
23 Joint Exhibit 1 on the bottom or --

24 MS. VIX: I -- well, I did that here, if you'd like.

25 JUDGE ETCHINGHAM: Okay. That's fine.

1 MS. VIX: Okay. And you just need one copy, correct?

2 JUDGE ETCHINGHAM: Yeah.

3 MS. VIX: Okay. And do you need two copies?

4 THE COURT REPORTER: Just one.

5 MS. VIX: Just one? Okay.

6 JUDGE ETCHINGHAM: All right. Anything else on
7 stipulations that anybody's thought of or want to propose?

8 All right. Let's move on to witnesses. It's my
9 understanding the General Counsel's universe of witnesses is
10 somewhere between two to four. Is that still the case?

11 MS. VIX: That's correct, Your Honor.

12 JUDGE ETCHINGHAM: All right. And, Mr. Wilson, yours is
13 somewhere between two and three?

14 MR. WILSON: That's right.

15 JUDGE ETCHINGHAM: Okay. And we're starting an hour
16 earlier than normal --

17 MR. WILSON: Thank you.

18 JUDGE ETCHINGHAM: -- just because of Mr. Wilson's schedule
19 primarily I think in hoping we can finish in two days. We will
20 give it a good shot. I don't want anybody to pass out or have
21 any health issues by how we -- how long we go here. But my
22 plan is to go about an hour and a half and then take a five- to
23 ten-minute break. Lunch today will be about 11:30. I've got
24 some matters I have to attend to. So we'll break from 11:30
25 until 12:30. And then we'll go into the afternoon and see how

1 things are going.

2 Given the amount witnesses, if we're able to finish the
3 GC's side of the case today, that might be a good stopping
4 point. Does everybody agree that Respondent should be able to
5 do their defense in one day?

6 MR. WILSON: Absolutely.

7 JUDGE ETCHINGHAM: So --

8 MS. VIX: And, Your Honor, it's very likely we will be
9 finished shortly after lunch.

10 JUDGE ETCHINGHAM: Okay. That's great.

11 MR. WILSON: Okay. Just so --

12 JUDGE ETCHINGHAM: As long as Mr. Wilson knows with his
13 witnesses -- if you could keep him informed on that progress, I
14 think it's reasonable for him to at least have a two or three
15 hour lead time.

16 MR. WILSON: That's right.

17 JUDGE ETCHINGHAM: Are your people coming up from
18 Palo Alto?

19 MR. WILSON: From San Mateo.

20 JUDGE ETCHINGHAM: Okay.

21 MR. WILSON: That's right. And so I have one witness on
22 basically an hour and a half -- hour to hour-and-a-half notice,
23 depending on traffic. So that's -- and then I'll have Paul
24 Mishkin, the CEO --

25 JUDGE ETCHINGHAM: Uh-huh.

1 MR. WILSON: -- is -- is on a train. He said he's going to
2 be here -- actually, he said about 8:20.

3 JUDGE ETCHINGHAM: Sure.

4 MR. WILSON: It was -- the train he said was running slow.
5 And unless there's an additional witness to be called based on
6 the testimony that comes in from General Counsel, those --
7 those might be the only two. But as long as I have about a
8 hour and a half --

9 JUDGE ETCHINGHAM: All right. Well, why don't we revisit
10 it right before lunch --

11 MR. WILSON: Okay.

12 JUDGE ETCHINGHAM: -- and that way whether they come in
13 this afternoon or not --

14 MR. WILSON: Okay.

15 JUDGE ETCHINGHAM: -- it should be known. Right?

16 MR. WILSON: Great.

17 MS. VIX: Great.

18 JUDGE ETCHINGHAM: Okay. All right. As far as additional
19 ground rules, if you could shut down your cell phones so they
20 don't go off, I'd appreciate that. If you need to take a break
21 sooner than we're planning to do that, just let me know and
22 we'll accommodate that. I don't want anybody to be
23 uncomfortable here. It sounds like we may not need to go late
24 into the evening, but we'll just play it by ear. Sometimes
25 estimates don't always follow through.

1 Any other miscellaneous things we need to discuss? There
2 was some talk of exchanging documents yesterday, and I don't
3 know if that was able to take place.

4 MS. VIX: That did, Your Honor.

5 JUDGE ETCHINGHAM: Well, that's great. I appreciate that.
6 That's always makes things a little smoother.

7 You saw my order regarding the subpoena, Respondent's
8 subpoena to the Charging Party. Those documents I guess are
9 due at 9:00 today I saw in the subpoena.

10 Have you exchanged those yet?

11 MR. MAREK: I believe that they've all -- all the documents
12 that would have been responsive to the order have been
13 produced. We -- we did make a production yesterday and -- and
14 everything -- I mean obviously it was before the order, but in
15 light of the order, we would have no further documents to
16 produce.

17 JUDGE ETCHINGHAM: Okay. Is that your understanding also?

18 MR. WILSON: As long as it's -- I think Mr. Marek said, "I
19 believe everything has been produced." I just want to make
20 sure that -- that --

21 MR. MAREK: Okay.

22 MR. WILSON: -- you know, that, in fact --

23 MR. MAREK: Everything has been produced.

24 JUDGE ETCHINGHAM: Okay.

25 MR. WILSON: Then okay. I received the papers yesterday.

1 JUDGE ETCHINGHAM: Okay. Great. Well, I certainly do
2 appreciate taking care of document production the day before.
3 It makes things a lot smoother.

4 So anything else we need to do before we get into brief
5 opening statements?

6 If not, Ms. Vix, would you like to present a brief opening
7 statement?

8 MS. VIX: Yes. Thank you, Your Honor.

9 Scott Duane, who has a Ph.D. in mathematics, was hired by
10 IXL Learning as a product analyst in their math department.
11 IXL makes math, English and science software for students.

12 Soon after he began working for IXL, Mr. Duane engaged in
13 many discussions with his co-workers about concerns they shared
14 with the workplace. There was a concern about the lack of sick
15 leave -- of a sick leave policy, the lack of diversity, the
16 lack of supportive creativity and the feeling of
17 micromanagement by the CEO of the Company.

18 A year after he started working for IXL, Mr. Duane began
19 preoperative procedures for upcoming gender confirmation
20 surgery. Mr. Duane is transgender. From July 2014 to the end
21 of October 2014, Mr. Duane underwent a painful and exhausting
22 procedures for two hours one day per week and then worked from
23 home. This was prearranged and approved by his direct
24 supervisor, David Keyes.

25 Mr. Duane took disability leave for two months in November

1 and December of 2014 to have the gender confirmation surgery.
2 Prior to his return to work, he corresponded with Mr. Keyes,
3 informing him that he developed a complication from his surgery
4 and requested a reasonable accommodation to work from the home
5 half days. Mr. Keyes initially rejected that. After further
6 communication, Mr. Keyes agreed that Mr. Duane could work 50
7 percent from home with fixed hours in the office every day and
8 required in-person meetings with him twice per week.

9 And the day Mr. Duane returned to work, December 30th,
10 2014, he met with Mr. Keyes, who relayed to him that two
11 employees on their team would be working -- working remotely,
12 one full time and one 50 percent.

13 IXL has contracted about glassdoor.com, a website that
14 allows companies to post job openings and permits employees to
15 post anonymous review about the employer. IXL encourages its
16 employees to post on the site.

17 Angered that he was treated differently than these co-
18 workers and have had to fight for a more restricted work from
19 home plan, Mr. Duane posted a negative review of IXL on Glass
20 Door. He highlighted the issue of discrimination, was critical
21 of the HR staff and raised concerns about the CEO's
22 micromanagement.

23 On January 8th, Mr. Mishkin, the CEO, requested a meeting
24 with Mr. Duane. After hearing Mr. Duane's complaints about
25 discrimination and the failure to grant him the disability

1 accommodation, Mr. Mishkin showed him the Glass Door post,
2 stating that he knew that Mr. Duane wrote it. He demanded
3 explanations behind the statements, including those around the
4 micromanagement. Mr. Mishkin told Mr. Duane that he used poor
5 judgment and that he should not have raised these workplace
6 concerns on Glass Door when he had not raised them with his
7 manager. He terminated Mr. Duane.

8 Counsel for the General Counsel urges the Judge to find IXL
9 terminated Mr. Duane because he engaged protected concerted
10 activity, both in talking with his co-workers about issues such
11 as discrimination and posting about it online and preemptively
12 terminated this outspoken employee before he engaged in further
13 concerted action.

14 In addition, the Judge should find that IXL terminated
15 Mr. Duane based on an unlawful workplace rule, requiring that
16 employees discuss workplace concerns with management before
17 taking additional action.

18 JUDGE ETCHINGHAM: Thank you.

19 Mr. Marek, do you want to present a brief opening
20 statement?

21 MR. MAREK: No, sir.

22 JUDGE ETCHINGHAM: How about you, Mr. Wilson, do you want
23 to do it now or do you want to defer it until your side of the
24 case?

25 MR. WILSON: I'd prefer to defer it.

1 JUDGE ETCHINGHAM: Okay.

2 MR. WILSON: Thank you.

3 JUDGE ETCHINGHAM: All right. Before we get into our first
4 witness, does anybody want to propose a sequestration order?
5 Is that needed in this case?

6 MS. VIX: Your Honor, there will be additional witnesses as
7 the day goes on. So, yes, Your Honor, I would like to move for
8 a sequestration order.

9 JUDGE ETCHINGHAM: Any objection to that?

10 MR. WILSON: No objection.

11 JUDGE ETCHINGHAM: All right. A sequestration order is
12 being issued in this proceeding. This means that all persons
13 who expect to be called as witnesses in this proceeding, other
14 than a person designated as essential to the presentation of a
15 party's case, will be required to remain outside the courtroom
16 whenever testimony or other proceedings are taking place. This
17 sequestration order also prohibits all witnesses from
18 discussing with any other witness or any possible witness the
19 testimony that he or she has already given or will give.

20 Likewise, counsel for a party may not disclose to any
21 witness the testimony of any other witness. Counsel may,
22 however, inform his or her own witness of the content of
23 testimony given by any opposing party's witness to prepare to
24 rebut that witness' testimony. It is the responsibility of
25 counsel to see that they and their witnesses comply with this

1 sequestration rule.

2 Can all -- all counsel abide by this rule?

3 MS. VIX: Yes, Your Honor.

4 MR. MAREK: Yes, Your Honor.

5 MR. WILSON: Yes, Your Honor.

6 JUDGE ETCHINGHAM: Thank you.

7 All right. Maybe what we should do is close the door so
8 that if witnesses show up --

9 And while I was reading that, we had someone enter the
10 room.

11 Sir, would you like to identify, or Mr. Wilson.

12 MR. MISHKIN: Sure. I'm Paul Mishkin, IXL CEO.

13 JUDGE ETCHINGHAM: Good morning. I'm Gerald Etchingham.
14 We have Ms. Vix. I'm not sure if you've met her.

15 MS. VIX: Hi. I'm counsel for the General Counsel.

16 JUDGE ETCHINGHAM: You know the Charging Party --

17 MR. MISHKIN: Yes.

18 JUDGE ETCHINGHAM: -- Mr. Duane? And Mr. Marek is his
19 counsel. I'm not sure if you've ever met him.

20 All right. So who would you like to call as your first
21 witness, Ms. Vix.

22 MS. VIX: Your Honor, I'd like to call Mr. Duane.

23 JUDGE ETCHINGHAM: All right. Mr. Duane, if you could come
24 up here and make yourself as comfortable as possible.

25 If you could raise your right hand, please.

1 Whereupon,

2 **ADRIAN SCOTT DUANE**

3 having been duly sworn, was called as a witness herein and was
4 examined and testified as follows:

5 JUDGE ETCHINGHAM: Thank you. If you could please state
6 and spell your name for the record.

7 THE WITNESS: Adrian Scott Duane, A-D-R-I-A-N, S-C-O-T-T,
8 D-U-A-N-E.

9 JUDGE ETCHINGHAM: Thank you.

10 Ms. Vix?

11 **DIRECT EXAMINATION**

12 Q BY MS. VIX: Mr. Duane, did you work for IXL?

13 A Yes.

14 Q What is IXL?

15 A IXL is an educational technology company that makes math
16 and English practice software for K through 12 students.

17 Q Where did you work?

18 A San Mateo, California.

19 Q Do all employees work out of that location?

20 A No.

21 Q Where do other employees work?

22 A At least one works 100 percent remote from Louisiana,
23 another works 100 percent remote from Michigan and other 50
24 percent remote from Washington, D.C. and 50 percent from
25 San Mateo.

1 Q Do other employees work remotely within the Bay Area?

2 A Yes.

3 Q Do you know how many?

4 MR. WILSON: Objection; foundation.

5 Q BY MS. VIX: Based on your experience working at IXL, did
6 you have the opportunity to learn of others who worked
7 remotely?

8 A Yes.

9 Q And how did you learn of other people working remotely?

10 A Somewhere on my direct team, others were engineers,
11 software engineers, that I worked closely with. So I knew
12 approximately where they were when we were working together.

13 Q Of those on your team, were you aware of others working
14 remotely?

15 A Yes.

16 Q And of those on your team -- how big was your team?

17 A It was about 15 people.

18 Q Okay. And of those 15, approximately how many worked
19 remotely?

20 A On and off, I would say about five.

21 Q Okay. Do you know how many employees work for the company
22 total?

23 A About 200.

24 Q When did you start working for IXL?

25 A July 2013.

1 Q And what was your position?

2 A I was a product analyst in math.

3 Q Did your position change during your employment?

4 A No.

5 Q And you said you worked in the math department?

6 A Yes.

7 Q And you testified that there are about 15 employees in
8 that department?

9 A Approximately, yes.

10 Q What qualifications did you have to get hired into that
11 position?

12 A I have a Ph.D. in mathematics.

13 Q Was having a Ph.D. in math a prerequisite for the job?

14 A Either a Ph.D. or a master's in math was usually expected
15 for my position.

16 Q In that position, what were your job duties?

17 A I designed skills that would go on the website, I wrote
18 specifications for those skills, I aligned those skills to the
19 common core curriculum, I designed the iPad app keyboard and I
20 also reviewed skills and tested them for the website.

21 Q Okay. When you began working for IXL, who was your direct
22 supervisor?

23 A Kate Mattison.

24 Q Was she promoted to a different position?

25 A Yes.

1 Q And what was that position?

2 A Director of products.

3 Q When did you stop working for IXL?

4 A January 2015.

5 Q Who was your direct supervisor at the time you stopped
6 working there?

7 A David Keyes.

8 Q What were David Keyes' job duties with respect to the
9 supervising you?

10 A He decided which skills I would design and he reviewed the
11 specifications that I wrote for those skills.

12 Q Did you have any other supervisors during your time at
13 IXL?

14 A No.

15 Q Did you have your own office?

16 A No.

17 Q What did you have?

18 A A cubicle.

19 Q Do all staff have cubicles?

20 A Staff that aren't managers have cubicles and managers have
21 offices.

22 Q And where were the offices positioned in relation to the
23 cubicles?

24 A The offices line the outside of the office, and the
25 cubicles are inside. And there's also a group of offices right

1 in the middle.

2 Q And how many managers were on the -- the math team that
3 you were on?

4 A Two.

5 Q Was your cubicle adjacent to the managers' offices?

6 A It was fairly close. I was about -- in my first cubicle
7 -- I moved floors. My first cubicle was about 15 feet from a
8 manager. The second one was about 15 feet from one manager and
9 about maybe 30 or 40 feet from another.

10 Q Were -- was your cubicle adjacent to any other managers'
11 offices, not just those on your specific team?

12 A Yes.

13 Q And who was -- whose office were you closest to?

14 A Karen Penner.

15 Q And who was Karen Penner?

16 A She is the head of recruiting at IXL.

17 Q Did all of the employees have the same office hours?

18 A No. Some people came in as early as 6:00 or 7:00 and left
19 at about 2:00 or 3:00 in the afternoon, others came in as late
20 as 10:00 or 11:00 and left at 7:00 or 8:00.

21 Q And what was the duration of the day? What were the
22 expected hours worked?

23 A About eight to nine hours a day.

24 Q Were employees allowed to have breaks?

25 A Yes.

1 Q Were they allowed to have lunch breaks?

2 A Yes.

3 Q Were these required to be on site or were employees
4 permitted to leave the facility?

5 A Employees could leave.

6 Q Was there a prohibition against talking to co-workers
7 during work hours?

8 A No.

9 Q Did employees communicate in other ways aside from
10 talking?

11 A Yes. We communicated via Gchat.

12 Q What is Gchat?

13 A It's an instant messaging service through Google mail.

14 Q And were you permitted to communicate only about work-
15 related topics on Gchat or were you permitted to discuss other
16 matters?

17 A No. We could use it for personal matters as well.

18 Q Was the use of Gchat encouraged?

19 A Yes.

20 Q Was the work that you performed collaborative or
21 individualized?

22 A It was 80 to 90 percent individual and about ten to 20
23 percent collaborative.

24 Q Okay. Did -- during your employment, did you have
25 conversations with your colleagues about working at IXL?

1 A Yes.

2 Q Let's start off with one of your first conversations.

3 Who was it with?

4 A Nemo Curiel.

5 Q And who is Nemo Curiel?

6 A He was also a product analyst in math.

7 Q Can you recall one of your first conversations with Nemo
8 Curiel about workplace issues?

9 A Yes.

10 Q And where was this --

11 JUDGE ETCHINGHAM: Can we get a time frame, please.

12 Q BY MS. VIX: Yeah. When was this?

13 A It was around August 2013.

14 Q And where did this conversation take place?

15 A Near our cubicles.

16 Q Do you recall the time of day?

17 A It was around lunchtime.

18 Q How did the conversation start?

19 A I had had an inconclusive blood test from my doctor and I
20 was waiting on the results.

21 Q Okay. Did he respond?

22 A Yes. He encouraged me to take a sick day because I was
23 really nervous about hearing the results of the test.

24 Q Okay. And what did you say in response, if anything?

25 A I didn't, I told him that I didn't want to take a sick day

1 because I didn't want to be perceived as lazy or not putting
2 enough into the work.

3 Q Did you have any subsequent conversations with Mr. Curiel
4 about sick leave?

5 A Yes.

6 Q And when was that?

7 A Around January 2014.

8 Q And where did this conversation take place?

9 A Near our cubicles.

10 Q Was anyone else present?

11 A No.

12 Q Do you recall the time of day?

13 A It was, again, around lunchtime.

14 Q And what was said?

15 A He told me that he had been called into the HR manager's
16 office because he was taking too many sick days.

17 Q Did you respond?

18 A Yes. I told him that if their policy was to take, that he
19 could take unlimited sick days then he was within his rights to
20 do that.

21 Q Did he respond to you?

22 MR. WILSON: Objection, Your Honor. Just I'd like to
23 object. To the extent that any of this non-party statement
24 from Mr. Curiel is being offered for its truth, I'd object on
25 hearsay grounds. I understand that there's going to be, I

1 expect that there's going to be questions about conversations
2 that the Charging Party had. But to the extent that the
3 declarant who he's talking with is discussing matters about
4 what the policies are and what someone in HR told him, that is
5 being offered for the truth and I object on hearsay grounds.

6 MS. VIX: Your Honor, this testimony goes to two things.
7 One, knowledge which we will get to in just a moment and the
8 second is the declarant is available. He's here. So as to the
9 effect on the hear, it's not hearsay. The conversation that
10 he's having with a co-worker would not be hearsay from what the
11 words he was using.

12 JUDGE ETCHINGHAM: All right. I'm going to overrule the
13 objection and let it in.

14 Q BY MS. VIX: And what did Mr. Curriel say in response to
15 you?

16 A He told me that he agreed but he would probably take fewer
17 sick days.

18 Q Were any managers, did any managers hear this
19 conversation?

20 A I can't be sure but were close to Karen Penner's office.

21 Q Was Karen Penner's office door open?

22 A Usually, yes.

23 Q And who is Karen Penner?

24 A She's the head of recruiting.

25 Q And how far was your cubicle from Ms. Penner's?

1 A About 15 feet away.

2 Q Did you have any other conversations with Mr. Curiel about
3 workplace conditions or concerns?

4 A Yes.

5 Q And when was this conversation?

6 A Around August 2013.

7 Q And where were you?

8 A Near our cubicles.

9 Q Do you recall the time of day?

10 A Again, probably around lunchtime.

11 Q Could a manager hear this conversation?

12 A Again, possibly Karen Penner.

13 Q And what was discussed?

14 A Nemo told me that he had noticed that there were only two
15 Latino employees including himself and only two or three black
16 employees.

17 Q Okay. What did you say in response?

18 A I told him that I had noticed the same thing but I wasn't
19 too surprised because it's the tech industry and it's not very
20 diverse.

21 Q Did you have any other conversations with Nemo Curiel
22 about employment issues?

23 A Yes.

24 Q And when was the next conversation?

25 A Around February 2014.

1 Q Where did this conversation take place?

2 A At a restaurant off-site.

3 Q And was this conversation just the two of you?

4 A No. There was one other person present.

5 Q Who was that other person?

6 A Jessica Morse.

7 Q And who is Jessica Morse?

8 A She was also a product analyst in math at IXL.

9 Q And how did this conversation start?

10 A They had, they told me that they had just found out that
11 their, the project that they had been working on had been
12 cancelled.

13 Q Do you know what project that was?

14 A It was a video project to create short videos for second
15 and third graders to learn math.

16 Q Okay. And what was said about the cancellation of this
17 project?

18 A Jess told me that she had moved from faraway to take this
19 job specifically to work on this project. And she was
20 frustrated that it had been cancelled and she felt like she had
21 wasted three months' of work.

22 Q Did you respond?

23 A Yes. I told her that I echoed her frustration and I would
24 also be really frustrated if that happened to me.

25 Q Did you discuss who had made the decision to cancel this

1 project?

2 A Yes.

3 Q And what was said about that?

4 A Nemo and Jess both told me that they believed that it was
5 not their direct supervisor, Isadora Milin, who had cancelled
6 it because it was her idea. They told me that instead they
7 believed that it was Paul Mishkin and Kate Mattison who had
8 made the decision to cut the project.

9 Q And who is Paul Mishkin?

10 A He's the CEO of IXL.

11 UNIDENTIFIED SPEAKER: I'm sorry.

12 Q BY MS. VIX: Did you have any more conversations with co-
13 workers about the workplace?

14 A Yes.

15 Q And when was this next conversation?

16 A Around April 2014.

17 Q And who was this conversation with?

18 A Nina Wu.

19 Q Okay. And who is Nina Wu?

20 A She was also a product analyst in math at IXL.

21 Q Where were you when you had this discussion?

22 A We were near our cubicles.

23 Q And what did you discuss?

24 A She told me that she had just started at IXL and she had
25 also come on to work on the video project that had been

1 cancelled. It had been cancelled before she showed up and she
2 was not informed before she got there that it was cancelled.
3 So she asked me if I had any idea about the decision, about who
4 had made it and why.

5 Q Did you respond?

6 A Yes. I told her that I had heard from Nina and Jess and I
7 also believed myself that it was not Isadora or her direct
8 supervisor who would cancel the project but rather Paul
9 Mishkin.

10 Q Was anything else said?

11 A Yes. She asked me about the general reception of ideas
12 and creativity at IXL.

13 Q And what did you say in response?

14 A I told her that it seemed like the company didn't really
15 want to push the boundaries. They wanted to keep doing the
16 things that they had been doing and not really try new things.

17 Q Did you have any other conversations with co-workers about
18 this idea around creativity?

19 A Yes.

20 Q With whom?

21 A With Jessica Morse.

22 Q Okay. And when did that conversation take place?

23 A Around July 2014.

24 Q Okay. And where were you when you had this conversation?

25 A Near our cubicles.

1 Q Okay. Was it just the two of you?

2 A Yes.

3 Q And what was said?

4 A She told me that Nina Wu had just quit and she had given a
5 very long written exit interview. And in that exit interview,
6 Nina pointed out to the company that --

7 MR. WILSON: Objection, Your Honor. I'm sorry, objection.
8 Now this is double hearsay.

9 MS. VIX: Your Honor, this is just being offered for the
10 effect on the hearer.

11 MR. WILSON: But, Judge, this is, it's one thing to have
12 an effect but this is specifically an allegation by a not, you
13 know, a double hearsay allegation about what was told to the
14 company about some issue. And that's, that's prejudicial.

15 JUDGE ETCHINGHAM: Yeah, I'm going to sustain the
16 objection.

17 Q BY MS. VIX: What did Ms. Morse tell you about, or what
18 did you say in response to her telling you that Nina quit?

19 A I speculated that the company may come to its senses and
20 actually listen to the ideas of its employees.

21 Q Okay. Did you have any other conversations with any other
22 employees or managers about this issue of creativity?

23 A Yes.

24 Q With whom?

25 A David Keyes.

1 Q And when was this conversation?

2 A It was early on around August 2013.

3 Q And during that time, was he your manager?

4 A No.

5 Q What was he?

6 A He was also a product analyst.

7 Q He was later promoted?

8 A Yes.

9 Q Okay. And where did this conversation take place?

10 A Near our cubicles.

11 Q Was anyone else present?

12 A Yes, two other product analysts, Richard Cudney (phonetic)

13 and Isadora Milin.

14 Q And what was discussed?

15 A I told him I had an idea for a new skill on the website in

16 which students would learn how to make fractals by actually

17 like creating the fractals.

18 Q Okay. Did Mr. Keyes respond?

19 A Yes. He told me that he thought it was a great idea but

20 he didn't think that Paul would approve it.

21 Q And Paul is who?

22 A Paul Mishkin, the CEO.

23 Q And did he say why he did not believe it would be

24 approved?

25 A He said it was too far outside of what we normally did.

1 It was too different from the skills that were currently on the
2 website.

3 Q Did you have any other conversations with any other
4 employees about workplace issues?

5 A Yes.

6 Q With whom?

7 A Isadora Milin.

8 Q And you testified that she was also a product analyst.
9 Did that position change for her?

10 A She was promoted for a period of time to manager and then
11 later she was demoted or brought back to just product analyst.

12 Q Okay. And when did this conversation take place?

13 A It was January 2015.

14 Q And where did the conversation take place?

15 A In her office.

16 Q Do you recall the time of day?

17 A It was in the morning around 10 a.m.

18 Q Was anyone else present?

19 A No.

20 Q And how did the conversation start?

21 A She called me into her office to show me a new skill that
22 she was designing for kindergartners.

23 Q And what was that skill?

24 A It was a skill where students would learn to count by
25 filling in a monster body with a certain number of eyes and

1 arms.

2 Q And what did she say about this skill?

3 A She told me that she didn't think, she thought it might
4 not get approved because, again, it was too different, it was
5 too outside of what we normally did.

6 Q Did you respond?

7 A I told her that it would be a really good idea for them to
8 pick it up and design it and it would be silly if they didn't.
9 It was a really good skill.

10 Q Did you have any other conversations with co-workers about
11 workplace issues?

12 A Yes.

13 Q With whom?

14 A Nina Wu.

15 Q And where did this conversation take place?

16 A Near our cubicles.

17 Q And do you recall when this conversation took place?

18 A It was around May 2014.

19 Q And was her cubicle near yours?

20 A Yes.

21 Q Was anyone else present?

22 A No.

23 Q How did the conversation begin?

24 A I told her that I was getting ready to tell my supervisor
25 that I planned to take two months off to have gender

1 confirmation surgery.

2 Q Okay. And did she say anything in response?

3 A She told me, I had told her that I was nervous about it.

4 And she asked why I felt nervous about it because David Keyes
5 is my supervisor, seemed like a nice guy.

6 Q Okay. And did you respond?

7 A I told her that the reason that I was nervous was because
8 I didn't plan to disclose that the surgery was related to my
9 gender transition and I was worried that if he later found out
10 that I was transgender that he might not think that the surgery
11 was medically necessary and would even feel lied to because I
12 hadn't disclosed that it was for my transition.

13 Q Did Nina Wu respond?

14 A She told me that she understood a little bit better my
15 concerns but she thought that David Keyes would still be nice
16 about it.

17 Q Did you take disability leave during your employment?

18 A Yes.

19 Q Did you inform the Employer in advance of your need to
20 take disability leave?

21 A Yes.

22 MS. VIX: Your Honor, permission to approach the witness?

23 JUDGE ETCHINGHAM: For what purpose?

24 MS. VIX: To show a document.

25 JUDGE ETCHINGHAM: All right. Is it something that Mr.

1 Wilson has seen?

2 MS. VIX: Yes, should have.

3 JUDGE ETCHINGHAM: All right. Then, yes, you can approach
4 the witness.

5 MS. VIX: Your Honor, we did not exchange all exhibits in
6 advance of the hearing but, not identified as exhibits, but
7 there has been an exchange of documents.

8 JUDGE ETCHINGHAM: Okay. But do you have a copy for him?

9 MS. VIX: Yes, yes, yes, Your Honor, I do.

10 JUDGE ETCHINGHAM: Okay.

11 MR. WILSON: I have no objection to admission of this
12 document. For the record, my position is that there doesn't
13 need to be any type of foundation laid. This is a document we
14 produced and so if it speeds things along --

15 JUDGE ETCHINGHAM: All right.

16 MR. WILSON: -- I'll stipulate to its admission.

17 JUDGE ETCHINGHAM: As soon as Ms. Vix says she'd like to
18 have it admitted, we'll --

19 MS. VIX: I appreciate that.

20 JUDGE ETCHINGHAM: Okay. Do you want to describe what it
21 is though just for the record?

22 MS. VIX: Yes, Your Honor. I'm sorry. These are not
23 premarked. So I'm showing the witness, General Counsel Exhibit
24 3 which is an email from Mr. Duane to a number of staff at IXL
25 dated 10/3/14. I think I said that.

1 Q BY MS. VIX: Mr. Duane, what is this document?

2 A This is an email that I sent to my colleagues to inform
3 them that I was going to take two months off to have surgery.

4 Q And what were you seeking by sending this email?

5 A I wanted to inform them that I was going to take leave so
6 that we could wrap up any projects that we needed to wrap up.
7 And I also wanted to make sure that my co-workers would respect
8 my privacy and not ask, you know, invasive questions about my
9 surgery.

10 MS. VIX: Your Honor, I'd like to move this document into
11 evidence.

12 JUDGE ETCHINGHAM: Any objection, Mr. Marek?

13 MR. MAREK: No.

14 MR. WILSON: No objection.

15 JUDGE ETCHINGHAM: Thank you, Mr. Wilson. I think you
16 indicated no objection.

17 MR. WILSON: Sorry.

18 JUDGE ETCHINGHAM: All right. So with no objection, we'll
19 admit General Counsel's 3 into evidence at this time.

20 **(General Counsel Exhibit Number 3 Received into Evidence)**

21 Q BY MS. VIX: And Mr. Duane, did you in fact take this
22 leave?

23 A Yes.

24 Q And while on leave, did you communicate with your manager?

25 A Yes.

1 MS. VIX: This is General Counsel 4 which I'll show
2 Respondent's counsel.

3 Your Honor, showing the witness General Counsel Exhibit 4
4 which is an email chain that starts December 19th, 2014 from
5 Mr. Duane to Mr. Keyes and continues on December 22nd, a
6 response from Mr. Keyes to Mr. Duane and then December 23rd, a
7 communication from Mr. Duane back to Mr. Keyes, then a December
8 24th, a response from Mr. Keyes to Mr. Duane. Another
9 communication also on December 24th, a reply from Mr. Duane to
10 Mr. Keyes and then the last, at the very top of General Counsel
11 Exhibit 1, I'm sorry, Exhibit 4 is from Mr. Keyes to Mr. Duane.

12 JUDGE ETCHINGHAM: So this is a three-page document. The
13 second two pages have Bates stamped numbers in sequence. Is
14 the first page the Bates stamp number right before 494 so it's
15 493? It's just been cut off?

16 MS. VIX: That would be correct, Your Honor.

17 JUDGE ETCHINGHAM: All right.

18 MS. VIX: The Bates stamped numbers are not relevant to
19 this.

20 JUDGE ETCHINGHAM: Well, as far as referencing a specific
21 part of this exhibit in the record and a closing brief or in a
22 decision, normally I'd have GC Exhibit 1, pages 1, 2 and 3
23 marked there. You don't have that. You just have the Bates
24 stamps on pages 2 and 3. So I just want to --

25 MS. VIX: Okay.

1 JUDGE ETCHINGHAM: -- make it clear if somebody wanted to
2 refer to the first page nobody really knows what to call it
3 other than GC Exhibit 4, page 1, so.

4 MS. VIX: Okay.

5 MR. WILSON: Should we not obscure the Bates number and
6 put stickers?

7 JUDGE ETCHINGHAM: Yeah, or maybe during a break the
8 version the court reporter has, you can just put 1, 2 and 3 or
9 put the real --

10 MS. VIX: Sure, that would be fine or we could all, could
11 we all identify them as page 1, 2 and 3 right now?

12 JUDGE ETCHINGHAM: Sure.

13 Q BY MS. VIX: Do you recognize this document?

14 A Yes.

15 Q And what is this?

16 A It's an email exchange between me and my manager, David
17 Keyes.

18 MS. VIX: Your Honor, I'd like to move this document into
19 evidence.

20 JUDGE ETCHINGHAM: Any objections?

21 MR. WILSON: No objection.

22 MR. MAREK: No objection.

23 JUDGE ETCHINGHAM: All right. No objection, we'll admit
24 General Counsel's Exhibit 4 at this time.

25 **(General Counsel Exhibit Number 4 Received into Evidence)**

1 Q BY MS. VIX: And what were you, can you give us a brief
2 explanation of what this email communication was?

3 A Yes. I was having a surgical complication known as a
4 urethral fistula. And for that reason, I needed to work 50
5 percent remotely if I was going to return to work. So I
6 emailed my manager, David Keyes, to request that accommodation.
7 He initially said no and told me that if I needed to, if I
8 couldn't be back at the office 100 percent of the time, then I
9 would need to remain on disability. I told him that I had
10 spoken to a friend from college who's an attorney and actually
11 he was legally bound to give me this accommodation and that I'd
12 like to work with him to make that transition work and to come
13 up with a work plan.

14 Q Had you worked from home before?

15 A Yes.

16 Q And when was that?

17 A One day per week. I worked remotely for about two to
18 three months prior to my surgery to have pre-operative
19 electrolysis appointments.

20 Q And from what period of time to when?

21 A About July 2014 to the end of October 2014.

22 Q Could you perform all of the functions of your job
23 remotely?

24 A Yes.

25 Q And how is that possible?

1 A All of our communication was online. We communicated
2 through gchat and email. We used online tools to upload drafts
3 of our specifications. So everything was done online.

4 Q In your email communication with Mr. Keyes, you state a
5 willingness or a desire to work 50 percent remotely. Why not
6 100 percent?

7 A I was worried that I would be perceived as taking
8 advantage or not putting in as much as other employees if I
9 asked to work 100 percent remotely.

10 Q Following your email communication with Mr. Keyes, did you
11 communicate with other employees about the disability
12 accommodation you were seeking?

13 A Yes.

14 Q And who was this with?

15 A Jessica Morse.

16 Q And how did this communication take place?

17 A Via text.

18 Q Okay.

19 MS. VIX: Sorry, Your Honor. I don't think I have enough
20 copies but --

21 Q BY MS. VIX: I'm showing you General Counsel Exhibit 5 --

22 MS. VIX: Ms. Court Reporter, I will provide you with two
23 copies at a break, General Counsel Exhibit 5. Okay.

24 Q BY MS. VIX: Do you recognize General Counsel Exhibit 5?

25 A Yes.

1 Q And what is it?

2 A It's a text message exchange between me and Jessica Morse.

3 Q And which of these messages are from you?

4 A The ones with the dark background are my texts.

5 MS. VIX: Your Honor, I'd like to admit this document into
6 evidence.

7 JUDGE ETCHINGHAM: Any objections?

8 MR. WILSON: May I first voir dire about the document,
9 Judge?

10 JUDGE ETCHINGHAM: Sure.

11 **VOIR DIRE EXAMINATION**

12 Q BY MR. WILSON: Mr. Duane, I'd like to ask you. These
13 screenshots were made by who?

14 A By me.

15 Q How did you make them?

16 A With my iPhone.

17 Q Is the messaging app that you used, what is this?

18 A It's the built-in iPhone messaging app.

19 Q Is this the work gchat that you referred to?

20 A No. It's my own personal phone.

21 Q Is this the entire discussion on December 23 with Jess or
22 Jessica?

23 A I believe that there is a little bit more to it but this
24 was everything that was relevant to the disability discussion.

25 Q One other thing is just at the bottom there is a --

1 JUDGE ETCHINGHAM: Which page?

2 Q BY MR. WILSON: Both pages there's, at the bottom there's
3 a file path, a file name and path, related to Google drive or
4 drive.google.com with the date of 9/30/2015. Do you know what
5 that is?

6 A I took screenshots on my phone and I emailed those images
7 to my lawyer. And I put them, well, I put them in Google Drive
8 and shared that drive with him. So that's where that comes
9 from.

10 Q But this was not done while -- I'm sorry. Was this Google
11 Drive usage while you were employed with IXL?

12 A No.

13 Q Okay. So it was not. So this was not on the IXL computer
14 system?

15 A No. It's my personal email.

16 Q Okay. Understood.

17 MR. WILSON: Thank you, Judge.

18 JUDGE ETCHINGHAM: So the date. I'm sorry if you've
19 already said but the date here is December 23, 2014?

20 THE WITNESS: Yes, sir.

21 JUDGE ETCHINGHAM: Okay. Any objection to it coming into
22 evidence?

23 MR. WILSON: No objection.

24 MR. MAREK: (No verb response).

25 JUDGE ETCHINGHAM: No objection, we'll admit General

1 Counsel's Exhibit 5 at this time.

2 **(General Counsel Exhibit Number 5 Received into Evidence)**

3 **DIRECT EXAMINATION (CONTINUED)**

4 Q BY MS. VIX: What day did you return to work?

5 A December 30th.

6 Q Did you meet with Mr. Keyes that day?

7 A Yes.

8 Q And whereabouts did you meet?

9 A In his office.

10 Q At what time?

11 A At 10 in the morning.

12 Q Was anyone else present?

13 A No.

14 Q And why did you have this meeting?

15 A He wanted to catch me up on changes to the personnel on
16 the team and also tell me what projects that he was working on.

17 Q So when you met, what was said during this meeting?

18 A He first told me that two new or one, excuse me, one new
19 product analyst had been hired and he would be working 100
20 percent remotely from Louisiana because his wife had recently
21 had a serious medical diagnosis so he needed to take care of
22 her.

23 Q Okay. Did he say anything else?

24 A Yes. He also told me that another product analyst, Gina
25 Bland, would be working 50 percent remotely from Washington,

1 D.C. on alternating months so that she could be with her
2 husband.

3 Q And why was he telling you this?

4 A He wanted to keep me updated on who would be in the
5 office, changes in the team.

6 Q You had not heard about these work-from-home
7 accommodations before?

8 A Correct.

9 Q Was anything else said during this meeting?

10 A Yes.

11 Q What else was said?

12 A We went over my remote work plan. He told me that I would
13 need to be in the office by 8 a.m. every day, stay until noon
14 and then work from home from 1 to 5 p.m. And I would also need
15 to check in with him twice a week in person and twice a week by
16 email.

17 Q You mentioned a work-from-home plan. Was that work-from-
18 home plan in writing?

19 A Yes.

20 MS. VIX: Your Honor, I'm showing the witness General
21 Counsel Exhibit 6.

22 Q BY MS. VIX: Mr. Duane, do you recognize this document?

23 A Yes.

24 Q And what is this document?

25 A This is the remote work plan that David Keyes and I agreed

1 upon.

2 MS. VIX: Your Honor, I'd like to move this document into
3 evidence.

4 JUDGE ETCHINGHAM: Any objections?

5 MR. WILSON: One moment, Judge, I want to make sure it's
6 complete.

7 No objection.

8 JUDGE ETCHINGHAM: All right. No objection, we'll admit
9 General Counsel's Exhibit 6 at this time.

10 **(General Counsel Exhibit Number 6 Received into Evidence)**

11 Q BY MS. VIX: What did you do after this conversation with
12 Mr. Keyes?

13 A I spoke with Jessica Morse.

14 Q And where did you meet?

15 A In the parking lot of the IXL building.

16 Q And this was immediately after your meeting with Mr.
17 Keyes?

18 A It was around when I was going to leave so around 12:15 or
19 12:30.

20 Q And how did this conversation start?

21 A I told her that I wanted to tell her what happened in my
22 meeting with David.

23 Q Okay. And what did you say?

24 A I just reiterated what we'd gone over and I noted that my
25 remote work plan seemed more restrictive than other people's

1 remote work.

2 Q Did she respond?

3 A Yes, she cited a study about sick leave that said that
4 companies that allow employees to take unlimited sick leave
5 actually end up, employees actually end up taking less sick
6 leave if it's unpermitted.

7 Q Did you respond?

8 A I told her that makes sense because there was definitely a
9 culture of guilt around taking sick leave at IXL.

10 Q Was anything else said during this conversation?

11 A No, not that I recall.

12 Q What did you do after this conversation?

13 A I wrote a review of IXL on glassdoor.com.

14 Q What is glassdoor.com?

15 A Glassdoor is a posting board where current and former or
16 current, former and potential employees can post about their
17 experiences in the workplace.

18 Q How did you know about glassdoor.com?

19 A I had used it in my own job search to find IXL and I'd
20 also posted on it before.

21 Q Was glassdoor ever discussed at IXL during your employment
22 there?

23 A Yes.

24 Q Do you recall when?

25 A The first time was around August 2013.

1 Q So this is about a month after you had started working
2 there?

3 A Yes.

4 Q And who did you have this discussion with?

5 A Karen Penner and Nemo Curiel.

6 Q And where did this conversation take place?

7 A Outside of Karen Penner's office.

8 Q Do you recall the time of day?

9 A It was around lunchtime.

10 Q Do you recall how the conversation started?

11 A Yes. Karen told me and Nemo that glassdoor had received
12 several negative reviews in the last few months and they
13 believed that it was one person in the sales department. And
14 she then asked us if we would be willing to post favorable
15 reviews on glassdoor.

16 Q Did you respond?

17 A Yes. I told her that I would probably be willing to post
18 a review.

19 Q Did Mr. Curiel say anything?

20 A He said he'd think about it.

21 Q Did you write your review?

22 A Yes.

23 Q Okay. And when was that?

24 A September 2013.

25 Q Do you recall what you said about the company?

1 A I gave it a positive review. I said so far I had had a
2 good experience working there.

3 Q Did you have any further conversations with Nemo Curiel
4 about glassdoor and what Ms. Penner had said?

5 A Yes.

6 Q And when was that?

7 A Around the time that I wrote the review so September 2013.

8 Q And where did this conversation take place?

9 A In our cubicles.

10 Q How did the conversation start?

11 A I asked him if he had gone on glassdoor and read the
12 reviews that Karen was talking about.

13 Q And what did he say?

14 A He said that he had and although he hadn't noticed too
15 much of the behavior that was noted in those negative reviews,
16 they were definite red flags to him and he was going to keep an
17 eye out.

18 Q Did you say anything in response?

19 A I told him that seemed reasonable that so far I had also
20 had a good experience working there but it seemed like maybe
21 people in other departments hadn't yet, hadn't.

22 Q Were there any other communications from management about
23 glassdoor?

24 A Yes.

25 Q Do you recall when?

1 A Early September 2013.

2 Q And where did this communication take place?

3 A It was at the quarterly meeting in the auditorium on the
4 first floor of the IXL building.

5 Q And who was in attendance at this meeting?

6 A The entire company.

7 Q And who spoke about glassdoor, specifically?

8 A Paul Mishkin, the CEO.

9 Q And what did he say?

10 A He said, rhetorically, what are we going to do about the
11 negative Glass Door reviews.

12 Q Did anyone in the audience respond?

13 A The audience laughed. They thought that he was joking, I
14 assume.

15 Q Did you write your positive review before or after this
16 quarterly meeting?

17 A After.

18 Q Did IXL managers or human resources staff ever communicate
19 with you again about Glass Door?

20 A Yes.

21 Q Was that communication in writing or was it verbal?

22 A Via email.

23 Q And do you recall to what email address it went to?

24 A To my IXL email address.

25 Q Do you still have access to that email address?

1 A No.

2 Q And why not?

3 A It was shut down while I was being fired.

4 Q Okay. And when did you receive a communication about
5 Glass Door from management or HR?

6 A It was around July 2014.

7 Q And who was the communication from?

8 A Maricela Prado.

9 Q Who is Maricela Prado?

10 A She is the HR coordinator at IXL.

11 Q Do you recall what the email said?

12 A The email encouraged us to write positive reviews on Glass
13 Door.

14 Q Back to December 30th. Why did you post to Glass Door?

15 A I was concerned about some of the treatment that I and
16 other employees had received in the workplace. And I thought
17 it was important to share those concerns with other employees.

18 MS. VIX: Showing the witness General Counsel Exhibit 7.

19 Q BY MS. VIX: Do you recognize this document?

20 A Yes.

21 Q And what is this?

22 A It's the review that I wrote on GlassDoor.com on December
23 30th.

24 MS. VIX: Your Honor, I'd like to move GC Exhibit 7 into
25 evidence?

1 JUDGE ETCHINGHAM: Any objection?

2 MR. WILSON: Short voir dire, Judge.

3 JUDGE ETCHINGHAM: Sure.

4 **VOIR DIRE EXAMINATION**

5 Q BY MR. WILSON: Mr. Duane, is this a copy of a word -- or
6 word processor type document?

7 A No, I don't believe so.

8 Q Is this -- this is not a screenshot from a website?

9 A No, I don't believe so.

10 Q It's just I've never seen this before in this form. How
11 did you come to have this document in this form, as opposed to
12 what I think we've all seen being posted on the website?

13 A I believe that Ms. Vix put it into this format.

14 MS. VIX: That's correct, Your Honor.

15 MR. WILSON: Oh, okay.

16 JUDGE ETCHINGHAM: Is there any question about the content
17 of it? Is it -- is there something missing or something you
18 didn't know about or is there something that's added that
19 wasn't part of it?

20 MR. WILSON: Well, that's what I'm -- I was trying to pull
21 up the actual posting. And just these introductory things.
22 There were stars and things like that. I'm not going --
23 knowing that Ms. Vix created this, I'm not going to object to
24 it. I'll introduce my version of the screenshot.

25 MS. VIX: Do you want to introduce your version of the

1 screenshot now? I'm happy to stipulate to your version. This
2 is my limited technology experience trying to produce this.

3 JUDGE ETCHINGHAM: It's readable.

4 MS. VIX: That was my goal.

5 JUDGE ETCHINGHAM: Do you want to go off the record
6 briefly?

7 MR. WILSON: No, I will -- like I said, I have it with --
8 attached to an email in the screenshot format. And so, that is
9 a little bit more information than you want. So --

10 MS. VIX: Could we go off the record?

11 JUDGE ETCHINGHAM: Sure.

12 MS. VIX: I believe Respondent did produce it --

13 JUDGE ETCHINGHAM: Briefly go off the record.

14 MS. VIX: -- in the screenshot format to me yesterday.

15 And I just didn't produce it in that version.

16 (Off the record at 9:13 a.m.)

17 JUDGE ETCHINGHAM: All right. Let's go back on the
18 record. Thank you. When we broke, we were discussing General
19 Counsel's Exhibit 7, whether we're going to either revise it,
20 use something in its place. So what did we decide?

21 MS. VIX: Yes, Your Honor. I've prepared a cleaner copy,
22 which I will show to Respondent's counsel.

23 (Counsel confer)

24 JUDGE ETCHINGHAM: Any objection to this version?

25 MR. WILSON: No.

1 JUDGE ETCHINGHAM: All right. No objection. We'll admit
2 General Counsel's Exhibit 7 at this time.

3 **(General Counsel Exhibit Number 7 Received into Evidence)**

4 JUDGE ETCHINGHAM: And just for the record, this version
5 is replacing or superseding the earlier version. So the
6 version in the record is the one we're using.

7 **DIRECT EXAMINATION (CONTINUED)**

8 Q BY MS. VIX: Okay. Mr. Duane, do you recognize General
9 Counsel Exhibit 7?

10 A Yes.

11 Q And what is that?

12 A It's the post that I wrote on Glass Door on December 30th.

13 MS. VIX: Your Honor, I'd like to move this document into
14 evidence.

15 JUDGE ETCHINGHAM: We just did.

16 MS. VIX: Oh, sorry.

17 JUDGE ETCHINGHAM: It's okay.

18 (Counsel confer)

19 Q BY MS. VIX: Did you talk with Mr. Keyes again about your
20 disability accommodation?

21 A Yes.

22 Q And when was that conversation?

23 A January 6th, 2015.

24 Q And where did that conversation take place?

25 A In his office.

1 Q Was it just the two of you?

2 A Yes.

3 Q Do you recall the time of day?

4 A It was first thing in the morning around 8 a.m.

5 Q What was said during this meeting?

6 A He told me that he had noticed that I didn't seem as happy
7 as work as I had before I left for surgery, and he wanted to
8 know why.

9 Q Did you respond?

10 A Yes. First, I told him that I wasn't happy with some of
11 the assignments that I was getting, that I felt like the -- my
12 ideas weren't really listened to, and that there wasn't a lot
13 of creative work to be done in the workplace. And then I told
14 him that I also was not happy at all with how the company had
15 dealt with my disability leave.

16 Q Did he respond to that?

17 A Yes. He first defended his decision to initially deny me
18 the accommodation. And he pointed out that, you know, he had
19 eventually been willing to accommodate me. I told him, in
20 response, that it wasn't just about that incident. It was
21 about a pattern of things that had happened at IXL with regard
22 to disability, starting with my training on my second or third
23 day of work with Maricela Prado, in which she got to the
24 disability portion of the disability training, and looked at us
25 and said: You're all healthy. You don't need this. That made

1 me very uncomfortable, because I knew that I would probably
2 have to take disability leave during my time at IXL. And I
3 really needed that information.

4 Q You told Mr. Keyes this during this meeting?

5 A Yes.

6 Q Okay. What else did you say to him?

7 A I also told him that Brad Marshall, who was the HR manager
8 at IXL for a short time, had initially given me incorrect
9 information about the amount of time that I could take on
10 disability, and that had, for a while, changed my plans for
11 surgery. I --

12 Q Did he respond to that?

13 A After I told him all of my complaints about disability --

14 Q There were more complaints?

15 A Yes, there were.

16 Q What was the next complaint?

17 A I also told him that Maricela had asked an inappropriate
18 question about my arm, which ended up being the donor site for
19 my surgery, during our meeting to discuss leave, and that that
20 was just another in a long line of inappropriate things that
21 had happened around disability in the workplace.

22 Q Did he respond at that point?

23 A Yes. He told me that he understood why I would feel
24 uncomfortable in the workplace. I'm sorry. I forgot one thing
25 that I told him. I also told him that he had denied me

1 something that I was legally accommodated to, in saying that I
2 was not allowed to take that leave, and that that made me feel
3 uncomfortable and unwelcome in the workplace.

4 Q Did he respond to that?

5 A Yes. He -- after I had listed all those complaints, he
6 told me that he totally understood why I would feel
7 uncomfortable. And he told me that he didn't mean to
8 discriminate against me. He told me that he wanted to make it
9 right and make it so that I could feel comfortable in the
10 workplace again. He also told me that he would escalate my
11 concerns to Lenore Ockenberg (sic phonetic).

12 Q Who is Lenore Ockenberg?

13 A She is the head of operations at IXL.

14 Q Did he say anything else?

15 A No, not that I recall.

16 Q Did you say anything about your work-at-home arrangement
17 and whether or not it was working?

18 A Yes. I brought up the fact that I had worked very hard to
19 show him that I could work from home effectively. And I
20 pointed out how different the situation was, because when I
21 took days to work remotely before my surgery, I took them
22 because, instead of taking sick leave, I worked remotely,
23 because I wanted to contribute as much as possible. But during
24 that time, I was having two-hour appointments in the afternoon
25 that were long and painful. And it affected my productivity.

1 But this time, I just needed to rest. I just needed to be at
2 home, and that I'd worked very hard to meet all of the goals
3 and to exceed them.

4 Q Did he respond to that point?

5 A Yes. He told me that he had noticed that I'd been doing a
6 really great job, and that I had stood by the work plan, and
7 that I'd met all of the goals up to that point and had been
8 doing very well.

9 Q Was anything else said during this meeting?

10 A No, not that I recall.

11 Q Was there anything said during this meeting that you
12 believe could have identified you as the author of that
13 December 30th Glass Door post?

14 A Yes. I was very critical of Maricela Prado and Brad
15 Marshall, who both worked in HR at IXL. And I'm also very
16 critical of HR in my post. I also used the language of
17 discrimination in that meeting, and I implied discrimination in
18 my post.

19 Q After your meeting with Mr. Keyes, did you talk to a
20 coworker after the meeting?

21 A Yes.

22 Q With whom?

23 A Jessica Morse.

24 Q And was this in person or in writing?

25 A First, via text message and then in person.

1 Q I'm showing the witness what's been marked as General
2 Counsel Exhibit 8. This is a one, two, three, four -- six-page
3 document. Mr. Duane, do you recognize General Counsel Exhibit
4 8?

5 A Yes.

6 Q What is it?

7 A It's a text message exchange between me and Jessica Morse.

8 Q And again, your writing is in which color?

9 A Mine are the texts with the dark background.

10 MS. VIX: Your Honor, I'd like to move this document into
11 evidence.

12 JUDGE ETCHINGHAM: Any objection?

13 MR. WILSON: No objection.

14 JUDGE ETCHINGHAM: No objection. We'll admit General
15 Counsel's Exhibit 8 at this time.

16 **(General Counsel Exhibit Number 8 Received into Evidence)**

17 Q BY MS. VIX: She writes, on page -- the last page, page 6:
18 You should be a disability advocate.

19 A Yes.

20 Q Have you been an advocate?

21 A Yes.

22 Q Did Jess know that you were an advocate?

23 A Yes.

24 Q How did she know?

25 A I told her about some of the activism work that I'd done.

1 Q What type of activism work had you engaged in?

2 A I helped to design curricula for the Fair Education Act.

3 Q What is the Fair Education Act?

4 A It's a law that was passed a few years ago, in California,
5 that requires schools to teach about certain marginalized
6 communities, in particular, the LGBT community and the
7 disability community.

8 Q And what, specifically, had you done with respect to work
9 on the Fair Education Act?

10 A I'd planned -- I'd helped to plan curricula with a group
11 of disability activists and a group of LGBT activists that
12 would include some of the -- some lessons about the communities
13 that were now included in this Act.

14 Q Did any managers know -- at IXL, know of your work as an
15 advocate on the Fair Education Act?

16 A Yes.

17 MR. WILSON: Objection, speculation. I don't object to
18 any testimony of what a manager told him or what he told a
19 manager. But to ask whether any manager knew about his --

20 MS. VIX: Okay. I can lay some foundation, Your Honor.

21 JUDGE ETCHINGHAM: Sure.

22 Q BY MS. VIX: Did you have any conversations with managers
23 about your work with the Fair Education Act?

24 A Yes.

25 Q With whom?

1 A Kate Madison.

2 Q And when did this conversation occur?

3 A Early in my time at IXL, around August 2013.

4 Q And where did this conversation take place?

5 A In her office.

6 Q And was it just the two of you?

7 A Yes.

8 Q How did the conversation start?

9 A I told her that I'd heard that IXL planned to create
10 social studies skills, and I told her that I would really like
11 to be involved in the lessons in the social studies section
12 that included the topics that are covered under the Fair
13 Education Act.

14 Q Did you tell you what you had done with the Fair Education
15 Act?

16 A Yes. I told her about my advocacy work and that I'd
17 already done some work in designing that curricula. So I
18 thought that I would be a good person for it.

19 Q And what did she say?

20 A She said that she thought my expertise would be really
21 helpful, and that she'd be happy to have me on that project
22 when it came around.

23 Q Did you get a chance to work on that issue?

24 A No.

25 Q Were you involved in other activism issues?

1 A Yes.

2 Q Have you ever Googled yourself?

3 A Yes.

4 Q And what shows up?

5 A A few things. One is an article that I wrote for The
6 Advocate in October 2014. There --

7 Q What is The Advocate?

8 A The Advocate is the largest worldwide publication on LGBT
9 issues.

10 Q And anything else show up?

11 A Yes, some links to Facebook events that I had organized
12 around transgender issues.

13 Q Did you Google yourself prior to this hearing?

14 A I did.

15 MS. VIX: Showing the witness General Counsel Exhibit 9.
16 This is a one-page document.

17 Q BY MS. VIX: Do you recognize this document?

18 A Yes.

19 Q And what is it?

20 A These are my current Google search results as of a couple
21 days ago.

22 MS. VIX: Your Honor, I'd like to move this document into
23 evidence.

24 JUDGE ETCHINGHAM: Any objection?

25 MR. WILSON: Voir dire, Judge --

1 JUDGE ETCHINGHAM: Sure.

2 MR. WILSON: -- please.

3 JUDGE ETCHINGHAM: Uh-huh.

4 **VOIR DIRE EXAMINATION**

5 Q BY MR. WILSON: Mr. Duane, did you use your personal
6 computer to run this search?

7 A Yes.

8 Q Did you clear any of your prior search histories before
9 running this search on Google on your computer?

10 A No.

11 Q Are you aware of whether Google searches are based upon
12 that particular user's prior Google searches?

13 A I don't believe they are, but I'm not an expert.

14 Q Okay. And the date of 11/4/2015 at the top left, is that
15 the date you did the search?

16 A Yes.

17 Q Okay.

18 MR. WILSON: No further questions on voir dire.

19 JUDGE ETCHINGHAM: Any objection to this coming into
20 evidence?

21 MR. WILSON: I object on relevancy grounds, but -- well, I
22 object on relevancy grounds.

23 MS. VIX: Your Honor, I believe that this document has the
24 potential to show knowledge.

25 MR. WILSON: Knowledge. I don't -- it's a Google printout

1 of something done 11 months after he worked there. And
2 knowledge of what?

3 JUDGE ETCHINGHAM: Yeah. My understanding of these types
4 of listings is some of them do have a date tied to them. So,
5 certainly, ones that go back to May 29th, 2013 would
6 potentially be relevant to this case. But any that came after
7 he was discharged I don't think have any relevance to this
8 proceeding. And it's hard to tell which ones are there. And
9 this is page 1 I'm --

10 MS. VIX: Yes, Your Honor.

11 JUDGE ETCHINGHAM: -- assuming?

12 MS. VIX: Page 2 was just a header. There was nothing, no
13 text. Your Honor, I would be willing to offer this document
14 with respect only to certain portions that show dates.

15 JUDGE ETCHINGHAM: You want to redact it then and maybe
16 offer it later in the day?

17 MS. VIX: I can do that, sure.

18 JUDGE ETCHINGHAM: Does that make sense to you, Mr.
19 Wilson? Do you question the relevance of some of these
20 listings that occurred before his discharge?

21 MR. WILSON: So I can't tell what did or did not occur
22 before. There's only one reference to something in May 2013
23 meeting. But it doesn't mean that it was posted that day. It
24 was -- could reference something else. So I will maintain -- I
25 will tell you that I'm going to maintain an objection to this

1 on relevance, even if some of these -- well, only one maybe or
2 two appear to have any reference to a date, that -- such as the
3 second one, October 27, 2014. Again, I -- it's -- this isn't
4 the EOC case and this is a -- I don't know that -- Mr. Duane's
5 status as a transgendered male. It's part of the allegations
6 here. This is --

7 MS. VIX: Your Honor, and that is absolutely not why this
8 is being offered. This is being offered to show his activism.

9 MR. WILSON: Okay.

10 JUDGE ETCHINGHAM: Right. Once again, it's hard to tell
11 what existed before the discharge from that after. So if you'd
12 like, I'm willing to revisit this. It's something that, even
13 if admitted, may not get a lot of weight. So -- and this just
14 doesn't seem like it's something we -- and then there's -- and
15 the other thing is you could have other witnesses talk about
16 the same thing. So that's kind of my ruling right now is I
17 sustain the objection as it exists here. But if you want to
18 redact it and revisit it a little bit later this morning, we
19 can certainly do that.

20 MS. VIX: Thank you, Your Honor.

21 JUDGE ETCHINGHAM: Sure.

22 **DIRECT EXAMINATION (CONTINUED)**

23 Q BY MS. VIX: Mr. Duane, have you been involved in creating
24 group action?

25 A Yes.

1 Q What have you done?

2 A When I was in graduate school, I founded a small non-
3 profit called Visible Bodies, which took a cross-section of the
4 transgender community in San Diego and had them -- had their
5 photographs taken and then write a little bit about themselves
6 to show a cross-section of the community.

7 Q Okay. Does that project still exist?

8 A Yes.

9 Q And whereabouts does it exist?

10 A Both in San Diego. And we also have a branch in
11 Minneapolis now as well.

12 Q If one had googled you in June of 2013, would your name
13 have appeared associated with Visible Bodies?

14 A Mostly likely, yes.

15 Q What else have you been involved with as an activist?

16 A Here in San Francisco, I organized a couple of book
17 release events around a book that I wrote for, called Manning
18 Up, which is a collection of short narratives by transgender
19 men.

20 Q And when did that take place?

21 A That was around July 2014.

22 Q And what else have you been involved with?

23 A I also organized here in San Francisco, every six months,
24 a forum for transgender men to come together with doctors and
25 community advocates and people who represent insurance

1 companies, so that we can learn about our medical options for
2 transition.

3 Q And when have you organized those events?

4 A It was every six months starting in September 2013.

5 Q Have you been involved in any other activism?

6 A Yes.

7 Q Okay.

8 A Quite a bit.

9 Q Is your sense of community organizing and change what
10 compels you to speak out on issues that you feel are unfair?

11 A Yes. I feel it's very important to speak out for other
12 people and on behalf of myself.

13 Q Did you talk with Jess Morse in person after your meeting
14 with Mr. Keyes?

15 A Yes.

16 Q And where did this conversation take place?

17 A In the parking lot of the IXL building.

18 Q At what time?

19 A Around noon, when I was about to leave.

20 Q Was anyone else present?

21 A No.

22 Q Did any managers see you talking?

23 A Yes. David Keyes drove by and saw us talking.

24 Q And what did you discuss?

25 A I reiterated what had happened in the meeting with David.

1 Q And did she respond?

2 A Yes. She told me that she was glad that someone was
3 speaking up and, you know, telling them what they needed to
4 know.

5 Q After your meeting with Mr. Keyes, did you receive an
6 email from Mr. Mishkin?

7 A Yes.

8 Q Showing the witness what's been marked as General Counsel
9 Exhibit 10. Do you recognize this document?

10 A Yes.

11 Q And what is it?

12 A It's an email that I received from Paul Mishkin on January
13 7th.

14 MS. VIX: Your Honor, I'd like to offer this document into
15 evidence.

16 JUDGE ETCHINGHAM: Any objection?

17 MR. WILSON: Voir dire about the document, Judge? May I?

18 JUDGE ETCHINGHAM: Sure.

19 **VOIR DIRE EXAMINATION**

20 Q BY MR. WILSON: Mr. Duane, do you see at the top there is
21 a word or email address that's cut off?

22 A Yes.

23 Q What is that email address?

24 A That's my IXL email address.

25 Q SDuane@IXL.com?

1 A Correct.

2 Q Does this document show anywhere what time of day that you
3 received it?

4 A I don't believe so, no.

5 Q Is this a screen print?

6 A Yes.

7 Q If you had scrolled down and screen printed, would you --
8 would it -- would this program have a line that showed the time
9 that -- the date and time that you received it?

10 A Yes. I may have another screenshot of it, actually.

11 Q Okay.

12 MR. WILSON: No objection.

13 JUDGE ETCHINGHAM: All right. With no objection, we'll
14 admit General Counsel's Exhibit 10 at this time.

15 **(General Counsel Exhibit Number 10 Received into Evidence)**

16 **DIRECT EXAMINATION (CONTINUED)**

17 Q BY MS. VIX: This email requests a meeting with you. Did
18 you meet with Mr. Mishkin?

19 A Yes.

20 Q And what date?

21 A January 8th, 2015.

22 Q What time?

23 A 11 a.m.

24 Q Where did you meet?

25 A In his office.

1 Q Was it just the two of you?

2 A Yes.

3 Q How did this meeting start?

4 A He asked me to reiterate the complaints that I had
5 discussed with my manager, David Keyes.

6 Q And did you reiterate those complaints?

7 A Yes. I told him all of the complaints that I had -- that
8 I passed on to David. And I also told him about one other
9 incident with Karen Penner, when she told me that one of the
10 employees that she supervises has Lupus.

11 Q For the sake of the record, could you please testify as to
12 what exactly you told Mr. Mishkin?

13 A Yes. I, first told him that -- about my training with
14 Maricela Prado, in which she skipped past the disability
15 section of the training, because she didn't think it was
16 relevant to us, because we were all healthy. I told him that
17 that had made me very uncomfortable, because I knew that I
18 would probably have to take disability leave during my time at
19 IXL. I also told him about Brad Marshall and the incorrect
20 information that I had received about disability leave from
21 Brad Marshall. And I also told him that Maricela had asked me
22 some inappropriate questions about my arm that I was going to
23 have surgery on.

24 Q And did he respond to any of these complaints?

25 A Yes. He -- in regard to my complaint about the HR

1 department, he told me that HR is a difficult specialty and
2 that there's really no way to be an expert in HR.

3 Q Okay. Did he make any other comments?

4 A He asked me if there were any other complaints besides
5 those three.

6 Q And did you?

7 A No.

8 Q What else was said during this meeting?

9 A After I told him about the complaints that I'd had about
10 HR, I also told him that it was not legal what he had done --
11 or what the company had done with regard to my disability
12 leave, and that it wasn't really a gray area with regard to HR,
13 that it was very cut and dry, in my situation, in particular.

14 Q Did he respond?

15 A He downplayed it. He said that he -- yeah, he downplayed
16 it I would say.

17 Q What else was said?

18 A After I had listed my complaints, he had pulled out the
19 printout of the Glass Door review that I had written and said:
20 Now I want to talk about something else.

21 Q And you're referring to General Counsel Exhibit 7?

22 A Yes.

23 Q Okay.

24 A He said: I know you know what this is, and I want to talk
25 about it.

1 Q Did you respond?

2 A I asked him why we were discussing this when I had come in
3 to discuss discrimination in the workplace.

4 Q And what did he say?

5 A He had said that we had already addressed my complaints
6 about discrimination and now we were going to talk about this.

7 Q Okay. And what was said next?

8 A He asked me to go through the review point by point and
9 point out specific examples of every complaint that I made.

10 Q And did you?

11 A Yes.

12 Q What did you say?

13 A First, he asked me about my complaint that the work was
14 not creative and that it was micromanaged. And I pointed to
15 the cancellation of the video project, which was, in my
16 opinion, a very creative project, as an example of that.

17 Q Okay. What was said next?

18 A He asked me about my assertion in the review that certain
19 groups are privileged over other groups and asked me to point
20 out examples of that.

21 Q What did you say?

22 A I told him that there -- it was apparent to me that --
23 excuse me -- that some groups were privileged over others in
24 the way that they got leave, in the way that they were allowed
25 to work or to work remotely, and just in who was represented in

1 the workplace.

2 Q Okay. Did he respond?

3 A He asked me if I felt -- first, he denied those claims.

4 He said that IXL does not discriminate whatsoever against

5 anyone. And then he asked me if I felt that there was a

6 culture of discrimination at IXL.

7 Q And did you respond?

8 A Yes. I said that I thought that there was.

9 Q What was said next?

10 A He asked me why it was that I had posted on this anonymous

11 forum rather than going through management. He asked me why I

12 hadn't gone to my manager instead of posting.

13 Q And what did you say?

14 A I told him that I had had conversations with managers and

15 that I also planned to have a conversation at my annual review

16 with my manager, David Keyes. And that annual review was set

17 to be the next day.

18 Q What was said next?

19 A He said that it was wrong that I had posted in the way

20 that I had, in this online forum, that it was wrong that I

21 hadn't told management first about my complaints, and that it

22 was -- that was not the right way to do it.

23 Q And what was said next?

24 A I told him that I could see, you know, why he would want

25 me to go to management first, and I offered to take the posting

1 down.

2 Q And what did he say?

3 A He said he wanted me to take it down.

4 Q Okay. Was anything else said?

5 A Yes. I told him okay, I would take it down. And then he
6 reiterated again that it was very wrong and showed poor
7 character and poor ethics that I had posted in this anonymous
8 online forum instead of going to a manager at the company. And
9 so, I couldn't work at the company anymore.

10 Q Was that the end of the conversation?

11 A Yes.

12 Q What happened next?

13 A I went to Lenore Ockerberg's office. I found a box of my
14 things that had been cleaned out of my desk as well as my
15 termination paperwork.

16 Q Were you given an appraisal every year that you were
17 there?

18 A Yes.

19 Q Is there an appraisal meeting that goes along with the
20 appraisal?

21 A Yes.

22 Q The appraisal is in writing?

23 A Yes.

24 Q Who is the appraisal meeting between?

25 A My first two appraisal meetings were between me and Kate

1 Madison. And my last appraisal meeting was between me and
2 David Keyes.

3 Q And what happens during an appraisal meeting?

4 A The manager brings in the written appraisal and goes
5 through, point by point, all of the things that you've done
6 well, as well as the areas in which you can improve.

7 Q Did you have an annual appraisal meeting in 2014?

8 A Yes.

9 Q And when was that meeting?

10 A January 2014.

11 Q And was that meeting between just you and Mr. Keyes? Or
12 was that meeting with you and Ms. Madison?

13 A Me and Mr. Keyes.

14 JUDGE ETCHINGHAM: So the meeting was in January 2014 for
15 the year 2014?

16 THE WITNESS: It was -- yes. We had one every January.
17 So it was sort of -- this is what happened last year, the
18 beginning of the year appraisal.

19 JUDGE ETCHINGHAM: So the last appraisal you had was in
20 January 2014?

21 THE WITNESS: Yes, sir. I was --

22 JUDGE ETCHINGHAM: For the 2013 year with Mr. Keyes?

23 THE WITNESS: I had two appraisal meetings in 2013 with
24 Kate Madison.

25 JUDGE ETCHINGHAM: Okay.

1 THE WITNESS: One in January 2014 with David Keyes. And I
2 was scheduled to have one on January 9th, 2015, with David
3 Keyes.

4 JUDGE ETCHINGHAM: Thank you.

5 THE WITNESS: Yes, sir.

6 Q BY MS. VIX: In your meeting with Mr. Keyes in January
7 2014, what did you discuss?

8 A He praised the work that I had done. He said that --
9 referring back to my earlier reviews, that I had met and
10 exceeded the goals that Kate had set out for me. And he then
11 asked me if there was anything that I wanted from the next
12 year.

13 Q And what did you say?

14 A I told him I wanted some more creative assignments. I
15 wanted to, you know, exercise my artistic muscles a little, and
16 that I'd also like to learn to code a little bit. And I asked
17 if it was possible to line up some assignments that would give
18 me an opportunity to do that.

19 Q Did you talk about your working hours?

20 A Yes.

21 Q What did you say?

22 A I brought up with him the fact that I kept irregular
23 hours. Sometimes I came in as early as 7. Sometimes I came in
24 as late as 11 in the morning. And that was due to the fact
25 that I was doing a lot of activism work in the evenings. And I

1 wanted to make sure that I had time for that. And I wanted to
2 make sure that it was okay with IXL and with him, in
3 particular, that I was keeping those irregular hours.

4 Q And what did he say?

5 A He said it was absolutely fine as long as I was getting my
6 assignments done, which I clearly was.

7 Q Okay. Did you receive a written appraisal in 2014?

8 A Yes.

9 Q And when was that? When did you receive it?

10 A At that meeting.

11 Q Okay. And do you recall what you received, in terms of
12 ratings, on that written appraisal?

13 A Yes, fours and fives out of a scale of one to five.

14 Q But you did not receive an appraisal for 2015, correct?

15 A Correct.

16 Q Okay.

17 MS. VIX: Your Honor, nothing further.

18 JUDGE ETCHINGHAM: All right.

19 Anything from your, Mr. Marek?

20 MR. MAREK: No, Your Honor.

21 JUDGE ETCHINGHAM: All right. Cross-examination.

22 MR. WILSON: I'd make a request for -- under Jencks, for
23 the Charging Party's affidavit or other statements?

24 JUDGE ETCHINGHAM: Is there one?

25 MS. VIX: Yes, Your Honor.

1 JUDGE ETCHINGHAM: How lengthy is it?

2 MS. VIX: Your Honor, the Respondent's counsel has seen
3 the attachments to the affidavit. The affidavit itself is only
4 three or four pages.

5 Your Honor, I will also produce to Respondent's counsel a
6 few communications between my office and the Charging Party.

7 JUDGE ETCHINGHAM: Okay.

8 Mr. Wilson, why don't you take a look at that? How much
9 time do you think you need to review it?

10 MR. WILSON: Your Honor, excuse me. What time did you say
11 you were breaking for lunch?

12 JUDGE ETCHINGHAM: 11:30.

13 MR. WILSON: Can I have 20 minutes to review all this?

14 JUDGE ETCHINGHAM: Sure. And the understanding is the
15 attachments he's pretty much already, so --

16 MS. VIX: He has seen already. Yes, Your Honor.

17 JUDGE ETCHINGHAM: All right, yeah. Let's come back at
18 10:30. We'll go off the record, come back at 10:30. And we'll
19 start cross-examination at that time.

20 MS. VIX: Thank you, Your Honor.

21 JUDGE ETCHINGHAM: Thank you.

22 MR. WILSON: Thank you.

23 (Off the record at 10:07 a.m.)

24 JUDGE ETCHINGHAM: All right. Let's go back on the
25 record.

1 Mr. Duane, do you understand you're still under oath?

2 THE WITNESS: Yes, sir.

3 JUDGE ETCHINGHAM: All right. Mr. Wilson.

4 MR. WILSON: Thank you.

5 **CROSS-EXAMINATION**

6 Q BY MR. WILSON: Mr. Duane, did you receive your PhD before
7 beginning work at IXL?

8 A Yes, sir.

9 Q Okay. What is your PhD major area of focus and -- or
10 and/or what was your dissertation?

11 A My dissertation was focused around finding alternating
12 patterns in -- or finding non-overlapping patterns in
13 alternating and normal permutations. My focus was algebraic
14 and enumerative combinatorics.

15 Q Say that again.

16 A Algebraic and enumerative combinatorics.

17 Q When you were initially interviewed by IXL, you had not
18 yet obtained your PhD; is that right?

19 A Correct. I was in my final year.

20 Q And do you recall having discussions with David Keyes
21 about getting your dissertation prepared and defending your
22 dissertation?

23 A Yes, I'm sure we did talk about that.

24 Q Did he provide you with any assistance or any advice, I
25 guess I should say, with respect to preparing for and defending

1 your dissertation?

2 A Not that I recall, no.

3 Q Do you know if Mr. Keyes has a PhD in mathematics?

4 A Yes, he does.

5 Q Okay. Did you frequently talk about mathematics as a more
6 of a friendly discussion as two mathematics PhD holders from
7 the time you were initially interviewed until your termination?

8 A Yes, I would say that we did.

9 Q You never told David Keyes about your transgender status;
10 is that right?

11 A I did not directly tell him.

12 Q You didn't tell him one way or another; is that right?

13 A I did not tell him I was this gender, and I did not tell
14 him I was transgender.

15 Q And you testified that when you spoke to Mr. Keyes about
16 unusual or varying work hours of starting and stopping, you
17 mentioned in that testimony that you had activism work in the
18 evenings. Do you recall saying that?

19 A Yes.

20 Q Okay. Did you tell Mr. Keyes that that was the reason for
21 your schedule that you needed or did you not mention the
22 activism part?

23 A Yes, I did mention the activism work.

24 Q What did you tell him?

25 A I told him that I worked on several issues in the LGBT

1 community, and that sometimes I had events in the evening. So
2 it was nice to have a flexible schedule.

3 Q Okay. You had very -- let me strike that. You spoke with
4 Mr. Keyes, several occasions, about medical procedures that you
5 had to have in 2014 and needed leave for, correct?

6 A Yes.

7 Q In early 2014, you needed leave for some type of time off
8 for varying sporadic medical problems; is that right?

9 A Yes. I needed preoperative electrolysis.

10 Q And what period of time in 2014 was that?

11 A It was early 2014. I informed him that it would be
12 ongoing on -- in July 2014.

13 Q And so, there were multiple occasions where you were
14 telling your supervisor, Mr. Keyes, that you needed to have
15 medical procedures and needed either time off or some
16 accommodations, such as working remotely, correct?

17 A Yes.

18 Q At no time did Mr. Keyes ever ask you what those medical
19 procedures were; is that right?

20 A No, he did not.

21 Q Would you agree that, throughout this employment, Mr.
22 Keyes was very flexible with your need for working remote or
23 taking time off because of sporadic medical issues?

24 A Aside from the incident upon my return, yes.

25 Q And that is aside from the December 2014 incident? Is

1 that what you're referring to?

2 A Correct.

3 Q Upon your return was December 30 of 2014, right?

4 A Correct.

5 Q Okay. So when you say aside from my return, are you
6 referring to the December 19 and 22, 2014 email exchange that
7 you've been shown as an exhibit?

8 A I'm referring to the email exchange as well as the fact
9 that my work accommodations were more restrictive than other
10 remote employees.

11 Q Okay. Have you ever seen the restrictions placed on
12 working remotely for any other employee besides yourself?

13 A Not to my knowledge.

14 Q Okay. Have you ever seen any restrictions that Mr. Keyes
15 placed on the remote working of Isadora Miller?

16 A No, I haven't.

17 Q How do you know that your work restrictions or your plan
18 for remote working in early 2015 was more restrictive than
19 other employees whose restrictions you don't know about?

20 A I had observed that employees with children would send an
21 off the bat email saying I'm going to be staying home today and
22 working remotely with my kids. And I can only assume that they
23 didn't have to check in regularly with their managers as I did,
24 because it was sporadic.

25 Q How many times did you work at home, in 2014, because of a

1 medical issue or not feeling well or anything related to sick
2 leave?

3 A I did not -- let's see. Once -- well, two to four times
4 per month for electrolysis. Between -- the first period was
5 once every two weeks between about January 2014 and July. And
6 then it was once per week from July 2014 to the end of October.

7 Q If you had to estimate the number of days you worked at
8 home in 2014, because of some need based on medical issues or
9 not feeling well, how many days would those be?

10 A I would say about 25 to 30.

11 Q And in those 25 to 30 days, estimated, that you worked at
12 home for medical or health reasons, did Mr. Keyes impose any
13 restrictions or reporting requirements on those days?

14 A He eventually asked that I take a half sick day, so that I
15 can make time for those appointments. That was in about August
16 2014.

17 Q And so, my question is on any of those days, did the 20 to
18 30 -- whatever the number was that you estimated in 2014, did
19 Mr. Keyes impose any restrictions or reporting requirements on
20 you at any point in time?

21 A No.

22 Q And so, when you say that you saw employees with children
23 who were allowed to work at home, and you assumed that they
24 weren't required to have any reporting or other restrictions,
25 would you agree that you also were allowed 20 to 30 times to,

1 similarly, work at home without such restrictions?

2 A Yes, I think that's fair.

3 Q When Mr. Keyes responded to you, in December, about the
4 remote working you were asking for upon return from your two-
5 month surgery leave, at that point in time, you say he denied
6 your request; is that right?

7 A Yes.

8 Q Okay. And how did he communicate to you that he was
9 denying that request?

10 A He told me, in writing, that he was denying it.

11 Q Is it in writing that we've seen today?

12 A Yes.

13 Q Is it one of the exhibits that you were shown?

14 A Yes, it was in that email exchange.

15 Q That would be the only way that he denied your request to
16 work at home?

17 A Yes.

18 Q So I'm going to ask you about that document.

19 MR. WILSON: Does the witness have a copy of the exhibits
20 in front of him?

21 JUDGE ETCHINGHAM: Yes.

22 MR. WILSON: Okay.

23 Q BY MR. WILSON: If you could, could you open up -- or pull
24 out GC Exhibit 4-1, -2, and -3, the three pages. Okay?

25 A Yeah.

1 Q All right. The last page of this exhibit is the first
2 email chronologically that -- in this sequence, at least in
3 this exhibit, correct?

4 A Yes.

5 Q Okay. And it's a December 19, 2014 email from you to
6 David Keyes, right?

7 A Yes.

8 Q You say: David, great to see you briefly at the Christmas
9 party.

10 When was that Christmas party?

11 A December, around December 8/9th, 2014.

12 Q And you were in attendance at the Christmas party?

13 A Yes.

14 Q In the second to last paragraph, you say: For now, I am
15 still planning on returning December 30, but I'm wondering if
16 you'd be open to me working half days in the office and half
17 days at home for the first few weeks.

18 Did you write that?

19 A Yes.

20 Q This would make the transition much easier for me I think.
21 Let me know what you think. Looking forward to being back at
22 it. Have a good holiday. Period or stop. Did you discuss
23 this statement that you wrote, or those sentences that I just
24 read, with anyone before sending this?

25 A Yes, with my partner.

1 Q Anyone else?

2 A Not that I recall, no.

3 Q When you say: I'm wondering if you'd be open to me
4 working half days in the office and half days at home for the
5 first few weeks, do you -- are you saying that this was the
6 request for your work remote accommodation?

7 A Yes.

8 Q Why did you say I'm wondering if you'd be open to?

9 A I was trying to be polite.

10 Q In response to that, on the next page, page 2 of this
11 exhibit, at the bottom, is it -- December 22 email from David
12 Keyes -- Keyes, sorry, Keyes -- to you, is this the response
13 that he sent you?

14 A Yes.

15 Q Okay. And you -- it's your testimony -- this is the
16 denial of your accommodation?

17 A Yes.

18 Q David says as far -- in the second paragraph: As far as
19 the plan goes for returning to work, I would prefer that you be
20 in the office for your hours when you come back since you are
21 more productive here.

22 Do you see that?

23 A Yes.

24 Q You interpreted that to be a denial?

25 A Yes.

1 Q He says: Further, is there anything we can do to
2 accommodate your situation, so that you can work in the office?
3 If you would need to extend your leave to aid in your recovery,
4 that would be totally fine as well. Just let me know.

5 Exclamation mark. Thanks, David. Did you provide him any
6 response other than the December 23 email that's directly above
7 this email, after receiving the December 22 email?

8 A No.

9 Q You didn't call him up?

10 A No.

11 Q So just to be sure, the request -- the -- what you call a
12 denial, and then your response to it all occurred in writing
13 and is contained in this set of emails?

14 A Yes.

15 Q Okay. And David said he would prefer that you be in the
16 office for your hours when you come back since you are more
17 productive here. Do you know what he meant by that statement
18 about being more productive here?

19 A Yes. He's referring to the hours that I spent having
20 electrolysis, during which I was actually working. And I don't
21 think it's surprising that, you know, those appointments were
22 log and they were tiring and they were painful. And that did
23 decrease my productivity a little bit, although I met all of my
24 goals during that time as well.

25 Q So when this electrolysis procedure was taking place, you

1 did work half days at home and half in the office. Is that
2 what you're saying? Or did I misunderstand?

3 A No. I believe I worked remotely for the day. The
4 appointments were in Oakland near my house.

5 Q Okay. So you worked remotely all day, but you had -- and
6 during that period of time, you didn't come into the office at
7 any point in the day?

8 A Correct.

9 Q Okay. When you read that, he was saying since you're more
10 productive here, you agreed, at that point in time, did you
11 not, that you, in fact, had productivity issues the last time
12 you worked remote with the electrolysis procedure, right?

13 A Only in that situation.

14 Q Right.

15 A This situation was different.

16 Q When he says -- when he said is there anything we can do
17 to accommodate your situation, so that you can work in the
18 office, did you have any other ideas in mind about other
19 accommodations that may have allowed you to be in the office
20 but also allows you to heal more quickly or properly?

21 A The complication that I was having was a urethral fistula.
22 That's a hole in your urethra. So I was leaking urine and had
23 trouble with personal hygiene. Also, that's a very delicate
24 issue, and it needs rest in order to heal. There's no way to
25 do that when you're sitting at a desk all day. Really, it

1 would have been better for me to work 100 percent remotely.

2 But as I stated before, I didn't feel comfortable asking about
3 that.

4 Q Well, you didn't feel comfortable based on the
5 productivity issue from the last time you worked 100 percent at
6 home?

7 A I believe there was a culture at IXL of shaming people for
8 taking too much sick leave, as my colleague, Nemo Curiel,
9 experienced.

10 Q And that would have been, according to you, in -- a year
11 earlier at least, right?

12 A Correct.

13 Q A little bit over a year later?

14 A Yes.

15 Q And in response, you told Nemo that that's not your
16 experience that you were having at the company, right?

17 A No, that's not what I told him.

18 Q Do you recall telling any of your coworkers that, in fact,
19 you weren't having any problems with the use of sick leave and
20 accommodating your need to work remotely?

21 A Yes. I think up until about July 2014 and thereafter, I
22 didn't have any issue. I don't recall a specific conversation,
23 but I wouldn't be surprised if I told someone that.

24 Q You say that you were concerned about asking for full-time
25 because of what you've already testified to. But at that time,

1 in December 19, 2014, had you requested a remote work day or
2 time off day at any point in time that was not provided to you?

3 A No.

4 Q In fact, every time you requested to work remotely or take
5 time off, including partial days, leaving early or coming in
6 late, it was always, in every case, approved?

7 A Yes, although --

8 Q Okay. Well, let me ask you this.

9 JUDGE ETCHINGHAM: He's asking the questions.

10 MR. WILSON: I'm sorry. What was that? Oh, I'm sorry.

11 JUDGE ETCHINGHAM: He wanted to expound, and that was not
12 being responsive.

13 Q BY MR. WILSON: In your -- the affidavit you provided to
14 the NLRB Regional Office here --

15 MR. WILSON: And I'm referring to page 2, counsel.

16 Q BY MR. WILSON: You say that you talked to Jessica Morris
17 -- Morse, a coworker, in the parking lot about two days before
18 you were terminated, right?

19 A Correct.

20 Q And this was the parking lot discussion you mentioned
21 earlier in your testimony?

22 A Yes.

23 Q You said, earlier in your testimony, that David Keyes
24 drove by you and Jessica while you were talking, right?

25 A Correct.

1 Q You agree that he was not close enough to hear anything
2 you were saying.

3 A Correct.

4 Q Okay. In fact, no one was close enough to hear anything
5 you and Jessica were saying.

6 A Correct.

7 Q You say, in your affidavit, that the point of that
8 discussion was to -- was, quite, basically to keep her updated
9 on my situation. She had had a better experience than I was
10 having with sick time when she had a neck injury.

11 A Correct.

12 Q At that time, she had a different supervisor, who was more
13 willing to accommodate her about her time.

14 A Yes.

15 Q Okay. Is that true? What you wrote, is that true?

16 A Yes.

17 Q Other than Nemo telling you about whatever his issue was
18 in -- sometime in 2013, was there any other reason that you
19 felt concerned about --

20 MR. WILSON: Sorry. It didn't -- I thought that might be
21 a witness of mind.

22 JUDGE ETCHINGHAM: It's all right.

23 Q BY MR. WILSON: Let me read -- let me go back. When you
24 say that you were concerned about asking for a full day work at
25 home upon returning from work, other than the conversation with

1 Nemo that you discussed, was there any other reason you felt
2 that there was a culture of shaming about sick leave use?

3 A Yes.

4 Q Any other -- anything other than what you've said in your
5 direct testimony?

6 A Yes. I had a conversation with Karen Penner around I
7 think it was late 2013, around December probably. She told me
8 that one of her supervisees has Lupus and had to have kidney
9 surgery, and decided to add onto that a plastic surgery
10 procedure. And she told me that she granted her, reluctantly,
11 a certain amount of time, six weeks off or something like that,
12 even though she didn't have to. And at that point, I knew that
13 the sick leave policy, which, unofficially, is take as much
14 time as you want, probably didn't have -- probably didn't
15 really mean unlimited.

16 Q When was that discussion with Karen Penner?

17 A It was around December of 2013.

18 Q So when you asked David Keyes for -- sorry. I'm going to
19 go back to your email. There it is. It's Exhibit 4. When you
20 responded to his December 22 email on December 23, you started
21 by saying: I'm writing this with the intent of finding a
22 solution with you collaboratively.

23 Was that true?

24 A Absolutely.

25 Q You say: There's a chance some of this email could be

1 read as combative or hostile, and that is not the tone I'm
2 intending at all.

3 Was that true?

4 A Yes.

5 Q Collaboratively, you were looking to discuss with him a
6 way to come to an accommodation that you felt you needed upon
7 returning from work (sic), right?

8 A Correct.

9 Q You mentioned that you spoke to an attorney. And I'm not
10 going to read it all, but there are these -- that's the second
11 paragraph. And you -- and I ask, first, did you write this
12 paragraph?

13 A Yes.

14 Q Okay. You say, at the end of that second paragraph: I'm
15 also cc-ing Maricela, who I believe is still filling in as the
16 HR manager.

17 MS. VIX: Your Honor, I'm going to object to the form of
18 these questions. The documents speak for themselves. Asking
19 questions and the witnesses testify that this is the extent of
20 the communication about this issue, the best evidence rule, the
21 document speaks for itself.

22 JUDGE ETCHINGHAM: Mr. Wilson.

23 MR. WILSON: I'm not attempting to provide some other
24 evidence that's supplants this written evidence. I'm asking
25 him, as I have been, about whether he wrote certain things and

1 why, and whether it was true when he wrote it, which is
2 perfectly valid questions about a document that the General
3 Counsel has admitted into evidence?

4 MS. VIX: Your Honor, the document, when it was
5 introduced, was not objected to. Counsel did not perform voir
6 dire on this document. He could have, as he has done with
7 other documents that were offered and admitted. So my
8 objection is still that the document speaks for itself, and it
9 has been admitted without objection from counsel.

10 MR. WILSON: Your Honor, I'm not challenging the
11 authenticity of it. I'm asking the witness about comments he
12 made and comments that his supervisor made to him that -- and
13 what his reactions were, what his intent was. This is
14 perfectly relevant information given that they are alleging
15 that this is part of the charge of discrimination based on
16 protected concerted activity and being fired for some sort of
17 policy of not being permitted to speak to a third party before
18 speaking to a supervisor.

19 JUDGE ETCHINGHAM: I'm going to overrule the objection and
20 give you a little bit more leeway here. If you have questions
21 about this, let's just get to the question. You don't need to
22 repeat what's already there into the record.

23 Q BY MR. WILSON: Why did you cc Maricela Prado on this
24 email?

25 A Because she was the HR coordinator, and I felt it was best

1 practice to keep HR in the loop.

2 Q Were you doing this to take a -- to demean her in any way?

3 A No.

4 Q When you offered to provide written documentation from
5 your doctor, had anyone asked you, prior to offering that in
6 this email, to provide written documentation?

7 A No, but the lawyer that I spoke with --

8 Q No, I don't want to know your --

9 A -- suggested --

10 Q I don't -- I'm not asking for what your lawyer told you,
11 because that's privileged, and I -- that's not my intent. So
12 I'm saying is there anybody at IXL who, prior to you saying my
13 doctor is happy to provide written documentation, anyone at IXL
14 who told you we need you to send us written documentation from
15 your doctor?

16 A Brad Marshall suggested that I might need to get it
17 eventually but never officially asked for it.

18 Q Brad Marshall was an HR manager?

19 A Correct.

20 Q Brad Marshall was not with the company after September
21 2014, right?

22 A Correct.

23 Q Okay. So I'm talking about December. I just want to make
24 it very clear that you were volunteering to provide medical
25 documentation from your doctor, right?

1 A Correct.

2 Q When you told him that you completely understand about the
3 productivity, is that for the reasons that we talked about
4 before?

5 A I also just wanted to make it clear to him that I
6 understood his concerns and that I wanted to acknowledge and
7 address his concerns as best as I could.

8 Q When you proposed that there be metrics in place and
9 monitoring of progress, you did that for -- you did that with
10 respect to the productivity issues the productivity issues
11 David had raised before in his email, right?

12 A Yes. I wanted to give him a way to address those issues.

13 Q When you suggest that you work in the mornings for half-
14 day with the afternoons being at home, was there any other
15 reason that you suggested that other than what you describe in
16 this December 23 email?

17 A I was more -- I had more energy in the mornings. I tended
18 to get tired towards the end of the day. So the mornings would
19 have been easier for me.

20 Q One day later, in the email above it, above the email we
21 were just discussing, David approved the accommodating you were
22 requesting, right?

23 A Correct.

24 Q In the second paragraph, when David mentions why we tried
25 having you work half-days and take half sick days, what period

1 of time was that in your employer where they tried -- as he
2 says they tried to work with you to take half-days -- sick days
3 and half workdays?

4 A That was in the last month or two preceding my surgery.
5 So it would have been September/October 2014.

6 Q Based on his statement in this email of December 24, about
7 wanting -- saying it would be great if you could provide the
8 written documentation from your doctor, did you, at that point,
9 then ask for the written documentation?

10 A From my doctor?

11 Q Yes.

12 A Yes.

13 Q Okay. You responded to his email. Is everything you say
14 in this email true?

15 A Yes.

16 Q Okay. When you returned on December 30, did you have the
17 meeting that David references at the top of this page 1 of
18 10/11 a.m.?

19 A Yes. That's the meeting I testified about earlier.

20 Q Okay. Is that about the time it took place?

21 A Yes.

22 Q When was it that you -- if you recall, when was it that
23 you received the working remotely plan that has been marked as
24 Exhibit 6?

25 A I can't remember exactly, but I believe it was that

1 morning right before the meeting.

2 MR. WILSON: If I could, I'd like to mark an exhibit as
3 Respondent's Exhibit 1. Are there stickers you'd like me to
4 use?

5 MS. VIX: You can just write on it, R-1.

6 THE COURT REPORTER: You can just write on it.

7 MR. WILSON: Thank you.

8 **(Respondent Exhibit Number 1 Marked for Identification)**

9 MR. WILSON: May I approach?

10 JUDGE ETCHINGHAM: Yes.

11 Q BY MR. WILSON: Showing you what I've marked as R-1. It
12 is a two-page document. I'd ask, first, have you seen this
13 first page before?

14 A Yes.

15 Q Okay.

16 MR. WILSON: The email from David Keyes on December 30,
17 2014, at 10:35 a.m., I will say for the record that these were
18 printed out from a online e-discovery portal. And it may be
19 Eastern Standard Time that is reflected. And because of that,
20 I apologize. There was no way I could change that. So I'm not
21 going to represent that this is exactly 10:35 a.m.

22 THE WITNESS: I believe that's the current time.

23 Q BY MR. WILSON: Oh, good.

24 MR. WILSON: All right. So we tried to fix it.

25 Q BY MR. WILSON: This is an email saying: Scott, here is

1 the plan we discussed. And the second is the actual working
2 remotely plan.

3 A Correct.

4 Q Okay. So shortly before the meeting was the first time
5 you saw the working remotely plan, right?

6 A Shortly after. Actually, during the meeting. He had it
7 printed out.

8 Q Okay, thank you. And then he emailed it?

9 A Correct.

10 Q Thank you.

11 JUDGE ETCHINGHAM: Is the second page of this exactly the
12 same as GC Exhibit 6 except for the colors?

13 MR. WILSON: Yes.

14 Q BY MR. WILSON: The metrics that you suggested in your
15 email exchange with David, are these -- are -- sorry. Does
16 this plan include metrics for quantitatively determining your
17 productivity while working remotely?

18 A Yes.

19 Q Does this plan have progress monitoring that was
20 referenced I the emails in December with David Keyes?

21 A Yes.

22 Q Okay. Prior to seeing this working remotely plan, were
23 you satisfied with the accommodation of working half-days at
24 home that had been home that had been provided by the company?

25 A Are you talking about in 2014 or --

1 Q Oh, sorry. Yeah. I'll rephrase. So after the email
2 exchange in December 20 -- 19 to 25, from that point in time
3 until you saw the working remotely plan, were you satisfied
4 with the accommodation that the company was providing for you
5 to work remotely while returning from surgery?

6 A Yes.

7 Q So was it seeing this plan that made you upset about the
8 accommodation and the plan?

9 A It was a combination of two things. First, it was that I
10 felt that the hours were more restricted than they needed to
11 be. There's -- I don't think there's any reason to restrict
12 ours in that way, especially with the type of work that we were
13 doing. And also, it was hearing about two colleagues who --
14 one of whom was a brand new hire that had, you know, much more
15 flexible plans, 100 percent remote from another state in one
16 instance. That was what I found unfair about it.

17 Q The post that you wrote on GlassDoor.com, on the 30th of
18 December, how long after your meeting with Mr. Keyes did you
19 write the content of that post?

20 A I believe it was that evening.

21 Q And you posted it that evening?

22 A I believe so, yes.

23 Q In your affidavit that you provided to the NLRB, you
24 stated that when you spoke to Nemo in 2013 about sick leave,
25 you told him be cautious of being perceived as abusing the sick

1 leave policy, right?

2 A Yes.

3 Q Okay. Let me take a step back and show you documents --
4 well, before I show you the documents, you mentioned that you
5 had appraisals in -- during your employment. Were the
6 appraisals always in writing?

7 A Yes.

8 Q Were there ever any performance appraisals that were
9 verbal only with you and your supervisor?

10 A Not official appraisals, no.

11 Q Do you recall ever having what's referred to as one on one
12 meetings with your supervisor?

13 A Yes. We had one on one meetings weekly.

14 Q What were the one on one meetings about?

15 A The projects we were working on, checking in on what kind
16 of progress was being made.

17 Q In your one on one meetings -- first of all, you had one
18 on one meetings with Mr. Keyes, correct?

19 A Correct.

20 Q And in your one on one meetings with Mr. Keyes. Do you
21 recall him requesting that you improve your accuracy and
22 thoroughness of the work product that you were creating?

23 A Yes, he did.

24 Q Do you recall him doing that often?

25 A Once or twice.

1 Q I want to talk about spec writing.

2 MS. VIX: Your Honor, I'm going to object as to relevance.
3 Job performance related issues really are not at issue in this
4 case.

5 JUDGE ETCHINGHAM: Mr. Wilson.

6 MR. WILSON: The General Counsel asked and the witness
7 provided, specifically, testimony about excellent appraisals.
8 And I'm addressing what they already discussed. And the fact
9 that the complaint itself alleges that Mr. Duane was an
10 excellent employee in performing excellent -- I forget the
11 language. But it's very much an allegation in this case.

12 JUDGE ETCHINGHAM: Yeah, I'll overrule. You can respond.

13 Q BY MR. WILSON: Do you remember what I was asking?

14 A I don't think you'd asked me a question yet.

15 Q I was asking about spec writing. Is that part of your
16 job?

17 A Yes.

18 Q Just generally speaking, to try to get to the heart of the
19 matter here, spec writing is what you would do to write math
20 problems or portions of math problems that would be used on the
21 website of IXL by students who were either learning about or
22 being quizzed about math, right?

23 A Yes. They were design documents.

24 Q So when I say your spec writing, do you understand and do
25 we agree that I'm talking about your writing of the math

1 problems themselves?

2 A Yes.

3 Q Okay. Did you also have to write explanations and answers
4 of those?

5 A All of that was included in the specs. We were designing
6 the engine that created a problem. It's not just writing the
7 problems themselves.

8 Q Okay. And is that different than testing?

9 A Yes.

10 Q What is testing? Could you briefly describe it?

11 A Testing is taking a skill that's been implemented in draft
12 and doing the problems, looking for typos, errors in logic,
13 things like that.

14 MR. WILSON: I'd like to move for the admission of R-1.

15 JUDGE ETCHINGHAM: Any objection?

16 MR. WILSON: No objection.

17 JUDGE ETCHINGHAM: No objection. We'll admit Respondent's
18 Exhibit 1 at this time.

19 **(Respondent Exhibit Number 1 Received into Evidence)**

20 Q BY MR. WILSON: Would you agree that spec writing was the
21 core part of your job as a product analyst?

22 A Yes.

23 MR. WILSON: I'm making as Respondent's 2, or R-2, a
24 multipage document, a period -- introductory period evaluation.

25 **(Respondent Exhibit Number 2 Marked for Identification)**

1 MR. WILSON: May I approach?

2 JUDGE ETCHINGHAM: Yes.

3 Q BY MR. WILSON: Mr. Duane, can you look at the document
4 marked R-2, which contains two different dated evaluations of
5 your performance?

6 A Yes.

7 Q Okay.

8 JUDGE ETCHINGHAM: Okay. Now just -- because it's gone
9 both ways here. Exhibits that are used in my courtroom, we
10 need to have them numbered, their pages numbers when they're
11 more than one page. And so, this doesn't have consecutive
12 Bates Stamp numbers, so that the reader might think something
13 is missing. So can we write pages 1 through -- how many are
14 here?

15 MR. WILSON: So it would be R-2-1 to 5.

16 JUDGE ETCHINGHAM: Thanks.

17 Q BY MR. WILSON: Mr. Duane, in an attempt to speed this up,
18 I've made document out of the two evaluations. One dated
19 September 12 on R-2-1 and the other starting on page 3 of R-2,
20 which is dated November 6th, 2013. First, I'm going to ask --
21 I'd like to ask you have you seen these before?

22 A Yes.

23 Q And did you receive these two evaluations on or about the
24 dates listed on them?

25 A Yes.

1 MR. WILSON: I'd offer R-2-1 through 5 into evidence.

2 JUDGE ETCHINGHAM: Any objection?

3 MS. VIX: Yes, Your Honor. Same objection as before. Any
4 testimony or documents related to job performance are not
5 relevant in this forum, particularly because this is a
6 protected concerted activity case. And any defenses the
7 Employer would have around the termination decision have -- are
8 not around performance issues, Your Honor.

9 JUDGE ETCHINGHAM: And how relevant -- what is the
10 relevance of this document when his testimony earlier was that
11 his 2014 reviews were four and fives?

12 MR. WILSON: Right. And he alleged in the complaint -- or
13 the NLRB alleged in the complaint, in reference to his
14 performance and how it was appraised --

15 MS. VIX: Where is that?

16 MR. WILSON: Okay.

17 (Counsel confer)

18 MR. WILSON: It's actually in paragraph 7 of the charge.
19 It's -- I don't know that the complaint has a reference. But
20 in paragraph 7 of the ULP charge, it states: Throughout my
21 employment with IXL, I was qualified for my position and
22 performed my duties in a professional and competent manner. I
23 earned excellent performance reviews, received multiple awards
24 for my work --

25 MS. VIX: Your Honor, his --

1 MR. WILSON: Can I finish?

2 MS. VIX: -- recitation of what's in an affidavit is
3 inappropriate.

4 MR. WILSON: It's not the affidavit. It's the charge that
5 was filed. It's the actual charging document. I'm not talking
6 about his affidavit. I'm talking about --

7 JUDGE ETCHINGHAM: You can respond.

8 MR. WILSON: It's not in the complaint, Your Honor.
9 Anything related to performance is not at all related to what's
10 in the complaint.

11 JUDGE ETCHINGHAM: Well, I'm going to overrule the
12 objection, let it come in, and let it go to the weight of the
13 evidence. I may not give it any weight at all. It provides us
14 with a full record. You did get into his evaluations in part
15 of your direct. And so, it provides just a fuller picture. So
16 we'll admit Respondent's Exhibit 2 over the objection of
17 counsel at this time.

18 **(Respondent Exhibit Number 2 Received into Evidence)**

19 Q BY MR. WILSON: Mr. Duane, you recounted multiple -- in
20 your direct testimony, you recounted multiple discussions in
21 2013 and 2014 with Nemo, Jessica, and Nina. I'd like to make
22 sure that I have your testimony, that you agree that in -- at
23 no time, a manager was present during any of these discussions,
24 correct?

25 A Isadora was a manager, and I did speak with her.

1 Q The references -- I'm sorry. The testimony that I was
2 referencing, the testimony regarding conversations with Nemo,
3 Jessica, and Nina, which you recounted at least six or seven,
4 no manager was present for any of those, correct?

5 A No, not directly.

6 Q Directly or indirectly, no manager was present, correct?

7 A We were close to manager's offices, and the doors were
8 often open. So it's reasonable to think that they might have
9 overheard, but I don't know for sure.

10 Q Do you have -- okay. So that's what you mean by
11 indirectly?

12 A Right, correct.

13 Q When was the time that you spoke with Isadora as a manager
14 about any of the topics that you already testified to?

15 A In January 2015.

16 Q Isadora was not a manager at this point in time, was she?

17 A I guess I'm not sure. I might be mistaken. I thought she
18 still was.

19 JUDGE ETCHINGHAM: Counsel, we're going to have to stop in
20 about five minutes. I just wanted to give you a little head's
21 up.

22 MR. WILSON: Okay. Let me quickly do a few things.

23 Q BY MR. WILSON: In your affidavit, you described the
24 reason that you posted the information that you posted on
25 GlassDoor.com on December 30. Do you recall?

1 A Yes, I do.

2 Q You state in -- on page 3 of your affidavit that you did
3 it because when you were interviewing for IXL, quote, I was
4 really excited, because management led me to believe that the
5 company encouraged diverse and creative thinking. So I thought
6 I could make an impact on education, right?

7 A Correct.

8 Q That was a reason that you posted the Glass Door post.

9 A That was one of the reasons.

10 Q A reason.

11 A One of the reasons.

12 Q Okay. You were disappointed with how narrow your job was
13 and how your creativity was not permitted, right?

14 A Correct. That was one of the reasons.

15 Q And that was one of the reasons you posted?

16 A Correct.

17 Q Okay. You were upset with how IXL handled your sick leave
18 accommodation request on December 19 to 22, 2014, correct?

19 A Yes. December 25th not 22, but yes.

20 Q Well, on the 19th and a day or two after is when David
21 responded, saying I prefer you work in the office, okay?

22 A Correct.

23 Q This is what I'm talking about?

24 A Yes.

25 Q Part of the reason that you filed your post -- you wrote

1 and filed your post on Glass Door was that you were upset about
2 that initial reaction from David to your request.

3 A Yes. And I thought it showed a pattern.

4 Q A pattern of what?

5 A A pattern of sick leave and disability not being
6 accommodated, not just for me but for other employees as well.

7 Q But you didn't say in your post that you were upset about
8 sick leave for myself and others, correct?

9 A No. I have fear of retaliation.

10 Q That's a no?

11 A No.

12 MS. VIX: Your Honor, may the witness explain his answer?

13 JUDGE ETCHINGHAM: You can ask follow-up questions. This
14 is cross-examination.

15 So, basically, a lot of his questions are going to be
16 asking yes, no, or I don't know kind of responses. And if he
17 wants to follow-up, he can. Otherwise, your counsel or Ms. Vix
18 can follow up later.

19 THE WITNESS: Yes, sir.

20 JUDGE ETCHINGHAM: Thanks.

21 Q BY MR. WILSON: You also posted the Glass Door post on
22 December 30, because you felt that the company was misleading
23 potential employees about its culture and you wanted people to
24 know, right?

25 A Yes.

1 Q Posting on GlassDoor.com you agree was anonymous?

2 A Yes.

3 Q And you agree that GlassDoor.com's posts do not have any
4 comment section where others can comment like a Facebook
5 message, correct?

6 A No, there's no comment section.

7 Q And there is no ability for any reader of your Glass Door
8 post to place their name on the post as being supportive,
9 right?

10 A User can mark as helpful, but it's anonymous.

11 JUDGE ETCHINGHAM: Sir, sir.

12 THE WITNESS: I'm sorry.

13 JUDGE ETCHINGHAM: That kind of a question was a yes, no,
14 or I don't know kind of response.

15 THE WITNESS: Okay.

16 JUDGE ETCHINGHAM: If you could answer directly to it,
17 we'll have a cleaner record here.

18 Q BY MR. WILSON: So I'll just ask again. You agree that
19 there's no ability for anyone to affix their name to your post
20 on GlassDoor.com, saying they agree or disagree with the post?

21 A Yes, that's true.

22 Q And you knew, when posting on GlassDoor.com, that you were
23 going to be reaching potential employees to let them know of
24 what you felt was a bait and switch or a misleading campaign to
25 recruit employees, right?

1 A Yes, I did know

2 JUDGE ETCHINGHAM: All right. It's 11:30.

3 MR. WILSON: Yeah.

4 JUDGE ETCHINGHAM: I'd like to pick up -- what's your time
5 estimate on what you have left with this witness on cross?

6 MR. WILSON: I think it's not a lot. Maybe a half-hour.

7 JUDGE ETCHINGHAM: Okay, all right. Let's go off the
8 record.

9 (Off the record at 11:31 a.m.)

10 JUDGE ETCHINGHAM: All right. Let's go back on the
11 record.

12 Mr. Wilson, we're hitting the tail end I think of your
13 questions when we broke for lunch. You want to resume.

14 MR. WILSON: Ready to proceed then?

15 JUDGE ETCHINGHAM: Yes.

16 MR. WILSON: Okay.

17 JUDGE ETCHINGHAM: Thanks.

18 (Counsel confer)

19 Q BY MR. WILSON: All right. Mr. Duane, I'm going to focus
20 your attention on the January 6th meeting that you had with
21 David Keyes, that you testified started at about 8 a.m. in the
22 morning, correct?

23 A Yes.

24 Q David started the meeting by mentioning that he noticed
25 that you seemed unhappy?

1 A Yes.

2 Q You agree that, in the period of time from when you
3 returned from leave until that meeting, that you were non-
4 communicative and generally unhappy?

5 A I wouldn't say non-communicative.

6 Q Were you acting differently than you had previous to your
7 leave in November?

8 A Yes.

9 Q When David says that you were visibly upset for that whole
10 period of time after you came back, do you disagree with --
11 that you were visibly upset?

12 A I think that's an exaggeration.

13 Q So was it a surprise when he said you seem upset or was it
14 not a surprise to you?

15 A It was a bit surprising.

16 Q The fact of the matter is you were not happy and you told
17 him that.

18 A I told him I had complaints, yes.

19 Q Specifically, you told him you weren't happy with the lack
20 of creativity --

21 A Yes.

22 Q -- in your assignments, correct?

23 A Yes.

24 Q You told him you were unhappy with the way that your leave
25 was handled by both him and HR, correct?

1 A Correct.

2 Q Okay. You say that David defended his position, right?

3 A Yes.

4 Q What do you mean by defending his position?

5 A He cited the previous work arrangement and reiterated that
6 he had concerns about productivity. And he also said that he
7 was just -- he was trying to find a solution that fit with
8 that.

9 Q You believed him, didn't you?

10 A Yes.

11 Q After hearing him talk on January 6th in this meeting with
12 you, you believed that his initial reaction to you on the
13 December 19 to 22 email exchange was nothing intentionally
14 discriminatory. Would you agree with that?

15 A Not intentionally, no.

16 Q You felt that he just was not educated enough about HR
17 issues by the company?

18 A Yes.

19 Q You told -- you testified that you told David about the
20 issue of, in the past, Maricela Prado asking about an arm wrap
21 or something to do with your arm?

22 A Correct.

23 Q What was -- I understand you said it was a skin graft or
24 -- you might have said that. But what was it that she asked?

25 MS. VIX: Your Honor, I object as to relevance.

1 MR. WILSON: He's bringing -- they brought it up. They're
2 alleging that it's one of the things he complained about.

3 JUDGE ETCHINGHAM: I'm going to overrule and let him
4 explain.

5 THE WITNESS: She asked what the cover was on my arm, and
6 I told -- this was directly before our meeting with her and
7 David discussing my upcoming leave. And I said, you know, I'll
8 get to that. And when I explained that I would have somewhat
9 limited use of my right hand after the surgery for an unknown
10 amount of time, and I might need accommodations in terms of
11 equipment, you know, mouse, whatever, she asked well, I don't
12 understand why they can't use your left hand. And that, to me,
13 pressed the issue. And I didn't feel like I wanted to explain
14 further, and it felt like she wanted me to explain further.

15 Q BY MR. WILSON: She got you an ergonomic mouse, correct?

16 A Correct.

17 Q Was the -- did you describe to David in this meeting what
18 you just said now about what Maricela had asked you?

19 A She was present for that.

20 Q So you -- in the meeting with David, you just referred to
21 it as that time that Maricela asked about my arm wrap?

22 A I said when Maricela asked inappropriate questions about
23 my arm.

24 Q And you just described what those are, right?

25 A Yes.

1 Q Okay. You say David said he totally understood, didn't
2 mean to discriminate, and he would escalate concerns that you
3 had to Lenora, right?

4 A Correct.

5 Q Did you ask him to escalate your concerns?

6 A I did not ask him to, no.

7 Q Did you want him to?

8 A I appreciated that he offered it, yes.

9 Q And did you know that he would be escalating your concerns
10 directly to the CEO?

11 A No, I didn't.

12 Q Did you appreciate that he did?

13 A Yes.

14 Q You say you think that there's a chance that the way you
15 phrased your comments in that meeting could have revealed that
16 you were the author of the Glass Door review posted on December
17 30, right?

18 A Yes.

19 Q Other than that belief, do you have any reason to -- or
20 any other fact that you know of to dispute that January 7 was
21 the first time that IXL management saw that post?

22 A Can you rephrase the question?

23 Q Other than your belief that what you said in -- on the
24 January 6th meeting would have revealed that you were the
25 author of the post, other than that, is there any other fact

1 that you know of that you believe contradicts the company's
2 position that the next day was the first day it found out about
3 the post on Glass Door?

4 MS. VIX: Your Honor, I'm going to object to the question.
5 I think it can be made more simple without interjecting the
6 company's position about January 7th being a relevant date to
7 the witness.

8 JUDGE ETCHINGHAM: Do you understand the question?

9 THE WITNESS: I think so, sir.

10 Are you asking if I think they knew about it before
11 January 7th?

12 Q BY MR. WILSON: Yes.

13 A I don't know when they saw it. I have no idea.

14 Q Okay, that's good. You agree that you told Paul Mishkin,
15 when you met with him on the 8th of January, that you wrote
16 that post because you were mad at that time?

17 A I believe that I mentioned that reason, yes.

18 Q In your post that you placed on Glass Door on December 30,
19 2014, it has the title micromanaged and problematic. Did you
20 write that?

21 A Yes.

22 Q It states: I have been working at IXL Learning full-time
23 more than three years.

24 A Yes.

25 Q Did you write that?

1 A Yes.

2 MS. VIX: Your Honor, I object to these questions.

3 There's already been opportunity for objection to the document.

4 The document speaks for itself. The witness has already

5 testified that he wrote it.

6 JUDGE ETCHINGHAM: Yeah.

7 MR. WILSON: Your Honor, I just --

8 JUDGE ETCHINGHAM: A simpler question would be is there
9 any part of the posting you didn't write.

10 MR. WILSON: No.

11 JUDGE ETCHINGHAM: That way you'd get to where you've just
12 been talking about.

13 MR. WILSON: Okay. Let me -- I'll rephrase.

14 Q BY MR. WILSON: When you wrote I've been working at IXL
15 Learning full-time for more than three years, was that true?

16 A No, it was not.

17 Q Okay. When you wrote your Glass Door review earlier in
18 your employment, do you recall citing as a benefit the fact
19 that the CEO was interactive with the employees?

20 A Yes.

21 Q When you wrote don't expect a challenge working here as a
22 con, you were writing that to an audience of non-employee
23 prospective recruits or, you know, prospective employees,
24 correct?

25 MS. VIX: Your Honor, I object to that question. He's

1 asking for a speculative answer.

2 MR. WILSON: That's absolutely not true. I'm asking him
3 what he intended to --

4 JUDGE ETCHINGHAM: How is his intent relevant? Isn't this
5 an objective standard?

6 MR. WILSON: It's an objective standard in some respects,
7 but it's also the -- whether he is engaged in concerted
8 activity, it is relevant.

9 JUDGE ETCHINGHAM: Why is his intention relevant?

10 MR. WILSON: His intention -- well, I don't want to -- I'd
11 rather not reveal legal argument on this. But it is -- his
12 purpose in writing this, which they claim to be concerted, is
13 relevant. It's relevant under Meyers Two (phonetic). It's
14 relevant under controlling, you know, protected concerted
15 activity case law.

16 JUDGE ETCHINGHAM: All right, response?

17 MS. VIX: No, Your Honor.

18 JUDGE ETCHINGHAM: All right. Overruled.

19 You can answer.

20 THE WITNESS: I intended it for both prospective and
21 current employees.

22 Q BY MR. WILSON: Why did you not state anywhere in this
23 Glass Door post that you were speaking on behalf of others?

24 A I think it's implied when I speak about the complaints
25 that I was bringing up. They clearly don't apply to just me.

1 Q Why didn't you state anywhere in this post that you were
2 speaking on behalf of others with respect to any of these
3 criticisms?

4 A Again, I think that it's implied both in what I said and
5 in the nature of Glass Door.

6 Q So that's why? That's your answer?

7 A Yes.

8 Q Okay. When you were meeting with David on January 6th,
9 and we had talked about several of the discussions that you
10 described in your testimony, you stated that he agreed that you
11 met all your goals and that you were doing well; is that right?

12 A Yes.

13 Q What, specifically, did he say about doing well, as
14 opposed to meeting goals, that you can recall?

15 A To the best of my recollection, he -- I cited some of the
16 specifications that I had completed writing, some of the
17 testing goals that I had, a meeting or two about the iPad
18 keyboard designed, and he agreed with those. He didn't bring
19 them up. I brought them up, and he agreed.

20 Q Did you talk about a project with color coded --

21 A Yes.

22 Q -- math problems for young children?

23 A Yes.

24 Q Were you going to work on that project?

25 A I think it -- I believe it was still up in the air, but

1 yes, I think so.

2 Q Was that a project you wanted to work on?

3 A Yes.

4 Q And did David deny, in any way, your request or interest
5 in working on that type of project?

6 A No.

7 Q How did the meeting between you and David on the 6th end?

8 A He had told me that he was going to escalate my concerns
9 to Lenora. I told him that I appreciated that. And if he
10 would like, I could send him some resources that my lawyer
11 friend had sent me about the ADA. And he said that he would
12 really like that, because he'd like to learn more.

13 Q Anything else, any way that it ended, any next steps,
14 nothing? Just you got up and left?

15 A Not that I recall, no.

16 Q But he defended his position on the way he handled your
17 leave?

18 A Yes, he did.

19 Q Okay. You recall describing to someone that you made him
20 cry or almost made him cry?

21 A Yes.

22 Q Why did you say that?

23 A I was exaggerating. And he teared up a little bit,
24 actually. I felt that he was being very sincere. And it was
25 an emotional meeting for both of us. I was talking about

1 issues that were very, very present in my life and had caused
2 me a lot of struggle. And I could tell that he was trying to
3 do his best to address those. It was emotional for both of us.

4 Q So you felt he was sincere?

5 A Yes.

6 Q And I show you an exhibit or refer to one already marked.
7 I just need to see if it includes the document I'm referring
8 to. Pardon me for one second. Do you have General Counsel
9 Exhibit 8 in front of you?

10 A Yes.

11 Q I'm going to ask you questions about General Counsel's
12 Exhibit 8.

13 A Okay.

14 Q Just for context, this is the January 6th message -- text
15 message exchange between you and Jessica Morse?

16 A Correct.

17 Q You start the text with respect to saying: OMG. I just
18 made David almost cry.

19 Now this is the exaggeration?

20 A Yes.

21 Q Okay. The third page. What did you mean by saying it's
22 hard being a straight cisgender able bodied white guy
23 sometimes?

24 A I was being sarcastic. I meant that, as a trans person,
25 I've had to go through things that my cisgender peers have not.

1 And the implication in that part of the text was that it would
2 be hard for him to understand.

3 Q You were making fun of him?

4 A I was making fun of the system that allows this to be the
5 way that it is.

6 Q When you said, on the next page, so many marginalized
7 people, you don't understand, was that further sarcasm?

8 A No.

9 Q The last page, which General Counsel asked you about, when
10 Jessica said you should be a disability advocate, do you see
11 that?

12 A Yes.

13 Q Jessica was one of your best friends at the company,
14 right?

15 A Correct.

16 Q And your best friend at the company, you agree, on January
17 6th, 2015, did not know that you were a disability advocate
18 already, right?

19 A That was --

20 Q Do you know? Is that true or not?

21 A I think she -- I think, yes, she knew about that but maybe
22 had forgotten.

23 Q When you discussed your working conditions with Nina and
24 Nemo in late summer/fall 2014, those times that you talked to
25 them about this, they were both ex-employees at the time,

1 correct?

2 A No. They were in the timeframe that you mentioned --

3 Q That's --

4 A -- but we discussed it earlier.

5 Q But my question is about that timeframe.

6 A Yes.

7 Q So, in August of 2014, when you talked to Nina and Nemo,
8 you were talking to them as former employees of IXL, right?

9 A Are you talking about the conversations I testified about
10 earlier?

11 Q I'm talking about August 2014.

12 A When I spoke to them during that time period, yes, they
13 were former employees.

14 Q Okay. You stated in your affidavit to the Board that you
15 spoke with Isadora Millen about work issues that you -- and
16 concerns you had from August 2014 until you were terminated.
17 Do you remember that?

18 A Yes.

19 Q Okay. Do you know if, at any point in that period of
20 time, she was a management -- a member of management at IXL?

21 A I believe she was, but I don't know the timeframe for her
22 work status.

23 Q Okay.

24 MR. WILSON: I'm going to mark as Respondent Exhibit -- do
25 you know where were are, Madame Court Reporter?

1 THE COURT REPORTER: It'd be 8.

2 MR. WILSON: Thank you.

3 **(Respondent Exhibit Number 3 Marked for Identification)**

4 MR. WILSON: May I approach?

5 JUDGE ETCHINGHAM: Sure.

6 Q BY MR. WILSON: Respondent Exhibit 3 is two pages that you
7 produced in response to subpoena, correct?

8 A Yes.

9 Q The first page is date -- well, there is a date of 8/1, at
10 8:41 a.m., at the top -- or near the top. Do you see that?

11 A Yes.

12 Q What date is that? What year?

13 A 2014.

14 Q Okay. There is a reference to Axiom Scott Duane. What is
15 that?

16 A That's my Facebook name.

17 Q What is this document?

18 A It's a Facebook conversation between me and Nemo Curiel.

19 Q And if you turn to the second page, there's a reference to
20 Nina Wu.

21 A Oh, yes. And between Nina Wu.

22 Q And then there's a reference at the bottom to Jessica
23 Morse?

24 A Yes, and between Jessica Morse.

25 Q Okay. So what -- just so I need to understand, the first

1 page dated on August 1, 2014, of you and Nemo, then you and
2 Nemo, are these one-on-one messages between the two of you?

3 A No, it's a group message.

4 Q Okay. Is there anywhere that this would reflect the other
5 participants in the conversation?

6 A I don't understand the question.

7 Q In an e-mail you would see all the -- sometimes you will
8 see all the participants if it's a group e-mail. Is there any
9 way to have printed this out that shows that it is a group
10 discussion instead of a one-to-one discussion on August 1?

11 A It's just the way Facebook conversations work. If you see
12 more than one name, then you can assume -- and if somebody's
13 added new conversation, you'll see a mark for that.

14 Q Okay. So if I understand correctly, there's no reference
15 to someone added in, and so this is a four-person text message?

16 A That's correct.

17 Q Okay. This was done through Facebook on your personal
18 Facebook page?

19 A Correct.

20 Q Okay.

21 JUDGE ETCHINGHAM: Is there anything that shows Nina and
22 Jessica participating prior to August 4th, or is that when --
23 is it only when they respond that you're going to see a date,
24 or how do you know if they saw the post from August 1st?

25 THE WITNESS: You can see a little small subtext saying

1 "Read by" and then they'll give the names there.

2 JUDGE ETCHINGHAM: Okay. So in this case, for this
3 exhibit, Nina and Jessica didn't join this group conversation
4 until August 4th?

5 THE WITNESS: They had access to it, but I'm not sure if
6 they read it or not.

7 JUDGE ETCHINGHAM: Okay. Sorry.

8 MR. WILSON: I would move for the admission of R 3.

9 JUDGE ETCHINGHAM: Any objection?

10 MS. VIX: I don't see how it's relevant, but that -- so my
11 objection is based on relevance.

12 JUDGE ETCHINGHAM: What is the relevance?

13 MR. WILSON: I need to make a record of references he's
14 made before about talking about certain topics with Nina and
15 Nemo, and based on when they were employees and when they were
16 not employees, this helps fix a date for those times. That's
17 the relevance for me.

18 JUDGE ETCHINGHAM: All right.

19 MS. VIX: And, Your Honor, my response is it would be
20 relevant from Respondent's perspective if they had had
21 knowledge of these Facebook communications, but there's no
22 evidence that they had knowledge of this communication.

23 JUDGE ETCHINGHAM: When you say "they," you mean the
24 company?

25 MS. VIX: The company, anyone in HR, management, or --

1 JUDGE ETCHINGHAM: I'm going to let it in and let it go to
2 the weight of the evidence because I'm not exactly sure how
3 relevant this is to everything, but to be safe, I'm going to --
4 I'll overrule any objection and let it in and let it go to the
5 wait of the evidence. So we'll admit Respondent's Exhibit 3
6 over objection at this time.

7 **(Respondent Exhibit Number 3 Received into Evidence)**

8 Q BY MR. WILSON: On the second page, on August 4, you
9 mention that you're not super upset about it, it's completely
10 worth it, especially when I think about people who pay for this
11 stuff out of pocket. What are you talking about?

12 A I'm talking about my gender confirmation surgery.

13 Q The gender confirmation surgery being covered by
14 insurance?

15 A Yes.

16 Q Okay. What are you talking about, about not being super
17 upset about it? What are you not super upset about, though?
18 I'm just trying to understand that.

19 A The situation with -- so previously, I had had
20 conversations with Maricela Prado and Brad Marshall about how
21 my leave would work, and I was informed that although the
22 company policy is that we had unlimited sick time, that I would
23 not be allowed to take sick time for the week waiting period
24 between when I would have surgery and when disability would
25 actually start.

1 Q Okay. So this is the September time frame that -- sorry,
2 not September. It would be the short-term disability, for lack
3 of a better term, is that what you're referring to?

4 A Yes, my medical leave.

5 Q Okay, okay, thank you. Next I'm marking as Respondent's
6 Exhibit 4 --

7 MR. WILSON: May I approach?

8 JUDGE ETCHINGHAM: Yes.

9 Q BY MR. WILSON: Showing the witness what I have marked as
10 R 4, which is a three-page document. You produced this in
11 response to our subpoena?

12 A Yes.

13 Q On December 30, 2014, you had already decided at that
14 point that you were leaving the company?

15 A I had not decided I was leaving. I had decided I was
16 going to pursue other opportunities, but I wasn't going to
17 leave without another job.

18 Q You were looking for a job?

19 A Correct.

20 Q Okay. And when did you start looking for a job?

21 A Around mid-December 2014.

22 Q In the second paragraph of your December 30 e-mail, it's
23 the second paragraph, it's, I guess, technically the third one
24 that starts with the word "Now," okay, you reference in the
25 second sentence there at the end, "David insisted on a doctor's

1 note."

2 MS. VIX: Your Honor, I object to counsel reading from the
3 document that has not been offered.

4 MR. WILSON: Your Honor, this is a credibility question.
5 He is describing at various times what David's response was to
6 a request on December 19 for leave, or for remote working, and
7 I'm asking this witness his statements about a document he
8 produced that reflect what I believe, and what I think, show
9 varying descriptions of how David reacted in e-mails to him and
10 in meetings to him, and it's relevant to credibility at the
11 least.

12 Now, if the question is -- or if the problem is that I
13 need to first ask for admission of this document, I can do
14 that, and I suppose we'll have the argument if there's an
15 objection to it. But these are -- this is cross-examination,
16 these are statements by the Charging Party, and they're made --
17 and on documents that were produced by the Charging Party and
18 they relate to the issues that they're claiming ultimately were
19 the precursor to a post that they're calling protected
20 concerted activity. I'm entitled to examine this witness on
21 credibility grounds, among other grounds, of his statements.

22 JUDGE ETCHINGHAM: When was the post made?

23 MR. WILSON: The post on Glassdoor was December 30, the
24 date of this -- the date of this e-mail.

25 JUDGE ETCHINGHAM: So wouldn't anything that's after the

1 post be irrelevant?

2 MR. WILSON: I don't know that this is after the post.

3 JUDGE ETCHINGHAM: Well, then I think, why don't we
4 discuss this before you get into specifics of it as far as
5 foundation goes?

6 MR. WILSON: Okay. Okay.

7 JUDGE ETCHINGHAM: Just because something was produced to
8 a subpoena doesn't always make it relevant to our trial here.

9 MR. WILSON: Sure.

10 JUDGE ETCHINGHAM: So that's why it would be good to
11 describe what it is, this document is, and have him
12 authenticate it.

13 MR. WILSON: Understood.

14 Q BY MR. WILSON: First of all, Mr. Duane, is this an e-mail
15 you wrote to Nina Wu at 10:36 p.m. on December 30?

16 A Yes.

17 JUDGE ETCHINGHAM: 30th or 3rd?

18 MR. WILSON: December 30.

19 JUDGE ETCHINGHAM: I'm sorry, I didn't hear the 30 part,
20 sounds like a 3rd.

21 MR. WILSON: I have to enunciate.

22 Q BY MR. WILSON: When did you post your Glassdoor post on
23 that day, at the time of day? Do you recall?

24 A It was in the early evening.

25 Q Okay. Before or after you wrote this e-mail?

1 A It would have been before. This is at 10:36 p.m.. I
2 usually go to bed around 11:00, so it would have been before.

3 MR. WILSON: Again, I move to the admission of this entire
4 e-mail trail, which includes e-mail between Mr. Duane and
5 Mr. Keyes and Ms. Prado that were forwarded by Gmail to Nina Wu
6 on the 23rd, and then a discussion took place on December 30.

7 JUDGE ETCHINGHAM: December 30th?

8 MR. WILSON: 30, December 30. Sorry.

9 JUDGE ETCHINGHAM: Sounds like 3rd from my vantage point
10 over here --

11 MR. WILSON: I'm sorry.

12 JUDGE ETCHINGHAM: -- so I just want to be clear.

13 Any objection to --

14 MS. VIX: Yes, Your Honor, I object, not as to the e-mail
15 communications between Mr. Duane and Mr. Keyes and Ms. Prado,
16 which have already been admitted into evidence, but as to the
17 communications between Nina Wu and Mr. Duane. As you pointed
18 out, they were exchanged after the Glassdoor post was made and
19 it doesn't go to knowledge. I don't see any relevance beyond
20 if there were a way to show knowledge, and there isn't.

21 MR. MAREK: Your Honor, can I add one thing?

22 JUDGE ETCHINGHAM: Sure.

23 MR. MAREK: We produced these because, at the time, we
24 were trying to avoid the ultimate petition to revoke that was
25 filed for -- to be cooperative. Respondent's counsel didn't

1 think we had done enough, presumably, and we had to file the
2 petition. If you look at your order, this document would not
3 have even had to have been produced under what the ultimate
4 order was, so I would join the objection on relevance. I mean,
5 I don't --

6 JUDGE ETCHINGHAM: Because what category document is this
7 that you say?

8 MR. MAREK: They asked for all documents between Mr. Duane
9 and any former employees of IXL, so things that had even --
10 what we did was anything that had even loose reference to the
11 employment situation, we said to them we'll produce it just to
12 avoid this fight that went before you anyway, not because we
13 thought they were relevant at all, but just because we didn't
14 want to have to drag you into it.

15 But again, I now look at your order and we would not have
16 had to produce this because it's not relevant. And so I don't
17 think now that I sit here and look at it, it's -- I would agree
18 with your order that it's not relevant.

19 JUDGE ETCHINGHAM: Mr. Wilson?

20 MR. WILSON: Your Honor, as I say, among other reasons,
21 his characterization of David in this e-mail, of what David did
22 with respect to a doctor's note, for instance, is not true.
23 David did not insist on a doctor's note. And I don't care if
24 this -- I don't care if this e-mail was written the day of or
25 yesterday.

1 If he is characterizing different -- in different
2 communications differently what happened, it goes to his
3 credibility, it goes to whether he can be believed. And if
4 he's saying on direct that "My request for accommodation was
5 denied, it was rejected, and I was given a choice of either
6 coming back to work full time or not being allowed back to
7 work," I get to challenge him by showing him the actual
8 conversation, which I've done, and then if he's stating in
9 other e-mails that David insisted on a doctor's note, when I
10 have went through already with him that he suggested that he
11 provided a doctor's note and David said that would be good,
12 these are credibility cross-examination questions and I'm
13 entitled to cross-examine him and impeach him with any of his
14 prior statements. So that is first and foremost why this is
15 relevant. It can be -- they're talking about the weight of it,
16 but it's certainly not inadmissible simply because they don't
17 feel it should have been produced or because it doesn't show --
18 and I agree it doesn't reflect any knowledge of any protected
19 concerted activity and Nina wasn't an employee at that time.
20 I'm not offering it for that purpose.

21 JUDGE ETCHINGHAM: Can we stipulate as to when Nina
22 stopped being an employee and the same with Nemo? Because it's
23 challenging on my part to be here and not knowing exactly what
24 their status is in this case on certain times?

25 MR. WILSON: I'll state for the record that Nina was an

1 employee from February 2014 to June 2014, Nemo was an employee
2 from June 24, 2013, to May 25, 2014. So by June of 2014,
3 neither of these employees, former employees, Nina and Nemo,
4 worked for the company.

5 And so I am not suggesting that this is concerted activity
6 that we had knowledge of, just the -- I'm not suggesting that,
7 I'm not offering this to try to show knowledge. Why would I do
8 that? It's not inadmissible simply because it doesn't
9 establish whether or not the employer had knowledge of this.
10 I'm entitled to cross-examine him based on conversations and
11 characterizations of what happened at different points in time,
12 and that's what I've been doing.

13 JUDGE ETCHINGHAM: All right. Go ahead.

14 MR. MAREK: If I might, from what I've heard so far, just
15 from this one snippet of a question, is the whole reason he
16 wants to put this in is because Mr. Duane wrote David insisted
17 on a doctor's note, and in Mr. Keyes' actual e-mail, he wrote
18 "It would be great if you could provide written documentation
19 for this," and we now might have a semantic debate on, when
20 Mr. Duane wrote an informal e-mail to his friend, if the word
21 "insist" is an accurate word choice. I don't think that would
22 rise to the level of impeachment or to make his document,
23 otherwise not relevant, an admissible document. It's not as if
24 -- this isn't a sworn statement, it's a -- we're going to now,
25 like I say, we're going to bicker over the word "insist" in an

1 e-mail to a friend. It just doesn't seem worth it to me.

2 MR. WILSON: This is argumentation about what weight
3 should be given and whether or not my argument is better than
4 their argument as to whether or not this is an impeachment
5 statement and whether it should be just casually ignored
6 because it was not under oath. These are arguments, these are
7 arguments that we can make in briefs, but it doesn't render a
8 document inadmissible because they don't agree that it rises to
9 the level of being impeachable enough or --

10 JUDGE ETCHINGHAM: I hear you, I'm ready to roll. Is
11 there anything else anybody wants to say?

12 MS. VIX: My one last point would be, Your Honor, that the
13 issue around the doctor's note appears to be an issue better
14 suited for the EEOC proceeding that will -- may or may not
15 occur in the future. It really has no relevance to this case.
16 Even if it's a credibility issue, it's not a credibility issue
17 that needs to be resolved for this case.

18 JUDGE ETCHINGHAM: Well, I'm going to overrule the
19 objection and let it come in and let it go to the weight of the
20 evidence. I think credibility is part of my job as a fact
21 finder and both -- all three sides can argue how much weight
22 and whether this impeaches him versus it being just a semantic
23 kind of difference in word selection.

24 So it would be different if this was some impeachable act
25 that occurred, you know, three months after his discharge

1 unrelated to what's going on in the case, but what I'm hearing
2 from Mr. Wilson is these are statements that may or may not
3 contradict what was testified earlier today.

4 So with that, I'm admitting Respondent's Exhibit 4 over
5 objection at this time.

6 **(Respondent Exhibit Number 4 Received into Evidence)**

7 MR. WILSON: Respondent's Exhibit 5 is a one-page document
8 that I just marked. And may I approach to show the witness?

9 JUDGE ETCHINGHAM: Yes.

10 Q BY MR. WILSON: This is R-5, Respondent 5. You wrote this
11 e-mail to Mr. Keyes?

12 A Yes.

13 Q On January 7, 2015, right?

14 A Correct.

15 Q You testified about providing him some materials on ADA or
16 disability?

17 A Yes.

18 MR. WILSON: Okay. I move for the admission of R-5.

19 JUDGE ETCHINGHAM: Any objection?

20 MS. VIX: No objection.

21 JUDGE ETCHINGHAM: I'm sorry?

22 MS. VIX: No objection, Your Honor.

23 JUDGE ETCHINGHAM: All right. No objection, we'll admit
24 Respondent's Exhibit 5 at this time.

25 **(Respondent Exhibit Number 5 Received into Evidence)**

1 Q BY MR. WILSON: The bottom of this e-mail, it states,
2 "Paul contacted me today and requested to meet with me to
3 address the concerns I brought up. Thank you for taking
4 seriously and escalating it to him." What time do you recall
5 that Paul contacted you first about meeting?

6 A It was around four in the morning.

7 JUDGE ETCHINGHAM: Counsel, what's your time estimate at
8 this point?

9 MR. WILSON: Mine?

10 JUDGE ETCHINGHAM: Yes.

11 MR. WILSON: I think -- I think probably 20, 20 minutes to
12 30 minutes. I think we're pretty much there, but I don't know
13 if we're going to get more objections and colloquy about some
14 final exhibits I have.

15 JUDGE ETCHINGHAM: Okay.

16 MR. WILSON: Would you like to take a break?

17 JUDGE ETCHINGHAM: No, I'm doing good, just your estimate
18 was 30 minutes coming back from lunch, so --

19 MR. WILSON: I understand. I'm marking a document as
20 Respondent's Exhibit 6, and if I may show the witness?

21 JUDGE ETCHINGHAM: Yes.

22 Q BY MR. WILSON: R-6 is the e-mail from Paul Mishkin to you
23 and your response, setting up the meeting that eventually took
24 place on the 8th?

25 A Yes.

1 MR. WILSON: Move for admission of R 6.

2 JUDGE ETCHINGHAM: Any objection?

3 MS. VIX: No objection.

4 JUDGE ETCHINGHAM: All right. No objection, we'll admit
5 Respondent's Exhibit 6 at this time.

6 **(Respondent Exhibit Number 6 Received into Evidence)**

7 MR. WILSON: Respondent's 7 is a one-page document from
8 charging party's personnel file that I am proposing for
9 purposes of setting dates and the ability to build a timeline.

10 Q BY MR. WILSON: Have you ever seen this document before,
11 Mr. Duane?

12 A Yes.

13 Q And do you recognize this as a document from your
14 personnel file?

15 A Yes.

16 MR. WILSON: I move for the admission of Respondent's 7.

17 JUDGE ETCHINGHAM: Any objection?

18 MS. VIX: Only object as to relevance. The witness has
19 testified to these dates, the dates aren't in dispute, the
20 timeline has been built.

21 MR. WILSON: Your Honor, I'd like to have a document that
22 establishes when the company placed in his personnel file the
23 date of his leave, when he starts SDI, and when -- and that
24 it's short-term disability, and it's signed on the 26th of
25 September, 2014, by his manager, David Keyes. There's nothing

1 extraordinarily unusual about offering a document like this and
2 it's not inadmissible, and I don't know why something like this
3 that is so basic would be objected to, but I certainly think it
4 should be allowed in when there's no dispute about its
5 authenticity.

6 JUDGE ETCHINGHAM: Any objection? Oh, you already did on
7 relevance?

8 MS. VIX: Yeah. I mean, the objection is I believe it
9 clutters the record. I don't think it's -- the dates are not
10 in dispute. There will be a transcript record of the dates.
11 The record is getting full of documents that are tangential at
12 best.

13 MR. WILSON: This is exactly why I can't tell you how long
14 it's going to take, because, excuse me, but this is a simple
15 personnel data form reflecting when he was approved for leave
16 and by his manager, who he's talked about at length. Anyway, I
17 offer its admission.

18 JUDGE ETCHINGHAM: I'm going to overrule the objection and
19 admit Respondent's Exhibit 7 at this time.

20 **(Respondent Exhibit Number 7 Received into Evidence)**

21 JUDGE ETCHINGHAM: It's also relevant to the argument that
22 the human relations department was incompetent and didn't know
23 what they were doing to the extent they got formalities that
24 they follow and personnel records. It sort of counters that.
25 I'm not sure by how much, but --

1 MS. VIX: Okay.

2 JUDGE ETCHINGHAM: Anyway, you know, in a perfect world,
3 this could probably be a joint exhibit that was submitted well
4 in advance, you wouldn't need to get some of these dates out of
5 this witness, we could move on quickly, but we're rarely in the
6 perfect world.

7 Q BY MR. WILSON: I'd like to talk to you about the meeting
8 you had with Paul Mishkin on January 8. What time did that
9 meeting start?

10 A Eleven a.m.

11 Q It started on the time that was already scheduled two days
12 -- or a day earlier, correct?

13 A Yes.

14 Q Going into that meeting, were you aware of any policy, in
15 writing or otherwise, at this company, IXL, that prohibited you
16 from complaining about your job to a third party without first
17 talking to your supervisor?

18 A No, I was not.

19 Q Are you aware that the NLRB or the general counsel in this
20 case is alleging that there was a policy that prohibited
21 employees from complaining about their job to a third party
22 without first complaining to their supervisor?

23 A Yes, I am aware.

24 Q And is it your testimony that the policy you're referring
25 to -- that is being referred to here is what Mr. Mishkin said

1 to you in that meeting about whether or not you should have
2 talked to your supervisor?

3 A I'm sorry, can you rephrase?

4 Q Other than what Mr. Mishkin said or didn't say in the
5 meeting on January 8, are you aware of any other policy that
6 states that you are not allowed to talk to a third party about
7 -- complaining about your working conditions or your job
8 without first talking to your supervisor?

9 A No, I'm not aware of any other policy.

10 Q When you say that Paul, in that meeting, downplayed the
11 problems that you experienced with HR, can you tell me what you
12 mean by that?

13 A Yes. When I finished listing what I saw as a pattern of
14 behavior of the HR not dealing very well with disability, he
15 said, "Okay, there are three things. Did you have anything
16 else," as if to say these are three separate incidents and they
17 don't really show what you think they showed. So his
18 perception of it was there were just these three things, and my
19 perception of it was these are three things that show a
20 pattern.

21 Q He didn't say any of that, right, about, well, it's just
22 three and -- you're saying that that's what your -- that was
23 the implication that you inferred from his comments?

24 A No. He said, "There are three things, you listed three
25 things. Do you have any more," and then he listed the three

1 things again.

2 Q And what I'm saying is your testimony is that you
3 inferred, from him listing those three things and what he just
4 said, that he was downplaying it?

5 A That, and him saying that HR was too difficult -- a
6 difficult specialty, that seemed to imply, well, this is just
7 something that's really hard, so of course we're going to make
8 a lot of mistakes.

9 Q Again, this is something hard and of course we're going to
10 make a lot of mistakes, that's not what he said, that's what
11 you're inferring?

12 A He said that HR was a difficult specialty.

13 Q I understand that. The last part of what you just said,
14 that of course there's going to be a lot of mistakes, he didn't
15 say that?

16 A He didn't -- no, not word for word.

17 Q You talked about the video project with him?

18 A Yes.

19 Q And he canceled that video project?

20 A To my knowledge, yes.

21 Q Were you on the video project?

22 A No.

23 Q Did he describe to you anything about why he canceled the
24 video project?

25 A Yes, I believe he did.

1 Q What did he say?

2 A He said something along the lines of it was taking too
3 many resources and wasn't worth pursuing at that time,
4 something along those lines.

5 Q Do you know if he was right or wrong when he said that?

6 A I'm not an expert. I don't know everything about the ed
7 tech market.

8 Q Okay. The ed tech market?

9 A The educational technology market.

10 Q Thanks. When you told him that you felt certain groups
11 were privileged on who got to leave and who worked remotely --
12 do you recall saying that in your direct testimony?

13 A Yes.

14 Q When you said that to him, were you referring to employees
15 with children who were allowed to work remotely?

16 A Yes.

17 Q Were you referring to anyone else as certain groups being
18 privileged?

19 A I think groups that were -- people who were perceived to
20 be team players, people who were perceived to be sort of in the
21 mainstream and who fit into the culture of IXL, those are the
22 people that I was referring to.

23 Q You didn't say that to him, am I correct in that? You
24 didn't say all of that, did you?

25 A I referred to people who didn't fit in, referring to

1 myself and other people as not getting -- not getting the same
2 privileges as others. I did say that to him.

3 Q Other than people with children, did you identify any
4 other -- not what you meant or what you were trying to imply,
5 but did you actually state to him any other type of employee
6 who had a privilege or was allowed to take leave and work
7 remotely?

8 A No, I don't believe so.

9 Q Do you recall Mr. Mishkin asking you, when you said that
10 certain people don't fit in, do you recall him saying --
11 asking, actually, "Are you talking about friendship or are you
12 talking about discrimination?"

13 A I do remember him asking that.

14 Q And do you remember that you said it's the same thing?

15 A I don't think those were my exact words, no.

16 Q Whether they were your exact words or not, do you recall
17 that, in effect, what your response to him was, it's one and
18 the same or it blends together?

19 A My meaning was that, in the workplace --

20 Q I'm sorry, I'm asking about what you said.

21 A I don't recall my exact words.

22 Q Okay. When the issue of going to your manager came up,
23 isn't it true that Mr. Mishkin said, "So why didn't you bring
24 all of these complaints to your manager instead of anonymously
25 posting them in the public?"

1 A Yes, he did ask me that.

2 Q He never said, "This is against our policy," about posting
3 without first going to your manager, did he?

4 A He didn't mention a policy, no.

5 Q Didn't he say "I think you should have allowed your
6 manager to address these instead of you placing them in an
7 anonymous post online"?

8 A He did say that, yes.

9 Q You agree that, in this discussion with Mr. Mishkin, you
10 never mentioned any of your prior discussions with the
11 employees of IXL, right?

12 A I don't believe I did, no.

13 MR. WILSON: Your Honor, is now an okay time to take a
14 five- to ten-minute break and clean up? And I don't believe I
15 have any other questions, but it would help me make sure of
16 that.

17 JUDGE ETCHINGHAM: Sure.

18 MR. WILSON: Thanks.

19 JUDGE ETCHINGHAM: Let's come back at 1:40 and resume,
20 finish up. We'll go off the record until then. Thank you.
21 (Off the record at 1:34 p.m.)

22 JUDGE ETCHINGHAM: All right. When we last broke, we were
23 finishing up cross-examination.

24 MR. WILSON: Yes.

25 JUDGE ETCHINGHAM: Mr. Wilson.

1 MR. WILSON: Thank you for that break, Your Honor. I have
2 no further questions.

3 JUDGE ETCHINGHAM: All right. Redirect?

4 MS. VIX: Thank you, Your Honor.

5 **REDIRECT EXAMINATION**

6 Q BY MS. VIX: Mr. Duane, have you reviewed the posts on
7 Glassdoor about IXL?

8 A Yes.

9 Q When was the last time you reviewed the posts on IXL -- or
10 on Glassdoor about IXL?

11 A Yesterday.

12 Q Okay. Anyone could post a review after they've read a
13 review?

14 A Yes, that's correct.

15 Q And in fact, reviewers do in fact comment on previous
16 reviews?

17 MR. WILSON: Objection, leading and no foundation,
18 speculation.

19 MS. VIX: Okay. Your Honor, may I approach the witness?

20 JUDGE ETCHINGHAM: For what reason?

21 MS. VIX: To show a document.

22 JUDGE ETCHINGHAM: All right.

23 MS. VIX: This is General Counsel Exhibit 11. So I can
24 rephrase my question. Should I do that first?

25 JUDGE ETCHINGHAM: Sure.

1 MS. VIX: Okay.

2 Q BY MS. VIX: You commented, you implied that you had, in
3 fact, looked at the Glassdoor reviews on IXL as recently as
4 yesterday?

5 A Yes.

6 Q Do you recall how many posts reviewing IXL were on
7 Glassdoor?

8 A I believe it was 66.

9 MS. VIX: Now permission to approach --

10 JUDGE ETCHINGHAM: Sure.

11 MS. VIX: -- with GC 11?

12 Q BY MS. VIX: Do you recognize this document?

13 A Yes.

14 Q And what is this?

15 A This is a printout of all the current Glassdoor reviews
16 for IXL Learning.

17 MS. VIX: Your Honor, this is a 20-page document, not all
18 are double-sided but many are. I apologize that the numbers
19 only are printed on the first page, so if we are referencing
20 this document, it would be page one front, page one back.

21 JUDGE ETCHINGHAM: I'm not sure if that works for the
22 court reporter. I just know we have, I think, rules and
23 procedures that talk about marking trial exhibits, so --

24 THE COURT REPORTER: It's okay.

25 JUDGE ETCHINGHAM: -- if the court reporter is good with

1 it, I'm good with it.

2 THE COURT REPORTER: Yeah.

3 MS. VIX: Thank you.

4 Q BY MS. VIX: Directing your attention to a postdated
5 July 10th, 2013, these will appear chronologically, so -- I
6 believe chronologically. It's possible that's not true. Let
7 me see if I can find that post.

8 JUDGE ETCHINGHAM: I'm not sure where you're going with
9 this.

10 MS. VIX: Your Honor --

11 JUDGE ETCHINGHAM: I think you need to establish some
12 familiarity from the witness --

13 MS. VIX: Okay.

14 JUDGE ETCHINGHAM: -- as far as a particular post you're
15 wanting him to look at, but I think that would be a starting
16 point.

17 MS. VIX: Okay.

18 Q BY MS. VIX: When you reviewed the Glassdoor website in
19 the past, have you only read the negative reviews?

20 A No, I read all the reviews.

21 Q Okay. You've testified already that your coworkers have
22 also commented to you that they read the reviews?

23 A Correct.

24 Q It's possible, and you can see from this document, at the
25 bottom, there's an icon, it looks like, that says "Helpful".

1 Could you describe what that helpful button is?

2 A If you read a review on Glassdoor and you find it helpful
3 either to, you know, draw you to that company, maybe apply to
4 that company, or if you're working there and you think it's
5 relevant, a lot of people will click helpful.

6 Q Okay. After someone has read a post, they can provide
7 their own post, their own review on this site, correct?

8 A Correct.

9 Q Okay.

10 MR. WILSON: Is this document being offered as an exhibit?

11 MS. VIX: In a moment.

12 MR. WILSON: Well, then I object for the same reasons that
13 my questioning of the witness on a document that was marked but
14 not admitted, or offered for admission, was deemed
15 objectionable and, you know, I don't know that this is an
16 appropriate -- I was waiting to get to the admission because I
17 don't even know when this was printed out and whether this was
18 printed out --

19 JUDGE ETCHINGHAM: I think he already testified it was
20 printed out recently, like either yesterday or today.

21 MR. WILSON: Well, then if they're replying on it to
22 support their claims, I would have thought that this would have
23 been something --

24 JUDGE ETCHINGHAM: I'm trying to give --

25 MR. WILSON: Okay.

1 JUDGE ETCHINGHAM: -- counsel opportunity to build a
2 foundation here.

3 MR. WILSON: Okay.

4 JUDGE ETCHINGHAM: So I mean, we're kind of jump to go the
5 gun, but she hasn't tried to get it admitted at this point. So
6 I hear you, I'm with you, I agree, it's exactly the reverse
7 sides here from when you were trying to get some documents in.

8 So Ms. Vix, go ahead.

9 Q BY MS. VIX: So directing -- so you've testified that
10 reviewers can comment on previous posts?

11 A Yes, by mentioning previous posts in the post that they
12 write.

13 Q Okay. And you've seen that done?

14 A Yes, several times.

15 MS. VIX: Okay. Your Honor, I'd like to offer General
16 Counsel Exhibit 11 into evidence for that purpose.

17 MR. WILSON: Object, I object to the entry of an exhibit
18 or a collection of posts that are anonymous, that was done
19 11 months after the events in question here, or at least with
20 some reference to -- or without at least some reference to what
21 they're talking about in here that supposedly substantiates
22 that employee or people can talk to each other through these
23 reviews.

24 MS. VIX: Your Honor, I --

25 MR. WILSON: If there's something in here that says that,

1 then okay, then I -- I mean, otherwise, it's just a collection
2 of reviews.

3 MS. VIX: If I may respond, counsel, during
4 cross-examination, brought in the issue that this was not --
5 Glassdoor.com was not like Facebook in which employees or
6 friends could communicate with each other, and I'm offering
7 these Glassdoor -- this collection of Glassdoor posts on IXL to
8 show that there is some communication between posters.

9 MR. WILSON: Again, my objection remains. And I also
10 object to the fact that this was a document that was ordered to
11 be produced pursuant to subpoena, and this is the first I'm
12 seeing of it, that allegedly supports their claims about the
13 concerted nature of Glassdoor, then it would have been nice to
14 know that that was an argument and a document that they had
15 printed for that purpose.

16 MS. VIX: Your Honor, I --

17 MR. WILSON: That's objectionable.

18 MS. VIX: -- would offer that it was printed after counsel
19 raised the issue about this not being a forum in which there
20 can be communication.

21 JUDGE ETCHINGHAM: The problem I'm having with it, I think
22 I know what you're wanting it for and all that, but, you know,
23 technology is such an ever-changing thing and I just don't know
24 whether the feature of finding these posts helpful existed back
25 in January of this year.

1 MS. VIX: Would it be --

2 JUDGE ETCHINGHAM: If it didn't exist, then I don't find
3 it relevant now, because I think that's the key part that you
4 want to use this for, is that somebody can hit on the helpful
5 and basically respond directly to somebody else's post.

6 MS. VIX: May I make a slight modification then to this
7 exhibit, which would be to only produce those posts that were
8 made prior to Mr. Duane's termination?

9 MR. WILSON: But Judge, they were printed out --

10 MS. VIX: Because the dates are printed for each post.
11 You can see in the left-hand corner of each post the date that
12 it was posted that particular review. And looking particularly
13 at the latter pages, you can see that many of these posts go
14 back to 2013.

15 JUDGE ETCHINGHAM: So what page would be the first page?
16 What are we getting rid of here if we do that?

17 MS. VIX: So Mr. Duane's post appears on the back side of
18 page eight, so I would -- I could offer just pages eight
19 through 20.

20 JUDGE ETCHINGHAM: All right. So what we would need to
21 do, I think, is re-number and just take away pages one through
22 seven, or re-number --

23 MS. VIX: Your Honor, during a break, I'd be happy to fix
24 those.

25 JUDGE ETCHINGHAM: You're saying the bottom side of page

1 eight is the first one, and that's Mr. Duane's post.

2 MS. VIX: And then going from page eight, nine, through
3 20, those all precede his termination.

4 JUDGE ETCHINGHAM: All right. Any objection to that?

5 MR. WILSON: I need to see -- and I don't think that this
6 is an accurate print out of these. I don't think that this is
7 the actual posts that are -- that were on the site in 2013,
8 2014, and this --

9 JUDGE ETCHINGHAM: Well, certainly the ones that are here
10 were on the site, right, because does something get on the site
11 from 2013 after it's been removed from the site, or isn't it
12 once it's on, it stays on until -- I mean, does Glassdoor allow
13 you to remove? I just don't know enough about the technology.

14 MR. WILSON: I don't know if these can be removed, but I
15 mean, Mr. Duane's prior posts, I could be wrong, but I don't
16 know --

17 JUDGE ETCHINGHAM: Isn't it just one post? Did he have
18 more than one post?

19 MR. WILSON: Yeah, he posted September 11, 2013, nice
20 place to work. It's on page 14 of this exhibit. And if I -- I
21 could be wrong, it doesn't look like it's the full post, and so
22 that's what has me concerned that --

23 JUDGE ETCHINGHAM: Sure. Why don't I take this under
24 submission and we'll revisit this in the morning and I'll give
25 both sides sometime this evening to look into it. Is that fair

1 enough?

2 MR. WILSON: Yeah, I just -- so that you know what I'm
3 saying, like there are things missing from this version of his
4 September 11, 2013 post, that they're not included on the page
5 14.

6 JUDGE ETCHINGHAM: And is that something you could get
7 your hands on, either from your client or your law firm?

8 MR. WILSON: I have that post.

9 JUDGE ETCHINGHAM: Okay.

10 MR. WILSON: And it was referred to before, I asked him
11 about it, and that's why I'm just looking at the two and I'm
12 thinking we need to be careful about this, because if this is
13 like a snapshot or after the fact, but I agree with your
14 assessment --

15 JUDGE ETCHINGHAM: The other thing is, is maybe there's a
16 stipulation that can be worked into.

17 MR. WILSON: I'm happy to do that.

18 JUDGE ETCHINGHAM: You kind of know what you're looking
19 for to say about this whole Glassdoor process, and you either
20 agree or you don't.

21 MR. WILSON: I agree. And I did offer, I mean I have a
22 compilation of the about -- what this site is about, and I had
23 asked, you know, that these be joined exhibits because they --

24 JUDGE ETCHINGHAM: Does one of the things you have say
25 that people can respond and basically communicate or quickly

1 respond to a post?

2 MR. WILSON: No, just -- they can't, and that's the post.

3 JUDGE ETCHINGHAM: Then how do you describe what the
4 helpful --

5 MR. WILSON: Helpful is anybody looking at this, I think
6 Mr. Duane mentioned and I think -- who knows, it's completely
7 anonymous, but it's an anonymous "I find this helpful".

8 JUDGE ETCHINGHAM: So it's an anonymous response?

9 MR. WILSON: It's anonymous "I find it helpful" or "I
10 don't".

11 JUDGE ETCHINGHAM: Okay.

12 MR. WILSON: And what I have -- I had printed out were
13 info -- like information pages that Glassdoor itself puts on
14 their site saying protecting member anonymity and it says
15 exactly what they do and how they will not even -- they will go
16 to court if someone tries to subpoena them to try to find out
17 who posted something. So anonymity is preserved, including the
18 helpfuls and everything else.

19 And that's been our point all along, I would like to
20 stipulate to what this site is about. And I don't mind a
21 collection of these, all 60-some reviews, I think that's fine,
22 I just worry that this is not a full collection.

23 JUDGE ETCHINGHAM: Okay.

24 MR. WILSON: And I think we could talk --

25 MS. VIX: I'd be happy to work out a full collection that

1 is 100 percent the entirety of each post.

2 JUDGE ETCHINGHAM: All right.

3 MS. VIX: If they're not there, it was absolutely
4 inadvertent, but --

5 JUDGE ETCHINGHAM: Sure. So we'll either call that GC
6 Exhibit 11 again, or if it's a joint exhibit, that's fine, too.

7 MR. WILSON: Yeah.

8 MS. VIX: And during a break, I can fix the GC 11.

9 JUDGE ETCHINGHAM: Sure. Or at least answer his question
10 as to why the old post may not look like it's all there.

11 MS. VIX: Okay.

12 JUDGE ETCHINGHAM: All right. So we'll put that on hold
13 for now.

14 MS. VIX: Okay.

15 JUDGE ETCHINGHAM: Anything else on redirect?

16 MS. VIX: Yes, Your Honor.

17 Q BY MS. VIX: Since we're talking about General Counsel's
18 exhibits, if we could go back to General Counsel Exhibit number
19 9, which is the Google printout, Mr. Duane, which of these
20 items -- we can go paragraph by paragraph -- which of these
21 items would have shown up prior to your termination? Would the
22 www.scotttduane.com have shown up?

23 A Yes, at the very end.

24 Q What about Op Ed Transmen, Transwomen, and Surrendering
25 the Dot, Dot, Dot?

1 A Yes, that would have appeared.

2 Q And what about the next, Adrian Scott Duane - The
3 Advocate?

4 A I believe so, yes.

5 Q How about the fourth paragraph, the Mathematics Genealogy
6 Project - Adrian Scott Duane?

7 A Yes.

8 Q The next paragraph, Axiom Scott Duane - Facebook, where it
9 says: Please share widely. This will be an important meeting
10 for the San Diego community?

11 A Yes, that would have appeared.

12 Q Okay. How about the next, Adrian D. Scott/Facebook?

13 A Yes, that would have appeared.

14 Q And the next, Adrian Scott, www.adrianscott.com?

15 A That's not me.

16 Q Would it have appeared in a Google search of you?

17 A I have no way of knowing.

18 Q Okay. So that Adrian Scott does not refer to you?

19 A Correct.

20 Q Okay. How about the next paragraph, Pattern Matching
21 Statistics and Their Permutations SN and the dot, dot, dot?

22 A Yes, that would have appeared.

23 Q And the next paragraph, Dr. Adrian Scott/Edith Cowan
24 University?

25 A That's not me, so I'm not sure.

1 Q Okay. So that -- would that have appeared?

2 A I don't know.

3 Q And the last one, Adrian Scott Profiles - Linked In?

4 A Yes, that would have appeared.

5 Q Okay. So all document -- all references to Adrian Scott

6 Duane would have appeared except -- and the only items that

7 would not have appeared would have been those referring only to

8 Adrian Scott?

9 A Correct. I don't know if those would have appeared or
10 not.

11 Q Okay.

12 JUDGE ETCHINGHAM: Except for the last one.

13 THE WITNESS: Yes, that one is actually me.

14 MS. VIX: Oh, sorry. Thank you. Your Honor, at this
15 point I would like to move for the admission of GC 9.

16 MR. WILSON: Your Honor, I think my objection is even
17 stronger now. Mr. Duane absolutely does not know how Google
18 would rank references to his name from different users'
19 computers. This is just very misleading because if -- Google
20 doesn't work that day. Google shows you results based on your
21 algorithm that they protect jealously and -- I represent the
22 company, and, you know, happen --

23 MS. VIX: I should call you as an expert witness.

24 MR. WILSON: And I'm a user. Yeah, I mean I'm not an
25 expert witness, but I certainly know that SEO rankings are not

1 just a simple cookie-cutter report that would apply on
2 everybody's computer at every point in time, you know, and that
3 if it was printed out today, that anyone could say that this is
4 how it would have appeared to a member of management, as I
5 guess the assumption -- or the presumption here, if they did a
6 Google search with their browser a year and a half earlier or
7 some other point in time.

8 I think that there's testimony that he's offered about his
9 advocacy, and they can make whatever argument they want, but to
10 present this document and have this witness say, "Yeah, that
11 would have appeared on everyone's search results in Google no
12 matter who they are a year and a half earlier," it's inherently
13 unreliable and it's inadmissible. It's too -- I think it's too
14 prejudicial to assume that this is -- this is what would have
15 appeared in 2014 on someone's computer whose history you don't
16 know.

17 JUDGE ETCHINGHAM: Ms. Vix, anything?

18 MS. VIX: Nothing further.

19 JUDGE ETCHINGHAM: All right. I'm going to sustain the
20 objection and General Counsel's 9 can go into the reject file.
21 It's not admissible.

22 **(General Counsel Exhibit Number 9 Rejected)**

23 Q BY MS. VIX: Mr. Duane, you testified about your
24 termination meeting with Mr. Mishkin. What were the words he
25 used about speaking to a manager first?

1 A He said that it was wrong to post on Glassdoor instead of
2 first going to management.

3 MS. VIX: Okay. Nothing further, Your Honor.

4 JUDGE ETCHINGHAM: Anything else on recross?

5 MR. WILSON: No.

6 JUDGE ETCHINGHAM: All right. Thank you, sir, you're
7 excused.

8 THE WITNESS: Thank you, sir.

9 JUDGE ETCHINGHAM: Who would you like to call as your next
10 witness?

11 MS. VIX: She is outside, I believe.

12 JUDGE ETCHINGHAM: All right.

13 THE COURT REPORTER: Are the exhibits -- these exhibits,
14 the Respondent's exhibits are for me?

15 MS. VIX: Oh, you can have that whole set.

16 MR. WILSON: The exhibits that were up on the witness
17 stand, those are the official exhibits, at least the ones --

18 JUDGE ETCHINGHAM: And I've got another set if you need
19 them, because I don't need exhibits.

20 Ma'am, if you want to just have a seat here, make yourself
21 comfortable. All right, if you could raise your right hand,
22 please.

23 Whereupon,

24 **NINA WU**

25 having been duly sworn, was called as a witness herein and was

1 examined and testified as follows:

2 JUDGE ETCHINGHAM: Thank you. If you can please state
3 your name and spell it for the record.

4 THE WITNESS: My name is Nina Wu. That's N-I-N-A, W-U.

5 THE COURT REPORTER: Would you please repeat that? You
6 don't need to speak too close to the microphone.

7 THE WITNESS: Okay. My name is Nina Wu, spelled N-I-N-A,
8 W-U.

9 JUDGE ETCHINGHAM: Thank you. Ms. Vix.

10 **DIRECT EXAMINATION**

11 Q BY MS. VIX: Good afternoon, Ms. Wu.

12 A Good afternoon.

13 Q Did you work for IXL Learning?

14 A Yes.

15 Q And what position?

16 A I was a product analyst for math.

17 Q So you worked in the math department?

18 A Yes.

19 Q When did you start working at IXL?

20 A In February of 2014.

21 Q Did you stop working for IXL?

22 A Yes.

23 Q And when was that?

24 A At the end of June 2014.

25 Q And why did you stop working at IXL?

1 A Because I had another job offer.

2 Q So you quit working for IXL?

3 A Yes.

4 Q And why did you quit?

5 MR. WILSON: Objection, asked and answered and -- I'll
6 withdraw.

7 THE WITNESS: I quit because the other job was a better
8 fit for me in terms of my career interests.

9 Q BY MS. VIX: Okay.

10 A And I wasn't that happy at IXL.

11 Q Did you work with Scott Duane?

12 A Yes.

13 Q Did you work physically near each other?

14 A Yes.

15 Q Did you have a cubicle?

16 A Yes.

17 Q How far was your cubicle from Mr. Duane's?

18 A It was two cubicles away.

19 Q Do you have any conversations with Mr. Duane about
20 workplace concerns?

21 A Yes.

22 Q Can you recall when a conversation would have occurred
23 about this topic?

24 A We talked frequently about our workplace concerns, at
25 least once a week throughout my time there.

1 Q And you worked there for five months, approximately?

2 A Yes.

3 Q Can you recall one of the first conversations you had with
4 Mr. Duane about workplace concerns?

5 A It must have been in about a month in.

6 Q So March 2014?

7 A Yes.

8 Q Okay. Do you recall where you would have been when you
9 had this conversation?

10 A Near our desks.

11 Q Was anyone else present?

12 A Sometimes during the five-month duration of our
13 conversations.

14 Q Okay. But trying to pinpoint this particular conversation
15 that might have happened in March.

16 A Yes.

17 Q Was any manager present?

18 A No.

19 Q Okay. How did the conversation start?

20 A Probably walked by his desk and asked what he was working
21 on and talked about what I was working on, and then not very
22 happy that -- about what I was working on, yeah.

23 Q And you expressed that to Mr. Duane?

24 A Yes.

25 Q And did he say anything in response?

1 A Yes. I guess commiserating or something, yeah, like that
2 sucks, too.

3 Q Okay. What did you say specifically about the project you
4 were working on that you were not happy with?

5 A I was unhappy that it wasn't the project or the work that
6 I wanted to do or thought I was supposed to be doing, saying
7 that I was working on multiple choice questions when I was
8 hired to work on a video project and some games.

9 Q Okay.

10 A And neither of those were happening.

11 Q Did Mr. Duane respond?

12 A Yes.

13 Q What did he say?

14 A Something along the lines of, like, "Yeah, that really
15 sucks" or "It's shitty".

16 Q Did you talk about who -- or why the video project was
17 canceled?

18 MR. WILSON: Objection, Your Honor. I'm going to object
19 to relevance. If we're talking about a conversation where the
20 witness has said no manager was present, there's no knowledge
21 by the employer of this discussion and this is not a charging
22 party and Mr. Duane has already testified about his
23 conversations with other coworkers. It's cumulative and it's
24 irrelevant. It doesn't actually -- to the extent that no
25 manager is present, it doesn't affect this case.

1 JUDGE ETCHINGHAM: Ms. Vix.

2 MS. VIX: Your Honor, I would argue that the relevance
3 goes to, to a large extent, the effect on the Charging Party,
4 these communications. And also, specifically, there's an issue
5 -- the issue has been raised about this video project and some
6 testimony about the video project is relevant.

7 MR. WILSON: The issue wasn't raised by us. Whatever
8 happened with this video project, Mr. Duane has already gone
9 through extensive testimony about what he told and didn't tell
10 management, and every conversation he had, he -- I asked him
11 about whether or not any manager was present. He said no. And
12 maybe someone could hear, but he didn't know that. And so
13 having a former employee testify about something that was never
14 disclosed to management, it's not -- it doesn't advance the
15 case at all. It's cumulative at most. At worst it's just
16 prejudicial.

17 JUDGE ETCHINGHAM: Well there was some objection as to
18 hearsay. And I forget if it was this witness's testimony that
19 Mr. Duane was trying to talk about, or one of the other
20 witnesses. But --

21 MR. WILSON: Yeah, there was one --

22 JUDGE ETCHINGHAM: -- or one of the coworkers. But --

23 MR. WILSON: -- that was one time, yes.

24 JUDGE ETCHINGHAM: -- I think the video project is
25 something worth hearing about. And to the extent she can fix

1 any hearsay objection that was lodged earlier that I sustained,
2 I think that's relevant to what we're doing here. So I'll
3 overrule it for now, and you can revisit it in a while if we
4 continue --

5 MR. WILSON: Okay. Thank you.

6 JUDGE ETCHINGHAM: -- cumulative type testimony.

7 Q BY MS. VIX: So do you recall any -- during this
8 conversation if there was any discussion of who cancelled the
9 video project?

10 A Yes. I was told that I guess whoever was working on the
11 video project, Jess, Nemo, Isadora were called into an office
12 or room, and I think it was -- I was told that it was Janet or
13 Paul that cancelled it.

14 Q So let's --

15 MR. WILSON: I'm going to object.

16 Q BY MS. VIX: -- break this down.

17 A Sorry.

18 Q That's okay.

19 MS. VIX: So before you need to object, we'll take a
20 break, and break this conversation down.

21 Q BY MS. VIX: So during just your conversation with Mr.
22 Duane --

23 A Yes.

24 Q -- what was said during that conversation about who
25 cancelled the video project?

- 1 A He told me that Jen cancelled it.
- 2 Q And who is Jen?
- 3 A Jen is the VP of IXL.
- 4 Q Okay.
- 5 A Yeah.
- 6 Q Do you know Jen's last name?
- 7 A Gu (phonetic).
- 8 Q Okay. Was any -- did you say anything in response to Mr.
- 9 Duane telling you that?
- 10 A Yes.
- 11 Q What?
- 12 A I said that I didn't like that the video project was
- 13 cancelled without consulting the people who were working on the
- 14 property. So for management to bring the people in the room,
- 15 and then cancel it in front of -- you know, right then, I
- 16 thought that really was not nice.
- 17 Q Okay. Did he say anything in response?
- 18 A Just confirming that it sucked, and that the people -- you
- 19 know, Jess wasn't happy, and --
- 20 Q And when you say Jess, who is Jess?
- 21 A Jess Morse. That's a --
- 22 Q And who's Jess?
- 23 A -- colleague. A --
- 24 Q And Mr. --
- 25 A -- Former colleague.

1 Q -- Scott said something about Jess Morse during this
2 conversation?

3 A Yeah.

4 Q What did he say?

5 A He said that she was really upset about it, and went home
6 early that day.

7 Q Okay.

8 A That it got cancelled.

9 Q Did you have any other conversations with Mr. Duane about
10 sort of projects and creativity?

11 A Yes.

12 Q Do you recall when?

13 A These conversations happened often during my time there.
14 At least once a week.

15 Q Okay. Do you recall what was said?

16 A Yes. I mean, the conversations always went sort of the
17 same way of how there was a lack of outlets for new ideas, and
18 that we all had ideas of how to improve the learning for
19 students, and where could we go to pitch these ideas. And so
20 that's what we -- that was the topic that we often talked about
21 in terms of creativity in the workplace.

22 Q Okay. Did you have any conversations about any other
23 workplace issues with Mr. Duane?

24 A Yes.

25 Q Do you recall when?

- 1 A Sometime during the five months.
- 2 Q Okay.
- 3 A I mean --
- 4 Q Was this conversation just between you and Mr. Duane?
- 5 A Yes.
- 6 Q Okay. Where were you when this conversation occurred?
- 7 A Can you go back -- so other conversations --
- 8 Q Yes. Other conversations --
- 9 A -- about other work?
- 10 Q -- or about Mr. Duane's workplace concerns.
- 11 A Okay. You said where?
- 12 Q Where were you when you had this conversation?
- 13 A I guess on the -- going out for lunch, maybe off --
- 14 outside of the office.
- 15 Q Okay. Do you recall how the conversation started?
- 16 A "How" -- you know, "How are things? How are you doing?"
- 17 Q Okay.
- 18 A Like you know, "What's on your mind?"
- 19 Q Okay. And what was said in response?
- 20 A Scott was worried about making sure that I didn't tell, or
- 21 like other people didn't know about his health conditions, and
- 22 wanted to make sure that I didn't tell anyone else.
- 23 Q Okay. And did you respond to that?
- 24 A Yes.
- 25 Q And what did you say?

1 A "But of course I won't tell anyone."

2 Q Okay. And what did he say in response?

3 A In response he said, like his reason for his concern was
4 that he didn't want the wrong people to find out because he was
5 planning to have an operation, and was afraid that HR, or
6 whoever, wasn't going to approve of his future leave.

7 Q Okay.

8 A Sick leave.

9 Q Did he respond? I'm sorry, did you respond to his
10 concerns?

11 MR. WILSON: Objection Your Honor. I'm going to renew my
12 objection now. This is -- we're in a topic of concern about
13 privacy of his surgical appointments, and concerns about
14 confidentiality of his health issues, to the extent there were
15 health issues. That's irrelevant to this case. And again,
16 we're -- the questions that are being asked, they're about
17 conversations outside the workplace at -- like literally
18 outside the workplace, not in the presence of management, and
19 they -- to the extent that they're going to cover ground that
20 Mr. Duane has covered, it's cumulative. But more to the point,
21 it's completely irrelevant to advancing the counsel -- the
22 general counsel's protected concerted activity case.

23 MS. VIX: Your Honor, I offer this testimony to provide
24 context about the Glassdoor post, and concerns that had been
25 raised not just by Mr. Duane, but had been discussed with

1 coworkers.

2 MR. WILSON: Okay. Your Honor, Ms. Wu did not -- stopped
3 working at IXL six months before that posting. And we've
4 already had ample testimony about what the motivation was. Why
5 Mr. Duane, on December 30th, posted a review of Glassdoor.
6 Again, this is just -- it's irrelevant about what they talked
7 about off site about his concerns about confidentiality of his
8 health status.

9 JUDGE ETCHINGHAM: All right. I'm going to sustain the
10 objection. Let's move forward.

11 Q BY MS. VIX: Ms. Wu, do you know what Glassdoor.com is?

12 A Yes.

13 Q What is it?

14 A It's a website where people can leave reviews for
15 different companies and employers.

16 Q Had you looked at Glassdoor in 2013?

17 A Yes.

18 Q And why were you looking at Glassdoor in 2013?

19 A I was looking at Glassdoor to look at IXL's reviews to see
20 what their interview process was like.

21 Q Okay. Did you --

22 A Because I was ab out to --

23 Q -- look at other companies on Glassdoor.com?

24 A Yes.

25 Q Okay. Once you were hired by IXL, did you look at

1 Glassdoor.com again?

2 A Yes.

3 Q Did you look at Glassdoor.com's -- the review on that site
4 that were related to IXL?

5 A Yes.

6 Q Did IXL managers or human resources staff ever communicate
7 with you about Glassdoor?

8 A Yes.

9 Q Was that communication in writing, or was it verbal?

10 A In writing, through e-mail.

11 MS. VIX: Permission to approach the witness.

12 JUDGE ETCHINGHAM: Yes.

13 MS. VIX: I'm showing the witness what's been marked as
14 General Counsel's 12.

15 Q BY MS. VIX: Do you recognize this document?

16 A Yes.

17 Q Looking at the "From Maricela Prado," who is Maricela
18 Prado?

19 A She was an HR person.

20 Q Okay. And the bcc colon, do you see your name on this
21 list?

22 A Yes.

23 Q And did you receive this e-mail on or about February 24,
24 2014?

25 A Yes.

1 Q Do you still have access to the e-mail address that this
2 was sent to?

3 A No.

4 Q And why not?

5 A It was deactivated when I quit.

6 Q Okay.

7 MS. VIX: Your Honor, I'd like to move this document into
8 evidence.

9 JUDGE ETCHINGHAM: Any objection?

10 MR. WILSON: Just a voir dire, Your Honor.

11 JUDGE ETCHINGHAM: Okay.

12 **VOIR DIRE EXAMINATION**

13 Q BY MR. WILSON: Ms. Wu --

14 A Yes.

15 Q -- where the document says bcc, right above it it says,
16 "Two undisclosed recipients."

17 A Yes.

18 Q Okay. When you received this e-mail did you -- were you
19 able to see all of the other recipients' addresses on there?

20 A I don't believe so, no.

21 Q And you recall sitting here today that you actually got
22 this?

23 A Yes.

24 Q Okay.

25 MR. WILSON: No, I have no objection.

1 JUDGE ETCHINGHAM: All right. Without objection we'll
2 admit General Counsel's 12 at his time.

3 **(General Counsel Exhibit Number 12 Received into Evidence)**

4 **DIRECT EXAMINATION (CONTINUED)**

5 Q BY MS. VIX: After you received this e-mail, what did you
6 do?

7 A I did not do anything for about a week.

8 Q After about a week what did you do?

9 A I went onto Glassdoor to see if anyone else had posted a
10 review of IXL.

11 Q Did you post your review --

12 A No.

13 Q -- of IXL?

14 A No.

15 Q Okay.

16 MS. VIX: Nothing further, Your Honor.

17 JUDGE ETCHINGHAM: Anything in Cross?

18 MR. WILSON: Yes.

19 **CROSS-EXAMINATION**

20 Q BY MR. WILSON: Ms. Wu --

21 A Yes.

22 Q -- hi. My name is Jeff Wilson. I represent IXL. I'll
23 just ask you a couple of questions. The e-mail that you
24 received that's marked as Exhibit 12, sitting in front of you -
25 -

1 A Uh-huh.

2 Q -- did you discuss verbally this request from Maricela
3 Prado with her?

4 A No.

5 Q Okay. Did Maricela Prado criticize or discipline you in
6 any way for not having posted anything?

7 A No.

8 Q Did you -- when you looked at IXL's Glassdoor posts, or
9 Glassdoor reviews in 2013, it was as a nonemployee, right?

10 A Yes.

11 Q Okay. And you have looked at Glassdoor for other job
12 hunts that you were on, right?

13 A Yes.

14 Q Okay. When you reviewed Glassdoor -- IXL Glassdoor
15 reviews in 2013, were you able to determine the identity of
16 anybody who posted on it?

17 A No. Because I didn't work for them yet, so I didn't know
18 anyone.

19 Q I'm sorry?

20 A Because I didn't work them yet, so I didn't know anyone.

21 Q Okay. Do you know when you looked at it to look at their
22 hiring process did you look at actual reviews of the company?

23 A Back in 2013?

24 Q Yes.

25 A No. I only looked at the interview process.

1 Q Do you know if that's --

2 A Things --

3 Q -- I'm talking about --

4 A -- posts.

5 Q -- information that IXL placed on there in a promotional
6 section for what their interview process is like?

7 A No. It was other people who have interviewed with IXL
8 also posting their experiences.

9 Q Okay. So the -- so you did -- you were -- you looked at
10 reviews from people about their experience interviewing?

11 A Yes.

12 Q I see. When you did that, were you able to identify, or
13 could you tell who it was who actually posted any of those
14 interview reviews?

15 A No.

16 Q Okay. Did you see any type of box that you could check on
17 whether or not something was helpful or not?

18 A I don't recall.

19 Q Okay.

20 MR. WILSON: Just a second.

21 Q BY MR. WILSON: Ms. Wu, how did you come to be here today
22 as a witness?

23 A I believe it's because I remembered getting this e-mail.

24 Q Okay. Did you receive a subpoena to be here?

25 A Yes. I guess that's how I came to be here.

1 Q And did you talk with Scott about this proceeding, and
2 your testimony?

3 A Yes.

4 Q When was that?

5 A Ages ago. Months ago. Months ago. I'm trying to
6 remember. I don't remember.

7 Q You don't remember?

8 A I mean I could probably try to date it if I ask some
9 questions to Scott. I don't know.

10 Q Yeah. You can't do that.

11 A Okay.

12 Q Okay? Did you do anything to prepare -- help yourself
13 prepare, or provide testimony today?

14 A Well yes. Like meeting with -- now I'm forgetting your
15 name.

16 Q Ms. Vix?

17 A Yes. Meeting with her like on Tuesday to go over this.

18 Q Okay. You mentioned that it was an e-mail. You're here
19 because of an e-mail. What e-mail are you talking about?

20 A This e-mail Exhibit 12, I guess.

21 Q Oh, I see. Did you review any other documents to help
22 yourself prepare for giving this testimony?

23 A No.

24 Q And did you speak at any time in the last week or two with
25 Scott about what's going on, and your testimony?

1 A No. Well I texted him asking if we could meet up before
2 this to just catch up and talk about any of this, but we never
3 ended up doing -- meeting up.

4 Q Okay. You are friends with Scott?

5 A Yes.

6 Q You were friends with Scott while you were working there?

7 A Yes.

8 Q You were friends with Scott after you left IXL?

9 A Yes.

10 Q And do you know whether or not Scott was terminated from
11 his job?

12 A Yes.

13 Q You do?

14 A Yes.

15 Q Did you offer Scott -- or did you offer to Scott to help
16 in this proceeding by being a witness?

17 A Yes.

18 Q Okay.

19 A Well we talked about his termination, and I -- during that
20 discussion I recalled having this e-mail because it was
21 relevant to Glassdoor. And then he asked if I was willing to
22 make a statement for this case, which is how I ended up.

23 Q And did you --

24 A -- becoming a --

25 Q -- make a statement for this case?

1 A -- yes. That I remembered receiving this e-mail.

2 Q Did you provide an affidavit to --

3 A Yes.

4 Q -- to the General Counsel, or to Ms. Vix?

5 A Yes.

6 Q Okay.

7 MR. WILSON: Your Honor, I'd like to ask to see that
8 affidavit.

9 MS. VIX: Sure.

10 MR. WILSON: I don't need any time.

11 JUDGE ETCHINGHAM: Huh?

12 MR. WILSON: I don't need any break.

13 JUDGE ETCHINGHAM: Good. How long is it?

14 MS. VIX: One-and-a-half pages.

15 MR. WILSON: That's why I said --

16 MS. VIX: Maybe one.

17 Q BY MR. WILSON: Okay. I notice in your affidavit you say
18 you cannot say for certain if you read the IXL reviews on
19 Glassdoor.com while -- when you worked at IXL. Is that -- was
20 that accurate when you wrote this affidavit in July?

21 A Yeah.

22 Q Is that a yes?

23 A Yes.

24 Q Okay. So when you say you reviewed -- today when you said
25 you reviewed reviews of IXL while you were an employee there --

1 A Uh-huh.

2 Q -- how do you know -- why is that different than what you
3 said about whether you are not sure? That you're not certain
4 -- you cannot say for certain if you did so.

5 A Right. So back in July I couldn't really recall if I had
6 gone on Glassdoor at -- you know, while I worked there. But
7 then through working through different questions, like specific
8 -- I -- it was unclear when it was first -- when the question
9 was first asked to me. And then this week it was more specific
10 saying like, did I go to the site while I was an employee. It
11 was asked more specifically this week that I could say that,
12 yeah, after I received this e-mail, I didn't do anything with
13 that e-mail. Or I didn't post a review. But I did go on
14 afterwards, because I was curious to see if anyone else did.
15 But I didn't -- so I just went on to see for that. I wasn't
16 looking for information for me as an employee. I was looking
17 as like a curious person. Like, oh, who followed up on this e-
18 mail?

19 Q Okay.

20 A I don't know if that makes sense.

21 Q When you say Glassdoor is like the Yelp.com of
22 employers --

23 A Yeah.

24 Q -- would you agree that the -- as far as you're concerned,
25 the primary use of Glassdoor is for job seekers to see -- to

1 take a look through the Glassdoor, so to speak, and see the
2 company, what it's like, before going to work there?

3 A Yes. But also I think it's useful for current employees.
4 Not just job seekers. But it's very useful for job seekers.

5 Q And Scott told you that he believed he was terminated for
6 posting to Glassdoor about IXL?

7 A Yes.

8 Q And he didn't tell you any other reason why he thought he
9 was terminated, right?

10 A That was the primary reason.

11 Q Well did he --

12 A I mean --

13 Q -- did he mention any other reasons?

14 MS. VIX: Your Honor, I object as to relevance.

15 MR. WILSON: I'll --

16 MS. VIX: What he told the witness after his
17 termination --

18 MR. WILSON: -- sure, I'll --

19 MS. VIX: -- is irrelevant.

20 MR. WILSON: -- let me make it a little bit more specific.

21 Q BY MR. WILSON: In your affidavit you say one thing about
22 that. You say, quote, he told me of his termination meeting,
23 and it was his belief -- it was Scott's belief that he was
24 terminated for posting to Glassdoor.com about IXL. That's your
25 affidavit.

1 A Yes.

2 Q I'm asking you know, did he -- he didn't tell you about
3 any other reason he thought he was --

4 MS. VIX: Your Honor, I --

5 Q BY MR. WILSON: -- fired, right?

6 MS. VIX: -- I object as to relevance. Anything he said
7 to the witness after his termination is irrelevant.

8 MR. WILSON: It goes to credibility, Judge. How he
9 described the reason for his termination the day of, or shortly
10 after, and how he's describing it now 11 months later --

11 JUDGE ETCHINGHAM: I'll overrule it. You can answer.

12 THE WITNESS: Can you ask it again?

13 Q BY MR. WILSON: Sure. I'm asking you that -- to -- do you
14 agree that Scott did not tell you he was fired for any other
15 reason, other than that he had posted on Glassdoor?

16 A That was the main reason that we talked about.

17 Q Okay. I'm asking you if he said any other reason.

18 A I mean, I guess there was -- we speculated in conversation
19 what else it could have been. But you know, like tossing
20 around ideas. But I think that was the focus of our
21 conversation of his termination.

22 Q Okay. And just to be sure, you didn't mention anything
23 else other than the Glassdoor in your affidavit?

24 A Yes.

25 Q Okay. That's yes?

1 A Yes.

2 Q Okay.

3 MR. WILSON: I have no other questions.

4 JUDGE ETCHINGHAM: Any redirect?

5 MS. VIX: Just a few questions.

6 **REDIRECT EXAMINATION**

7 Q BY MS. VIX: At the time that you gave your affidavit, did
8 you have, or were you presented with General Counsel Exhibit
9 12, the one in front of you?

10 A No.

11 Q So at the time that you made your affidavit, did you know
12 the date of Ms. Prado's e-mail?

13 A No.

14 Q So when you gave your affidavit testimony, and you're
15 referring to the e-mail, you were not aware of the date of her
16 e-mail?

17 A No.

18 Q So it could have come days or weeks prior to the time that
19 you quit?

20 MR. WILSON: Objection. Leading.

21 THE WITNESS: Yes. Oh, I'm sorry.

22 MR. WILSON: I object to the leading.

23 JUDGE ETCHINGHAM: To be noted.

24 Q BY MS. VIX: Could the e-mail have been sent to you prior
25 -- it was sent to you prior to the time that you quit?

1 A Yes.

2 Q But at the time you gave your affidavit, you had no idea
3 at what time you had received that e-mail?

4 A No.

5 Q Okay.

6 MS. VIX: Nothing further, Your Honor.

7 MR. WILSON: No further questions.

8 JUDGE ETCHINGHAM: All right. Thank you, ma'am. You're
9 excused. Do you understand you're not to tell anybody, you
10 know, what you testified to today until we're done with this
11 trial, which we think will be either later today or tomorrow?

12 THE WITNESS: Yes.

13 JUDGE ETCHINGHAM: Thank you.

14 THE WITNESS: Thank you.

15 JUDGE ETCHINGHAM: Have a good evening.

16 THE WITNESS: Thanks. You too.

17 JUDGE ETCHINGHAM: All right. Who would you like to call
18 next?

19 MS. VIX: Nothing further at this time, Your Honor.

20 JUDGE ETCHINGHAM: All right. So General Counsel is
21 resting?

22 MS. VIX: Subject to rebuttal.

23 JUDGE ETCHINGHAM: And the fixing of Exhibit 11?

24 MS. VIX: May I take care of that during a break, Your
25 Honor?

1 JUDGE ETCHINGHAM: Sure. What is your pleasure, Mr.
2 Wilson? We're moving over to your side. Do you want to get
3 right into it? Do you want to work on Exhibit 11 with Ms. Vix?

4 MR. WILSON: If I could have a few minutes? So that we
5 can work on Exhibit 11 after tonight. I assume Mr. Keyes is
6 here.

7 JUDGE ETCHINGHAM: Uh-huh.

8 MR. WILSON: We just need a break to --

9 JUDGE ETCHINGHAM: Sure.

10 MR. WILSON: -- like drink something, and --

11 JUDGE ETCHINGHAM: How much do you need? Do you want a
12 five or 10?

13 MR. WILSON: Ten.

14 JUDGE ETCHINGHAM: All right. Let's come back at 2:50,
15 and we'll start with Mr. Keyes.

16 MR. WILSON: Thank you.

17 JUDGE ETCHINGHAM: Sure.

18 (Off the record at 2:43 p.m.)

19 MR. WILSON: Your Honor, I'd like -- I want to go on the
20 record and make a motion before putting on our case.

21 JUDGE ETCHINGHAM: Okay.

22 MR. WILSON: Can I go --

23 JUDGE ETCHINGHAM: Let's go back on the record.

24 MR. WILSON: Your Honor, the Employer moves at this time
25 for summary judgment motion, and to dismiss this complaint

1 based on the undisputed fact that whether or not any activity
2 engaged in by the Charging Party can be considered concerted,
3 it is again undisputed that the Employer had no knowledge of
4 any concertedness at any point in time.

5 And there -- the Glassdoor.com post itself, on its face,
6 reflects no indication that it is a concerted complaint, that
7 it arises from concerted group action, or that it's involving
8 more than one person raising individual complaints about his
9 treatment and his leave. And there -- so an indispensable
10 element of the General Counsel's case, which is knowledge of
11 concerted activity, is missing. And having rested, there --
12 without having established that indispensable element -- there
13 cannot be a violation of § 8.

14 And so for that reason, it's the Employer's position that
15 this case should be dismissed with the General Counsel having
16 rested.

17 JUDGE ETCHINGHAM: All right. Ms. Vix?

18 MS. VIX: May I take a moment, Your Honor, to consult with
19 the regional management?

20 JUDGE ETCHINGHAM: Sure.

21 MS. VIX: Thank you.

22 JUDGE ETCHINGHAM: Let's -- how much is a moment?

23 MS. VIX: I think I would need 10 minutes, presuming I can
24 reach management.

25 JUDGE ETCHINGHAM: All right. Let's do that. We'll go

1 off the record, and come back at 3:05. And that'll give you a
2 chance to talk with your witness, Mr. Wilson.

3 (Off the record at 2:55 p.m.)

4 JUDGE ETCHINGHAM: All right. Let's go back on the
5 record. All right, when we last broke there had been a motion
6 made by Respondent's counsel to dismiss this action based on
7 there being no sufficient -- insufficient evidence to prove
8 concerted activity. And so Ms. Vix, what's your response to
9 that?

10 MS. VIX: Your Honor, General -- counsel for the General
11 Counsel opposes the motion. We have -- agree, I believe, that
12 Mr. Mishkin -- I'm sorry, Mr. Duane was terminated for his post
13 on Glassdoor.com. It's the General Counsel's position that
14 that post is protected concerted activity. We have several
15 theories, which I can list for you now. One is the post is
16 inherently concerted.

17 The second is that cases falling under the paraxial case
18 of board decision prevent the termination of employees when
19 it's -- the termination is a preemptive strike to prevent
20 future concerted action. And third, there was testimony, and
21 undisputed testimony that Respondent told Mr. Duane that he was
22 terminated for not following a work rule, which was that he
23 needed to complain to a manager first before going to
24 Glassdoor.

25 These are not our exclusive list of theories of this case,

1 but those are the three that I could put forward at this time.

2 JUDGE ETCHINGHAM: Mr. Marek, do you want to add anything?

3 MR. MAREK: I would just add that if I understood

4 Respondent's argument, it's that the posting was for the sole

5 benefit of Mr. Duane, as opposed to part of a concerted

6 activity. I think that the evidence that's been given today

7 shows that's certainly not the case. That it was after Mr.

8 Duane raised these issues with Mr. Keyes, and Mr. Keyes said in

9 large part he would address those issues, that Mr. Duane still

10 would have made that post.

11 I think there's an obvious -- there's an obvious argument

12 there. That if the purpose was solely to promote his own

13 issues, those have largely been achieved in that discussion

14 with Mr. Keyes, and the only reason that he would have posted

15 on the site would be to speak to the larger audience.

16 I think particularly when you see that this is a company

17 that has told other employees to go to Glassdoor, it just

18 doesn't make -- the argument their making doesn't make sense

19 that this would be part of an action that was limited only to

20 Mr. Duane. It just seems so apparent that this is something

21 larger than that.

22 I also think if you look at the language of the post, that

23 the language on that post is not language limited to the draft

24 there. It's often in the second person. It's referring to

25 other people. And so far as reasons, I think that post is not

1 just about Mr. Duane, but it's obviously in reference to how
2 the company has been treating other people as well.

3 JUDGE ETCHINGHAM: And the aspect about the argument that
4 management didn't know, what I'm hearing is that we have
5 concerted activity here. But I'm not hearing how management
6 heard of it, or knew of it.

7 MS. VIX: The -- well, Your Honor, I believe that there is
8 both an inference that there was knowledge based on the open
9 doors of managers during -- which they may have heard these
10 conversations between coworkers about concerns that they had
11 about the workplace. But more importantly, or in addition, our
12 argument is that the post itself is protected concerted
13 activity. That the employer became aware of the post, and
14 linked it to Mr. Duane, and fired him because of it.

15 JUDGE ETCHINGHAM: All right. Mr. Wilson, any response?

16 MR. WILSON: Your Honor, there is no such thing as
17 inherently concerted. There is a broadening of the thought
18 concept, and the coverage of mutual aid or protection. And
19 Fresh and Easy is a recent -- Fresh and Easy Marketplace is a
20 recent case that certainly enlarges the scope of mutual aid or
21 protection. And the argument as I understand it is that it
22 brings within it a complaint or activity related to a claim of
23 discrimination, or a violation of a federal employment statute
24 in that that inherently is for the purpose of mutual aid or
25 protection. And that's a step -- that's one step removed from

1 what I'm talking about.

2 And what I'm talking about is whether or not the post is
3 -- that Glassdoor post on December 30 -- is concerted in any
4 way. There's no mention in that post, you can look at -- you
5 know I've read it. I've read it many, many times. There's
6 nothing that would put an employer on notice that this was a
7 group complaint, that this was arising from any group
8 complaint, or it was -- or intended to initiate group action.

9 This was aimed at job seekers saying this is -- the post
10 says what it says. It's an anonymous post, and it is does not
11 reflect, as I asked Mr. Duane, any reference to we or the
12 employees here believe this. This was made at a time when the
13 Charging Party was upset about his treatment on his specific
14 work -- remote work plan, and the way that his sick leave was
15 handled. That sick leave issue that he had, without commenting
16 on whether we think it is legitimate or credible at all, that
17 isn't mentioned. That isn't -- those concerns aren't mentioned
18 in this post.

19 And you can't -- nothing about, absolutely nothing about
20 Glassdoor converts an otherwise unconcerted activity into
21 concerted activity by being posted there. Unlike cases, very
22 recent cases, that have addressed Facebook, and Twitter, and
23 LinkedIn where there is a watercooler type nature that is a
24 part of the Facebook, especially. And people can like with
25 their name, and you can see that employees are liking each

1 other's comments, or responding to each other's comments. And
2 employers who take action against an employee who has posted a
3 negative comment that other employees have shared in, or like,
4 or commented on, that the board has found that that as a
5 concerned quality.

6 Here that's missing. And so the charge here is -- I'm
7 sorry, the complaint here is that he was fired for having
8 placed that Glassdoor post on Glassdoor on the 30th, and it was
9 amended to say and for violating a policy that he wasn't
10 allowed to do something. Those are the two charges. It's not
11 -- or those are the two complaint allegations.

12 The complaint allegation is not that the charging party
13 engaged in all of these concerted discussions and the employer
14 knew about it and fired him for it. In fact that is the
15 wildest speculation that anyone in management might have heard
16 something because of where they discussed it, even though the
17 Charging Party was asked thoroughly about it.

18 So leaving that aside, the question is the two charge --
19 complaint allegations here, was there anything inherent about
20 that Glassdoor post that is concerted, and was there a policy
21 that violates Section 7 rights, or interferes with Section 7
22 rights? And the Charging Party admitted there is no policy.
23 The only thing that that's based on is Mr. Mishkin -- according
24 to the Charging Party -- Mr. Mishkin's statement that he
25 thought he should have brought generalized concerns like that

1 to his manager instead of going out in public in an anonymous
2 post, and attacking the company.

3 That's not a policy. He's stating his belief. So there's
4 no policy, there's no concertedness here, and without it, you
5 don't get to the next prong of PCA about whether this was
6 protected mutual aid and protection. They're lacking
7 concertedness here, and they're -- and even if they have
8 concertedness somewhere in that record there's absolutely no
9 knowledge by -- on the part of any management employee of IXL
10 that any of this was concerted. And without it, this case
11 should be over.

12 JUDGE ETCHINGHAM: All right. Well I'm going to deny the
13 motion just because I think it is a closer call than what
14 you're representing. This is a changing area of the law, and
15 I'd like the chance to, I think review the paraxial case and
16 some of the cases mentioned. So I think it's more efficient to
17 just finish. I understand it's a little bit more time and
18 money to do that, but I think in the long run, that's the
19 better way to proceed rather than having to come back if I turn
20 out to wrong by granting motion now.

21 And that way we've got a full record, you'll be able to
22 brief it just as much, even more thoroughly, and you know,
23 there's parts of what you're saying I do agree with. So I
24 think it's a tough case for the General Counsel at this time,
25 but I think I need to side on the error of just finishing the

1 trial. So --

2 MR. WILSON: Thank you, Judge.

3 JUDGE ETCHINGHAM: -- with that, who would you like to
4 call as your first witness?

5 MR. WILSON: David Keyes.

6 JUDGE ETCHINGHAM: All right. Mr. Keyes, please have a
7 seat up here. Make yourself as comfortable as you can.

8 Whereupon,

9 **DAVID KEYES**

10 having been duly sworn, was called as a witness herein and was
11 examined and testified as follows:

12 JUDGE ETCHINGHAM: If you could please state your name and
13 spell it for the record.

14 THE WITNESS: My name is David Keyes, last name is K-E-Y-
15 E-S.

16 JUDGE ETCHINGHAM: All right, Mr. Wilson.

17 **DIRECT EXAMINATION**

18 Q BY MR. WILSON: Mr. Keyes, what is your current position?

19 A Program manager.

20 Q With the company of?

21 A Program manager at IXL.

22 Q Thank you. How many employees are at IXL today?

23 A Between 2 and 300.

24 Q How many employees were employed at IXL on January 8,
25 2015?

1 A Probably around 200.

2 Q Okay. How many employees -- are you a supervisor of any
3 employee?

4 A Yes.

5 Q Okay. In January -- December, 2014, and January 2015, how
6 many employees were you supervising at that point in time?

7 A I think six.

8 Q Is there an area of specialty, or area -- a subject area
9 that you oversee in your role as program manager?

10 A Yeah, the math content.

11 Q And briefly for the record please describe what it is that
12 that means. Math content and what your employees, and your
13 team, and you provide.

14 A So our site is an educational practice site, so there are
15 lots of questions, lots of math questions, as well as some
16 other subjects. And so it was my job to manage the team of
17 employees who wrote the designs for those questions, and the
18 explanations that come along with it.

19 Q Who is the audience for IXL's practice questions and --

20 A Kindergarten --

21 Q -- problems.

22 A -- Kindergarteners through 12 graders.

23 Q Are there other subject areas that are covered by IXL's
24 practice questions, and services?

25 A Yes. Language arts is out, and then science and social

1 studies is out in a week or two.

2 Q Okay. So for your purposes, you oversee only the math --

3 A Yeah.

4 Q -- component?

5 A Uh-huh.

6 Q All right. And you know Adrian Scott Duane?

7 A Uh-huh. Yes.

8 MS. VIX: Please say yes.

9 THE WITNESS: Sorry.

10 MR. WILSON: Sorry, yes. Just so it -- we'll correct you.

11 THE WITNESS: Absolutely.

12 MR. WILSON: Okay.

13 THE WITNESS: Yeah.

14 Q BY MR. WILSON: And how do you know Mr. Duane?

15 A He was hired as a product analyst when I was at the
16 company also as a product analyst, and I supervised him for a
17 year.

18 Q When did you become his supervisor?

19 A January 2014.

20 Q Who was your supervisor during the period of time, January
21 2014 until January 2015?

22 A Mine was Kate Madison.

23 Q Okay. What is Kate Madison's position?

24 A Director of products.

25 Q Okay. So she's direct your report? Or you directly

1 report to her?

2 A Yes.

3 Q Okay. Do you -- and Paul Mishkin is the CEO?

4 A Yes.

5 Q And does Kate directly report to him, or do you know?

6 A No. I don't think so. I think Kate reports to Joe Kent,
7 who's the --

8 Q Thank you.

9 A -- director of engineering, or VP of engineer.

10 Q Okay. So without putting in any org charts, just
11 generally speaking, you are a manager and the hierarchy, at
12 least for those people, would be Mr. Mishkin, Mr. Kent, Ms.
13 Madison, and you?

14 A Yes.

15 Q Okay. And I understand there are other managers
16 obviously.

17 A Sure.

18 Q Okay. Did you -- in spring and summer of 2014, were there
19 occasions when you permitted employees on your team to work
20 remotely on occasion?

21 A Yes.

22 Q Is there a policy at IXL for who gets to work remotely,
23 who doesn't, and how much, and how little?

24 A It's up to the manager's discretion.

25 Q And is that -- was that the case for the entire period of

1 time from when you were the program manager in the start of
2 2014 until the end of Mr. Scott's -- Mr. Duane's employment?

3 A Yes.

4 Q Okay. Do you recall any times when Mr. Duane was
5 permitted to work remotely at home?

6 A Yes.

7 Q Mr. Duane testified about the amount of -- or the nature
8 of working on these problems, and that they could be worked on
9 pretty much at home or at the office. What is your view on
10 where you need to be to do the work of a product analyst?

11 MS. VIX: Your Honor, I would just object to the
12 introductory sentence to the question. If he could rephrase
13 the question to just not reference the testimony of the
14 witness, Mr. Duane.

15 MR. WILSON: I'm entitled to ask him -- I'm entitled to
16 ask him to evaluate, or rebut, or agree with what has been
17 asked by another witness.

18 JUDGE ETCHINGHAM: Okay. I'm going to overrule it. He
19 can answer.

20 THE WITNESS: Most of it can be done remotely. The only
21 issue is testing all of the devices. But everything else, if
22 you have a strong internet connection, yeah.

23 Q BY MR. WILSON: Where is your office at IXL in relation to
24 the members of your team in 2014?

25 A It's about 40 feet away. So there's like 24 cubicles in a

1 long stretch. The math team is kind of near like one end of
2 it, and then my office is on the office end.

3 Q Do you have an office with a door or a cubicle?

4 A Door.

5 Q Do you know who Isadora Milin is?

6 A Yes.

7 Q And who is that?

8 A She is a senior product analyst at IXL. She started
9 approximately October 2012.

10 Q Okay. Is she a member of your team?

11 A Yes.

12 Q Has there been any point in time when Ms. Milin was a
13 manager at IXL?

14 A Yeah. She managed Nemo Curiel and Jessica Morse starting
15 whenever Nemo started, which I'm not 100 percent sure on the
16 date. But it was sometime in the summer of 2013. It was close
17 to when Scott started. And then she stopped managing Jessica
18 Morse summer, July of about 2014.

19 Q So when Ms. Milin stopped managing Jessica in July 2014,
20 did she manage anybody else after that?

21 A No.

22 Q When -- was that the last time she was in a management
23 position?

24 A Yes.

25 Q Was she a manager at any time between August 2014 and

1 January 2015?

2 A No.

3 Q Okay. Did there ever come a time when Mr. Duane advised
4 you that he was going to need an extended medical leave of
5 absence for any reason?

6 A Yes.

7 Q When was that?

8 A July or August 2014.

9 Q Do you recall what it was that he was going to need -- how
10 much time and when he would need off?

11 A Yeah. He said he was having surgery and would need
12 approximately two months off in the fall.

13 Q What is your -- what was your role as a program manager in
14 the process of reviewing, approving, denying such a leave
15 request?

16 A It was my job to approve it or deny it. I approved it.

17 Q Was there any interaction that you had with HR
18 specifically in 2014 in evaluating whether you were going to
19 approve medical leave?

20 A In evaluating it? No. I just approved it.

21 Q Is there -- well, in this case we've heard of an unlimited
22 sick leave policy. Are you familiar with that?

23 A Yes.

24 Q Can you describe what your -- what the company's sick
25 leave policy was in 2014?

1 A When employees wanted to take a sick day, they would talk
2 -- tell their manager they wanted to take a sick day. And they
3 had unlimited sick days to use.

4 Q Is that paid or unpaid sick days.

5 A It's paid.

6 Q Okay. Was there any requirement, or criteria that they
7 had to meet in order to be able to take that sick leave? I'm
8 sorry, paid sick leave? Sick days, sorry.

9 A I think that if it was more than three days in a row, we'd
10 ask for a doctor's note. But besides that, no.

11 Q Briefly, if you could describe for me the role that Scott
12 -- I'm going to refer to Scott, and you know that I'm talking
13 about Mr. Duane?

14 A Yes.

15 Q Okay. It's just faster. Scott's job involved spec
16 writing?

17 A Yes.

18 Q Okay. Can you describe, and briefly, what that is?

19 A Yes. So like I said, we worked on the math problems. So
20 the way our problems appeared on the site was that an engineer
21 wrote a program that generated them. So the engineer needed a
22 list of specifications from us. Hence the documents that are
23 called specs where we basically say what each problem is going
24 to be about, what the text in that problem is, how students
25 answer it. If they like multiple choice, or type their answer.

1 Things like that.

2 Q Okay. Just for the benefit of the Judge, and for the
3 record to understand, just a typical situation, what -- a math
4 problem, you're talking about a math problem that some student
5 aged K through 12 would actually see on the site, and take as a
6 practice test?

7 A Yeah. They would answer it on the site. We record all of
8 their data and responses, so teacher or parents can see how
9 they're doing.

10 Q Okay. Would -- did Scott write out the actual questions,
11 like a math problem and the explanation for it, or is it --

12 A Yes.

13 Q -- some other -- okay.

14 A Yeah.

15 Q And then that -- in addition to that, was there a testing
16 part of his job?

17 A Yes.

18 Q Okay. Could you just briefly describe what that means?

19 A Well we, you know, write these specs. The engineer writes
20 code, and then the code has to be tested. So we want to make
21 sure that, you know, by the time we release it for the user
22 that there aren't any problems with it. That it works
23 smoothly. And so there's actually -- yeah, so that's why we
24 test.

25 Q And the product analyst performs that function as well?

1 A Yes.

2 Q What is the core function, or core job responsibility, of
3 a product analyst in 2014?

4 A Writing the specs and testing the resulting generators.

5 Q Okay. Was there a period of time in 2014 when Scott had
6 an extended, or more than a day or two period of time, where he
7 worked at home remotely in 2014?

8 A Sorry, can you repeat it?

9 Q Yeah, sorry. In 2014, was there any point in time when
10 Scott had an extended work at home period?

11 A When he was doing his preop appointments, for a while
12 there it was twice a week work from home. Not consecutive
13 days. I believe it was Tuesday, Thursday. Twice a week.

14 Q You mentioned the operation, the surgery, the preop, did
15 you ever ask Mr. Duane what his surgery was?

16 A No.

17 MS. VIX: Your Honor, I object as to relevance.

18 MR. WILSON: Okay. I'll move -- I'll --

19 JUDGE ETCHINGHAM: You'll strike that?

20 MR. WILSON: -- I'll withdraw the question.

21 JUDGE ETCHINGHAM: Okay.

22 Q BY MR. WILSON: At any point in time did you know what his
23 surgery was for?

24 A No.

25 MS. VIX: Again.

1 Q BY MR. WILSON: In 2014, Scott did go on a two month
2 leave?

3 A Yes.

4 Q Okay. And I'm going to ask you about that period of time.
5 Do you -- when do you recall the first point in time was that
6 you talked to him about his return to work?

7 A When he e-mailed me.

8 Q Okay.

9 A Well, I guess before he left he talked -- we had a
10 ballpark date of end of December. But the actual date wasn't
11 set. So after he left, then it was when he e-mailed me.

12 Q All right. I'm going to show you an exhibit that has been
13 previously marked by the General Counsel as Exhibit 4. I don't
14 know --

15 MR. WILSON: Are they up there?

16 (Counsel confer)

17 THE WITNESS: Is this it?

18 MR. WILSON: Yeah, that's it.

19 Q BY MR. WILSON: Yes, it says number 4?

20 A Yep.

21 Q Okay. Do you --

22 MR. WILSON: Thank you.

23 Q BY MR. WILSON: Do you have in front of you a three page
24 set of e-mails

25 A Yes.

1 Q Okay. I'm going to ask you to look at the last page, and
2 there's a December 19, 2014 e-mail. Do you see that?

3 A Yes.

4 Q Okay. Did you receive that?

5 A Yes.

6 Q Okay. And the next page, page 2, December 22. Did you
7 write that?

8 A The one at the bottom.

9 Q Yes. I'm sorry, December 22, "David Keyes wrote," and
10 then there's --

11 A Oh, yes. I wrote that.

12 Q Okay. I want to ask you about your response pertaining --
13 regarding working remotely. Why did you tell Scott that you
14 preferred that he be in the office for his hours?

15 MR. MAREK: Your Honor, I'm going to object to relevance.
16 But also, I mean, I think the document speaks for itself. But
17 I don't -- I've now heard the argument that they've made. I
18 don't see how this is relevant.

19 JUDGE ETCHINGHAM: That's the relevance, Mr. Wilson?

20 MR. WILSON: I think at the very least the fact that we've
21 been here all day talking about Scott's view that David, Mr.
22 Keyes, denied his requested accommodation, and that it spawned
23 certain things. I can't imagine that it's not relevant to hear
24 Mr. Keyes's side of it. Sorry, Mr. Keyes's side of what
25 happened.

1 MR. MAREK: I don't know why that would make it relevant.
2 I thought the issue here was sort of the more we see what
3 everyone wrote, and as a result of what was written and what
4 occurred the post on Glassdoor was posted. I don't know why
5 going over this now is adding anything to the proceeding at
6 this time.

7 JUDGE ETCHINGHAM: Well it's the Respondent's case in
8 chief, so you may not know what their strategy is. But I agree
9 that since we've gone over it from the Charging Party's point
10 of view, and General Counsel's case in chief, that we can get
11 Mr. --

12 MR. WILSON: Keyes.

13 JUDGE ETCHINGHAM: -- how come it's not Keys?

14 MR. MAREK: It's like eyes with a K.

15 THE WITNESS: He's right.

16 MR. WILSON: Or like Kaiser without the er (sic), right?
17 Or like hypnotize without the hypnot. Replace it with K.

18 JUDGE ETCHINGHAM: All right, I'm overruling the
19 objection. And you may respond.

20 MR. WILSON: I'm doing everything I can.

21 Q BY MR. WILSON: Please, why did you respond this way?

22 A When he was working remotely for his preop days, I had
23 noticed a lack of productivity on those days. And I talked to
24 him about it, and he said that he was so wiped out from the
25 preop appointments that he couldn't manage to work after. And

1 so we came up with a compromise where he would take half sick
2 days on those days so he could focus on his appointments, and
3 work prior to the appointments.

4 So I was concerned if he came back, you know, part time --
5 half day in the office, half day at home for five days a week,
6 you know, I was concerned about the productivity.

7 Q Okay. Regardless of what's in this e-mail chain, was
8 there any point in time when you insisted upon medical
9 documentation for this -- for him to work remotely upon coming
10 back to work?

11 A He, I believe, proposed that he'd get me a doctor's note.
12 And I said, "That would be great." And so he did send me one.

13 Q Okay. Did you ever have any discussions with Scott about
14 the fairness and his view of your response in this e-mail?

15 A After a week -- and he'd been back a week -- I met with
16 him for about an hour. I believe that's the January 6th
17 meeting. He was visibly upset when he came back.

18 Q Well I don't want to --

19 A We don't want to get into that.

20 Q -- no. I just want to know, I asked -- the question was,
21 was there a time that that was discussed? And you --

22 A Yeah. We talked about it on the Tuesday.

23 Q You met with Scott on December 30, the first day back?

24 A Yes. Yeah.

25 Q Was there -- did he voice any complaints about your -- the

1 way that you responded here, or your work at home plan?

2 A No.

3 Q You provided Scott with a work at home, work remotely
4 plan --

5 A Yeah.

6 Q -- is that right?

7 A Yes.

8 Q Okay. Who drafted that plan?

9 A I did.

10 Q And why did you draft that plan?

11 A Well like I said I was concerned about the productivity
12 from -- based on the preop appointments. And he had suggested
13 that we put metrics in place. I thought that was a good idea.
14 So I wrote the plan.

15 Q From the 30th of December --

16 A Uh-huh.

17 Q -- until the January 6 meeting that you were --

18 A Yes.

19 Q -- referred to, did Scott work remotely half days --

20 A Yes.

21 Q -- during that time?

22 A Yes.

23 Q Okay. Do you have any opportunity to see him in the
24 workplace during those half days?

25 A Yes.

1 Q Did you notice -- well, what was his demeanor and attitude
2 during that period of time?

3 A Visibly upset, non-communicative.

4 Q Can you provide me an example of what you mean by
5 non-communicative?

6 A Yeah, yes. We had a team meeting and he wasn't -- he
7 wasn't there, so I went to go get him. He wasn't really late,
8 it was just like a minute. But I went to go get him, and I saw
9 him, passed in the hallway, I said, like, "Hey, like, we're
10 starting the meeting," and he just, like, looked at the ground
11 and, like, didn't even really respond, it was kind of just like
12 a grunt back and then went to the meeting, so --

13 Q Was that unusual or usual for how you interacted with him?

14 A That was pretty unusual.

15 Q Okay. So did you do anything as a result of noticing his
16 visible frustration or being upset?

17 A Well, that's why I called the meeting for January 6th.

18 Q Okay. Where was that meeting?

19 A In my office.

20 Q Who was in attendance at that meeting?

21 A Just myself and Scott.

22 Q Do you have any idea what time of day that was?

23 A Morning.

24 Q You know that Scott -- you know now that Scott has posted
25 -- or had posted something on Glassdoor.com, correct?

1 A Yes, I know that now.

2 Q At the time of your meeting on January 6, were you aware
3 of that post?

4 A No.

5 Q Can you describe what -- did you start the meeting by
6 telling Scott anything about why you were meeting?

7 A Yes. I started the meeting by saying, "You know, I've
8 noticed you've been upset since you came back and is there
9 anything that I can do, we can talk about, that can help?"
10 That's how the meeting was started.

11 Q And did he say anything?

12 A Yeah. He started, you know, talking about -- he said he
13 was really upset at how we handled his sick leave and he knew
14 for a fact that we had discriminated against him and -- and,
15 yeah, I mean, that was the gist of it.

16 Q What was your reaction?

17 A You know, I told him I was really sorry we had to have the
18 conversation, I told him -- like, I tried to explain that I was
19 trying to work with him on the coming back. You know, I just
20 asked if he could -- if we could accommodate him in the office.
21 I didn't know. And then, you know, it definitely seemed like
22 my responses were not adequate, so, you know, I told him I
23 would bring this issue up with higher-ups, HR and Paul.

24 Q Did the two of you discuss anything else at the meeting?

25 A Not that I remember.

1 Q Did he tell you about any other discrimination he felt he
2 had suffered or that any wrongful conduct toward him by
3 anything?

4 A No. It was about the ADA compliance and him coming back
5 from leave.

6 Q After telling him you were going to take this to HR and
7 Paul, did he say anything?

8 A He seemed appreciative that, like, I was taking the steps
9 to do that.

10 Q Were you -- what was your demeanor during the meeting?

11 A I mean, I was upset, but I think, like -- I guess I was
12 trying to be -- to, like, let him know that it wasn't in any
13 way my intention to have him feel that way, so I guess that
14 would be my demeanor.

15 Q Did you show any emotion? Did you cry in that meeting?

16 A I don't think I cried, but I was -- I would say I guess I
17 was emotional, voice wavering a little bit, maybe.

18 Q Why?

19 A Because it's a serious allegation and I -- yeah, it's a
20 serious allegation and I take it seriously and I believed, and
21 still believe, that I did not discriminate against him, and so
22 it upset me that he thought I had.

23 Q Did he talk about any other employees in that meeting?

24 A No.

25 Q Okay. What did you do after the meeting to bring this to

1 others?

2 A I immediately e-mailed Lenore and Maricela, and I think
3 met with them soon afterwards, and we spoke to Paul in that
4 meeting as well.

5 Q What is it that you discussed, to the best of your
6 recollection, about conveying or saying to Maricela and Paul
7 and Lenore?

8 A Yeah, I said -- I gave them a recap of the meeting I had
9 with Scott. You know, I said that he's convinced we've
10 discriminated against him, and at this point, I think it would
11 be best if he spoke to Paul about it and, you know, see if we
12 can resolve it.

13 Q Did Paul say anything?

14 A He said that he would be able to meet with him later that
15 week.

16 Q Anything else come of that?

17 A No, I don't think so.

18 Q So did you have that discussion the day of that meeting
19 with Scott, January 6th?

20 A Yes.

21 Q And I'm talking about this management discussion?

22 A Between Lenore, Maricela, Paul, and myself?

23 Q Right.

24 A Yes.

25 Q Okay.

1 A It was on January 6th.

2 Q Okay. Then the next day did you talk to Scott at all?

3 That would be January 7th.

4 A I don't recall. I probably did.

5 Q Okay. It was a workday?

6 A Yeah.

7 Q Was there a point in time when you learned of any

8 Glassdoor posting placed by Scott?

9 A Yeah. That was on the 7th.

10 Q How did you come to learn that?

11 A Maricela sent an e-mail out, I was on it, saying, like,

12 "Take a look at this post." Yeah.

13 Q Okay. And what was your response when you saw that?

14 A I was --

15 Q And I don't mean reaction internal --

16 A Okay.

17 Q -- response.

18 MS. VIX: Your Honor, if there's a document that captures
19 this communication, it sounded like this communication was done
20 by e-mail, that is the best evidence.

21 MR. WILSON: I gave that to you and --

22 MS. VIX: I'd love to see it if he's going to be
23 testifying to it.

24 MR. WILSON: Okay. I gave it to you so that you could cut
25 and paste out the post.

1 MS. VIX: Oh, was that it?

2 MR. WILSON: Yes.

3 MS. VIX: Oh.

4 MR. WILSON: I probably have more copies. One second.

5 MS. VIX: I wasn't looking at the header.

6 MR. WILSON: Yeah, okay. You're just going to have to
7 live with one less. What are we up to? Respondent's?

8 THE COURT REPORTER: 7, the next one is 8.

9 MR. WILSON: Okay. I'm going to mark as Respondent's
10 Exhibit 8 an e-mail.

11 **(Respondent Exhibit Number 8 Marked for Identification)**

12 Q BY MR. WILSON: Have you seen Respondent's Exhibit 8
13 before?

14 A Yes.

15 Q Is this the e-mail you were referring to?

16 A Yes.

17 Q It's dated January 7 and it has an 11:04 a.m. e-mail --
18 sorry, 11:04 a.m. send time on the e-mail. What is that --
19 does that coincide with what you remember about the time of day
20 you got this?

21 A Yeah.

22 MR. WILSON: I'd move for the admission of R-8.

23 JUDGE ETCHINGHAM: Any objection?

24 MS. VIX: No objection by me, Your Honor.

25 MR. MAREK: No objection.

1 JUDGE ETCHINGHAM: No objection, we'd admit Respondent's
2 Exhibit 8 at this time.

3 **(Respondent Exhibit Number 8 Received into Evidence)**

4 MR. MAREK: I would just ask, I didn't get a copy, if
5 there's an extra copy. I know you said you were one short.
6 Maybe later on, I understand.

7 MR. WILSON: I'll make a copy for you.

8 MR. MAREK: Yeah, yeah.

9 MR. WILSON: Or I'll e-mail it to you.

10 MR. MAREK: I understand.

11 MR. WILSON: I will get you one.

12 Q BY MR. WILSON: Did you have any discussions with Scott
13 about this review after receiving the e-mail from Maricela?

14 A No.

15 Q Do you know whether or not Scott met with Paul after the
16 January 7 e-mail at any point in time?

17 A Yes. He met with him on the 8th.

18 Q Were you at that meeting?

19 A No.

20 Q Did you perform a performance appraisal in 2015 of Scott?

21 A In 2015?

22 Q Yes.

23 A No.

24 MR. MAREK: Did you mean '14?

25 MR. WILSON: No, 2015. One second, please.

1 Q BY MR. WILSON: Taking you back to January 6, after the
2 meeting that you had that morning with Scott --

3 A Uh-huh, yes.

4 Q Okay. Did you -- was there any point in time that day
5 where you saw Scott talking to any other employee outside the
6 offices?

7 A No.

8 Q Okay. Do you know when Jessica Morse was employed at IXL?

9 A I can give approximate dates, yes.

10 Q Please.

11 A End of August, early September 2013 until end of
12 January 2015.

13 Q When did you become -- were you her supervisor at any
14 point in time?

15 A Yes.

16 Q When was it?

17 A End of July or mid July 2014 through the end.

18 Q Did you ever discuss with Scott whether any other employee
19 at IXL supervised by you had been given remote working plans or
20 allowed to work remotely?

21 A Did I discuss that with Scott?

22 Q Yes.

23 A No.

24 Q Okay. Did you ever hire anyone at IXL who was permitted
25 to work remotely 100 percent of the time outside the offices?

1 A Yes.

2 Q Who?

3 A Matthew Bleeker (phonetic).

4 Q When was Matthew Bleeker hired?

5 A When did he accept or when did he start?

6 Q Can you give me both?

7 A I can give you when he started. He started end of
8 January 2015. He accepted early December 2014 or maybe
9 November 2014.

10 Q Do you know when -- at what point in time, to the best of
11 your recollection, did you approve a 100 percent remote working
12 arrangement for Mr. Bleeker?

13 A Before he accepted, because he originally declined the
14 offer and -- because he said he couldn't move.

15 MS. VIX: Your Honor, I'm going to object to these
16 questions as to relevance and other employees work-at-home
17 arrangements with Mr. Keyes.

18 JUDGE ETCHINGHAM: What's the relevance?

19 MR. WILSON: Your Honor, I'm addressing the incidents of
20 -- or actually two people that the Charging Party identified as
21 being permitted to work at home without restrictions unlike the
22 restrictions placed on him, and this was one of them.

23 MS. VIX: Whether or not Mr. Duane was correct in his
24 complaints about the work-at-home arrangements is not relevant
25 to these proceedings.

1 JUDGE ETCHINGHAM: Sustained. Let's move on.

2 Q BY MR. WILSON: Did Scott ever complain to you about
3 creativity being absent from his job?

4 A No.

5 Q Okay. When was the last time you spoke to Scott?

6 A Probably Wednesday, the 7th.

7 MR. WILSON: One second, Your Honor. I think that's it.
8 I just want to check a checklist to make sure I'm covering
9 everything. Okay. No other questions.

10 JUDGE ETCHINGHAM: All right. Cross-examination.

11 **CROSS-EXAMINATION**

12 Q BY MS. VIX: Good morning.

13 A Hi.

14 Q Good afternoon. Wow, sorry about that. My name is Cecily
15 Vix, I'm counsel for the General Counsel. I just have a few
16 questions for you. You testified that you had other employees
17 on your team who worked remotely?

18 A Yes. At which times?

19 Q That's something for you to tell me.

20 A Oh, okay.

21 Q So you had employees that worked remotely sporadically?

22 A Almost all my employees, when they requested a solitary
23 day, unless I had reason not to, I let them work remotely.

24 Q Okay. However, you arranged to have one employee work
25 remotely 100 percent of the time?

1 A Matthew Bleeker, yes.

2 Q And did you also approve a work-at-home or work-remotely
3 plan with employee named Gina Bland?

4 A Oh, yes. She was on a 50 percent -- 50/50 plan, but her
5 first three months were in the office.

6 Q Okay. Does she now work remotely 100 percent of the time?

7 A Yes, she -- she did well and, yeah.

8 Q Did you consult with someone in the company about
9 Mr. Duane's work-at-home or work-remotely request?

10 A To which request are you referring? The initial e-mail?

11 Q The request following his operation, following sometime in
12 December?

13 A Yes. I consulted with Kate Mattison and Maricela and
14 Lenore.

15 Q Okay. And why did you consult with them?

16 A I wanted to make sure that I handled the situation
17 properly.

18 Q Did you also consult with Mr. Mishkin?

19 A No.

20 Q After you talked with Mr. Duane on January 6th, you
21 testified that you spoke with Mr. Mishkin directly about the
22 complaints that Mr. Duane had made?

23 A Uh-huh, yes.

24 Q And then you saw his December 30th Glassdoor post?

25 A On the 7th, yes.

1 Q Did you tell anyone that you thought that Scott had
2 written it?

3 A After I saw it?

4 Q Yes.

5 A Yes.

6 Q You were asked if you believed it was his posting?

7 A That's correct.

8 Q Do you know why Scott was terminated?

9 A For the Glassdoor posting.

10 MS. VIX: Nothing further, Your Honor.

11 MR. MAREK: Your Honor, can I ask a couple questions?

12 JUDGE ETCHINGHAM: Sure.

13 MR. MAREK: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 Q BY MR. MAREK: Can you -- I don't know if you have it in
16 front of you. It's marked as General Counsel Exhibit 4.

17 MR. WILSON: Mr. Marek, can you just introduce who you
18 are?

19 MR. MAREK: Sure. I'm David Marek. I'm Scott's lawyer.

20 THE WITNESS: Hi.

21 MR. WILSON: I appreciate that, thank you.

22 Q BY MR. MAREK: This is the e-mail chain. I think you
23 testified about it. This is the one that starts with the
24 e-mail on Friday, December 19th, that Scott writes to you after
25 the Christmas party.

1 A Yes.

2 Q Do you have that?

3 A I have that, yes.

4 Q Can you turn to the second page of that document? It's
5 bates number 494.

6 A Yes.

7 Q You see that's an e-mail from Scott to you, and he
8 references that he spoke with an employment attorney?

9 A Uh-huh, yes.

10 Q After Scott put you on notice that he had spoken to an
11 attorney, did you notify anyone at HR or legal?

12 A I forwarded this e-mail to Maricela and Lenore, I believe,
13 yes.

14 Q Okay. What did you say to them when you forwarded it to
15 them?

16 A I said, "Here is the e-mail I just got. We should talk
17 about it."

18 Q And then did you talk about it?

19 A Actually, I ended up talking with Paul about it. This is
20 -- this is when Paul first, like, was notified that anything
21 was happening.

22 Q And that was on December 23rd?

23 A Yeah, I may have spoken with Paul the 24th or 25th.

24 Q Okay. If you look at the next page, you respond to Scott
25 on the 24th.

1 A Okay. Then I spoke to Paul on the 24th then.

2 Q And the other two people you spoke to, that's Maricela,
3 and what's the other women's name?

4 A Lenore. I didn't speak to them. I just forwarded the
5 e-mail.

6 Q Okay.

7 A Paul, I spoke with.

8 Q Did you also forward the e-mail to Paul?

9 A I did or Lenore did.

10 Q Does that mean that you actually saw that the e-mail got
11 forwarded to Paul?

12 A Yes.

13 Q And did you guys -- the four of you, was there a
14 discussion on it, the e-mail, at that time?

15 A No. I was -- I was in Los Angeles, so I -- the
16 conversation I had with Paul was one-on-one over the phone.

17 Q Okay. And what did you and he discuss on the 23rd?

18 A He asked me some questions about the situation, like get
19 the background information, and we decided that I would write
20 an e-mail response and send it to him first for review and then
21 I'd send it back to Scott.

22 Q Okay. Was there any discussion where Scott talks about
23 the American with Disabilities Act? Was that discussed with
24 you and Paul?

25 A Not that --

1 MR. WILSON: Objection, Your Honor. I think, at this
2 point, we're veering into the EEOC charge and discovery on that
3 EEOC charge, subject areas that I have been met with objections
4 for requesting any information from any witness on. So I
5 object to Mr. Marek's questions about the ADA claims and
6 discrimination among management.

7 JUDGE ETCHINGHAM: Response?

8 MR. MAREK: I don't have any more questions on that topic
9 so we can move on. I'm just trying to understand what happened
10 in this time period.

11 JUDGE ETCHINGHAM: All right, I'll sustain the objection.
12 Let's move on.

13 Q BY MR. MAREK: Before you sent the e-mail on the 24th, did
14 you ever to get approval from somebody?

15 A I wanted Paul to review it, yes.

16 Q So you sent that to Paul first?

17 A That's correct.

18 Q Did you send it to anyone other than Paul?

19 A No.

20 Q Are you aware if Paul sent it to anybody?

21 A No.

22 Q And so Paul approved -- this is now -- when I say the
23 e-mail on the 24th, that's the first page at the bottom of GC
24 4, correct?

25 A When it says "Thanks for the response"?

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

1 suggestion that that January 7th was the first time we heard
2 discrimination does not appear to be accurate, and I did think
3 I should be able to explore that.

4 JUDGE ETCHINGHAM: Okay, I'm going to overrule the
5 objection and let it go briefly for the reasons you just
6 stated, so --

7 MR. MAREK: Do you know what the last question was?

8 THE COURT REPORTER: Okay, before the objection, the EEOC
9 charge, right?

10 MR. MAREK: Right. Yeah, if you can read the last
11 question before the objection.

12 THE COURT REPORTER: Could you turn to the second page of
13 that document?

14 MR. MAREK: Oh, was that it?

15 JUDGE ETCHINGHAM: I thought it had to do with whether
16 Mr. Mishkin had received any kind of -- if he knew that
17 Mr. Mishkin, any kind of advice before he responded or in
18 preparing the response that became the e-mail.

19 MR. MAREK: I thought so as well.

20 THE COURT REPORTER: Is this the one that starts with the
21 e-mail on Friday, December 19th?

22 MR. WILSON: Can you just ask the question again?

23 THE COURT REPORTER: Scott said that the --

24 MR. MAREK: Yeah, let me -- I can ask it again. That's
25 fine, I'm sorry.

1 Q BY MR. MAREK: So when you had that discussion with
2 Mr. Mishkin and you were in Los Angeles, what was discussed as
3 it pertains to Mr. Duane on that call?

4 A Like I said, Paul wanted to know the background, like he
5 had just been drawn into the situation at this point, so he
6 wanted to know, like -- yeah, the background, Scott went out on
7 leave, he's coming back, those sorts of things.

8 Q What do you remember that you told him?

9 A I said he went out on leave for an operation and he's now
10 coming back and he requested to work half time at home four
11 hours a day, and I responded with -- that I prefer that he be
12 in the office because of the productivity from the pre-op
13 appointments. I gave him the background of the half sick days
14 that we ended up doing for the pre-op appointments. And then I
15 said I would write a response and I would send it to Paul
16 first.

17 Q Okay. And whose idea was it to agree or let Mr. Duane
18 work from home part time?

19 A It was mine.

20 Q And you proposed that to Mr. Mishkin; is that right?

21 A Wait. I'm sorry, to let -- well, no, Scott proposed it to
22 me.

23 Q Right.

24 A I said I'd prefer it to be in the office.

25 Q Right.

1 A He responded with this e-mail saying, "So before I start,
2 I want to let you know I'm writing with the intent,"
3 blah-blah-blah, and then he said that -- I mean, I'm trying to
4 scan it now.

5 Q So you told me that after you received this e-mail on the
6 23rd, that's what led you to e-mail Maricela and Lenore and
7 also have a phone conversation with Paul, correct?

8 A That's correct.

9 Q And then you told me that this e-mail that you wrote on
10 December 24th, you had sent a draft of that to Paul and you got
11 his approval before you sent it, right?

12 A That's correct.

13 Q Am I correct, though, that you spoke to Paul before you
14 even --

15 A Yes.

16 Q -- drafted it?

17 A Yes, that's correct.

18 Q Okay. So in this response on the 24th, am I correct that
19 you then agreed that Mr. Duane could work from home part time,
20 correct?

21 A Yes.

22 Q Was that something that you and Mr. Mishkin discussed on
23 the call?

24 A No. Because I wrote the e-mail, and then I sent it to him
25 and he said, "That sounds fine, let's go with that."

1 Q Okay. Did you and he, Mr. Mishkin, have a discussion
2 about whether you were going to get documentation from his
3 doctor?

4 A I have to remind myself at which point he offered the
5 documentation from the -- oh, okay. So he had already offered
6 it, so then, yeah, yeah, we were going to get it.

7 Q My question is, did you and Mr. Mishkin discuss that?

8 A Oh. I don't know.

9 Q And you said you gave Mr. Mishkin the back story; is that
10 right?

11 A That's right.

12 Q Did he ask you why Mr. Duane had surgery?

13 A No.

14 Q Now, then you see above that, Mr. Duane responds to you on
15 the 24th, correct?

16 A Yes.

17 Q Okay. And then you respond on the 25th. Do you see that?

18 A Yes.

19 Q Okay. Did you forward this e-mail he sent you on the 24th
20 to anybody?

21 A I don't remember. I either forwarded -- like, I either
22 responded and forwarded both, or I forwarded each one
23 individually.

24 Q Okay.

25 A But I was forwarding the e-mails to Paul and Maricela.

1 Q You testified earlier you did not report directly to
2 Mr. Mishkin, right?

3 A No, I don't.

4 Q Who did you report to at that time?

5 A Kate Mattison.

6 Q And you didn't include her on any of this, correct?

7 A That's correct.

8 Q All right. How come you went right to Mr. Mishkin?

9 A I didn't go right to Mr. Mishkin, I went right to Maricela
10 first and then -- and Lenore, and then we decided to loop Paul
11 in.

12 Q But not Ms. Mattison; is that right?

13 A That's correct.

14 Q Why was that decision made?

15 A I don't know.

16 Q Okay. Am I correct that prior to seeing the Glassdoor
17 posting, you were aware that Mr. Duane and some of his
18 colleagues believed that Mr. Mishkin was a micromanager; is
19 that right?

20 A I was not aware.

21 Q You had never heard people make those comments?

22 A No.

23 Q You had weekly one-on-ones with the people in your group;
24 is that right?

25 A That's right.

1 Q And are you familiar with -- we've heard testimony about a
2 video project. Do you know what I'm referring to?

3 A Yes. I used to work on it.

4 Q You did. And was that under your management?

5 A Only for a couple months and then Isidora took over.

6 Q Okay. And you were aware that that got shut down; is that
7 right?

8 A Yes.

9 Q And were you aware that the speculation was that that was
10 shut down by Mr. Mishkin?

11 A Yeah. I mean, I'm -- yeah, Paul decided to cancel it.

12 JUDGE ETCHINGHAM: Speculation doesn't help us here.

13 MR. MAREK: I'm just laying foundation.

14 Q BY MR. MAREK: You understood that -- before I get to who
15 did it, you understood that the people who were involved in the
16 project believed that it was shut down by Mr. Mishkin, right?

17 MR. WILSON: Objection. That is speculation. If you want
18 -- if he wants to ask him what Paul's role was -- I don't know
19 how this is relevant.

20 MR. MAREK: Your Honor, the issue is not what his role
21 was. The issue is whether or not this witness knew -- he had
22 weekly one-on-ones with a group of people who believed that --
23 who were independently having conversations that Mr. Mishkin
24 was a micromanager. The issue here is whether or not this
25 manager knew that these people were all talking about the fact

1 that they believe --

2 JUDGE ETCHINGHAM: Why don't you ask that?

3 MR. MAREK: I'm getting to that.

4 MR. WILSON: He asked him that.

5 MR. MAREK: I'm trying to lay some foundation. That's
6 what I'm getting at.

7 MR. WILSON: Judge, he asked that question specifically
8 and he's answered it and he said no, about micromanaging. Now,
9 if he wants to ask him about video project, that's fine, but
10 you heard him ask "Your people were concerned about him
11 micromanaging," he said, "No, I don't agree with that, I never
12 heard that." But if he wants to ask about anybody complaining
13 about a video project, go ahead, but, you know --

14 MR. MAREK: Well, right now I'm just asking about if he
15 had heard that people believed Mr. Mishkin shut down the video
16 project.

17 THE WITNESS: I hadn't heard that. I don't know about
18 belief, but --

19 JUDGE ETCHINGHAM: I don't want you to guess.

20 THE WITNESS: Okay.

21 JUDGE ETCHINGHAM: So if you have some personal knowledge,
22 you can say.

23 MR. MAREK: Wait, can I make sure my question is clear,
24 Your Honor? I'm not asking -- I'm asking if he heard.

25 Q BY MR. MAREK: I don't want you to guess on anything, I

1 want to know what you heard. Did you hear that that is what
2 the people who were working on the project believed?

3 A Can you ask that one more time?

4 Q Yes. Did you hear --

5 A Did I hear?

6 Q Yes. Did you hear that the people working on the project
7 believed it was shut down by Mr. Mishkin?

8 A No.

9 Q Okay. Did you ever hear anything about why the project
10 was shut down?

11 A Kate mentioned to me that there's an issue with
12 scalability, that it was taking too long to produce, like, one
13 individual video, so how could we ever possibly scale it to the
14 number of skills we have.

15 Q I see. And you testified about Jessica Morse's dates of
16 employment. Do you remember that?

17 A Yes.

18 Q And can you just tell me, what were the dates of her
19 employment, roughly?

20 A End of August, early September 2013 to end of
21 January 2015.

22 Q And do you know why she was fired?

23 MR. WILSON: Objection, irrelevant.

24 JUDGE ETCHINGHAM: What's the relevance of that?

25 MR. MAREK: That I believe that she was fired in

1 connection with Mr. Duane's Glassdoor posting.

2 MR. WILSON: Then make that charge or --

3 JUDGE ETCHINGHAM: What's the relevance to this case?

4 Yeah.

5 MR. WILSON: -- or let's not start another lawsuit, a mini
6 trial in this one.

7 MR. MAREK: I just asked him a question. Why can't we
8 get --

9 MR. WILSON: It's irrelevant and I object.

10 JUDGE ETCHINGHAM: Sustained. Let's move on.

11 MR. MAREK: Okay. That's my last question, Your Honor.
12 Thank you.

13 JUDGE ETCHINGHAM: Okay. Anything on re --

14 MR. WILSON: No.

15 JUDGE ETCHINGHAM: Recross?

16 MS. VIX: No, Your Honor.

17 JUDGE ETCHINGHAM: Recross.

18 MR. WILSON: Redirect.

19 JUDGE ETCHINGHAM: I guess you just stopped, yeah.

20 MR. WILSON: No redirect, Judge.

21 JUDGE ETCHINGHAM: All right. Thank you, sir, you're
22 excused. You understand you're not to speak to anybody about
23 your testimony here until we're done, which, hopefully, is
24 either today or tomorrow?

25 THE WITNESS: Yes.

1 JUDGE ETCHINGHAM: All right, thank you. Have a good
2 evening.

3 THE WITNESS: Thank you.

4 JUDGE ETCHINGHAM: All right. What do you want to do
5 right now? We can power through, finish, and then you don't
6 have to come back tomorrow, or -- I don't know if you have more
7 than one witness or just one. Do you want to take a break and
8 talk about it?

9 MR. WILSON: Five minutes?

10 JUDGE ETCHINGHAM: Sure. Let's come back at 4:30.

11 MR. WILSON: Thank you.

12 JUDGE ETCHINGHAM: Any preference on the other side to the
13 extent they want to power through and finish tonight? Is
14 everybody open to do that?

15 MS. VIX: That would be fine with me, Your Honor.

16 MR. MAREK: That would be great.

17 JUDGE ETCHINGHAM: Yeah. Ms. Court reporter, you able
18 to --

19 THE COURT REPORTER: Sure.

20 (Off the record at 4:26 p.m.)

21 JUDGE ETCHINGHAM: Let's go back on the record.

22 Sir, if you'd raise your right hand.

23 Whereupon,

24 **PAUL MISHKIN**

25 having been duly sworn, was called as a witness herein and was

1 examined and testified as follows:

2 JUDGE ETCHINGHAM: Thank you. If you could please state
3 your name and then spell it for the record.

4 THE WITNESS: My name is Paul Mishkin, M-I-S-H-K-I-N.

5 JUDGE ETCHINGHAM: Thank you. Mr. Wilson?

6 **DIRECT EXAMINATION**

7 Q BY MR. WILSON: Mr. Mishkin, did you found IXL Learning,
8 Inc.?

9 A Yes.

10 Q When was that?

11 A I founded the company in 1998.

12 Q How long have you been the CEO?

13 A Since then. So 17 years.

14 Q Do you -- well, there is a stipulation in Joint -- Joint
15 Exhibit 1 pertaining to a subscription of services with
16 glassdoor.com. Are you familiar with your company's
17 subscription to Glass Door?

18 A Yes, I am.

19 Q Okay. What is purpose, in your -- if you can describe
20 what you understand, the purpose of your subscription with
21 glassdoor.com?

22 A We pay for service on Glass Door that allows us to help
23 recruit candidates to the Company, prospective hires, and gives
24 us enhanced services on -- on the website and lets us put more
25 information on it.

1 Q All right. How long, if you know, has the Company --
2 well, strike that. The Joint exhibit, which is a fax
3 stipulation, we provided, says that, "IXL Learning has been
4 using Glass Door since 2013." Do you know, is -- does that
5 coincide with what you recall?

6 A That sounds about right to me.

7 Q Okay.

8 MR. WILSON: I'm going to mark as Respondent's Exhibit --
9 is it 8 --

10 JUDGE ETCHINGHAM: 9?

11 MS. VIX: 9.

12 MR. WILSON: -- 9.

13 **(Respondent Exhibit Number 9 Marked for Identification)**

14 MR. WILSON: Respondent Exhibit 9 is a three-page -- it's a
15 three-page set of -- of screenshots from glassdoor.com
16 pertaining to what they say their service is and how they
17 protect anonymity. I would ask that this three-page background
18 information be admitted.

19 JUDGE ETCHINGHAM: Any objection?

20 MS. VIX: May I voir dire for a moment, please?

21 JUDGE ETCHINGHAM: Sure.

22 **VOIR DIRE EXAMINATION**

23 Q BY MS. VIX: Mr. Mishkin, did -- did you print these three
24 pages out?

25 A No.

1 Q Do you know when they were printed out?

2 A No, I don't.

3 Q Do you know if these explanations, descriptions of Glass
4 Door existed in 2014?

5 A These particular pages, I don't know.

6 MS. VIX: Nothing further.

7 JUDGE ETCHINGHAM: Do you object?

8 MS. VIX: I -- I don't object.

9 JUDGE ETCHINGHAM: All right. No objection, we'll admit
10 Respondent's Exhibit 9 at this time.

11 **(Respondent Exhibit Number 9 Received into Evidence)**

12 MR. WILSON: Thank you.

13 **DIRECT EXAMINATION (CONTINUED)**

14 Q BY MR. WILSON: Mr. Mishkin, when was the first time that
15 you met Scott Duane?

16 A I actually don't know for sure.

17 Q Do you recall ever having any conversation with Scott
18 Duane prior to January 8 of 2015?

19 A I may have, but I don't -- if I did, I don't remember.

20 Q I am going to focus all of this testimony on the end of
21 2014 and beginning of 2015 in the interest of moving this
22 along. Were you made aware by David Keyes in December of 2014
23 that Scott had complained of discrimination or what he believed
24 were unfair treatment with respect to his leave request.

25 A David did make me aware of the situation.

1 JUDGE ETCHINGHAM: Well, sir, I want you to listen the
2 question. A lot of times it's a --

3 THE WITNESS: Oh --

4 JUDGE ETCHINGHAM: -- kind of a yes, no, or I don't know.

5 THE WITNESS: -- okay.

6 JUDGE ETCHINGHAM: Maybe it shouldn't be because that's
7 leading. That was a question that was one of those types. So
8 if you could just be -- respond as possible at first and then
9 he can have you follow up.

10 THE WITNESS: Oh, okay.

11 JUDGE ETCHINGHAM: Thanks.

12 THE WITNESS: I -- I guess the word discrimination threw me
13 a little bit because I remember David telling me that Scott had
14 brought up concerns and wanted to me about them.

15 Q BY MR. WILSON: Okay. I want to focus on January 6. -- I
16 mean you've been here and you -- you've heard the testimony.
17 After a meeting between Scott and David, did you have any
18 discussion with your managers about what was -- what had taken
19 place with Scott after that point?

20 A Wait. I -- I think I didn't understand --

21 Q Yeah. I'm sorry. I'm trying to --

22 A -- because I don't have any managers.

23 Q -- jump ahead. Yeah. I'm sorry. Did you talk to David
24 Keyes --

25 A Oh -- oh, I get it.

1 Q -- on January 6 about Scott?

2 A Yes, we did.

3 Q All right. Who initiated that discussion?

4 A David told me -- David initiated it.

5 Q You -- I'm going to show you Exhibit 10 from the General
6 Counsel, which is an e-mail from you to Scott Duane.

7 There is this e-mail, "Hi, Scott," and it ends with,
8 "Thanks, Paul." Did you send this to him?

9 A Yes, I did.

10 Q Okay. Do you know what time of day you sent it to him?

11 A I think it was late at night.

12 Q Okay. Respondent Exhibit 6 is a response to this e-mail,
13 which I'm just going to show you. Do you recall receiving
14 than?

15 A I do.

16 Q Okay. At the time that you scheduled the Thursday 11 a.m.
17 discussion, had you made any decision about Scott's employment?

18 A No, I hadn't.

19 Q What was your intent in scheduling this meeting?

20 A David had told me that he thought it would be a good idea
21 for me to talk to Scott, and he had told me that Scott had
22 raised an issue related to discrimination. So I wanted to talk
23 to Scott about those things.

24 Q Later -- at that -- on January 7, did there come a point
25 in time where you learned about a Glass Door post?

1 A I did.

2 Q Okay. Was it before or after you sent the January 7 e-
3 mail scheduling the meeting with Scott?

4 A It was after.

5 Q When you -- how did you come to learn about the post?

6 A I believe it was Maricela who discovered the post and --
7 and let me know about it.

8 Q The post we've seen has been dated -- was dated
9 December 30, 2014. At any point in time between December 30,
10 2014 and January 7, did you see or be informed by anyone about
11 that post?

12 A No. I didn't know about it.

13 Q Okay. Upon reading that post, did you come to any
14 conclusions about Mr. -- Mr. Duane's employment?

15 A I did.

16 Q What conclusions did you come to?

17 A The conclusion I came to was that it was unacceptable and
18 that he would have to be terminated.

19 Q Why. For -- for the record --

20 A It --

21 Q -- let me show --

22 A Yeah --

23 Q -- put the post --

24 A -- that would help.

25 Q -- in front of you. This has been previously marked as

1 Respondent's Exhibit 8. First of all, is Respondent's
2 Exhibit 8 what you received?

3 A Yes.

4 Q Okay. And now I asked you why --

5 A Uh-huh.

6 Q -- you believed -- or decided Mr. Duane was to be
7 terminated after reading that. Can you answer that question?

8 A I decided that because -- really because of the
9 outrageousness of what was written. I believe it was
10 defamation. And the fact that it was posted in a public forum,
11 and, in particular, the website Glass Door, that is extremely
12 in recruiting candidates. That's the particular challenge for
13 a company too, in this job market. So it was those reasons.

14 Q Did you change your meeting with Scott that had been
15 scheduled at all?

16 A No.

17 Q Okay. When you met with Scott on January 8, what time of
18 the day was that, to the best of your recollection?

19 A We met at 11:00.

20 Q Okay. A.m.?

21 A Yes.

22 Q Okay. Where did you meet?

23 A We met in my office.

24 Q Was anybody present other than you and Scott?

25 A No.

1 Q Was did you -- or who spoke first at this meeting?

2 A I spoke first. And --

3 Q And what did you say?

4 A I asked -- I asked Scott two things. I asked, "How are
5 things with David now," and I also said, "I understand you have
6 some issues related to discrimination that you'd like to
7 discuss," and I told him I would like to hear about those.

8 Q And did Scott respond to you after asking that?

9 A He did.

10 Q Okay. And what did he say?

11 A Scott said that things were fine with David now, he said
12 they were -- they were at a good place and he also did say that
13 he felt that -- well, the way he put it was denying his request
14 to -- to work at home. That's the way Scott expressed it. And
15 then he said that that was, in his words, illegal. And then he
16 talked about two other incidents that he told me made him feel
17 uncomfortable.

18 Q Okay. Can you describe the first one?

19 A The first one that he mentioned was he said that shortly
20 after he was hired he was in a presentation being given by
21 Maricela Prado about -- about benefits and insurance and things
22 like that. And when Maricela got to a slide about disability
23 benefits, according to Scott, she made a comment, "You three
24 look like healthy, young guys. We can skip this slide." And
25 Scott told me that -- that that made him feel uncomfortable

1 because he knew that he had health issues and disability
2 insurance -- disability would be important to him.

3 Q And at that point in time --

4 A Uh-huh.

5 Q -- did you know what those health issues were?

6 A No, I didn't.

7 Q Okay. And did he say anything else about the comment by
8 Maricela?

9 A No.

10 Q Okay. And did you respond to that first comment or did he
11 go onto the second?

12 A He went onto -- to the second one.

13 Q Okay. Can you describe what he said?

14 A The second one was he said that he had been in an
15 conversation with Karen Penner, our recruiting manager, and
16 Karen had been discussing one of her direct reports, Bridget
17 Antle, who had been on medical leave, and that Karen was
18 sharing details about the procedures that Bridget was
19 undergoing. He also said that he asked Karen whether she felt
20 it was appropriate for her to be sharing this information with
21 him. And, according to Scott, Karen said that it was fine,
22 Bridget's a very open person about these things.

23 Q Okay. Did you have any response to either -- either or
24 both of those comments?

25 A I did. I told -- you know, I listened and I told Scott

1 that I would talk to Maricela and I would talk to Karen.

2 Q Was there anything else discussed about his concerns or
3 the -- the reason for the -- the meeting, actually?

4 A Scott also did talk about concerns that he had relating to
5 HR. He said that he had been given incorrect information by
6 Brad Marshall, who had -- had been our HR manager for a fairly
7 brief period of time.

8 Q Okay. And did he describe what the information was?

9 A No, he didn't say what it was.

10 Q Okay. What else?

11 A He also -- Scott also told me that he felt that Maricela
12 needed more HR training. And he also told me that -- that
13 managers, such as David, should have received more training,
14 and specifically training about disability issues.

15 Q Did you respond to those comments?

16 A I did. I believe it was a little later in the meeting
17 that I got into that. But I -- I responded --

18 Q Well, how about --

19 A Oh --

20 Q -- this: Since -- so we can go sort of sequentially. I
21 don't want to take it disjointed.

22 A Yeah.

23 Q So what was discussed, if anything, after that?

24 A So after that, I -- I told Scott that I had something that
25 I wanted to talk to him about. But before we did that, was

1 there anything that he would like to share with me. And he
2 said no.

3 Q Okay. And then what did you do?

4 A So I had a printout of the Glass Door review and I handed
5 it to Scott, and Scott saw the review and seemed surprised.
6 And said, "This is a separate conversation." And I said,
7 "You're right, it's a separate conversation, but I'd like to
8 have that conversation now." And at that point Scott also said
9 that anonymity exists online for a reason, and he didn't think
10 it was fair that I was asking him about this review. And I
11 told him, "You posted this online in a very public place. I
12 have a right to ask you about it."

13 Q Okay. And what was discussed next, if anything?

14 A So the first thing I asked about -- I read him -- well, I
15 told him I was bothered by it. I told him I was bothered
16 because what he insinuates in this post completely goes against
17 my values and the values that I worked so hard at that
18 cultivate at this company.

19 Q Did you have -- okay. I don't mean to cut you off, but --

20 A Yeah. And so I -- I read the paragraph to him, the one
21 that starts, "There" -- "there are no politics if you fit in."
22 And immediately after I finished reading that to him, he said,
23 "I" -- "I was upset when I wrote that." And I -- I didn't want
24 to drop it there. I mean I wanted to know more about this. So
25 I -- I started asking him more about it. I said, "What you're

1 saying" -- "you know, what you're saying here is if you're
2 not" -- "if you work for IXL and you're not white or Asian, if
3 you are not straight or mainstream gay, if you don't like
4 sports, if you don't have kids, that you'll be discriminated
5 against." I told him that's -- that's the claim you're making
6 here. And I said, "What" -- "what do you have to say about
7 that?" And Scott said -- Scott said he looks around the
8 company and those -- those are the kind of people that -- that
9 he sees. And he told me as a result of that, he has a hard
10 time connecting with people.

11 Q Did you ask him anything else about that?

12 A When he said that, I asked him, "Scott, are you talking
13 about discrimination or are you talking about friendships?"

14 Q And what -- did he respond?

15 A He responded that those two things blend together.

16 Q Okay. And what was your reaction to that or response?

17 A I don't know that I -- I followed up on that more.

18 Q Okay.

19 A I -- I think at that point I moved on to a different
20 comment.

21 Q Okay. Well, what -- what did -- what do you recall, if
22 anything, came next to the discussion?

23 A Came next?

24 Q Yeah.

25 A Scott -- Scott repeatedly apologized -- not apologized

1 but -- well, apologized at least once but expressed that --
2 that, you know, again this idea that he was upset and offered
3 to take the post down. And I told him that -- you know, I'd
4 like that but it's already out there in -- in the public.

5 Q Did you demand that it be taken down?

6 A I didn't.

7 Q Okay. But you said you would like it?

8 A When he offered that, I said I would like it.

9 Q Okay. All right. And did you?

10 A Um --

11 Q Go ahead.

12 A So I -- I asked him -- I read the sentence to him about
13 the CEO, "The CEOs are really involved in every product, every
14 decision, every" -- "everything," and I asked him what he meant
15 by that. And he looked right at me and he said, "You cancel
16 projects." So I asked him, "What project are you talking
17 about?" And he said, "The video project."

18 Q Okay. And did you say anything in response?

19 A I don't remember -- I don't remember really talking more
20 about that.

21 Q Did you cancel the video project?

22 A I did.

23 Q Why?

24 A I canceled the video project because, first of all, the
25 video project was my idea. It was an important strategic

1 project or exploration really for the company to see if -- to
2 see whether we could find a way to extend our -- our product
3 into math videos. So our product had been -- was more about
4 math practice up to that point and we wanted to get more into
5 math instruction.

6 And so we built up a team of at least four people full time
7 to -- to start creating script and trying out different -- you
8 know, different ideas how we might create math videos,
9 brainstorming ideas, writing up design documents, trying things
10 out. And it lasted for -- actually, I don't remember quite how
11 long it lasted. But at some point we realized that it just --
12 it wasn't a -- it wasn't an effort that made sense for us as a
13 company.

14 Q Okay. All right. Did you talk about anything else in the
15 meeting?

16 A I know at some point we got into again -- I -- I came back
17 to the -- the part about the -- the allegations about, you
18 know, different ethnicities and, you know, straight mainstream
19 gay. Back to that paragraph. And I -- I asked him if he had
20 any evidence, if he had ever -- if he had anything to back this
21 up. And he had two things to say. He told me that as a queer
22 person, he doesn't feel that he fits in. And -- and he also
23 told me that he sees employees with kids being able to work
24 from home.

25 Q Okay. Did you have any comment on that?

1 A Apart from just, again, expressing how -- how much of
2 upset me and -- and how much his claims went against my values,
3 no.

4 Q Did you discuss David Keyes -- Kayes, -- Keyes at fall?

5 A We did. There were -- we -- we did come back to that and
6 Scott again -- again made the point that -- that, as he phrased
7 it, David's denying his request was illegal. And Scott also
8 acknowledged that there were productivity issues in the past.
9 He admitted that he -- he hadn't been productive. I asked him,
10 "Don't" -- "don't you think David has" -- "has a right to ask
11 you about this?" And he said, "Yes," but that it was still
12 illegal.

13 Q Okay. Did you discuss any -- anything further ongoing
14 through management or him talking to his managers about this?

15 A I asked Scott whether he had brought up any of these
16 concerns with David, and he kind of -- he kind of hemmed and
17 hawed a little bit and he said, "Well, I might have mentioned
18 something a couple of days ago." It wasn't really clear. And
19 then he said something about planning to mention something.
20 And I asked him, "I just can't understand why you would post
21 all this, why you would" -- "why you would" -- oh, what he
22 said -- when he said that about David, he also said that he's
23 been struggling a lot, the health issues have been very
24 difficult, very draining on him and he just didn't have it in
25 him to do that. And so I asked him, "How did you find the

1 energy to craft a post like this and post it online? How did
2 you find the energy to do that and" -- "and not find the energy
3 to" -- "to talk to your manager?"

4 Q Anything else about talking to his manager or anything
5 else in the -- in this meeting?

6 A Not that I remember.

7 Q Okay. Is there a rule or a policy at your company about
8 talking to management about work problems before third parties?

9 A No, there's not.

10 Q How did you conclude the meeting?

11 A I concluded the meeting by telling -- telling Scott I was
12 sorry for whatever he was going through healthwise and I -- I
13 thanked him for sharing. I told him again I would talk to
14 Maricela and Karen. And I also told him despite that, that
15 what he did was unacceptable, it showed extremely poor
16 judgment, poor ethical values. I told him that I couldn't -- I
17 couldn't trust him, I couldn't imagine ever trusting him, ever
18 being able to work with him. And I -- at that point, you know,
19 Scott got the gist of what was happening and he -- he stood up,
20 he -- he said, "You'll be hearing from my lawyer," and just
21 stormed out of my office.

22 Q Okay. Did Scott discuss during this meeting any
23 conversations with other employees?

24 A No.

25 MR. WILSON: I have nothing else.

1 JUDGE ETCHINGHAM: All right. Cross-examination?

2 MS. VIX: I do have some, Your Honor. May I take a five-
3 minute break?

4 JUDGE ETCHINGHAM: Sure.

5 MS. VIX: And, actually, before we go off the record, I
6 know we had at least an off-the-record discussion about General
7 Counsel Exhibit 11. I'm not sure if it was on the record.
8 Could we ask the court reporter if that was there?

9 JUDGE ETCHINGHAM: I don't think it was.

10 MS. VIX: Okay.

11 MR. WILSON: Could we just put it on the record?

12 MS. VIX: Okay.

13 MR. WILSON: Just whether it was or wasn't. We'll just put
14 it on the record now.

15 JUDGE ETCHINGHAM: Yeah. Sure.

16 MS. VIX: Okay. So, Your Honor, I would like to move to
17 introduce General Counsel Exhibit 11, excluding pages 1 through
18 7. Suggest introducing pages 8 through 20.

19 JUDGE ETCHINGHAM: So GC 11. We'll start at page 8 and go
20 all the way through page 20, is the streamline way we're going
21 to deal on it.

22 Any objection to that coming into evidence?

23 MR. WILSON: I will address any weight issues, but I will
24 not -- I don't join in it but I don't object and I won't oppose
25 the admissibility of it.

1 JUDGE ETCHINGHAM: All right. Then without any objection,
2 we will admit General Counsel's Exhibit 11, starting at page 8
3 and going through page 20, into evidence at that time.

4 **(General Counsel Exhibit Number 11 (pages 8 through 20)**
5 **Received into Evidence)**

6 MS. VIX: And could you -- could the record reflect that
7 each page is a two-page document? So it's --

8 JUDGE ETCHINGHAM: Oh, that's right.

9 MR. WILSON: It --

10 JUDGE ETCHINGHAM: Some are.

11 MR. WILSON: Not really.

12 MS. VIX: Oh, sorry. Some are.

13 MR. WILSON: Yeah, there's one or two that's one page.

14 But --

15 MS. VIX: Okay.

16 MR. WILSON: But it is what it is. I have a complete copy.

17 Okay. Are we off the record?

18 JUDGE ETCHINGHAM: Yes. Let's go off the record.

19 (Off the record at 5:14 p.m.)

20 JUDGE ETCHINGHAM: All right. Back on the record.

21 When we broke, we were moving toward cross-examination.

22 And over to you, Ms. Vix.

23 **CROSS-EXAMINATION**

24 Q BY MS. VIX: Hi, Mr. Mishkin.

25 A Hi.

1 Q I'm Cecily Vix, counsel for the General Counsel.

2 You have been present for the testimony of all the
3 witnesses today, correct?

4 A Uh-huh. Right.

5 Q Okay. What is your current position with IXL?

6 A I'm the CEO.

7 Q Can your employees work remotely?

8 A Well, that's up to individual managers. So --

9 Q But they have the --

10 A -- some managers do give -- give those privileges.

11 Q Okay. And how are they able to work remotely?

12 A It -- I mean it really depends on the position.

13 Q Is it a technology access issue or personality issue or
14 performance issue?

15 A I mean I can speak to the technology a little bit. You
16 know, in some, in some roles there may be more need for in-
17 person meetings and other roles that may be more individual
18 work that -- that would presumably be a factor.

19 Q And some of your employees are actually in the sales
20 department, correct?

21 A Right. Uh-huh.

22 Q And so sales employees presumably go out in the field and
23 meet with clients on a regular basis?

24 A Less so at IXL. We don't really have a field -- much of a
25 field sales team.

1 Q Okay.

2 A Yeah.

3 Q You have how many employees approximately?

4 A We have I'd say about 220 to 240 right now.

5 Q Okay. You wrote an e-mail to Mr. Duane on January 7th
6 asking to meet with him to discuss the complaints he had made
7 to David about discrimination?

8 A Yes.

9 Q And when had you met with David, and that's David Keyes,
10 to discuss these complaints?

11 A Had I met with David. David and I did have a phone call
12 where David filled me in and, you know, we talked about -- he
13 told me he was planning on responding to -- to Scott and asked
14 me if -- if it would be okay if he ran it by me.

15 Q You meet with employees on occasion to discuss any work-
16 related matter?

17 A I -- well, I have had a lot of meetings. I have an open-
18 door policy, so --

19 Q Can you estimate how many meetings you might have in a
20 week with individual employees?

21 A Probably a typical day -- a typical day might be three or
22 four meetings.

23 Q Okay. When issues such as discrimination come up, you
24 meet with the employee personally as you did with Mr. Duane?

25 A I can't think of any other examples of discrimination

1 issues having come up in the past.

2 Q Okay. You know of the website glassdoor.com?

3 A Yes.

4 Q And IXL utilizes glassdoor.com for various purposes,
5 primarily as a recruitmental?

6 A We -- we do use it as a -- as a recruitmental.

7 Q Are employees identified by name on glassdoor.com if they
8 review the Company?

9 A No, they're not.

10 Q Does IXL have a way of finding out the identity of an
11 anonymous reviewer?

12 A No, we don't.

13 Q You have a subscription to Glass Door?

14 A Yes.

15 Q Is that -- that the way to characterize the relationship?

16 A That's -- that's right. The Company does subscribe
17 annually.

18 Q And the subscription allows IXL to post job openings on
19 the site and permits employees to review the workplace?

20 A The subscription doesn't allow -- the part about employees
21 posting reviews is just an inherent feature of the site; it's
22 not something that is part of the subscription.

23 Q So the part that glassdoor.com -- I'm sorry -- that IXL
24 pays for is the job posting portion?

25 A Relating to job postings. Also allowing us to have a --

1 have like a presence page on the site where we can give more
2 background about the Company, post a -- you know, a video,
3 things like that.

4 Q Okay. So the portion where employees can review the site,
5 that would be available whether or not you had a subscription
6 to the service?

7 A That's -- that's correct.

8 Q Okay. You have a director of recruitment at IXL?

9 A I don't know her exact title, but we have someone in
10 charge of recruitment --

11 Q Okay.

12 A -- named Karen Penner.

13 Q Named Karen Penner?

14 A Uh-huh.

15 Q And recruitment is a fairly significant undertaking?

16 A I would say so, yeah.

17 Q At Glass Door? I'm sorry.

18 A Yes.

19 Q I'm sorry.

20 A Yes. Uh-huh.

21 Q Hiring qualified employees is an important focus for the
22 Company?

23 A It's -- yes, it is.

24 Q The Glass Door also serves other purposes?

25 A Other than?

1 Q Other than recruitment.

2 A I'm not sure I would agree with that.

3 Q Is it not to build engagement with existing employees?

4 A No, it's not.

5 Q So viewing Glass Door reviews of IXL employees doesn't
6 build employee loyalty and company pride?

7 A No. I don't agree with that at all.

8 MS. VIX: Your Honor, permission to approach the witness?

9 JUDGE ETCHINGHAM: All right.

10 MS. VIX: I'm showing the witness General Counsel 13.

11 Your Honor, I'm showing the witness a document marked as
12 General Counsel Exhibit 13 with the heading of executive
13 summary. This document was produced pursuant to subpoena and
14 provided by Respondent's counsel yesterday afternoon responsive
15 to a subpoena request to produce any documents IXL had in
16 relation to Glass Door.

17 I can see at the bottom there's symbol. It looks like it
18 says Glass Door.

19 Q BY MS. VIX: I'm directing for attention to the benefits
20 of an employee engagement plan. Do you see there, Mr. Mishkin,
21 that it says on the second bullet point, "Reviewing employer
22 branding builds employee loyalty and company pride?"

23 A I see that.

24 Q Had you seen this before today?

25 A No.

1 Q Does your testimony change with respect to the question
2 about the purpose of Glass Door?

3 A No, it wouldn't. I think -- well, I think there's some
4 interpretation of this phrase employee engagement. And the
5 purpose of that employee engagement -- when I read this
6 employee engagement section, it matches with -- with my view of
7 Glass Door, that it's a recruiting tool. The purpose of
8 employee of engagement is to have employees engaged in that
9 they are submitting positive reviews of the company so that the
10 company appears more attractive to candidates.

11 Q Is it -- Glass Door produced this document, with the
12 executive summary here, to IXL in order to show IXL how to use
13 IXL -- Glass Door effectively, get the most out of the
14 relationship?

15 A Uh-huh.

16 Q Is that correct?

17 A I -- I don't understand. You're asking me about the
18 production process and I don't --

19 Q Sorry. No. I'm just asking -- what I'm saying is,
20 through your relationship with Glass Door, they provided this
21 document, this -- which is part of a manual --

22 A Okay.

23 Q -- which describes ways in which to get the most out of
24 the relationship with Glass Door?

25 A Uh-huh.

1 Q And one of their suggestions is that "viewing employer
2 branding builds employer loyalty and company pride" is one of
3 their suggestions --

4 A Hmm.

5 Q -- as to why a company such as IXL would use Glass Door?

6 MR. WILSON: Object to the characterization and -- this
7 witness has said he's never seen this before. But I --

8 MS. VIX: Do you have a different custodian of records
9 you'd like to bring?

10 MR. WILSON: No.

11 MS. VIX: Okay.

12 MR. WILSON: He's -- he just said he had -- this wasn't --
13 it was an engagement plan prepared by Glass Door and he's never
14 seen it, so I'm on be on foundational grounds. I'm not saying
15 it's not a authentic document, I'm not saying it wasn't
16 provided to IXL. I'm saying this witness, he just said he
17 didn't see it. That's all.

18 MS. VIX: Okay.

19 Q BY MS. VIX: Now that you've seen it, you can see here
20 that it says, "Viewing employer branding builds employee
21 loyalty and company pride," correct?

22 A I can read that, yes.

23 Q Okay.

24 MS. VIX: Your Honor, I'd like to introduce this document
25 into evidence. It's -- it's clear Mr. Mishkin is not the

1 custodian of record, however, for the sake of efficiency,
2 Respondent's counsel is stipulated to its authenticity.

3 MR. WILSON: I would --

4 JUDGE ETCHINGHAM: Any objection?

5 MR. WILSON: I would suggest that -- unless there's a
6 reason you don't want to do that, I would suggest you mark --
7 mark the entire --

8 MS. VIX: I --

9 MR. WILSON: -- plan.

10 MS. VIX: -- did have a reason. And I thought that --

11 MR. WILSON: Okay.

12 MS. VIX: -- actually you would object --

13 MR. WILSON: Yes.

14 MS. VIX: -- based on proprietary interest. There is a lot
15 of specific how to language from Glass Door. I would imagine --

16 MR. WILSON: All right.

17 MS. VIX: -- that they would have concern about this
18 product being in the record -- the entire product being in the
19 record.

20 MR. WILSON: Yeah. We've -- we've produced it, and the
21 executive summary versus the other pages --

22 JUDGE ETCHINGHAM: How lengthy is it, the --

23 MR. WILSON: It's got --

24 JUDGE ETCHINGHAM: -- whole thing?

25 MR. WILSON: I actually made five copies of it.

1 MS. VIX: Great, because I didn't.

2 MR. WILSON: Right. That's --

3 JUDGE ETCHINGHAM: Let's go with the full one and move on.

4 MR. WILSON: It's five pages and --

5 JUDGE ETCHINGHAM: Yeah.

6 MR. WILSON: -- just in the interest of completeness --

7 MS. VIX: I -- I -- Your Honor, that's fine, however my
8 position is that the executive summary sort of gets us there.
9 We don't need to see the templates, but --

10 MR. WILSON: Again, I would -- I mean I think it's -- it's
11 not complete, it's out of context, and -- and I have these
12 copies here and I'm happy to provide them.

13 JUDGE ETCHINGHAM: Yeah. I think the full version gives --
14 allows me to give the proper weight to it as opposed to just
15 singling in. And you're welcome to focus on that page in
16 your --

17 MS. VIX: Okay.

18 JUDGE ETCHINGHAM: -- closing brief. And I just -- it's --
19 like you said, it's more complete and not taken out of context.

20 MS. VIX: So we'll call General Counsel 13 this entire --

21 JUDGE ETCHINGHAM: Yeah.

22 MS. VIX: -- document.

23 JUDGE ETCHINGHAM: Sure. How many pages is it --

24 MR. WILSON: Five.

25 JUDGE ETCHINGHAM: -- just for the record? So it's five

1 pages? And what is the first page called? Is there like a --
2 is it still executive summary or has it got --

3 MR. WILSON: No.

4 JUDGE ETCHINGHAM: -- a different title?

5 MR. WILSON: It's called, "Employee Engagement Plan for IXL
6 Learning, presented by Glass Door."

7 JUDGE ETCHINGHAM: Okay. Is there a date on it?

8 MR. WILSON: There is not a date.

9 JUDGE ETCHINGHAM: Okay.

10 MR. WILSON: There's the name of the senior account
11 executive of Glass Door who prepared it. But I will -- I can
12 stipulate, if it helps, that 2000 -- the Company started their
13 sponsorship in 2013. And you have seen the Maricela Prado e-
14 mail. I don't mean to highjack you, but -- your -- your
15 presentation, but it -- if it matters, if it speeds it along.

16 Maricela Prado's e-mail to Nina Wu, well, that -- that one,
17 it's -- it's a template.

18 JUDGE ETCHINGHAM: Okay.

19 MR. WILSON: And so it actually -- I think it -- it sets a
20 time frame. We know that we had it at least before then --

21 JUDGE ETCHINGHAM: Uh-huh.

22 MR. WILSON: -- which was early -- you know, February of
23 2012 or so --

24 JUDGE ETCHINGHAM: All right. Is there any --

25 MR. WILSON: -- or -- or '13.

1 JUDGE ETCHINGHAM: -- objection to the five-page --

2 MR. WILSON: No.

3 JUDGE ETCHINGHAM: -- exhibit, General Counsel Exhibit 13,
4 coming into evidence at this time?

5 MR. WILSON: No.

6 JUDGE ETCHINGHAM: All right. No objection. We will admit
7 General Counsel's Exhibit 13.

8 **(General Counsel Exhibit Number 13 Received into Evidence)**

9 Q BY MS. VIX: Mr. Mishkin, you took a personal interest
10 when you learned back in 2013 that there were negative reviews
11 on Glass Door about IXL?

12 A I did.

13 Q You even went so far as to ask your director of
14 recruitment to bring this up with Glass Door, to take down a
15 negative post?

16 A I don't remember doing that.

17 Q Let me see if I can refresh your recollection.

18 A Sure.

19 Q I can show you General Counsel Exhibit 14. I'm directing
20 your attention to the, "From Karen Penner."

21 A Uh-huh.

22 Q This is your head of recruitment; is that correct?

23 A Right. That's correct.

24 Q And the date here is July 31st, 2013, correct?

25 A Yes.

1 Q And the date -- and I'm sorry. And it's to you; Paul
2 Mishkin?

3 A Right.

4 Q The line starting p.m." -- comma -- "Paul Mishkin wrote,"
5 do you -- can you see that, the beginning of that --

6 A I do.

7 Q -- sentence? Okay. In there it says, "Hi, Karen. I'm
8 almost certain that the new low and fed up reviews are the same
9 person. What do you think about bringing this up with Glass
10 Door and asking them investigate? They have a flag review
11 feature which makes me think they're willing to take action
12 when they hear about people abusing the site, especially when
13 it relates to one of their paying customers?"

14 Does this refresh your recollection?

15 A It does. I mean I don't want to quibble over words, but
16 what you asked me before was whether I directed Karen to take
17 down a review. I -- I didn't do that but I did inquire about
18 the process, you know, is it possible to reach out to them and
19 is this -- you know, is this option available to us?

20 Q So not directing her to but you asked --

21 A I --

22 Q -- asked her to --

23 A I wanted --

24 Q -- think about it?

25 A Yeah. I wanted to discuss it --

1 Q Okay.

2 A -- find out more.

3 Q And she responded to you?

4 A Um --

5 Q That she's tried flagging reviews and it's on a case-by-
6 case basis?

7 A I'm looking for that part.

8 Q It's right in the middle. It starts, "A brief meeting?"

9 A Oh, okay. I see that.

10 Q Okay.

11 MS. VIX: Your Honor, I'd like to move this document into
12 evidence. I think it speaks for itself. I don't need the
13 witness to testify to it.

14 JUDGE ETCHINGHAM: Any objection?

15 MR. WILSON: No.

16 JUDGE ETCHINGHAM: Without objection, we'll admit General
17 Counsel's 14 at this time.

18 **(General Counsel Exhibit Number 14 Received into Evidence)**

19 Q BY MS. VIX: After you scheduled the meeting to meet with
20 Mr. Duane for January 8th, you found out about his Glass Door
21 posting?

22 A That's right.

23 Q The December 30th posting?

24 A Yes.

25 Q Did you personally find it on Glass Door?

1 A No, I didn't personally find it.

2 Q You were told that he wrote it?

3 A It was pointed out to me and I was told that the -- I was
4 told that it was almost certainly him.

5 Q And after you learned that Mr. Duane had written and
6 posted the negative Glass Door review, you decided to terminate
7 him?

8 A I did.

9 Q Your problem with the post was that it was a public
10 posting?

11 A No. My problem with the post was first how blatantly
12 untrue it was and also that it was designed -- the way it was
13 written and the place it was posted were specifically designed
14 to hurt the Company.

15 Q Because it could be seen by potential employees?

16 A It -- yes --

17 Q Okay.

18 A -- on Glass Door.

19 Q And you were not particularly happy that it was critical
20 of you as the CEO?

21 A I don't know if I would say it quite that way. I just
22 thought that was a disrespectful way of phrasing it.

23 Q So you felt --

24 A And it could have --

25 Q -- like it was disrespectful?

1 A It could have been anyone.

2 Q Okay. It could have been anyone?

3 A I mean that disrespectful way of speaking about a fellow
4 employee. It wasn't necessarily that it was about me. You
5 know, if it had talked about any other employee in such -- such
6 a manner, just that general tone, that was offensive to me.

7 Q Okay. You were also unhappy with the statement that said,
8 "IXL isn't going anywhere right now?"

9 A Yes.

10 Q But it was also specifically critical of you as the CEO,
11 and that was insulting?

12 A That was specifically critical of -- of the company as a
13 whole, not -- not me.

14 Q When you met with Mr. Duane on January 8th, there's been
15 ample testimony conversation, he explained to you that the
16 complaints -- one of his complaints was that disability wasn't
17 fully discussed during his training; is that correct?

18 A That's correct.

19 Q He raised his work-from-home complaints and the fact that
20 it wasn't granted immediately?

21 A Yes.

22 Q And then you had further discussion. Ultimately you
23 showed him the Glass Door post and discussed that you weren't
24 happy with it?

25 A That's right.

1 Q You also didn't particularly like that he didn't go to a
2 supervisor first before he posted his concerns on Glass Door?

3 A It seemed inappropriate.

4 Q Okay. And you prefer that employees go to their
5 supervisors first to air their complaints or concerns?

6 A I think it's common decency.

7 Q Okay. And you were not very happy that Mr. Duane didn't
8 talk to a manager first about these complaints that he posted
9 on Glass Door?

10 A I'd agree with that.

11 Q And you told him that he was terminated because he didn't
12 come to management with his complaints first, before posting
13 them on Glass Door?

14 A That's absolutely false.

15 Q That is, in part, why you terminated him?

16 A No, it is not.

17 Q There is also an EEOC case pending related to some of
18 these matters, correct?

19 A Right.

20 Q And in response to the complaint made by Mr. Duane in
21 relation to the discrimination claim, your company provided a
22 position statement in -- in response?

23 A Okay.

24 Q Are you familiar with that position statement?

25 A I'm sure I've seen it.

1 Q Okay. Do you recall when you would have seen that
2 document?

3 A Not right now.

4 Q This position statement was submitted to the EEOC on
5 July 10th, 2015?

6 A Okay.

7 Q And in that position statement it says things you've
8 already testified to, "Complainant's post include a number of
9 false and disparaging remarks about the company, including that
10 the company was not going anywhere," and it says, "Complainant
11 posted these comments without first raising his concerns with
12 any managerial employee at IXL." Is that correct a correct
13 statement?

14 A It's -- that -- that is correct, yeah.

15 Q Okay. Mr. Duane also filed for unemployment benefits
16 after he was terminated by you, correct?

17 A Uh-huh.

18 Q You have to give --

19 A Oh, yes.

20 Q -- audible response.

21 A Yes.

22 Q Thank you. And you filed a response to that claim?

23 A We did.

24 Q And EDD ruled that the discharge did not meet the
25 definition of misconduct connected with the work?

1 MR. WILSON: Objection; relevance.

2 THE WITNESS: Yeah, I'm not familiar the --

3 MR. WILSON: Wait.

4 THE WITNESS: -- the.

5 MR. WILSON: Hold on.

6 JUDGE ETCHINGHAM: Wait a second.

7 THE WITNESS: Oh, sure.

8 JUDGE ETCHINGHAM: Wait a second. When there's an
9 objection --

10 MR. WILSON: Object to the relevance of the --

11 MS. VIX: So, Your Honor --

12 MR. WILSON: -- unemployment ruling.

13 MS. VIX: EDD employment rulings are considered relevant by
14 the NLRB, not for the final ultimate decision made by the EDD
15 but as relevant background information.

16 JUDGE ETCHINGHAM: I disagree with you. I'm going to
17 sustain the objection. Let's move on.

18 Q BY MS. VIX: Do you recall -- okay.

19 MS. VIX: So are you saying I'm not permitted to ask any
20 more questions about EDD?

21 JUDGE ETCHINGHAM: No, you're not.

22 MS. VIX: Okay.

23 JUDGE ETCHINGHAM: I'm the fact finder here. Whatever EDD
24 did is --

25 MS. VIX: Okay.

1 JUDGE ETCHINGHAM: -- kind of their deal and their
2 business.

3 MS. VIX: Nothing further, Your Honor.

4 JUDGE ETCHINGHAM: All right. Anything?

5 MR. WILSON: Yes, just a couple really quick.

6 **CROSS-EXAMINATION**

7 Q BY MR. MAREK: I'm David Marek.

8 A Yeah.

9 Q In the posting, there was testimony about the sentence
10 that said, "The company isn't going anywhere right now?"

11 A Uh-huh.

12 Q You -- you interpreted that to be negative; is that
13 correct?

14 A I do.

15 Q And then the -- that sentence -- so I'm just going to --
16 do you have it in front of you? It's -- it's General Counsel
17 Exhibit 7.

18 A I think I don't have that anymore.

19 Q That -- I'm going to read you what comes after it. The
20 next sentence says, "They play to the traditional classroom,
21 which is good for profits. You won't have to worry about the
22 company going under." And there's a parentheses, "but don't
23 expect the profits to pass on to you either."

24 A Uh-huh.

25 Q You -- you didn't understand that first sentence to be

1 saying that the company won't be going out of business any time
2 soon?

3 A You know, in the context of that -- of that paragraph, to
4 me, it clearly comes across as basically saying the company
5 isn't doing well.

6 Q It doesn't -- I mean I don't --

7 A If I could see the paragraph right now, I mean we could
8 start talking about the details.

9 Q Sure.

10 A I don't have it.

11 MR. MAREK: May I approach, Your Honor?

12 JUDGE ETCHINGHAM: Sure.

13 Q BY MR. MAREK: And the sentence that comes after it, this
14 says that -- talks about your -- your profits because you play
15 to the traditional -- the traditional -- I'm sorry, I don't
16 know. Now I don't -- I don't know if I have another copy.
17 Here it is. That you play to the traditional classroom, which
18 is good for profits and then you don't have to worry about the
19 company going under. Wouldn't that mean that the first
20 sentence is actually saying that the company's not going to be
21 going out of business any time soon?

22 MR. WILSON: Object to argumentative and -- and how he
23 interpreted it is how he interpreted it.

24 THE WITNESS: Yeah, I -- I do interpret that as a negative
25 comment, and, you know, going along with other kind of, you

1 know, backhanded -- you know, pro -- that isn't really a pro,
2 like easy on challenging work.

3 Q BY MR. MAREK: You heard Mr. Duane testify that when he
4 left your office after that meeting, his stuff had already been
5 put in a box and moved to I think the HR woman's office; is
6 that right?

7 A That's right.

8 Q And that was done at your directive; is that correct?

9 A Before -- before my meeting with Scott --

10 MR. MAREK: Your Honor --

11 THE WITNESS: -- we --

12 MR. MAREK: -- can I get a yes or no to that question? I
13 just want to know if that was done at his directive.

14 THE WITNESS: I -- I played a role in that decision, yeah.

15 Q BY MR. MAREK: And that decision was made before the
16 meeting obviously?

17 A Yes.

18 MR. MAREK: I have nothing further, Your Honor. Thank you.

19 JUDGE ETCHINGHAM: I just have one follow-up. On the Glass
20 Door site and the subscription you pay, the other kind of
21 benefit to the Company that I didn't hear any testimony about
22 is interested candidates submit their resume to Glass Door and
23 somehow they all get funneled to your company where you review
24 which ones are -- you're interested and would invite to an
25 interview?

1 THE WITNESS: Hmm. I actually don't know much about that
2 feature.

3 JUDGE ETCHINGHAM: Okay.

4 THE WITNESS: Yeah.

5 JUDGE ETCHINGHAM: How do you -- how does your company hire
6 people or recruit people using Glass Door? Just do you know
7 the mechanics --

8 THE WITNESS: Sure.

9 JUDGE ETCHINGHAM: -- of it?

10 THE WITNESS: Well, it's such a widely used site among job
11 seekers that we're able to have -- we call it an enhanced page
12 on the site. So it's not the typical basic company
13 information. That's the standard. But we get to say more
14 about the company, we get to post information about, you know,
15 what it's like working at IXL, show a video about our -- our
16 company, about our products. So we kind of have a page
17 that's -- it's more welcoming.

18 I know there are other -- other benefits too that our
19 recruiting team could speak better to.

20 JUDGE ETCHINGHAM: Okay. Thank you. I have nothing else.
21 Anything on redirect?

22 MR. WILSON: No.

23 JUDGE ETCHINGHAM: Anything on recross? No?

24 MS. VIX: I just wanted to make sure that the -- that the
25 sentence I read from the position statement was actually

1 acknowledged by Mr. Mishkin. If it's possible that the court
2 reporter could go back to that. It's a little ways, but that
3 would be my only concern. I would --

4 MR. WILSON: What page?

5 JUDGE ETCHINGHAM: This is a --

6 MS. VIX: -- I could ask it again.

7 JUDGE ETCHINGHAM: -- a position statement that was
8 submitted in the EEOC case.

9 MS. VIX: Yes, which I am just asking him a question about
10 the statement, not -- I'm not introducing the document.

11 JUDGE ETCHINGHAM: Right. And you asked him about --

12 MS. VIX: If -- if the sentence --

13 MR. WILSON: What page?

14 MS. VIX: It's Bate stamped 718.

15 MR. WILSON: I mean can you tell what page of the actual
16 position statement?

17 MS. VIX: No. There aren't position -- that aren't pages.

18 MR. WILSON: Okay. I'm just --

19 MS. VIX: So the -- the question I had was whether the --
20 the -- this paragraph deals with a lot of the stuff that has
21 already been testified to, that the complaint of -- of what the
22 Complainant's, Charging Party's, post had said. "It's not
23 going anywhere. The company micromanages employees. It's
24 unchallenging, boring, menial work. Employees can do way
25 better." And I asked the question If the -- if this next

1 sentence was true, "Complainant posted these comments without
2 first raising his concerns with any managerial employee at
3 IXL." And the answer is --

4 THE WITNESS: That -- that is true, to my knowledge. Yeah.

5 MS. VIX: Okay. That's all.

6 Nothing further, Your Honor.

7 JUDGE ETCHINGHAM: All right. Anything else?

8 MR. WILSON: No.

9 JUDGE ETCHINGHAM: All right. So at this point, sir,
10 you're excused, you're --

11 THE WITNESS: Okay. Thank you.

12 JUDGE ETCHINGHAM: Thank you for your testimony here.

13 And is Respondent resting at this time?

14 MR. WILSON: Yes, Respondent rests.

15 JUDGE ETCHINGHAM: Okay. And does General Counsel have any
16 rebuttal or are you resting also?

17 MS. VIX: I will rest, Your Honor. Thank you.

18 JUDGE ETCHINGHAM: All right. And Mr. Marek, how about
19 you, are you --

20 MR. MAREK: We rest as well, Your Honor.

21 JUDGE ETCHINGHAM: All right. So normally what we do is
22 allow for some time for closing briefs to be submitted, and
23 that's my preference. So I will prepare and file with the
24 Board my decision in this proceeding. A copy will be served on
25 each of the parties.

1 You're reminded to refer to the Board's rules and
2 regulations for information regarding the filing of briefs and
3 proposed findings for my consideration and regard procedures
4 before the Board after the issuance of a judge's decision.

5 Now that the evidence is in, you can also assess whether
6 settlement is something you want to revisit. And I'd strongly
7 encourage that should you review the evidence and -- and change
8 your mind based on the testimony here today.

9 I will allow until December 10th, 2015 for the filing of
10 briefs and any proposed findings and conclusions. Briefs
11 should be filed directly with the Judge's division office in
12 San Francisco regardless of whether they are mailed or e-
13 mailed.

14 Now, this is the important part because we've got holidays
15 coming up. So to the extent there is a request for an
16 extension of time for the filing of briefs, that request must
17 be made in writing to my attention here in San Francisco at the
18 San Francisco Division of Judges. And that request must also
19 be served on the other parties. The positions of the other
20 parties regarding the request for an extension should be
21 obtained ahead of time and set forth in the request.

22 It's the policy of the Division of Judges to grant
23 discretionary extensions only when they are clearly justified.
24 Requests for extensions must contain specific reasons and show
25 that the requesting party cannot reasonably meet the current

1 deadline.

2 Is that understood?

3 Basically you need to do a meet and confer and, like I
4 said, with the holidays, I think it's easier to obtain a
5 request for an extension.

6 There being nothing further, the trial's now closed.

7 **(Whereupon, the hearing in the above-entitled matter was closed**
8 **at 6:01 p.m.)**

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 20, Case Number
4 20-CA-153625, Adrian Scott Duane and IXL Learning, Inc., at the
5 National Labor Relations Board, Region 20, 901 Market Street,
6 Suite 306, San Francisco, California 94103-1779, on Thursday,
7 November 5, 2015, at 8:05 a.m. according to the record, and
8 that this is the original, complete, and true and accurate
9 transcript that has been compared to the reporting or
10 recording, accomplished at the hearing, that the exhibit files
11 have been checked for completeness and no exhibits received in
12 evidence or in the rejected exhibit files are missing.

13

14

15

16

17

18

19

20

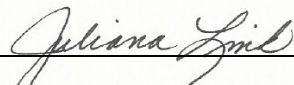
21

22

23

24

25



JULIE LINK

Official Reporter

Exhibit F

In the Matter Of:

U.S. EEOC vs IXL LEARNING

3:17-cv-02979-VC

ADRIAN SCOTT CAMPE DUANE

March 27, 2018



ESQUIRE
DEPOSITION SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

1

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4
5 U.S. EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

6 Plaintiff,)

7 and)

8 ADRIAN SCOTT DUANE,)

9 Plaintiff-Intervenor,)

10 v.)

11 IXL LEARNING, INC.,)

12 Defendant.)

13
14
15 DEPOSITION OF

16 ADRIAN SCOTT CAMPE DUANE

17
18 March 27, 2018

19 10:05 a.m.

20
21 44 Montgomery Street, Suite 1100

22 San Francisco, California

23
24 Sarah J. Bingham, CSR #13720

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

2

1 APPEARANCES OF COUNSEL

2
3 FOR THE PLAINTIFF U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

4 Ami Sanghvi, Esq.
Equal Employment Opportunity Commission
5 350 The Embarcadero, Suite 500
San Francisco, CA 94105
6 Ami.sanghvi@eeoc.gov

7
8 FOR THE PLAINTIFF-INTERVENOR:

9 David Marek
The Marek Law Firm, Inc.
228 Hamilton Avenue
10 Palo Alto, CA 94301
917-721-5042
11 David@marekfirm.com

12
13 FOR THE DEFENDANTS:

14 Jeffrey D. Wilson, Esq.
Young Basile Hanlon & Macfarlane, P.c.
3001 W. Big Beaver Road, Suite 624
15 Troy, Michigan 48084
248-649-3333
16 wilson@youngbasile.com

17
18 THE VIDEOGRAPHER:

19 Lorenzo Fernandez-Kopec
Esquire Deposition Solutions

20 -o0o-

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

3

INDEX OF EXAMINATION

Witness: ADRIAN SCOTT CAMPE DUANE

EXAMINATION	PAGE
Mr. Wilson	6

INDEX TO EXHIBITS

DEFENDANTS	DESCRIPTION	PAGE
Exhibit 200	Plaintiff-Intervenor's Responses and Objections to Defendant's First Set of Requests For Admission	16
Exhibit 201	Facebook chat from Scott Duane to Nina Wu, Bates EEOC_000365	44
Exhibit 202	E-mail chain between Claire Spencer and Scott Duane, Bates EEOC_000611-000612	62
Exhibit 203	E-mail from David Keyes to Kate Mattison, Bates IXL-1950	62
Exhibit 204	E-mail chain between David Keyes and Scott Duane, CC to Maricela Prado, Bates IXL-1876-1876 and IXL2000001-2000003	62
Exhibit 205	E-mail from Scott Duane to David Keyes, Bates IXL-1647-1648	62
Exhibit 206	E-mail from Scott Duane to Paul Mishkin, Bates IXL-1663	62

INDEX TO EXHIBITS (CONTINUED)

DEFENDANTS	DESCRIPTION	PAGE
Exhibit 207	E-mail chain beginning with e-mail from David Keyes to Kate Mattison, Bates IXL-1667-1687	62
Exhibit 208	E-mail chain between Scott Duane and Kush Patel, Bates EEOC_000418-00041962	62
Exhibit 209	Text message spreadsheet, Bates EEOC_000713-000723	62
Exhibit 210	NLRB trial transcript, Bates IXL-0229-0515	62
Exhibit 211	E-mail from Scott Duane to Jessica Morse, Bates EEOC_000417	110
Exhibit 212	Facebook chat between Scott Duane and Nemo C, Bates EEOC_000337-000332	142
Exhibit 213	Facebook chat between Scott Duane and Nemo C, Bates EEOC_000304-000291	148
Exhibit 214	E-mail chain beginning with e-mail from Scott Duane to Nina Wu, Bates EEOC_000501-000503	150
Exhibit 215	Facebook post by Scott Duane, Bates EEOC_000238-000239	195
Exhibit 216	Facebook group chat among Scott Duane, Nina Wu, Nemo C, Jessica Morse, Bates EEOC_000379-000375	157
Exhibit 217	E-mails between Scott Duane and William Duane, Bates EEOC_000449-000500	184

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

5

DEPOSITION OF ADRIAN SCOTT CAMPE DUANE
March 27, 2018

THE VIDEOGRAPHER: This begins the videotape deposition of Adrian Scott Duane in the matter of EEOC verse IXL Learning, filed in the United States District Court, Northern District of California, case number 3:17-CV-02979-VC. This deposition's being held at 44 Montgomery Street, San Francisco, California on March 27th, 2018.

My name is Lorenzo Fernandez-Kopec. I'm the videographer. The court reporter today is Sarah Bingham. We're both here representing Esquire Solutions. Please note that audio and video recording will be taking place unless all parties have agreed to go off the record.

The time is 10:05. We are on the record now.

Counsel and all present will you please state your appearance and affiliation, after which -- for the record, after which the court reporter will swear in the witness.

MS. SANGHVI: Ami Sanghvi for the plaintiff EEOC.

MR. MAREK: David Marek for the plaintiff Adrian Scott Duane.

1 MR. WILSON: Jeff Wilson for defendant IXL
2 Learning.

3
4 ADRIAN SCOTT DUANE,
5 having been first duly sworn, testified as follows:

6
7 MR. MAREK: Let me just correct the record. I
8 represent the intervening-plaintiff.

9 MR. WILSON: Okay. Ready to go? All right.

10 EXAMINATION

11 BY MR. WILSON:

12 Q. Good morning.

13 A. Morning.

14 Q. State your full name, please.

15 A. Adrian Scott Campe Duane.

16 Q. How do you spell that?

17 A. A-d-r-i-a-n, S-c-o-t-t, C-a-m-p-e, D-u-a-n-e.

18 Q. Is Campe a hyphenated name?

19 A. No. It's my mother's maiden name. I took it
20 on when I transitioned.

21 Q. When was that?

22 A. My legal name change was around November 2009.

23 Q. Did you work at IXL Learning?

24 A. Yes.

25 Q. What dates did you work there?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

7

1 A. July 2013 until January 2015.

2 Q. You understand that you are here giving a
3 deposition in a case brought by the EEOC that you've
4 intervened against IXL, correct?

5 A. I do, yes.

6 Q. Have you ever had your deposition taken before in
7 any other proceeding?

8 A. No.

9 Q. So as you probably know and can see that we have
10 a couple different ways that we're recording this
11 proceeding. One is from a court reporter who is
12 transcribing everything everybody says. Another is a we
13 have a videographer here.

14 Throughout the question-and-answer period, there
15 will be times when I'm asking a question and you know sort
16 of where I'm going -- and it might not happen at the
17 beginning, but as we get a little bit into it, you'll know
18 where I'm going, you'll know what your answer is, and
19 you'll want to sort of jump in and cut to the chase and
20 answer. That's how normally people talk. But here we have
21 to keep a clean record. So I would ask that you wait until
22 I respond -- until I finish before you start responding.

23 Okay?

24 A. Sounds good.

25 Q. Okay. Also, even though we have video, the court

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

8

1 reporter is making a written transcription and so
2 everything you -- every -- every bit of information you
3 provide needs to be a verbal response, verbal information
4 as opposed to nods of the heads or non-verbal agreements
5 like "uh-huh" or "huh-uh." Do you understand that?

6 A. Yup.

7 Q. All right. If -- if we notice that you haven't,
8 someone will probably speak up. If we say, "Is that a
9 'yes'?" or something like that, "Is that a 'no'?" we're not
10 asking you to rephrase your response, we're just asking you
11 to verbalize your response. Do you understand?

12 A. I do.

13 Q. All right. You know that you are under oath
14 today, right?

15 A. Yes.

16 Q. You just gave your oath to tell the truth, right?

17 A. Yes.

18 Q. And you are here during this deposition, you're
19 intending to tell the truth; is that right?

20 A. Of course.

21 Q. Okay. If I ask you a question and you don't know
22 what I mean or don't understand what I'm asking and
23 therefore can't really answer, please ask me to rephrase or
24 repeat or tell me that you don't know what I'm asking,
25 can't understand it, and I will try to make it more

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

9

1 understandable. Do you understand?

2 A. Yes.

3 Q. All right. If you don't ask me for clarification

4 or tell me to rephrase and you start answering, I'm going

5 to move on to the next question assuming that you

6 understood what I asked. Do you understand?

7 A. I do.

8 Q. Okay. If you need to take a break, bathroom,

9 stretch your legs or any other reason, we can certainly do

10 that. If there's a question pending, we just ask that

11 you -- that you provide that response before taking a

12 break. Because of the nature of these depositions, unlike

13 what you might see on TV where a lawyer's sitting next to

14 you and you push the mic away and you ask how to respond,

15 that's not this kind of a deposition -- or kind of an

16 examination. Do you understand?

17 A. Yes.

18 Q. Okay. Are you on any medication today that would

19 impair your ability to understand what I'm asking or

20 understand how you're responding?

21 A. No.

22 Q. Okay. Do you have any condition that would

23 impair your ability to understand what I'm asking and

24 provide a response?

25 A. Not that I know of, no.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

10

1 Q. Okay. How did you prepare for your deposition?

2 A. I reviewed documents with my counsel and

3 talked with them about what to expect.

4 Q. Who else did you talk to?

5 A. I -- in order to prepare?

6 Q. Yes.

7 A. Not really anyone in order to prepare. I

8 talked to my boyfriend about it a little.

9 Q. What's your boyfriend's name?

10 A. Anthony.

11 Q. How long has Anthony been your boyfriend?

12 A. A short time.

13 Q. You made a reference at one point in some
14 interrogatory answers, and I can show them to you later, to
15 your partner having helped you prepare something. Is that
16 someone different than Anthony?

17 MS. SANGHVI: Objection. Vague.

18 BY MR. WILSON:

19 Q. Go ahead. You can answer.

20 A. I believe what you're referring to is the
21 e-mail that I responded to David Keyes with, and I did
22 talk with my ex-partner, my partner at the time, Jenna
23 Mandis, about that, but she is no longer my partner.

24 Q. That name again, Jenna?

25 A. Jenna, J-e-n-n-a, Mandis, M-a-n-d-i-s.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

11

1 Q. Okay. Did you say you did talk to Anthony about
2 the deposition or not?

3 A. I just told him that I had to get deposed on
4 Tuesday.

5 Q. Have you talked to Anthony about what you're
6 alleging in this case?

7 A. A little bit, yeah.

8 Q. How do you describe -- how have you described it
9 to Anthony?

10 A. Well, I explained the basics of the case, that
11 I was fired from my job three-and-a-half years ago
12 almost, and I explained to him, you know, the reasons
13 that I thought that was, that, you know, I'd written
14 this post alleging discrimination because I felt
15 discriminated against and I was fired for making that
16 complaint.

17 Q. Did you tell him anything else about the case?

18 A. Not that I remember, no.

19 Q. Okay. What document do you recall reviewing in
20 order to help you prepare for your deposition?

21 A. My attorneys showed me some of the discovery
22 documents. I looked over the -- the interrogatories and
23 the other documents that -- the other discovery
24 documents, request for discovery.

25 Q. Do you recall any -- do any documents stick out

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

12

1 in your mind as some that you place more emphasis on or
2 reviewed more carefully to prepare for today?

3 A. Oh, one thing I didn't mention is I read over
4 the NLRB transcript as well. I wanted to clarify that.

5 I wouldn't say that any in particular stuck
6 out, no.

7 Q. Did you read the whole transcript from the NLRB
8 trial?

9 A. I reviewed my own testimony.

10 Q. Did you review your testimony from different
11 examiners, like for instance, the NLRB's questioning of you
12 and your responses, my cross-examination of you and your
13 responses?

14 MS. SANGHVI: Objection.

15 BY MR. WILSON:

16 Q. Did you read all of that?

17 MS. SANGHVI: Objection. Compound.

18 BY MR. WILSON:

19 Q. Go ahead.

20 A. Yes, I did read all of it.

21 Q. Did you read any other parts of the NLRB
22 transcript to help you prepare?

23 A. No, I don't think I did.

24 Q. Okay. When you read your testimony from the NLRB
25 trial -- first of all, when do you recall reading that?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

13

1 How far in the past? Was it today, yesterday, some time
2 else?

3 A. It was a few days ago, and again, this morning
4 I looked it over.

5 Q. In that NLRB testimony that you gave, did you
6 tell the truth?

7 A. Yes.

8 Q. Okay. Excuse me. Are there any other documents
9 or electronically-stored information, like communications,
10 whether or not you'd consider them documents, that you
11 reviewed for purposes of providing your testimony today?

12 A. Not that -- not that I can remember, no.

13 Q. You didn't, for instance, look into your text
14 messages or Facebook chats or any other electronic
15 communication device or platform to refresh your memory
16 about events for purposes of today?

17 A. Well, I looked at the ones that we'd turned
18 over for discovery.

19 Q. Other than what might have been turned over in
20 discovery, did you review any of your electronic
21 communications on devices, on computers in order to get
22 ready for today?

23 A. No.

24 Q. When you reviewed documents that you say were
25 produced, how do you know that they were produced in this

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

14

1 case?

2 A. Because my attorneys told me to -- told me

3 that they were.

4 Q. Okay. Who are your attorneys?

5 A. Well, David Marek's been representing me for
6 about three years, and Ami Sanghvi is -- is representing
7 me and the EEOC in this case.

8 Is that --

9 Q. And do you consider her to be your attorney?

10 A. I think it's -- I think she's the EEOC's
11 attorney and I'm the primary plaintiff, so kind of.

12 Q. Okay.

13 A. I don't totally understand the -- you know,
14 it's -- the -- the relationship, but yes.

15 Q. Can you tell me what she told you about the
16 deposition?

17 MS. SANGHVI: Objection. Attorney-client --
18 it calls for attorney-client privileged communications.

19 MR. WILSON: Okay. So any communications --
20 for the record, so I can at least understand it, any
21 communications between you and Mr. Duane, you're
22 asserting attorney-client privilege?

23 MS. SANGHVI: I am, yes.

24 MR. WILSON: Okay.

25 MS. SANGHVI: Sorry, also for the record I'll

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

15

1 assert attorney-client privilege and common-interest
2 privilege to the extent that Mr. Marek was involved in
3 any of those communications.

4 BY MR. WILSON:

5 Q. When you provided answers in this case to written
6 discovery requests, first off -- first of all, do you
7 remember doing that at all since this case started?

8 A. Do I remember handing over documents or --

9 Q. Sorry. Providing written responses to written
10 interrogatories and -- and questions that we posed.

11 A. Yes.

12 Q. And you said you reviewed interrogatories to
13 prepare for today, right?

14 A. Yes.

15 Q. Did you review your interrogatory answers in this
16 case?

17 A. I actually reviewed the questions that were
18 asked.

19 Q. Did you review your answers?

20 A. Actually, no, I didn't.

21 Q. Do you remember reviewing anything called Request
22 For Admission?

23 A. Yes. Well, I remember reading them. I didn't
24 review them -- I reviewed some of those in preparation
25 for the case -- or the deposition today.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

16

1 MR. WILSON: So I'm going to mark as
2 Exhibit -- what do you want to do? What do you want to
3 do about exhibit numbers? I know we were thinking of
4 sequential, but I think I'm just going to start with
5 Exhibit 1 for Duane deposition.

6 MS. SANGHVI: It was -- we'd agreed the
7 defendants would take 200 to 300, I think is what we
8 had -- the agreement was.

9 (Deposition Exhibit 200 was marked for
10 identification.)

11 MR. WILSON: So I will show you Exhibit 200
12 then.

13 Is that right? That makes sense.

14 BY MR. WILSON:

15 Q. Okay. So in a second -- let's see. Let me back
16 up for a second before I show you that.

17 Do you -- when you -- I just noticed -- when
18 you gave responses to someone, some attorney to help
19 prepare your answers to interrogatories, do you recall
20 reviewing a document called request for admission so
21 that you could admit or deny things?

22 A. Yes.

23 Q. Okay. When you gave your written answers to
24 interrogatories, did you consult anyone other than your
25 lawyers --

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

17

1 A. No.

2 Q. -- to be able --

3 A. Sorry.

4 Q. -- to do that?

5 A. No, I did not.

6 Q. Okay. Are you getting anything popping up on

7 yours?

8 A. Yes.

9 Q. Okay. What do you see?

10 A. Adrian Scott Duane Exhibit 200 PDF.

11 MR. WILSON: Do you guys see that? Okay.

12 BY MR. WILSON:

13 Q. So can you just touch that document? And it

14 should pull up.

15 A. (Witness nods head.)

16 Q. Okay. So because this is the first exhibit I'm

17 showing you, I just want to clarify something, that this is

18 a seven page document. You can leaf through by just

19 swiping from right to left. Will you do that right now?

20 Just -- okay. So you can see -- you can review, if you

21 want, just like if I handed you a paper document and you

22 wanted to review, you wanted to read part of it or some of

23 it or all of it, you can go ahead and do that just by

24 flipping through on your screen. And you can sort of pinch

25 and zoom in or zoom out if something's not easy to read.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

18

1 Do you understand?

2 A. Yes.

3 Q. Okay. So -- and there'll be times when I might
4 sort of commandeer your screen and I might just show you
5 part of the document. So you'll see that. It will change,
6 and then -- as if I were showing you a piece of paper. And
7 if there's any problem, if you can't read something, just
8 let me know. But after one or two, it gets pretty easy.

9 Do you understand?

10 A. Yes.

11 Q. Basically that I'm going to be showing you
12 documents on an iPad.

13 A. Yes.

14 MS. SANGHVI: Objection. Just to clarify for
15 the record since it's the first time I'm using this as
16 well.

17 MR. WILSON: Yes.

18 MS. SANGHVI: If you are manipulating the
19 document in some way, you will read that into the
20 record, correct?

21 MR. WILSON: Yes.

22 MS. SANGHVI: Okay.

23 MR. WILSON: By "manipulating" -- unless I
24 draw on it, sometimes I might do that, might draw a
25 little red arrow somewhere, I'll make sure I mention

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

19

1 that for the record. But for the most part, it's

2 just -- it's the document as produced. All right.

3 Anything? Are they coming up on your screen?

4 MR. MAREK: Yup.

5 MR. WILSON: All right.

6 BY MR. WILSON:

7 Q. So can you turn to page three of that document?

8 A. Yup. Yes.

9 Q. All right. And you see the first question,

10 "REQUEST FOR ADMISSION NO. 1." You see it says, "Admit

11 that Duane was not happy with the diversity in IXL

12 Learning's workplace." "RESPONSE," "Admit." Do you see

13 that?

14 A. Yes.

15 Q. Do you recall admitting that? Do you recall

16 seeing that --

17 A. Yes.

18 Q. -- before it was provided by your attorney?

19 A. I believe it was sent to my attorney and they

20 sent to me, so --

21 Q. The reason I ask is on page seven, and this is

22 how it works with Requests For Admission, is that you don't

23 sign this, your attorney does. So I just simply want to

24 know if you saw these responses before they were sent to

25 me.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
20

1 A. Oh, yes, I did.

2 Q. Got it. Thank you. On the next page, do you see
3 Request For Admission 2 where it says, "Admit that Duane
4 never told Paul Mishkin that he was transgender"? Do you
5 see that?

6 A. Yes.

7 Q. All right. And your response was, "Admit that
8 Duane never directly told Mishkin that he was transgender."
9 What -- can you tell me what you mean by "directly"?

10 A. I never said to him "I'm a transgender man."
11 I never -- I never said that directly.

12 Q. Okay. So when we say admit that you never told
13 Paul Mishkin that he was transgender, do you admit that?

14 A. No. I -- I think -- I think that there are
15 many ways to tell someone. Like I think "told" is a
16 little bit vague. What I'm saying is I never directly
17 said to him, "I'm transgender." That's what I admit to.

18 Q. Did you ever -- did you ever indirectly say to
19 him "I'm transgender"?

20 MS. SANGHVI: Objection. Vague.

21 THE WITNESS: I think that there were -- there
22 were many ways that he could have had that information;
23 for instance, the doctor's note that I provided to my
24 direct supervisor which had my surgeon's name and e-mail
25 address and website which makes it very clear that he

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
21

1 only performs gender reassignment surgeries.

2 BY MR. WILSON:

3 Q. Do you have any reason to believe Paul Mishkin
4 ever saw that doctor's note?

5 A. I assume that he did since it was part of the
6 discussion about my disability accommodation, but I --
7 that's my assumption is that he saw it.

8 Q. Is there any other reason that you believe that
9 Paul Mishkin may have been informed indirectly that you
10 were transgender?

11 A. I think that there are, again, quite a few
12 avenues by which he could have discovered that
13 information. I think one thing is that, you know, we
14 live in the Bay Area. There are a lot of trans people
15 here and a lot of people know how to see the -- the
16 clues of someone being transgender, and I happen to be a
17 trans -- a trans man that has quite a few of those. So
18 it wasn't out of the question to me that, you know,
19 somebody had just realized that I was trans and -- and
20 told him or that he had realized himself that I was
21 trans. So that's one sector that he could have found
22 out by.

23 There -- I was also doing a lot of
24 trans-related activism. And I -- although I never said,
25 "I'm doing trans related activism because I'm trans," I

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
22

1 did talk to several colleagues, including some that were
2 relatively high up at the company, about my trans
3 activism. And I think that it's -- it's reasonable that
4 someone might make the assumption that I am trans based
5 on that activism.

6 Q. You never --

7 A. Can I add something?

8 Q. Go ahead.

9 A. So the other thing was right before I was
10 fired I attended this -- this Christmas party with the
11 ex-partner that you mentioned before, Jenna, and a lot
12 of people -- most people, I would say, in the workplace
13 assumed that I was a gay cisgender man. I'm a queer
14 trans man. So I was dating somebody that was also
15 gender variant. She's a cis woman but she usually gets
16 read as like a butch lesbian. She's very masculine.
17 And when we showed up at the party together, I think
18 that a lot of people sort of questioned what was going
19 on with my gender and sexuality based on that.

20 And I think that there were, you know, quite a
21 few of these like little things that had built up in the
22 workplace, such as them just seeing me every day and,
23 you know, seeing that I'm -- I'm short, I have, you
24 know, a relatively -- not a very deep voice for a man,
25 things like that and, you know, I do this trans

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
23

1 activism. And I think that for a lot of people at that
2 company, seeing me with a woman, especially a gender
3 variant woman, was kind of the final clue that sort of,
4 you know, put it in their minds that there was something
5 going on with my gender and not just my sexuality.

6 Q. So other than what you've speculated about what
7 people might have concluded, do you have any evidence or
8 any facts that you can tell me of today that Paul Mishkin
9 knew you were transgender at any time during your
10 employment?

11 MS. SANGHVI: Objection.

12 Go ahead.

13 BY MR. WILSON:

14 Q. Go ahead.

15 A. I think what I've outlined is -- is all I can
16 remember.

17 Q. All right. Number 3 on your request for
18 admission states or asks, "Admit that Mishkin never asked
19 Duane what his medical procedures were." And again, you --
20 you say, "Admit that Mishkin never directly asked Duane
21 what his medical procedures were." Why do you say "never
22 directly" as opposed to just "admit"?

23 A. Well, I know that there was discussion between
24 four people at the company, Paul Mishkin, Maricela
25 Prado, David Keyes, and Lenore Ockerberg. Around the

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

24

1 time that I was requesting accommodation and right
2 before I was fired, I know there was an e-mail exchange
3 and I assume that there was other communication as well,
4 by phone, whatever. And again, with the doctor's note,
5 I think that although the doctor's note does not
6 specifically say what my surgery was for, I think
7 it's -- you know, it's fair to assume that somebody
8 reading that could put the -- put the pieces together.
9 And again, I assume that that was perhaps part of the
10 conversation between Paul Mishkin, David Keyes, and the
11 other folks.

12 Q. Okay. So when we asked you to admit that he
13 never -- that Paul Mishkin never asked you what your
14 medical procedures were, can you, sitting here today, admit
15 that he never asked you that?

16 MS. SANGHVI: Objection.

17 BY MR. WILSON:

18 Q. Go ahead.

19 MS. SANGHVI: Asked and answered.

20 BY MR. WILSON:

21 Q. Go ahead.

22 A. He never asked me directly, no. He never
23 asked me person to person, "What did you have surgery
24 for?"

25 Q. Okay. In Number 5, in the Request For Admission,

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
25

1 we asked you to admit that you were trying to harm IXL's
2 recruiting efforts by making your December 30, 2014,
3 Glassdoor post. There was an objection about vagueness.
4 And then your response is, "Denied that trying to harm
5 IXL's recruiting efforts was the primary motivation for
6 Duane's Glassdoor post." Do you see that?

7 A. Yes.

8 Q. Now, we didn't ask you to admit that it was your
9 primary motivation, but I'll ask you now. Do you admit
10 that trying to harm IXL's recruiting efforts by making your
11 Glassdoor post was one of many of your motivations for
12 making the post?

13 A. I would say -- I -- no, I wouldn't admit to
14 that. I would say instead that what I wanted was -- in
15 terms of recruitment effort, what I wanted was for
16 potential employees that were looking at this company
17 to -- to know my experience there and know that I saw
18 some -- some issues at the company. I felt that -- I
19 mean, the whole point of Glassdoor is to give
20 information to potential employees, current employees,
21 and sometimes management as well by stating our
22 experience. So that's -- that's what I was trying to do
23 is trying to give people information.

24 Q. You were trying to keep people from working at --
25 at IXL, right?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
26

1 A. What I was trying to do was let them know that
2 if diversity was important to them, among the other
3 things in my post, then they -- they might want to look
4 elsewhere.

5 Q. Would you agree that you, on at least one
6 occasion, attempted to persuade someone interested in
7 working at IXL from -- from working at IXL?

8 MS. SANGHVI: Objection. Vague.

9 THE WITNESS: I -- not that I -- no, not that
10 I can remember. Yeah.

11 BY MR. WILSON:

12 Q. At Number 6, we asked, "Admit that IXL did not
13 discriminate against Duane." And the response was an
14 objection with no answer saying it would require you to
15 make a legal conclusion "that he cannot make."

16 You've testified a few minutes ago that you felt
17 that IXL had discriminated against you. Do you recall
18 that?

19 A. Yes.

20 Q. Okay. Is there a reason why you will not admit
21 or deny that IXL discriminated against you?

22 MS. SANGHVI: Objection. Calls for --

23 BY MR. WILSON:

24 Q. Go ahead.

25 MS. SANGHVI: Objection. Calls for legal

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
27

1 speculation.

2 BY MR. WILSON:

3 Q. Go ahead.

4 A. I know that I felt discriminated against at
5 IXL. And I know also that there's a legal definition of
6 discrimination and that it can be hard to prove. And
7 the distinction that -- that I'm making in that
8 admission is that I felt discriminated against but I
9 just don't -- I don't have the legal expertise to say
10 like yes, it's provable in court. All I know is that I
11 felt discriminated against.

12 Q. And in your Glassdoor post, you never once said
13 "I was discriminated against," correct?

14 MS. SANGHVI: Objection. Argumentative.

15 BY MR. WILSON:

16 Q. Correct?

17 A. No, I didn't say those words --

18 Q. Right.

19 A. -- no.

20 Q. Do you remember being contacted by a -- by a
21 student interested in possibly working at IXL?

22 A. Oh, yes, vaguely. Vaguely I do. I think it
23 was someone who was an alum of my college maybe. Yeah,
24 I remember that vaguely.

25 Q. Do you recall what you told her about whether she

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
28

1 should work at IXL?

2 A. I think that I told her -- I'm sorry, no, I

3 can't remember exactly.

4 Q. You felt that IXL was doing a bait and switch on

5 employees -- or sorry, strike that.

6 You felt that IXL was doing a bait and switch

7 on potential employees and recruits around the time that

8 you worked there, right?

9 MS. SANGHVI: Objection.

10 THE WITNESS: Can --

11 MS. SANGHVI: Go ahead.

12 THE WITNESS: Can you clarify?

13 BY MR. WILSON:

14 Q. Do you recall in your Glassdoor post saying that

15 IXL does a bait and switch?

16 MS. SANGHVI: Objection. Objection.

17 Go ahead.

18 THE WITNESS: I remember saying something to

19 that effect.

20 BY MR. WILSON:

21 Q. Did you feel at that time that you posted your

22 Glassdoor post that IXL was baiting and switching recruits

23 for employment?

24 A. I definite -- I felt that the work that we

25 were doing was not really the work that we thought we

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
29

1 would be doing -- or that I thought I would be doing
2 when I interviewed for the job.

3 Q. And that is work that would be more creative? Is
4 that what your feeling was before you took the job?

5 MS. SANGHVI: Objection.

6 THE WITNESS: I think that there was an
7 element of creativity and an element of getting to own
8 the product. We were making, you know, math education
9 software and the people that were making it knew a lot
10 of math and knew a lot about teaching. And I -- I
11 expected that we would have more -- more say in how --
12 how we did that teaching. And that can be very
13 creative. It can -- and it can just depend on different
14 styles of pedagogy and things like that. And it was
15 apparent to me throughout the time that I worked there
16 that there was one way pedagogically that we were
17 approaching math practice and there was really no
18 movement whatsoever from that.

19 BY MR. WILSON:

20 Q. And your basis for concluding that was on what
21 you experienced or what others had told you in addition to
22 what you experienced?

23 A. Both.

24 Q. The people who told you or provided you any kind
25 of information that led to your conclusion that you just

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
30

described, can you name those individuals?

A. Yes. Nemo Curiel, Jessica Morse, and Nina Wu,
and also Isadora Milin.

Q. Nemo was an employee at IXL for some period of
time while you were there?

A. Yes.

Q. What was Nemo's position?

A. He was a product analyst in math as well.

Q. Is Nemo mainstream gay or white or Asian or all
of the above?

MS. SANGHVI: Objection.

BY MR. WILSON:

Q. Go ahead.

A. Nemo is Latino and, to be honest, I don't know
how he would describe his sexuality. As far as I know,
he's straight.

Q. Do you know whether Jessica is -- Jessica Morse
is gay, straight, or something else?

MS. SANGHVI: Objection.

BY MR. WILSON:

Q. Go ahead.

A. I believe that she's straight.

Q. Do you know the sexual orientation of Nina Wu?

MS. SANGHVI: Objection.

THE WITNESS: I don't believe she's straight.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

31

1 I don't know for sure. That's a question for her.

2 BY MR. WILSON:

3 Q. At the time that you worked at IXL while she
4 worked there, what did you perceive her sexual orientation
5 to be?

6 MS. SANGHVI: Objection.

7 THE WITNESS: We had some discussions about --
8 about sexuality. This is -- this is hard for me to
9 answer because I'm a little concerned about her privacy.
10 That's why I'm holding back a little bit. But frankly,
11 we talked about sexuality. She -- she told me that she
12 was interested in exploring alternative sexuality and we
13 had many discussions about that.

14 BY MR. WILSON:

15 Q. Would you consider her mainstream gay or not?

16 MS. SANGHVI: Objection.

17 THE WITNESS: Probably not, no.

18 BY MR. WILSON:

19 Q. So what do you mean by "mainstream gay"? And the
20 reason -- the word I'm referring to -- the term I'm
21 referring to is the term you used in your Glassdoor post.
22 So I'm not asking you what you consider it today. So let
23 me strike all that.

24 At the time you posted on Glassdoor in 2014,
25 what did you consider to be mainstream gay?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
32

1 A. As far as I remember, what -- what I meant at
2 that time was folks who were cis gender, not really too
3 gender variant. Kind of stayed within, you know, one
4 standard deviation of what society would consider normal
5 gender presentation or typical gender presentation and,
6 you know, dated specifically their own gender. So cis
7 men dating cis men. Cis women dating cis women.

8 Q. Would a very effeminate homosexual male at that
9 time be considered in your view mainstream gay?

10 A. I think it -- I think it depends, to be
11 honest.

12 Q. Okay. So I'm trying to understand at that point
13 in time, when you said -- or you used the term "mainstream
14 gay" in that post, were you referring to only individuals
15 who were gender variant or something else?

16 MS. SANGHVI: Objection.

17 Go ahead.

18 THE WITNESS: I was referring to gender
19 variance, and really I would -- I -- I think I was
20 probably the only one in that category. There might
21 have been one other, so my sample size is -- is pretty
22 small. But I'd say gender variance and people that have
23 sexualities that are -- that are not just man dating
24 man, woman dating woman. So queer people, bisexual
25 people, poly people, those -- those categorizations are

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

33

1 what I was thinking of when I was saying outside of
2 mainstream gay.

3 BY MR. WILSON:

4 Q. Two questions. One is you said you were the only
5 one at that time. Did you mean only person at IXL who was
6 not mainstream gay?

7 MS. SANGHVI: Objection. Misstates his
8 testimony.

9 Go ahead.

10 BY MR. WILSON:

11 Q. Go ahead.

12 A. I perceived myself as I believe the only
13 person who was transgender, and I believe the only --
14 the only person perhaps besides Nina who was -- whose
15 sexuality fell outside of that mainstream, although I
16 don't know for sure because I -- you know, I haven't
17 discussed all of the sexualities of all the people at
18 IXL.

19 Q. Do you know of any of the testimony given by some
20 of your coworkers at that time in this case regarding what
21 they perceived your sexuality to be?

22 A. My understanding is that they perceived me as
23 a gay man.

24 Q. Would you agree or disagree that coworkers other
25 than those that you really confided in would most

1 reasonably consider you to be mainstream gay male?

2 MS. SANGHVI: Objection.

3 Go ahead.

4 THE WITNESS: Well, probably up until the time
5 I started dating my ex-partner Jenna. And there were
6 several people in the company that did know when I began
7 to date Jenna because I was very happy about it.

8 BY MR. WILSON:

9 Q. When you said "poly," could you tell me what that
10 means? You said bisexual, you know, cis gender, you gave a
11 few different descriptions, and you mentioned poly. Can
12 you just tell me what that means to you?

13 A. So poly is a shortening -- shortening of the
14 word polyamorous. Polyamorous is a pretty large
15 umbrella term that refers to people that date multiple
16 people at once, have multiple relationships at once,
17 have sex outside of their relationships. There are a
18 lot of different configurations that polyamory can take,
19 but it refers to many different types of alternative
20 relationships.

21 Q. David Keyes was your supervisor from mid 2014
22 until the end of your employment; is that right?

23 A. Yes.

24 Q. Who was your supervisor before that?

25 A. Kate Mattison.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
35

1 Q. You recall that you had roughly 25 to 30 days in
2 2014 when you either worked at home or worked partially at
3 home, partially at work? Do you recall that?

4 A. Yes.

5 Q. Your best estimate, if you can give it, how many
6 of those days were while David Keyes was your supervisor?

7 A. I believe it was -- I think it was all of
8 them.

9 Q. And that is a function of the electrolysis
10 appointments that you had in part; is that right?

11 MS. SANGHVI: Objection.

12 THE WITNESS: What do you mean by "a function
13 of"?

14 BY MR. WILSON:

15 Q. The time you needed to work at home or might need
16 to leave -- or -- sorry.

17 The time that you worked remotely or maybe needed
18 to take a day off, those were in large measure because of
19 the electrolysis appointments that you had described
20 previously; is that --

21 MS. SANGHVI: Objection.

22 BY MR. WILSON:

23 Q. Do you agree with that?

24 MS. SANGHVI: Objection. Vague as to time.

25 BY MR. WILSON:

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
36

1 Q. Okay. Go ahead.

2 A. Yes. It was mostly because of the two-hour
3 electrolysis appointments on my arm. There were other
4 preoperative -- preoperative -- some other preoperative
5 things I needed to take care of as well on and off, as
6 well as, you know, the week that I was out for my first
7 surgery.

8 Q. Okay. Sorry. David Keyes, while as your
9 supervisor, knew that you were an LGBT activist; is that
10 right?

11 A. Yes.

12 Q. Do you believe that David Keyes at any point
13 prior to your termination knew that you were transgender?

14 A. I believe that he found out during -- during
15 December -- December 2014. I believe that he had.

16 Q. Is your basis for saying that similar to what
17 you've already testified with respect to the doctor's note
18 and how easy it would be for someone to Google that
19 doctor's name?

20 MS. SANGHVI: Objection.

21 THE WITNESS: It's based mostly actually on my
22 attendance at the Christmas party and -- and also the --
23 sort of the way that he interacted with me around --
24 around the time I was -- I was returning.

25 One thing that sort of made me suspicious that

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

37

1 he probably knew is -- is the way that -- in which he
2 initially denied my accommodation and said that -- and
3 said no. He seemed sort of unconcerned. And I thought,
4 you know, this is a pretty serious surgery and he's just
5 seen me. He knows that I'm limping around and that I
6 have this -- you know, an injury on my arm and stuff.
7 He knows I'm in sort of rough shape and he didn't ask
8 about it. So he's a lot less concerned during that
9 December time than he had previously. And I wondered
10 why that was because I always felt that David and I
11 had had a pretty good relationship.

12 So my assumption -- my assumption was that,
13 okay, so he's found out that this -- this surgery is
14 what it is, that it's gender confirmation surgery, and
15 in his mind he now sees that -- that it's not
16 life-threatening. He might have even seen it as
17 elective or he might have seen it as something that I
18 was trying to hide from him, and thus was treating me in
19 the way that he was.

20 BY MR. WILSON:

21 Q. All right. These were all speculations you made
22 about the way you just described his response in an e-mail,
23 right?

24 MS. SANGHVI: Objection.

25 BY MR. WILSON:

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
38

1 Q. Go ahead.

2 A. I -- I'm just testifying to how his actions
3 made me -- made me feel, what they made me think.

4 Q. You understand that he has denied knowing at any
5 point in time during your employment that you were
6 transgender? Do you understand that he's denied that?

7 A. I do understand that, yeah.

8 Q. Okay. Is there any other reason that you might
9 have to dispute that denial?

10 A. Not that I can think of right now, no.

11 Q. When you were receiving your offer letter from
12 IXL in 2013 and deciding to -- to work for IXL, do you
13 agree that you were excited because the company, you
14 thought, encouraged diverse and creative thinking?

15 A. That was one of the reasons, yes.

16 Q. And you believed that management led you to think
17 that that was the case, right?

18 A. I asked some questions in my interview. Not
19 everybody in my interview were managers; some of them
20 were, some of them weren't basically. But it was based
21 on some of the answers I got in that interview.

22 Q. And in fact, the -- that excitement about
23 creativity, diverse thinking that you believed was going to
24 happen at -- at IXL turned out in your view not to be the
25 case, right?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
39

1 A. Yes.

2 Q. Right. And that was one of the reasons you

3 posted the Glassdoor posting, right?

4 A. Can you restate?

5 Q. Your disappointment in not seeing during your

6 work what you expected regarding encouragement of diverse

7 and creative thinking was one of the reasons that you

8 posted the Glassdoor review in December 2014, correct?

9 A. Yes, along with wanting to highlight some of
10 the things that I saw as issues of discrimination in the
11 workplace.

12 Q. Right. So what I said was that was one of the
13 reasons. And do you agree with that?

14 A. Yeah, it was one of the reasons.

15 Q. Okay. And you were disappointed with how narrow
16 your job was and that creativity was not permitted, right?

17 A. I was -- I was disappointed with the -- with
18 some of the ways in which creativity was constrained,
19 yeah.

20 Q. And that was one of the reasons as well why you
21 posted your Glassdoor post in December 2014, right?

22 A. Yes, I'd say it was one of the reasons.

23 Q. Generally speaking, the reason -- strike that.

24 Generally -- generally speaking, one of the

25 goals of your posting that Glassdoor review in

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
40

1 December 2014 was to let potential employees know what
2 you felt was a bait and switch or misleading campaign to
3 recruit employees, right?

4 MS. SANGHVI: Objection.

5 THE WITNESS: I wanted potential employees to
6 know what my experience had been there, and part of my
7 experience was what I perceived to be a not accurate
8 representation of what the work would be, yeah.

9 BY MR. WILSON:

10 Q. Okay. So my question is "yes" or "no," if you
11 can answer "yes" or "no." When you posted on Glassdoor in
12 December 2014, you knew that you would be reaching
13 potential employees and you wanted to tell them about what
14 you felt was a bait and switch or a misleading campaign to
15 recruit employees by IXL, correct?

16 A. I would say yes, I wanted to reach current
17 employees and yes, I wanted to let them know of this
18 discrepancy.

19 Q. When you communicated during your employment at
20 IXL with Nina, Nemo, or Jessica about personal issues or
21 non-work-related issues, what were the forms of
22 communication that you used? Can you describe them?

23 MS. SANGHVI: Objection. Vague as to time.

24 THE WITNESS: We used Gchat, which was like an
25 instant messaging service that -- that we use as part of

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

41

1 work. We used text message, text messages, Facebook
2 sometimes, and we just talked.

3 BY MR. WILSON:

4 Q. Any other electronic communication platform that
5 you used with any of those three individuals during the
6 time that you were at IXL?

7 A. Maybe e-mail. I mean, we definitely e-mailed
8 about work-related things. I'm not sure if we e-mailed
9 about personal things or not. I can't recall any other
10 methods that we communicated by, no.

11 Q. So in terms of like instant messaging or chats,
12 there was Gchat you referenced, correct?

13 A. Mm-hm.

14 Q. Right?

15 A. Yes.

16 Q. And text messaging was through your cell phone
17 provider; is that right?

18 A. Yes.

19 Q. Were there any other platforms or apps that might
20 today be considered to be like Slack or something that you
21 used to communicate with the three of them that you haven't
22 already identified?

23 MS. SANGHVI: Objection.

24 THE WITNESS: We basically used Gchat in lieu
25 of Slack. I don't think Slack was around then.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
42

1 /////

2 BY MR. WILSON:

3 Q. So anything other than that is what my question
4 is.

5 A. I don't believe so, no.

6 Q. Okay. You produced your text messages, e-mails,
7 other kinds of communication in this case with Nemo, Nina,
8 and Jessica; do you agree?

9 A. Yes.

10 Q. When you had to pull those documents together
11 to -- to produce them, how did you do that?

12 MS. SANGHVI: Objection to the extent that it
13 calls for any attorney-client privileged communications.

14 BY MR. WILSON:

15 Q. Go ahead.

16 A. I did a couple of things. So it was mostly
17 through the EEOC. They had me send in my -- my -- mail
18 in my phone to a lab that, you know, took the messages
19 off of it. They also had me provide my passwords to
20 e-mail and Facebook and things like that so they could
21 clone it and store it securely. So that's how -- that's
22 how it was done.

23 Q. When you first filed your charge of
24 discrimination against IXL way back in 2015, do you recall
25 doing anything to preserve your electronic communications

1 at that time from being deleted or automatically purged,
2 anything like that?

3 A. Well, I just don't delete things. So I don't
4 delete e-mails, I don't delete texts, I don't delete
5 Facebook, and so I was sure not to do that.

6 Q. Did you do anything to make sure that any
7 communications weren't automatically deleted?

8 A. I don't think I have anything in place that
9 does automatically delete, but to be honest, I'm not
10 sure. I didn't intentionally do anything to prevent
11 automatic deletion.

12 Q. And did you do anything to delete or conceal or
13 hide any communications that you felt were private or that
14 you didn't want to disclose in any of these proceedings?

15 A. No.

16 MS. SANGHVI: Objection. Vague.

17 BY MR. WILSON:

18 Q. Go ahead.

19 A. No.

20 Q. You recall in the NLRB trial, leading up to it,
21 receiving a subpoena from me, my office, for all of your
22 communications with different individuals. Do you -- do
23 you recall that?

24 A. Yes.

25 Q. All right. And do you agree with me that you

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

44

1 produced more communications with Nemo, Nina, and Jessica
2 in this case than you did in response to the NLRB subpoena?

3 MS. SANGHVI: Objection.

4 BY MR. WILSON:

5 Q. Go ahead.

6 A. I think -- I think yes, but I think that's
7 because some of the things didn't have anything to do
8 with the NLRB proceeding. It was only relevant when the
9 discrimination piece of it came.

10 Q. So in other words -- I'll ask again. There were
11 e-mails -- or sorry. There were communications that you
12 produced in this case that you did not produce in the NLRB
13 case; is that true?

14 A. Yes, I think it is.

15 MR. WILSON: Okay. Going to mark as
16 Exhibit 201 a document that I hope gets distributed with
17 a EEOC Bates label of 365.

18 (Deposition Exhibit 201 was marked for
19 identification.)

20 BY MR. WILSON:

21 Q. Can you tell me if that popped up on your screen?

22 A. Yes.

23 Q. And if you guys have it? It's a one pager. Can
24 you tell me what this type of communication is?

25 A. This is something on Facebook. I think it's a

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

45

1 message, a private message, but I'm not sure.

2 MR. WILSON: So are you guys seeing a little

3 tag at the bottom?

4 MS. SANGHVI: No.

5 MR. WILSON: Yeah, that's -- hmm. All right.

6 BY MR. WILSON:

7 Q. So how -- do you know how this document became

8 printed out or -- in this format that you're seeing it in

9 right now with these different characters and attachment

10 name, exclamation mark, do you know, or is it something

11 that you gave it to the EEOC and that's however they

12 produced it?

13 MS. SANGHVI: Objection.

14 Go ahead.

15 THE WITNESS: The latter.

16 BY MR. WILSON:

17 Q. Yeah. So this looks to me like it's a message,

18 and according to your testimony, on Facebook from you to

19 Nina Wu, dated July 31, 2014; is that accurate?

20 A. Yes.

21 Q. In this -- what do you call this, a Facebook

22 message?

23 A. Sure.

24 Q. Okay. In this Facebook message, it looks like

25 you're replying to something that came before it because

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
46

1 you start with, "yeah, i mean, i wasn't super surprised,
2 cuz i do think he's a nice guy." Do you see that first
3 sentence?

4 A. Yes.

5 Q. Okay. Do you know what you're referring to
6 there?

7 A. I think -- I think that I'm referring to --
8 the nice guy I'm referring to is David Keyes. I think
9 I'm referring to a conversation having to do with my
10 electrolysis, working from home. But to be honest, I
11 don't -- I don't remember writing it so I don't totally
12 know the context.

13 Q. Did you review this Facebook message before
14 giving your testimony today?

15 A. I think -- I think I did look over this
16 particular one, yeah.

17 Q. When you looked over it, did you do anything to
18 review other documents or inquire into what it is you're
19 really talking about here?

20 MS. SANGHVI: Objection. Vague and asked and
21 answered previously.

22 BY MR. WILSON:

23 Q. Go ahead.

24 A. Can you restate the question?

25 Q. Yeah. So when you looked at this in order to

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

47

1 prepare for today and you saw these words written out, did
2 you do anything to sort of understand what the context was
3 or review anything that might help you understand what the
4 context was?

5 A. Well, I thought about what the time period was
6 and where that would have fit in with the conversations
7 that I was having with David Keyes and with other people
8 at the company and just like where it was with regard to
9 my surgery and I think whether or not -- no, we didn't
10 talk about that. I was going to say whether or not Nina
11 still worked there or not. I believe she didn't at this
12 time. So I just kind of did some thinking about where
13 it -- where it fit into that time line.

14 Q. You didn't review any other documents to help you
15 understand the context; is that right?

16 A. No, I didn't.

17 Q. You say, "he was nicer than he had to be though.
18 like he said something about how he'd notice -- noticed on
19 Tues i didn't get a lot done and i legit almost cried." Do
20 you know what you're referring to in that -- those two
21 sentences?

22 A. Yes, I do.

23 Q. Can you tell me?

24 A. Yeah. So when I was doing my preoperative
25 electrolysis appointments, initially when I -- when I

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

48

1 had a conversation with David Keyes about what I would
2 need during that time, I told him, you know, I'm going
3 to have this preoperative appointment. The office was
4 close to where I live in Oakland, so I -- I wanted to
5 work from home on those days to just make it more
6 convenient because the appointment was right in the
7 middle of the afternoon. And so I -- I told him, you
8 know, "Can -- can we do this? This is why, you know, I
9 have this -- this appointment, preoperative appointment
10 in the afternoon." And he agreed to that. And so I
11 tried doing that.

12 And the reason that I initially asked to just
13 work from home is because I didn't -- I didn't feel
14 comfortable taking even a half sick day, asking for a
15 half sick day when I was already saying, you know, I
16 want these two months off. It wasn't a super
17 comfortable workplace to take sick leave in. There was
18 kind of an -- an implication that if you were taking a
19 sick day then you were really working from home. And
20 there was -- because sick days were ostensibly
21 unlimited, there was kind of this culture of guilt
22 around it. So I wanted to avoid that because I knew
23 that this was, you know, a big -- a big ask in the
24 workplace. So I suggested doing the work-from-home
25 thing.

1 And then I think probably about a month into
2 that David asked me to come in and said, you know, "I
3 noticed that you haven't been as productive on
4 Tuesdays." And I remember finding that just upsetting
5 because it's -- because, you know, it's not that he was
6 incorrect, I had this two-hour appointment and I had
7 been attempting to work a full eight hours on top of
8 having this appointment, which was like -- electrolysis
9 is quite painful as well, so it was just a really hard
10 thing to deal with, hard to work out hours, and it was
11 hard to have my appointment. Sometimes I would
12 literally have my computer open during the two-hour
13 appointment and I would just be working with my left
14 hand while my right arm was getting worked on in an
15 attempt to, you know, stay productive and stay -- and
16 stay up.

17 And he wasn't seeing any of that. All he was
18 seeing was that I was a little bit less productive on
19 Tuesdays than I was on other days. And so I -- you
20 know, I told him, "Okay. I'll try harder to do that.
21 I'll try harder to be productive." I was really just
22 trying to handle all of these different things in
23 preparation for this like really major surgery that I
24 was about to have. And I felt like, you know, it was --
25 it was difficult to hear that my boss was not happy with

1 how that was going.

2 So then he called me back in to his office and
3 said, you know, "Really what I meant was why don't we
4 just have you take a half sick day on those days so that
5 you have the -- you know, the" -- I think he said
6 something like, "the space, the time to do those
7 appointments, you don't have to worry about it. And
8 then my expectations as your manager, I can adjust my
9 expectations." And I found that to be -- the fact that,
10 you know, he brought that to me and said, "This is what
11 I'd like to -- I'd like for us to do," I felt -- at the
12 time, until what happened later on with the other
13 disability stuff, I -- I felt that -- I felt thankful
14 that he was bringing that option. And I -- and I
15 definitely, you know, adjusted my behavior on those
16 Tuesdays to reflect that. I took a half day -- I worked
17 a half day on those days, and I was a half day's worth
18 of productive, and then I would take the afternoon to do
19 this -- you know, this -- this appointment. So at the
20 time I -- you know, I was expressing that, you know, I
21 felt positive about that.

22 Q. When -- when David was your supervisor, in fact,
23 you requested a flexible schedule and -- for the purpose of
24 attending LGBT activism work in the evenings, right?

25 A. I don't think it was -- I don't think I

1 requested it. The -- the workplace work -- had some
2 flexibility with hours. That was the typical setup
3 for -- for employees. Some people would come in at 7,
4 some people would come in at 10. And I think what I
5 said was -- like I just wanted to check in with him and
6 say, "Hey, you know, sometimes I have this -- this stuff
7 in the evening." I think at the time I was organizing
8 some events around a book that I had written for or
9 whatever. So I just said, you know, "It's really nice
10 that I can have this flexible schedule and come in early
11 and leave on time for these things." And I wanted to
12 check that that was okay with him.

13 Q. And you in fact told him that the reason was that
14 you needed or appreciated the flexibility was LGBT activism
15 events and work that you did after -- after work, right?

16 A. I -- I believe I told him that, yeah.

17 Q. And you were happy that you had that flexibility
18 at IXL under David Keyes to -- to attend those activism
19 functions, right?

20 MS. SANGHVI: Objection.

21 BY MR. WILSON:

22 Q. Go ahead.

23 A. Yes. I was happy that I could work and do my
24 other work, yes.

25 Q. Were there any other employees at IXL during your

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
52

1 time of employment that you perceived to be mainstream gay

2 other than anyone you've talked about?

3 A. Yes.

4 Q. Who?

5 A. Steve Johnson, I believe is his last name. I

6 believe he started working there a few months after I

7 did. He was a cis gender gay guy.

8 Q. You said cis gender gay man?

9 A. Mm-hm.

10 Q. Is that "yes"?

11 A. Yes. As far as I know.

12 Q. Do you know of any -- anybody at IXL who you

13 considered at any point in time during your employment to

14 be not a white or Asian, straight person?

15 MS. SANGHVI: Objection. Vague.

16 THE WITNESS: Can you restate?

17 BY MR. WILSON:

18 Q. During the time that you were employed, do you

19 know of any employees at IXL who you perceived were not

20 white or Asian, straight individuals?

21 A. So I'm sorry, I'm trying to get the

22 intersection --

23 Q. Sure.

24 A. -- that you're looking for. So you're saying

25 people who are not white or Asian and people who are

1 straight? People who are both not white and/or Asian

2 and straight?

3 Q. Right.

4 A. I believe I put Nemo in that category.

5 Q. Yes, you did.

6 A. I think other -- there were a couple others

7 that I did not know well, but I don't know -- I don't

8 know their names, all of them. There weren't many

9 non-white or Asian people working there to be honest so

10 it's hard to say.

11 Q. You agree that that's common in the Bay Area --

12 Bay Area tech community for there not to be a large amount

13 of non-white, non-Asian employees, right?

14 MS. SANGHVI: Objection.

15 THE WITNESS: Yes, as far as I know diversity

16 is a very common problem in tech companies.

17 BY MR. WILSON:

18 Q. Do you recall in fact saying effectively that to

19 Nemo at some point in a written communication?

20 A. Yes. I think I said something along the lines

21 of, you know, "That's -- that's tech for you" or

22 something.

23 Q. Yeah. When you posted your Glassdoor post, you

24 criticized the CEO of IXL for being too involved and

25 micromanaging. Do you agree?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

54

1 A. Yes, that was one of my complaints.

2 Q. And you agree that your complaint was that the
3 CEO was too involved in projects regardless of the type of
4 individual or classification of the individual involved in
5 that project; would you agree?

6 MS. SANGHVI: Objection. Vague.

7 THE WITNESS: I'm not sure I understand the
8 question.

9 BY MR. WILSON:

10 Q. Okay. You did not say anything in your Glassdoor
11 post about the CEO's involvement being a problem only with
12 particular types of employees, right?

13 MS. SANGHVI: Objection.

14 THE WITNESS: No, I wouldn't say that his
15 involvement was limited to specific groups, no.

16 BY MR. WILSON:

17 Q. And my question is your complaint in the
18 Glassdoor post was just generically he was too involved and
19 too much of a micro manager, words to that effect,
20 regardless of who the employee was, right?

21 MS. SANGHVI: Objection. Misstates.

22 BY MR. WILSON:

23 Q. Go ahead.

24 A. I complained about his micromanagement as one
25 of my complaints in the Glassdoor, and the

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
55

1 micromanagement wasn't directly tied to the issues of
2 diversity in the workplace.

3 Q. Thank you. I think you said that better than I
4 could have asked that question.

5 A. Thank you.

6 Q. Won't be the first time -- or won't be the last,
7 I should say.

8 You wrote a Glassdoor post earlier in your
9 employment prior to the December 2014 Glassdoor post,
10 correct?

11 A. Yes.

12 Q. And in that prior Glassdoor post, you in fact
13 called it a benefit that the CEO was interactive with
14 employees, right?

15 A. At the time, yes, I -- I saw it as a good
16 thing that the CEO was involved.

17 Q. Okay.

18 A. But I had limited information at the time.

19 Q. Okay. The primary reason for you criticizing the
20 CEO being too involved in everything was a video project
21 that you learned about being canceled by him; is that fair
22 to say?

23 MS. SANGHVI: Objection.

24 Go ahead.

25 THE WITNESS: That was definitely one of the

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
56

1 reasons, yes.

2 BY MR. WILSON:

3 Q. My question is that was the main reason that you
4 felt that Paul was -- Paul Mishkin was too involved, right?

5 A. I felt that way for a lot of reasons. I can't
6 really say whether that was the primary reason or not.

7 Q. When Paul met with you after you had posted on
8 Glassdoor, do you recall him asking about why you made that
9 criticism?

10 A. Yes, I do.

11 Q. Okay. And do you recall that what you told him
12 was the -- sorry. What you told him about in response was
13 the video project, right?

14 A. That was one of the things that I cited, yes.

15 Q. Did you cite to him any other example of him
16 being too involved?

17 A. I can't -- I can't recall -- I can't recall
18 that I said or didn't say. I know we did talk about the
19 video project in that meeting. Yeah.

20 Q. And when you testified in the NLRB trial, that
21 was in, forgive me, November 2015 time frame; is that
22 right?

23 A. Mm-hm. Yes.

24 Q. Okay. Would your memory be fresher as to what
25 happened in January of 2015 with respect to that meeting at

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

57

1 the time that you gave your NLRB testimony or today?

2 A. I -- I -- I don't -- I don't really know how

3 to answer that. I suppose the -- the previous hearing.

4 Q. After -- strike that.

5 Did you -- strike that.

6 You didn't read any of Paul Mishkin's

7 testimony from that trial in preparation for today?

8 A. No, I didn't.

9 Q. Okay. You were sitting in that trial at the time

10 at the NLRB hearing, right?

11 A. Yes.

12 Q. Do you recall Paul giving his explanation of why

13 that video project was canceled?

14 A. I -- I recall it, but I don't recall it super

15 clearly.

16 Q. Okay. When you read your testimony, do you

17 recall how I actually asked you about that video project

18 and whether or not you were involved in it personally? Do

19 you recall that?

20 A. To -- to be honest, I don't have a super clear

21 recollection of those questions.

22 Q. No problem. I asked you if Paul was right or

23 wrong that the video project had too many resources devoted

24 to it and wasn't worth pursuing at the time, and you said,

25 "I can't say. I'm not an expert." Do you recall that?

1 A. I -- I vaguely recall that, yeah.

2 Q. Do you agree with that?

3 A. Yeah, I would say, you know, I -- I didn't

4 have all of the information about the video project.

5 But from my perspective as a former educator, as a

6 mathematician, I thought it was a really great way to --

7 it was a really good addition to what we already had.

8 It was really exciting and I thought that it was going

9 to, you know, take IXL to a new place and, you know,

10 have them start teaching math in a different way and

11 that was -- that was great. I really couldn't

12 understand why you'd want to -- you'd want to not do

13 that.

14 Q. Do you agree that Paul Mishkin knows more about

15 the ed-tech market than you?

16 MS. SANGHVI: Objection.

17 THE WITNESS: I -- he's certainly been working

18 in it longer than I have.

19 BY MR. WILSON:

20 Q. At the time that you made your post, generally

21 that time frame, December, January 2015, do you agree at

22 that time that Paul Mishkin knew more about the ed-tech

23 market than you?

24 A. He was certainly -- he -- he'd been working in

25 this much longer than I had, so --

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

59

1 Q. Is there a reason why you can't say that you
2 agree or disagree that he knew more about the ed-tech
3 market than you?

4 MS. SANGHVI: Objection. Argumentative.

5 BY MR. WILSON:

6 Q. Go ahead.

7 A. Is there a reason I can't say? Because I
8 don't know everything that he knows or doesn't know.
9 I -- you know, I had one conversation with him so it's
10 not really in my knowledge base to tell you what he does
11 or doesn't know about ed -- ed-tech.

12 Q. So when you criticized the CEO in your posting,
13 at that time you had not even met Paul personally
14 one-on-one; is that right?

15 A. I hadn't had a conversation with him.

16 Q. And at that point you didn't know whether Paul's
17 knowledge of the education technology market was superior
18 to yours or not; is that what your testimony is?

19 A. Yeah, I think that's accurate.

20 Q. Sitting here today, do you believe that you know
21 sort of better than Paul Mishkin about what projects IXL
22 should have stuck with or abandoned in 2014?

23 MS. SANGHVI: Objection.

24 THE WITNESS: I knew what my opinion was at
25 that time. I knew that my opinion was that it was a

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
60

1 good project and that we should have kept going with it.

2 BY MR. WILSON:

3 Q. I just want to ask for clarification on something
4 and if you've already answered it then so be it. I'm going
5 to have to ask you again because I don't remember your
6 answer. But in 2014, at least prior to your return to work
7 on December 30th, give or take, at IXL, do you believe that
8 David Keyes viewed you as a mainstream gay male?

9 A. Prior to my return to work?

10 Q. Correct.

11 MS. SANGHVI: Objection. Asked and answered.

12 Go ahead.

13 BY MR. WILSON:

14 Q. Go ahead.

15 A. I don't believe that he knew my trans status
16 prior to that time. That was my perception. And most
17 people perceived me as a -- as a gay man, so sure.

18 Q. And so I'm just using your terminology just so I
19 have a clear record. He -- as far as you know and believe,
20 he perceived you as a, quote, "mainstream gay male"; is
21 that right?

22 MS. SANGHVI: Objection.

23 THE WITNESS: To be honest, I think that
24 depends on whether he knew about my partner at the time
25 or not and I just don't remember if he did or not.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

61

1 BY MR. WILSON:

2 Q. In July 2014 and within a few months following
3 July 2014, you were very happy with what you perceived to
4 be David Keyes being very flexible with you on attending
5 your medical appointments, right?

6 MS. SANGHVI: Objection.

7 THE WITNESS: Well, there were some things
8 that -- there were -- there were some things that --
9 that I started to notice. I -- I didn't -- the -- the
10 conversation that we had about the Tuesdays, it did
11 bother me a little bit. I wanted to feel positively
12 about it and I wanted to believe that he was, you know,
13 doing the right things. But when he -- when he told me
14 that I wasn't being as productive, I -- I didn't like
15 hearing that. And there was a part of me that -- that
16 wanted to know like why he wasn't -- why he wasn't
17 empathizing a little bit more. You know, I had these --
18 these invasive appointments and I thought that he would
19 be a little more caring about that. So that wasn't
20 great.

21 I would say that there was sort of a slow
22 buildup where I just started to notice that he was a
23 little bit more -- maybe a little bit frustrated with
24 the fact that I had to do this like halfway thing every
25 week in the months before my surgery, but at the time he

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
62

1 was also giving me everything I needed. He was -- he
2 was allowing me to work from home. So yes, that part
3 was -- was satisfactory to me.

4 BY MR. WILSON:

5 Q. Do you recall testifying that Mr. Keyes was very
6 flexible with your need to work remotely and take time off
7 because of sporadic medical issues?

8 A. Yes. Until my -- until my return, until the
9 conversation in December, he was very -- he was
10 flexible, yeah.

11 MR. WILSON: All right. Let's take a
12 five-minute break. We've been going for about an hour
13 and a half.

14 THE VIDEOGRAPHER: The time is 11:26. We're
15 going off the record.

16 (Recess taken from 11:26 to 11:43.)

17 (Deposition Exhibit 202 through 210 were
18 marked for identification.)

19 (Mr. Marek not present.)

20 THE VIDEOGRAPHER: The time is 11:43. We're
21 back on the record.

22 BY MR. WILSON:

23 Q. Okay. While we were on break, I marked a few
24 exhibits that I'm going to ask you about, and the first one
25 is Exhibit Number 202. Can you please pull that up on your

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

63

1 computer?

2 A. Yes.

3 Q. On your tablet. This is a two-page e-mail

4 exchange between you and someone named Claire Spencer. Do

5 you see that?

6 A. Yes.

7 Q. Okay. Did you provide this to the EEOC to

8 produce in this case?

9 MS. SANGHVI: Objection.

10 THE WITNESS: I believe that they probably got

11 it from my e-mail clone.

12 BY MR. WILSON:

13 Q. Okay. Did you know that you were producing this?

14 MS. SANGHVI: Objection.

15 BY MR. WILSON:

16 Q. Go ahead.

17 A. They informed me of how they were going to

18 collect and search my documents and it does not surprise

19 me that this was -- this was on the list.

20 Q. So do you recall, sitting here today, this

21 exchange with Claire Spencer at Carleton College?

22 A. I recall it -- I recall it vaguely. I had

23 totally forgotten about it until today.

24 Q. Is Carleton College where you went to school?

25 A. Yes, I went to undergrad.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
64

1 Q. Okay. So in this September 13th, 2005 [sic],
2 e-mail from Claire to you, she talks about how "You came to
3 Carleton to speak about IXL in the spring of 2014,"
4 quote -- parentheses, "(I believe)." First I'm going to
5 ask you, do you recall going to Carleton to speak about IXL
6 around that time?

7 A. Yeah, I recall that.

8 Q. Okay. Was that something that you were doing on
9 behalf of IXL or in your own capacity or some other way?

10 A. On behalf of IXL.

11 Q. Okay. Was it a recruiting function?

12 A. It was a -- I'd say yes, it was. Often alums
13 would go to their colleges and talk about the -- the
14 company.

15 Q. Where is this located?

16 A. Northfield, Minnesota.

17 Q. Did IXL pay for you to travel there and provide
18 this presentation?

19 A. I -- I don't remember. I think so. Probably.

20 Q. At the time that you went in spring 2014, was
21 Kate Mattison your supervisor?

22 A. No, I think it would have been David Keyes.

23 Q. Okay. Do you -- sorry. Do you recall what it
24 was that you spoke about generally, presented generally --

25 (Mr. Marek joined the proceedings.)

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

65

1 BY MR. WILSON:

2 Q. -- at Carleton in that time frame?

3 A. To be honest, I don't remember it very well.

4 Q. Was it a prepared like PowerPoint or some other
5 kind of graphic presentation that you provided along with a
6 speech?

7 A. I think I had a PowerPoint, but I don't
8 remember.

9 Q. Did you make the PowerPoint or is it something
10 that IXL gave you?

11 A. I -- I don't know. I don't remember.

12 Q. So if you want to read this before we talk more
13 about it, since you said you don't remember it, you
14 certainly can do that. I'm interested though -- so if you
15 don't need to read it, that's fine. My question is do you
16 agree that you were giving this presentation at Carl --
17 Carleton on behalf of IXL for the purpose of helping
18 possibly recruit new talent?

19 A. My understanding was I was supposed to share
20 my experience about working there.

21 Q. Did IXL tell you what to say?

22 A. I honestly don't remember.

23 Q. Were you there with anyone else from IXL?

24 A. No, as far as I know.

25 Q. Did you ever do this with any other school or any

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
66

1 other presentation to any other group like you did with

2 Carleton?

3 A. No, I don't think I did. Not that I remember.

4 Q. This Claire Spencer says, "I distinctly remember

5 you having your nails painted all different colors and I

6 thought that was really cool!" Do you recall having your

7 nails painted all different colors?

8 A. I paint my nails a lot.

9 Q. Okay.

10 A. But no, I don't remember that specific time.

11 Q. Did you talk at all in Carl -- if you remember --

12 in this Carleton speech about diversity or the composition

13 of the workforce at IXL?

14 A. I -- I honestly don't remember.

15 Q. Okay. Is there anything that you might have in

16 your files and your computer, any other device that might

17 help you recall what it was that you prepared and/or

18 presented at Carleton?

19 A. It was probably on my work computer, so no.

20 Q. She says, "If I remember correctly, you, at least

21 at the time, were a project analyst." Is that what you

22 were at the time?

23 A. Product analyst.

24 Q. Okay. She says, "Even though I did not apply to

25 that exact position, I was wondering if you could review my

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

67

1 qualifications ... let me know where I can improve to be
2 more prepared for a career in this field." So having read
3 that, do you know if there was any kind of job fair or any
4 recruiting event going on at Carleton that you were
5 speaking at?

6 A. It was only about IXL.

7 Q. Okay.

8 A. I think I contacted the math department and
9 said -- or IXL did. I can't remember.

10 Q. Sorry. Okay. Any idea how many people you gave
11 a speech to at Carleton at this point in time?

12 A. I think it was probably around 10 to 15.

13 Q. Did you speak positively about IXL at that
14 speech?

15 A. Probably so, but I don't remember.

16 Q. Did you tell any of the students about not being
17 given the ability to be creative or engage in diverse
18 thinking at that speech?

19 A. I don't remember what I said. It's possible
20 that it could have -- could have come up.

21 Q. Oops. Do you think it's possible that you could
22 have complained about IXL not allowing employees to be
23 creative or engage in diverse thinking in their jobs?

24 A. Well, I know that if I would have been asked
25 questions I would have answered honestly by the

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

68

1 students.

2 Q. And in spring of 2014, your honest opinion was
3 that IXL did not encourage creativity or diverse thinking
4 in the projects; is that right?

5 A. I wouldn't totally agree with that. I think I
6 had noticed some things that indicated to me that
7 creativity wasn't really encouraged by that time.

8 Q. It looks like you responded to Claire that night
9 on September 13th; is that right?

10 A. According to this, yes.

11 Q. Okay. Now, you say here that -- you know,
12 "Thanks for reaching out. I'm no longer at IXL. I had a
13 few criticisms of the company while I was there, namely
14 that I did not find them very welcoming to queer people,
15 people with disabilities, and people of color." Do you see
16 that?

17 A. Yes.

18 Q. Were you being truthful when you wrote that?

19 A. Yes.

20 Q. Did you believe in September 2013 --
21 September 2015 that IXL was not welcoming of people with
22 disabilities?

23 A. I would say as a person with a disability I
24 certainly didn't feel great about how I was treated and
25 I felt discriminated against, yes.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

69

1 Q. What disability do you have?

2 A. I had gender reassignment surgery and that
3 resulted in a disability, a temporary disability.

4 Q. So when you say "people with disabilities," you
5 include yourself in that for the temporary disability
6 following your reassignment surgery?

7 A. Yes. I was disabled.

8 Q. And what is the basis for you saying that IXL was
9 not welcoming of people of color?

10 A. There were not many people of color working
11 there.

12 Q. You already had admitted that that's typical of
13 the tech community in the Bay Area; isn't that right?

14 A. I would say -- I mean, it's -- it's common.
15 It doesn't mean it's not a problem and it doesn't mean
16 that it wasn't true about IXL.

17 Q. Was there anything that you have identified so
18 far today or can -- or that you can identify to support
19 your comment that IXL was not very welcoming to people of
20 color?

21 MS. SANGHVI: Objection. Argumentative and
22 asked and answered.

23 BY MR. WILSON:

24 Q. Go ahead.

25 A. The makeup of the workplace was certainly

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
70

1 among those things. I think that's the primary thing is
2 that, you know, I looked around and it was most white
3 and East Asian folks. Yeah.

4 Q. Is there anything about IXL, at least as of
5 September 2015, that you felt made it less welcoming of
6 people of color than the tech community?

7 MS. SANGHVI: Objection. Calls for
8 speculation.

9 THE WITNESS: Well, I don't really know how to
10 answer that because I don't have knowledge of all tech
11 companies. At the time, you know, I -- I had only
12 worked for IXL.

13 BY MR. WILSON:

14 Q. Right. And so when you told this student
15 interested in working at IXL that IXL was not welcoming --
16 very welcoming of people of color, you were basing it on
17 the fact that the tech community itself doesn't have many
18 people of color?

19 MS. SANGHVI: Objection.

20 BY MR. WILSON:

21 Q. Go ahead.

22 MS. SANGHVI: Mischaracterizes.

23 THE WITNESS: I don't think I would agree with
24 that. I was basing it on my experience at the company.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

71

1 BY MR. WILSON:

2 Q. Which is simply you looked around and there

3 weren't a lot of people of color; is that right?

4 A. In addition, I had conversations with Nemo

5 Curiel about that who is a person of color.

6 Q. Any other reason that you told this employ --

7 this student interested in working at IXL that IXL was not

8 welcoming of people of color? Sorry.

9 A. Nothing that I can recall right now other than

10 what I've already told you.

11 Q. Okay. Sitting here today, do you feel that you

12 were being fair in that criticism of IXL regarding people

13 of color?

14 A. Yes, I do.

15 Q. In your Glassdoor post, you didn't mention

16 anything about IXL being not very welcoming of people with

17 disabilities; is that right?

18 MS. SANGHVI: Objection.

19 THE WITNESS: I didn't directly reference

20 disability in that post.

21 BY MR. WILSON:

22 Q. You didn't directly or indirectly, correct?

23 MS. SANGHVI: Objection. Argumentative and

24 misstates the record.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
72

1 BY MR. WILSON:

2 Q. Go ahead.

3 MS. SANGHVI: Didn't document it.

4 THE WITNESS: I didn't directly.

5 BY MR. WILSON:

6 Q. Sorry?

7 A. I didn't directly, no.

8 Q. You didn't directly or indirectly is my question.

9 MS. SANGHVI: Objection. Asked and answered
10 and now argumentative.

11 BY MR. WILSON:

12 Q. Go ahead.

13 A. I disagree.

14 Q. So you believe you indirectly in your Glassdoor
15 post criticized IXL for not being welcoming of people with
16 disabilities; is that right?

17 A. Well --

18 MS. SANGHVI: Objection.

19 Go ahead.

20 THE WITNESS: I was talking about general
21 unwelcomeness, and some of what I was talking about was
22 sick leave and work-from-home accommodations, and those
23 tied directly into disability, or I should say
24 indirectly.

25 /////

1 BY MR. WILSON:

2 Q. In the 25 to 30 days that you were given
3 unrestricted remote work or days off or partial days in
4 2014 at IXL, those had nothing to do in your mind with any
5 disability you had; is that right?

6 MS. SANGHVI: Objection. Mischaracterizes.

7 THE WITNESS: I disagree. I -- I mean, first
8 of all, I knew I was going to be temporarily disabled
9 from this surgery. And, you know, I was -- my -- my arm
10 was being injured in these appointments as part of what
11 electrolysis does, and it limited some of -- some of my
12 ability to do certain things.

13 BY MR. WILSON:

14 Q. So prior to your surgery and -- and the
15 complications after your surgery, your testimony now is
16 that you were a person with disabilities in 2014?

17 A. I was a person with medical needs.

18 Q. I didn't ask that, I asked about people with
19 disabilities. Is it your testimony now that you considered
20 yourself a person with a disability in 2014 prior to
21 returning to work?

22 A. What I would say is that I was a trans person
23 with medical needs and those resulted in some physical
24 limitations and some limitations on my schedule.

25 Q. All right. Just try one more time and just

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

74

1 simply ask you. My question is prior to returning to work
2 at IXL in December 2014, did you consider yourself to be a
3 person with a disability?

4 MS. SANGHVI: Objection. Asked and answered
5 now four times.

6 BY MR. WILSON:

7 Q. Go ahead.

8 A. Well, being trans isn't considered a
9 disability under the ADA, so it falls outside of that if
10 you're -- if you're talking about, you know, that
11 definition. But I certainly had physical limitations
12 which -- which led me to be disabled in certain
13 circumstances.

14 Q. Okay. Do you know of any other -- sorry. Strike
15 that.

16 In 2014, do you know of any other employee at
17 IXL who was a person with a disability?

18 A. I knew of some people's medical needs. I
19 don't know if they would consider themselves people with
20 disabilities or not.

21 Q. So when you told this student thinking of working
22 at IXL that IXL was not very welcoming of people with
23 disabilities, you were basing it on your experience
24 personally with IXL during your employment; is that right?

25 A. I was basing it on how they had handled my

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

75

1 accommodation and my leave.

2 Q. And you were not basing this on some other
3 incident of -- of IXL not being welcoming to some other
4 employee who had a disability; is that right?

5 MS. SANGHVI: Objection. Form and compound.

6 THE WITNESS: Well --

7 BY MR. WILSON:

8 Q. Excuse me.

9 A. Could you restate the question?

10 Q. Your statement here that you did not find IXL
11 very welcoming of people with disabilities was not based on
12 what you perceived about IXL's treatment of some other
13 employee who had a disability during the time you worked
14 there, right?

15 MS. SANGHVI: Objection. Form.

16 THE WITNESS: Well, a lot of it was based on
17 the general policies or lack thereof around sick leave
18 and medical accommodation, disability accommodation, and
19 those came up with -- with other employees as well. But
20 again, I don't know if they'd consider themselves people
21 with disabilities or not.

22 BY MR. WILSON:

23 Q. You agree that David Keyes never imposed any
24 restrictions or reporting requirements on you at any point
25 in time in 2014 prior to your remote working schedule?

1 MS. SANGHVI: Objection. Vague as to time.

2 Go ahead.

3 THE WITNESS: Well, I perceived that the
4 reason that he -- that he said, you know, take this half
5 sick day was because I was not -- he -- he was
6 monitoring what I was doing and didn't consider it to be
7 up to par for what he considered for what I should be
8 doing on those days when I had -- had that appointment.
9 Yeah.

10 BY MR. WILSON:

11 Q. Do you recall in your testimony in the NLRB when
12 I asked you did Mr. Keyes impose any restrictions or
13 reporting requirements on you at any point in time, 2014,
14 and you said "No"? Do you recall that?

15 A. Yes, I do.

16 Q. Were you being truthful at the time?

17 A. Yes.

18 Q. Okay.

19 MS. SANGHVI: Objection. Improper
20 impeachment.

21 But go ahead.

22 BY MR. WILSON:

23 Q. You also told Claire in this e-mail, "I also
24 found that I didn't have much input as to what I worked on
25 and how the product was designed -- it's a very top-down

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

77

1 organization, and new folks don't have much say." Do you
2 agree, sitting here today, that that was a truthful
3 opinion, belief that you had about the company?

4 A. It was my opinion, yes.

5 Q. Do you believe it was being -- that you were
6 being truthful?

7 A. Well, stating my opinion I think is truthful,
8 yes.

9 Q. You said, "if you're passionate about innovative
10 education, as I was when I started at IXL (and [I] still
11 am), I'd recommend looking elsewhere." Do you see that?

12 A. Mm-hm. Yes.

13 Q. So if I'm understanding you correctly, what
14 you're telling this prospective employee is people who are
15 passionate about innovative education won't be happy or
16 shouldn't consider working at IXL; is that right?

17 MS. SANGHVI: Objection. Mischaracterizes the
18 document.

19 BY MR. WILSON:

20 Q. Go ahead.

21 A. I was only speaking about my personal
22 experience of somebody that was passionate about
23 education.

24 Q. All right. But when you said, "On the whole, if
25 you're passionate about innovative education, as I was when

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

78

1 I started (and still am), I'd recommend looking elsewhere,"
2 and what -- my question -- having read that, my question to
3 you is what you -- what you intended to be telling her at
4 that point in time was if you want to go into a job and
5 innovate, you should not work at IXL, right?

6 MS. SANGHVI: Objection.

7 THE WITNESS: What I told her was that as a
8 person who was passionate about education, that was my
9 meaning. As a person that is passionate about education
10 and ed-tech and innovation that I was not -- I would
11 say I would not have pursued this job opportunity if I
12 had known at the time what the work environment was
13 actually like.

14 BY MR. WILSON:

15 Q. And in fact, in mid 2000 -- strike that.

16 In mid December 2014, you had already decided
17 "I am done with IXL as soon as I can find another job,"
18 right?

19 MS. SANGHVI: Objection.

20 THE WITNESS: No, I disagree with that.

21 BY MR. WILSON:

22 Q. Do you recall testifying that in mid 2000 -- mid
23 December 2014 you were -- had made the decision to leave
24 IXL once you found a better job?

25 A. Well, I think my time line was open-ended, and

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

79

1 certainly I wasn't going to go anywhere when I was still
2 recovering from surgery if I had the choice. I was -- I
3 was thinking about opportunities to move on but I hadn't
4 made any firm plans.

5 Q. When you just testified a little bit ago about
6 other IXL employees who had bad experiences with sick leave
7 or taking sick leave under IXL's policies, who were you
8 referring to other than yourself?

9 A. Nemo Curiel is one of those examples.

10 Q. Anyone else?

11 A. I think Jess Morse had mixed experiences with
12 it. Hers was certainly better than mine. Mostly I'd be
13 thinking of Nemo though.

14 Q. Anyone else other than Nemo and maybe Jess Morse?

15 A. Not that I can remember right now.

16 Q. Do you recall referring to this issue about use
17 of sick leave as a culture of shaming?

18 A. Yes, I do recall that.

19 Q. And it was your belief at the time that even
20 though IXL gave employees unlimited sick leave there was a
21 culture of shaming employees or using too much sick leave;
22 is that what you concluded?

23 A. I think that --

24 Q. Excuse me.

25 A. -- what I concluded was that unlimited didn't

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

80

1 really mean unlimited, that unlimited was more of a way
2 to -- to impose this implied culture of overexplaining
3 about medical needs, not maintaining privacy, and sort
4 of leaving it up to the manager as to how much sick
5 leave someone could take, which was actually the written
6 policy as far as I -- I recall.

7 Q. So the culture of shaming, if I understand you
8 correctly, is based on what Nemo told you, what you
9 experienced, and maybe some of what Jessica experienced; is
10 that accurate?

11 A. I think it had to do with the comparison
12 between what Nemo experienced, what I experienced as
13 people that had bad experiences, and what other folks
14 that had had better experiences were doing in the way
15 they were taking sick leave.

16 Q. What other folks who had good experiences are you
17 referring to?

18 A. Everyone who took sick days and was willing to
19 explain exactly why they took sick days. I believe
20 there was -- there was also someone underneath Karen
21 Penner. I don't remember her name, but she had a
22 surgery and -- I never spoke to her about it, but Karen
23 Penner told me details of her surgery and expressed
24 that -- she made it sound like her employee was -- was
25 satisfied with -- with the sick leave that she was

1 getting.

2 Q. Okay.

3 A. But I don't know if that's actually the case.

4 Q. To dive into this a little bit, what you're
5 saying, correct me if I'm wrong, is that by giving
6 employees unlimited sick leave and allowing their managers
7 to have discretion on -- on implementing unlimited sick
8 leave policies, it resulted in those managers asking too
9 many questions about why you needed the sick leave; is that
10 right?

11 A. Can you restate?

12 MR. WILSON: Can you read question?

13 (Record read.)

14 THE WITNESS: I think there's a lot of things
15 in that question. One thing is that -- I mean, managers
16 certainly had, I thought, too much discretion over how
17 the unlimited sick leave policy, quote/unquote, "would
18 be implemented."

19 BY MR. WILSON:

20 Q. Okay. But I'm speaking about the comment you
21 made that it results in people being asked too much or
22 too -- for too many details about why they need the sick
23 leave. Do you recall having said that?

24 A. I don't actually recall having said that.

25 Q. Okay.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
82

1 A. But the --

2 Q. All right. Whatever your testimony was five
3 minutes ago or so, is it your position, sitting here now,
4 that this culture of shaming was in part a reference to
5 people who take unlimited sick leave being asked questions
6 about why they needed the sick leave?

7 A. I think the result of giving the managers so
8 much discretion over the unlimited sick leave policy,
9 the result of that was that people felt like -- they
10 create an expectation that we had to prove ourselves,
11 that we had to prove that we were actually sick or
12 disabled in order to access the unlimited sick leave
13 policy. And over and over again I saw sort of evidence
14 of that. If someone was going to be sick then they
15 would message their manager, their team usually, with
16 details, lots of details about why. And I was not
17 comfortable with that at all.

18 Q. But that was never a problem for you in 2014; is
19 that right?

20 MS. SANGHVI: Objection.

21 THE WITNESS: I certainly worried about it
22 constantly.

23 BY MR. WILSON:

24 Q. Okay. My question is it was never a problem in
25 2014 for your manager asking for too much information about

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

83

1 why you might need time off, right?

2 A. I believe that actually one of the reasons why
3 my disability accommodation was treated the way that it
4 was in December was because I was so private about the
5 reasons for my surgery. I think it resulted in a lack
6 of trust on their part. Yeah.

7 Q. In the 25 to 30 times that you took time off,
8 left work early, worked at home, David Keyes never once
9 asked you to explain the medical procedure that you were
10 undergoing that required you to take that time, right?

11 A. I felt pressure to -- to explain. It wasn't
12 pressure that I was willing to give into, but I do
13 believe that if I had explained further -- first of all,
14 I was in a double bind. If I had explained further, I
15 would have outed myself. But the culture around
16 explaining put pressure on me to do so as well if I
17 wanted to continue to access my -- my medical care.

18 Q. Okay. I'm going to ask you just simply the
19 following: At no point in time did Mr. Keyes ever ask you
20 what the medical procedures were that you needed all that
21 time off for, did he?

22 MS. SANGHVI: Objection.

23 THE WITNESS: He -- he didn't directly ask.

24 BY MR. WILSON:

25 Q. He didn't indirectly ask you either, right?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
84

1 A. I think that the culture of pressure around
2 that was an indirect way of -- of -- of getting to that
3 information.

4 Q. Do you recall in your NLRB trial testimony under
5 oath when I asked you, "Specifically at no time did
6 Mr. Keyes ever ask you what those medical procedures were?"

7 You said, "No, he did not." Do you recall that?

8 A. He -- he didn't directly ask me.

9 Q. Do you recall not -- forget directly. Do you
10 recall saying, "No, he did not"?

11 MS. SANGHVI: Objection. It's --

12 BY MR. WILSON:

13 Q. "Yes" or "no"?

14 MS. SANGHVI: -- appropriate to put the
15 document in front of him, the testimony in front of him.

16 BY MR. WILSON:

17 Q. Go ahead. Can you answer?

18 A. That's what I testified to, yes.

19 Q. Were you being truthful at the time?

20 A. Yes, although I would have restated it at the
21 time saying he didn't directly ask me. I would have
22 explained it like I explained it to you just a minute
23 ago.

24 Q. All right. Go to -- there's an easier way to do
25 this, but I'm going to flip to a page of an exhibit and

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

85

1 show it to you. What I've marked as an exhibit, next in
2 order -- I don't remember exactly, I'll tell you in a
3 minute -- is the trial transcript from -- from the NLRB
4 trial. I think it's 210, Exhibit 210. So I'm going to
5 direct you to page 87. Is page 87 on your screen?

6 A. Yes.

7 Q. Okay.

8 A. 88 -- oh, 87.

9 Q. Okay. And it's Bates labeled at the bottom,
10 should be IXL-316.

11 A. Yup.

12 Q. Okay. Around line 13, this is me asking you a
13 question. I said, "There" -- "And so, there were multiple
14 occasions where you were telling your supervisor,
15 Mr. Keyes, that you needed to have medical procedures and
16 [you] needed either time off or some accommodation, such as
17 working remotely, correct?

18 "Yes" is the answer.

19 And then my question, "At no time did Mr. Keyes
20 ever ask you what those medical procedures were; is that
21 right?

22 "Answer: No, he did not."

23 And further I said, "Question: Would you agree
24 ... throughout his employment" -- "throughout this
25 employment, Mr. Keyes was very flexible with your need for

1 working remote or taking time off because of sporadic
2 medical issues?"

3 And your answer was, "Aside from the incident
4 upon my return, yes."

5 Did I read that correctly?

6 A. Correct.

7 Q. Was your testimony truthful in those answers that
8 you gave?

9 A. Yes, but again, I would have explained it like
10 I did to you a few minutes ago.

11 Q. Okay. But my question is that was truthful
12 testimony, "yes" or "no"?

13 A. I think what I said to you a few minutes ago
14 is a more full version of the truth, but this is also
15 true.

16 Q. When -- let me turn this off so you guys can --
17 okay. I'm going to point your attention to page 89, which
18 should be on your screen.

19 A. Mm-hm.

20 Q. Approximately line 11 or so, I -- I ask you about
21 the 25 to 30 days estimated that you worked at home for
22 medical or health reasons. I said did Mr. Keyes impose any
23 restrictions or reporting requirements on those days, and
24 your answer was, "He eventually asked that I take a half
25 sick day, so that I can make time for those appointments.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

87

1 That was in about August 2014."

2 Was that truthful testimony?

3 A. Yes.

4 Q. Okay. And I followed it up with a question.

5 "And so, my question is on any of those days, did the 20 to

6 30 -- whatever the number was that you estimated in 2014,

7 did Mr. Keyes impose any restrictions or reporting

8 requirements on you at any point in time?"

9 And your answer was "No."

10 Was that a truthful answer?

11 A. Yes, but again, you know, would I say that

12 there -- there was -- there was pressure to do so. Just

13 the ask of taking the sick day was -- was an indication

14 to me that there -- that he was sort of monitoring and

15 that I was frustrating him by, you know, not being as

16 productive on these days when I had these long

17 appointments.

18 Q. So you felt that having to ask for a sick day

19 under an unlimited sick leave policy was too much pressure;

20 is that right? Is that what you just said?

21 MS. SANGHVI: Objection. Mischaracterizes.

22 THE WITNESS: No, I don't think that's what I

23 said.

24 BY MR. WILSON:

25 Q. Okay. You felt that he -- it was -- you were

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

88

1 being pressured in some way because you had to ask for
2 specific days off in 2014; is that your testimony?

3 A. Well, the problem was that work-from-home days
4 and sick days really blended together at IXL because of
5 the unlimited sick leave policy.

6 Q. Yeah. So let me just ask again. When you said
7 that -- when you gave the answer "No" on line 21 to that
8 question, I asked you if that was truthful, and you said,
9 well, yes, but, and then you started to explain something
10 else about pressure. I just want to know, was this a
11 truthful answer when you said in response to my question on
12 line 17 to 20, and your answer was "No," was that truthful
13 at the time that you gave it?

14 MS. SANGHVI: Objection. Asked and answered.

15 BY MR. WILSON:

16 Q. Go ahead.

17 A. Well, like I said before, it was truthful, but
18 this is also true that there was this pressure.

19 Q. That's not my question. My question was was that
20 truthful period?

21 MS. SANGHVI: Objection. Argumentative. And
22 the witness is absolutely allowed to expand.

23 MR. WILSON: No, I'm sorry.

24 BY MR. WILSON:

25 Q. Was that truthful or was that not truthful, the

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

89

1 answer of n-o, no?

2 MS. SANGHVI: Objection. Asked and answered.

3 BY MR. WILSON:

4 Q. Go ahead.

5 MS. SANGHVI: Go ahead.

6 THE WITNESS: Again, I'll just repeat myself

7 that it was true but it was not the full version of the

8 truth, like --

9 BY MR. WILSON:

10 Q. So you didn't give -- sorry. Go ahead. Go

11 ahead.

12 A. Today I'm telling -- I'm expanding in a way

13 that I was not allowed to do on the stand at the NLRB.

14 Q. Okay.

15 A. So yes, this is true, and also what I'm

16 telling you today is true.

17 Q. Okay. On page 95 of this transcript, I asked you

18 about this culture of shaming that you identified,

19 particularly starting on line seven if you want to take a

20 look. It says, "I believe" -- you said, "I believe there

21 was a culture of IXL" -- "at IXL," sorry -- "of shaming

22 people for taking too much sick leave, as my colleague,

23 Nemo Curiel, experienced."

24 Was that true when you said it?

25 A. Yes.

1 Q. And I asked you that, "you told Nemo that's not
2 your experience that you were having at the company,"
3 right?

4 And you said, "No, that's not what I told him."

5 Was that a truthful statement?

6 A. Where I said -- no, I said "no" to that
7 question.

8 Q. And was it true? Was that answer the truth?

9 A. Well, we had a lot of conversations about sick
10 leave.

11 Q. So my question is very simple. Is the answer you
12 gave, "No, that's not what I told him," is that a truthful
13 answer or not?

14 A. As far as I recall, I -- we had multiple
15 conversations about sick leave so I -- I don't think
16 your characterization and your question was fair. So
17 yes, my answer of "no" was accurate.

18 Q. Okay. So "accurate" meaning you told the truth
19 on line 17 there about you said, "No, that's not what I
20 told him," right?

21 A. Correct.

22 Q. Okay. Do you recall that Jessica had a better
23 experience than Nemo when she needed sick leave?

24 MS. SANGHVI: Objection.

25 Go ahead.

1 THE WITNESS: Yes, as far as I recall she had
2 a better experience.

3 BY MR. WILSON:

4 Q. And you mentioned Karen Penner and her treatment
5 of someone else's sick leave. Do you recall whether or not
6 that person had lupus?

7 A. Karen disclosed to me that she had lupus, yes.

8 Q. In fact, you felt that that was inappropriate at
9 the time for her to do so, right?

10 A. Absolutely.

11 Q. Okay. Do you have any reason to dispute the
12 testimony of Paul Mishkin that the employee was quite open
13 in IXL with other employees about her lupus and what she
14 was going through?

15 A. I can only say that it made me very
16 uncomfortable that someone's supervisor told me about
17 their very serious medical condition, and I wondered if
18 the same was going to be done with me if people found
19 out what my surgery was for.

20 Q. And what I'm asking you is do you have any reason
21 to dispute that -- what Paul Mishkin testified to, which
22 was that this employee made it well known in the company
23 that she had lupus and was battling lupus?

24 MS. SANGHVI: Objection.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
92

1 BY MR. WILSON:

2 Q. Do you know?

3 A. I know that that employee never disclosed to
4 me personally that she had lupus, that it came through
5 her supervisor instead.

6 Q. My question wasn't that. My question was do you
7 have any reason to dispute that Paul said -- Paul Mishkin
8 testified that this employee was open with employees and
9 made it known that she was battling lupus?

10 MS. SANGHVI: Objection.

11 BY MR. WILSON:

12 Q. Go ahead.

13 MS. SANGHVI: Assumes facts not before the
14 witness. Vague. Compound. Yeah.

15 BY MR. WILSON:

16 Q. Go ahead.

17 A. I just don't really think I have any basis to
18 answer that question.

19 Q. In other words, you don't have a basis to dispute
20 it, right?

21 MS. SANGHVI: Objection. Argumentative and
22 mischaracterizes his testimony.

23 BY MR. WILSON:

24 Q. Go ahead.

25 A. I don't have a way to answer that question

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
93

1 because I -- I -- I don't have a way to answer that
2 question.

3 Q. You testified on -- at the NLRB on -- it was page
4 98 -- about how this employee -- I think I've opened it to
5 that page -- how this employee, in late 2013, you learned
6 about from your discussion with Karen Penner. This is who
7 we're talking about, right?

8 MS. SANGHVI: Objection. Vague.

9 THE WITNESS: Could you restate?

10 BY MR. WILSON:

11 Q. This person we're talking about with lupus, you
12 learned about this person by talking to Karen Penner in
13 late 2013, about December 2013, right?

14 MS. SANGHVI: Objection. Form.

15 THE WITNESS: Karen talked to --

16 BY MR. WILSON:

17 Q. Go ahead.

18 A. Karen talked to me.

19 Q. And this is the person we're talking about,
20 right?

21 A. Yes.

22 Q. Okay. Your testimony on that page, starts around
23 line ten, was that Karen told you "that she had granted,
24 reluctantly, a certain amount of time off, six weeks off or
25 something like that, even though she didn't have to." Do

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

94

1 you recall having that discussion with Karen?

2 A. Yes.

3 Q. Okay. That was in the first six months or so of
4 you working at IXL, right?

5 A. Yeah, it would have been.

6 Q. Okay. You said, "At that point [in time], I knew
7 that the sick leave policy, which, unofficially is take as
8 much time as you want, probably didn't ... really mean
9 unlimited." Is that what -- do you see that testimony?

10 A. Yes.

11 Q. Is that truthful testimony?

12 A. Yes.

13 Q. Okay. Is there any other employee that you know
14 of at IXL as of December 2014 who was not given every day
15 of sick leave that they requested?

16 A. Nemo Curiel got some significant friction for
17 taking sick days, and I know as a result took fewer sick
18 days than he needed to.

19 Q. So anybody else?

20 A. Right now I can't recall anybody else.

21 Q. And my question was do you know of any employee
22 as of December 2014 at IXL who was not given every sick day
23 that they requested, and you said, well, the response about
24 Nemo. Can you answer my question whether or not there was
25 anybody who was denied sick leave?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
95

1 MS. SANGHVI: Objection. Form.

2 THE WITNESS: I think that Nemo was pressured
3 not to take sick leave, and that's a form of -- I mean,
4 it's a form of denial.

5 BY MR. WILSON:

6 Q. Okay. It's a form -- did you say it's a form of
7 denial? Is that what you said? You don't have to explain
8 it. Is that what you said? I couldn't hear.

9 A. I think that -- I think that Nemo being
10 pressured to not take sick leave was a way for him to
11 get him to take less sick leave, which was the result.

12 Q. Okay. Is this a problem that you concluded was a
13 problem at IXL or at any company that had unlimited sick
14 leave?

15 MS. SANGHVI: Objection. Form.

16 THE WITNESS: I'd only worked at IXL.

17 BY MR. WILSON:

18 Q. Right. I'm saying at the time that you posted on
19 Glassdoor, December 2014, was your view about unlimited
20 sick leave, was it only about the way IXL implemented
21 unlimited sick leave or the concept itself being, you know,
22 unfair or pressuring people into not taking sick leave?

23 A. I was speaking about my experience at IXL.
24 That doesn't mean that I don't think that there's issues
25 with unlimited sick leave. I think that's probably one

1 of the reasons that IXL had adopted that policy and it
2 resulted in the problems that I cited.

3 Q. And those problems, as far as you know, were
4 manifested in two employees' situations, Nemo's and yours;
5 is that right?

6 A. I think that there were also -- I would say
7 that we were the ones that encountered the most
8 friction, but I also consider it a problem when
9 employees feel that they have to overexplain their
10 medical situations. And I observed quite a -- quite a
11 lot of that.

12 Q. What other overexplaining of medical situations
13 did you observe other than what you've testified to already
14 today?

15 A. When people would take sick days they would
16 explain quite a bit to their -- to their team, to their
17 immediate team, "This is what I have going on, these are
18 my symptoms." When their children were sick, they'd do
19 the same thing. When they had appointments, they'd
20 specify what the appointment was for. And Jessica Morse
21 was an example actually of -- of somebody that gave
22 quite a bit of detail, and as a result, you know, did
23 receive better treatment from her manager than Nemo did
24 from the same manager.

25 Q. What information did she provide?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

97

1 A. She told us whenever she was having
2 appointments such as -- I think she had an MRI. She
3 told us exactly what her injury was and where that
4 injury came from. Yeah.

5 Q. So I want to be as clear as I can with you in
6 this question so tell me if I'm not. But if you never had
7 to disclose to your supervisor what your medical
8 appointments were for in 2014, what you had 25 to 30 days
9 of remote work or -- or days off, why do you conclude
10 that -- that the unlimited sick leave is only provided to
11 people who overexplain?

12 A. Well, there were a couple of reasons for that.
13 One was the way that Nemo was treated when he took sick
14 leave without disclosing why. Another was the fact that
15 the unlimited sick leave did not extend to my first week
16 of disability, during which I had to take vacation days
17 or unpaid. I think they -- they actually required that
18 I cash out my vacation days during that week. So that
19 meant, you know, that wasn't really unlimited. I was
20 definitely, you know, sick -- quote/unquote, "sick and
21 injured" during that first week after my surgery. I
22 think sick leave would have been an appropriate thing to
23 take.

24 And I also knew from my conversation with
25 Karen as well that this -- this employee had, you know,

1 requested time off for basically these two surgeries,
2 the kidney surgery and plastic surgery, and that the
3 reason that she got the -- the -- the time off that she
4 needed was because she provided that -- that detail and
5 Karen approved of that detail, approved of what that
6 condition was.

7 Q. So your complaint with IXL's sick leave policy
8 and how it was implemented, at least as of December 2014,
9 was that people who explained why they needed leave in more
10 detail were treated better than people who were more
11 guarded or -- or chose not to disclose as much detail about
12 why they needed sick leave; is that what you're saying?

13 MS. SANGHVI: Objection. Compound. Form.

14 BY MR. WILSON:

15 Q. Go ahead.

16 MS. SANGHVI: And mischaracterizes.

17 Go ahead.

18 THE WITNESS: Can you restate the question?

19 MR. WILSON: Can you reread it? It might be
20 easier.

21 (Record read.)

22 THE WITNESS: Well, I think that there was --
23 I definitely experienced pressure to -- on employees to
24 have to explain what their medical conditions were in
25 order to access leave. And for me what that meant was

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

99

1 that I explained as much as I was comfortable with,
2 probably beyond a little bit what I was comfortable
3 with. If I had been as private as I wanted to, there --
4 there -- there are things I wouldn't have disclosed,
5 such as, you know, the fact that my arm was a donor
6 site. And also, you know, in the long run, I -- I feel
7 like the fact that I didn't explain is why -- definitely
8 contributed to the fact that I was -- I was fired. I
9 wasn't taking disability in the way that they wanted.

10 BY MR. WILSON:

11 Q. So you think you were fired because of the way
12 that you were taking sick leave in 2014?

13 MS. SANGHVI: Objection.

14 BY MR. WILSON:

15 Q. Go ahead.

16 A. No, that's not what I said.

17 Q. Okay.

18 A. I think I was fired for complaining about
19 discrimination and other issues in the workplace.

20 Q. When you -- well, let me ask directly. Do you
21 dispute that -- strike that. It will be a negative --
22 double negative.

23 Do you agree that you were terminated by -- by
24 IXL because of what you wrote in your Glassdoor post?

25 A. That was the reason that I was given, yes.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
100

1 Q. Do you doubt that reason?

2 A. I think that it was compounded by some other
3 things.

4 Q. Do you have any facts that you know of to -- to
5 dispute that IXL terminated you after reading your
6 Glassdoor post in January 2015?

7 MS. SANGHVI: Objection.

8 THE WITNESS: I'm sorry, I'm just trying to
9 parse your question.

10 BY MR. WILSON:

11 Q. Okay.

12 A. So I think what you're saying is the -- the
13 official reason that I was given was the -- the
14 complaints that I made in the Glassdoor post. They
15 found that post because I complained about
16 discrimination to my manager. So I think that also part
17 of it was that they -- they felt that I was -- I was
18 complaining about discrimination and they didn't like
19 that either.

20 Q. So it's your allegation that Paul Mishkin fired
21 you because you complained to David Keyes about
22 discrimination; is that right?

23 MS. SANGHVI: Objection. Mischaracterizes his
24 testimony.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
101

1 BY MR. WILSON:

2 Q. Go ahead.

3 A. I think that that was probably -- I -- I don't
4 know what was in his head, but I think -- my assumption
5 is that that was part of it.

6 Q. Do you think -- sorry. Is it your assumption and
7 allegation in this case that Paul Mishkin was going to fire
8 you because of your meeting with David Keyes before he ever
9 saw that Glassdoor post?

10 MS. SANGHVI: Objection. Form.

11 BY MR. WILSON:

12 Q. Go ahead.

13 A. I don't know. You'd have to ask him.

14 Q. I'm asking you. You're making allegations. I
15 want to know your allegation. And so I'll -- I'll say the
16 question again. Is it your allegation that Paul Mishkin
17 would have fired you for what you said in the meeting with
18 David Keyes regardless of what you put in that Glassdoor
19 post?

20 MS. SANGHVI: Objection.

21 THE WITNESS: I don't know what he would have
22 done.

23 BY MR. WILSON:

24 Q. I agree you don't know. I'm asking what your
25 allegation is.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
102

1 A. I don't think that allegation makes -- I don't
2 think that -- I don't think the question really makes
3 sense.

4 Q. Okay. Had you --

5 A. That's --

6 Q. -- never posted on Glassdoor, is it your
7 allegation here that Paul Mishkin would have fired you for
8 the complaints that you brought to David Keyes on
9 January 6th in the meeting with him?

10 MS. SANGHVI: Objection. Calls for legal
11 speculation.

12 THE WITNESS: I -- that's not what happened.
13 I did write the Glassdoor post and I did complain, so I
14 don't think it really makes sense to speculate about
15 what would have happened if I didn't write that post.

16 BY MR. WILSON:

17 Q. Humor me. I'm asking you.

18 A. I don't -- I don't know how to answer that
19 question. I don't think there is a good answer to that
20 question because that's not what happened.

21 Q. Okay. When David Keyes escalated your concerns
22 in the meeting on January 6th to Paul Mishkin, you were
23 happy that he was taking it seriously and escalating it to
24 the top, right?

25 A. I appreciated how sincere David was in that

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
103

1 meeting and I appreciated that he seemed to be taking it
2 seriously, yes.

3 Q. Okay. When you posted on Glassdoor on
4 December 30, 2014, there were several reasons that you
5 wrote and posted that review, right?

6 A. Several reasons?

7 Q. Right. One was that you were upset at that point
8 in time; is that right?

9 A. I'd had a meeting with David Keyes that --
10 that I did not -- that led me to believe that I was
11 being treated differently with regard to my remote work
12 accommodations because of my disability.

13 Q. Okay. So one of the reasons was you were upset;
14 is that right?

15 A. One of the reasons was the conversation with
16 David Keyes.

17 Q. Okay. So -- but my question is one of the
18 reasons that you posted was you were upset at that point in
19 time; is that right?

20 MS. SANGHVI: Objection. Vague.

21 Go ahead.

22 THE WITNESS: I don't remember all my reasons.
23 I don't think -- I don't think the emotionality of it
24 was a primary reason.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
104

1 BY MR. WILSON:

2 Q. I didn't ask primary, I said whether it was one
3 of the reasons. And if you don't know, you can say you
4 don't know.

5 A. I'm not sure what all my reasons were.

6 Q. Okay. One of the reasons was that you believed
7 management misled you about the job involving diverse and
8 creative thinking, right?

9 A. Well, one of my complaints was certainly the
10 micromanagement and the lack of creativity, yes.

11 Q. Okay. One of the reasons was you were
12 disappointed with how narrow your job was and how your
13 creativity was not permitted, right?

14 A. That's one of the things I said in the post,
15 yes.

16 Q. Listen. My question is one of the reasons you
17 posted that review on Glassdoor was that you were
18 disappointed with how narrow your job was and how your
19 creativity was not permitted, right?

20 A. I said that was part of the post, but I don't
21 think I would have posted it if I hadn't felt
22 discriminated against in that meeting.

23 Q. So if you'll look on page 114 of your
24 testimony -- excuse me -- at the NLRB trial, on what starts
25 at the top of the page, but specifically line 12, I asked,

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
105

1 "You were disappointed with how narrow your job was and how
2 your creativity was not permitted, right?

3 "Answer: Correct. That was one of the reasons.

4 "And that was one of the reasons you posted?

5 "Answer: Correct."

6 Was that a truthful answer at the time?

7 A. Yes.

8 Q. Okay. You felt that one of the reasons that you
9 posted was that you were upset about the initial reaction
10 from David Keyes in December to your request for a --
11 50 percent work at home, right?

12 A. It was really more to do with the meeting that
13 we had that day, but there -- the e-mail exchange was --
14 was part of it as well. It all led up to this meeting.

15 Q. So on page -- of your transcript, on bottom of
16 page 114, which I pulled up for you, I asked the question,
17 "Part of the reason that you filed your post -- you wrote",
18 and then on to 15 -- 115, "and filed your post on Glassdoor
19 was that you were upset about that initial reaction from
20 David to your request.

21 "Answer: Yes. And I thought it showed a
22 pattern."

23 Was that truthful testimony?

24 A. Yes. And like I said there, it was part of a
25 pattern that led up to that December 30th conversation.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
106

1 Q. Right. So my question simply is is that
2 truthful?

3 A. I think I answered that, but yes, it's
4 truthful.

5 Q. Okay.

6 A. And it's part of a pattern.

7 Q. Right. Well, exactly, that's what you said.

8 "Yes. And I thought it showed a pattern." And that's a
9 truthful statement that you made, correct?

10 A. Yes.

11 Q. All right. I asked you, "A pattern of what?"

12 And you answered, "A pattern of sick leave and
13 disability not being accommodated, not just for me but for
14 other employees as well."

15 Was that a truthful statement?

16 A. Yes.

17 Q. Okay. I asked you, "But you didn't say in your
18 post that you were upset about sick leave for myself and
19 others, correct?"

20 You said, "No. I have a fear of retaliation.

21 "Question: That's a no?

22 "Answer: No."

23 Was that truthful testimony?

24 A. Yes. I was afraid of retaliation.

25 Q. Was the answer that you gave on lines 9 and then

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
107

1 11 truthful?

2 A. I think the part of that question that I was
3 saying no to was I didn't say that it was for myself.
4 But again, I think we talked about this before, I did
5 talk about working from home as part of the -- as part
6 of the post, and that ties directly into sick leave and
7 disability.

8 Q. So Mr. Duane, I'm asking you were the answers at
9 lines 9 and 11 truthful or not?

10 A. Yes, but as I said before, I'm expounding on
11 this now. I'm expounding on that truthful answer.

12 Q. So did you give the whole truth then or are you
13 saying you gave something less than the full truth in those
14 two answers?

15 MS. SANGHVI: Objection. Argumentative.

16 BY MR. WILSON:

17 Q. Go ahead.

18 A. In that format I wasn't allowed to expound.

19 Q. All right. Now, if you will look at the
20 bottom --

21 A. Mm-hm.

22 Q. -- around line 21 --

23 A. Mm-hm.

24 Q. -- I also asked you, "You also posted the Glass
25 Door post on December 30, because you felt that the company

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
108

1 was misleading potential employees about its culture and
2 you wanted people to know, right?"

3 Your answer was "Yes."

4 Was that truthful?

5 A. Yes.

6 MR. WILSON: Excuse me. I said we would take
7 a lunch break around now, so let's -- let's take a lunch
8 break now. Go off the record.

9 THE VIDEOGRAPHER: Sure. The time is 12:50.
10 We're going off the record.

11 (Recess taken from 12:50 to 1:36.)

12 (Mr. Marek not present.)

13 THE VIDEOGRAPHER: The time is 1:36. We are
14 back on the record.

15 BY MR. WILSON:

16 Q. Okay. Mr. Duane, when was the last time you
17 spoke to Jessica Morse?

18 A. I can't remember exactly, but it's been quite
19 a long time. Some time in 2015, early 2015.

20 Q. I recall seeing a reference in an e-mail you sent
21 to her that -- that she helped you write the charge of
22 discrimination that you filed either with the EEOC or the
23 NLRB. Do you recall whether that's true or not?

24 A. I don't know what you're referring to, so --
25 yeah, I don't recall.

1 Q. All right. Do you know where Jessica Morse
2 currently lives?

3 A. No, I don't.

4 Q. When was the last time you spoke to Nina Wu?

5 A. Just the other day.

6 Q. Did you talk at all about your -- this case?

7 A. No, we talked about dance.

8 Q. When was the last time you spoke to Nina about
9 IXL and/or your dispute with IXL?

10 A. I think I've mentioned to her sort of in
11 passing, we've seen each other, you know, some of the
12 current things that are going on.

13 Q. She testified at the NLRB trial, right?

14 A. Yes.

15 Q. Did you discuss with her the outcome of that NLRB
16 trial?

17 A. I think I probably did, but I -- I don't have
18 any specific memory of it.

19 Q. Do you know where she lives now?

20 A. Yes, I do.

21 Q. Do you know her address?

22 A. I don't know her exact address, no.

23 Q. Do you know what city she lives in?

24 A. Yes, I do.

25 Q. Could you tell me?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

110

1 A. Oakland, California.

2 Q. Have you talked to her at all about receiving or
3 possibly receiving a subpoena from me or IXL related to
4 this case?

5 A. No, she hasn't mentioned a subpoena.

6 (Mr. Marek joined the proceedings.)

7 BY MR. WILSON:

8 Q. Have you mentioned it to her?

9 A. No.

10 Q. Okay. So let me introduce Exhibit 211. I'll
11 just put it up on your screen since it's a one-pager.

12 (Deposition Exhibit 211 was marked for
13 identification.)

14 BY MR. WILSON:

15 Q. Do you have that e-mail on your screen?

16 A. Mm-hm.

17 Q. "Yes"?

18 A. Yes.

19 Q. Okay. This is an e-mail -- a Gmail, I guess,
20 from you to Jessica Morse, dated July 8, 2015, correct?

21 A. Yes, looks like it.

22 Q. Have you reviewed this e-mail before today's
23 deposition?

24 A. No, I haven't.

25 Q. Okay. My question is about really the second

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

111

1 paragraph. It says, "I know you said you didn't want to
2 have any involvement after the initial complaint that you
3 helped to draft." Do you see that?

4 A. Yes.

5 Q. Do you -- can you tell me what you mean by that?

6 A. I honestly don't remember.

7 Q. Did she help you draft your initial complaint?

8 A. No, I think it was mostly done by my
9 attorneys. No.

10 Q. Do -- just -- so sitting here today, your best
11 guess as to why you would say to Jessica "the initial
12 complaint that you helped to draft," any ideas?

13 A. I mean, I think we probably had some
14 conversations about -- about our two experiences getting
15 fired from IXL, but honestly I don't remember.

16 Q. Okay. Okay. So I'm going to show you a few
17 exhibits that I've marked already. This one is
18 Exhibit 203. They had been marked a while ago.

19 MR. MAREK: What's the password to this?

20 MR. WILSON: 12345. Sorry. Here.

21 MS. SANGHVI: No, to the computer.

22 MR. WILSON: To the computer? Oh.

23 MS. SANGHVI: Sorry, can we just go off the
24 for this?

25 THE VIDEOGRAPHER: Sure. The time is 1:41.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
112

1 We're going off the record.

2 (Recess taken from 1:42 to 1:42.)

3 THE VIDEOGRAPHER: The time is 1:42. We are
4 back on the record.

5 BY MR. WILSON:

6 Q. Okay. I am showing you document -- one-page
7 document we've marked as Exhibit 203. It should be
8 displayed on your screen. Do you see that?

9 A. Yes, I do.

10 Q. Okay. Now, this is an e-mail exchange -- well,
11 first let me ask: On June 2nd, 2014, you sent an e-mail to
12 mathpa@ixl.com. Can you describe what that is?

13 A. It was an e-mail list of people that were on
14 my direct team.

15 Q. Okay. In this e-mail to your team, did that
16 include your supervisor?

17 A. Yes.

18 Q. Says, "I will be working remotely today and
19 Wednesday," "today" apparently being a Monday. "I will be
20 on e-mail and except for medical appointments in the middle
21 of the day," and "I'll be around all day Tuesday." I want
22 to ask: At that point in time, when you worked remotely,
23 what was the primary way that you would communicate with
24 any of your coworkers? Was it e-mail, chat, or some other
25 method?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

113

1 A. I think we probably used e-mail and chat
2 equally.

3 Q. What about video conferencing or, you know, Skype
4 or FaceTime, anything like that?

5 A. There wasn't really much call to use those,
6 video over chat.

7 Q. Do you recall if you ever communicated with
8 your -- with your coworkers while working at home through
9 any video conferencing?

10 A. I don't recall. I don't think I did.

11 Q. Okay. So now, then, the e-mail appears to be now
12 forwarded from David Keyes to Kate Mattison. Do you see
13 that?

14 A. Yes.

15 Q. Okay. Would David Keyes have been on that mathpa
16 e-mail group list?

17 A. Yes.

18 Q. Have you ever seen this e-mail between David
19 Keyes and Kate Mattison, dated June 2, 2014, before I just
20 showed it to you?

21 A. No, I haven't.

22 Q. Okay. So David, on June 2nd, 2014, was your
23 supervisor at the time?

24 A. Yes, he was.

25 Q. He says, "Scott has been working remotely more in

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

114

1 the past few weeks due to doctors" -- "doctor appointments
2 in SF and Marin." First off, is that accurate to the best
3 of your memory?

4 A. Yes, to the best of my memory. Some of them
5 were actually in Oakland. Yeah.

6 Q. It says, "I just wanted to let you know that I've
7 talked to him about tasks that need to be completed on
8 these days. I have felt recently that he may be slipping
9 back into a habit of lower productivity, so I'm keeping an
10 eye on the situation."

11 You haven't seen this before, but do you recall
12 in June, a time frame, 2014, whether David had any
13 discussions with you about completing tasks and keeping
14 your productivity up?

15 A. It was really only the one conversation about
16 the -- the days on which I had those -- those
17 appointments, and he did mention that, and that's when
18 he -- that's when he told me go ahead and take a half
19 sick day.

20 Q. So reading that as we just did, sitting here in
21 the deposition, at this point in time do you have any
22 reason to -- that you know of to doubt that David was being
23 accurate or truthful in what he was saying to Kate
24 Mattison?

25 A. Well, I don't think it's -- I think that

1 he's -- he's probably right, that on those days when I
2 had two -- two hours in the afternoon when I wasn't --
3 when I was -- you know, when I wasn't able to work it's
4 probably true that my productivity was a little bit
5 lower. So yeah, I don't really doubt that. But I don't
6 think it was -- I also don't think it was the same
7 things that were coming up with regard to my early time
8 at IXL.

9 Q. And "the same things," can you tell me what you
10 mean by the same things as your early time with IXL?

11 A. Well, here he references productivity issues.

12 Q. Yeah.

13 A. And early in at my time at IXL -- I wouldn't
14 really call it a productivity issue. I think there was
15 an issue of poor communication between Kate Mattison and
16 myself. The training, frankly, and the onboarding
17 wasn't very good so I didn't always know exactly what I
18 was expected to do. And once I sort of figured out what
19 the expectations of the workplace were and how to
20 function as a professional in a workplace, my
21 productivity improved. And this latter stuff that he's
22 talking about is related to my -- my medical condition.

23 Q. So -- okay. So I think I understand. You're
24 referring to his comment about "slipping back into old
25 habits," you're saying that that refers to something that

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
116

1 has nothing to do with medical leave and remote work for
2 that purpose?

3 A. Yeah. I think it's unfair to characterize --
4 to characterize the situation as "slipping back into old
5 habits."

6 Q. I understand.

7 A. I was taking care of my medical needs.

8 Q. I understand. Okay. Well, I want to ask you --
9 it's a three-page document marked as Exhibit 204. Can you
10 select that document for me, please? Do you have that up
11 on your screen?

12 A. Yes.

13 Q. Okay. So this is an e-mail exchange that on page
14 three begins on December 19th, then December 22, -3, -4,
15 and then 25. You're familiar with this e-mail exchange
16 back and forth, right?

17 A. Yes.

18 Q. We've had discussions about this before. I'm not
19 going to go over all of it. I want to ask you about a
20 comment you make, page two, December 23rd, middle of the
21 page where you say, "Hi David, So before I start I want to
22 let you know that I'm writing with the intent of" --
23 sorry -- "with the intent of finding a solution with you
24 collaboratively," and then you go further on. Do you see
25 that?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
117

1 A. Mm-hm.

2 Q. "Yes"?

3 A. Yes.

4 Q. Okay. Can you describe in your best -- the
5 words -- the best words you can use as to what you mean by
6 "finding a solution with you collaboratively"?

7 MS. SANGHVI: Objection. Form.

8 THE WITNESS: Well, I really wanted to -- I
9 wanted to diplomatically find a way to get the
10 accommodations that I needed in the workplace that I --
11 I had made clear in my previous e-mail, you know, I'm
12 required to work from home. And what I meant to say was
13 I want to work with you in doing this. I don't want to
14 say this is absolutely -- I didn't want to be
15 heavy-handed. I wanted to be diplomatic and I wanted to
16 preserve the workplace relationships that I developed
17 over the year and a half as best I could, or salvage
18 them really.

19 BY MR. WILSON:

20 Q. You talk further in that e-mail, that particular
21 e-mail, about talking to an employment lawyer and the ADA.
22 Based on what you were representing as your understanding
23 of the ADA at the time, did you consider this exchange to
24 be part of the interactive process of finding an
25 accommodation that would work for you with your medical

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
118

1 condition?

2 MS. SANGHVI: Objection. Calls for legal
3 speculation.

4 THE WITNESS: Well, I was certainly trying to
5 engage in a negotiation with him about how my
6 accommodations were going to be satisfied.

7 BY MR. WILSON:

8 Q. Okay. On the last page of this, the page three,
9 your first e-mail kicking off this discussion, in the third
10 paragraph you say, "I'm still planning on returning
11 December 30, but I'm wondering if you'd be open to me
12 working half days in the office and half days at home for
13 the first few weeks." Do you see that part -- part that I
14 just read?

15 A. Yes.

16 Q. Okay. Do you agree that you were not telling
17 David at that point that you required this half day in the
18 office/half day at home accommodation as a condition for
19 returning?

20 MS. SANGHVI: Objection. Form.

21 THE WITNESS: Well, I told them in the
22 previous paragraph that it was because of this medical
23 complication that I had, so I think it was pretty clear
24 that I was asking for an accommodation.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
119

1 BY MR. WILSON:

2 Q. Okay. And my question to you was -- is do you
3 agree that you -- what you are not doing here is stating
4 that "I must have this half day in the office/half day at
5 home or I won't be coming back to work"?

6 MS. SANGHVI: Objection. Vague. Form.

7 THE WITNESS: Well, in the previous paragraph
8 I say that I have this complication and this is why --
9 this is why I'm asking for this thing. Again, when I
10 wrote it I was trying not to be heavy-handed, I was
11 being diplomatic. I think that's the way that you
12 should communicate with colleagues.

13 BY MR. WILSON:

14 Q. And so based on this e-mail where you say, "I'm
15 wondering if you'd be open to me working half days in the
16 office, half days at home for the first few weeks. This
17 would make the transition much easier for me, I think. Let
18 me know what you think," do you agree that that was a
19 diplomatic way of beginning a discussion about whether or
20 not a remote work arrangement would be feasible?

21 A. No, I think it was a diplomatic way of asking
22 for what I needed.

23 Q. And in his response on the 22nd of December, in
24 the second paragraph, he says, "As far as the plan goes for
25 returning to work, I would prefer that you be in the office

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
120

1 for your hours when you come back since you are more
2 productive here." You've already testified before that you
3 viewed this as a rejection of your accommodation request,
4 right?

5 MS. SANGHVI: Objection.

6 THE WITNESS: Well, he was saying no to me
7 being able to work remotely, so he was saying no to my
8 request.

9 BY MR. WILSON:

10 Q. Would you agree with me he didn't say no, he said
11 "I would prefer that you be in the office"?

12 MS. SANGHVI: Objection.

13 THE WITNESS: Well, to me, "I would prefer"
14 coming from my supervisor was certainly a no.

15 BY MR. WILSON:

16 Q. Okay. When he says "Is there anything we can do
17 to accommodate your situation so that you can work in the
18 office?" And, "If you would need to extend your leave to
19 aid in recovery, that would be totally fine as well." But
20 as to that first part, if there's "anything we can do to
21 accommodate your situation so that you can work in the
22 office," did you view that as a complete non-starter or not
23 possible that IXL could make in accommodation so that you
24 could still work in the office after you returned?

25 MS. SANGHVI: Objection. Vague and compound

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
121

1 and form.

2 THE WITNESS: The way I saw that was a no to

3 working remotely.

4 BY MR. WILSON:

5 Q. Well, he's asking you "Is there anything we can

6 do to accommodate your situation so that you can work in

7 the office?" What I'm asking you is when you saw that, did

8 you view that as him offering an alternative for you to

9 consider or are you simply saying that this is code word

10 for no, you do not get the request that you've asked for?

11 A. I wouldn't call it a code word. I would say

12 that when my boss says "I would prefer not to do this,"

13 that the -- the initial thing that I'd asked for, that

14 was a no to the thing that I'd asked for.

15 Q. Did you consider, before responding to this

16 December 22nd e-mail, whether there was an accommodation

17 that could be made at the office or by IXL generally to

18 allow you to work in the office full time when you returned

19 from your leave?

20 A. Had I considered it?

21 Q. Right.

22 A. You mean --

23 Q. When you read this at that time -- so I'll ask

24 again. When you read David's e-mail, did you consider at

25 that point in time that you should talk to him more about

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
122

1 what they could do to make it possible for you to work in
2 the office full time as opposed to this remote 50/50
3 arrangement?

4 MS. SANGHVI: Objection. Form.

5 Go ahead.

6 THE WITNESS: I think what you're asking is --
7 I'm not sure what you're asking. Can you restate?

8 BY MR. WILSON:

9 Q. Let me -- let me try and restate it. When you
10 got this December 22nd e-mail and he told you what his
11 preference would be and asked "Is there anything we can do
12 to accommodate your situation so that you can work in the
13 office?" you rejected that as a possibility in your mind
14 and instead insisted on the 50/50 remote office arrangement
15 you originally requested, right?

16 MS. SANGHVI: Objection. Mischaracterizes.

17 THE WITNESS: Well, I knew, having talked to
18 my doctor, my surgeon, what would be best for my body
19 and my health. And it was very clear that the type
20 of -- the type of complication I had, which was a
21 urethral fistula, a hole in my urethra, that kind of --
22 that kind of complication heals with rest, as I -- as I
23 tell him later, and the best way to get that rest is
24 to -- is to not be putting pressure on that area which
25 is, you know, directly impacted when you're sitting in a

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
123

1 chair.

2 So I mean yes, I did -- there -- I thought
3 about ways that that accommodation could be made, but it
4 just doesn't -- it wouldn't -- it wouldn't -- the
5 complication I had would not have worked -- the best
6 acomm -- the accommodation that I really needed was rest
7 at home. And considering that I could do all my job
8 duties, you know, working remotely, it was reasonable to
9 ask for what I needed there.

10 BY MR. WILSON:

11 Q. Okay. And on December 22nd, David did not know
12 what you just described about the -- the -- how it's not
13 possible for you to come back to work full time other than
14 what you put in this December 19th e-mail, right?

15 MS. SANGHVI: Objection. Calls for
16 speculation.

17 THE WITNESS: I don't know exactly what he
18 knew or didn't know. I intentionally held back some of
19 this information -- some of the information about my
20 health for my own privacy. And I -- I gave -- I think
21 that I gave him the information that he needed, which
22 was that the accommodation that I needed was to work
23 from home 50 percent of the time.

24 BY MR. WILSON:

25 Q. But as far as you knew on December 22nd, when

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
124

1 David responded the way he responded, again, as far as you
2 know, the only information he had about the need for your
3 remote work was what you told him in this December 19th
4 e-mail, right?

5 MS. SANGHVI: Objection. Calls for
6 speculation.

7 THE WITNESS: I gave him, I think, the -- all
8 of the information that he needed there --

9 BY MR. WILSON:

10 Q. That's not my question.

11 A. -- to make a determination.

12 Q. Okay. My question isn't whether you think it was
13 sufficient. My question is simply as far as you knew at
14 that point in time, on December 22nd, the only information
15 David had about your need and request for, I should say,
16 remote work was this information that you put in this
17 December 19th e-mail; is that right?

18 MS. SANGHVI: Objection. At this point asked
19 and answered.

20 BY MR. WILSON:

21 Q. Go ahead.

22 A. I gave him all the information that I was
23 comfortable giving him based on my observations about
24 how privacy wasn't respected around medical conditions
25 at the workplace.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
125

1 Q. And my question to you is -- and all of that
2 information you gave him is contained in this December 19th
3 e-mail, right?

4 MS. SANGHVI: Objection. Form.

5 THE WITNESS: Well, he had this information as
6 well as the fact that I'd had a serious enough surgery
7 that I had to be off for two months and had been under
8 the care of the -- of a doctor for about a year before
9 that.

10 BY MR. WILSON:

11 Q. Anything else?

12 A. At that point, no, that was it.

13 Q. In your December 19th e-mail, you say, "the day
14 after the party, a complication called a fistula appeared.
15 This is not very serious, but will make it challenging to
16 be out of the house for long periods of time until it fully
17 heels. My doctor believes I should heal from this quickly,
18 but it may affect how soon I can return."

19 Sitting here now, with -- with having read
20 David's response here asking you if there's a way to
21 accommodate your situation so that you can work in the
22 office, is it your position that he was being
23 unreasonable in asking if there was a different
24 accommodation based on the information you gave him in
25 this December 19th e-mail?

1 A. Well, I was pretty sure that he didn't know
2 very much at all about the ADA based on my interactions
3 with him, HR at the company. And so it concerned me
4 that I was asking for something and he was saying no to
5 it without that basis of knowledge.

6 Q. And you don't believe him asking you "Is there
7 anything we can do to accommodate your situation so that
8 you can work in the office?" to be a request for more
9 information to consider an alternative accommodation?

10 A. I did not believe that that was his
11 motivation --

12 Q. Okay.

13 A. -- no.

14 Q. Did I cut you off there? If I cut you off, go
15 ahead and finish.

16 A. I did not believe that he -- he was -- I
17 didn't believe he was aware of what the company's
18 responsibilities were around disability for sure, and so
19 I -- in my follow up e-mail, that's why I informed him
20 of what I saw as their responsibilities to the best of
21 my knowledge.

22 Q. Did your employment attorney in December of 2014
23 tell you whether or not David's comment about accommodating
24 your situation so that you could work in the office might
25 be a reasonable accommodation?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
127

1 MS. SANGHVI: Objection on the basis
2 attorney-client privilege and I would instruct the
3 witness not to answer.

4 MR. WILSON: Well, he is disclosing what his
5 attorney is advising him in this e-mail. Any privilege
6 is waived.

7 MS. SANGHVI: We -- we do not take that
8 position. Defendants are aware that we don't take that
9 position.

10 MR. WILSON: Defendants are not aware of that.
11 And I'm asking about what his attorney told him, which
12 he describes about reasonable accommodation. I'm asking
13 if he talked about what David offered as a different
14 accommodation. How is that -- how is that privileged?

15 MS. SANGHVI: It's a -- you're asking about a
16 privileged communication with his attorney at the time
17 and therefore he's not going to answer that. The
18 document says what it says, I don't dispute that, but
19 asking anything further beyond the document is
20 encroaching upon attorney-client privileged
21 communications.

22 BY MR. WILSON:

23 Q. Mr. Duane, did you disclose to any other
24 individuals in this time frame of December 2014 and
25 January 2015 what your attorneys told you about IXL

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
128

1 accommodations and whether or not David was violating your
2 rights?

3 MS. SANGHVI: Objection. Vague, compound, and
4 form.

5 BY MR. WILSON:

6 Q. Go ahead.

7 A. Not that I remember, no.

8 Q. Do you remember in writing describing exactly
9 what your attorneys told you to Nemo Curiel?

10 A. I -- I might have actually done that, yeah.
11 I'm not sure.

12 Q. And at that point in time, in talking to Nemo
13 about what your lawyers told you, in talking to Nina Wu
14 about what your lawyers told you, did you understand that
15 you were disclosing privileged communications?

16 MS. SANGHVI: Objection.

17 BY MR. WILSON:

18 Q. Go ahead.

19 MS. SANGHVI: Calls for legal speculation.

20 If you have a document you want to put in
21 front of him, you're more than welcome to do that.

22 BY MR. WILSON:

23 Q. Can you answer the question, please?

24 A. So you're asking about the conversations that
25 I had with them? I -- I -- I don't really know to be

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
129

1 honest. I don't think that my basis of -- of legal
2 knowledge is broad enough to answer that question.

3 Q. I'm not asking your legal knowledge. I'm asking
4 when you talked to Nina and Nemo in December 2014,
5 January 2015 about what your attorneys told you about IXL,
6 do you believe you were disclosing privileged
7 communications to them?

8 MS. SANGHVI: Objection. Vague as to time, as
9 to substance. You're referring to something he doesn't
10 have in front of him.

11 BY MR. WILSON:

12 Q. All right. Go ahead and answer, please.

13 A. I'm not really sure what communications you're
14 referring to so it's hard for me to answer that
15 question.

16 Q. Any communications at all that you can remember
17 with either of those two people about what your attorneys
18 told you? That's my question.

19 MS. SANGHVI: Objection. Vague. Compound.
20 Form.

21 BY MR. WILSON:

22 Q. Go ahead.

23 A. I can't remember all the conversations I had
24 with them so it's hard for me to say without having
25 access to those.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
130

1 Q. Exhibit 205, which I marked, is -- I'm just going
2 to put it up on your screen and ask you to just basically
3 confirm that this is something you sent. On December 30,
4 2014, did you send this e-mail to David Keyes attaching a
5 note from your doctor?

6 A. Yes.

7 Q. All right. And then the next page is the
8 doctor's note or letter, right?

9 A. Yes.

10 MS. SANGHVI: I'd like to state for the record
11 that the second page of the document should have a
12 redaction for his date of birth.

13 MR. WILSON: His date of birth?

14 MS. SANGHVI: Yeah. Just don't want that part
15 of the public record, so we can just mark that
16 confidential.

17 MR. WILSON: So dates of birth I didn't
18 realize were private, but we can follow up after the
19 deposition.

20 BY MR. WILSON:

21 Q. Do you see that doctor's note in front of you?

22 A. Yes.

23 Q. Did you ask this doctor to provide this
24 information?

25 MS. SANGHVI: Objection to the extent that any

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
131

1 communications with his doctor constitute privileged
2 information.

3 MR. WILSON: Are you instructing him not to
4 answer?

5 MS. SANGHVI: Not yet, but we're getting
6 there.

7 BY MR. WILSON:

8 Q. Can you answer the question, please?

9 A. I did tell Dr. Crane that I needed a -- a
10 doctor's note for work.

11 Q. This says it's advised that you be allowed to
12 work remotely starting at your return on December 26th for
13 at least four more weeks to allow for extended recovery
14 time and should be in place to January 25th. Do you see
15 that?

16 A. Yes.

17 Q. The doctor -- at least the doctor's note here
18 does not provide for 50 percent home and work, it simply
19 says remotely working for at least four more weeks as of
20 December 29th, right?

21 A. Yes.

22 Q. Is there any reason why you were asking for
23 50 percent work at home and work at the office when your
24 doctor's note here says you should be allowed to work
25 remotely through January 25th?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
132

1 MS. SANGHVI: Objection. Misstates. Vague.

2 Go ahead.

3 BY MR. WILSON:

4 Q. Go ahead.

5 A. Yes, there was a reason. The reason was that

6 I -- I didn't -- I didn't want to be perceived in the

7 workplace as not working hard enough or trying to take

8 advantage. And a lot of the cultural signals and the

9 way in which remote work and sick leave interacted with

10 each other and intersected with each other in these

11 blurry ways at IXL made me concerned that asking for any

12 accommodation would create more friction. You know, I'd

13 started to sense friction between myself and David as I

14 was getting up to surgery, but everything had been fine

15 and I wanted to make sure that everything stayed fine.

16 So I asked for less than what I actually needed so that,

17 you know, he would feel better about it.

18 Q. So there's a lot there, but I'll just home in

19 on -- on the -- one part of that, which is your physician

20 advised you to do one thing and you chose to -- to only

21 work -- or request only working half the day from home and

22 half the day at the office, correct?

23 MS. SANGHVI: Objection. Mischaracterizing

24 the document.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
133

1 BY MR. WILSON:

2 Q. Go ahead.

3 A. Well, I was -- yes, I asked for less than what
4 I needed. I was trying to balance my professional life
5 and my health.

6 Q. Exhibit 206 is a one-page document which is Bates
7 numbered IXL-1663. And this is your exchange on
8 January 7th with Paul Mishkin, correct?

9 A. Yes.

10 Q. When you received this e-mail from Paul Mishkin,
11 if I understand your testimony, you were -- you were
12 pleased that your comments and complaints to David Keyes
13 were being escalated to the CEO, right?

14 A. At the time I believed that Paul Mishkin
15 actually wanted to discuss the discrimination complaints
16 that I made. So yes, I was -- I was certainly pleased
17 that the CEO appeared to me taking those things
18 seriously, those complaints seriously. And I was
19 looking forward to having an honest, straightforward
20 conversation about discrimination in the workplace, but
21 that's not what happened.

22 Q. So my question to you was at the time you
23 received this e-mail, you were pleased that David had
24 escalated your complaint to the CEO, yes?

25 A. I was looking forward to having an open and

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
134

1 honest discussion about discrimination.

2 Q. Okay. My question is very simple, which is at
3 the point in time that you got this e-mail on January 7th,
4 8:06 a.m. or thereabouts, you were pleased that your
5 complaint to David was being escalated to the CEO, right?

6 A. Well, under the assumption that it was
7 actually being escalated for the purpose of discussing
8 discrimination in an open and honest way, yes. But
9 that's not -- that's not what was going on.

10 Q. Right. At that point in time, whatever you've
11 concluded since then about what was going on, you were
12 pleased that it was being escalated to David -- from David
13 to Paul Mishkin; is that right?

14 MS. SANGHVI: Objection. Asked and answered.
15 BY MR. WILSON:

16 Q. Go ahead.

17 A. Well, that wasn't actually the purpose of
18 meeting.

19 Q. That's not my question.

20 A. So I was looking forward to having a
21 conversation about discrimination and I was -- I was
22 looking forward to -- to airing those grievances and
23 finding solutions collaboratively to take care of some
24 of those things in the workplace.

25 Q. Do you remember testifying in the NLRB that you

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
135

1 appreciated that David escalated your complaint to the CEO

2 and you said "yes"? Do you recall that?

3 A. Yeah, I do.

4 Q. Was that truthful when you said it?

5 A. Yes, and now I'm expounding upon it.

6 Q. I'm asking you whether it was truthful, and you

7 say "yes"?

8 A. That was true and what I'm telling you now is

9 also true.

10 Q. That's not my question. My question was was your

11 answer true in the NLRB trial, "yes" or "no"?

12 MS. SANGHVI: Objection. He's asked it --

13 you've asked, it he's answered it.

14 BY MR. WILSON:

15 Q. Go ahead.

16 A. What I said at the NLRB was true and what I'm

17 telling you right now is also true.

18 Q. Mr. Duane, I'm not asking you about what you're

19 telling me now, whether it's true or not. I'm asking a

20 very simple question, which is was that answer that you

21 gave at the NLRB true, "yes" or "no"? And if you can't

22 answer it "yes" or "no" it wasn't true without adding more

23 verbiage then we can -- then you can say that. But I need

24 to keep asking my question until I get the -- an answer to

25 the specific question I'm asking.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
136

1 MS. SANGHVI: You've --

2 THE WITNESS: I believe I'm giving --

3 BY MR. WILSON:

4 Q. So with that preface -- with that preface, I will
5 ask it again, which is was that answer that you gave at the
6 NLRB that I just asked you about true, "yes" or "no"?

7 MS. SANGHVI: Objection. Asked and answered.

8 He has --

9 BY MR. WILSON:

10 Q. Go ahead.

11 MS. SANGHVI: -- said "yes" and expounded.

12 MR. WILSON: Your objection's noted.

13 BY MR. WILSON:

14 Q. Go ahead.

15 A. I believe I'm giving you a more accurate
16 answer by giving you more detail.

17 Q. Okay.

18 A. So yes, both of those things are true.

19 Q. So --

20 A. The NLRB testimony is true, this is also true.

21 Q. So your NLRB testimony is not the full truth; is
22 that what you're saying?

23 MS. SANGHVI: Objection. Mischaracterizes his
24 testimony and argumentative.

25 /////

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
137

1 BY MR. WILSON:

2 Q. Go ahead. Go ahead.

3 A. At the NLRB hearing, because you were
4 cross-examining me, I didn't have an opportunity to
5 expound. So now that I do have an opportunity to
6 expound and give a more accurate explanation and answer,
7 that's what I'm doing.

8 Q. All right. So let's look at your testimony at
9 the NLRB, and I'm going to go to page 121. All right. On
10 that page, 121, I asked you, starting on line 9, "Did you
11 know that he would be escalating your concerns directly to
12 the CEO?"

13 "Answer: No, I didn't.

14 "Did you appreciate that he did?

15 "Yes."

16 Was that truthful testimony?

17 MS. SANGHVI: Objection. Asked and answered.

18 THE WITNESS: Like I said before, this is
19 true, and I'm giving a more complete and -- and -- I'm
20 giving also a true answer now. I believed that my
21 complaints were being escalated for the purpose of
22 discussing discrimination honestly and openly with the
23 CEO, but when I got to that meeting that was certainly
24 not what I found.

25 BY MR. WILSON:

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
138

1 Q. Okay. Mr. Duane, when I asked you did you
2 appreciate that he did and you answered "Yes," are you --
3 is it your testimony that you needed to give more
4 information than that in order to testify truthfully?

5 MS. SANGHVI: Objection. Asked and answered.

6 BY MR. WILSON:

7 Q. Go ahead.

8 A. I didn't have a chance to expound upon it so
9 I'm expounding upon it now and letting you know.

10 Q. That's not my question.

11 A. That -- that --

12 Q. That's not my question, sir. My question is when
13 you answered that question, quote, "Did you appreciate that
14 he did?" and you said, "Yes," my question is, is it your
15 testimony that there was more information that you needed
16 to give for that to be a complete, truthful answer, "yes"
17 or "no"?

18 MS. SANGHVI: Asked and answered.

19 THE WITNESS: Well, like --

20 BY MR. WILSON:

21 Q. Go ahead.

22 A. Like I said, I think that this answer in
23 isolation is -- is truthful, and I also felt that
24 appreciation within the confines of thinking that I was
25 going to have an open and honest conversation about

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
139

1 discrimination and -- and my complaints in particular.

2 That's -- that's not what happened. So if I could

3 unfeel that appreciation, I probably would.

4 Q. So you did -- you felt that appreciation at the
5 time, right?

6 A. With the understanding that this
7 conversation --

8 Q. Okay.

9 A. -- was --

10 Q. Okay.

11 A. -- going to be about discrimination --

12 Q. All right.

13 A. -- and -- yeah.

14 Q. Now, on that day, or that week even,
15 January 2015, you had already decided weeks before then
16 that you were going to leave the company when you found
17 another job, right?

18 A. I had begun looking at next steps for my
19 career but I had no firm plans.

20 Q. You began looking for another job in mid
21 December 2014, correct?

22 A. I don't remember making any specific efforts.
23 I was mostly focused on healing from surgery.

24 Q. All right. So I'm going to turn your attention
25 to page 134, and specifically line 13. I asked you on

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
140

1 December 30, 2014, "You had already decided at that point
2 you were leaving the company?"

3 "Answer: I had not decided I was leaving, I had
4 decided I was going to pursue other opportunities, but I
5 wasn't going to leave without another job.

6 "Question: You were looking for a job?

7 "Answer: Correct.

8 "Okay. And when did you start looking for a job?

9 "Answer: Around mid December 2014."

10 Now, was that truthful testimony?

11 A. Yeah. I think what I meant there was that I
12 hadn't submitted any applications. I wasn't doing
13 interviews. That's how I interpreted your question a
14 minute ago, so --

15 Q. That's not my question now. My question is, is
16 that -- what I read to you there, was that truthful
17 testimony?

18 A. Well, I think I was -- I was looking into
19 other opportunities but I wasn't applying for jobs. So
20 yes, if -- it depends on how you interpret that
21 question. I think I -- I believe that I interpreted,
22 when you asked it at the NLRB, to be was I -- was I
23 Googling around for -- for other job postings, was I
24 exploring, and I was doing those things but I wasn't
25 submitting applications or doing interviews yet. I

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
141

1 wasn't in shape to do that.

2 Q. Do you recall telling any of your friends or
3 coworkers or ex-coworkers around that point in time that
4 you were done with IXL and -- and ready to leave as soon as
5 your medical leave was over?

6 MS. SANGHVI: Objection. Form.

7 BY MR. WILSON:

8 Q. Go ahead.

9 A. I don't recall saying it exactly like that.

10 Q. Generally like that?

11 MS. SANGHVI: Objection. Form.

12 BY MR. WILSON:

13 Q. Go ahead.

14 A. I recall talking to some people about -- about
15 potentially moving on in my career.

16 Q. Specifically what I asked you was around that
17 point in time, in December of 2014, you talked to a few
18 coworkers or ex-coworkers about the fact that you were done
19 with IXL as soon as you got your surgery paid for and your
20 leave was -- medical leave was finished, correct?

21 MS. SANGHVI: Objection. Form.

22 THE WITNESS: I don't remember exactly what
23 was said in those conversations. Really, I think my
24 meaning was probably I had this big health concern that
25 I've been taking care of for all of 2014. And after

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
142

1 that was taken care of, I would have the opportunity
2 to -- to look for other jobs in a way that I couldn't do
3 in the time when I was taking care of my medical needs.

4 MR. WILSON: Let's see. Okay. I've marked
5 Exhibit 212.

6 (Deposition Exhibit 212 was marked for
7 identification.)

8 BY MR. WILSON:

9 Q. I'll just put it up on your screen. This is --
10 this is a discussion that the EEOC produced, starting at
11 EEOC 337, between yourself and Nemo Curiel, correct?

12 A. Yes.

13 Q. This is again Facebook messaging?

14 A. Yeah, looks like it.

15 Q. So this is a six-page document. First page is
16 12/23/2014.

17 A. Mm-hm.

18 Q. Let me just make sure that the other pages go in
19 order. Yeah. Okay. So I'll go through these pages with
20 you. So you said to Nemo in this message on December 23rd
21 at 11:20 p.m., if that's accurate, that's what it says,
22 "ixl is such a full of shit company. i'm over it." Do you
23 recall sending that note?

24 A. I don't recall specifically, but I did -- I
25 sent it. I'm not sure you're going in the right order.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
143

1 Can you check on that?

2 Q. Yeah. Here, let me unfreeze it. Go ahead and
3 read, leaf through, tell me when you're ready.

4 A. Yeah. Never mind. Good.

5 Q. Okay. So this -- this e-mail -- or sorry,
6 Facebook message on the 23rd, what did you mean when you
7 said "i'm over it"?

8 A. I felt frustrated.

9 Q. "I'm over it" means I'm frustrated?

10 A. To me, that's one of the ways I use it, yes.

11 Q. And that's the way you used it in this message,
12 right?

13 A. I mean, it was a really long time ago. I
14 can't say for sure, but that's generally how I speak,
15 yes, to friends.

16 Q. And when you said "ixl is such a full of shit
17 company," what did you mean by that?

18 A. Well, I was frustrated with the -- the amount
19 of advocacy I was having to do on my own behalf with
20 David Keyes with regard to the disability accommodation
21 stuff. It frustrated me that they didn't seem to be
22 taking that seriously.

23 Q. In response, it appears that Nemo says, "i read
24 what you wrote." Do you know what that means?

25 A. I'm not sure. I'm -- I can't say for sure.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
144

1 It could be the previous message, it could be something
2 that I posted on Facebook.

3 Q. So on page four, this is a message from you to
4 Nemo?

5 A. Yes.

6 Q. It says, "i wrote David a very diplomatic e-mail
7 telling him i'd spoken with a lawyer and she said they
8 legally couldn't deny me what i was asking for, and that i
9 would like to return on the 30th with 50% remote
10 accommodation." First was all, did you write that?

11 A. Yes, I did.

12 Q. Okay. And is that an accurate description of
13 what your lawyer said?

14 MS. SANGHVI: Objection. I'm instructing him
15 not to answer what his lawyer said.

16 MR. WILSON: He's already described what his
17 lawyer said.

18 MS. SANGHVI: He's -- he's described a general
19 understanding -- his general understanding. He is not
20 giving a word-by-word replay of what was discussed.

21 MR. WILSON: So you're instructing him not to
22 answer a question about what he said his lawyer said
23 here; is that right?

24 MS. SANGHVI: He can answer a question about
25 the document and nothing about the conversations that he

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
145

1 had with his attorney.

2 BY MR. WILSON:

3 Q. Were you being truthful in this comment to

4 Mr. Curiel?

5 A. Yeah, as far as -- yeah, I think I was.

6 Q. You asked him, "Did you ever notice how much more

7 leeway people with kids get there?" Do you see that?

8 A. Yes.

9 Q. What were you referring to at the time?

10 A. People with children -- who were all straight

11 cis people in the workplace. People with children

12 frequently worked from home with very little -- very

13 little notice to their teams or their supervisors, and

14 there didn't seem to be any of the -- they didn't lose

15 any social capital in the workplace as a result of, you

16 know, frequently and unexpectedly having to stay home or

17 change their schedule or -- or work remotely because of

18 their need to take care of their -- their children

19 and --

20 Q. Do you know of anyone in 2014 at IXL who had kids

21 and who got more days off and remote days than you?

22 A. I didn't count people's days -- days working

23 remotely.

24 Q. Do you -- without counting, do you know if anyone

25 at IXL, whether they had kids or not, had more remote and

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
146

1 partial days and sick days in 2014 approved than you did?

2 MS. SANGHVI: Objection. Form.

3 Go ahead.

4 THE WITNESS: I honestly don't know.

5 BY MR. WILSON:

6 Q. And the 25, 30 times that you had work-at-home or

7 partial days, those were not related in any way to

8 childcare, right?

9 A. No, they were related to my health.

10 Q. On the last page, you say, "He," referring to

11 David -- this is on the 25th of December.

12 A. Mm-hm.

13 Q. "He caved, but it's clear also he doesn't

14 understand that he actually broke the law, and has no

15 choice in the matter. He thinks he's being a nice guy and

16 doing me a favor." What did you mean by "he has no choice

17 in the matter"?

18 A. I believed that he -- that under the ADA I was

19 asking for something that I was legally entitled to.

20 That's what I meant there.

21 Q. In other words, what you mean is that he had no

22 choice but to give you what you requested and not offer a

23 different type of accommodation, correct?

24 MS. SANGHVI: Objection. Mischaracterizes.

25 BY MR. WILSON:

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
147

1 Q. Go ahead.

2 A. Well, my understanding was that if what I was
3 asking for was a reasonable accommodation then yes, they
4 had an obligation to -- to grant me that accommodation.
5 That's my understanding and that was what I meant by
6 that.

7 Q. Were you on paid leave during the -- during
8 the -- most of December when you were out for your surgery?

9 A. I was on state short-term disability.

10 Q. How long did that last?

11 A. Short-term disability kicks in, I believe,
12 eight days --

13 Q. How long?

14 A. -- after you initially go on, so I was on from
15 my eighth day to the day that I came back.

16 Q. And my question is how long did it last, do you
17 know? Could you have stayed on that disability beyond the
18 day you came back and still received those benefits?

19 A. My understanding is that short-term disability
20 is 90 days and I hadn't hit the 90 days, although I was
21 receiving less pay while I was on disability and I -- I
22 couldn't afford to really do that anymore.

23 Q. So my question simply is you had not run out of
24 the -- that disability benefit on the date that you had
25 returned to work, correct?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
148

1 A. I hadn't -- I -- I could have stayed on
2 short-term disability if I wanted to receive lower pay,
3 yes.

4 (Deposition Exhibit 213 was marked for
5 identification.)

6 BY MR. WILSON:

7 Q. I'll introduce hopefully here Exhibit 213, which
8 is a 14 -- a 14-page conversation starting at the EEOC_304.
9 Do you have that up? I can put it up on your screen if
10 you'd like. So I'm showing you the first page of it. It's
11 dated January 26th, 2015. This is you asking Nemo, "yo,
12 when did you quit IXL?" Do you see that?

13 A. Yes.

14 Q. Do you recall sending that question?

15 A. I don't recall the specific day or anything,
16 but yes, I sent it.

17 Q. Why were you asking him when he quit?

18 A. We were -- I was working with my attorneys to
19 put together the complaint and trying to make sure that
20 everything was accurate.

21 Q. Show you -- again, having a lag here. So on page
22 11 of that --

23 MS. SANGHVI: I'm going to --

24 /////

25 BY MR. WILSON:

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
149

1 Q. -- document --

2 Sorry?

3 MS. SANGHVI: When you started with this
4 document I didn't realize it was a 14-page document.
5 Can we give the witness an opportunity to review the
6 document before you --

7 MR. WILSON: If he wants. Actually, I did
8 and --

9 BY MR. WILSON:

10 Q. I want to ask you about page 11. If you need to
11 read the whole thing for me to ask you about page 11, go
12 ahead.

13 A. Is it 212 or 213?

14 Q. 213.

15 A. Okay.

16 Q. The page I'm referring to -- and you tell me, for
17 me to ask you about this, do you need to read the document?

18 A. Yes, I do.

19 Q. Okay. Go ahead.

20 A. Okay.

21 MS. SANGHVI: I'm going to object -- I mean,
22 you've grouped all of these together. It's not clear
23 that these are all part of the conversation as they are
24 separated by six days.

25 MR. WILSON: Okay.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
150

1 BY MR. WILSON:

2 Q. So I'm going to ask you to turn to page 11. Let
3 me know when you're there.

4 A. Yes.

5 Q. You have a comment to Nemo saying "He hates me.
6 Like virulently." Who are you referring to?

7 A. Paul Mishkin.

8 Q. Nemo responds on the next page, "why does he hate
9 you."

10 "Because of time off?" is the page after.

11 And in your response is the following on page 14:

12 "[It's] One of two things...either his ego is that delicate
13 that one bad review made him go nuts, or he found out I'm
14 trans and he's" -- "and is -that- disgusted by trans
15 people."

16 Did you write that?

17 A. Yeah, I wrote that.

18 Q. Okay.

19 (Deposition Exhibit 214 was marked for
20 identification.)

21 BY MR. WILSON:

22 Q. All right. Showing you Exhibit 214. This is a
23 three-page e-mail conversation. The first three -- three
24 or so e-mails are e-mails we've already seen relate --

25 A. I don't have it up.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
151

1 Q. Go ahead.

2 A. I don't -- I didn't get it.

3 Q. 214? I can put it up on the screen if you'd
4 like.

5 A. There it is.

6 Q. Are you ready?

7 A. Yes.

8 Q. So the first -- the page two and three we've
9 already seen. It's really the back and forth,
10 December 20th -- December 19th to 23 between you and David
11 Keyes. It's the first page I really am asking you about
12 where you forwarded that to perhaps I think Nina at the
13 bottom there at 9:14 p.m. on December 23rd. Do you see
14 that?

15 A. Yes.

16 Q. Okay. It says, "Thought I'd shaarrreee.
17 Breaking employment law. #IXLLearning." Do you see that?

18 A. Yes.

19 Q. Do you write that?

20 A. I believe I did, yes.

21 Q. Okay. So Nina responds. And then I want to ask
22 you about your e-mail on December 31st --

23 A. Mm-hm.

24 Q. -- where you say in the second paragraph, "Yeah,
25 IXL is so ridiculous. Why hire such talented people if

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
152

1 you're just going to give them menial, boring work and
2 treat them like disobedient children who can't trusted to
3 be home alone?" Do you see that?

4 A. Mm-hm.

5 Q. And this was your impression at the time on
6 December 31st, right?

7 A. I -- I think it's -- it's a way of expressing
8 some of the concerns that I had about the workplace,
9 yes.

10 Q. Okay. Right. That was -- at that point in time,
11 on December 31st, that was a complaint you had about IXL,
12 right?

13 A. I think that there are a couple of complaints
14 that are sort of folded in there, yes.

15 Q. One of your complaints is exactly what you wrote
16 there, right, which is "Why hire such talented people if
17 you're just going to give them menial, boring work and
18 treat them like disobedient children who can't be trusted
19 to be home alone," correct?

20 A. It's a bit of a restatement of what I've said
21 in the Glassdoor posts and other places, yes.

22 Q. My question very simple, which is you believe
23 that at the time that -- was a complaint you had at the
24 time on December 31st, right?

25 MS. SANGHVI: Objection. Asked and answered.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
153

1 He said "yes. "

2 BY MR. WILSON:

3 Q. Go ahead.

4 A. Yeah, it's a restatement of some of complaints
5 that I posted elsewhere, yes.

6 Q. You say you've started applying to other things.
7 Do you see that?

8 A. Yes, I do.

9 Q. Okay. At least as of December 31st, you had
10 started applying to other things, correct?

11 A. You know, I honestly don't -- I don't remember
12 submitting applications during that time.

13 Q. Okay.

14 A. But it's -- it's possible that I -- that I --
15 that I did start applying earlier. I might have also
16 been using "applying" as like sort of a placeholder,
17 like I was saying to you before, looking for
18 opportunities, looking for postings, doing my rÈsumÈ,
19 things like that.

20 Q. So when you say, "I've started applying to other
21 things," you might not really be talking about applying to
22 other things?

23 A. I think I might have been using "applying" in
24 a slightly looser way than -- than you're using it right
25 now.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
154

1 Q. I'm not using it any way. I'm asking you did you
2 say that, did you apply to other things as of
3 December 31st?

4 A. Like I said, I can't remember if I actually
5 submitted applications --

6 Q. Okay.

7 A. -- but I was -- I was looking around for
8 opportunities.

9 Q. All right. Next paragraph you say, "Now that I'm
10 committed to moving on from IXL, I'm much less secretive
11 about my trans status." When you say "I'm" -- "Now that
12 I'm committed to moving on from IXL," you meant at that
13 point in time that you were committed to leaving your job
14 once you found another one, right?

15 A. I was definitely looking for the next step.

16 Q. Were you committed to moving on from IXL at that
17 time?

18 A. I wanted to move on, yes. I was frustrated
19 with how things were, how my boss was.

20 Q. Were you committed to moving on from IXL at that
21 time?

22 MS. SANGHVI: Objection. Asked and answered.

23 BY MR. WILSON:

24 Q. Go ahead.

25 A. I was looking for other career opportunities,

1 yeah.

2 Q. Was this a true statement when you made it, that

3 "I'm committed to moving on from IXL"?

4 A. I don't remember exactly why I chose all the

5 words that I chose, but I would say I was -- I was --

6 within myself, I was committed to making the next career

7 decision for myself.

8 Q. All right. When you said to her in this e-mail

9 "David insisted on a doctor's note, so I had Curt write

10 one," do you see that?

11 A. Yes.

12 Q. You know that that's not true, right?

13 A. I disagree with that characterization.

14 Q. Do you agree that you offered David -- to

15 provide, sorry, David with a doctor's note in the e-mail on

16 December 23rd?

17 A. Well, I first brought up --

18 Q. Did you offer that or not?

19 A. Well, I first brought up the doctor's note.

20 And the reason that I did that was because I knew that

21 it was a way of lending legitimacy to the -- the medical

22 procedures that I was undergoing. But his response --

23 his response saying -- saying yes to me, I knew that the

24 accommodation was not going to happen without that

25 doctor's note because he said yes, he did want it. So I

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
156

1 mean, I use the word "insisted" here. Really what I
2 meant was yeah, he said he did want that and the
3 accommodation was -- was contingent on that.

4 Q. Okay. So you said, "He didn't say what my
5 surgery was, but his website is on there. If anyone goes
6 to it, they'll figure it out quickly. And I don't really
7 give a fuck!" Do you see that?

8 A. Yes.

9 Q. At that point in time, you didn't care whether or
10 not people at IXL knew about your trans status, correct?

11 MS. SANGHVI: Objection. Mischaracterizes the
12 document.

13 THE WITNESS: To be honest, I -- I still had
14 mixed feelings about it. It's -- it's not -- I -- I
15 wanted to feel comfortable in the workplace as a -- as a
16 trans person and wanted to be able to be out. But to be
17 honest, I was still feeling quite a bit of fear at this
18 time that being out as a trans person would cause me
19 additional friction in the workplace. But I also knew
20 that I'd already accessed this very major surgery, which
21 is hard to get for trans people, and I valued that
22 surgery. I valued my access to that surgery. And I
23 knew that being out as trans in the workplace would
24 potentially jeopardize that. So what I meant here was
25 that I have less to lose now as a trans person because

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
157

1 I've already accessed phalloplasty.

2 BY MR. WILSON:

3 Q. You've already accessed what?

4 A. Phalloplasty.

5 Q. Phalloplasty. So you -- in other words, now that
6 you've got your surgery paid for and it was complete, other
7 than postoperative, you know, healing, you didn't give a
8 fuck whether or not people knew about your trans status,
9 right?

10 MS. SANGHVI: Objection.

11 BY MR. WILSON:

12 Q. Go ahead.

13 A. I knew that there was just a lot less for me
14 to lose now that I accessed my medical care. I mean,
15 it's a -- it's difficult to access medical care as a
16 trans person, and being out with -- being out as trans
17 in this particular workplace, I knew I would risk that.
18 That was a big deal. So what I'm -- what I meant here
19 was that I just have -- I have less to lose now as a
20 trans person in this workplace.

21 Q. Okay.

22 (Deposition Exhibit 216 was marked for
23 identification.)

24 ////

25 BY MR. WILSON:

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
158

1 Q. All right. I'm going to show you a five-page
2 exhibit, number 216, I just marked and should pop up soon.
3 When you see 216, go ahead and open it up, please. Did you
4 get it?

5 A. Yeah.

6 Q. Okay. Like I said, this is five pages. The
7 dates are all -- are on 8/1, 8/4/2014, August 1st and 4 of
8 2014. And this appears to be a Facebook group chat with
9 you, Nina, Nemo, and Jessica, correct?

10 A. Yes.

11 Q. And the beginning number's EEOC_000379. Your
12 message says, "Yep. I mean it's fine, it" -- "it will work
13 out, i just find HR people to be soooooo slimy." And that's
14 on August 1, 2014. Do you see that?

15 A. Yes, I do.

16 Q. All right. Do you know what you were referring
17 to, what the context of that comment was?

18 A. Not exactly. I'd have -- I'd had several
19 conversations with the HR personnel at IXL and they were
20 all pretty -- in my view, pretty negative and gave me
21 concerns about taking this leave, you know, being trans,
22 accessing medical care in that workplace. So I was
23 probably referring to one of those conversations.

24 Q. All right. So if we just forward a few pages,
25 maybe it helps contextualize this. On page four, there's a

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
159

1 reference by Nina of sacrificing a week of vacation time.
2 Might have nothing to do with your August 1st comment, but
3 is it that -- does that provide any context for what you
4 were talking about?

5 A. Mm, yeah, it does. So there was one
6 conversation -- might have been a couple, actually --
7 where, you know, I talked to the HR staff at IXL -- I
8 think was Brad Marshal, but it could have been -- it
9 could have been Maricela. I'm not sure. I think it was
10 Brad Marshal -- about that first week before state
11 disability kicks in. Some workplaces, you know, make
12 you take vacation days for that and some make you take
13 sick days for that. And IXL's -- I believed based on
14 IXL's unlimited sick time policy that I -- I could take
15 sick days for that. And then in that conversation I
16 found out that actually the policy was that the sick
17 leave wasn't really unlimited, that in a situation like
18 this I would have to use my vacation days in order to --
19 to get paid for those -- for those first eight days or
20 whatever it was going to be. And I remember being
21 disappointed by that and feeling a little bit mislead by
22 the unlimited -- quote/unquote "unlimitedness" of the
23 policy.

24 Q. So you were -- you were complaining or you were
25 upset and your comment about them being so slimy is that

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
160

1 you had to use some -- some vacation days to get that --
2 that period compensated before benefits kicked in, correct?

3 A. Well --

4 Q. Is that what you're just talking about?

5 A. I don't remember exactly why I wrote that --

6 Q. All right.

7 A. -- piece, but --

8 Q. But what you just were referring to is what I'm
9 asking about?

10 A. Which part?

11 Q. About the fact that you were going to have to use
12 vacation days to get compensated for eight days or so until
13 your benefits kicked in. That's what you were concerned
14 about?

15 A. That was the context of the conversation, but
16 my concerns about the HR at IXL were not at all limited
17 to just that conversation.

18 Q. But you don't know what you're talking about here
19 on page one, you're -- but that is one thing that might be
20 what you're referencing, right, is this requirement that
21 you use vacation time, correct?

22 A. I think I was probably speaking more generally
23 about the HR at IXL when I said that particular thing.

24 Q. All right.

25 A. But it was in the context of this conversation

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
161

1 that I just had.

2 Q. So Nemo responds saying "So vague and shitty."

3 Does that help refresh your recollection about what it is

4 you were talking about that he's responding to?

5 A. I believe he's probably referring to the sick

6 leave policy itself was vague and shitty.

7 Q. All right. He says, "Yeah. That sucks man," on

8 page three. "Sorry. But totally worth it to be there."

9 Do you know what he's referring to there?

10 A. I think that -- I think the "totally worth it

11 to be there" -- that's what you're talking about?

12 Q. Yes.

13 A. So I think he's referring to the surgery

14 itself. We'd had many conversations about how vital the

15 surgery was to my health and well-being and he was

16 really excited for me.

17 Q. Nina responds saying, "Scott" -- "Awww, Scott,

18 that's the worst! Sliminess starts from the top though,

19 you know? But to sacrifice a week of vacation time for all

20 of this is okay. Also, when you return, you can just take

21 a shit ton of random sick days and just vacation then." Do

22 you recall receiving this?

23 A. Yes, I do.

24 Q. And what was your reaction when you got that

25 message from her?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
162

1 A. I thought it was sort of funny and -- you
2 know, I saw -- I saw her point, you know. But I -- I
3 didn't really plan on doing that.

4 Q. Why not?

5 A. I don't know, because I think, you know, you
6 take vacation when it's vacation and I take sick time
7 when it's sick time and -- yeah.

8 Q. So that would not have been an appropriate way of
9 using sick versus vacation time in your view at that time?

10 A. Yeah, I don't think it would have been
11 appropriate.

12 Q. So the next page is you responding saying, "YES
13 the slimy does trickle down! I'm not super upset about it.
14 It's completely worth it, esp when I think about people who
15 pay for this stuff out of pocket." You're talking about
16 your surgery?

17 A. Yes.

18 Q. And your surgery was covered by your health
19 benefits at IXL?

20 A. That's correct.

21 Q. All right. At this point in time in August of
22 2014, did you have an intent of moving on from IXL once
23 your surgery was done?

24 A. I -- I don't -- I wasn't really thinking about
25 my next career step, I was just focused on my health at

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
163

1 that time.

2 Q. Had you made any conclusions about leaving IXL in
3 August or September?

4 A. Really I was pretty laser-focused on getting
5 the surgery. There's a lot of logistics to it. So I
6 wasn't -- I wasn't thinking -- I was thinking very
7 day-to-day at that time.

8 Q. So that's a no, you were not thinking of moving
9 on?

10 A. I can't remember everything that was in my
11 mind at that time.

12 Q. Okay.

13 A. But it -- it wasn't my focus.

14 Q. All right. After your exchange with David Keyes
15 in December, between the 19th and the 24th and -5th of
16 December 2014, you were satisfied with the accommodation
17 reached at that point in time, correct?

18 A. I was satisfied with the accommodation but not
19 the way that we got there.

20 Q. Okay. My question was very simple, which was you
21 were satisfied with the accommodation that was reached
22 after that conversation?

23 MS. SANGHVI: Objection. Asked and answered.

24 /////

25 BY MR. WILSON:

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
164

1 Q. Go ahead.

2 A. Well, we came to the accommodation that I
3 requested, but I wasn't happy that I had to advocate so
4 fiercely for myself for something that I felt was a
5 pretty easy ask.

6 Q. Right. Were you satisfied with that
7 accommodation at this point, "yes" or "no"?

8 MS. SANGHVI: Objection. Asked and answered.

9 BY MR. WILSON:

10 Q. Go ahead.

11 MS. SANGHVI: He doesn't have to give you a
12 "yes" or "no."

13 MR. WILSON: Your objection's noted.

14 BY MR. WILSON:

15 Q. Go ahead.

16 A. Well, I was -- I was satisfied with just the
17 accommodation, but the process to get to the
18 accommodation, I thought it was too difficult and there
19 was too much of a burden on me to advocate for myself.
20 I thought that the company owed it to its employees to
21 know more about the accommodation process.

22 Q. Other than having to advocate for those couple
23 days between the 22nd and the 24th or so in December, other
24 than that there was never any accommodation requested by
25 you that IXL rejected in any way; isn't that right?

1 A. Well, there -- there were a lot of times when
2 the same concerns that came up for me with regard to the
3 accommodation, they came up throughout the year and a
4 half that I worked there, specifically with regard to
5 disability stuff and how my medical information might be
6 treated based on how I saw other people being treated.

7 Q. So my question is other than the couple days
8 where you had the back and forth with David in the middle
9 of -- near the end of December 2014, there was never any
10 accommodation that you requested at IXL that IXL did not
11 grant; is that right?

12 A. The only time I requested a disability
13 accommodation was this -- this one time. So I -- I
14 think that's --

15 Q. So is that a -- is that a "yes" or a "no"?

16 MS. SANGHVI: Objection. He's asked -- you've
17 asked it, he's answered.

18 BY MR. WILSON:

19 Q. Go ahead.

20 A. Well, the only disability accommodation I
21 asked for was -- was the one.

22 Q. Which one?

23 A. I asked for remote work accommodation when I
24 came back and I also asked, you know, to work remotely
25 before that. I don't -- I don't know if that's -- falls

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
166

1 into the category of remote work for a disability
2 accommodation.

3 Q. You asked for an ergonomic mouse, right?

4 A. Yes. That's -- that's true, yeah. Forgot
5 about that.

6 Q. Did -- did they provide that to you?

7 A. They, did yes.

8 Q. Any time you asked for a day off or to leave
9 early or to come in late or to work at home, it was always,
10 in every case, granted by IXL, correct?

11 MS. SANGHVI: Objection. Form.

12 Go ahead.

13 THE WITNESS: It was, but the result of that
14 was increased friction between me and my manager in ways
15 that I didn't really fully appreciate until he did deny
16 that accommodation initially. And yeah, it was -- it
17 was -- they -- they granted those things but at the cost
18 of some of professional social capital that I had in
19 that -- in a that workplace. That was really the -- the
20 problem that was sort of gradually building up until the
21 end of when I started -- until the -- until I was fired.

22 BY MR. WILSON:

23 Q. Social capital is something that you kept mental
24 track of or was that something that you put in writing at
25 any point in time?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
167

1 A. Well, what I mean by social capital is the
2 trust that my manager did or didn't have in me and my
3 coworkers did or didn't have in me. So that's pretty --
4 it's not a tangible thing, it's just something I was
5 perceiving from my manager and from other people.

6 Q. Okay. Exhibit 209 is -- is an 11-page
7 spreadsheet produced by the EEOC with information about, I
8 guess, text messages. Can you pull that up and tell me if
9 you've seen that before?

10 A. I haven't seen it in this format before.

11 Q. Okay. Have you done anything to review the text
12 messages that were produced in this case by either your --
13 your -- by the EEOC or your personal attorney?

14 A. I've reviewed some of them but not all of
15 them.

16 Q. So if you look at these -- kind of -- you can
17 thumb through these and glance through some of these text
18 column -- sorry, the text messages in the text column.

19 A. Mm-hm.

20 Q. These start in 2000 -- April 2014, and the last
21 page appears to end on July 2017. Do you see that?

22 A. The last page?

23 Q. Well, just the whole 11 pages.

24 A. Yes --

25 Q. Do you see that?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
168

1 A. I do see.

2 Q. Again, scrolling through there, do these look

3 like text messages that you sent and testified?

4 A. Yeah, they do.

5 Q. Where would these be stored -- or where do they

6 reside currently, if you know?

7 A. I don't understand your question.

8 Q. So you have different text messages with

9 different people, Jessica Morse -- Morse, Nina, maybe Nemo,

10 I don't know if that's on here. Is this a cell phone, is

11 this a -- that you're doing texting with? Is it a laptop?

12 Is it a tablet or something else?

13 MS. SANGHVI: Objection.

14 Go ahead.

15 THE WITNESS: I mean, they are text messages

16 so probably a phone. I don't remember what kind of

17 phone I had back then. I have -- have an iPhone now, so

18 they -- they might also appear in iMessage depending on

19 the recipients or communication.

20 BY MR. WILSON:

21 Q. Let's see. I'm going to point your attention

22 to -- I guess it would be -- it would be page two, if you

23 could go to that. There's a text on the 23rd of December.

24 It's like one, two, three, four, five -- seven lines down,

25 I think. Appears that Jess Morse says, "yeah how is the

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
169

1 job hunt going?" Do you see that?

2 A. Mm-hm. Yes.

3 Q. And what appears to me two lines above it is
4 something from you to -- to Jess saying "I am so done with
5 IXL as soon as possible." Do you see that?

6 A. Yes.

7 Q. And that was sent at 1:19 p.m. on December 23rd,
8 correct?

9 A. Yes.

10 Q. And was that a truthful statement, that you were
11 so done with IXL as soon as possible on that day?

12 A. So again, this was around the time that I was
13 having the e-mail discussion with David Keyes and I was
14 feeling frustrated with IXL and the way I was being
15 treated.

16 Q. My question is was it true that on that day at
17 that time that you were, quote, "so done with IXL as soon
18 as possible," "yes" or "no"?

19 A. I don't remember exactly what was in my mind,
20 but I know that I was -- I was frustrated that day and I
21 think I was mostly expressing some frustrations. That's
22 what I mean by "I'm so done."

23 Q. When she asked you "how is the job hunt going?"
24 had you talked to her previously about looking for a job?

25 A. We both discussed, I think maybe while I was

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
170

1 on leave or maybe a little bit before that, we were both
2 thinking about applying and moving on. I know that she
3 was for sure.

4 Q. Were you looking for a job as of the date that
5 she e-mailed or texted you that?

6 A. As I said before, I was looking around at
7 postings. I think I was doing some r  sum   polishing and
8 stuff but I don't think that I actually submitted --
9 officially submitted applications as of that -- as of
10 that time.

11 Q. You were ready to leave as soon as you found a
12 job, correct?

13 A. I was looking for the next step in my career.

14 Q. Okay. The next page, on -- text message on the
15 5th of January, you say to Jess, "Omg I just made David
16 almost cry." Do you see that?

17 A. Yes.

18 Q. All right. And your next e-mail after says, "He
19 called me in and said you don't seem happy ... I said well
20 IXL hasn't treated me well around my disability," "And then
21 I just kept talking," "Jenna says I'm self righteous," and,
22 "She's right," "And now David knows." This was, what,
23 shortly like within minutes of your meeting with him that
24 day?

25 A. Yes.

1 Q. All right. You say in response to "What were his
2 parting words," "Says he's going to escalate it to Lenore
3 on my behalf. Wants me to know that he will try to earn my
4 trust back and ... he was my advocate. Omg he was so
5 upset," right?

6 A. Yes.

7 Q. Were you accurately describing David's comments
8 and his demeanor at the time?

9 A. Yes. He -- he got emotional during our
10 meeting. Actually kind of appreciated that. And yeah,
11 I think it's accurate.

12 Q. Okay. And then you respond and said, "It's hard
13 being a straight cis gender able bodied white guy
14 sometimes." Were you mocking him at that point?

15 A. No, I wasn't mocking him. I had the
16 experience in the past, I had this experience with
17 David, that sometimes -- sometimes it's a shock to -- to
18 people who aren't a member of a marginalized group
19 that -- that there are these systems in place that make
20 it harder for us to navigate the world. And I saw that
21 realization on his face. So it was more about like how
22 he, just by virtue of who he is and what his life
23 consists of, that he was sort of outside of that -- of
24 that system and didn't recognize it until I brought it
25 to his attention. So it was more about like the

1 whole -- the system as a whole. It wasn't really about
2 this one individual who was -- it was about -- it was
3 about the bigger picture.

4 Q. So when -- when she said in response, "Be nice.
5 Ur so cold," laugh out loud, your answer is, "You're right
6 I am." You said that, right?

7 A. Yeah, I -- I said that.

8 Q. Okay.

9 A. Yeah.

10 Q. You -- on the next page, you say "I brought up
11 everything. Maricela asking inappropriate questions."
12 With that -- the inappropriate questions comment, you
13 testified about that already in the other case in trial,
14 but -- but she was asking you questions about the arm --
15 arm wrap on -- I'm sorry, arm wrap that you had on covering
16 up your arm; is that right?

17 A. She asked me what happened to my arm and then
18 later she asked why I needed a particular donor site
19 rather than another donor site that she thought would be
20 better.

21 Q. Now, did she say "donor site" and did you guys
22 have that discussion or did she ask you whether whatever
23 was going on with this wrap on your arm whether it could be
24 surgery on -- on your other arm?

25 MS. SANGHVI: Objection. Form.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
173

1 BY MR. WILSON:

2 Q. As opposed to using the words donor site.

3 A. Well, in that meeting I used the word donor
4 site. I said -- as best as I could without revealing
5 the nature of the surgery, I said that my arm was going
6 to be used as a donor site for tissue, and that it would
7 be my right arm, and that was why I had the wrap on, and
8 that was why I would need the -- the equipment
9 accommodations that I was telling her about. And in
10 response to that, she asked why it couldn't be my left
11 arm, which was a decision that my doctor and I made
12 together. It's actually a pretty private decision, so
13 it was uncomfortable to me that she had asked about
14 that.

15 Q. You viewed that as some kind of a violation?

16 MS. SANGHVI: Objection. Vague.

17 THE WITNESS: I viewed it as inappropriate.
18 It was a question about my body from HR.

19 BY MR. WILSON:

20 Q. But so I understand, you were telling her about
21 your body and why you would need an ergonomic mouse because
22 of using, you know, your right hand for a mouse and having
23 that procedure done on your arm, correct?

24 A. I -- I was -- I was telling her what was going
25 to happen. I was telling her about the medical decision

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
174

1 that my doctor and I had already made together.

2 Q. All right. And -- and in that context of asking
3 for an ergonomic mouse and explaining that you had a wrap
4 on for the procedure on your arm, her -- her question of
5 why can't they use your left arm, that you were upset about
6 and felt was a violation, right?

7 A. I felt it was an inappropriate question, yes.

8 Q. All right. I think I'm done with this document,
9 I just need to make sure. Okay.

10 In your Glassdoor post on December 30, 2014,
11 you -- you complained about "There are no politics if
12 you fit in. If you don't -- that is, if you're not a
13 family-oriented white or Asian straight or mainstream
14 gay person with 1.7 kids who really likes softball,"
15 that's the way you described it, "then you're likely to
16 find yourself on the outside." And then you -- you said
17 treatment in the workplace in terms of a few things,
18 flexible hours, interesting projects, praise,
19 promotions, big yearly raise seemed to run along these
20 characteristics. I want to ask you about those -- those
21 items.

22 Okay. With respect to flexible hours, is
23 there anything in addition to what you've testified
24 today that would be the basis for you at that time
25 saying that flexible hours are -- are given based on

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
175

1 those characteristics you just described?

2 A. Well, the -- the reason that I would -- that I
3 would give to support that is first of all the way that
4 my disability leave upon coming back was handled. I
5 didn't -- I didn't see anyone who either had kids and
6 needed to care for kids. They -- folks that had kids
7 frequently, you know, like I've said before, took remote
8 work time, worked remotely, sporadically at the drop of
9 a hat. So there was that piece of it.

10 And then there was also the piece of sick
11 leave just needing to be really detailed in order for
12 people to -- in order for managers to -- to take it
13 seriously. That had been my observation in the
14 workplace up to that time based on conversations I had
15 with Nemo, behaviors that I observed in the workplace
16 when people were taking remote work time or taking sick
17 workdays, and just the general sense that I had that
18 there was quite a lot of gossip even from HR itself
19 about people's health and -- and about their, you
20 know -- the accomodation and the hours that they were
21 getting in the workplace.

22 And all of those things together, they -- they
23 painted a picture for me that there was -- that all of
24 these things were running along these characteristics;
25 if you have kids, if you have a medical condition that's

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
176

1 not stigmatized, like being trans or having HIV or a few
2 other things, then you're more likely to get these
3 things, you're more likely to be able to work remotely,
4 you know, with -- and not encounter the kinds of
5 workplace friction. So that's the --

6 Q. Do you know of anybody at IXL who had HIV?

7 A. I had an HIV scare when I was there.

8 Q. Okay. Do you know of anybody who had HIV at IXL?

9 A. I had a false positive HIV test so I was
10 referring to my own --

11 Q. That's not --

12 A. -- situation.

13 Q. That's not what I asked you. What I asked you
14 was do you know of anybody that was HIV positive at IXL?

15 A. When I made -- when I made that comment, I
16 just want to say like I was referring to the false
17 positive test that I had and the pressure that I felt to
18 not take sick time for that false positive test.

19 Q. When was that?

20 A. That was in August of 2013 so it was fairly
21 early on, but I already had a sense that -- that it
22 wasn't -- that -- that the unlimited sick leave
23 was -- -- was contingent upon explanation. I wasn't
24 ready to give an explanation for something I might have
25 that's very stigmatized.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
177

1 Q. Was there anyone at IXL that you know of who was
2 HIV positive?

3 A. Not to my knowledge, no.

4 Q. Was there anyone at IXL other than yourself who
5 was transgender?

6 A. There was one person who was exploring but was
7 not out.

8 Q. Was there anyone at IXL other than yourself who
9 was transgender?

10 A. I don't know the trans status of everyone
11 there, but to my knowledge, I was the only trans person.

12 Q. Was there anyone at IXL who -- who was turned
13 down, was denied any leave or sick days or flexible
14 schedule because they were not white, Asian, straight, or
15 mainstream gay?

16 MS. SANGHVI: Objection. Form. Compound.

17 BY MR. WILSON:

18 Q. Go ahead.

19 MS. SANGHVI: It asks for speculation.

20 MR. WILSON: You said form.

21 BY MR. WILSON.

22 Q. Go ahead.

23 THE WITNESS: Can you restate the question?

24 MR. WILSON: Can you read that question back?

25 THE WITNESS: It was just kind of confusing.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
178

1 (Record read.)

2 THE WITNESS: I -- I don't really know how to
3 answer that. I -- I don't know all of the sick time
4 that people took or didn't take. But I know, for
5 instance, again, Nemo was -- he wasn't denied because of
6 those things, but -- I was actually not done with my
7 answer when you cut me off a few questions ago, and
8 we -- there was another piece to the gender and the --
9 and the race piece of it.

10 BY MR. WILSON:

11 Q. How about we just answer my question before you
12 go back to the other one. Go ahead.

13 A. I -- I -- I don't really know how to answer
14 that. I -- I think that there was quite a bit of
15 implicit bias in the workplace.

16 Q. Okay.

17 A. And that's where a lot of the discrimination
18 came from.

19 Q. Okay. You went on Glassdoor.com posting a review
20 not saying "I felt" or "could be" these things. You
21 specifically said flexible schedules and yearly raises and
22 a few other things run along these characteristics of being
23 white, Asian, straight, or mainstream gay, 1.7 kids and
24 really like softball. My question is, having made those
25 accusations, whether you know of anybody who was not given

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
179

1 the flexible schedule, the raise, or other benefits because
2 they weren't in those categories?

3 A. Well, I know that there was a pay disparity
4 between two of my colleagues, one of whom was male and
5 one of whom was female. The male employee was making
6 \$10,000 more than the female employee for the same job.
7 That was Nemo Curiel and Jessica Morse. They were hired
8 within a couple months of each other for the exact same
9 position, as far as I know, the exact same -- similar
10 qualifications. And it came out after Nemo left. Jess
11 found out -- I don't remember how, but she found out
12 that she, for however long had been working there, had
13 been making \$10,000 less in salary than Nemo had. So
14 she brought that to David Keyes and he corrected it
15 and -- and did -- you know, she got that raise at that
16 time. But then a couple months later, when she was up
17 for a yearly raise, she was given a very small yearly
18 raise with the explanation that she'd already gotten a
19 raise that year. And to me that was a very clear
20 example of gender pay disparity in the workplace.

21 Q. So --

22 A. There was also the fact that while I was
23 working there, Isadora Milin and David Keyes were in
24 similar positions, had started right around the same
25 time. I thought Isadora's work was really good. I

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
180

1 loved her ideas and thought she was very smart, and
2 David was promoted above her. And I think she actually
3 ended up working under him, after a while, of him
4 managing some other people. So again I saw those
5 things, you know, falling along those same lines of
6 gender and also of race and -- yeah.

7 Q. Okay.

8 A. So those are -- those are two of the
9 observations. There's also just the fact that, you
10 know, most of management is white and I believe most of
11 the higher-ups are male, although it was better in that
12 regard than it was with regard to race.

13 Q. So the answer I think to my -- well, my question
14 was whether you knew of anyone in those characteristics who
15 were not given raises or flexible schedules. You've
16 identified two white females, correct, Isadora and Jess,
17 correct?

18 A. I don't know how --

19 MS. SANGHVI: Objection. Calls for
20 speculation.

21 BY MR. WILSON:

22 Q. Correct?

23 A. I don't know how Isadora identifies herself.

24 Q. You're the one who created this category or list
25 of categories. We didn't -- I didn't create it, no one

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
181

1 else created, you did. You said white or Asian, straight
2 or mainstream gay, okay, with kids that -- softball and
3 kids. What I'm asking you is Jessica and -- and Isadora,
4 were they in that category of white or Asian, straight, or
5 mainstream gay people?

6 A. I don't think I'd put Isadora in that
7 category. I mean, she's an immigrant. I know that he's
8 an immigrant. She has, you know, a green card status
9 that was up in the air at the time. So in my mind, I
10 was putting her in the same category as people of color.

11 Q. Okay. And Nemo is a person of color --

12 A. Yes.

13 Q. -- in your view?

14 A. That's correct.

15 Q. And you're saying Nemo was paid more than the
16 white coworker in the same position named Jessica, right?
17 Correct?

18 A. He was being paid more than a woman doing the
19 same job as him, which is a --

20 Q. Okay.

21 A. -- problem in tech.

22 Q. And you don't say anything about female or male
23 in your Glassdoor post, correct?

24 A. I thought I mentioned gender but I might not
25 have.

1 Q. Okay. The interesting projects that you referred
2 to, saying that the interesting projects are given along
3 the lines of those characteristics, what interesting
4 projects are you talking about?

5 A. Well, things like managing an entire
6 department, that was David Keyes's responsibility that
7 he was given. Yeah, that's the -- that's the example
8 that comes to mind --

9 Q. Okay.

10 A. -- right now. But I think there are others,
11 but I'm not able to remember them right as I sit here
12 now.

13 Q. What about praise? Is there any instance that
14 you know of employees who were not in those characteristics
15 that you identified in your post who were deprived praise
16 over people who were in those characteristics?

17 A. Again, I'd put Isadora in that category. She
18 had this really great video project that she'd -- she'd
19 been running and it was sort of, you know, snatched
20 without much of a -- without -- to my knowledge, without
21 too much explanation and acknowledgement of the hard
22 work that she had already done on it.

23 Q. Did you feel yourself to be an exceptional
24 employee or a mediocre employee?

25 A. I think that I -- I did my job pretty well.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
183

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?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
184

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 --

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
185

1 A. Mm-hm.

2 Q. -- on your screen there.

3 A. Mm-hm.

4 Q. And I want to ask you about -- it's like the last
5 or second-to-the-last paragraph where you say, "As for what
6 I'll do now," you say, "I'm feeling more optimistic every
7 day." Do you see that part?

8 A. Yes.

9 Q. Okay. This is January 11, 2015. You say, "I've
10 been taking classes online on data science." Is that true
11 at the time?

12 A. Yes.

13 Q. What coursework or what institution was that?

14 A. It was a course through Coursera. I think it
15 was run by Johns Hopkins.

16 Q. When did you started it?

17 A. I can't remember for sure. I think it was --
18 I think it was in January. Might have been before.

19 Q. Was it while you were on leave?

20 A. It might have been, yeah.

21 Q. And why were you taking that online class while
22 you were on leave?

23 A. Well, it interested me. And, you know, being
24 on leave gets pretty boring after a while. And I also
25 was -- I was thinking about skills that I might need as

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?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
189

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

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
190

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

1 non-economic damage, pain and suffering or the like after
2 being terminated?

3 A. Yes --

4 MS. SANGHVI: Object -- objection. Just
5 with -- vague.

6 BY MR. WILSON:

7 Q. Go ahead.

8 A. I saw two different therapists.

9 Q. Okay. When was that?

10 A. The first was around, I think, April 2015,
11 just for -- I only saw her for one session. And then
12 after I was employed again I actually -- that's when I
13 started seeing a therapist regularly when I could afford
14 it.

15 Q. When you -- who did you see in April 2015?

16 A. To be honest, I don't remember her exact name,
17 but she was through the Pacific Center in Berkeley.

18 Q. And why did you go see her?

19 A. I was -- I was struggling with -- with the
20 things that had happened, with, you know, being
21 unemployed, with losing my job, those things. And I
22 went and saw her specifically because it was an LGBT
23 center that offered sliding scale therapeutic services.

24 Q. You don't remember her name?

25 A. I -- I only saw her for one session. It -- it

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
192

1 didn't seem like it was going to be -- yeah, I only saw
2 her for one session.

3 Q. Is the name of the clinic or facility called
4 Pacific Center?

5 A. Yes.

6 Q. Did you receive any diagnosis from the Pacific
7 Center?

8 MS. SANGHVI: Objection. I'm going to
9 instruct him not to answer to the extent that it calls
10 upon psychotherapy and patient-confidential
11 communications.

12 MR. WILSON: You -- you're instructing him not
13 to answer?

14 MS. SANGHVI: Yes, I am.

15 MR. WILSON: Counsel, he's claiming emotional
16 pain and suffering damages. He's saying he sought
17 treatment for that and you're -- you're instructing him
18 not to answer questions about -- about an issue he's
19 placed in this case in controversy, which is his
20 emotional distress for which he's seeking damages.

21 MS. SANGHVI: You're --

22 MR. WILSON: What am I missing?

23 MS. SANGHVI: Do you want to do this on the
24 record or off the record?

25 MR. WILSON: I'm trying to find out why this

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
193

1 would not -- why this isn't relevant when he's claiming
2 these damages.

3 MS. SANGHVI: As we've indicated in writing,
4 that our claim for emotional distress damages does not
5 place Mr. Duane's mental state at issue in this
6 litigation. We're -- we're state -- we're essentially
7 seeking what I'll refer to, for lack of a better term,
8 as garden-variety emotional distress. We are not -- not
9 at this time nor ever going to claim any more advanced
10 mental harm or -- you know, any sort of broader claim
11 for emotional distress damages beyond basic garden
12 variety damages and therefore it is not being placed at
13 issue.

14 Any, you know, care that he sought, it doesn't
15 automatically get brought in and he doesn't
16 automatically have to talk about it. We have stated in
17 writing, we've stated to you, we're stating now on the
18 record that we're not seeking nor will he ever try to
19 claim or testify anything with regards to any severe
20 mental distress or any severe lack of the ability to
21 function or any diagnosis at this point or later.

22 MR. WILSON: Okay. Well, I'll move on, but I
23 have to say I'm confused by that. So let's -- I'm not
24 going to waste anymore time on it.

25 BY MR. WILSON:

1 Q. Let's see. One second. What the hell's going on
2 here? Come on.

3 How would you characterize the garden-variety
4 emotional distress that you are claiming in this case?

5 A. What do you mean by characterize it? Can you
6 be more specific?

7 Q. How would you describe it?

8 A. Well, I had trouble sleeping. I feel stress
9 in pretty much every workplace that -- I've worked in
10 two workplaces since then and it's a -- it's a thing
11 that causes me to feel anxious in the workplace; for
12 instance, when I get called in for unexpected meetings
13 with superiors, I feel -- I feel very anxious about
14 that.

15 Q. Anything else?

16 A. Well, it put a great deal of strain on my
17 relationship with my partner. We eventually -- we
18 eventually broke up because of -- or not totally because
19 of it but we broke up later that year. It made it
20 difficult to maintain friendships. I was definitely
21 more withdrawn during that year that I was unemployed.

22 Q. And the name -- is this -- which partner is this?

23 A. Jenna Mandis.

24 Q. Where is Jenna now?

25 A. I don't know.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
195

1 Q. Do you know her address?

2 A. I know the last address that she lived at, but

3 to be honest, I haven't talked to her in a while.

4 Q. What's the last address that you know of?

5 A. 1538 Lexington Avenue in El Cerrito, 94503.

6 Q. Thank you. Let's see. I marked a number of
7 exhibits, some of which maybe I might not ask you about.

8 But they are marked for the record in any event.

9 (Deposition Exhibit 215 was marked for
10 identification.)

11 BY MR. WILSON:

12 Q. One of them is Exhibit, excuse me, 215, which I'm
13 going to just ask you a question about. And it should pop
14 up on your screen. Do you see that?

15 A. Yes.

16 Q. Okay. I'm going to go -- there are two pages
17 that I know of here. It's EEOC document 238 to 39. Do you
18 see that?

19 A. Yes.

20 Q. Okay. So the first page is some -- some sort of,
21 I guess, e-mail to a group of people; is that right?

22 A. This is a Facebook post.

23 Q. Okay. Is this a Facebook post in a private chat
24 or is it a post that could be read by anybody in your --
25 who -- well, anybody at all? Do you know?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
196

1 A. I'm not sure the privacy settings that I had
2 on here, but most likely it was -- it -- it was only
3 visible to my friends on Facebook. I don't think I
4 would have made this public.

5 Q. Okay. So you wrote, "Lawyer friends, I need
6 you," right? That's you?

7 A. Mm-hm. Yes.

8 Q. Okay. Are any of these people your lawyers who
9 commented; Cara Chomski, for instance?

10 A. Cara became my lawyer, yes.

11 Q. Okay. Was she a friend and that's how she saw
12 this?

13 A. Yes. She's a friend from college -- she was a
14 friend from college at the time.

15 Q. All right. Did you have any discussions with --
16 well, did Cara become an actual like retained, engaged
17 lawyer for you?

18 A. Yes, after I was fired.

19 Q. Okay. Before you were fired, did you talk to her
20 about this?

21 A. Yes, we spoke on the phone.

22 Q. Was she your lawyer at that time?

23 A. I -- she wasn't retained by me as an attorney,
24 no.

25 Q. Did you get legal advice from her?

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
197

1 A. I got -- I got advice on the situation that I
2 was in.

3 Q. Did you get legal advice from her to your
4 knowledge?

5 A. It seemed like legal advice to me.

6 Q. You referenced in your e-mail to David Keyes that
7 you spoke to an employment attorney, or words to that
8 effect, without getting it out, in the e-mail --

9 A. Yes.

10 Q. -- exchange --

11 A. Yes.

12 Q. -- that you spoke to an employment lawyer or
13 something like that. Is Cara who you talked to?

14 A. Yes.

15 Q. Okay. On the second page, which I think you
16 should have --

17 A. Yes.

18 Q. -- in front of you, you made a comment on the
19 22nd of -- of December that, near the end there, "What it
20 boils down to is, my days with this company are
21 numbered...[I'm] hoping to find something better soon."
22 Did you mean that when you said it?

23 A. Yes. I wasn't happy with how I was being
24 treated.

25 Q. Were you having emotional distress, or however

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
198

1 you've described it, before being fired?

2 A. Well, not from being fired because I hadn't
3 been fired yet.

4 Q. But were you experiencing any of those symptoms
5 prior to June -- to January 8, 2015?

6 MS. SANGHVI: Objection. Vague. What
7 symptoms?

8 BY MR. WILSON:

9 Q. Go ahead.

10 A. Well, if you're talking about something like
11 stress, I mean, I felt stress leading up to the surgery.
12 But the -- the -- the anxiousness in the workplace, no,
13 I -- I did not have a fear of -- I -- I didn't have a --
14 a big fear of being fired like I did before I was fired
15 from this job.

16 Q. So at the time when you were moving on from IXL,
17 looking to get a different opportunity but before being
18 fired, you were not having the kind of anxiousness that you
19 said you had after you got fired?

20 MS. SANGHVI: Objection. Form.

21 BY MR. WILSON:

22 Q. Go ahead.

23 A. I think that's hard to -- it's sort of
24 chronological. I hadn't been fired so I didn't have
25 stress from being fired, no.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
199

1 Q. Okay. That's not what I asked you. What I asked
2 you is anxiousness, difficulty sleeping, problems with your
3 relationships, these things that you just described as
4 symptoms that you were experiencing from being fired, my
5 question is you were not experiencing any of those symptoms
6 prior to being fired?

7 A. I mean, sometimes I felt anxious before I was
8 fired.

9 Q. So you were then or not?

10 MS. SANGHVI: Objection. Form.

11 BY MR. WILSON:

12 Q. Go ahead.

13 A. I don't -- I -- I don't think that I would
14 identify the anxiousness that I felt after I was fired
15 or the stress that I felt from being fired as -- I mean,
16 that's where those things came from and I feel very
17 clear about that. But that -- it doesn't mean that I
18 didn't feel anxious or stressed ever before I was fired.

19 Q. Okay. So just very simply, the things that you
20 described about sleep, about relationship, about anxiety,
21 did you have any of those symptoms in December 2014 at the
22 time that you had sort of had enough with IXL and were
23 looking to move on?

24 MS. SANGHVI: Objection. Form.

25 Go ahead.

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
200

1 THE WITNESS: Well, I -- like I said, I
2 sometimes felt stress and anxiety before being fired,
3 and it was also very clear to me -- it -- it remains
4 pretty clear to me when my stress and anxiety is related
5 to the -- to the firing. It's always, you know, felt
6 pretty -- pretty clear that there was that distinction
7 there.

8 BY MR. WILSON:

9 Q. Did you feel any stress and anxiety from the
10 surgery itself and the recovery and the fistula that
11 occurred that was different in kind to what you're
12 describing as termination based related anxiety?

13 A. I definitely had some -- I had anxiety and
14 stress about the surgery. It's a pretty difficult
15 process to go through. There's the insurance piece of
16 it. Like there were all these different pieces. And
17 yes, there were stressful pieces about that. And again,
18 it seemed pretty clear to me during that time where --
19 where that stress and anxiety were coming from. I was
20 having a very major surgery, a very major step in
21 transition. All of those things, yeah, they do -- they
22 do cause stress.

23 Q. Okay. Thank you. Okay. And to your knowledge,
24 what's -- as far as you know, you're not intending to offer
25 any medical records or medical testimony to support your

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
201

1 claim for emotional distress?

2 A. That's correct.

3 Q. Okay. So if you were -- if you had to sort of
4 estimate the ending of your relationship with Jenna, how
5 much of that was based on whatever emotional distress you
6 say you suffered from being fired?

7 A. Well, I don't think there's a very clear way
8 to parse that out. The ways in which it showed up were,
9 you know, I had financial stress, she has financial
10 stress as a teacher in the Bay Area, so it was increased
11 financial stress on both of us. And that -- for me,
12 that part of it came from my firing. I wouldn't have
13 felt that stress if -- if not for that.

14 And there -- you know, it was also -- it was
15 just a -- it was just a difficult year for me. I -- you
16 know, there were -- there were a lot of things that
17 happened that were -- that were quite stressful. So I
18 don't really think that I can give you -- if what you're
19 looking for is a percentage breakdown, I don't think I
20 can give that to you. I think it was a contributing
21 factor.

22 MR. WILSON: All right. Just one more second
23 and I think I'm done.

24 I have about an hour more of questions,
25 actually. Just kidding. I think that's it. That's all

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
202

1 I got for now -- or for today, tomorrow, the next day.

2 MS. SANGHVI: Just like the opportunity to

3 review and sign.

4 THE VIDEOGRAPHER: All right. This concludes

5 the deposition for today. The time is 4:26. We're

6 going off the record.

7 (Deposition concluded at 4:26 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
203

ESQUIRE ERRATA SHEET

Esquire Job ID: J1982357

Case Caption: EEOC vs. IXL Learning

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have
read the entire transcript of my Deposition taken
in the above-captioned matter or the same
has been read to me and the same is true and
accurate, save and except for changes and/or
corrections, if any, as indicated by me on the
DEPOSITION ESQUIRE ERRATA SHEET hereof, with the
understanding that I offer these changes as if still
under oath. Signed on the _____ day of
_____, 20____.

ADRIAN SCOTT CAMPE DUANE

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
204

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

ADRIAN SCOTT CAMPE DUANE

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
205

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

ADRIAN SCOTT CAMPE DUANE

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018
206

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

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: #ixlllearning..2009

	1982357 DUA		114	17
Exhibits	NE.ADRIAN.	\$	104:23	88:12
	SCOTT.		105:16	90:19
1982357 DUA	exhibit209	\$10,000	115	19th
NE.ADRIAN.	1982357 DUA	179:6,13	105:18	116:14
SCOTT.	NE.ADRIAN.		11:20	123:14
exhibit200	SCOTT.	-	142:21	124:3,17
1982357 DUA	exhibit210		11:26	125:2,13,
NE.ADRIAN.	1982357 DUA	-3	62:14,16	25 151:10
SCOTT.	NE.ADRIAN.	116:14	11:43	163:15
exhibit201	SCOTT.	-4	62:16,20	1:19
1982357 DUA	exhibit211	116:14	12	1:36
NE.ADRIAN.	1982357 DUA	-5th	104:25	108:11,13
SCOTT.	NE.ADRIAN.	163:15	12/23/2014	1:41
exhibit202	SCOTT.	-that-	142:16	111:25
1982357 DUA	exhibit212	150:14	121	1:42
NE.ADRIAN.	1982357 DUA		137:9,10	112:2,3
SCOTT.	NE.ADRIAN.	1	12345	1st
exhibit203	SCOTT.		111:20	158:7
1982357 DUA	exhibit213	1	12:50	159:2
NE.ADRIAN.	1982357 DUA	16:5	108:9,11	
SCOTT.	NE.ADRIAN.	19:10	13	2
exhibit204	SCOTT.	158:14	85:12	
1982357 DUA	exhibit214	1.7	139:25	2
NE.ADRIAN.	1982357 DUA	174:14	134	20:3
SCOTT.	NE.ADRIAN.	178:23	139:25	113:19
exhibit205	SCOTT.			186:9
1982357 DUA	exhibit215	10	13th	20
NE.ADRIAN.	1982357 DUA	51:4	64:1 68:9	87:5
SCOTT.	NE.ADRIAN.	67:12	14	88:12
exhibit206	SCOTT.	189:23	148:8	200
1982357 DUA	exhibit216	11	150:11	16:7,9,11
NE.ADRIAN.	1982357 DUA	86:20	14-page	17:10
SCOTT.	NE.ADRIAN.	107:1,9	148:8	2000
exhibit207	SCOTT.	148:22	149:4	78:15,22
1982357 DUA	exhibit217	149:10,11	15	167:20
NE.ADRIAN.		150:2	67:12	2005
SCOTT.	#	167:23	105:18	64:1
exhibit208		185:9	189:23	2009
	#	11-page	1538	6:22
	ixlllearning	167:6	195:5	
	151:17			

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNING

March 27, 2018

Index: 201..4:26

201	146:1	167:6	238	107:25
44:16,18	158:8,14	20th	195:17	118:11
2013	162:22	151:10	23rd	130:3
7:1 38:12	163:16	21	116:20	140:1
68:20	165:9	88:7	142:20	146:6
93:5,13	167:20	107:22	143:6	174:10
176:20	174:10	210	151:13	188:24
	199:21	62:17	155:16	189:8
2014	2015	85:4	168:23	300
25:2	7:1 42:24	211	169:7	16:7
31:24	56:21,25	110:10,12	24th	30th
34:21	58:21	212	163:15	60:7
35:2	68:21	142:5,6	164:23	105:25
36:15	70:5	149:13	25	144:9
39:8,21	100:6	213	35:1 73:2	31
40:1,12	108:19	148:4,7	83:7	45:19
45:19	110:20	149:13,14	86:21	31st
55:9	127:25	214	97:8	151:22
59:22	129:5	150:19,22	116:15	152:6,11,
60:6	139:15	151:3	146:6	24 153:9
61:2,3	148:11	215	25th	154:3
64:3,20	184:8,14	195:9,12	131:14,25	337
68:2	185:9	216	146:11	142:11
73:4,16,	187:20	157:22	26th	365
20 74:2,	188:19,25	158:2,3	131:12	44:17
16 75:25	189:9	184:22	148:11	39
76:13	190:7	217	29th	195:17
78:16,23	191:10,15	184:16,	131:20	3:41
82:18,25	198:5	19,23	2nd	190:18,20
87:1,6	2017	22	112:11	
88:2	167:21	116:14	113:22	4
94:14,22	202	22nd	3	4
95:19	62:17,25	119:23		158:7
97:8 98:8	203	121:16	3	4:05
99:12	111:18	122:10	23:17	190:20,21
103:4	112:7	123:11,25	30	4:26
112:11	204	124:14	25:2 35:1	202:5,7
113:19,22	116:9	164:23	73:2 83:7	
114:12	205	197:19	86:21	
126:22	130:1	23	87:6 97:8	
127:24	206	151:10	103:4	
129:4	133:6			
130:4	209			
139:21				
140:1,9				
141:17,25				
145:20				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: 5..addition

	158:7	9:19,23	accommodati	80:10
5	87	67:17	on	90:17,18
	85:5,8	73:12	21:6 24:1	114:2,23
5		193:20	37:2	136:15
24:25	88	absolutely	75:1,18	137:6
	85:8	88:22	83:3	142:21
50	89	91:10	85:16	144:12
105:11	86:17	117:14	117:25	148:20
123:23	8:06	187:16	118:18,24	171:11
131:18,23	134:4	Academy	120:3,23	accurately
189:11,19		186:13,15	121:16	171:7
50%		187:1,16	123:3,6,	accusations
144:9	9	188:2,3	22 125:24	178:25
50/50		189:1,24	126:9,25	
122:2,14	9	190:3	127:12,14	acknowledge
5th	106:25	accelerate	132:12	ment
170:15	107:9	186:8	143:20	182:21
	137:10	access	144:10	acomm
	9-month	82:12	146:23	123:6
6	186:8	83:17	147:3,4	actions
	90	98:25	155:24	38:2
6	147:20	129:25	156:3	activism
26:12	189:2	156:22	163:16,	21:24,25
6th	94503	157:15	18,21	22:3,5
102:9,22	195:5	accessed	164:2,7,	23:1
	95	156:20	17,18,21,	50:24
7	89:17	157:1,3,	24 165:3,	51:14,18
	98	14	10,13,20,	activist
7	93:4	accessing	23 166:2,	36:9
51:3	9:14	158:22	16	actual
7th	151:13	accommodate	accommodati	196:16
133:8		120:17,21	ons	
134:3	A	121:6	72:22	ADA
		122:12	103:12	74:9
8	A-D-R-I-A-N	125:21	117:10	117:21,23
	6:17	126:7	118:6	126:2
8	a.m.	accommodate	128:1	146:18
110:20	134:4	d	173:9	add
198:5	abandoned	106:13	accommodatio	22:7
8/1	59:22	accommodati	n	adding
158:7	ability	ng	accurate	135:22
8/4/2014		126:23	40:7	addition
			45:19	29:21
			59:19	

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: additional..amount

58:7 71:4	advantage	70:23	72:2,12,	191:7
174:23	132:8	75:23	19 74:7	198:9,22
additional	183:23	77:2	76:2,21	199:12,25
156:19	advice	85:23	77:20	aid
address	183:1	99:23	84:17	120:19
20:25	196:25	101:24	88:16	air
109:21,22	197:1,3,5	118:16	89:4,5,	181:9
195:1,2,4	advised	119:3,18	10,11	airing
adjust	131:11	120:10	90:25	134:22
50:8	132:20	155:14	92:12,16,	allegation
adjusted	advising	agreed	24 93:17	100:20
50:15	127:5	16:6	98:15,17	101:7,15,
admission	advocacy	48:10	99:15	16,25
15:22	143:19	agreement	101:2,12	102:1,7
16:20	advocate	16:8	103:21	allegations
19:10,22	164:3,19,	agreements	107:17	101:14
20:3	22 171:4	8:4	114:18	alleging
23:18	affect	ahead	122:5	11:6,14
24:25	125:18	10:19	124:21	allowed
27:8	afford	12:19	126:15	88:22
admit	147:22	17:23	128:6,18	89:13
16:21	191:13	22:8	129:12,22	107:18
19:10,12	afraid	23:12,14	132:2,4	131:11,24
20:3,7,	106:24	24:18,21	133:2	allowing
12,13,17	afternoon	26:24	134:16	62:2
23:18,20,	48:7,10	27:3	135:15	67:22
22 24:12,	50:18	28:11,17	136:10,14	81:6
14 25:1,	115:2	30:13,21	137:2	alternative
8,9,13	agree	32:17	138:7,21	31:12
26:12,20	26:5	33:9,11	141:8,13	34:19
admitted	33:24	34:3 36:1	143:2	121:8
69:12	35:23	38:1	146:3	126:9
admitting	38:13	42:15	147:1	alum
19:15	39:13	43:18	149:12,19	27:23
adopted	42:8	44:5	151:1	alums
96:1	43:25	45:14	153:3	64:12
Adrian	53:11,25	46:23	154:24	Ami
6:15	54:2,5	51:22	157:12	14:6
17:10	58:2,14,	54:23	158:3	amount
advanced	21 59:2	55:24	164:1,10,	53:12
193:9	65:16	59:6	15 165:19	93:24
	68:5	60:12,14	166:12	
		63:16	168:14	
		69:24	177:18,22	
		70:21	178:12	
			183:18,20	
			187:24	

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: analyst..attorney

143:18	apparent	36:3	59:4	assumed
analyst	29:15	47:25	69:21	22:13
30:8	apparently	50:7	71:23	Assumes
66:21,23	112:19	61:5,18	72:10	92:13
and/or	appeared	73:10	88:21	assuming
53:1	125:14	86:25	92:21	9:5
66:17	133:17	87:17	107:15	assumption
109:9	appears	96:19	136:24	21:7 22:4
answering	113:11	97:2,8	arm	37:12
9:4	143:23	112:20	36:3 37:6	101:4,6
answers	158:8	114:1,17	49:14	134:6
10:14	167:21	appreciated	73:9 99:5	attaching
15:5,15,	168:25	51:14	172:14,	130:4
19 16:19,	169:3	102:25	15,16,17,	attachment
23 38:21	application	103:1	23,24	45:9
86:7	s	135:1	173:5,7,	attempt
107:8,14	140:12,25	171:10	11,23	49:15
Anthony	153:12	appreciatio	174:4,5	attempted
10:10,11,	154:5	n	arrangement	26:6
16 11:1,	170:9	138:24	119:20	attempting
5,9	applied	139:3,4	122:3,14	49:7
anxiety	189:19	approaching	arrow	attend
199:20	apply	29:17	18:25	51:18
200:2,4,	66:24	approved	Asian	attendance
9,12,13,	154:2	98:5	30:9	36:22
19	189:9	146:1	52:14,20,	attended
anxious	applying	Approximate	25 53:1,9	22:10
194:11,13	140:19	ly	70:3	188:2
199:7,18	153:6,10,	86:20	174:13	attending
anxiousness	15,16,20,	apps	177:14	50:24
198:12,18	21,23	41:19	178:23	61:4
199:2,14	170:2	April	181:1,4	attention
anymore	189:5	167:20	asks	86:17
147:22	appointment	191:10,15	23:18	139:24
193:24	48:3,6,9	area	177:19	168:21
App	49:6,8,	21:14	assert	171:25
186:13,15	11,13	53:11,12	15:1	attorney
187:1,15	50:19	69:13	asserting	14:9,11
188:2,3	76:8	122:24	14:22	16:18
189:1,24	96:20	201:10	assume	19:18,19,
190:3	appointment	argumentati	21:5	
	s	ve	24:3,7,9	
	35:10,19	27:14		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: attorney-client..bit

23 126:22	Awww	36:21	battling	55:13
127:5,11,	161:17	38:20	91:23	147:24
16 145:1		75:11,16	92:9	
167:13		80:8		benefits
196:23	B	117:22	Bay	147:18
197:7		119:14	21:14	160:2,13
		124:23	53:11,12	162:19
attorney-	back	125:24	69:13	179:1
client	16:15	126:2	201:10	
14:17,18,	31:10	159:13		Berkeley
22 15:1	42:24	165:6	began	191:17
42:13	50:2	174:25	34:6	
127:2,20	62:21	175:14	139:20	bias
	108:14	200:12		178:15
attorneys	112:4	201:5	beginning	
11:21	114:9		7:17	big
14:2,4	115:24	basic	119:19	48:23
111:9	116:4,16	193:11	158:11	141:24
127:25	119:5	basically		157:18
128:9	120:1	18:11	begins	174:19
129:5,17	123:13,18	38:20	116:14	198:14
148:18	147:15,18	41:24	begun	
	151:9	98:1	139:18	bigger
August	165:8,24	130:2		172:3
87:1	168:17		behalf	
158:7,14	171:4	basics	64:9,10	bind
159:2	175:4	11:10	65:17	83:14
162:21	177:24	basing	143:19	birth
163:3	178:12	70:16,24	171:3	130:12,
176:20	190:22	74:23,25		13,17
187:20		75:2	behavior	
	bad		50:15	bisexual
automatic	79:6	basis	behaviors	32:24
43:11	80:13	29:20	175:15	34:10
automatical	150:13	36:16		bit
ly		69:8	belief	7:17 8:2
43:1,7,9	bait	92:17,19	77:3	11:7
193:15,16	28:4,6,15	126:5	79:19	20:16
	40:2,14	127:1		31:10
Avenue		129:1	believed	49:18
195:5	baiting	174:24	38:16,23	61:11,17,
	28:22		104:6	23 79:5
avenues		Bates	133:14	81:4
21:12	balance	44:17	137:20	96:16,22
	133:4	85:9	146:18	99:2
avoid	base	133:6	159:13	115:4
48:22	59:10	bathroom	believes	152:20
		9:8	125:17	156:17
aware	based		benefit	159:21
126:17	22:4,19			170:1
127:8,10				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: blended..cell

178:14	62:12,23	6:17	Cara	18 67:4,
184:6	108:7,8	California	196:9,10,	11
187:1,3	190:16	110:1	16 197:13	case
blended	breakdown	call	card	7:3 11:6,
88:4	201:19	45:21	181:8	10,17
blurry	Breaking	113:5	cards	14:1,7
132:11	151:17	115:14	188:22	15:5,7,
bodied	bring	121:11	care	16,25
171:13	183:9	called	36:5	33:20
body	bringing	15:21	83:17	38:17,25
122:18	50:14	16:20	116:7	42:7
173:18,21	broad	50:2	125:8	44:2,12,
boils	129:2	55:13	134:23	13 63:8
197:20	broader	125:14	141:25	81:3
book	193:10	170:19	142:1,3	101:7
51:8	broke	192:3	145:18	109:6
bootcamp	146:14	194:12	156:9	110:4
186:13,15	194:18,19	calls	157:14,15	166:10
boring	brought	14:18	158:22	167:12
152:1,17	7:3 50:10	26:22,25	175:6	172:13
185:24	102:8	42:13	193:14	192:19
boss	155:17,19	70:7	career	194:4
49:25	171:24	102:10	67:2	cash
121:12	172:10	118:2	139:19	97:18
154:19	179:14	123:15	141:15	categories
bother	193:15	124:5	154:25	179:2
61:11	building	128:19	155:6	180:25
bottom	166:20	180:19	162:25	categorizat
45:3 85:9	buildup	192:9	170:13	ions
105:15	61:22	campaign	186:1,6	32:25
107:20	built	40:2,14	189:4	category
151:13	22:21	Campe	carefully	32:20
boyfriend	burden	6:15,18	12:2	53:4
10:8,11	164:19	canceled	caring	166:1
boyfriend's	butch	55:21	61:19	180:24
10:9	22:16	57:13	Carl	181:4,7,
Brad		capacity	65:16	10 182:17
159:8,10	C	64:9	66:11	183:21
break	C-A-M-P-E	capital	Carleton	catheter
9:8,12		145:15	63:21,24	188:3
		166:18,23	64:3,5	caved
		167:1	65:2,17	146:13
			66:2,12,	cell

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: center..comfortable

41:16	characteriz	22:10	12:4	code
168:10	e	36:22	17:17	121:9,11
	116:3,4	chronologic	18:14	cold
center	188:23	al	28:12	172:5
191:17,23	194:3,5	198:24	class	collaborati
192:4,7	characters	circumstanc	185:21	vely
CEO	45:9	es	classes	116:24
53:24	charge	74:13	185:10	117:6
54:3	42:23	cis	classificat	134:23
55:13,16,	108:21	22:15	ion	colleague
20 59:12	chase	32:2,6,7	54:4	89:22
133:13,	7:19	34:10	clean	colleagues
17,24	chat	52:7,8	7:21	22:1
134:5	112:24	145:11	clear	119:12
135:1	113:1,6	171:13	20:25	179:4
137:12,23	158:8	cisgender	57:20	collect
CEO's	195:23	22:13	60:19	63:18
54:11	chats	cite	97:5	college
Cerrito	13:14	56:15	117:11	27:23
195:5	41:11	cited	118:23	63:21,24
chair	check	56:14	122:19	196:13,14
123:1	51:5,12	96:2	146:13	colleges
challenging	143:1	city	149:22	64:13
125:15	childcare	109:23	179:19	color
chance	146:8	claim	189:25	68:15
138:8	children	193:4,9,	190:11	69:9,10,
change	96:18	10,19	199:17	20 70:6,
6:22 18:5	145:10,	201:1	200:3,4,	16,18
145:17	11,18	claiming	201:7	71:3,5,8,
characteris	152:2,18	192:15	clinic	13
tics	choice	193:1	192:3	181:10,11
174:20	79:2	194:4	clone	colors
175:1,24	146:15,	Claire	42:21	66:5,7
178:22	16,22	63:4,21	63:11	column
180:14	Chomski	64:2 66:4	close	167:18
182:3,14,	196:9	68:8	48:4	comfortable
16	chose	76:23	clue	48:14,17
characteriz	98:11	clarificati	23:3	82:17
ation	132:20	on	clues	99:1,2
90:16	155:4,5	9:3 60:3	21:16	124:23
155:13	Christmas	clarify		156:15
187:25				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: commandeering.condition

commandeer	24:3	142:22	152:13,15	computers
18:4	40:22	143:17	153:4	13:21
comment	41:4 42:7	164:20	complete	conceal
69:19	44:24	197:20	120:22	43:12
81:20	53:19	company's	137:19	concept
115:24	115:15	126:17	138:16	95:21
116:20	127:16	comparison	157:6	concern
126:23	168:19	80:11	completed	141:24
145:3	communicati	compensated	114:7	concerned
150:5	ons	160:2,12	completely	31:9 37:8
158:17	13:9,21	compensatio	162:14	126:3
159:2,25	14:18,19,	n	completing	132:11
172:12	21 15:3	188:18	114:13	160:13
176:15	42:13,25	complain	complicatio	concerns
197:18	43:7,13,	102:13	n	102:21
commented	22 44:1,	complained	118:23	137:11
196:9	11 127:21	54:24	119:8	152:8
comments	128:15	67:22	122:20,22	158:21
133:12	129:7,13,	100:15,21	123:5	160:16
171:7	16 131:1	174:11	125:14	165:2
committed	community	complaining	complicatio	conclude
154:10,	53:12	99:18	ns	97:9
12,13,16,	69:13	100:18	73:15	concluded
20 155:3,	70:6,17	159:24	composition	23:7
6	companies	complaint	66:12	79:22,25
common	53:16	11:16	compound	95:12
53:11,16	70:11	54:2,17	12:17	134:11
69:14	company	98:7	75:5	202:7
common-	22:2	111:2,7,	92:14	concludes
interest	23:2,24	12 133:24	98:13	202:4
15:1	25:16,18	134:5	120:25	concluding
communicate	34:6	135:1	128:3	29:20
41:21	38:13	148:19	129:19	conclusion
112:23	47:8	152:11,23	177:16	26:15
119:12	64:14	complaints	compounded	29:25
communicate	68:13	54:1,25	100:2	conclusions
d	70:24	100:14	computer	163:2
40:19	77:3 90:2	102:8	49:12	condition
41:10	91:22	104:9	63:1	9:22
113:7	95:13	133:12,	66:16,19	91:17
communicati	107:25	15,18	111:21,22	98:6
on	126:3	137:21		
13:15	139:16	139:1		
	140:2			

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: conditions..creative

115:22	constitute	62:9	110:20	53:6
118:1,18	131:1	97:24	132:22	97:12
175:25	constrained	103:15	133:8	152:13
conditions	39:18	105:25	139:21	159:6
98:24	consult	114:15	140:7	164:22
124:24	16:24	133:20	141:20	165:7
conferencin	contacted	134:21	142:11	179:8,16
g	27:20	138:25	146:23	190:5
113:3,9	67:8	139:7	147:25	Coursera
confided	contained	148:8	152:19	185:14
33:25	125:2	149:23	153:10	coursework
confidentia	context	150:23	156:10	185:13
l	46:12	159:6,15	158:9	court
130:16	47:2,4,15	160:15,	160:2,21	7:11,25
configurati	158:17	17,25	162:20	27:10
ons	159:3	163:22	163:17	covered
34:18	160:15,25	conversatio	166:10	162:18
confines	174:2	ns	169:8	covering
138:24	contextuali	47:6 71:4	170:12	172:15
confirm	ze	90:9,15	173:23	coworker
130:3	158:25	111:14	180:16,	181:16
confirmation	contingent	128:24	17,22	coworkers
37:14	156:3	129:23	181:14,	33:20,24
confused	176:23	141:23	17,23	112:24
193:23	continue	144:25	201:2	113:8
confusing	83:17	158:19,23	corrected	141:3,18
177:25	contributed	161:14	179:14	167:3
considered	99:8	175:14	correctly	Crane
32:9	contributin	cool	66:20	131:9
41:20	g	66:6	77:13	create
52:13	201:20	correct	80:8 86:5	82:10
73:19	controversy	7:4 18:20	cost	132:12
74:8 76:7	192:19	27:13,16	166:17	180:25
121:20	convenient	39:8	counsel	created
186:12	48:6	40:15	10:2	180:24
consists	conversatio	41:12	192:15	181:1
171:23	n	55:10	count	creative
constantly	24:10	60:10	145:22	29:3,13
82:22	46:9 48:1	71:22	189:10	38:14
	59:9,15	81:5	counting	39:7
	61:10	85:17	145:24	67:17,23
		86:6	couple	104:8
		90:21	7:10	
		105:3,5	42:16	
		106:9,19		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: creativity..days

183:9	89:18,21	data	16	109:5
creativity	108:1	185:10	105:10,20	112:21
29:7	Curriel	186:2	113:12,	114:19
38:23	30:2 71:5	date	15,18,22	118:17,18
39:16,18	79:9	34:7,15	114:12,22	119:4
68:3,7	89:23	130:12,13	116:21	125:13
104:10,	94:16	147:24	118:17	132:21,22
13,19	128:9	170:4	123:11	139:14
105:2	142:11	184:1	124:1,15	147:15,18
credit	145:4	dated	127:13	148:15
188:22	179:7	32:6	128:1	166:8
cried	current	45:19	130:4	169:11,
47:19	25:20	110:20	132:13	16,20
criticism	40:16	113:19	133:12,23	170:24
56:9	109:12	148:11	134:5,12	185:7
71:12	curriculum	dates	135:1	202:1
criticisms	187:8	6:25	143:20	day's
68:13	Curt	130:17	144:6	50:17
criticized	155:9	158:7	146:11	day-to-day
53:24	cut	dating	151:10	163:7
59:12	7:19	22:14	155:9,14,	days
72:15	126:14	32:7,23,	15 163:14	13:3
criticizing	178:7	24 34:5	165:8	35:1,6
55:19	cuz	David	169:13	48:5,20
cross-	46:2	10:21	170:15,22	49:19
examination	D	14:5	171:17	50:4,17
12:12		23:25	179:14,23	50:4,17
cross-	D-U-A-N-E	24:10	180:2	73:2,3
examining	6:17	34:21	182:6	76:8
137:4	dad	35:6	197:6	80:18,19
cry	188:12	36:8,12	David's	86:21,23
170:16	damage	37:10	121:24	87:5,16
cultural	191:1	46:8 47:7	125:20	88:2,3,4
132:8	damages	48:1 49:2	126:23	94:17,18
culture	192:16,20	50:22	171:7	96:15
48:21	193:2,4,	51:18	day	97:8,9,
79:17,21	11,12	60:8 61:4	22:22	16,18
80:2,7	dance	64:22	35:18	114:8,16
82:4	109:7	75:23	48:14,15,	115:1
83:15		83:8	19 50:4,	118:12
84:1		100:21	16,17	119:15,16
		101:8,18	76:5	145:21,22
		102:8,21,	86:25	146:1,7
		25 103:9,	87:13,18	147:12,20
			94:14,22	149:24
			105:13	159:12,

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: deal..difficult

13,15,18,	139:21	27:5	deposed	34:11
19 160:1,	140:1,9	74:11	11:3	design
12 161:21	141:17	delete	deposition	187:9
164:23	142:20	43:3,4,9,	7:3,6	designed
165:7	146:11	12	8:18 9:15	76:25
177:13	147:8	deleted	10:1	detail
188:1	151:10,	43:1,7	11:2,20	96:22
197:20	13,22	deletion	14:16	98:4,5,
deal	152:6,11,	43:11	15:25	10,11
49:10	24 153:9	delicate	16:5,9	136:16
157:18	154:3	150:12	44:18	detailed
194:16	155:16	demeanor	62:17	175:11
December	163:15,16	171:8	110:12,23	details
25:2	164:23	denial	114:21	80:23
36:15	165:9	38:9	130:19	81:22
37:9	168:23	95:4,7	142:6	82:16
39:8,21	169:7	denied	148:4	determinati
40:1,12	174:10	25:4 37:2	150:19	on
55:9	197:19	38:4,6	157:22	124:11
58:21	199:21	94:25	184:16	developed
60:7 62:9	decided	177:13	195:9	117:16
74:2	78:16	178:5	202:5,7	development
78:16,23	139:15	deny	depositions	186:17,18
83:4	140:1,3,4	16:21	9:12	deviation
93:13	186:14	26:21	deprived	32:4
94:14,22	189:24	144:8	182:15	device
95:19	deciding	166:15	describe	13:15
98:8	38:12	denying	11:8	66:16
103:4	decision	190:8	30:15	devices
105:10,25	78:23	department	40:22	13:21
107:25	155:7	67:8	112:12	devoted
116:14,20	173:11,	182:6	117:4	57:23
118:11	12,25	depend	194:7	diagnosis
119:23	decline	29:13	describes	192:6
121:16	190:6	depending	127:12	193:21
122:10	deep	168:18	describing	differently
123:11,	22:24	depends	128:8	103:11
14,25	defendants	32:10	171:7	difficult
124:3,14,	16:7	60:24	200:12	49:25
17 125:2,	127:8,10	140:20	description	157:15
13,25	definite	description	s	
126:22	28:24			
127:24	definition			
129:4				
130:3				
131:12,20				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: difficulty..doctor

164:18	68:23	43:14	18,22	91:11,21
194:20	69:1,3,5	97:7	108:22	92:7,19
200:14	71:20	98:11	133:15,20	99:21
201:15	72:23	127:23	134:1,8,	100:5
difficulty	73:5,20	disclosed	21 137:22	109:9
199:2	74:3,9,17	91:7 92:3	139:1,11	127:18
	75:4,13,	99:4	178:17	distinction
diplomatic	18 83:3		discuss	27:7
117:15	97:16	disclosing	109:15	200:6
119:11,	99:9	97:14	133:15	distinctly
19,21	103:12	127:4	discussed	66:4
144:6	106:13	128:15	33:17	distress
diplomatically	107:7	129:6	144:20	190:25
117:9	126:18	discovered	169:25	192:20
	143:20	21:12	discussing	193:4,8,
direct	147:9,11,	discovery	134:7	11,20
20:24	17,19,21,	11:21,23,	137:22	194:4
85:5	24 148:2	24 13:18,	discussion	197:25
112:14	159:11	20 15:6	21:6	201:1,5
directly	165:5,12,	discrepancy	23:23	distributed
20:8,9,	20 166:1	40:18	93:6 94:1	44:16
11,16	170:20	discretion	118:9	dive
23:20,22	175:4	81:7,16	119:19	81:4
24:22	disabled	82:8	134:1	diverse
55:1	69:7 73:8	discriminat	142:10	38:14,23
71:19,22	74:12	e	169:13	39:6
72:4,7,8,	82:12	26:13	172:22	67:17,23
23 83:23	disagree	discriminat	discussions	68:3
84:8,9,21	33:24	ed	31:7,13	104:7
99:20	59:2	11:15	114:13	diversity
107:6	72:13	26:17,21	116:18	19:11
122:25	73:7	27:4,8,	196:15	26:2
137:11	78:20	11,13	disgusted	53:15
disabilitie	155:13	68:25	150:14	55:2
s	disappointe	104:22	disobedient	66:12
68:15,22	d	discriminat	152:2,18	doctor
69:4	39:15,17	ion	disparity	114:1
71:17	104:12,18	11:14	179:3,20	122:18
72:16	105:1	27:6	displayed	125:8,17
73:16,19	159:21	39:10	112:8	130:5,23
74:20,23	disappointm	42:24	dispute	131:1,17
75:11,21	ent	44:9	38:9	173:11
disability	39:5	99:19		174:1
21:6	disclose	100:16,		
50:13				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: doctor's..efforts

doctor's	47:14	193:5	151:22	59:2,11
20:23	63:18	due	155:8,15	78:10
21:4	donor	114:1	169:13	187:6,14
24:4,5	99:5	duties	170:18	education
36:17,19	172:18,	123:8	184:24	29:8
130:8,21	19,21		195:21	59:17
131:10,	173:2,3,6		197:6,8	77:10,15,
17,24	Door	E	e-mailed	23,25
155:9,15,	107:25		41:7,8	78:8,9
19,25	double	e-mail	170:5	educator
doctors	83:14	10:21	e-mails	58:5
114:1	99:22	20:24	42:6 43:4	EEOC
document	doubt	24:2	44:11	7:3 14:7
11:19	100:1	37:22	150:24	42:17
16:20	114:22	41:7	184:20	44:17
17:13,18,	115:5	42:20	earlier	45:11
21 18:5,	dozen	63:3,11	55:8	63:7
19 19:2,7	190:4	64:2	153:15	108:22
44:16	draft	76:23	early	142:10,11
45:7 72:3	111:3,7,	105:13	51:10	167:7,13
77:18	12	108:20	83:8	195:17
84:15	draw	110:15,	108:19	EEOC's
112:6,7	18:24	19,22	115:7,10,	14:10
116:9,10	drop	112:10,	13 166:9	EEOC_000379
127:18,19	175:8	11,13,15,	176:21	158:11
128:20	Duane	20,24	earn	EEOC_304
130:11	6:15	113:1,11,	171:3	148:8
132:24	14:21	16,18	easier	effect
133:6	16:5	116:13,15	84:24	28:19
142:15	17:10	117:11,	98:20	54:19
144:25	19:11	20,21	119:17	197:8
149:1,4,	20:3,8	118:9	East	effectively
6,17	23:19,20	119:14	70:3	53:18
156:12	26:13	121:16,24	easy	effeminate
174:8	107:8	122:10	17:25	32:8
195:17	108:16	123:14	18:8	efficient
documents	127:23	124:4,17	36:18	187:16
10:2	135:18	125:3,13,	164:5	effort
11:22,23,	138:1	25 126:19	ed	25:15
24,25	190:24	127:5	59:11	efforts
13:8,10,	Duane's	130:4	ed-tech	25:2,5,10
24 15:8	25:6	133:10,23	58:15,22	
18:12		134:3		
42:10		143:5		
46:18		144:6		
		150:23		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: ego..examples

139:22	emphasis	11	190:5	estimate
ego	12:1	employees'	ending	35:5
150:12	employ	96:4	201:4	201:4
eighth	71:6	employment	engage	estimated
147:15	employed	23:10	67:17,23	86:21
El	52:18	28:23	118:5	87:6
195:5	187:15	34:22	engaged	evening
elective	191:12	38:5	196:16	51:7
37:17	employee	40:19	engineering	evenings
electrolysi	30:4	52:1,13	186:14	50:24
s	54:20	55:9	entire	event
35:9,19	74:16	74:24	182:5	67:4
36:3	75:4,13	85:24,25	entitled	195:8
46:10	77:14	117:21	146:19	events
47:25	80:24	126:22	environment	13:16
49:8	91:12,22	151:17	78:12	51:8,15
73:11	92:3,8	184:7,11	eventually	86:24
electronic	93:4,5	197:7,12	equally	194:17,18
13:14,20	94:13,21	encounter	113:2	evidence
41:4	97:25	176:4	equipment	23:7
42:25	179:5,6	encountered	173:8	82:13
electronica	182:24	96:7	ergonomic	ex-
lly-stored	183:12,16	encourage	166:3	coworkers
13:9	employees	68:3	173:21	141:3,18
element	25:16,20	encouraged	174:3	ex-partner
29:7	28:5,7	38:14	escalate	10:22
else's	40:1,3,5,	68:7	171:2	22:11
91:5	13,15,17	encourageme	escalated	34:5
emotional	51:3,25	nt	102:21	exact
171:9	52:19	39:6	133:13,24	66:25
190:25	53:13	encroaching	134:5,7,	109:22
192:15,20	54:12	127:20	12 135:1	179:8,9
193:4,8,	55:14	end	137:21	184:1
11 194:4	67:22	34:22	escalating	191:16
197:25	75:19	165:9	102:23	examination
201:1,5	79:6,20,	166:21	137:11	6:10 9:16
emotionalit	21 81:6	167:21	esp	examiners
y	91:13	197:19	162:14	12:11
103:23	92:8 96:9	ended	essentially	examples
empathizing	98:23	180:3	193:6	79:9
61:17	106:14	186:13		
	108:1	187:5		
	164:20			
	182:14			
	183:3,4,			

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: exceptional..false

exceptional	157:22	79:6, 11	136:11	Facetime
182:23	158:2	80:13, 14,		113:4
	167:6	16 111:14	expounding	
exchange	184:16, 19		107:10, 11	facility
24:2	195:9, 12	experiencin	135:5	192:3
63:4, 21		g	138:9	fact
105:13	exhibits	198:4	expressed	38:22
112:10	62:24	199:4, 5	80:23	50:9, 22
116:13, 15	111:17	expert	expressing	51:13
117:23	195:7	57:25	50:20	53:18
133:7	expand	expertise	152:7	55:12
163:14	88:22	27:9	169:21	61:24
197:10	expanding	explain	extend	70:17
excited	89:12	80:19	97:15	78:15
38:13	expect	83:9, 11	120:18	91:8
161:16	10:3	88:9 95:7	extended	97:14
excitement	expectation	96:16	131:13	99:5, 7, 8
38:22	82:10	98:24		125:6
exciting	expectation	99:7	extent	141:18
58:8	s	explained	15:2	160:11
exclamation	50:8, 9	11:10, 12	42:12	179:22
45:10	115:19	83:13, 14	130:25	180:9
excuse	expected	84:22	192:9	factor
13:8 75:8	29:11	86:9 98:9	eye	201:21
79:24	39:6	99:1	114:10	facts
104:24	115:18	explaining		23:8
108:6	experience	83:16	F	92:13
195:12	25:17, 22	174:3		100:4
exhibit	40:6, 7	explanation	face	fair
16:2, 3, 5,	65:20	57:12	171:21	24:7
9, 11	70:24	137:6		55:21
17:10, 16	74:23	176:23, 24	Facebook	67:3
44:16, 18	77:22	179:18	13:14	71:12
62:17, 25	90:2, 23	182:21	41:1	90:16
84:25	91:2	exploring	42:20	fairly
85:1, 4	95:23	31:12	43:5	176:20
110:10, 12	171:16	140:24	44:25	falling
111:18	experienced	177:6	45:18, 21,	180:5
112:7	29:21, 22	expound	24 46:13	
116:9	80:9, 12	107:18	142:13	falls
130:1	89:23	137:5, 6	143:6	74:9
133:6	98:23	138:8	144:2	165:25
142:5, 6	experiences	expounded	158:8	false
148:4, 7			195:22, 23	176:9, 16,
150:19, 22			196:3	18

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: familiar..form

familiar	156:14	field	141:20	flexible
116:15		67:2		50:23
184:21	fell		fire	51:10
	33:15	fiercely	101:7	61:4
family-	187:7	164:4		62:6,10
oriented		figure	11:11,15	85:25
174:13	felt	156:6	22:10	174:18,
	11:14		24:2	22,25
fastest	25:18	figured	99:8,11,	177:13
187:16	26:16	115:18	18 100:20	178:21
father	27:4,8,11	filed	101:17	179:1
184:20,24	28:4,6,24	42:23	102:7	180:15
	37:10	105:17,18	111:15	
favor	40:2,14	108:22	166:21	flip
146:16	43:13		183:24	84:25
fear	49:24	files	196:18,19	flipping
106:20	50:11,13,	66:16	198:1,2,	17:24
156:17	21 56:4,5		3,14,18,	
198:13,14	68:25	final	19,24,25	focus
	70:5 82:9	23:3	199:4,6,	163:13
feasible	83:11	financial	8,14,15,	focused
119:20	87:18,25	201:9,11	18 200:2	139:23
feedback	91:8	find	201:6	162:25
190:1	100:17	68:14		
	104:21	75:10	firing	folded
feel	105:8	78:17	200:5	152:14
28:21	107:25	117:9	201:12	
38:3	114:8	158:13		folks
48:13	138:23	174:16	firm	24:11
61:11	139:4	192:25	79:4	32:2 70:3
68:24	143:8	197:21	139:19	77:1
71:11	164:4			80:13,16
96:9 99:6	174:6,7	finding	fistula	175:6
132:17	176:17	49:4	122:21	
156:15	178:20	116:23	125:14	follow
182:23	198:11	117:6,24	200:10	126:19
194:8,11,	199:7,14,	134:23		130:18
13	15 200:2,		fit	
199:16,18	5 201:13	fine	47:6,13	forget
200:9		65:15	174:12	84:9
	female	120:19	five-minute	forgive
feeling	179:5,6	132:14,15	62:12	56:21
29:4	181:22	158:12		
156:17		finish	five-page	Forgot
159:21	females	7:22	158:1	166:4
169:14	180:16	126:15	flexibility	forgotten
185:6	fewer		51:2,14,	63:23
	94:17	finished	17	form
feelings				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: format..give

75:5,15	100:15	197:18		40:24
93:14	137:24	frustrated	G	41:12,24
95:1,3,4,	139:16	61:23		gender
6,15	150:13	143:8,9,	garden	21:1
98:13	154:14	18,21	193:11	22:15,19
101:10	159:16	154:18	garden-	23:2,5
117:7	170:11	169:14,20	variety	32:2,3,5,
118:20	179:11	frustrating	193:8	6,15,18,
119:6	frame	87:15	194:3	22 34:10
121:1	56:21	frustration	gave	37:14
122:4	58:21	s	8:16 13:5	52:7,8
125:4	65:2	169:21	16:18,23	69:2
128:4	114:12	fuck	34:10	171:13
129:20	127:24	156:7	45:11	178:8
141:6,11,	frankly	157:8	57:1	179:20
21 146:2	31:10	full	65:10	180:6
166:11	115:16	6:14 49:7	67:10	181:24
172:25	frequently	86:14	79:20	general
177:16,20	145:12,16	89:7	86:8	72:20
198:20	175:7	107:13	88:7,13	75:17
199:10,24	fresher	121:18	90:12	144:18,19
format	56:24	122:2	96:21	175:17
45:8	friction	123:13	106:25	generally
107:18	94:16	136:21	107:13	39:23,24
167:10	96:8	142:22	123:20,21	58:20
forms	132:12,13	143:16	124:7,22	64:24
40:21	156:19	full-time	125:2,24	121:17
formulated	166:14	184:11	135:21	141:10
187:11	176:5	fully	136:5	143:14
forward	friend	125:16	158:20	160:22
133:19,25	196:11,	166:15	gay	generically
134:20,22	13,14	function	22:13	54:18
158:24	friends	35:9,12	30:9,18	give
forwarded	141:2	64:11	31:15,19,	25:19,23
113:12	143:15	115:20	25 32:9,	35:5 60:7
151:12	196:3,5	193:21	14 33:2,	83:12
found	friendships	functions	6,23 34:1	89:10
21:21	194:20	51:19	52:1,7,8	107:12
36:14	front	funny	60:8,17,	137:6
37:13	84:15	162:1	20 174:14	138:3,16
50:9	128:21		177:15	146:22
76:24	129:10		178:23	149:5
78:24	130:21		181:2,5	152:1,17
91:18			Gchat	156:7

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: giving..hates

157:7	181:23	green		happened
164:11		181:8	H	50:12
175:3	Glassdoor.			56:25
176:24	com	grievances		102:12,
201:18,20	178:19	134:22	habit	15,20
	Gmail	ground	114:9	133:21
giving	110:19	187:8	habits	139:2
7:2 46:14			115:25	172:17
57:12	goals	group	116:5	190:11
62:1	39:25	66:1		191:20
65:16	good	113:16	half	201:17
81:5 82:7	6:12 7:24	158:8	48:14,15	
124:23	37:11	171:18	50:4,16,	happy
136:2,15,	55:15	183:3	17 62:13	19:11
16	58:7 60:1	195:21	76:4	34:7
137:19,20	80:16	grouped	86:24	49:25
144:20	102:19	149:22	114:18	51:17,23
glance	115:17	groups	117:17	61:3
167:17	143:4	54:15	118:12,17	77:15
Glass	179:25	183:7	119:4,15,	102:23
107:24	186:7	guarded	16	164:3
Glassdoor	Google	98:11	132:21,22	170:19
25:3,6,	36:18	guess	165:4	197:23
11,19	Googling	110:19	184:14	hard
27:12	140:23	111:11	halfway	27:6 31:8
28:14,22	gossip	167:8	61:24	49:9,10,
31:21,24	175:18	168:22	hand	11 53:10
39:3,8,	gradually	195:21	49:14	129:14,24
21,25	166:20	guilt	173:22	132:7
40:11	grant	48:21	handed	156:21
53:23	147:4	guy	17:21	171:12
54:10,18,	165:11	46:2,8	handing	182:21
25 55:8,	granted	52:7	15:8	198:23
9,12 56:8	93:23	146:15	handle	harder
71:15	166:10,17	171:13	49:22	49:20,21
72:14	graphic	guys	handled	171:20
95:19	65:5	17:11	74:25	harm
99:24	great	44:23	175:4	25:1,4,10
100:6,14	58:6,11	45:2	happen	193:10
101:9,18	61:20	86:16	7:16	hat
102:6,13	68:24	172:21	21:16	175:9
103:3	182:18		38:24	hate
104:17	194:16		155:24	150:8
105:18			173:25	hates
152:21				150:5
174:10				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: head..implemented

head	108:21	86:21	Hopkins	67:10
17:15	111:3,12	105:11	185:15	ideas
101:4	helping	107:5	hour	111:12
heads	65:17	113:8	62:12	180:1
8:4	helps	117:12	201:24	183:2
heal	158:25	118:12,18	hours	identificat
125:17	Hey	119:5,16	49:7,10	ion
healing	51:6	123:7,23	51:2	16:10
139:23	hide	131:18,23	115:2	44:19
157:7	37:18	132:18,21	120:1	62:18
heals	43:13	145:12,16	174:18,	110:13
122:22	high	152:3,19	22,25	142:7
health	22:2	166:9	175:20	148:5
86:22	higher-ups	homosexual	188:24	150:20
122:19	180:11	32:8	189:2,7	157:23
123:20	highlight	honest	190:16	184:17
133:5	39:9	30:14	house	195:10
141:24	hire	32:11	125:16	identified
146:9	151:25	43:9	HR	41:22
161:15	152:16	46:10	126:3	69:17
162:18,25	hired	53:9	158:13,19	89:18
175:19	179:7	57:20	159:7	180:16
hear	hit	60:23	160:16,23	182:15
49:25	147:20	65:3 68:2	173:18	identifies
95:8	HIV	129:1	175:18	180:23
hearing	176:1,6,	133:19	huge	identify
57:3,10	7,8,9,14	134:1,8	187:7	69:18
61:15	177:2	138:25	huh-uh	199:14
137:3	hmm	156:13,17	8:5	imessage
heavy-	45:5	191:16	Humor	168:18
handed	holding	195:3	102:17	immigrant
117:15	31:10	honestly	hundred	181:7,8
119:10	hole	65:22	189:13,19	impacted
heels	122:21	66:14	hunt	122:25
125:17	home	67:25	169:1,23	impair
held	35:2,3,15	111:6,15	hyphenated	9:19,23
123:18	46:10	137:22	6:18	impeachment
hell's	48:5,13,	146:4	I	76:20
194:1	19 62:2	153:11	idea	implemented
helped	83:8	190:13		81:18
10:15		hope		95:20
		44:16		98:8
		hoping		
		197:21		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: implementing..interview

implementin	69:5	14,16,22	156:1	interactive
g	112:16	125:2,5,		55:13
81:7	including	24 126:9	instance	117:24
implication	22:1	130:24	12:11	
48:18	incorrect	131:2	13:13	interested
implicit	49:6	138:4,15	20:23	26:6
178:15	increased	165:5	178:5	27:21
implied	166:14	167:7	182:13	31:12
80:2	201:10	informed	194:12	65:14
important	indication	21:9	196:9	70:15
26:2	87:13	63:17	instant	71:7
impose	indirect	126:19	40:25	185:23
76:12	84:2	initial	41:11	186:6
80:2	indirectly	105:9,19	institution	interesting
86:22	20:18	111:2,7,	185:13	174:18
87:7	21:9	11 121:13	instruct	182:1,2,3
imposed	71:22	initially	127:2	internship
75:23	72:8,14,	37:2	192:9	184:9
impression	24 83:25	47:25	instructing	interpret
152:5	individual	48:12	131:3	140:20
Improper	54:4	147:14	144:14,21	interpreted
76:19	172:2	166:16	192:12,17	140:13,21
improve	individuals	injured	insurance	interrogato
67:1	30:1	73:10	200:15	ries
improved	32:14	97:21	intended	11:22
115:21	41:5	injury	78:3	15:10,12
in-between	43:22	37:6	intending	16:19,24
187:9	52:20	97:3,4	8:19	interrogato
inappropriate	information	innovate	200:24	ry
te	8:2,3	78:5	intent	10:14
91:8	13:9	innovation	116:22,23	15:15
172:11,12	20:22	78:10	162:22	intersected
173:17	21:13	innovative	intentional	132:10
174:7	25:20,23	77:9,15,	ly	intersectio
incapacitat	29:25	25	43:10	n
ed	55:18	input	123:18	52:22
187:21	58:4	76:24	interacted	intervened
incident	82:25	inquire	36:23	7:4
75:3 86:3	84:3	46:18	132:9	interview
include	96:25	insisted	interaction	38:18,19,
	123:19,21	122:14	s	21 183:25
	124:2,8,	155:9	126:2	184:3,4
				190:9

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: interviewed..job

interviewed	179:25	66:13	159:7	170:15
29:2	isolation	67:6,9,	160:16,23	185:9,18
interviewin	138:23	13,22	162:19,22	198:5
g	issue	68:3,12,	163:2	Jenna
189:6	79:16	21 69:8,	164:25	10:22,24,
interviews	115:14,15	16,19	165:10	25 22:11
140:13,25	192:18	70:4,12,	166:10	34:5,7
189:6,21,	193:5,13	15 71:7,	169:5,11,	170:21
22,23	issues	12,16	14,17	194:23,24
190:1,4,6	25:18	72:15	170:20	201:4
introduce	39:10	73:4	176:6,8,	jeopardize
110:10	40:20,21	74:2,17,	14 177:1,	156:24
148:7	55:1 62:7	22,24	4,8,12	Jess
introducor	86:2	75:3,10	183:24	79:11,14
y	95:24	77:10,16	186:22,24	168:25
186:5	99:19	78:5,17,	187:12	169:4
	115:11	24 79:6,	198:16	170:15
invasive	items	20 88:4	199:22	179:10
61:18	174:21	89:21	IXL's	180:16
involved	ixl	91:13	25:1,5,10	Jessica
15:2	6:23 7:4	94:4,14,	75:12	30:2,17
53:24	19:11	22 95:13,	79:7 98:7	40:20
54:3,4,18	25:25	16,20,23	159:13,14	42:8 44:1
55:16,20	26:7,12,	96:1	IXL-1663	80:9
56:4,16	17,21	99:24	133:7	90:22
57:18	27:5,21	100:5	IXL-316	96:20
involvement	28:1,4,6,	109:9	85:10	108:17
54:11,15	15,22	110:3		109:1
111:2	30:4 31:3	111:15	J	110:20
involving	33:5,18	115:8,10,		111:11
104:7	38:12,24	13 120:23	J-E-N-N-A	158:9
ipad	40:15,20	121:17	10:25	168:9
18:12	41:6	127:25	January	179:7
iphone	42:24	129:5	7:1 56:25	181:3,16
168:17	51:18,25	132:11	58:21	job
Isadora	52:12,19	141:4,19	100:6	11:11
30:3	53:24	142:22	102:9,22	29:2,4
179:23	58:9	143:16	127:25	39:16
180:16,23	59:21	145:20,25	129:5	67:3
181:3,6	60:7	148:12	131:14,25	78:4,11,
182:17	64:3,5,9,	151:25	133:8	17,24
Isadora's	10,17	152:11	134:3	104:7,12,
	65:10,17,	154:10,	139:15	18 105:1
	21,23	12,16,20	148:11	123:7
		155:3		
		156:10		
		158:19		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: jobs..lawyer's

139:17,20		15,19	187:9	label
140:5,6,	K	130:4	198:18	44:17
8,23		133:12	200:11	labeled
154:13	Karen	143:20	kinds	85:9
169:1,23,	80:20,22	151:11	42:7	lack
24 170:4,	91:4,7	163:14	176:4	75:17
12 179:6	93:6,12,	169:13	knew	83:5
181:19	15,18,23	179:14,23	23:9	104:10
182:25	94:1	197:6	29:9,10	193:7,20
183:22,25	97:25	Keyes's	36:9,13	lacking
184:13	98:5	182:6	37:1	187:11
186:2,22	Kate	kicked	40:12	lag
188:24	34:25	160:2,13	48:22	148:21
191:21	64:21	kicking	58:22	laptop
198:15	113:12,19	118:9	59:2,24,	168:11
jobs	114:23	kicks	25 60:15,	large
67:23	115:15	147:11	24 73:8	34:14
140:19	keeping	159:11	74:18	35:18
142:2	114:9,13	kidding	94:6	53:12
186:23	Keyes	201:25	97:24	laser-
187:6	10:21	kidney	122:17	focused
189:5,9,	23:25	98:2	123:18,25	163:4
19	24:10	kids	124:13	late
Johns	34:21	145:7,20,	155:20,23	93:5,13
185:15	35:6	25 174:14	156:10,	166:9
Johnson	36:8,12	175:5,6,	19,23	Latino
52:5	46:8 47:7	25 178:23	157:8,13,	30:14
joined	48:1	181:2,3	17 180:14	laugh
64:25	51:18	kind	knowing	172:5
110:6	60:8 61:4	9:15	38:4	law
July	62:5	14:11	knowledge	146:14
7:1 45:19	64:22	23:3	59:10,17	151:17
61:2,3	75:23	29:24	70:10	lawyer
110:20	76:12	32:3	126:5,21	117:21
167:21	83:8,19	47:12	129:2,3	144:7,13,
jump	84:6	48:18,21	177:3,11	15,17,22
7:19	85:15,19,	65:5 67:3	182:20	196:5,10,
June	25 86:22	122:21,22	197:4	17,22
112:11	87:7	167:16	200:23	197:12
113:19,22	100:21	168:16	L	lawyer's
114:12	101:8,18	171:10		9:13
198:5	102:8,21	173:15	lab	
	103:9,16	177:25	42:18	
	105:10			
	113:12,			

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: lawyers..lot

lawyers	106:12,18	102:10	life-	109:2,19,
16:25	107:6	118:2	threatening	23
128:13,14	116:1	128:19	37:16	located
196:8	120:18	129:1,3	likes	64:15
leading	121:19	196:25	174:14	logistics
43:20	132:9	197:3,5	limitations	163:5
198:11	139:16	legally	73:24	long
leaf	140:5	144:8	74:11	10:11
17:18	141:4,5,	146:19	limited	87:16
143:3	20 147:7	legit	54:15	99:6
learned	158:21	47:19	55:18	108:19
55:21	159:17	legitimacy	73:11	125:16
93:5,12	161:6	155:21	160:16	143:13
Learning	166:8	legs	limping	147:10,
6:23	170:1,11	9:9	37:5	13,16
Learning's	175:4,11	lending	lines	179:12
19:12	176:22	155:21	53:20	187:21
leave	177:13	Lenore	106:25	longer
35:16	185:19,	23:25	107:9	10:23
48:17	22,24	171:2	168:24	58:18,25
51:11	leaving	lesbian	169:3	68:12
72:22	80:4	22:16	180:5	looked
75:1,17	140:2,3	letter	182:3	11:22
78:23	154:13	38:11	list	13:4,17
79:6,7,	163:2	130:8	63:19	46:17,25
17,20,21	led	letting	112:13	70:2 71:2
80:5,15,	29:25	138:9	113:16	186:1
25 81:6,	38:16	Lexington	180:24	looser
8,9,17,23	74:12	195:5	Listen	153:24
82:5,6,8,	103:10	LGBT	104:16	lose
12 87:19	105:14,25	36:9	183:2	145:14
88:5	leeway	50:24	literally	156:25
89:22	145:7	51:14	49:12	157:14,19
90:10,15,	left	191:22	litigation	losing
23 91:5	17:19	lieu	193:6	191:21
94:7,15,	49:13	41:24	live	lost
25 95:3,	83:8	life	21:14	189:10
10,11,14,	173:10	133:4	48:4	lot
20,21,22,	174:5	171:22	lived	21:14,15,
25 97:10,	179:10	legal	195:2	23 22:11,
14,15,22	legal	6:22	lives	18 23:1
98:7,9,	26:15,25	27:5,9		29:9,10
12,25				
99:12				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: lots..marked

34:18	37:21	181:2,5	179:5,13	manifested
37:8	38:3 56:8			96:4
47:19	58:20	maintain	male	
56:5 66:8	70:5	194:20	32:8 34:1	manipulating
71:3	78:23	maintaining	60:8,20	
75:16	79:4	80:3	179:4,5	18:18,23
81:14	80:24		180:11	Marek
90:9	81:21	major	181:22	15:2 19:4
96:11	91:15,22	49:23		62:19
132:8,18	92:9	156:20	man	64:25
157:13	100:14	200:20	20:10	108:12
163:5	106:9	make	21:17	110:6
165:1	117:11	8:25	22:13,14,	111:19
175:18	121:17	18:25	24 32:23,	
178:17	123:3	22:4	24 33:23	Marek's
183:23	132:11	26:15	52:8	14:5
187:13	133:16	43:6 48:5	60:17	marginalize
201:16	150:13	65:9	161:7	d
lots	155:2	86:25	management	171:18
82:16	163:2	116:20	25:21	
loud	170:15	119:17	38:16	Maricela
172:5	173:11	120:23	104:7	23:24
loved	174:1	122:1	180:10	159:9
180:1	176:15	124:11	183:2	172:11
lower	178:24	125:15	187:8	Marin
114:9	194:19	132:15	manager	114:2
115:5	196:4	142:18	50:8	mark
148:2	197:18	148:19	54:19	16:1
lunch	maiden	159:11,12	80:4	44:15
108:7	6:19	171:19	82:15,25	45:10
lupus	mail	174:9	96:23,24	130:15
91:6,7,	42:17	makes	100:16	marked
13,23	main	16:13	166:14	16:9
92:4,9	56:3	20:25	167:2,5	44:18
93:11	mainstream	102:1,2,	managers	62:18,23
	30:9	14	38:19	85:1
	31:15,19,	makeup	81:6,8,15	110:12
	25 32:9,	69:25	82:7	111:17,18
M	13 33:2,	making	175:12	112:7
	6,15 34:1	8:1 11:15	managing	116:9
M-A-N-D-I-S	52:1	25:2,10,	180:4	130:1
10:25	60:8,20	12 27:7	182:5	142:4,6
made	174:13	29:8,9	Mandis	148:4
10:13	177:15	101:14	10:23,25	150:19
36:25	178:23	139:22	194:23	157:22
		155:6		158:2

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: market..Minnesota

184:16,19	32:1 50:3	9:18	34:11	micromanage
195:6,8,9	97:19	188:3	91:4	d
market	98:25	mediocre	109:10	183:13,
58:15,23	117:12	182:24	110:5,8	14,16
59:3,17	140:11	183:4,12,	181:24	micromanage
marketable	146:20	16,22	message	ment
186:19	147:5	meeting	41:1	54:24
187:12,13	154:12	56:19,25	45:1,17,	55:1
Marshal	156:2,24	101:8,17	22,24	104:10
159:8,10	157:18	102:9,22	46:13	micromanagi
masculine	measure	103:1,9	82:15	ng
22:16	35:18	104:22	142:20	53:25
math	medical	105:12,14	143:6,11	mid
29:8,10,	23:19,21	134:18	144:1,3	34:21
17 30:8	24:14	137:23	158:12	78:15,16,
58:10	61:5 62:7	170:23	161:25	22 139:20
67:8	73:17,23	171:10	170:14	140:9
mathematici	74:18	173:3	messages	middle
an	75:18	meetings	13:14	48:7
58:6	80:3	194:12	41:1	112:20
mathpa	83:9,17,	member	42:6,18	116:20
113:15	20 84:6	171:18	167:8,12,	165:8
mathpa@ixl.	85:15,20	memory	18 168:3,	187:8
com.	86:2,22	13:15	8,15	Milin
112:12	91:17	56:24	messaging	30:3
matter	96:10,12	109:18	40:25	179:23
146:15,17	97:7	114:3,4	41:11,16	mind
Mattison	98:24	men	142:13	12:1
34:25	112:20	32:7	met	37:15
64:21	115:22	menial	56:7	73:4
113:12,19	116:1,7	152:1,17	59:13	122:13
114:24	117:25	mental	method	143:4
115:15	118:22	166:23	112:25	163:11
meaning	124:24	193:5,10,	methods	169:19
78:9	141:5,20	20	41:10	181:9
90:18	142:3	mention	mic	182:8
141:24	155:21	12:3	9:14	minds
means	157:14,15	18:25	micro	23:4
34:10,12	158:22	71:15	54:19	mine
143:9,24	165:5	114:17	micromanage	79:12
meant	173:25	mentioned	183:3	Minnesota
medication	175:25	22:11		64:16
	190:25			
	200:25			

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: minute..Nemo

minute	mislead	188:18	193:22	needed
84:22	159:21		199:23	35:15,17
85:3		monitoring		36:5
140:14	misleading	76:6	movement	51:14
	40:2,14	87:14	29:18	62:1 81:9
minutes	108:1	month	moving	82:6
26:16	misled	49:1	141:15	83:20
82:3	104:7	184:5	154:10,	85:15,16
86:10,13			12,16,20	90:23
170:23	missing	months	155:3	94:18
	192:22	48:16	162:22	98:4,9,12
mischaracte		52:6	163:8	117:10
rizes	misstates	61:2,25	170:2	119:22
70:22	33:7	94:3	198:16	123:6,9,
73:6	54:21	125:7		21,22
77:17	71:24	179:8,16	MRI	124:8
87:21	132:1	186:9	97:2	131:9
92:22	187:25			132:16
98:16		morning	multiple	133:4
100:23	mixed	6:12,13	34:15,16	138:3,15
122:16	79:11	13:3	85:13	172:18
136:23	156:14		90:14	175:6
146:24		Morse		186:20
156:11	Mm	30:2,17		187:14
	159:5	79:11,14	N	190:2
Mischaracte	Mm-hm	96:20		
rizing	41:13	108:17	n-o	needing
132:23	52:9	109:1	89:1	175:11
	56:23	110:20		
Mishkin	77:12	168:9,25	nails	negative
20:4,8,13	86:19	179:7	66:5,7,8	99:21,22
21:3,9	107:21,23			158:20
23:8,18,	110:16	mother's	named	
20,24	117:1	6:19	63:4	negotiation
24:10,13	142:17	motivation	181:16	118:5
56:4	146:12	25:5,9	names	
58:14,22	151:23	126:11	53:8	neighborhoo
59:21	152:4			d
91:12,21	167:19	motivations	narrow	189:19
92:7	169:2	25:11	39:15	
100:20	185:1,3	mouse	104:12,18	Nemo
101:7,16	196:7	166:3	105:1	30:2,4,9,
102:7,22		173:21,22		14 40:20
133:8,10,	mocking	174:3	nature	42:7 44:1
14 134:13	171:14,15		9:12	53:4,19
150:7		move	173:5	71:4
	Monday	9:5 79:3	navigate	79:9,13,
Mishkin's	112:19	154:18	171:20	14 80:8,
57:6	money	187:1		12 89:23

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: Nemo's..objection

90:1,23	161:17	40:21	133:7	41:23
94:16,24	168:9			42:12
95:2,9	NLRB	normal	numbered...	43:16
96:23		32:4	[i'm	44:3
97:13	12:4,7,	Northfield	197:21	45:13
128:9,12	21,24	64:16	numbers	46:20
129:4	13:5	note	16:3	51:20
142:11,20	43:20			52:15
143:23	44:2,8,12	20:23	nuts	53:14
144:4	56:20	21:4	150:13	54:6,13,
148:11	57:1,10	24:4,5		21 55:23
150:5,8	76:11	36:17	O	58:16
158:9	84:4 85:3	130:5,8,		59:4,23
161:2	89:13	21	Oakland	60:11,22
168:9	93:3	131:10,	48:4	61:6
175:15	104:24	17,24	110:1	63:9,14
178:5	108:23	142:23	114:5	69:21
179:7,10,	109:13,15	155:9,15,		70:7,19
13	134:25	19,25	oath	71:18,23
181:11,15	135:11,	noted	8:13,16	72:9,18
	16,21	136:12	84:5	73:6 74:4
Nemo's	136:6,20,	164:13	object	75:5,15
30:7 96:4	21 137:3,	notice	149:21	76:1,19
	9 140:22	8:7 47:18	191:4	77:17
nice		61:9,22	objection	78:6,19
46:2,8	NLRB's	145:6,13	10:17	82:20
51:9	12:11		12:14,17	83:22
146:15	no'	noticed	14:17	84:11
172:4	8:9	16:17	18:14	87:21
nicer	nods	47:18	20:20	88:14,21
47:17	8:4 17:15	49:3 68:6	23:11	89:2
night	non-asian	November	24:16	90:24
68:8	53:13	6:22	25:3	91:24
Nina	non-	56:21	26:8,14,	92:10,21
30:2,23	economic	number	22,25	93:8,14
33:14	191:1	23:17	27:14	95:1,15
40:20	non-starter	24:25	28:9,16	98:13
42:7 44:1	120:22	26:12	29:5	99:13
45:19	non-verbal	62:25	30:11,19,	100:7,23
47:10	8:4	87:6	24 31:6,	101:10,20
109:4,8	non-white	158:2	16 32:16	102:10
128:13	53:9,13	195:6	33:7 34:2	103:20
129:4	non-work-	number's	35:11,21,	107:15
151:12,21	related	158:11	24 36:20	117:7
158:9		numbered	37:24	118:2,20
159:1			40:4,23	119:6
				120:5,12,

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: objection's..pager

25 122:4,	124:23	131:23	openly	organizatio
16 123:15	180:9	132:22	137:22	n
124:5,18	observe	office/half	opinion	77:1
125:4	96:13	118:18	59:24,25	organizing
127:1	observed	119:4	68:2	51:7
128:3,16	observed	official	77:3,4,7	orientation
129:8,19	96:10	100:13	opportuniti	30:23
130:25	175:15	officially	es	31:4
132:1,23	occasion	170:9	79:3	originally
134:14	26:6	Omg	140:4,19	122:15
135:12	occasions	170:15	153:18	ostensively
136:7,23	85:14	171:4	154:8,25	48:20
137:17	occurred	onboarding	opportunity	outcome
138:5	200:11	115:16	78:11	109:15
141:6,11,	Ockerberg	one-on-one	137:4,5	outed
21 144:14	23:25	59:14	142:1	83:15
146:2,24	offer	one-page	149:5	outlined
152:25	38:11	112:6	198:17	23:15
154:22	146:22	133:6	202:2	overexplain
156:11	155:18	one-pager	opposed	96:9
157:10	200:24	110:11	8:4 23:22	97:11
163:23	offered	online	122:2	overexplain
164:8	127:13	185:10,21	173:2	ing
165:16	155:14	188:16	optimistic	80:2
166:11	190:9	Oops	option	96:12
168:13	191:23	67:21	50:14	owed
172:25	offering	open	options	164:20
173:16	121:8	49:12	186:12	
177:16	offers	91:12	order	P
180:19	184:7,13	92:8	10:5,7	
183:17	190:5	118:11	11:20	
187:22	office	119:15	13:21	p.m.
191:4	43:21	133:25	46:25	142:21
192:8	48:3 50:2	134:8	82:12	151:13
198:6,20	118:12	138:25	85:2	169:7
199:10,24	119:16,25	158:3	98:25	202:7
objection's	120:11,	open-ended	138:4	Pacific
136:12	18,22,24	78:25	142:19,25	191:17
164:13	121:7,17,	opened	159:18	192:4,6
obligation	18 122:2,	93:4	175:11,12	pager
147:4	13,14	openly	186:21	44:23
observation	125:22	openly	187:15	
175:13	126:8,24			
observation				
s				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: pages..perceived

pages	21:5 24:9	passionate	162:15	82:5,9
142:18,19	35:10	77:9,15,	179:3,20	89:22
158:6,24	40:6,25	22,25		91:18
167:23	61:15	78:8,9	PDF	95:22
184:20	62:2		17:10	96:15
195:16	73:10	password	pedagogical	97:11
	82:4 83:6	111:19	ly	98:9,10
paid	100:16	passwords	29:16	108:2
141:19	101:5	42:19		112:13
147:7	104:20		pedagogy	129:17
157:6	105:14,	past	29:14	141:14
159:19	17,24	13:1	pending	145:7,10,
181:15,18	106:6	114:1	9:10	11 150:15
	107:2,5	171:16		151:25
pain	117:24	patient-	Penner	152:16
191:1	118:13	confidentia	80:21,23	156:10,21
192:16	120:20	l	91:4	157:8
painful	130:14	192:10	93:6,12	158:13
49:9	132:19		people	162:14
paint	149:23	pattern	7:20	165:6
66:8	160:10	105:22,25	21:14,15	167:5
	184:8	106:6,8,	22:12,18	168:9
painted	185:7	11,12	23:1,7,24	171:18
66:5,7	201:12	Paul	25:23,24	175:12,16
175:23		20:4,13	29:9,24	178:4
paper	partial	21:3,9	32:22,24,	180:4
17:21	73:3	23:8,24	25 33:17	181:5,10
18:6	146:1,7	24:10,13	34:6,15,	182:16
par	partially	56:4,7	16 47:7	195:21
76:7	35:2,3	57:6,12,	51:3,4	196:8
		22 58:14,	52:25	
paragraph	parting	22 59:13,	53:1,9	people's
111:1	171:2	21 91:12,	60:17	74:18
118:10,22	partner	21 92:7	67:10	145:22
119:7,24	10:15,22,	100:20	68:14,15,	175:19
151:24	23 60:24	101:7,16	21 69:4,	
154:9	194:17,22	102:7,22	9,10,19	perceive
185:5		133:8,10,	70:6,16,	31:4
parentheses	parts	14 134:13	18 71:3,	perceived
64:4	12:21	150:7	8,12,16	33:12,21,
	party		72:15	22 40:7
parse	22:10,17	Paul's	73:18	52:1,19
100:9	36:22	59:16	74:19,22	60:17,20
201:8	125:14	pay	75:11,20	61:3
		64:17	77:14	75:12
part	passing	147:21	80:13	76:3
17:22	109:11	148:2	81:21	132:6
18:5 19:1				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: perceiving..positions

perceiving 167:5	personal 40:20 41:9 77:21 167:13	pieces 24:8 200:16,17	162:15	82:8,13 87:19 88:5 94:7 96:1 98:7 159:14, 16,23 161:6
percent 105:11 123:23 131:18,23	personally 57:18 59:13 74:24 92:4	pinch 17:24	point 10:13 25:19 32:12 36:12 38:5 52:13 53:19 59:16 67:11 75:24 76:13 78:4 83:19 86:17 87:8 94:6 103:7,18 112:22 114:21 118:17 121:25 124:14,18 125:12 128:12 134:3,10 140:1 141:3,17 152:10 154:13 156:9 162:2,21 163:17 164:7 166:25 168:21 171:14 186:18 193:21	polishing 170:7 politics 174:11 poly 32:25 34:9,11, 13 polyamorous 34:14 polyamory 34:18 poor 115:15 pop 158:2 195:13 popped 44:21 popping 17:6 posed 15:10 position 30:7 66:25 82:3 125:22 127:8,9 179:9 181:16 187:2 positions 179:24
percentage 201:19		place 12:1 43:8 58:9 131:14 171:19 189:23 193:5		
perception 60:16	personnel 158:19	placeholder 153:16		
performs 21:1	perspective 58:5	placement 189:4		
period 7:14 30:4 47:5 88:20 160:2	persuade 26:6	places 152:21		
periods 125:16	phalloplast y 157:1,4,5	plaintiff 14:11		
permitted 39:16 104:13,19 105:2	phone 24:4 41:16 42:18 168:10, 16,17 184:3 196:21	plan 119:24 162:3		
person 24:23 33:5,13, 14 52:14 68:23 71:5 73:16,17, 20,22 74:3,17 78:8,9 91:6 93:11,12, 19 156:16, 18,25 157:16,20 174:14 177:6,11 181:11	physical 73:23 74:11 physician 132:19 picture 172:3 175:23 piece 18:6 44:9 160:7 175:9,10 178:8,9 200:15	planning 118:10 plans 79:4 139:19 plastic 98:2 platform 13:15 41:4 platforms 41:19 pleased 133:12, 16,23 134:4,12 pocket		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: positive..private

187:10	183:1	Practical	presentatio	prevent
190:3	195:22,	186:17	n	43:10
positive	23,24	practice	32:5	previous
50:21	posted	29:17	64:18	57:3
176:9,14,	28:21	Prado	65:5,16	117:11
17,18	31:24	23:25	66:1	118:22
177:2	39:3,8,21	praise	presented	119:7
positively	40:11	174:18	64:24	144:1
61:11	53:23	182:13,15	66:18	previously
67:13	56:7	preface	preserve	35:20
possibility	95:18	136:4	42:25	37:9
122:13	102:6	prefer	117:16	46:21
possibly	103:3,5,	119:25	pressure	169:24
27:21	18	120:11,13	83:11,12,	primary
65:18	104:17,21	121:12	16 84:1	14:11
110:3	105:4,9	preference	87:12,19	25:5,9
post	107:24	122:11	88:10,18	55:19
11:14	144:2	preoperativ	98:23	56:6 70:1
25:3,6,	153:5	e	122:24	103:24
11,12	posting	36:4	176:17	104:2
26:3	39:3,25	47:24	pressured	112:23
27:12	59:12	48:3,9	88:1	printed
28:14,22	178:19	preparation	95:2,10	45:8
31:21	postings	15:24	pressuring	prior
32:14	140:23	49:23	95:22	36:13
39:21	153:18	57:7	pretty	55:9,12
53:23	170:7	prepare	18:8	60:6,9,16
54:11,18	postoperati	10:1,5,7,	32:21	73:14,20
55:8,9,12	ve	15 11:20	34:14	74:1
58:20	157:7	12:2,22	37:4,11	75:25
71:15,20	posts	15:13	118:23	198:5
72:15	152:21	16:19	126:1	199:6
99:24	potential	47:1	158:20	privacy
100:6,14,	25:16,20	prepared	163:4	31:9 80:3
15 101:9,	28:7	65:4	164:5	123:20
19	40:1,5,13	66:17	167:3	124:24
102:13,15	108:1	67:2	173:12	196:1
104:14,20	potentially	present	182:25	private
105:17,18	141:15	62:19	183:8	43:13
106:18	156:24	108:12	184:2	45:1 83:4
107:6,25	Powerpoint		185:24	99:3
174:10	65:4,7,9		194:9	130:18
181:23			200:4,6,	173:12
182:15			14,18	195:23

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: privilege..question

privilege	110:6	project	65:5	push
14:22		54:5	97:10	9:14
15:1,2	process	55:20	98:4	
127:2,5	117:24	56:13,19		put
	164:17,21	57:13,17,	provider	23:4 24:8
privileged	200:15	23 58:4	41:17	53:4
14:18		60:1	providing	83:16
42:13	produce	66:21	13:11	84:14
127:14,	42:11	182:18	15:9	101:18
16,20	44:12			110:11
128:15	63:8	projects	psychothera	123:14
129:6	produced	54:3	py	124:16
131:1	13:25	59:21	192:10	128:20
	19:2 42:6	68:4		130:2
problem	44:1,12	174:18	public	142:9
18:7	45:12	182:1,2,4	130:15	148:9,19
53:16	142:10		196:4	151:3
54:11	167:7,12	promoted	pull	166:24
57:22		180:2	17:14	181:6
69:15	producing	promotions	42:10	182:17
82:18,24	63:13	174:19	62:25	183:21
88:3	product	prospective	167:8	184:23,24
95:12,13	29:8 30:8	77:14	pulled	194:16
96:8	66:23	provable	105:16	putting
166:20	76:25	27:10	purged	122:24
181:21	187:8	prove	43:1	181:10
problems	productive	27:6	purpose	
96:2,3	49:3,15,	82:10,11	50:23	Q
199:2	18,21		65:17	
procedure	50:18	provide	116:2	qualificati
83:9	61:14	8:3 9:11,	134:7,17	ons
173:23	87:16	24 42:19	137:21	67:1
174:4	120:2	63:7		179:10
procedures	productivit	64:17	purposes	
23:19,21	y	96:25	13:11,16	qualities
24:14	114:9,14	130:23	pursue	183:9
83:20	115:4,11,	131:18	140:4	queer
84:6	14,21	155:15	186:6,14	22:13
85:15,20	professiona	159:3	pursued	32:24
155:22	l	166:6	78:11	68:14
proceeding	115:20	186:15	187:10	question
7:7,11	133:4	provided	188:15	7:15 8:21
44:8	166:18	15:5		9:5,10
proceedings	program	19:18	pursuing	19:9
43:14	188:4	20:23	57:24	21:18
64:25		29:24	187:5,6	31:1

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: question-and-answer..recall

40:10	148:14	64:4	81:12,13	71:6 76:4
42:3	152:22	138:13	86:5	91:11,20
46:24	163:20	169:17	98:21	92:7 98:3
54:8,17	165:7	quote/ unquote	118:14	99:25
55:4 56:3	168:7		121:23,24	100:1,13
65:15	169:16		125:19	103:24
72:8 74:1	173:18		140:16	105:17
75:9 78:2	174:4,7	81:17	143:3,23	114:22
81:12,15	177:23,24	97:20	149:11,17	131:22
82:24	178:11,24	159:22	177:24	132:5
85:13,19,	180:13	R	178:1	155:20
23 86:11	183:6,15		195:24	175:2
87:4,5	184:13	race	reading	reasonable
88:8,11,	186:25	178:9	12:25	22:3
19 90:7,	195:13	180:6,12	15:23	123:8
11,16	199:5	raise	24:8	126:25
92:6,18,	question- and-answer	174:19	100:5	127:12
25 93:2		179:1,15,	114:20	147:3
94:21,24		17,18,19	ready	reasons
97:6	questioned	raises	13:22	11:12
98:18	22:18	178:21	141:4	38:15
100:9	questioning	180:15	143:3	39:2,7,
101:16		random	151:6	13,14,20,
102:2,19,	12:11	161:21	170:11	22 56:1,5
20 103:17	questions	reach	176:24	83:2,5
104:16	15:10,17	40:16	realization	86:22
105:16	33:4	reached	171:21	96:1
106:1,21	38:18	163:17,21	realize	97:12
107:2	57:21	reaching	130:18	103:4,6,
110:25	67:25	40:12	149:4	13,15,18,
119:2	81:9 82:5	68:12	realized	22 104:3,
124:10,	172:11,	reaction	21:19,20	5,6,11,16
12,13	12,14	105:9,19	reason	105:3,4,8
125:1	178:7	161:24	9:9 19:21	reassignmen t
128:23	192:18	read	21:3,8	21:1
129:2,15,	201:24	12:3,7,	26:20	69:2,6
18 131:8	quickly	16,20,21,	31:20	recall
133:22	125:17	24 17:22,	38:8	11:19,25
134:2,19	156:6	25 18:7,	39:23	12:25
135:10,	186:20	19 22:16	48:12	16:19
20,24,25	187:11	57:6,16	51:13	19:15
138:10,	quit	65:12,15	55:19	26:17
12,13,14	148:12,17	67:2 78:2	56:3,6	27:25
140:6,13,	quote		59:1,7	28:14
15,21	60:20			
144:22,24				
147:16,23				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: receive..remember

35:1,3	43:21	7:10	referred	120:3
41:9	110:2,3	records	182:1	relate
42:24	147:21	189:15	referring	150:24
43:20,23	161:22	200:25	10:20	related
53:18	recently	recovering	31:20,21	21:25
56:8,11,	114:8	79:2	32:14,18	110:3
17 57:12,	recess	recovery	46:5,7,8,	115:22
14,17,19,	62:16	120:19	9 47:20	146:7,9
25 58:1	108:11	131:13	79:8,16	200:4,12
62:5	112:2	200:10	80:17	relationshi
63:20,22	190:20	recruit	108:24	p
64:5,7,23	recipients	40:3,15	115:24	14:14
66:6,17	168:19	65:18	129:9,14	37:11
71:9	recognize	recruiting	145:9	194:17
76:11,14	171:24	25:2,5,10	146:10	199:20
78:22	recollectio	64:11	149:16	201:4
79:16,18	n	67:4	150:6	relationshi
80:6	57:21	recruitment	158:16,23	ps
81:23,24	161:3	25:15	160:8	34:16,17,
84:4,7,9,	recommend	recruits	161:5,9,	20 117:16
10 90:14,	77:11	28:7,22	13	199:3
22 91:1,5	78:1	red	176:10,16	relevant
94:1,20	record	18:25	refers	44:8
108:20,	7:21	redaction	34:15,19	193:1
23,25	14:20,25	130:12	115:25	reflect
113:7,10	18:15,20	refer	reflect	reluctantly
114:11	19:1	193:7	50:16	93:24
135:2	60:19	reference	refresh	remains
141:2,9,	62:15,21	10:13	13:15	200:3
14	71:24	71:19	161:3	remember
142:23,24	81:13	82:4	regard	11:18
148:14,15	98:21	108:20	47:8	13:12
161:22	108:8,10,	159:1	103:11	15:7,8,
188:11	14 112:1,	referenced	115:7	21,23
190:8	4 130:10,	41:12	143:20	23:16
receive	15 178:1	197:6	165:2,4	26:10
96:23	189:18	references	180:12	27:20,24
148:2	190:19,22	115:11	regularly	28:3,18
184:13	192:24	referencing	191:13	32:1
192:6	193:18	160:20	rejected	46:11
received	195:8	rejection	122:13	49:4
133:10,23	202:6		164:25	60:5,25
147:18	recording			64:19
receiving				65:3,8,
38:11				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: remote..result

11,13,22	175:7,16	16:20	reside	172:4
66:3,4,	remotely	19:10	168:6	173:10
10,11,14,	35:17	20:3	resources	responses
20 67:9,	62:6	23:17	57:23	12:12,13
15,19	85:17	24:25	respect	15:9
79:15	112:18,22	105:10,20	36:17	16:18
80:21	113:25	120:3,8	56:25	19:24
85:2	120:7	121:10	174:22	responsibil
103:22	121:3	124:15	respected	ities
108:18	123:8	126:8	124:24	126:18,20
111:6,15	131:12,	132:21	respond	responsibil
128:7,8	19,25	requested	7:22 9:14	ity
129:16,23	145:17,23	50:23	171:12	182:6
134:25	165:24	51:1	responded	rest
139:22	175:8	94:15,23	10:21	122:22,23
141:22	176:3	98:1	68:8	123:6
153:11	repeat	122:15	124:1	restate
154:4	8:24 89:6	146:22	responding	39:4
159:20	rephrase	164:3,24	7:22 9:20	46:24
160:5	8:10,23	165:10,12	121:15	52:16
163:10	9:4	requesting	161:4	75:9
168:16	replay	24:1	162:12	81:11
169:19	144:20	requests	responds	93:9
179:11	replying	15:6	150:8	98:18
182:11	45:25	19:22	151:21	122:7,9
183:4	reporter	require	161:2,17	177:23
184:1,4	7:11 8:1	26:14	response	restated
185:17	reporting	required	8:3,10,11	84:20
188:14	75:24	83:10	9:11,24	restatement
190:13	76:13	97:17	19:12	152:20
191:16,24	86:23	117:12	20:7 25:4	153:4
remote	87:7	118:17	26:13	restriction
73:3	representat	187:4	37:22	s
75:25	ion	requirement	44:2	75:24
86:1 97:9	40:8	160:20	56:12	76:12
103:11	representin	requirement	88:11	86:23
116:1	g	s	94:23	87:7
119:20	14:5,6	75:24	119:23	result
122:2,14	117:22	76:13	125:20	82:7,9
124:3,16	request	86:23	143:23	94:17
132:9	11:24	87:8	150:11	95:11
144:9	15:21	reread	155:22,23	96:22
145:21,25		98:19	171:1	145:15
165:23				
166:1				

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: resulte..satisfactor

166:13	150:13		52:15	15 128:3,
resulted	167:11	S	53:14	16,19
69:3	178:19		54:6,13,	129:8,19
73:23	202:3	S-C-O-T-T	21 55:23	130:10,
81:8 83:5	reviewed	6:17	58:16	14,25
96:2	10:2	sacrifice	59:4,23	131:5
results	12:2,9	161:19	60:11,22	132:1,23
81:21	13:11,24	sacrificing	61:6	134:14
retained	15:12,17,	159:1	63:9,14	135:12
196:16,23	24 110:22	salary	69:21	136:1,7,
	167:14	179:13	70:7,19,	11,23
retaliation	reviewing	salvage	22 71:18,	137:17
106:20,24	11:19	117:17	23 72:3,	138:5,18
return	15:21	sample	9,18 73:6	141:6,11,
60:6,9	16:20	32:21	74:4	21
62:8 86:4	ridiculous	Sanghvi	75:5,15	144:14,
125:18	151:25	10:17	76:1,19	18,24
131:12	righteous	12:14,17	77:17	146:2,24
144:9	170:21	14:6,17,	78:6,19	148:23
161:20	rights	23,25	82:20	149:3,21
returned	128:2	16:6	83:22	152:25
120:24	risk	18:14,18,	84:11,14	154:22
121:18	157:17	22 20:20	87:21	156:11
147:25	rough	23:11	88:14,21	157:10
returning	37:7	24:16,19	89:2,5	163:23
36:24	roughly	26:8,22,	90:24	164:8,11
73:21	35:1	25 27:14	91:24	165:16
74:1	run	28:9,11,	92:10,13,	166:11
118:10,19	99:6	16 29:5	21 93:8,	168:13
119:25	147:23	30:11,19,	14 95:1,	172:25
revealing	174:19	24 31:6,	15 98:13,	173:16
173:4	178:22	16 32:16	16 99:13	177:16,19
review	185:15	33:7 34:2	100:7,23	180:19
12:10	running	35:11,21,	101:10,20	183:17
13:20	175:24	24 36:20	102:10	187:22,25
15:15,19,	182:19	37:24	103:20	190:15
24 17:20,	résumé	40:4,23	107:15	191:4
22 39:8,	153:18	41:23	111:21,23	192:8,14,
25 46:13,	170:7	42:12	117:7	21,23
18 47:3,		43:16	118:2,20	193:3
14 66:25		44:3	119:6	198:6,20
103:5		45:4,13	120:5,12,	199:10,24
104:17		46:20	25 122:4,	202:2
149:5		51:20	16 123:15	satisfactor
			124:5,18	y
			125:4	62:3
			127:1,7,	

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: satisfied..sick

satisfied	148:9	46:3	31:8,11,	18:4 85:1
80:25	151:3	sentences	12 33:15,	111:16
118:6	184:23	47:21	21	148:21
163:16,	185:2	separated	SF	158:1
18,21	195:14	149:24	114:2	showed
164:6,16	scrolling	September	shaarrreee	11:21
scale	168:2	64:1	151:16	22:17
191:23	search	68:9,20,	shaming	105:21
scare	63:18	21 70:5	79:17,21	106:8
176:7	second-to-	163:3	80:7 82:4	113:20
schedule	the-last	sequential	89:18,21	201:8
50:23	185:5	16:4	shape	showing
51:10	secretive	service	37:7	17:17
73:24	154:10	40:25	141:1	18:6,11
75:25	sector	services	share	112:6
145:17	21:21	191:23	65:19	148:10
177:14	securely	session	she'd	150:22
179:1	42:21	191:11,25	179:18	sic
schedules	seek	192:2	182:18	64:1
178:21	190:24	set	shit	sick
180:15	seeking	187:5,15	142:22	48:14,15,
school	192:20	190:2,10	143:16	17,19,20
63:24	193:7,18	settings	161:21	50:4
65:25	sees	196:1	shitty	72:22
science	37:15	setup	161:2,6	75:17
185:10	select	51:2	shock	76:5
186:2	116:10	severe	171:17	79:6,7,
Scott	send	193:19,20	short	17,20,21
6:15	42:17	sex	10:12	80:4,15,
17:10	130:4	34:17	22:23	18,19,25
113:25	sending	sexual	short-term	81:6,7,9,
161:17	142:23	30:23	147:9,11,	17,22
screen	148:14	31:4	19 148:2	82:5,6,8,
17:24	sense	sexualities	shortening	11,12,14
18:4 19:3	16:13	32:23	34:13	86:25
44:21	102:3,14	33:17	shortly	87:13,18,
85:5	132:13	sexuality	170:23	19 88:4,5
86:18	175:17	22:19	show	89:22
110:11,15	176:21	23:5	10:14	90:9,15,
112:8	sentence	30:15	16:11,16	23 91:5
116:11				94:7,15,
130:2				17,22,25
142:9				95:3,10,
				11,13,20,
				21,22,25

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: sign..specific

96:15,18	147:23	skill	snatched	115:18
97:10,13,	199:19	187:5,15	182:19	152:14
15,20,22		190:2,10		153:16
98:7,12	sincere		social	162:1
99:12	102:25	skills	145:15	166:20
106:12,18	sir	183:23	166:18,23	171:23
107:6	138:12	185:25	167:1	182:19
114:19		186:17,	society	186:4
132:9	sit	18,20	32:4	187:7
146:1	182:11	187:12,13		193:10
159:13,	site	Skype	softball	195:20
14,15,16	99:6	113:3	174:14	198:23
161:5,21	172:18,		178:24	199:22
162:6,7,9	19,21	Slack	181:2	201:3
175:10,16	173:2,4,6	41:20,25	software	
176:18,22	188:16	sleep	29:9	sought
177:13		199:20	186:14,	192:16
178:3	sitting		17,18	193:14
	24:14	sleeping		
sign	57:9	194:8	solution	sound
19:23	59:20	199:2	116:23	80:24
202:3	63:20		117:6	
	71:11	sliding		Sounds
signals	77:2 82:3	191:23	solutions	7:24
132:8	111:10	slightly	134:23	sources
significant	114:20	153:24	someone's	188:18
94:16	122:25	Sliminess	91:16	space
silting	125:19	161:18	something's	50:6
9:13	situation	slimy	17:25	speak
	114:10	158:13		8:8 64:3,
similar	116:4	159:25	sooooo	5 67:13
36:16	120:17,21	162:13	158:13	143:14
179:9,24	121:6		sort	
simple	122:12	slipping	7:15,19	speaking
90:11	125:21	114:8	17:24	39:23,24
134:2	126:7,24	115:24	18:4	67:5
135:20	159:17	116:4	22:18	77:21
152:22	176:12	slow	23:3	81:20
163:20	197:1	61:21	36:23,25	95:23
			37:3,7	160:22
simply	situations	small	47:2	specific
19:23	96:4,10,	32:22	59:21	54:15
71:2 74:1	12	179:17	61:21	66:10
83:18		184:10	80:3	88:2
106:1	six-page		82:13	109:18
121:9	142:15	smart	87:14	135:25
124:13	size	180:1	109:10	139:22
131:18	32:21	183:3,8		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: specifically..stuff

148:15	188:24	153:6,10,	stay	strain
194:6	spoke	20 166:21	49:15,16	194:16
specificall	64:24	179:24	145:16	stress
y	80:22	185:16	stayed	194:8
24:6 32:6	108:17	191:13	32:3	198:11,25
84:5	109:4,8	starting	132:15	199:15
104:25	196:21	89:19	147:17	200:2,4,
139:25	197:7,12	131:12	148:1	9,14,19,
141:16	spoken	137:10	step	22 201:9,
142:24	144:7	142:10	154:15	10,11,13
165:4	sporadic	148:8	162:25	stressed
178:21	62:7 86:1	starts	170:13	199:18
191:22	sporadicall	93:22	186:1	stressful
speculate	y	104:24	200:20	200:17
102:14	175:8	161:18	steps	201:17
speculated	spreadsheet	state	139:18	stretch
23:6	167:7	6:14	Steve	9:9
speculation	spring	130:10	52:5	strike
27:1 70:8	64:3,20	147:9	stick	28:5
102:11	68:2	159:10	11:25	31:23
118:3	staff	193:5,6	stigmatized	39:23
123:16	159:7	stated	176:1,25	57:4,5
124:6	stand	193:16,17	stipend	74:14
128:19	89:13	statement	184:10	78:15
177:19	standard	75:10	store	99:21
180:20	32:4	90:5	42:21	struggling
speculation	start	106:9,15	stored	191:19
s	7:22 9:4	155:2	168:5	stuck
37:21	16:4 46:1	169:10	straight	12:5
speech	58:10	states	30:16,18,	59:22
65:6	116:21	23:18	22,25	student
66:12	140:8	stating	52:14,20	27:21
67:11,14,	153:15	25:21	53:1,2	70:14
18	167:20	77:7	145:10	71:7
spell	started	119:3	171:13	74:21
6:16	15:7 34:5	193:17	174:13	students
Spencer	52:6	status	177:14	67:16
63:4,21	61:9,22	60:15	178:23	68:1
66:4	77:10	154:11	181:1,4	stuff
spend	78:1 88:9	156:10	straightfor	37:6
189:7	132:13	157:8	ward	50:13
spending	149:3	177:10	133:19	51:6
		181:8		

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: styles..talking

115:21	supervisor	97:21		56:18
143:21	20:24	98:2	T	64:13
162:15	34:21, 24	125:6		65:12
165:5	35:6 36:9	132:14	table	66:11
170:8	50:22	139:23	188:13	107:5
styles	64:21	141:19		109:6
29:14	85:14	147:8	tablet	117:20
	91:16	156:5, 20,	63:3	121:25
submitted	92:5 97:7	22 157:6	168:12	193:16
140:12	112:16	161:13, 15		196:19
154:5	113:23	162:16,	tag	
170:8, 9	120:14	18, 23	45:3	talked
submitting	supervisors	163:5	taking	10:3, 8
140:25	145:13	172:24	9:11	11:5
153:12		173:5	48:14, 18	31:11
subpoena	supplement	187:17, 20	79:7	41:2 52:2
43:21	187:14	188:1	80:15	93:15, 18
44:2	support	198:11	86:1	107:4
110:3, 5	69:18	200:10,	87:13	109:7
	175:3	14, 20	89:22	110:2
substance	200:25	surprise	94:17	114:7
129:9	suppose	63:18	95:22	122:17
sucks	57:3	surprised	99:9, 12	127:13
161:7	supposed	46:1	102:23	129:4
suffered	65:19	suspicious	103:1	141:17
201:6	surgeon	36:25	116:7	159:7
suffering	122:18	swiping	133:17	169:24
191:1	surgeon's	17:19	141:25	195:3
192:16	20:24	switch	142:3	197:13
sufficient	surgeries	28:4, 6, 15	143:22	talking
124:13	21:1 98:1	40:2, 14	158:21	46:19
suggested	surgery	switching	175:16	72:20, 21
48:24	24:6, 23	28:22	185:10, 21	74:10
super	36:7	symptoms	186:4	93:7, 11,
46:1	37:4, 13,	96:18	187:1	12, 19
48:16	14 47:9	198:4, 7	talent	115:22
57:14, 20	49:23	199:4, 5,	65:18	117:21
162:13	61:25	21	talented	128:12, 13
superior	69:2, 6	system	151:25	141:14
59:17	73:9, 14,	171:24	152:16	153:21
superiors	15 79:2	172:1	183:3	159:4
194:13	80:22, 23	systems	talk	160:4, 18
	83:5	171:19	7:20	161:4, 11
	91:19		10:4, 22	162:15
			11:1 22:1	170:21
			47:10	182:4
				189:5

800.211.DEPO (3376)
EsquireSolutions.com

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: thinks..told

47:12	ties	10,19,21	160:21	24:14
67:18,23	107:6	84:5,19,	161:19	31:22
68:3	time	21 85:16,	162:6,7,	41:20
74:21	10:12,22	19 86:1,	9,21	46:14
79:3,13	13:1	25 87:8	163:1,7,	47:1
104:8	18:15	88:13	11,17	57:1,7
138:24	23:9 24:1	91:9	165:12,13	59:20
162:24	28:7,21	93:24	166:8,25	63:20,23
163:6,8	29:15	94:6,8	169:12,17	69:18
170:2	30:5	95:18	170:10	71:11
185:25	31:3,24	98:1,3	171:8	77:2
thinks	32:2,9,13	103:8,19	174:24	89:12,16
146:15	33:5,20	105:6	175:8,14,	96:14
thought	34:4	108:9,13,	16 176:18	111:10
11:13	35:15,17,	16,19	178:3	112:18,19
28:25	24 36:24	109:4,8	179:16,25	174:24
29:1 37:3	37:9 38:5	111:25	181:9	202:1,5
38:14	40:23	112:3,22	184:3	today's
47:5	41:6 43:1	113:23	185:11	110:22
58:6,8	47:5,12,	114:12,21	188:11,15	told
61:18	13 48:2	115:7,10,	189:24	11:3
66:6	50:6,12,	13 117:23	190:18,21	14:2,15
81:16	20 51:7,	121:18,	193:9,24	20:4,8,
105:21	11 52:1,	23,25	196:14,22	12,15
106:8	13,18	122:2	198:16	21:20
123:2	55:6,15,	123:13,23	199:22	27:25
151:16	18 56:21	124:14	200:18	28:2
162:1	57:1,9,24	125:16	202:5	29:21,24
164:18,20	58:20,21,	127:16,24	times	31:11
172:19	22 59:13,	128:12	7:15 18:3	48:2,7
179:25	25 60:16,	129:8	74:5 83:7	49:20
180:1	24 61:25	131:14	146:6	51:13,16
181:24	62:6,14,	133:14,22	165:1	56:11,12
three-and-a-half	20 64:6,	134:3,10	190:12,14	61:13
11:11	20 65:2	139:5	tissue	70:14
three-page	66:10,21,	141:3,17	173:6	71:6,10
116:9	22 67:11	142:3	title	74:21
150:23	68:7	143:13	187:9	76:23
thumb	70:11	145:9	today	78:7
167:17	73:25	150:10	8:14 9:18	80:8,23
tied	75:13,25	23,24	12:2	90:1,4,
55:1	76:1,13,	153:12	13:1,11,	12,18,20
72:23	16 78:4,	154:13,	16,22	91:16
	12,25	17,21	15:13,25	93:23
	79:19	156:9,18	23:8	97:1,3
	83:1,7,	159:1,14		114:18

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: tomorrow..type

118:21	60:15	treat	108:23	138:16,23
122:10	73:22	152:2,18	115:4	140:10,16
124:3	74:8	treated	135:8,9,	145:3
127:11,25	150:14	68:24	11,16,17,	169:10
128:9,13,	154:11	83:3	19,21,22	truthfully
14 129:5,	156:10,	97:13	136:6,18,	138:4
18	16,18,21,	98:10	20	Tues
tomorrow	23,25	103:11	137:19,20	47:19
202:1	157:8,16,	165:6	155:2,12	Tuesday
ton	20 158:21	169:15	166:4	11:4
161:21	176:1	170:20	169:16	112:21
	177:10,11	197:24	185:10	Tuesdays
top	trans-	treating	trust	49:4,19
49:7	related	37:18	83:6	50:16
102:24	21:24	treatment	167:2	61:10
104:25	transcribin	75:12	171:4	turn
161:18	g	91:4	trusted	19:7
top-down	7:12	96:23	152:2,18	86:16
76:25	transcript	174:17	truth	139:24
totally	12:4,7,22	190:25	8:16,19	150:2
14:13	85:3	192:17	13:6	turned
46:11	89:17	trial	86:14	13:17,19
63:23	105:15	12:8,25	89:8	38:24
68:5	transcripti	43:20	90:8,18	177:12
120:19	on	56:20	107:12,13	tutor
161:8,10	8:1	57:7,9	136:21	188:9,12
194:18	transgender	84:4	truthful	tutoring
touch	20:4,8,	85:3,4	68:18	188:10,
17:13	10,13,17,	104:24	76:16	15,16
track	19 21:10,	109:13,16	77:2,6,7	TV
166:24	16 23:9	135:11	84:19	9:13
186:9	33:13	172:13	86:7,11	two-hour
traction	36:13	trickle	87:2,10	36:2
188:17	38:6	162:13	88:8,11,	49:6,12
	177:5,9	trouble	12,17,20,	two-page
training	transition	194:8	25 90:5,	63:3
115:16	119:17	true	12 94:11	type
186:2,25	200:21	44:13	105:6,23	44:24
189:3,4	transitione	69:16	106:2,4,	54:3
trans	d	86:15	9,15,23	122:19,20
21:14,17,	6:20	88:18	107:1,9,	146:23
19,21,25	travel	89:7,15,	11 108:4	
22:2,4,	64:17	16,24	114:23	
14,25		90:8	135:4,6	
			137:16	

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: types..viewed

187:2	128:14	48:21	upsetting	vagueness
types	133:11	79:20,25	49:4	25:3
34:19	146:14	80:1	Ur	valued
54:12	168:7	81:6,7,17	172:5	156:21,22
	173:20	82:5,8,12	urethra	variance
typical	understanda	87:19	122:21	32:19,22
32:5 51:2	ble	88:5 94:9	urethral	variant
69:12	9:1	95:13,19,	122:21	22:15
	understandi	21,25		23:3
U	ng	97:10,15,	V	32:3,15
	33:22	19		
uh-huh	65:19	159:14,		variety
8:5	77:13	17,22		193:12
	117:22	176:22	vacation	
umbrella	139:6	unlimitedne	97:16,18	verbal
34:15	144:19	ss	159:1,12,	8:3
uncomfortab	147:2,5,	159:22	18 160:1,	verbalize
le	19	unofficiall	12,21	8:11
91:16	understood	y	161:19,21	verbiage
173:13	9:6	94:7	162:6,9	135:23
unconcerned	unemployed	unpaid	vague	version
37:3	191:21	97:17	10:17	86:14
undergoing	194:21	184:10	20:16,20	89:7
83:10	unemploymen	unreasonabl	26:8	versus
155:22	t	e	35:24	162:9
undergrad	188:20,21	125:23	40:23	video
63:25	unexpected	unrestrict	43:16	7:25
underneath	194:12	d	46:20	55:20
80:20	unexpectedl	73:3	52:15	56:13,19
understand	y	unsuccessfu	54:6 76:1	57:13,17,
7:2 8:5,	145:16	lly	92:14	23 58:4
11,22,25	unfair	187:6	93:8	113:3,6,9
9:1,6,16,	95:22	unwelcomene	103:20	182:18
19,20,23	116:3	ss	119:6	view
14:13,20	unfeel	72:21	120:25	32:9
18:1,9	139:3	upset	128:3	38:24
32:12	unfreeze	103:7,13,	129:8,19	95:19
38:4,6,7	143:2	18 105:9,	132:1	120:22
47:2,3,15	unlike	19 106:18	161:2,6	121:8
54:7	9:12	159:25	173:16	158:20
58:12	unlimited	162:13	191:5	162:9
80:7		171:5	198:6	181:13
115:23		174:5	vaguely	
116:6,8			27:22,24	viewed
			58:1	
			63:22	

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: violating..WILSON

60:8	154:18	16 71:8,	41:3	107:16
120:3	156:15,16	16 72:15	42:2,14	108:6,15
173:15,17	wanting	74:22	43:17	110:7,14
violating	39:9	75:3,11	44:4,15,	111:20,22
128:1	waste	well-being	20 45:2,	112:5
violation	193:24	161:15	5,6,16	117:19
173:15	ways	whatsoever	46:22	118:7
174:6	7:10	29:18	51:21	119:1,13
virtue	20:15,22	white	52:17	120:9,15
171:22	39:18	30:9	53:17	121:4
virulently	123:3	52:14,20,	54:9,16,	122:8
150:6	132:11	25 53:1	22 56:2	123:10,24
visible	143:10	70:2	58:19	124:9,20
196:3	166:14	171:13	59:5	125:10
vital	201:8	174:13	60:2,13	127:4,10,
161:14	website	177:14	61:1	22 128:5,
voice	20:25	178:23	62:4,11,	17,22
22:24	156:5	180:10,16	22 63:12,	129:11,21
Wednesday	Wednesday	181:1,4,	15 65:1	130:13,
	112:19	16	69:23	17,20
W	week	WILSON	70:13,20	131:3,7
	36:6	6:11	71:1,21	132:3
wait	61:25	10:18	72:1,5,11	133:1
7:21	97:15,18,	12:15,18	73:1,13	134:15
waived	21 139:14	14:19,24	74:6	135:14
127:6	159:1,10	15:4	75:7,22	136:3,9,
wanted	161:19	16:1,11,	76:10,22	12,13
12:4	188:6,24	14 17:11,	77:19	137:1,25
17:22	189:2,7	12 18:17,	78:14,21	138:6,20
25:14,15	weeks	21,23	81:12,19	141:7,12
40:5,13,	93:24	19:5,6	82:23	142:4,8
16,17	114:1	21:2	83:24	144:16,21
48:4,22	118:13	23:13	84:12,16	145:2
51:5,11	119:16	24:17,20	87:24	146:5,25
61:11,12,	131:13,19	26:11,23	88:15,23,	148:6,25
16 83:17	139:15	27:2,15	24 89:3,9	149:7,9,
99:3,9	188:2,6	28:13,20	91:3	25 150:1,
108:2	weird	29:19	92:1,11,	21 153:2
114:6	187:7	30:12,20	15,23	154:23
117:8,9,	welcoming	31:2,14,	93:10,16	157:2,11,
15 132:15	68:14,21	18 33:3,	95:5,17	25 163:25
133:15	69:9,19	10 34:8	98:14,19	164:9,13,
148:2	70:5,15,	35:14,22,	99:10,14	14 165:18
		25 37:20,	100:10	166:22
		25 40:9	101:1,11,	168:20
			23 102:16	173:1,19
			104:1	177:17,

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: withdrawn..wrap

20,21,24	27:17	126:8,24	145:12	69:25
178:10	44:10	131:10,	165:4	99:19
180:21	47:1	12,18,23,	175:8	115:19,20
183:19	54:19	24 132:9,	194:9	117:10,16
184:18	92:19	21 145:17	workforce	124:25
187:23	117:5	147:25	66:13	132:7
188:8	146:21	152:1,17	working	133:20
190:17,23	155:5	158:12	25:24	134:24
191:6	157:5	165:23,24	26:7	145:11,15
192:12,	171:2	166:1,9	27:21	152:8
15,22,25	173:2	175:8,16	46:10	156:15,
193:22,25	197:7	176:3	48:19	19,23
195:11	work	179:25	49:13	157:17,20
198:8,21	6:23,25	182:22	52:6 53:9	158:22
199:11	28:1,24,	187:21	58:17,24	166:19
200:8	25 29:3	work-at-	65:20	174:17
201:22	35:3,15	home	69:10	175:14,
withdrawn	38:12	146:6	70:15	15,21
194:21	39:6 40:8	work-from-	71:7	176:5
woman	41:1	home	74:21	178:15
22:15	48:5,13	48:24	75:25	179:20
23:2,3	49:7,10	72:22	77:16	183:10
32:24	50:24	88:3	85:17	194:9,11
181:18	51:1,15,	work-	86:1 94:4	198:12
women	23,24	related	107:5	workplaces
32:7	60:6,9	41:8	112:18	159:11
wondered	62:2,6	workdays	113:8,25	194:10
37:9	66:19	175:17	118:12	works
91:17	73:3,21	worked	119:15	19:22
wondering	74:1	28:8	121:3	world
66:25	78:5,12	29:15	123:8	171:20
118:11	83:8 97:9	31:3,4	131:19	worried
119:15	103:11	35:2,17	132:7,21	82:21
word	105:11	47:11	145:22	worry
31:20	115:3	49:14	148:18	50:7
34:14	116:1	50:16	179:12,23	worst
121:9,11	117:12,	70:12	180:3	161:18
156:1	13,25	75:13	186:9	worth
173:3	119:5,20,	76:24	188:5	50:17
word-by-	25 120:7,	83:8	workplace	57:24
word	17,21,24	86:21	22:12,22	161:8,10
144:20	121:6,18	95:16	39:11	162:14
words	122:1,12	112:22	48:17,24	wrap
	123:13,22	123:5	51:1 55:2	
	124:3,16			
	125:21			

ADRIAN SCOTT CAMPE DUANE
U.S. EEOC vs IXL LEARNINGMarch 27, 2018
Index: write..zoom

172:15,23	128:13
173:7	
174:3	
	y
write	
102:13,15	year
108:21	117:17
144:10	125:8
150:16	165:3
151:19	179:19
155:9	187:18
writing	194:19,21
46:11	201:15
116:22	
128:8	yearly
166:24	174:19
183:4	178:21
193:3,17	179:17
written	years
8:1 11:13	11:11
15:5,9	14:6
16:23	yes'
47:1 51:8	8:9
53:19	yesterday
80:5	13:1
wrong	yo
57:23	148:11
81:5	
	Yup
wrote	8:6 19:4,
55:8	8 85:11
68:18	
99:24	
103:5	z
105:17	
119:10	zoom
143:24	17:25
144:6	
150:17	
152:15	
160:5	
196:5	
Wu	
30:2,23	
45:19	
109:4	

Exhibit G

From: David Keyes [dkeyes@ixl.com]
Sent: Monday, June 02, 2014 6:21 AM
To: Kate Mattison
Subject: Fwd: working remotely today & Wednesday

Hi Kate,

Scott has been working remotely more in the past couple weeks due to doctor appointments in SF and Marin. I just wanted to let you know that I've talked with him about tasks that need to be completed on these days.

I have felt recently that he may be slipping back into old habits of lower productivity, so I'm keeping an eye on the situation.

Thanks,
David

----- Forwarded message -----

From: **Scott Duane** <sduane@ixl.com>
Date: Mon, Jun 2, 2014 at 7:04 AM
Subject: working remotely today & Wednesday
To: mathpa <mathpa@ixl.com>

Hi all,

I'll be working remotely today and Wednesday. I'll be on email and chat except for medical appointments in the middle of the day. I'll be around all day Tuesday.

Scott

Exhibit H

From: Scott Duane [sduane@ixl.com]

Sent: Friday, October 03, 2014 12:07 PM

To: mathpa; Suzanne Pelz; Mark Ritterhoff; Li-Chung Chen; Juyang Xia; Kevin Dong; Kevin OConnor; Parth Shah; Joshua Gevirtz; Jiho Kim; Linda Vo; David Bemiller; Stephen Chait; Bai Xiong Wu; Andrew Lenox; Geoffrey Anderson

CC: Maricela Prado; David Keyes

Subject: Gone for Nov & Dec

Hi all,

In early November I'll be having major surgery that will put me out of commission for about 2 months. My last day will be October 30th, and I'll be gone until about December 30th.

If you have any questions/concerns about projects I'm working on, please let me know with enough time so that I can respond by the last week of October.

Though I know and appreciate that some folks might be concerned or curious, this is a matter I'm only discussing in detail with close friends and family. So, I'd prefer not to field questions from coworkers about it. Thanks in advance for respecting that. Best,

Scott

Exhibit I

From: David Keyes [dkeyes@ixl.com]
Sent: Thursday, December 25, 2014 3:22 PM
To: Scott Duane
CC: Maricela Prado
Subject: Re: Return update

Hi Scott,

This all sounds good. I've set up a meeting for us on the 30th from 10-11 am. Let me know if you'd prefer a different time.

I can get you caught up on what's been going on the past couple months and we can go over a game plan for your part time remote situation.

Thanks,
David

On Wed, Dec 24, 2014 at 11:06 PM, Scott Duane <sduane@ixl.com> wrote:
Hi David,

I can understand your concerns, given the brief situation with remote work while trying to balance my pre-op appointments. At that time I was trying my best to contribute, while undergoing lengthy appointments that were physically and mentally exhausting. I did not always keep up, despite my best efforts. In retrospect, I should have requested a reasonable accommodation for my medical situation from the beginning, rather than attempting to keep up with work on those days.

I do believe that this situation is very different. What I need is the opportunity to rest my physical body from the kind of everyday movement that most people take for granted -- I am not attempting to attend appointments during that time as I was previously. If you feel like I'm not keeping up with work with this accommodation, please tell me directly. I'm happy to reevaluate if necessary.

My doctor is not in his office at this time, but he and his staff will get a written statement to you as soon as possible.

The 30th still works for me. I'll see you then.

Best,

Scott

On Wed, Dec 24, 2014 at 11:50 AM, David Keyes <dkeyes@ixl.com> wrote:
Hi Scott,

Thanks for the response. We are definitely on the same page here as far as goals are concerned - that is, having you achieve a complete recovery while also being able to fully contribute to the team when you return. To start, I would like to clarify a couple things from our previous emails.

When you worked remotely the days of your pre-op appointments, I noticed that productivity was down. This is why we tried having you work half days and take half sick days. It is also why I said I preferred that you return to work in the office full time if we could accommodate you appropriately.

You are definitely correct that the IXL development team does allow employees to work remotely in a variety of situations (sick children, waiting for repair people, sick, extending vacations etc...). This is allowed by manager discretion based on the employee's ability to work well in these types of situations. Also, these sorts of working remotely requests are sporadic in nature (a day here, a day there), and are different than working remotely part time every day. These more regular requests are not always granted.

Based on your doctor's recommendation, it sounds like reasonable accommodation in your case is to set up a part time remote working situation. It would be great if you could provide written documentation for this - and we can move forward with this plan.

I'm happy to come up with performance goals and a progress monitoring plan for you as well. Having your office time be in the morning sounds great to me - thanks for that suggestion! I'm looking forward to having you back and think that the 30th still works. We can talk about specifics of our plan then.

Thanks,
David

On Tue, Dec 23, 2014 at 3:39 PM, Scott Duane <sduane@ixl.com> wrote:
Hi David,

So before I start I want to let you know that I'm writing with the intent of finding a solution with you collaboratively -- there's a chance some of this email could be read as combative or hostile, and that is not the tone I'm intending at all.

I went ahead and spoke with an employment attorney to check in about what is meant by "reasonable accommodation", and she said with certainty that remote work qualifies here -- after all, IXL employees frequently work remotely to take care of children, to wait for repair people, because they're sick, or even just to extend vacations. This situation shouldn't (and legally can't) be treated any differently -- that is, under the Americans with Disabilities Act, IXL has to provide me with this accommodation. The attorney I spoke with also provided several online resources to me about the federal law which I am happy to pass onto you so that you can see some examples of how the ADA is implemented. I'm also CCing Maricela, who I believe is still filling in as the HR manager and should be familiar with the protections provided by the ADA.

My doctor is happy to provide written documentation, and actually suggested as much remote time as possible so that things heal quickly, particularly the complication that has arisen.

I completely understand your concerns about remote work and productivity, and I also understand that your primary responsibility is to make sure the math team meets all of its goals. But the bottom line is, I want to return to work, and I am certain I can perform the essential functions of my job while working remotely 50%. I'd like to find a solution under which I return on the 30th with this accommodation, or something very close to it. I suggest that we find some metrics that we can put in place so that you can monitor my progress to your satisfaction. I'd also suggest making all office time in the morning, so that you're sure to always have a chance to catch me in person to let me know what you'd like prioritized, etc. If there's anything else you'd like to include, such as a weekly productivity review, I'm happy to do that as well.

Best,

Scott

On Mon, Dec 22, 2014 at 3:47 PM, David Keyes <dkeyes@ixl.com> wrote:
Hi Scott,

It was great to see you as well! Glad to hear your recovery is going pretty smoothly.

As far as the plan goes for returning to work, I would prefer that you be in the office for your hours when you come back since you are more productive here.

Is there anything we can do to accommodate your situation so that you can work in the office? If you would need to extend your leave to aid in your recovery, that would be totally fine as well. Just let me know!

Thanks,
David

On Fri, Dec 19, 2014 at 12:53 PM, Scott Duane <sduane@ixl.com> wrote:
Hi David,

Great to see you briefly at the Christmas party. I wanted to give you a quick update on how things are going and begin to finalize my plan for returning to work.

As you probably have heard, things have been going very well in terms of healing, for the most part. Unfortunately, the day after the party, a complication called a fistula appeared. This is not very serious, but will make it challenging to be out of the house for long periods of time until it fully heals. My doctor believes I should heal from this quickly, but it may affect how soon I can return.

For now, I am still planning on returning Dec 30, but I'm wondering if you'd be open to me working half days in the office and half days at home for the first few weeks. This would make the transition much easier for me, I think.

Let me know what you think. Looking forward to being back at it. Have a good holiday,

Scott

Exhibit J

From: David Keyes [dkeyes@ixl.com]

Sent: Tuesday, December 30, 2014 10:35 AM

To: Scott Duane

Subject: Remote plan

Attachments: scott_duane_post_disability_leave_remote_plan.docx

Hi Scott,

Here is the plan we just discussed.

Thanks,
David

Scott Duane Working Remotely Plan

Working schedule (exact hours up for discussion, but consistency is required)

- Monday:
 - o Home: 6:30 am – 10:30 am
 - o Office: 12 pm – 4 pm
 - o The Math PA meeting is now 1 – 2 pm, and I'd like you to be in the office for this
- Tuesday – Friday:
 - o Office: 7 am – 11 am
 - o Home: 12 pm – 4 pm
- Two 1-1's a week, one on Tuesday and one on Friday

Weekly work plan

Send me an email on Friday afternoon with a detailed and prioritized breakdown of what you'll be working on the following week categorized by tasks for Monday, goals for the week, and maintenance tasks. Include the relevant Fogbugz scheduled item cases tracking these tasks.

Here is an example (tasks are listed in order of priority):

Tasks for Monday

- 1) Revisions of K-VENN-12 and PC-STAT-91 back to reviewer
- 2) Complete PC-FUN-3 first draft (with 1-3 example scenarios)
- 3) Complete standard alignment review (Fogbugz case # and link)

Goals for the week

- 1) Hand off K-VENN-12 and PC-STAT-91
- 2) Push PC-FUN-3 into second round review
- 3) Complete first round testing of A-80UP and G-22
- 4) Complete a first draft of PC-STAT-71
- 5) Iterate on mobile keyboard design project. Talk to Xing, talk to Andy. Submit latest revision to David for review.

Maintenance tasks

- Review Isidora's specs on schedule (same day if revision received in the morning, same or next day if revision received in the afternoon)
- Complete phone interviews and job test reviews, and submit evaluations to Jobvite within 1-3 days of the interview or receiving the job test

General goals

Write 1-2 new spec drafts a week. Flip reviews, revisions of specs within 1-2 days after receiving them. Stay on top of Fogbugz tasks, with both the "Math Content" milestone and the upcoming release milestone.

Meet goals set in Friday email consistently and with good quality. Aim to reduce time specs need in first and second round review. Currently it has been 10+ rounds, and it should be more like 5-7.

If goals are not being met, other accommodations will need to be considered, such as going back on disability leave or being in the office more.

Exhibit K

From: Maricela Prado [mprado@ixl.com]
Sent: Wednesday, January 07, 2015 11:04 AM
To: Paul Mishkin
CC: Lenore Ockerberg; David Keyes
Subject: Glassdoor Review

Hi everyone,

I hate to assume who this is from.... but please read this review from Glassdoor for yourselves.

Dec 30, 2014



"Micromanaged and problematic "



Current Employee - Anonymous Employee

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

Pros

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

The company isn't going anywhere right now. They play to the traditional classroom, which is good for profits. You won't have to worry about the company going under (but don't expect the profits to pass onto you, either).

Cons

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

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.

Advice to Management

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

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

Doesn't Recommend Neutral Outlook Disapproves of CEO

Sincerely,

Maricela Prado
Human Resources Coordinator | IXL Learning
Tel: 650.372.4221 | Main: 855.255.7700 | Fax: 650.372.4072

Exhibit L

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---000---

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

I N D E X

PAGE

EXAMINATION BY MS. SANGHVI

6, 171

EXAMINATION BY MR. MAREK

152

E X H I B I T S

DEPOSITION

PAGE

Exhibit 39 Two-page document entitled Scott Duane Performance Annual Review 42
2014 Bates stamped IXL-1674 and IXL-1675

Exhibit 40 Three-page document Bates stamped 43
IXL-1715 through IXL-1717

Exhibit 41 One-page handwritten document 44
Bates stamped IXL-1928

Exhibit 42 E-mail Bates stamped IXL-1626 47
from Andrew Lenox to David Keyes dated November 17, 2014

Exhibit 43 Two-page e-mail from Juyang Xia 48
to David Keyes dated November 20th, 2014 Bates stamped IXL-1629 and IXL-1630

Exhibit 44 One-page printout of a chat 56
message between David Keyes and Kate Mattison on September 26, 2014
Bates stamped IXL-0804

1	E X H I B I T S (Continued)		
2	DEPOSITION		PAGE
3	Exhibit 45	Four-page e-mail chain Bates	71
4		stamped IXL 0569 through	
		IXL 0572	
5	Exhibit 46	Letter dated Monday, December	94
6		29, 2014 on Brownstein & Crane	
7		Surgical Services Bates stamped	
		IXL 0112	
8	Exhibit 47	Copy of Exhibit 15 with	125
		handwritten notations	
9	Exhibit 48	One-page e-mail from David Keyes	132
10		to Scott Duane dated January 7th,	
		2015 Bates stamped IXL-1696	
11	Exhibit 49	One-page calendar entry from	135
12		David Keyes to Scott Duane on	
13		January 7th, 2015 Bates stamped	
		IXL-1697	
14	Exhibit 50	Document titled Scott Duane	136
		Working Remotely Plan Bates	
15		stamped IXL-1650	
16	Exhibit 51	Two-page printout of a Gchat	138
17		conversation between Gina Bland	
		and David Keyes IXL-0831 and	
		IXL-0832	
18	Exhibit 52	Metadata	147
19			
20			
21			
22			
23			
24			
25			

DEPOSITION OF DAVID KEYES

BE IT REMEMBERED, that pursuant to Notice, and on the 5th day of March, 2018, commencing at the hour of 9:34 a.m., in the offices of U.S. Equal Employment Opportunity Commission, The Phillip Burton Federal Building, 450 Golden Gate Avenue, 5 West, San Francisco, California, before me, DIANA L. GONZALEZ, a Certified Shorthand Reporter, personally appeared DAVID KEYES, produced as a witness in said action, and being by me first duly sworn, was thereupon examined as a witness in said cause.

---o0o---

APPEARANCES:

For the Plaintiff:

AMI SANGHVI
U.S. Equal Employment Opportunity Commission
The Phillip Burton Federal Building
450 Golden Gate Avenue, 5 West
San Francisco, California 94102
(415) 522-3071
ami.sanghvi@eeoc.gov

For the Plaintiff-Intervenor:

DAVID MAREK
The Marek Law Firm, Inc.
228 Hamilton Avenue
Palo Alto, California 94301
(650) 721-5042
david@marekfirm.com

1 For the Defendant IXL Learning, Inc.:

2 JEFFREY D. WILSON
3 Young Basile
4 3001 West Big Beaver Road, Suite 624
5 Troy, Michigan 48084
6 (248) 649-3333
7 wilson@youngbasile.com

8 Also Present:

9 Malinda Tuazon, EEOC

10 Roberta Steele, EEOC
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 DAVID KEYES,
2 sworn as a witness,
3 testified as follows:

4 EXAMINATION BY MS. SANGHVI:

5 Q. My name is Ami Sanghvi, and I'm an attorney
6 with the Equal Employment Opportunity Commission.
7 We're the federal agency charged with enforcing the
8 country's anti-discrimination laws in the workplace.

9 I'm going to have everyone in the room identify
10 themselves for the record.

11 MR. MAREK: David Marek. Good to see you. I
12 represent Scott Duane.

13 MS. TUAZON: Malinda Tuazon, and I'm
14 investigator here at the EEOC.

15 MR. WILSON: Jeff Wilson for IXL.

16 BY MS. SANGHVI:

17 Q. And I'm going to go through a few basic rules.
18 Have you ever been deposed before?

19 A. No.

20 What we did was not a deposition, correct
21 (indicating)?

22 Q. So rule number one is I'm going to ask the
23 questions, you have to give the answers to me.

24 A. Sorry.

25 Q. I know there's a lot of other people in the

1 room. But if you don't understand a question that I've
2 asked and you need me to rephrase it, I'm happy to do
3 so. But the questions will come from me and you will
4 give me an answer to the best of your ability.

5 Is that clear?

6 A. Understood.

7 Q. So as far as you remember, you've never sat in
8 a room with a court reporter transcribing your
9 testimony; is that correct?

10 A. Correct.

11 Q. Have you ever testified in any sort of court
12 proceeding?

13 A. Yes.

14 Q. What proceeding was that?

15 A. The NLRB hearing a couple of years back related
16 to this case.

17 Q. And it was an NLRB hearing related to Scott
18 Duane's charge; is that correct?

19 A. That's right.

20 Q. Anything else?

21 A. No.

22 Q. Have you ever been personally sued in any
23 capacity?

24 A. No.

25 Q. And has anyone ever sued you in any capacity?

1 A. No.

2 Q. So a few ground rules for a deposition today is
3 it is proceed essentially -- the examination and
4 cross-examination proceeds as it would at trial. So I
5 will ask a question, you will give me an answer, and
6 there can be no consultation while that question is
7 pending or during the examination at all to any notes
8 or to your attorney, at all.

9 And another point that's worth making is the
10 court reporter is transcribing everything, so she needs
11 to get everything in a verbal answer. She can't take
12 down nods of the head or hand gestures. So when I ask
13 you a question, please answer it verbally.

14 A. Understood.

15 Q. If -- we will take breaks throughout the day as
16 needed, but my only request is that we not take a break
17 while a question is pending. We can take a break at
18 the end of that question and answer.

19 A. Got it.

20 Q. Before this deposition is used in court at all,
21 you will get an opportunity to review the written
22 product and to correct any transcription errors, sign
23 off on those errors and send that back.

24 Do you understand that?

25 A. Yes.

1 Q. Can you tell me what your understanding is for
2 why you're here today?

3 A. I was Scott's manager in 2014.

4 Q. Do you understand that this is -- that your
5 deposition testimony today is related to the EEOC's
6 lawsuit against IXL Learning?

7 A. Yes.

8 Q. What have you done to prepare for today's
9 deposition?

10 A. I spoke with Jeff. We reviewed some documents
11 that were provided for the case.

12 MR. WILSON: Don't say anything that we talked
13 about, but you're good so far.

14 BY MS. SANGHVI:

15 Q. When did you meet with Jeff? You're referring
16 to Jeff Wilson, the attorney for IXL?

17 A. That's right.

18 Wednesday night. Last week.

19 Q. How long did that meeting last?

20 A. A couple of hours.

21 Q. Two to three hours?

22 A. Yeah.

23 Q. Did you review any documents at that meeting?

24 A. Yes. One's that were provided.

25 Q. What documents, to the best of your

1 recollection, did you review?

2 A. The e-mails between myself and Scott.

3 Q. Anything else?

4 A. Some instant message chats between myself and
5 Scott.

6 Q. Any other documents that you recall?

7 A. No.

8 Q. Did you do any preparation for this deposition
9 apart from your meeting with Mr. Wilson?

10 A. Yes.

11 Q. What is that?

12 A. I reviewed my testimony from the NLRB hearing
13 as well as the EEOC interview, I guess.

14 Q. When you say your notes from the EEOC
15 interview, did you keep notes from your EEOC interview?

16 A. I'm sorry. My testimony from the EEOC
17 interview.

18 Q. And how did you obtain those documents?
19 Actually, I'm going to scratch that.

20 Other than reviewing your prior testimony at
21 the NLRB hearing and to the EEOC investigator, did you
22 review any other documents?

23 A. No.

24 Q. Have you spoken to anyone about your presence
25 today at this deposition?

1 A. Yes.

2 Q. Who?

3 A. My wife knows. My mom knows. My boss knows,
4 Kate Mattison.

5 Q. Anyone else?

6 A. No.

7 Q. And do you consider Jeff Wilson to be your
8 attorney at these proceedings?

9 A. Yes.

10 Q. What did you tell your mom about your presence
11 at this deposition today?

12 A. I said I'm being deposed, and there's
13 information about the case online.

14 Q. Did you review the information about the case
15 online?

16 A. No.

17 Q. Have you made any written statements about the
18 events related to this lawsuit?

19 A. No.

20 Q. Have you spoken to any reporters about the
21 events related to this lawsuit?

22 A. No.

23 Q. Have you posted any statements about your
24 deposition today on any internet or social media site?

25 A. No.

1 Q. And have you ever posted any statements about
2 the events related to this lawsuit on any internet or
3 social media site?

4 A. No.

5 Q. Just for some background, since this is our
6 first opportunity to meet, I will ask you some personal
7 background questions.

8 A. Sure.

9 Q. To begin, are you under any medication that
10 might impair your ability to testify truthfully?

11 A. No.

12 Q. Are you under the influence of any substances
13 that might impair your ability to testify truthfully?

14 A. No.

15 Q. Have you ever been arrested before?

16 A. No.

17 Q. Does the fact that you are currently -- do you
18 believe the fact that you are currently employed as a
19 manager at IXL impair your testimony to testify
20 truthfully today?

21 A. No.

22 Q. You said you are married. What is your
23 spouse's name?

24 A. Reed, R-e-e-d.

25 Q. What is Reed's last name?

1 A. Same as mine.

2 Q. How long have you been married?

3 A. Almost eight years.

4 Q. Have you been married before?

5 A. No.

6 Q. Do you have any children?

7 A. Yes.

8 Q. How many?

9 A. Two.

10 Q. What are their ages?

11 A. Parker is four, Tatum is one.

12 Q. What is the highest level of education that
13 you've received?

14 A. Ph.D.

15 Q. Where did you receive your Ph.D. from?

16 A. University of Colorado Boulder.

17 Q. When was that?

18 A. 2011.

19 Q. What was your Ph.D. in?

20 A. Math.

21 Q. What was your thesis on?

22 A. Number theory. I haven't been asked that in a
23 while.

24 Q. Prior to 2000- -- sorry, how long did it take
25 you to obtain your Ph.D.?

1 A. Five years.

2 Q. From 2005 to 2011 -- excuse me, 2006 to 2011 --

3 A. Yes.

4 Q. -- did you work in that time frame?

5 A. Yeah. I was a teaching assistant through a
6 school.

7 Q. Anything else?

8 A. I tutored.

9 Q. Fair to say your jobs at that time were
10 essentially part time?

11 A. Yeah.

12 Q. Prior to 2006 when you began your Ph.D. program
13 at the University of Colorado, what were you doing?

14 A. I was an undergraduate at Cal.

15 Q. Where? Where is that located?

16 A. Berkeley. University of California Berkeley.

17 Q. And when did you begin your undergraduate work?

18 A. 2002.

19 Q. What did you graduate with?

20 A. Two bachelor's degrees, one in math, one in
21 history.

22 Q. And prior to 2002 were you -- is it fair to say
23 you were in high school?

24 A. Yes.

25 Q. So in 2011 once you had graduated with your

1 Ph.D., what's the next thing that you did?

2 A. I went to work at IXL.

3 Q. What was your first role at IXL?

4 A. Product analyst.

5 Q. Which department?

6 A. Math content.

7 Q. What month would you estimate that was in 2011?

8 A. End of December.

9 Q. From end of December 2011 to what point were
10 you in the product analyst role?

11 A. By title -- can you clarify? Do you mean
12 product analyst or senior product analyst?

13 Q. Well, let's go -- why don't we work backwards,
14 that might be easier.

15 What is your current title?

16 A. Senior program manager.

17 Q. When did you obtain that title?

18 A. January of this year.

19 Q. What was your title before that?

20 A. Program manager.

21 Q. How long were you a program manager?

22 A. Three years.

23 Q. Prior to program manager, what was your title?

24 A. Senior product analyst.

25 Q. And prior to that you were a product analyst?

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.

1 Q. Other than those three individuals, anyone else
2 that you managed around the time frame of -- looks like
3 perhaps 2014 is when you became a senior product
4 analyst.

5 A. Uh-huh. Yes.

6 I started with those three. I picked up others
7 throughout the years we hired.

8 Q. And am I correct to understand that you were in
9 the role of senior product analyst for approximately
10 one year before you became program manager?

11 A. That's right.

12 Q. So explain to me what -- other -- other than
13 managing individuals, anything else that your senior
14 product analyst role entailed?

15 A. Yes. Focusing a lot more on reviews, a lot
16 less on writing the specs myself, a lot more project
17 management, setting scope and strategy for the math
18 content.

19 Q. When you were a product analyst, who did you
20 report to?

21 A. Kate Mattison.

22 Q. And when you became a senior product analyst?

23 A. Kate Mattison the whole time.

24 Q. Does it remain Kate Mattison?

25 A. Yes.

1 Q. Then what was your -- what did your job entail
2 when you became a program manager?

3 A. I managed more people at that time and -- so
4 more projects. More people, more projects.

5 Q. More money?

6 A. I don't understand the question.

7 Q. Did you earn more money?

8 A. Yes.

9 Q. And then you became a senior program manager
10 this year. Can you explain to me how your job differs
11 from program manager?

12 A. Yes. Much bigger team, much larger projects.

13 Q. Did you receive an increase in your salary?

14 A. Yes.

15 Q. Approximately how big is your team currently?

16 A. 26.

17 Q. And how many people report directly to you?

18 A. Four.

19 Q. Who are those four?

20 A. Matthew Bleacher, Luke Corazza, Isidora Milin
21 and Christine Kiekhaefer.

22 Q. So how many people report to Matthew Bleacher?

23 A. I don't know the exact number. I'll give you a
24 range. It's between six and eight.

25 Q. What about Luke Corazza?

1 A. Six.

2 Q. And Christine Kiekhaefer?

3 A. Zero.

4 Q. Isidora Milin?

5 A. Zero.

6 Q. Do you receive performance evaluations for your
7 work?

8 A. Yes.

9 Q. By whom?

10 A. Kate. Kate Mattison.

11 Q. When's the last performance -- what is the last
12 performance evaluation that you received?

13 A. December 2017.

14 Q. How would you characterize that performance
15 evaluation?

16 A. Positive.

17 Q. Did Ms. Mattison review areas of improvement
18 for you?

19 A. Yes.

20 Q. And what were some of those?

21 A. Taking on even more strategic vision leadership
22 for the product, understanding the subtleties of the
23 design philosophies of the company better and
24 communicating that to my team. We're working on a
25 multi-year project right now and they're kind of

1 breaking that into yearly chunks, like where do we want
2 to be at the end of 2018 with the project.

3 Q. Did Ms. Mattison speak to you about working on
4 improving the retention of female staff?

5 A. No.

6 Q. You became a program manager, would you say,
7 around 2015 or another time period in 2015?

8 A. January.

9 Q. Do you provide performance evaluations for
10 members of your team?

11 A. Yes.

12 Q. To all 26 members of your team?

13 A. No.

14 Q. So who do you provide performance evaluations
15 for?

16 A. The four that report directly to me.

17 Q. And then is it correct to say that Mr. Bleacher
18 and Mr. Corazza provide performance evaluations for the
19 individuals that report to them?

20 A. That's right.

21 Q. Do you sign off on those performance
22 evaluations by Mr. Bleacher or Mr. Corazza for their
23 direct reports?

24 A. Not all of them. Sometimes they'll ask for my
25 opinion or something but --

1 Q. And when you perform a performance evaluation
2 for one of your four direct reports, do you -- does
3 anyone review that document before it's finalized?

4 A. No.

5 Q. Can you explain to me a little bit about how
6 the salary increases as a manager, your understanding
7 of the salary increases for individuals? Does it go
8 online with the performance evaluations?

9 A. Uh-huh. Yes.

10 Q. How so?

11 A. Stronger performers receive larger raises.

12 Q. Are there bonuses?

13 A. No.

14 Q. Have there ever been bonuses provided to IXL
15 employees?

16 A. Yes.

17 MR. WILSON: Objection; lacks foundation.

18 Go ahead.

19 BY MS. SANGHVI:

20 Q. When was that?

21 A. When I first started we had bonuses, and then
22 they were phased out.

23 Q. When, approximately, were they phased out?

24 A. I don't remember.

25 Q. You said stronger performers received higher

1 raises; is that correct?

2 A. Yeah.

3 Q. Is there a scale on which you place individuals
4 to understand what their raise might be?

5 MR. WILSON: Foundation.

6 Go ahead.

7 THE WITNESS: I'm not sure I understand what
8 you mean by scale.

9 BY MS. SANGHVI:

10 Q. So how do you determine how much money a
11 stronger performer receives, how much increase in
12 salary?

13 MR. WILSON: Foundation.

14 THE WITNESS: There's a lot of factors. We do
15 provide notes on the employee and describe the strength
16 of their performance; their starting salary is
17 different, depending on their previous experience and
18 years at the company; how much impact their particular
19 roles or projects have, et cetera. There's a lot of
20 factors that decide.

21 BY MS. SANGHVI:

22 Q. So it's fair to say it's a pretty subjective
23 evaluation depending on some of the factors that you've
24 laid out?

25 MR. WILSON: Form.

1 THE WITNESS: No. I'd say it's not subjective.

2 BY MS. SANGHVI:

3 Q. Is there some sort of -- I guess what I'm
4 trying to understand is, do you have some sort of grid,
5 you know, if you get a three, four, five in your
6 performance evaluation, then you're eligible for a 10
7 percent salary increase, but if you're in this range,
8 you're only eligible for this much of an increase.
9 That's really what I'm trying to understand.

10 MR. WILSON: Form, foundation.

11 THE WITNESS: We have a starting salary matrix,
12 and we have this, you know, strength of performance
13 notes on each employee. And then depending on a
14 variety of other factors that we look into very deeply,
15 we then decide employees in this band get roughly this
16 percent, employees in this band get this percent, but
17 it's not the same every year.

18 BY MS. SANGHVI:

19 Q. And who -- who do you make salary increase
20 decisions for, the four people that report to you?

21 A. I don't make the final decisions.

22 Q. Who does?

23 A. Paul and Jen.

24 Q. You're referring to Paul Mishkin the CEO and
25 Jennifer Gu the COO?

1 A. That's right.

2 Q. Does Kate Mattison who supervises you have any
3 input into that process?

4 A. Yes.

5 Q. How so?

6 A. She collects the input from all the individual
7 subjects and curates some like final list of
8 information and provides that to Jen and Paul.

9 Q. Do you know why they phased out the bonuses?

10 A. No.

11 Q. Have you ever been disciplined in any way?

12 MR. WILSON: Objection; form.

13 THE WITNESS: What do you mean by disciplined?
14 BY MS. SANGHVI:

15 Q. Have you ever received a written disciplinary
16 action while at IXL?

17 A. No.

18 Q. Have you ever been -- received a verbal
19 disciplinary warning while at IXL?

20 A. No.

21 Q. Have you ever had to issue any kind of
22 disciplinary warning to one of the individuals that
23 report to you?

24 A. Do you mean -- like what do you mean exactly?

25 Q. Let me ask it this way. Have you ever had an

1 employee who has received some sort of written
2 disciplinary warning?

3 A. Yeah.

4 Q. Who is that?

5 A. Richard Cudney.

6 Q. When was that?

7 A. 2015.

8 Q. What was that warning for?

9 A. It was a performance improvement plan.

10 Q. What is a performance improvement plan?

11 A. It is a written document that describes the
12 lack of standard in performance and sets a strategy for
13 improving that performance.

14 Q. Is it in place for a certain amount of time?

15 A. Depends.

16 Q. Mr. Cudney's, was it in place for a certain
17 amount of time?

18 A. Yes. Three months, I think.

19 Q. And then what happens at the end of the
20 three-month period?

21 MR. WILSON: Objection; form.

22 BY MS. SANGHVI:

23 Q. What happened at the end of the three-month
24 period for Mr. Cudney?

25 A. He improved.

1 Q. Was he taken off the performance improvement
2 plan?

3 A. Yes.

4 MR. WILSON: Cudney with a C or a K?

5 THE WITNESS: C.

6 BY MS. SANGHVI:

7 Q. Have you provided a performance -- have you
8 ever needed to do a performance improvement plan for
9 any other employees?

10 A. Yes.

11 Q. Who?

12 A. Ann Zatsman, Jeffrey Steckroth, Caitlin
13 Kozlowski. That's it.

14 Q. Let me ask you first. Is Mr. Cudney still
15 employed with IXL?

16 A. Yes.

17 Q. In what role?

18 A. Senior product analyst.

19 Q. When did you have to provide a performance
20 improvement plan for Ms. Zatsman?

21 A. End of 2016.

22 Q. Is she still employed?

23 A. No.

24 Q. Was that related to her performance on the
25 performance improvement plan?

1 A. That's right.

2 Q. So what happened there?

3 A. She didn't improve, and we terminated her
4 employment.

5 Q. What about Mr. Jeffrey Steckroth?

6 A. He also did not improve, and we terminated his
7 employment.

8 Q. When was that?

9 A. Spring 2017.

10 Q. And Caitlin Kozlowski?

11 A. She is still on the plan. It is current.

12 Q. So this method of putting employees on
13 performance improvement plans, is that a company
14 policy?

15 A. Yes.

16 Q. Has that always been a company policy?

17 A. Yeah.

18 Q. Do you discuss your decision to put individuals
19 on a performance improvement plan with anyone?

20 A. Yes.

21 Q. Who do you -- excuse me. I should have
22 clarified. With anyone above you.

23 A. Sometimes.

24 Q. Who would that be?

25 A. Kate.

1 Q. You're referring to Ms. Mattison?

2 A. That's right.

3 Q. Anyone else?

4 A. The manager of the employee. It's not always
5 me.

6 Q. Are there any personnel policies or procedures
7 that you are aware of regarding how to conduct a
8 performance evaluation of an employee?

9 A. Yes.

10 Q. Where would that be located?

11 A. I don't know.

12 Q. Describe to me what procedures you're thinking
13 about.

14 A. There's a form and strategy which is to
15 construct the plan in such a way that it can be helpful
16 to the employee so that they can actually improve on it
17 if they take the initiative to do so.

18 Q. Is that a written strategy --

19 A. No.

20 Q. -- or written guidance?

21 A. No.

22 Q. So how did you learn of that strategy of how to
23 create a performance evaluation review?

24 A. Conversations with HR.

25 Q. And who in HR?

1 A. Victoria and Charla.

2 Q. You're referring to Charla Rodney who, as I
3 understood it, was employed at IXL from February of
4 2015 through the end of 2015, correct?

5 A. Yes.

6 Q. And you're referring to Victoria --

7 A. Victoria K.

8 Q. K, yes. Who was employed after Ms. Rodney,
9 correct?

10 A. Yeah.

11 Q. So prior to February of 2015, were there any
12 policies or procedures about how to conduct performance
13 evaluations of employees?

14 A. Yes.

15 Q. And what were those?

16 A. The same.

17 Q. How did you -- you talked about understanding
18 the strategy of being helpful to an employee and that
19 you learned that through conversations with HR.

20 So I'm trying to understand prior -- since
21 Ms. Rodney only began in February of 2015 -- prior to
22 February of 2015, how were you understanding the
23 guidance -- the company guidance around performance
24 evaluation reviews?

25 A. Through Brad Marshall and my own boss, Kate.

1 Q. I don't know if I asked you this, but are there
2 personnel policies or procedures regarding, say,
3 performance improvement plans for individuals, written
4 performance -- excuse me, I'm going to start that over.

5 Are there any written policies or procedures
6 that IXL has about placing individuals on performance
7 improvement plans?

8 A. The form that I mentioned, yes.

9 Q. Where is that form located?

10 A. I don't know.

11 Q. How do you access it if you need to?

12 A. I have it in my e-mail from a while back.

13 Q. In general, if you need to access forms --
14 standard forms that IXL has, is there one location that
15 you can go to get those forms?

16 A. Yes. There's -- it's called the hub.

17 Q. Have you received any formal training as a
18 supervisor for how to either conduct a performance
19 review or place somebody on a PIP?

20 A. Yes.

21 Q. What formal training is that?

22 A. We had a meeting with Brad and he went over the
23 process on how to do it, how to have the conversation.

24 Q. When was that?

25 A. I think -- I don't know exactly. I'd say early

1 to mid-2014.

2 Q. Was that for all managers or for you as a new
3 manager?

4 A. It wasn't for all managers. It was a small
5 meeting.

6 (Ms. Tuazon leaves proceedings.)

7 BY MS. SANGHVI:

8 Q. Who else was there?

9 A. Kate was there and Isidora was there.

10 Q. And did this coincide with the time Ms. Milin
11 was supervising two employees as well?

12 A. Yes.

13 Q. Why was this meeting convened?

14 A. To discuss one of Isidora's reports.

15 Q. And who was that?

16 A. Nemo.

17 Q. Who was that discussion about?

18 A. It was about how to execute a performance plan.

19 Q. You were not -- actually, excuse me. Did you
20 supervise Nemo -- are you referring to Nemo Curiel?

21 A. Yes.

22 Q. And did you supervise Nemo Curiel?

23 A. No.

24 Q. So why were you at that meeting?

25 A. Because he was on my team.

1 Q. And did Mr. Curiel get placed on a performance
2 improvement plan?

3 A. Yes.

4 Q. Why?

5 A. I don't remember.

6 Q. What was the outcome of Mr. Curiel's
7 performance improvement plan?

8 A. He left voluntarily.

9 Q. Did he leave once he was placed on it,
10 because -- excuse me. Did he leave as soon as he was
11 placed on it?

12 A. I don't remember.

13 Q. Other than this meeting that you're recalling
14 in early to mid-2014 with Brad Marshall, any other type
15 of training that you recall receiving regarding IXL's
16 policies or procedures on performance reviews?

17 A. On performance reviews or performance
18 improvement plans?

19 Q. We'll break it down. Performance reviews
20 first.

21 A. I've had multiple conversations with Kate and
22 other managers about strategies for performing
23 performance reviews, so definitely I've had others
24 there.

25 Q. Any other meetings that you recall regarding

1 performance improvement plans?

2 A. No.

3 Q. Are there personnel policies or procedures at
4 IXL regarding how to handle complaints from employees?

5 A. Yes.

6 Q. What are they?

7 A. They can come to their manager's supervisor or
8 to HR directly.

9 Q. Where is that information located or where is
10 that --

11 A. A handbook.

12 Q. Do you remember when that handbook became --
13 you started using an employee handbook at IXL?

14 A. I don't remember.

15 Q. If an employee were to come to you with a
16 complaint, what would you do?

17 A. I would try and --

18 MR. WILSON: Objection; form.

19 Go ahead.

20 THE WITNESS: I would try and see if we could
21 work it out.

22 BY MS. SANGHVI:

23 Q. Would you consult anybody?

24 A. Yes.

25 Q. Who?

1 A. HR, Kate.

2 Q. You were involved in hiring Mr. Duane as a
3 product analyst, correct?

4 A. Yeah.

5 Q. And that was in mid-2013; is that correct?

6 A. Yes.

7 Q. Mr. Duane was employed at IXL from July 2013 to
8 January 8th, 2015. Does that seem right to you?

9 A. Yes.

10 Q. So in that period of time, he only held the
11 position of product analyst, correct?

12 A. Yes.

13 Q. Can you -- describe to me some of the more
14 important elements of the product analyst at that time?

15 A. Yes. So, like I said before, writing the
16 specs. That was like the main thing. And the
17 secondary thing was we did not have a QA -- dedicated
18 contact QA team at the time, so we did a lot of testing
19 of the resulting code that the engineers wrote based on
20 specs.

21 Q. Was that testing sometimes done on mobile
22 devices?

23 A. Uh-huh. Yes.

24 Q. Was that part of Scott's job as well?

25 A. Yes.

1 MR. WILSON: I'm sorry, for my -- can we go off
2 the record?

3 MS. SANGHVI: Yes.

4 (Off the record from 10:18 to 10:19.)

5 BY MS. SANGHVI:

6 Q. Did the product analyst have to work with UI
7 designers?

8 A. Sometimes.

9 Q. What is UI?

10 A. It's like --

11 Q. What does it stand for?

12 A. User interface.

13 Q. Now you can explain to me what user interface
14 is.

15 A. It's like the skin for the site. So like how
16 does it look, the aesthetics, how do you interact with
17 it.

18 Q. When you talked about testing, you were talking
19 about testing on mobile devices and anything else?

20 A. Browsers, too, yeah.

21 Q. Is there any phone interviewing that product
22 analysts have to do?

23 A. Some of them do, yes.

24 Q. What does that entail?

25 A. Interviewing candidates who apply for a job.

1 Q. You testified that one of the core functions of
2 the job was writing the specs and testing the resulting
3 generators. Can you explain to me what resulting
4 generators means?

5 A. Yes, the code the engineers write is called
6 generators because they generate problems.

7 Q. From July of 2013 to January of 2014, you and
8 Mr. Duane were both product analysts, correct?

9 A. Yes.

10 Q. What were your impressions of him as a peer?

11 A. Can you clarify what you mean by impression?

12 Q. What were your impressions of his work product
13 as a peer product analyst?

14 A. It was okay. It needed more time review, but
15 he was new, ramping up.

16 MR. WILSON: Malinda has returned. Better?

17 MS. TUAZON: Better, thank you.

18 BY MS. SANGHVI:

19 Q. Did you have critiques of Mr. Duane's work at
20 this time in the Jan -- excuse me, in the July 2013 to
21 January 2014 period of time?

22 A. Yes.

23 Q. And what were some of those critiques?

24 A. Testing. I remember he could be a little more
25 thorough, like focusing too much on one aspect of it.

1 Then I mentioned the specs, taking longer to get
2 through review.

3 Q. When you became his manager, so in the period
4 of January 2014 to January of 2015, what were your
5 general impressions of his work product?

6 A. He never made the IXL standard. So, again,
7 specs took longer to get through review. He didn't
8 apply feedback from previous ones to the next ones, so
9 like the same sort of issues were appearing.

10 Q. Did you ever have the opportunity to review his
11 work in any formal written document?

12 A. I'm not sure I fully understand the question.

13 Q. I think earlier you testified to drafting and
14 writing performance evaluation reviews for employees.

15 A. Uh-huh.

16 Q. So I'm curious, up until January of 2014, is it
17 correct that Ms. Mattison would have been responsible
18 for --

19 A. Yes.

20 Q. -- evaluating Scott Duane's performance?

21 A. Yes.

22 MR. WILSON: Just wait for her.

23 BY MS. SANGHVI:

24 Q. And as of -- from January 2014 to January of
25 2015, you were responsible for evaluating Mr. Duane's

1 performance, correct?

2 A. Yes.

3 Q. So in that period of time, did you have the
4 occasion to draft a written performance evaluation for
5 Mr. Duane?

6 A. Yes.

7 Q. When did you draft that?

8 A. End of the year, 2014.

9 Q. And for what purpose did you draft that
10 document?

11 A. For his annual review.

12 Q. What did you do with that document once he
13 drafted it?

14 A. I asked Kate to review it.

15 Q. Why?

16 A. Because I wanted her input.

17 Q. I think you testified earlier that you don't
18 always solicit Ms. Mattison's input. So I'm curious
19 why for Mr. Duane you sought her input?

20 A. Because she had managed him just recently.

21 Q. She had managed him the one year prior; is that
22 correct?

23 A. That's right.

24 Q. Any other reason other than she had previously
25 managed him?

1 A. No.

2 Q. And how did you ask for her review -- ask for
3 her input?

4 A. I don't remember.

5 Q. Did you walk it over to her office and say,
6 "Can you look at this" or did you e-mail it to her?

7 A. I don't remember. One of those two.

8 Q. And then what input, if any, did Ms. Mattison
9 give you?

10 A. I think she said it looked fine.

11 Q. Did you make any changes after Ms. Mattison's
12 review?

13 A. I don't remember.

14 Q. When you draft these documents, just
15 physically, where do you save them?

16 A. On the drive.

17 Q. Are you referring to a shared drive?

18 A. No. I don't remember which drive.

19 Q. Would you save it to your desktop?

20 A. No. We had personal drives, so it would
21 probably be there.

22 Q. And then what did you do with that review, if
23 anything, after that -- after Ms. Mattison's review?

24 A. I -- nothing.

25 Q. Did you meet with Mr. Duane about it?

1 A. No.

2 Q. Why not?

3 A. Because we had decided to terminate him.

4 Q. Other than the performance evaluation meeting,
5 did you -- excuse me, the performance evaluation review
6 for Mr. Duane, were there other ways in which you
7 evaluated his performance?

8 A. Yes.

9 Q. And how -- describe some of those for me.

10 A. One-one conversations, spec reviews.

11 Q. How often did you have one-to-one meetings with
12 Mr. Duane?

13 A. Weekly.

14 Q. And how did those meetings generally go?

15 A. Not great.

16 Q. Why is that?

17 A. He would not provide details often.

18 Q. Was that something that other product analysts
19 did during their one-to-one meetings?

20 A. Yes.

21 Q. Is that something that you asked him to do?

22 A. Yeah.

23 Q. And Mr. Duane didn't. So what did you do about
24 him not providing details?

25 A. I would ask follow-up questions to get the

1 details.

2 Q. And then would you get the details once you
3 asked the follow-up questions?

4 A. Yes.

5 Q. So am I correct to understand that your
6 critique of the one-to-one meetings is because
7 Mr. Duane wouldn't initially provide you with details,
8 is that correct, until you had to ask follow-up?

9 A. That's right.

10 Q. Once the review -- your general practice in
11 2014 once you drafted a performance evaluation review
12 and you received or didn't receive input from
13 Ms. Mattison, you would generally review it with the
14 employee; is that correct?

15 A. That's right.

16 Q. And what does that process look like,
17 generally?

18 A. Usually it's over coffee or lunch, and it's a
19 two-way conversation about we're kind of recapping the
20 last year and looking forward to the next year.

21 Q. Is the employee given an electronic copy of
22 that document?

23 A. Sometimes.

24 Q. What happens with that review? Do you put it
25 in a file of some sort, do you give it to HR?

1 A. Upload it to the HR system.

2 Q. And you upload it to the HR system only once
3 it's been reviewed with the employee?

4 A. That's right.

5 Q. Do employees have the opportunity to change or
6 edit that document in some way based on your
7 conversation with them?

8 A. Typically employees will have their own
9 document and bring it to the conversation so it can be
10 beneficial. I get theirs, they get mine.

11 MS. SANGHVI: I'm going to mark as Exhibit 39 a
12 two-page document Bates number IXL-1674.

13 (Document marked Deposition Exhibit 39
14 for identification.)

15 BY MS. SANGHVI:

16 Q. Mr. Keyes, I'm showing you a document that the
17 court reporter has labeled Exhibit 39.

18 Is this the performance annual review for
19 Mr. Duane that you were referring to creating at the
20 end of 2014?

21 A. Yes.

22 Q. Do you know if you uploaded this to the HR
23 system?

24 A. I don't remember exactly.

25 MS. SANGHVI: I'm going to show you another

1 document. It's a three-page document starting at Bates
2 IXL-1715. I'm going to have it marked as Exhibit 40.

3 (Document marked Deposition Exhibit 40
4 for identification.)

5 BY MS. SANGHVI:

6 Q. What is -- do you see this document marked
7 Exhibit 40?

8 A. Yes.

9 Q. Can you explain to me what this document is?

10 A. Yes. These are my running notes throughout the
11 year.

12 Q. Do you keep this for every employee?

13 A. Who directly reports to me, yes.

14 Q. And what do you mean by when you say running
15 notes?

16 A. Well, you'll see on page 2 that's dates and,
17 you know, bold headers. So throughout the year I keep
18 notes on employees to make writing this a lot easier.

19 Q. So am I correct to understand that this
20 document pre-dates Exhibit 39?

21 A. That's right.

22 Q. And in Exhibit 40 where it says "DK notes,"
23 that is referencing David Keyes' notes, correct?

24 A. That's right.

25 Q. It looks like you have in here sort of three

1 snapshots, July 2014, September 2014 and November of
2 2014. Any reason for those particular dates?

3 A. No.

4 MS. SANGHVI: I'm going to show you a one-page
5 document, handwritten, bearing Bates number IXL-1928.
6 That is as Exhibit 41.

7 (Document marked Deposition Exhibit 41
8 for identification.)

9 BY MS. SANGHVI:

10 Q. Mr. Keyes, do you recognize the handwriting on
11 this document?

12 A. Yes.

13 Q. Whose is it?

14 A. Mine.

15 Q. Can you describe to me what this document
16 appears to be?

17 A. Yeah. This must have been a check-in in 2014 I
18 did with Scott.

19 Q. Is this -- was it common for you to keep
20 handwritten notes of check-ins with your direct
21 reports?

22 A. Sometimes. Depended when I worked on them if I
23 typed them up or wrote them down.

24 Q. Do you have any -- looking at this document,
25 can you give me any estimate as to when this check-in

1 might have taken place, given that it's undated?

2 A. No. I don't know.

3 Q. In the second starred point it says, "Strive
4 for perfection in all projects 4/5?

5 Is that a date or is that -- some sort of
6 numerical system, do you know, that you made?

7 A. I don't know.

8 Q. Just for my clarification, what's the last word
9 on this document?

10 A. This one (indicating)?

11 Q. Yes.

12 A. "Positive."

13 Q. And it's your memory that this is a document
14 that you might have written while meeting with Scott or
15 after?

16 A. Before.

17 Q. So it's accurate to say that these are your
18 notes to prepare for a one-on-one?

19 A. Before.

20 Q. Is it common when you are creating a
21 performance evaluation score for an employee that you
22 solicit input from other employees?

23 A. Yes.

24 Q. And what is that input that you solicit?

25 MR. WILSON: Objection; form.

1 THE WITNESS: They're called peer evaluations.

2 BY MS. SANGHVI:

3 Q. So is there a process by which you seek peer
4 evaluations prior to your drafting a performance
5 review?

6 A. Yes, there's a company process.

7 Q. Can you describe that process for me?

8 A. Yeah. For each direct report a supervisor has,
9 we list names of people either from within our own
10 teams or other teams in the company, we send that list
11 to engineering, they actually have a script, and they
12 automatically send out e-mails to those people to write
13 notes on said employee, and those e-mails come to us.

14 Q. So the -- is there a number of peer evaluations
15 that you solicit per employee?

16 A. It ranges between two and five.

17 Q. And are the peer evaluations required if
18 somebody gets a request for "Please evaluate your
19 peer," are they required to then provide that input?

20 A. Yes. Yes.

21 Q. Did you solicit peer evaluations for Mr. Duane
22 prior to drafting Exhibit 39 in his performance review
23 of 2014?

24 A. Yes.

25 Q. Do you remember from whom?

1 A. No.

2 MS. SANGHVI: I'll ask the court reporter to
3 mark as Exhibit 42 a one-page document that's a
4 printout of an e-mail bearing Bates number IXL-1626.
5 It's from Andrew Lenox to David Keyes dated
6 November 17, 2014.

7 (Document marked Deposition Exhibit 42
8 for identification.)

9 BY MS. SANGHVI:

10 Q. Did you solicit Mr. Lenox's feedback prior to
11 drafting Mr. Duane's performance review for 2014? Does
12 this refresh your recollection?

13 A. Yes. I mean I -- I definitely must have.

14 Q. How would you characterize Mr. Lenox's review?
15 Actually, strike that. I'm sorry.

16 Do you recall -- now having seen this document,
17 do you recall receiving Mr. Lenox's review of
18 Mr. Duane's performance?

19 A. Yes.

20 Q. What do you recall about his review of
21 Mr. Duane's performance?

22 MR. WILSON: Objection; form.

23 THE WITNESS: Looks like he liked Scott.

24 BY MS. SANGHVI:

25 Q. Did you disagree with anything that Mr. Lenox

1 was reviewing?

2 A. No. Scott could be very positive when he
3 wanted to be.

4 Q. Do you have any reason to believe that
5 Mr. Lenox was not providing you with truthful
6 information?

7 A. No.

8 MS. SANGHVI: I'm marking as Exhibit 43 a
9 two-page e-mail bearing Bates number IXL-1629 from
10 Juyang Xia to David Keyes on November 20th, 2014.

11 (Document marked Deposition Exhibit 43
12 for identification.)

13 BY MS. SANGHVI:

14 Q. Do you recognize this document?

15 A. Yeah.

16 Q. First let me ask you, I think you talked about
17 the engineers have a script to generate an e-mail. Is
18 this an example of that e-mail that was generated to
19 Mr. Duane's peers?

20 A. This part here (indicating).

21 Q. Yes, the bottom part.

22 MR. WILSON: When you -- when you point to
23 something, just describe verbally what you are pointing
24 to.

25 BY MS. SANGHVI:

1 Q. If you look a few lines down into the document
2 where it says on Thursday, November 13th dkeyes@ixl.com
3 wrote, and then there is text here that appears to be
4 an auto-generated e-mail; is that accurate?

5 A. Yes.

6 Q. And that is what you were referring to earlier
7 about the solicitation for peer evaluations, this is
8 the e-mail that gets generated?

9 A. Yes.

10 Q. Does this refresh your recollection that
11 Mr. Xia -- I'm not sure if I'm saying that right.

12 A. "Miss."

13 Q. Miss Xia?

14 A. Uh-huh.

15 Q. -- provided to you?

16 A. Yes.

17 Q. Do you have any reason to believe that this
18 e-mail -- that this feedback was false?

19 A. No.

20 Q. If these -- is it possible that these are the
21 only two peer evaluations that you received for
22 Mr. Duane's performance in 2014?

23 A. Yes.

24 Q. Would you agree that while you noted areas of
25 improvement for Scott Duane throughout the time that

1 you supervised him in 2014, you also always recognized
2 areas where he demonstrated good performance?

3 A. Yes.

4 Q. And it's -- am I correct in understanding that
5 you never placed Mr. Duane on a performance improvement
6 plan of any sort?

7 A. That's correct.

8 Q. Are you also -- would you agree that you also
9 recommended Mr. Duane receive raises while he was
10 employed at IXL, salary raises?

11 A. Yes, I recommended an average.

12 Q. Did you ever supervise a person by the name of
13 Jessica Morse?

14 A. Yes.

15 Q. What role did Jessica Morse play?

16 A. She was a product analyst.

17 Q. Is she still employed?

18 A. No.

19 Q. Why not?

20 A. We terminated her employment.

21 Q. Why?

22 A. She was very difficult to work with,
23 increasingly negative, and really wasn't hired for the
24 role that she ended up having.

25 Q. What role was she hired for?

1 A. The video project role.

2 Q. And that project was canceled, correct?

3 A. Yes.

4 Q. When was she terminated?

5 A. End of January 2015.

6 Q. She was good friends with Mr. Duane, correct?

7 MR. WILSON: Objection; form, foundation.

8 Go ahead.

9 THE WITNESS: Yes, I believe so.

10 BY MS. SANGHVI:

11 Q. Did her termination have anything to do with
12 Mr. Duane's termination?

13 A. No.

14 Q. Was Ms. Morse ever placed on a performance
15 improvement plan?

16 A. No.

17 Q. Why not?

18 A. I don't recall.

19 Q. In the course of your time as a supervisor,
20 approximately how many people have you terminated?

21 A. Four to five.

22 Q. We've established that Mr. Duane is one,
23 Jessica Morse is another. Can you name the others?

24 A. Ann Zatsman, Jeffrey Steckroth. That's it.

25 Q. So I think you've also testified that

1 Ms. Zatsman and Mr. Steckroth were placed on
2 performance improvement plans, correct?

3 A. Yes.

4 Q. But that Mr. Duane and Ms. Morse were not,
5 correct?

6 A. Correct.

7 Q. What are some of your other criticisms of
8 Mr. Duane's performance in the time that you supervised
9 him?

10 A. It would help me to know what you, I guess,
11 already heard to be my criticisms so I can think about
12 what the other ones are.

13 Q. And what I'm asking is, as you sit here today,
14 what are the list of criticisms that come to mind?

15 A. Okay. So biggest one was lack of quality in
16 the work, so taking a long time to get through review.
17 And then others would be like organization and
18 follow-through. He was in charge of the mobile device
19 cabinet, and that was kind of a mess. And then being
20 more like share -- like open and sharing in one-one
21 meetings instead of me having to like pull it out of
22 him, like coming prepared.

23 Q. Anything else?

24 A. No.

25 Q. And then the little device cabinet, is that --

1 sometimes I'm not sure if electronics speak is the same
2 as actual speak. Is that actually a cabinet with
3 mobile devices in it?

4 A. Yes.

5 Q. And what was his job there as being in charge
6 of the mobile device cabinet?

7 A. Organizing it, you know, chargers, like making
8 sure devices weren't lost around the office.

9 Q. And that was a product analyst role more than
10 it was an IT department role?

11 A. In this case it was a product analyst's
12 responsibility because the product analysts use those
13 devices for testing so --

14 MS. SANGHVI: We've been going for about an
15 hour and a half. Would you like to take a break?

16 MR. MAREK: Yeah.

17 MS. SANGHVI: We'll take a ten-minute break.

18 (Break taken from 10:53 to 11:16.)

19 BY MS. SANGHVI:

20 Q. Mr. Keyes, when did you first learn that
21 Mr. Duane needed to take a leave of absence?

22 A. Summer 2014.

23 Q. Actually, I'm going to ask you, prior to the
24 summer of 2014, at some point in February of -- excuse
25 me, at some point in December of 2013, did you learn

1 that Mr. Duane needed to go out for approximately one
2 week in February?

3 A. Yes.

4 Q. And what was your understanding of his
5 necessary leave of absence in February of 2014?

6 A. He told me he needed it for an operation. I
7 said okay.

8 Q. Did you have any understanding of what that
9 operation was?

10 A. No.

11 Q. Did you discuss his need for a leave for an
12 operation with anybody?

13 A. No.

14 Q. Just what is the process when an employee --
15 when Mr. Duane informed you that he needed to take a
16 leave for an operation?

17 A. The process in this case, because it was only a
18 week, was for the manager to approve it, and I did.

19 Q. Then I think you were about to say in the
20 summer of 2014 you became aware of another leave of
21 absence that Mr. Duane required; is that correct?

22 A. Yes.

23 Q. Can you tell me when, approximately, that you
24 learned that?

25 A. Summer of 2014.

1 Q. And how did you learn?

2 A. He told me he would need to be out for a couple
3 of months in the fall.

4 Q. Did you understand why he needed to be out for
5 a couple of months in the fall?

6 A. No.

7 Q. Mr. Duane didn't tell you that it was for
8 surgery?

9 A. He did say surgery, yes.

10 Q. What did you do once you had that -- excuse me.
11 How did he give you that information?

12 A. I believe verbally.

13 Q. And then what did you do next?

14 A. I said, "Okay, that's fine. Let me know what
15 you need from me."

16 Q. Did you have any other meetings regarding his
17 leave prior to him going on leave?

18 A. Yes.

19 Q. When is the first meeting that you recall?

20 A. Specifically about the leave?

21 Q. Yes.

22 A. I don't recall when the first meeting was.

23 Q. Do you recall in September of 2014 you spoke
24 with Ms. Mattison regarding Scott's upcoming leave of
25 absence?

1 A. No.

2 MS. SANGHVI: I'm going to mark in evidence
3 Exhibit 44, a one-page printout of a chat message
4 between David Keyes and Kate Mattison on September 26,
5 2014 bearing Bates number IXL-0804.

6 (Document marked Deposition Exhibit 44
7 for identification.)

8 BY MS. SANGHVI:

9 Q. Mr. Keyes, is this a conversation between you
10 and your supervisor Kate Mattison over Gchat?

11 A. Yes.

12 Q. Does this refresh your recollection that you
13 spoke to Ms. Mattison in September -- late September of
14 2014 regarding Scott's leave?

15 A. Yeah.

16 Q. Do you recall that meeting now?

17 A. No.

18 Q. Why -- do you recall why you needed to meet
19 with Ms. Mattison regarding Scott's leave?

20 A. No, I don't.

21 Q. Do you recall any meetings with Ms. Mattison
22 regarding Scott's leave prior to him taking it?

23 A. No.

24 Q. Do you recall any conversations with
25 Ms. Mattison regarding the reason for Scott's leave?

1 A. No.

2 Q. Did you ever have a meeting with Mr. Duane and
3 Mr. Marshall?

4 A. No.

5 Q. Was there a plan to have a meeting with
6 Mr. Duane and Mr. Marshall with regards to Mr. Duane's
7 upcoming leave of absence?

8 A. I don't recall for all three of us.

9 Q. Do you recall meeting with Mr. Duane and
10 anybody in HR?

11 A. Yes.

12 Q. What do you recall?

13 A. We met with Maricela Prado.

14 Q. And who is "we"?

15 A. Sorry. Scott and I and Maricela met to discuss
16 Scott's upcoming leave.

17 Q. Where was that meeting?

18 A. In the office.

19 Q. Do you remember where in the office?

20 A. One of the sixth floor conference rooms.

21 Q. Other than Mr. Duane, Ms. Prado and yourself,
22 was anyone else present?

23 A. No.

24 Q. Approximately how long was that meeting?

25 A. Half an hour.

1 Q. What did you discuss at that meeting?

2 A. Scott's upcoming leave, the approximate dates,
3 when he was going out, when he was coming back -- or
4 when he thought he would be coming back, and how
5 disability would be set up.

6 Q. Anything else that you recall being discussed
7 at that meeting?

8 A. No.

9 Q. Any accommodations that Mr. Duane sought at
10 that meeting?

11 A. No.

12 Q. Do you recall Mr. Duane asking for a mouse to
13 attach to his computer at that meeting?

14 A. No.

15 Q. Do you remember if Mr. Duane was wearing a
16 protective sleeve on his arm at that meeting?

17 A. No.

18 Q. Was he wearing a protective sleeve on his arm?

19 MR. WILSON: Objection.

20 Go ahead.

21 THE WITNESS: I don't know.

22 BY MS. SANGHVI:

23 Q. Did Ms. Prado ask Mr. Duane about why he was
24 wearing a protective sleeve on his arm?

25 A. I don't know.

1 Q. Did you hear Ms. Prado ask Mr. Duane why he was
2 wearing a protective sleeve on his arm?

3 A. No.

4 Q. Did you hear Ms. Prado ask Mr. Duane why the
5 surgeon could not operate on the other arm?

6 A. No.

7 Q. Did you know that Mr. Duane was going to have
8 some type of surgery related to his arm?

9 A. I don't know.

10 Q. What knowledge did you have about the nature of
11 Mr. Duane's surgery?

12 A. All I knew is that it was surgery. I asked him
13 if he was okay. He said, "Yes, I'll be fine. It's not
14 serious." Or "life threatening" I think was the phrase
15 he used. And I said okay.

16 Q. And that conversation happened at this meeting
17 with Ms. Prado?

18 A. No, that was earlier.

19 Q. How much earlier?

20 A. In the summer.

21 Q. Was it related to the first time that he
22 informed you that he would need surgery?

23 A. I don't know.

24 Q. In your mind at that time in that meeting with
25 Ms. Prado and Mr. Duane, did you speculate about the

1 reason for his leave?

2 A. No.

3 Q. Were you curious about why he needed surgery?

4 A. No.

5 Q. Had you ever had any other employees seek leave
6 of absence for a medical reason?

7 A. I don't recall.

8 Q. And did Mr. Duane inform the math team that he
9 would be out for a period of time due to a personal and
10 private medical situation?

11 A. Yeah.

12 Q. How did he inform them?

13 A. E-mail.

14 Q. After Mr. Duane sent that e-mail, did any
15 members of the team ask you about the circumstances of
16 Mr. Duane's leave?

17 A. No.

18 Q. Do you know approximately when that meeting
19 with Ms. Prado occurred?

20 A. Close to when Scott actually went on leave.

21 Q. Which was when?

22 A. End of October, early November 2014.

23 Q. Do you know if the conversation that you had
24 with Ms. Mattison was before or after this meeting with
25 Ms. Prado and Mr. Duane?

1 A. Before.

2 Q. You remember that it was before, but you don't
3 remember what you discussed with Ms. Mattison?

4 A. Right.

5 Q. How would you describe Mr. Duane's attitude at
6 the meeting that you had with Ms. Prado and Mr. Duane?

7 A. He was a little upset.

8 Q. Can you explain that a little?

9 A. Yeah. It seemed like he was stressed out about
10 the upcoming operation, wanting to get, you know, ducks
11 in a row before he left.

12 Q. So you would characterize his upset as being
13 more concerned about organizing the details prior to
14 his leave, that it was related to that?

15 A. I don't know if it was related to that.

16 Q. Did you feel as if his sense of upset was
17 directed at you?

18 A. No.

19 Q. Did you sense that it was directed at
20 Ms. Prado?

21 A. No.

22 Q. Let me show you a document that's previously
23 been marked as Exhibit 23. It is an e-mail -- it's a
24 print out of an e-mail chain between Ms. Prado,
25 Mr. Duane, Mr. Keyes starting at Bates number IXL-1603.

1 If you could take a look through that document,
2 I'm not asking you questions directly related to it,
3 but just to refresh your recollection.

4 MR. WILSON: Document 23? Exhibit 23, I mean;
5 is that right?

6 MS. SANGHVI: That's correct.

7 THE WITNESS: (Witness reviewing document.)

8 BY MS. SANGHVI:

9 Q. Does this refresh your recollection that you
10 were initially scheduled to meet with Brad Marshall
11 regarding Mr. Duane's leave?

12 A. Where does it say that?

13 Q. If you look at sort of the very beginning of
14 the thread, so the last page of the printout.

15 A. Yes.

16 MR. WILSON: Go ahead and read it.

17 THE WITNESS: Oh, last page of the printout
18 says --

19 MR. WILSON: I'm sorry, I don't mean to
20 interrupt. I don't mean read it for the record. If
21 you need to read something, she's already said this
22 before, go ahead and read it. It's not a speed read
23 test. But go ahead.

24 BY MS. SANGHVI:

25 Q. I just want to know if that refreshes your

1 recollection that Mr. Marshall was at some point
2 involved in the discussion about Mr. Duane's leave?

3 A. Yes.

4 Q. And does it refresh your recollection at all
5 that Mr. Marshall had provided some inaccurate
6 information to Mr. Duane about the disability pay while
7 he was on leave at all?

8 A. Where does it say that?

9 Q. So setting the document aside for one second,
10 what I'm really looking for is -- if recalling now that
11 you had these discussions that there was a conversation
12 with Mr. Marshall originally, does that trigger any
13 memories for you regarding the context of
14 Mr. Marshall's involvement in Mr. Duane's leave?

15 MR. WILSON: Objection; form.

16 Go ahead.

17 THE WITNESS: Yes. I knew that Scott had been
18 communicating with Brad.

19 BY MS. SANGHVI:

20 Q. And if you look at the first page of the
21 document, it also indicates that Mr. Duane had
22 requested an ergonomic mouse postsurgery.

23 Does that refresh your recollection as to his
24 request for any accommodation?

25 A. (Witness reviewing document.)

1 Yeah.

2 Q. Is it still your testimony that you had no
3 knowledge about the nature of Mr. Duane's upcoming
4 surgery?

5 A. That's right. Yeah.

6 Q. And you had no knowledge that the surgery would
7 affect his arm in any way?

8 A. Right.

9 Q. When's the first time that you communicated
10 with Mr. Duane after he began his medical leave in late
11 October of 2014?

12 A. Company holiday party I saw him.

13 Q. That was in December of 2014?

14 A. That's right.

15 Q. Where was that party?

16 A. San Francisco.

17 Q. Did Mr. Duane bring a guest with him to the
18 party?

19 A. Yeah.

20 Q. Can you describe his guest?

21 A. A woman.

22 Q. Did Mr. Duane introduce you to his guest?

23 A. I think so.

24 Q. Did you have any reaction to Mr. Duane's
25 presence at the party?

1 A. No.

2 Q. Were you surprised to see him there?

3 A. I was glad to see him.

4 Q. Why?

5 A. It meant he was doing well.

6 Q. Did he seem to be doing well?

7 A. Yeah. He was at the party.

8 Q. Did it strike you as odd that he was well
9 enough to be at the party and yet still out on medical?

10 A. No. He was coming back soon.

11 Q. Did you discuss Mr. Duane's presence at the
12 holiday party with any other IXL employee?

13 A. I don't remember.

14 Q. Is it possible you did?

15 A. I suppose, yes.

16 Q. Were you surprised to see Mr. Duane with a
17 female guest?

18 A. No.

19 Q. Did you have any impressions prior to this
20 holiday party in 2014 about Mr. Duane's gender
21 identity?

22 A. Can you clarify what you mean by that?

23 Q. I don't know that I can.

24 I'm asking if you -- having interacted with
25 Mr. Duane from July of 2013 when he was hired to

1 December of 2014, if you had formed any impressions
2 about his gender identity?

3 A. I thought he was a gay man.

4 Q. But it wasn't surprising to see him come to the
5 holiday party with a female guest?

6 A. No.

7 Q. After the holiday party -- sorry. Did you --
8 do you remember any specific conversations with
9 Mr. Duane at the holiday party?

10 A. I said hello, he introduced his guest, my wife
11 was with me, I introduced her. I think that was about
12 it.

13 Q. After the interaction at the holiday party,
14 what was the next communication that you had with
15 Mr. Duane?

16 A. I think it was the e-mail he sent me about, you
17 know, coming back.

18 Q. What do you remember about that e-mail?

19 A. He told me he had developed a complication
20 postsurgery and asked if I would be open to him working
21 from home half the time.

22 Q. When you received the e-mail, did you consider
23 it to be a request for a reasonable accommodation?

24 A. Yes, I guess. It was a request.

25 Q. But you did understand it to be a request

1 related to his medical condition, correct?

2 A. Yes. Yeah.

3 Q. So what did you do when you received that
4 e-mail?

5 A. Well, I wasn't comfortable with the arrangement
6 or that he had proposed, so I consulted with HR, I
7 consulted with Kate, and I wrote a response.

8 Q. Who in HR did you consult with?

9 A. Lenore and Maricela.

10 Q. How did you consult with them?

11 A. I talked to them.

12 Q. Well, let's back up one second.

13 When you received the e-mail, did you forward
14 it to Ms. Ockerberg or Ms. Prado?

15 A. I don't remember.

16 Q. Did you schedule a meeting with them or just --

17 A. Uh-huh. Yes.

18 Q. With both of them?

19 A. Yes.

20 Q. When did you schedule that meeting with them?

21 A. Soon after I received the e-mail.

22 Q. And where -- did you meet then with them?

23 A. Yes, over the phone.

24 Q. Were you in the office?

25 A. No, not -- not that day.

1 Q. And on the phone call is yourself,
2 Ms. Ockerberg and Ms. Prado. Was anyone else on that
3 phone call?

4 A. No.

5 Q. What did you discuss on that phone call?

6 A. Discussed -- you know, I talked about how I
7 wanted to respond, and then we discussed like how it
8 should be, you know, framed.

9 Q. So tell me what you said about what you -- how
10 you wanted to respond?

11 A. Well, I was concerned with Scott's productivity
12 when he worked remotely in the fall and the summer in
13 his pre-op appointments, which is something Scott and I
14 talked about. So having him work remotely four hours
15 every day of the week I wasn't comfortable with. So I
16 wanted to like tell him that, and then also see if we
17 could do anything to make him comfortable and able to
18 work in the office.

19 Q. So did you tell Ms. Ockerberg and Ms. Prado
20 that Scott was suffering a postoperative condition
21 called a fistula?

22 A. I don't remember if I gave them that detail or
23 not.

24 Q. Did you investigate -- were you aware of what a
25 post-surgical fistula is?

1 A. No.

2 Q. Did you investigate what a post-surgical
3 fistula is?

4 A. No.

5 Q. Did you consider the length of time it normally
6 takes for a fistula to heal?

7 A. No.

8 Q. Did you consider the fact that Mr. Duane
9 indicated that it would only be a few weeks that he
10 would need this accommodation?

11 A. Yeah, I considered that.

12 Q. And was that discussed in the meeting with
13 Ms. Ockerberg and Ms. Prado?

14 A. No.

15 Q. What advice did Ms. Ockerberg and Ms. Prado
16 give you?

17 A. They said that we are required to pursue
18 accommodations. So I said great, let's see if there
19 are accommodations in the office.

20 Q. So when you -- did you -- in that conversation,
21 did you talk about specific accommodations that could
22 be made in the office?

23 A. No.

24 Q. What was in your mind about how you might be
25 able to accommodate Mr. Duane?

1 A. I didn't know. I wanted him to let me know if
2 there's anything we could do.

3 Q. Are you familiar with the term "interactive
4 process" as it relates to reasonable accommodation
5 requests by an employee?

6 A. Yes.

7 Q. And what's your understanding of that term?

8 A. That the employer and the employee should
9 engage in a conversation about reasonable
10 accommodations.

11 Q. Did you consider -- excuse me. After speaking
12 to -- I think you said you consulted with HR, and that
13 consisted of Ms. Ockerberg and Ms. Prado. Anyone else?

14 A. Yeah, Kate.

15 Q. In HR, I mean, anyone else?

16 A. No.

17 Q. Then you also mentioned that you consulted with
18 Kate. When did you consult with Ms. Mattison?

19 A. I believe after HR. So I wrote the e-mail, and
20 then I had Kate read it over.

21 Q. And what was Ms. Mattison's response?

22 A. She said it looks good.

23 Q. Did she have -- did you have any conversations
24 with her about this separate from showing her the text
25 or the e-mail you intended to send Mr. Duane?

1 A. I don't remember.

2 Q. Did you consult anyone other than
3 Ms. Ockerberg, Ms. Prado and Ms. Mattison?

4 A. No.

5 Q. So then what did you do next?

6 A. I sent the e-mail.

7 Q. What did you say in your e-mail to Scott?

8 A. I said, "I prefer you to be in the office
9 because you're more productive here." And then I said,
10 "Is there anything we can do to accommodate you in the
11 office?"

12 Q. When you sent the e-mail to Mr. Duane on -- the
13 follow-up e-mail, excuse me, you sent that on
14 December 22nd; is that correct?

15 A. I don't know.

16 Q. Let me get a document in front of you.

17 I'm going to mark into evidence Exhibit 45, a
18 four-page document that starts at IXL 0569. Just for
19 the record, this version of their production is IXL
20 space 0569. There's no hyphen.

21 It's a printout of e-mails between David Keyes
22 and Scott Duane. The most recent of the thread is
23 dated December 25th, 2014.

24 (Document marked Deposition Exhibit 45
25 for identification.)

1 BY MS. SANGHVI:

2 Q. Does this appear to be an accurate printout of
3 the e-mail communication that we've been referring to
4 between you and Mr. Duane?

5 A. Yes.

6 Q. Does this refresh your recollection that you
7 responded to Mr. Duane on December 22nd, 2014 at
8 3:47 p.m.?

9 A. Yes.

10 Q. When you sent the e-mail on December 22nd,
11 Ms. Ockerberg had already informed you that you were
12 risking a violation of the law if you did not allow
13 Scott to work remotely given his medical situation,
14 correct?

15 MR. WILSON: Objection; form.

16 THE WITNESS: I don't know.

17 BY MS. SANGHVI:

18 Q. I'm going to show you an exhibit already marked
19 as 13.

20 A. (Witness reviewing document.)

21 Q. Does that refresh your recollection that
22 Ms. Ockerberg told you that since IXL allows other
23 product analysts to work remotely, IXL could risk
24 getting sued if you didn't allow Scott to do so as well
25 given his medical condition?

1 A. Yeah.

2 Q. That e-mail was according to the timestamp next
3 to your name at 3:46 p.m., correct?

4 A. Yes.

5 Q. So at the time you sent the e-mail to
6 Mr. Duane, you were aware that there was a risk of
7 violation of the law if you did not allow him to work
8 remotely, correct?

9 A. I was aware that Lenore thought there was a
10 risk, yeah.

11 Q. But you didn't agree with Ms. Ockerberg?

12 A. We were engaging in reasonable accommodations
13 situations, so I didn't fully agree.

14 Q. Can you explain that a little bit more?

15 A. Well, this paragraph in my e-mail, "Is there
16 anything we can do to accommodate your situation so you
17 can work in the office?" is to me trying to find
18 reasonable accommodation.

19 Q. But in the paragraph before where you say, "I
20 would prefer that you be in the office," you were
21 denying his request to work from home or not?

22 MR. WILSON: Objection.

23 THE WITNESS: No.

24 BY MS. SANGHVI:

25 Q. So can you explain that a little bit?

1 A. I was being very open and honest saying I would
2 prefer he be in the office because he showed previous
3 productivity issues when he worked from home. And then
4 I asked him, "Can we accommodate you in the office?" I
5 didn't know the answer to that question yet.

6 Q. And can you talk about the previous
7 productivity issues that you just mentioned?

8 A. Sure. Scott had a series of pre-op
9 appointments in late summer, early fall. I think it
10 was twice a week. And he requested to work remotely on
11 those days, so I said okay. And I noticed a lack of
12 productivity on those days, and we talked about it.
13 And he admitted and agreed that he was not productive
14 on those days. He said the appointments wiped him out.
15 I said, "Okay. I totally get that. What time are the
16 appointments?"

17 "They are like lunch time."

18 "So can you do a half day and then go to the
19 appointment and then rest?"

20 He was like sure. So he did half sick days for
21 the appointment and rest after and then half workdays.

22 Q. So you understood that his prior productivity
23 issues that you've just outlined during the late
24 summer, early fall were due to appointment -- medical
25 appointments that he was having, correct?

1 A. Correct.

2 Q. And based on the information that you had when
3 Mr. Duane e-mailed you on December 19th, the
4 circumstances for his request to work from home in
5 December -- or in January, excuse me, of 2015 were
6 different, correct?

7 MR. WILSON: Objection; form.

8 Go ahead.

9 THE WITNESS: They were different. They were
10 about, I guess, the fistula instead of pre-op
11 appointments.

12 BY MS. SANGHVI:

13 Q. Then Mr. Duane responded to you on
14 December 23rd, correct?

15 A. Yup.

16 Q. What was your immediate impression after
17 reading his response in the e-mail of December 23rd?

18 A. I was kind of surprised, a little upset.

19 Q. Why were you surprised?

20 A. The two previous e-mails were pretty, I don't
21 know, congenial, I guess, friendly, and then this one
22 was not.

23 Q. Do you see where Mr. Duane wrote, "Before I
24 start I want to let you know that I'm writing with the
25 intent of finding a solution with you. There's a

1 chance some of this e-mail could be read as combative
2 or hostile, and that is not the tone I'm intending at
3 all"? Do you see that?

4 A. Yeah.

5 Q. Did you have any reason to not believe his
6 statement there?

7 MR. WILSON: Objection; form.

8 THE WITNESS: I had reason to not believe it.
9 The following text contradicts it.

10 BY MS. SANGHVI:

11 Q. How so? Why did you think the following text
12 contradicted that statement?

13 A. He reached out to attorneys. He, you know --
14 I'm scanning it now. Give me a minute.

15 He says we have to provide him with the
16 accommodation he requests. He offers resources on
17 federal law, a bit of a condescending tone. It's
18 fairly contradictory to me.

19 Q. Do you believe that employees have the right to
20 learn about their rights outside of --

21 A. Absolutely.

22 Q. What did you -- sorry, I think you said you
23 were surprised and shocked, perhaps? Correct me if
24 that's a mischaracterization, but I believe that's what
25 you testified to earlier.

1 A. I said surprised and a little upset.

2 Q. Upset, okay.

3 Can you explain to me why you felt upset?

4 A. Yes. I was trying to work with him for
5 accommodations, and he -- clearly touched a nerve with
6 him, and he didn't think that's what I was doing, so
7 that bothered me.

8 Q. In that last paragraph, do you see where
9 Mr. Duane says he'd "like to find a solution under
10 which I return on the 30th with this accommodation or
11 something very close to it"?

12 A. Yes.

13 Q. Did you not take that as -- excuse me. Did you
14 not take that as Mr. Duane trying to engage in a
15 discussion around accommodations?

16 MR. WILSON: Objection; form.

17 THE WITNESS: It's buried, so he was still
18 doing it but after all this other stuff first, right?
19 So like it's buried, I mean. And that's exactly what
20 we did, we accommodated him based on his ideas in the
21 bottom paragraph.

22 BY MS. SANGHVI:

23 Q. And what did you do once you received this
24 e-mail?

25 A. I talked to Paul on the phone.

1 Q. The first thing you did after you received this
2 e-mail was pick up the phone and call Paul Mishkin the
3 CEO?

4 A. No, no. I believe I forwarded him the e-mail.
5 Well, I certainly forwarded him the e-mail or Lenore or
6 Maricela did. I forwarded the e-mail to HR, and then
7 either they forwarded it to Paul or I did too.

8 Q. Then what happened?

9 A. Then I talked to Paul on the phone.

10 Q. Did you call Paul, or did Paul call you?

11 A. Paul called me.

12 Q. How long after 3:39 p.m. on Tuesday, December
13 23rd? Actually, I'm sorry, I'm going to take that back
14 for a second.

15 Mr. Duane sent this e-mail at 3:39 on December
16 23rd. Do you recall when you might have read it?

17 A. I do, actually. I was driving to L.A., and I
18 was at a rest stop and I read it.

19 Q. Approximately what time?

20 A. I don't remember.

21 Q. Then when did Mr. Mishkin call you?

22 A. I believe the next morning or the morning
23 after. The next morning.

24 Q. What did Mr. Mishkin say?

25 A. Oh, he asked me a bunch of questions, he wanted

1 the background, like how did it come to this point, so
2 I filled him in.

3 Q. So tell me what you told Mr. Mishkin.

4 A. I told him that Scott went on leave for two
5 months and we were coordinating when he was coming
6 back, and he sent this e-mail saying he developed a
7 complication, asked to work remotely half days from
8 home but I had concerns about that, from what I've said
9 before about the pre-op appointments, so I responded
10 with what I responded with, and he responded with what
11 he did, so I was kind of filling him in to that point.

12 Q. And what were some of the questions that
13 Mr. Mishkin had for you?

14 A. Like why was I concerned about productivity, so
15 I explained. I can't think of any other specific
16 questions.

17 Q. By the next morning when Mr. Mishkin called
18 you, had you had any conversations with anyone between
19 the time you read the e-mail to the call you had with
20 Mr. Mishkin with regards to this -- with regards to
21 Mr. Duane's e-mail?

22 A. My wife was in the car with me. I told her I
23 got the e-mail.

24 Q. Did you have any conversations with anyone at
25 IXL?

1 A. No.

2 Q. You had no conversations with anybody in HR?

3 A. Besides forwarding them the e-mail, no.

4 Q. Did you receive a response to the forward?

5 A. I don't remember.

6 Q. Do you remember receiving any advice from HR
7 with regards to how to respond to this e-mail on
8 December 23rd?

9 A. The advice I received was from Paul.

10 Q. And what was that advice?

11 A. To accommodate Scott by allowing him to work
12 remotely and to put a plan in place that I would feel
13 comfortable with letting him do it, which is exactly
14 what Scott proposed, and then reviewing the e-mail I
15 craft -- I wrote before I sent it.

16 Q. So after you got off the phone with
17 Mr. Mishkin, you drafted a responsive e-mail to
18 Mr. Duane; is that correct?

19 A. Yes.

20 Q. And you forwarded that to Mr. Mishkin for his
21 review?

22 A. Yes.

23 Q. And what was Mr. Mishkin's response to that
24 e-mail?

25 A. He said it looks good.

1 Q. Did he tell you that over the phone or in an
2 e-mail?

3 A. I don't remember.

4 Q. Then what did you do?

5 A. I sent Paul the e-mail. Sorry, I sent Scott
6 the e-mail.

7 Q. You wrote here, "Based on your" -- in your
8 response to Mr. Duane dated December 24th, 2014, you
9 wrote, "Based on your doctor's recommendation it sounds
10 like reasonable accommodation in your case is to set up
11 a part-time remote working situation."

12 How did your opinion change on December 24th
13 from five days earlier -- excuse me, two days earlier
14 when you responded on December 22nd?

15 MR. WILSON: Objection; form.

16 THE WITNESS: I mean he made it pretty clear
17 that he needs to be at home, we can't accommodate him
18 in the office, so that changed my opinion. I also
19 liked his idea of like putting some structure in place
20 for productivity goals.

21 BY MS. SANGHVI:

22 Q. And then what happened next after you sent that
23 e-mail on December 24th?

24 A. Scott responded.

25 Q. What was your response -- what was your

1 reaction to Scott's response on December 24th?

2 A. I said it sounds good.

3 Q. Were you still upset over the communication you
4 had with Mr. Duane?

5 A. No. It seemed like we resolved it.

6 Q. Was this the first time you requested a
7 doctor's -- you received a doctor's note for an
8 individual seeking to work from home?

9 A. I don't know.

10 Q. Can you describe some of the circumstances in
11 which people work from home?

12 MR. WILSON: Objection; form, foundation.

13 Go ahead.

14 THE WITNESS: Sure. Plumbers's coming. I'm
15 sick, but not so sick I have to sleep all day. I don't
16 want to get other people sick. I have an appointment
17 and I don't want to drive to the office and drive to
18 the appointment. I'm traveling. You know, I want to
19 fly in Thursday night, can I work remotely Friday and
20 then have the weekend where I'm traveling too.

21 BY MS. SANGHVI:

22 Q. Anything else?

23 A. I'm sure there are others.

24 Q. Child care?

25 A. Child sick.

1 Q. When you have employees working remotely, do
2 you assess their productivity?

3 A. Yes.

4 Q. How so?

5 A. Based on what they're turning in, how
6 responsive are they over e-mail, over instant message.
7 We use software to track the specs, so our -- is there
8 action on the specs.

9 Q. Have you had any occasion to disallow an
10 employee to work remotely because of lower
11 productivity?

12 A. Disallow, yes.

13 Q. Who?

14 A. Richard Cudney.

15 Q. When was this?

16 A. I don't remember.

17 Q. Was this before he was -- I believe he is an
18 individual who you placed on a performance improvement
19 plan; is that correct?

20 A. That's correct.

21 Q. Was it before you placed him on a performance
22 improvement plan?

23 A. It was after.

24 Q. Why did -- describe the circumstances there.

25 A. He requested to move full time remote, and I

1 said no, and we put measures in place that if he hit
2 those measures then we'd reconsider.

3 Q. Did you reconsider?

4 A. Not yet.

5 Q. Was this in the last year?

6 A. Yes.

7 Q. Anyone else that you can think of?

8 A. No.

9 Q. Do you have full time remote employees?

10 A. Yes.

11 Q. Who? Currently who?

12 MR. WILSON: You or IXL? I object if you
13 say -- if you're asking all of IXL, I'll object as
14 foundation.

15 BY MS. SANGHVI:

16 Q. Mr. Keyes, do you -- is anyone on your team a
17 full time remote employee?

18 A. Yes.

19 Q. Who?

20 A. Luke Corazza, Matthew Bleacher and Christine
21 Kiekhaefer.

22 Q. Where is Mr. Corazza located?

23 A. Carlsbad, California.

24 Q. And where is Mr. Bleacher located?

25 A. Lafayette, Louisiana.

1 Q. Where is Christine Kiekhaefer located?

2 A. Ashland, Oregon.

3 Q. When did Mr. Corazza start working remotely
4 full time?

5 A. July 2017.

6 Q. Had he been working for IXL previously at the
7 San Mateo location?

8 A. Yes.

9 Q. And why did he become a full time remote
10 employee?

11 A. He wanted to move and he was a strong
12 performer.

13 Q. When did Mr. Bleecher begin working full time
14 remote?

15 A. He started full time remote end of
16 January 2015.

17 Q. Why -- what were the circumstances around his
18 remote work arrangement?

19 A. He rejected our offer because he couldn't move
20 his family in time, and so we re-worked the offer.

21 Q. You had already made the offer to Mr. Bleecher
22 to work remotely full time by the end of December 2014,
23 correct?

24 A. Yeah.

25 Q. And Ms. Kiekhaefer, when did she begin working

1 full time remote?

2 A. I don't remember.

3 Q. Have you always supervised her?

4 A. Yes.

5 Q. Anyone -- I think we were talking right now
6 about people who are currently working full time remote
7 in the past and around the period of 2014.

8 Did you have any other employees that were
9 working in your department who were working remotely
10 part time or full time?

11 A. Yes.

12 Q. Who is that?

13 A. Gina Bland.

14 Q. When did Ms. Bland begin?

15 A. Summer 2014.

16 Q. What were the circumstances around her remote
17 work arrangement?

18 A. It was 50/50. First three months in the
19 office, so -- through mid-fall 2014 she was in the
20 office full time, and then it was like two weeks in
21 D.C., two weeks in SF. Or San Mateo.

22 Q. Do you know why she needed to work remotely
23 50/50?

24 A. Yes. Her husband is a political journalist and
25 decided to stay in D.C.

1 Q. And did she remain 50/50 -- excuse me. Is she
2 still working there?

3 A. No.

4 Q. When did she stop?

5 A. Summer 2016.

6 Q. Did she remain remotely 50 percent of the time
7 until the summer of 2016?

8 A. No.

9 Q. When did she change that arrangement?

10 A. I think it might have -- summer of 2015 she
11 became a full time remote employee.

12 Q. Why did you allow that?

13 A. She was performing really well.

14 Q. Mr. Bleacher did not have the opportunity to
15 demonstrate his productivity before being permitted to
16 work full time remote. Can you explain that decision a
17 little?

18 MR. WILSON: Objection; form.

19 THE WITNESS: Yes. The way he communicated in
20 the interview process, we really felt like that was a
21 big strength of his and that's -- so we took a risk,
22 you know, and it paid off.

23 BY MS. SANGHVI:

24 Q. Scott returned to work on December 30th,
25 correct? Excuse me. Scott returned to work on

1 December 30th, 2014; is that correct?

2 A. Yes.

3 Q. Where was he sitting when he returned to work?

4 A. In his cube.

5 Q. It was the same cubicle he had been in for the
6 entirety of his employment?

7 A. No. We -- no. We moved floors.

8 Q. Was it the same cube that he was in prior to
9 going out on leave?

10 A. I think so.

11 Q. Where was your office in relation to
12 Mr. Duane's cubicle?

13 A. Like 40 to 50 -- 40 feet-ish away down ten
14 cubes.

15 Q. And did you have a meeting with Mr. Duane when
16 he returned to work on December 30th, 2014?

17 A. Yes.

18 Q. Can you describe that meeting?

19 A. Yes. It was a catch-up meeting, so what had
20 happened with the team the last two months, where
21 projects were, what -- you know, what we'd done.

22 Q. And in the catch-up portion of the meeting, did
23 you inform Mr. Duane that there had been changes to the
24 team personnel?

25 A. Yes. He was involved in recruiting, so I gave

1 him recruiting update.

2 Q. Did you inform Mr. Duane that Matthew Bleacher
3 had been extended an offer to work remotely full time
4 because of his inability to relocate his family?

5 A. Yes.

6 Q. And at this time, Ms. Bland was working
7 50 percent in D.C. and 50 percent at San Mateo,
8 correct?

9 A. Yes.

10 Q. And did you have any conversation with
11 Mr. Duane about Ms. Bland's arrangement?

12 A. No.

13 Q. But it was known to the team that that was her
14 situation, correct?

15 A. Yes.

16 Q. What were your -- so this is the first time you
17 had met Mr. Duane in person after the December 23rd
18 e-mail that surprised and upset you. So describe the
19 tenor of your conversation.

20 A. Sure. It was very one-sided. He didn't speak
21 at all really. Had his arms crossed most of the time.
22 He was clearly still very upset from the e-mails.

23 Q. So he walked into the office, sat down and
24 didn't say a word?

25 A. Pretty much.

1 Q. Did you ask him any questions?

2 A. I don't remember. Probably did.

3 Q. Did he refuse to give an answer?

4 A. He would nod.

5 Q. And it's -- am I correct to say that you
6 developed a document for Mr. Duane that outlined his
7 remote work from home arrangement, correct?

8 A. Yes.

9 Q. And had you already sent him that document
10 prior to the meeting?

11 A. I don't remember.

12 Q. Did that -- did you discuss that document at
13 this meeting on December 30th?

14 A. Yes.

15 Q. What was the conversation that you had about
16 the arrangement?

17 A. I went over it -- we looked at it together on
18 the screen, and I went over it. Like I said, he was
19 silent.

20 Q. Anything else?

21 A. No.

22 Q. Did you talk to him about his attitude at that
23 meeting?

24 A. No.

25 Q. Did you talk to anyone else about his attitude

1 at that meeting after the meeting?

2 A. Yes.

3 Q. Who?

4 A. Kate.

5 Q. When did you have that conversation with
6 Ms. Mattison?

7 A. It was later that week, because she was
8 traveling. She wasn't around.

9 Q. How did you -- was that conversation on the
10 phone or in person?

11 A. It was in person.

12 Q. And where was that conversation?

13 A. Kate's office.

14 Q. And what did you tell her?

15 A. I said "Scott has been acting very upset since
16 he came back, and he's essentially impossible to be
17 working with, like he's noncommunicative. Do you have
18 any suggestions?"

19 Q. And did she?

20 A. Yeah. She said, "Why don't you call a meeting
21 and ask him what he's upset about and see if you guys
22 can resolve it?"

23 Q. Had that not occurred to you before that?

24 A. I don't remember.

25 Q. So then what did you do? Well, did you discuss

1 anything else at that meeting?

2 A. No.

3 Q. Before moving to what you did, can you -- other
4 than this one meeting in which you said Scott was
5 silent on 12-30-2014, what other examples indicated
6 that Scott was being noncommunicative and difficult to
7 work with?

8 A. One, you know, we have a team meeting so --
9 everyone was there but Scott so I went to go get him,
10 and then he was like walking toward the conference
11 room. I was like, "Hey, I was grabbing you for a
12 meeting." And he kind of grunted and walked by me and
13 then sat in the back of the conference room just kind
14 of sulking so --

15 Q. Anything else? Sorry, was Scott late to that
16 meeting?

17 A. Barely, like a minute or two.

18 Q. Other than your impression that he was sulking
19 in the back of the room, any other examples?

20 A. None that come to mind.

21 Q. Did you receive any complaints from co-workers?

22 A. No.

23 Q. Did he have any opportunity between
24 December 30th and January 8th, 2015 to have to work
25 with other employees?

1 A. Yes.

2 Q. And you didn't receive any complaints from
3 those employees, correct?

4 MR. WILSON: Objection.

5 Go ahead.

6 THE WITNESS: That's right.

7 MR. WILSON: For the record, it's been three
8 hours in. Do you have any idea when you're thinking of
9 taking a lunch break?

10 MS. SANGHVI: I'm happy to go and take one now.
11 Let's go off the record.

12 (Lunch recess taken from 12:31 to 1:36.)

13 (Ms. Tuazon leaves proceedings.)

14 BY MS. SANGHVI:

15 Q. I just want to go back to something that we had
16 been talking about, just focusing on the time period of
17 when Mr. Duane returned to work on December 30th.

18 You testified that you had met with
19 Ms. Mattison a little bit after his return to work. Do
20 you recall meeting with her on January 2nd, 2015?

21 A. It was later that week of December 30th so --

22 Q. When was this team meeting that you had
23 referenced where you noticed Mr. Duane being, I think
24 the word you used, was sulking?

25 A. I don't recall the exact date.

1 Q. Do you think it was before or after your
2 meeting with Ms. Mattison?

3 A. I think it was before.

4 Q. And when Mr. Duane had returned from leave, he
5 provided you with a doctor's note; is that correct?

6 A. Yes.

7 MS. SANGHVI: I'll ask the court reporter to
8 mark as Exhibit 46 a one-page document that bears Bates
9 number IXL 0112 dated Monday, December 29th, 2014 from
10 Brownstein & Crane Surgical Services.

11 (Document marked Deposition Exhibit 46
12 for identification.)

13 BY MS. SANGHVI:

14 Q. Do you recall receiving this note?

15 A. Yes.

16 Q. What did you do when you received this doctor's
17 note?

18 A. I noted it and then filed it away.

19 Q. Where did you file it?

20 A. I have folders for each person who reports to
21 me, and I put it there.

22 Q. Did Mr. Duane provide this to you via e-mail or
23 in person?

24 A. E-mail.

25 Q. And did he provide it to anyone other than

1 yourself?

2 A. I don't remember.

3 Q. Did you provide this letter to anyone else at
4 IXL?

5 A. I don't remember.

6 Q. When an employee has a request for a reasonable
7 accommodation and they submit a letter, is it your
8 general practice to provide that document to HR?

9 A. Yes.

10 Q. Do you believe you would have gone against your
11 general practice in this instance?

12 A. If I didn't provide it to HR, but I don't
13 remember if I did or I didn't.

14 Q. I'm just trying to understand, since you don't
15 remember whether or not you provided it, if your
16 general practice was to provide a doctor's note to HR
17 for their files, is there any reason to believe that
18 you would not have done that in this instance?

19 A. No, there's no reason to believe I would not
20 have done it.

21 Q. When you received this note, did you read it?

22 A. Yes.

23 Q. And what was your immediate reaction to reading
24 the doctor's note from Scott's surgeon, Dr. Crane?

25 A. Sounded fine.

1 Q. Did you investigate who Brownstein & Crane
2 Surgical Services were?

3 A. No.

4 Q. Did you look up Dr. Curtis Crane?

5 A. No.

6 Q. At this point were you at all curious what
7 Scott's surgery had been?

8 A. No.

9 Q. Did you believe Scott's surgery to be elective?

10 A. No.

11 Q. What did you believe about the nature of his
12 surgery?

13 A. Nothing. I never asked him about it. He
14 never -- I did ask him if it was serious, and he said
15 no, it wasn't life threatening. I said okay.

16 Q. But did you form an opinion as to whether or
17 not it was an elective surgery or not?

18 MR. WILSON: Objection.

19 THE WITNESS: No.

20 BY MS. SANGHVI:

21 Q. And this notice from Dr. Crane confirmed for
22 you that Mr. Duane was suffering from a delayed
23 postoperative healing condition; is that correct?

24 A. Yes.

25 Q. You had testified about two instances in which

1 you noticed Mr. Duane being noncommunicative; one on
2 December 30th in a meeting with you individually, and
3 then once at a team meeting.

4 Was that behavior that you observed different
5 from the behavior that you observed prior to his leave
6 of absence?

7 A. Yes.

8 Q. How so?

9 A. It was actually quite different. Prior to the
10 leave of absence, he definitely wasn't sulking in the
11 back of the room at a team meeting or not responding to
12 me when I talked to him, and afterwards he was.

13 Q. Did you take it personally, Mr. Duane's
14 attitude once he returned to work?

15 A. No.

16 Q. Did you believe that it was a result of his
17 disability -- excuse me, was it a result of his
18 postoperative condition?

19 A. I didn't know.

20 Q. Is it possible that his attitude changed after
21 his return to work was due to his postoperative
22 condition?

23 MR. WILSON: Objection; form, foundation.

24 THE WITNESS: I don't know.

25 BY MS. SANGHVI:

1 Q. Would you agree that it is possible?

2 A. Yeah.

3 Q. Was your -- did you believe that his behavior
4 in those two instances was related to the e-mail chain
5 regarding his request for an accommodation?

6 A. Yes.

7 Q. How so?

8 A. It was pretty consistent with the tone of the
9 longer e-mail in that chain.

10 Q. Other than with Ms. Mattison, did you discuss
11 Mr. Duane's behavior that you observed on those two
12 instances with anyone else at IXL?

13 A. No.

14 Q. So what happened after your meeting with
15 Ms. Mattison later in the week of December 30th?

16 A. Like I said, she suggested that I meet with
17 Scott and ask him if anything was bothering him and if
18 we could resolve it, and so I scheduled a meeting.

19 Q. When was that meeting with Scott?

20 A. That would be January 6th.

21 Q. Where was that meeting held?

22 A. In my office.

23 Q. Who else was present?

24 A. Nobody else.

25 Q. What was your intention for that meeting?

1 A. To clear the air and to resolve the conflict.

2 Q. So how did you begin the meeting?

3 A. I said, "I've noticed you've been upset since
4 you've returned. Is there anything I can do to help"?

5 Q. And what was Mr. Duane's response?

6 A. He started talking. He said that he felt he
7 was treated unfairly. He said that we discriminated
8 against him in handling his coming back from leave. He
9 was pretty upset.

10 Q. How could you tell he was upset?

11 A. Tone of voice, hand gestures while speaking.
12 Typical markers of someone being upset.

13 Q. Was he yelling?

14 A. No.

15 Q. So what about his tone of voice? Can you
16 describe his tone of voice, let me ask you that?

17 A. Very accusatory. I don't know if I can give a
18 much better description than that.

19 Q. And can you describe his hand gestures while
20 speaking?

21 A. They were not resting at his side. I mean he
22 was putting them out in front of his face.

23 Q. Was that unusual for Mr. Duane to communicate
24 with his hands while speaking?

25 A. I don't know.

1 Q. I'm trying to understand, Mr. Keyes, only
2 because you gave me two examples of how you understood
3 him to be upset, his tone of voice and the use of hand
4 gestures. So I'm just trying to understand, was he
5 pounding his fists on the desk or something along those
6 lines? Those are the reasons for my question.

7 A. Understood. He was not pounding the desk.

8 Q. So you said he was very accusatory. Did he
9 give you examples of how he felt treated unfairly?

10 A. He said that we had to provide him with
11 reasonable accommodation. I said that we had and had
12 engaged in a conversation about that reasonable
13 accommodation. It was mostly focused around that, like
14 coming back to the e-mails.

15 Q. And what was his reaction when you said you had
16 provided him with reasonable accommodation?

17 A. He didn't believe me.

18 Q. Did he say as much?

19 A. No, he didn't say it. He just --

20 Q. So what made you believe that he didn't believe
21 you?

22 A. Normally when I would -- like you say something
23 like that and the person believes you, they'd be, like,
24 "Yes, I agree" or -- there was no confirmation from his
25 end.

1 Q. Other than referring to the return-to-work
2 accommodation discussion or e-mail discussion, did
3 Mr. Duane give any other examples of why he felt
4 discriminated against?

5 A. I don't remember other specific examples.

6 Q. How long was this meeting?

7 A. Between a half hour and an hour.

8 Q. So you've outlined for me this one interaction
9 about how he said you had to provide him with
10 accommodations and you responded that you had provided
11 accommodations and that he didn't believe you.

12 Did that conversation itself take 30 minutes to
13 an hour?

14 A. That is the main focus of the conversation,
15 yeah.

16 Q. Did he provide more details on what he meant
17 when he said that you had to provide the accommodation
18 or why he was upset?

19 A. He said we did not reasonably -- or we did not
20 provide the reasonable accommodation and that's
21 discrimination. And I said, "We did provide the
22 reasonable accommodation, and I'm sorry you feel this
23 way. What can we do moving forward?"

24 I kept like trying to make it -- like how can
25 we resolve this like frustration he had. And so then

1 he -- it seemed clear that like the way to resolve it
2 was to -- for me to talk to HR about it.

3 Q. Could you understand from Mr. Duane that he was
4 upset that he had to advocate for his accommodation, or
5 was it more that he was -- he still believed he was
6 still not being accommodated?

7 A. Definitely seemed to me like he believed that
8 we did not provide reasonable accommodation. Part of
9 it was the immediacy and just in general he was upset
10 about it.

11 Q. Did he bring up his working remotely plan?

12 A. I don't remember.

13 Q. Did you take any notes during this meeting?

14 A. No.

15 Q. Did you write any notes after the meeting?

16 A. I don't remember.

17 Q. Did you keep a file of handwritten notes
18 related to Mr. Duane's appointment somewhere in your
19 office?

20 A. No.

21 Q. If you would have taken notes, where would you
22 have done them; on a pad of paper or electronically?

23 MR. WILSON: Objection; form.

24 THE WITNESS: Like I said before, it kind of
25 depends. I don't know.

1 BY MS. SANGHVI:

2 Q. Did Mr. Duane bring the fact that other
3 employees were not subject to a detailed remote work
4 from home plan?

5 A. In the January 6th meeting?

6 Q. Yes.

7 A. I don't think so.

8 Q. Going back to that plan, did you draft that by
9 yourself, the remote work from home plan that we have
10 marked previously as Exhibit -- actually, let's back up
11 even further. Hang on.

12 On December 30th, I think you testified earlier
13 that you had a -- you had drafted a remote work from
14 home arrangement or plan for Mr. Duane; is that
15 correct?

16 A. Yes.

17 Q. Had you drafted that in consultation with
18 anybody?

19 A. I had Maricela review it.

20 Q. Anyone else?

21 A. I don't think so.

22 Q. And, again, do you remember how you had
23 Maricela review it? Did you e-mail it to her?

24 A. That would have been e-mailed, yeah.

25 Q. Did you have Ms. Mattison review it?

1 A. I don't remember.

2 Q. Had you ever created a plan like that for
3 anyone else?

4 A. Yes.

5 Q. Who?

6 A. Isidora.

7 Q. And when was that?

8 A. December 2014.

9 Q. Why did you create that plan for Isidora?

10 A. She wanted to work remotely for a week, so I --
11 I was concerned about productivity as well, so -- hers
12 was over e-mail. She e-mailed me her tasks for the day
13 and her tasks for the week.

14 Q. Anyone else -- why were you concerned about her
15 productivity?

16 A. She was on a slower side to turn things in
17 so --

18 Q. And does that remain -- that arrangement, does
19 that remain in place today?

20 A. With Isidora?

21 Q. With Ms. Milin any time she wants to work from
22 home.

23 A. No.

24 Q. Was that a time-limited plan?

25 A. The plan was specific to her specific week of

1 travel.

2 Q. Anyone else that you've created that sort of
3 plan with to control -- to monitor their remote work?

4 A. Yes.

5 Q. Who?

6 A. Matt Bleecher and Gina Bland being my remote --
7 well, Gina wasn't remote yet, but she was 50/50 --
8 being my employees who worked remotely on a regular
9 basis, they started e-mailing me.

10 Q. And was that at your request or just through
11 the natural progression?

12 A. It was at my request.

13 Q. When did you put that in place for Ms. Bland?

14 A. Early 2015.

15 Q. And why did you put that in place for
16 Ms. Bland?

17 A. Because it was helpful for me to hear from them
18 what they were working on since I didn't get to see
19 them as often.

20 Q. But Ms. Bland by this point had already been
21 working remotely, correct?

22 A. A little bit.

23 Q. So I'm curious what led to the change in your
24 approach with Ms. Bland in early 2015?

25 A. I liked the week that Isidora did it. It

1 actually not only was helpful for me, but she commented
2 that it was helpful for her, so I thought I would
3 extend the idea.

4 Q. And with Mr. Bleecher?

5 A. Similar.

6 Q. When did that -- when did the remote
7 arrangement begin?

8 A. The remote like e-mail what they're working on
9 arrangement?

10 Q. Correct.

11 A. Soon after he started.

12 Q. And that was in January -- late January 2014,
13 correct?

14 A. That's correct.

15 Q. So other than what you have testified to with
16 regards to Mr. Duane talking about his belief that IXL
17 did not accommodate him, were there any other examples
18 that he provided during that meeting on January 6th,
19 2015 in your office?

20 A. I don't remember.

21 Q. What did you do at the conclusion of that
22 meeting? How did that meeting end?

23 A. I told Scott that I really wanted to resolve
24 his frustrations and that I would go speak to HR on his
25 behalf and get back to him.

1 Q. How did you feel at the end of that meeting?

2 A. I felt optimistic that we could figure it out.
3 It -- I felt like it was -- I felt like he left that
4 meeting in a better place, and me too, because we
5 talked.

6 Q. So earlier you had described how he was upset
7 during that meeting. But I don't think we had talked
8 about how you had come to a place of resolution. So
9 can you describe that a little bit?

10 A. Yes. I told him multiple times in the meeting
11 that I'm sorry that he felt that way, that I'm
12 acknowledging that he's feeling that way, and that what
13 I would like to do is figure out a way to resolve this.
14 And he was on board with that. He was appreciative
15 that I was going to HR. And so despite the
16 frustrations he shared in the meeting at the end, I was
17 optimistic that we could figure it out.

18 Q. And what did you do next?

19 A. I went to Lenore and Maricela in HR and talked
20 to them.

21 Q. Where did you have that meeting?

22 A. One of the sixth floor rooms.

23 Q. It was yourself, Ms. Ockerberg and Ms. Prado?

24 A. That's right.

25 Q. Was anyone else present?

1 A. Not to start.

2 Q. And then?

3 A. We called Paul on the phone. He was on the
4 phone.

5 Q. Why did you call Paul on the phone?

6 A. Well, Paul had reviewed the e-mail, so he was
7 aware of the general situation. And given how upset
8 Scott was, we thought Paul could help.

9 Q. So prior to -- there's some portion of the
10 meeting in which you, Mr. Ockerberg and Ms. Prado
11 discussed some things prior to calling Mr. Mishkin; is
12 that correct?

13 A. Yes.

14 Q. And what are some of the things that you
15 discussed in that time frame?

16 A. I debriefed them on what Scott and I had just
17 talked about, saying Scott was very upset, he felt we
18 discriminated against him, felt we didn't provide him
19 reasonable accommodation. I told him at the end of the
20 meeting that I would come talk to HR on his behalf.

21 Q. And what did Ms. Ockerberg -- who did more
22 talking in the meeting, Ms. Ockerberg or Ms. Prado?

23 A. I don't remember.

24 Q. What did either Ms. Ockerberg or Ms. Prado say
25 in response to your description of the meeting with

1 Mr. Duane?

2 A. They said, "I think this would be a good thing
3 to call Paul about," so I called Paul.

4 Q. So once you called Paul, I'm assuming you
5 briefed him again on the meeting that you had?

6 A. Yes.

7 Q. And then what happened next? What did he say?

8 A. He said he would be happy and willing to speak
9 with Scott to see if maybe he could help resolve the
10 situation.

11 Q. Did he ask for any information?

12 A. He -- we had, you know, briefed him on what had
13 happened, so no.

14 Q. Did he ask Ms. Prado to collect any e-mails and
15 provide them to him?

16 A. I don't think so.

17 Q. Was this meeting on the same day as your
18 meeting with Mr. Duane?

19 A. Yes.

20 Q. So it was on January 6th?

21 A. Yeah.

22 Q. And what happened next?

23 A. Paul e-mailed Scott saying something to the
24 extent of, you know, "I hear you have some concerns,
25 I'd love to talk to you about them," and a meeting was

1 set up.

2 Q. Were you supposed to be involved in that
3 meeting?

4 A. No.

5 Q. What was your impression of what you needed to
6 do next, if anything?

7 A. My impression was I did not need to do anything
8 and I was hoping the meeting between Paul and Scott
9 would go well and then we could move on.

10 Q. Was there any discussion with Ms. Ockerberg or
11 Ms. Prado while Mr. Mishkin was on the phone about --
12 by IXL's belief that they did accommodate Mr. Duane?

13 A. I don't remember.

14 Q. At this time had you informed Mr. Mishkin about
15 the remote work plan that you had put in place for
16 Mr. Duane?

17 A. Yeah.

18 Q. Had he seen it?

19 A. I'm not sure.

20 Q. Did he ask to see it?

21 A. I don't think so.

22 Q. So at the conclusion of that meeting, it was
23 your understanding that Mr. Mishkin would reach out to
24 Mr. Duane and you had no other follow-up to do --

25 A. Correct.

1 Q. -- with regards to this complaint that
2 Mr. Duane had made?

3 A. Correct.

4 Q. So what is the next thing that you remember
5 with regards to Mr. Duane's employment?

6 A. The next day we got an e-mail from Maricela
7 with a Glassdoor posting in the e-mail.

8 Q. I'm going to show you a document that's been
9 previously marked as Exhibit 15.

10 A. (Witness reviewing document.)

11 Q. Is that the e-mail that you're referring to
12 with regards to Ms. Prado sending you a Glassdoor
13 posting?

14 A. Yes.

15 Q. You'll see that that e-mail is sent to you at
16 11:04 a.m. Do you know when you approximately read it?

17 A. Midday.

18 Q. How do you know that?

19 A. Well, it looks like I forwarded it to Kate at
20 2:00 p.m., so must have been between 11:00 and 2:00.

21 Q. Why did you forward that e-mail to
22 Ms. Mattison?

23 A. To keep her in the loop.

24 Q. So we've talked a fair amount about the steps
25 that you took ever since December 22nd when you

1 received an e-mail from Mr. Duane with -- that you --
2 that upset you. From that point on you had started
3 involving Mr. Mishkin, correct?

4 A. Yes.

5 Q. And I don't think that I have any testimony
6 about you speaking to Ms. Mattison at all about these
7 interactions about the reasonable accommodation. I
8 just want to make sure that that's correct still.

9 A. No, that's incorrect. We talked earlier about
10 Kate reviewing the e-mail I sent to Scott after he
11 requested his half time from home.

12 Q. Right. So after that review, Ms. Mattison was
13 not involved in the January 6th meeting with Paul
14 Mishkin or Lenore Ockerberg or Maricela Prado, correct?

15 A. Correct.

16 Q. So when you forwarded this e-mail to
17 Ms. Mattison, what were you -- what was the follow-up
18 after forwarding it?

19 A. I don't remember.

20 Q. Did you talk to her about it?

21 A. I don't remember.

22 Q. Let's go back to when you first read that
23 e-mail, what was your reaction? Did -- I believe
24 Maricela wrote, "I hate to assume who this is from but
25 please read this review from Glassdoor for yourselves."

1 Upon reading the review, did you know who it
2 was from?

3 A. Yes.

4 Q. And who did you believe it was from?

5 A. Scott.

6 Q. Why did you believe it was from Scott?

7 A. The tone was very consistent with his attitude
8 since returning, the writing style is similar to what
9 I'd seen in his specs. It read like Scott.

10 Q. You'll notice further through that thread there
11 is also an e-mail from Ms. Prado that was compiling all
12 of the e-mails from Scott with regards to his leave of
13 absence. Do you see that?

14 A. Yes.

15 Q. Do you recall now that Ms. Prado was asked to
16 compile e-mails for Mr. Mishkin?

17 A. No, I still don't recall that.

18 Q. I'm showing you Exhibit 28 which shows that you
19 were a recipient on this e-mail from Ms. Prado to
20 Mr. Mishkin, correct?

21 A. Yes.

22 Q. And that -- this e-mail, Exhibit 28, is dated
23 January 6th at 10:33 a.m.; is that correct?

24 A. Yes.

25 Q. So just to narrow us down on time frame, do you

1 believe that your meeting with Mr. Duane on January 6th
2 occurred prior to 10:33 a.m.?

3 A. Yes.

4 Q. And then did your meeting with Ms. Ockerberg,
5 Ms. Prado and then calling Mr. Mishkin occur prior to
6 10:33 a.m.?

7 A. Yes.

8 Q. So after you forwarded the e-mail to
9 Ms. Mattison, you don't recall any conversation with
10 her about the Glassdoor.com post by Mr. Duane?

11 A. No.

12 Q. Ever? Have you ever had a conversation with
13 Ms. Mattison about the Glassdoor.com post by Mr. Duane?

14 A. Yeah.

15 Q. When do you remember having a conversation with
16 her?

17 A. I don't know the precise day, but at some point
18 I did tell her that Paul had made the decision to
19 terminate his employment.

20 Q. Because of the Glassdoor.com post?

21 A. That's right.

22 Q. Was Ms. Mattison unaware of Mr. Duane's
23 termination until the point at which you told her?

24 MR. WILSON: Objection; form, foundation.

25 Go ahead.

1 THE WITNESS: I don't know for sure.

2 BY MS. SANGHVI:

3 Q. Thinking back to that moment in time that
4 you're remembering informing Ms. Mattison that at some
5 point after Mr. Duane is terminated Paul had made the
6 decision to terminate him because of the Glassdoor.com
7 post -- I'm trying to understand that meeting with
8 Ms. Mattison -- where was it?

9 A. Her office.

10 Q. What was the context of that meeting?

11 A. Communicating to her a decision to terminate
12 Scott.

13 Q. Do you believe it was before that decision had
14 been communicated to Scott or after?

15 A. Before.

16 Q. So somewhere midday you see this e-mail on
17 January 6th, 2015 and you see this post. What happens
18 after you read the post? Do you think the first thing
19 you did was e-mail it to Ms. Mattison?

20 A. I don't know.

21 Q. So what do you remember about what happens
22 after you see this post?

23 A. Well, I remember thinking that Scott wrote it.
24 And I remember having a meeting with Lenore, Maricela
25 and Paul to --

1 Q. Who called that meeting?

2 A. Paul.

3 Q. How did he call that meeting?

4 A. I don't remember. Either e-mail or IM.

5 Instant message.

6 Q. And where was that meeting?

7 A. In a sixth floor room.

8 Q. Who was present for that meeting?

9 A. Paul, Lenore, Maricela and myself.

10 Q. Describe the meeting for me.

11 MR. WILSON: Objection; form.

12 THE WITNESS: We looked at the post, Paul asked
13 me if I was sure it was Scott, and I said yes because
14 it was consistent with his attitude and the writing.
15 And then Paul said that we're going to terminate him
16 for the post.

17 BY MS. SANGHVI:

18 Q. So Mr. Mishkin confirms with you that it was
19 likely Mr. Duane who wrote the post and you were sure
20 of it, correct?

21 A. Yes.

22 Q. And the next thing Mr. Mishkin told you was
23 that Mr. Duane would be terminated?

24 A. Yes.

25 Q. Did you talk about how you felt about the post?

1 A. No.

2 Q. Did you talk about what Mr. Mishkin felt about
3 the post?

4 A. No.

5 Q. Did anyone seem upset about the post?

6 A. No.

7 Q. So after Mr. Mishkin indicated to you that
8 Mr. Duane would be terminated, did he also indicate a
9 reason for the termination?

10 A. Yeah. He said the post was slanderous against
11 the company and showed poor judgment.

12 Q. Did he use those words, "slanderous against the
13 company"?

14 A. I don't know for sure.

15 Q. Did you talk about the substance in the post at
16 all?

17 A. I don't remember.

18 Q. Did Mr. Mishkin indicate to you what he thought
19 was slanderous about the post?

20 A. The post -- sorry, can I read it?

21 The post claims discrimination, which is
22 untrue.

23 Q. How does the post claim discrimination?

24 A. Treatment --

25 MR. WILSON: Sorry. Objection; form and

1 foundation.

2 BY MS. SANGHVI:

3 Q. Go ahead.

4 A. Treatment in terms of who gets flexible hours,
5 interesting projects is different. Runs along
6 characteristics of how you might classify yourself.

7 Q. So did you discuss that particular claim at
8 this meeting?

9 A. I honestly don't remember specifics.

10 Q. So far as I understand it, you have a meeting
11 with Ms. Ockerberg, Ms. Prado, Mr. Mishkin. How long
12 did that meeting last?

13 A. 15 minutes, 20 minutes.

14 Q. So far as I understand it, you have a meeting
15 with Ms. Ockerberg, Ms. Prado, Mr. Mishkin.
16 Mr. Mishkin asks you if you're sure Mr. Duane posted
17 this, you answer yes. He indicates that because it's
18 slanderous against the company and because of the post,
19 he's going to terminate Mr. Duane.

20 You have no recollection of anything else said
21 at that meeting?

22 A. Yeah.

23 MR. WILSON: Are you -- can you respond to her.

24 MS. SANGHVI: He did.

25 MR. WILSON: Well, she asked a whole bunch of

1 things.

2 Are you agreeing --

3 MS. SANGHVI: I'm going to object to you --

4 MR. WILSON: Excuse me, I'm talking to the
5 witness.

6 MS. SANGHVI: And this is -- it's
7 inappropriate.

8 MR. WILSON: Excuse me. You said he answered
9 the question. It's not inappropriate.

10 MS. SANGHVI: It is inappropriate to --

11 MR. WILSON: No, it isn't. It's inappropriate
12 for you to keep interrupting me. I'm making a
13 statement.

14 MS. SANGHVI: You can make a statement for the
15 record.

16 MR. WILSON: Thank you. I was in the middle of
17 doing that when you interrupted me again.

18 You asked him a series of questions. His
19 response is recorded "yeah" or something. I asked
20 whether he could answer the question, period. That's
21 what I asked him.

22 MS. SANGHVI: Okay. Are you done?

23 MR. WILSON: No, I'm not done. Because once
24 again you've interrupted me. I have not interrupted
25 you. I have been very cautious with impeding the flow

1 of your questioning. But when I simply say, "Can you
2 answer the question," it's not coaching, I'm not
3 interfering, and I'm not obstructing, and I don't
4 appreciate being accused of that. So that's what I've
5 been trying to say. Thank you.

6 MS. SANGHVI: Are you done?

7 MR. WILSON: Go ahead.

8 MS. SANGHVI: Are you done, Mr. --

9 MR. WILSON: Am I done? Would you like to talk
10 about this more so I can explain more about --

11 MS. SANGHVI: We can talk it about it off the
12 record. I'm asking if your comments for the record are
13 complete now.

14 MR. WILSON: Well, when I stopped talking,
15 that's when I finished.

16 BY MS. SANGHVI:

17 Q. Mr. Keyes, what happened at the end of that
18 meeting? How did that meeting end?

19 A. Well, like I said, the decision was made to
20 terminate his employment, so the next step were
21 logistics.

22 Q. So what were those logistics that were
23 discussed?

24 A. When to do it, how to clean up the cubicle, et
25 cetera.

1 Q. Anything other than when to do it and how to
2 clean up the cubicle?

3 A. No.

4 Q. So one -- what was decided about when to do it?

5 A. Well, Paul and Scott already had the meeting
6 scheduled provisionally to talk about how to alleviate
7 Scott's frustrations. So that was a decision to do in
8 that meeting.

9 Q. What decisions were made about how to clean up
10 his cubicle?

11 A. Operations would take care of it.

12 Q. Was there a discussion as to when operations
13 would take care of it?

14 A. During the meeting time.

15 Q. Other than cleaning up his cubicle, I imagine
16 there were other human resource related tasks to
17 accomplish; is that correct?

18 A. Yes.

19 Q. Were those discussed at this meeting?

20 A. No.

21 Q. Did Mr. Mishkin provide you with any guidance
22 on what you should do?

23 A. We discussed -- yes.

24 Q. What did he provide you?

25 A. We discussed what I would tell people on the

1 team.

2 Q. And what was that?

3 A. That Scott showed poor judgment.

4 Q. Did he tell you to explain how or why Scott
5 showed poor judgment?

6 A. No. We left it at that.

7 Q. Did you discuss what you should do if you were
8 asked how Scott showed poor judgment?

9 A. Yes.

10 Q. And what was that discussion?

11 A. Can't provide any more details on this.

12 Q. So was it a conscious decision at that meeting
13 to not provide information to IXL employees that Scott
14 was terminated because of the Glassdoor.com post?

15 MR. WILSON: Objection; form and foundation.

16 THE WITNESS: Yes. The reason was that he
17 didn't show good judgment.

18 BY MS. SANGHVI:

19 Q. What did you do immediately after this meeting?

20 Sorry. I'm going to strike that.

21 Did anything else happen in this meeting that
22 you haven't testified to?

23 A. No.

24 Q. Was there anything else discussed that you
25 haven't testified to about yet?

1 A. No.

2 Q. What did you do immediately after the meeting
3 ended?

4 A. I don't remember.

5 Q. Were you -- how did you feel at the end of the
6 meeting?

7 A. I think a little disappointed.

8 Q. Why is that?

9 A. Disappointed in Scott for making those posts.

10 Q. Why were you disappointed that he made this
11 post?

12 A. Because we had worked together to get
13 reasonable accommodation and then had made strides the
14 following week to address his existing frustration, and
15 then seeing this post was disappointing.

16 Q. You -- did you notice that the post was made
17 prior to your meeting with Scott on January 6th; is
18 that correct?

19 A. Yes.

20 Q. Were there topics that Mr. Duane raises in the
21 Glassdoor.com post that he did not raise in his meeting
22 with you on January 6th?

23 A. Can I take a minute to read it?

24 Q. Of course.

25 A. (Witness reviewing document.)

1 MR. WILSON: Let's go off the record so I can
2 use the restroom. Is that okay?

3 MS. SANGHVI: Yeah.

4 (Break taken from.)

5 BY MS. SANGHVI:

6 Q. Mr. Keyes, I think we were talking before the
7 break about the substance of Mr. Duane's Glassdoor
8 post. I actually think there was a question pending.

9 MR. WILSON: There wasn't.

10 MS. SANGHVI: I don't know. I just want to
11 double-check.

12 (Record read.)

13 MS. SANGHVI: So there was a question pending.

14 BY MS. SANGHVI:

15 Q. If you could answer that now.

16 A. No, there wasn't.

17 Q. So everything that he raised in the
18 Glassdoor.com post he raised with you in the meeting on
19 January 6th?

20 A. No. Wait. Can we clarify that. What I'm
21 saying is the Glassdoor post he did not raise these
22 things with me in the meeting.

23 Q. So did you then discuss topic by topic what he
24 raised in the Glassdoor.com post in your meeting with
25 Mr. Mishkin on January 7th?

1 A. No.

2 MR. WILSON: While there's no question pending,
3 can I point out for the record that -- did you write on
4 the exhibit?

5 THE WITNESS: Yes.

6 MR. WILSON: I just wanted to know. That's
7 fine. If you didn't, I wanted to point that out.

8 MS. SANGHVI: That's not a problem.

9 THE COURT REPORTER: Can we go off the record.

10 (Off the record from 2:48 to 2:49.)

11 MS. SANGHVI: Just so we have a clear record on
12 this, I'm going to now mark this exhibit as Exhibit 47.

13 (Document marked Deposition Exhibit 47
14 for identification.)

15 BY MS. SANGHVI:

16 Q. Mr. Keyes, is this your handwriting to the left
17 of the writing?

18 A. Yes.

19 Q. And in the pros -- next to the pros, you wrote
20 "none;" is that correct?

21 A. Correct.

22 Q. So am I correct in understanding that Mr. Duane
23 did not raise any of the pros that he talked about in
24 his post in his meeting with you on January 6th?

25 A. That's correct.

1 Q. Then under cons, the first paragraph talks
2 about a challenge and the CEO's involvement. You wrote
3 "nope" there; is that correct?

4 A. That's right.

5 Q. Mr. Duane did not raise any of these issues
6 during your meeting on January 6th, 2015, correct?

7 A. Yes.

8 Q. The next paragraph refers to treatment in the
9 workplace along certain characteristics such as "If
10 you're family-oriented white or Asian straight or
11 mainstream gay person with 1.7 kids who really likes
12 softball," did he raise any of those concerns in his
13 meeting with you on January 6th?

14 A. No.

15 Q. And then there's an allegation here -- did you
16 write "nope" next to the paragraph relating to HR
17 knowledge?

18 A. Correct.

19 Q. So it's correct to say that he did not raise
20 any concerns about HR knowledge or HR staff at the
21 company during his meeting with you on January 6th,
22 2015?

23 A. Correct.

24 Q. And then in the advice to management section,
25 have you written "nope" twice; is that correct?

1 A. That's correct.

2 Q. And those things were also not raised with you
3 in the meeting on January 6th?

4 A. That's correct.

5 Q. So given that Mr. Duane has raised a whole host
6 of new issues in this Glassdoor.com post, were any of
7 those issues discussed at the meeting with Mr. Mishkin?

8 A. I don't remember specifics.

9 Q. Do you remember generality?

10 A. Yes. In general we felt the post was very
11 negative toward the company and showed poor judgment.

12 Q. Let the record reflect that Mr. Wilson is
13 observing the documents.

14 MR. WILSON: Let the record reflect I took a
15 scan so I have a copy of it.

16 BY MS. SANGHVI:

17 Q. Mr. Keyes, was there any discussion about
18 investigating these new claims of discrimination in the
19 post?

20 A. No.

21 Q. I think you had testified earlier that it
22 wasn't true that you had discriminated; is that
23 correct?

24 A. That's correct.

25 Q. How did you know that that wasn't true?

1 A. Because we worked on reasonable accommodation
2 and gave him reasonable accommodation.

3 Q. Do you think that -- as you read this post, was
4 Mr. Duane raising any other concerns about
5 discrimination in this post?

6 A. There's the one sentence here where he mentions
7 the word, so I see that as different.

8 Q. How is it -- are you referring to the sentence
9 where he says that, "Most management has no idea what
10 the word 'discrimination' means"?

11 A. Yes.

12 Q. How is it different?

13 A. He's not saying I discriminated against him,
14 he's saying I don't know what it means.

15 Q. What did you understand that -- I understand
16 what the document says. I'm trying to understand what
17 your perception of that sentence was?

18 MR. WILSON: Objection; form, foundation.

19 THE WITNESS: That I didn't know what it meant.

20 BY MS. SANGHVI:

21 Q. In the paragraph before where he talks about
22 politics if you fit in and certain characteristics, did
23 you believe -- that Mr. Duane did not raise with you in
24 your meeting, did you believe that he was raising some
25 concerns about discrimination in that paragraph?

1 MR. WILSON: Objection; form, foundation.

2 Go ahead.

3 THE WITNESS: I don't know specifically. He
4 was definitely raising like unfairness.

5 BY MS. SANGHVI:

6 Q. So can you describe to me what you see as the
7 difference between discrimination and unfairness?

8 A. Discrimination is if unfairness is applied
9 based on specific classifications of that person.

10 Q. Is -- and Mr. Duane is raising his concern that
11 treatment in the workplace is in fact related to
12 certain characteristics. Is that your understanding as
13 well of that fourth paragraph?

14 MR. WILSON: Objection; form, foundation.

15 THE WITNESS: Yeah.

16 BY MS. SANGHVI:

17 Q. So was Mr. Duane raising some concerns about
18 discrimination in his post?

19 MR. WILSON: Objection; asked and answered.

20 THE WITNESS: Implicitly, I suppose.

21 BY MS. SANGHVI:

22 Q. I'm trying to understand whether HR or
23 Mr. Mishkin or yourself decided to investigate that
24 claim of implicit discrimination?

25 MR. WILSON: Objection; form, foundation.

1 THE WITNESS: Did we decide to investigate it?

2 BY MS. SANGHVI:

3 Q. Yes.

4 A. No.

5 Q. Why not?

6 A. Everyone was well -- everyone was well
7 knowledgeable about the situation up to that point per
8 previous testimony, Paul reviewing my response e-mail,
9 us discussing it, and it was clear to us that we had
10 not done so.

11 Q. I think we've -- just so I'm clear, I have
12 understood that none of this was raised prior, correct?

13 A. Correct.

14 Q. So how was IXL well knowledgeable about the
15 claims that Mr. Duane is raising in this post?

16 MR. WILSON: Objection; form, foundation.

17 THE WITNESS: I don't understand the question.

18 BY MS. SANGHVI:

19 Q. I believe you just testified that the reason
20 there had been no investigation into the implicit
21 discrimination claims raised in the post was because
22 IXL was well knowledgeable about the situation and
23 everything that had occurred up to that point; is that
24 accurate?

25 A. Yes, that's right.

1 Q. So what I'm trying to understand is if these
2 are all new claims, was IXL knowledgeable about these
3 new claims of discrimination regarding treatment in the
4 workplace running along certain characteristics?

5 MR. WILSON: Objection; compound form and
6 foundation.

7 THE WITNESS: Were we -- was IXL knowledgeable
8 about it when is what I think I'm confused about by the
9 question. Like when we read the post we became
10 knowledgeable.

11 BY MS. SANGHVI:

12 Q. And then at the meeting I think you've said
13 that there was no investigation that would occur
14 after -- excuse me, at the meeting it was decided to
15 terminate Mr. Duane, correct?

16 A. That's right.

17 Q. And that there was going to be no further
18 investigation into any claims raised in this post; is
19 that correct?

20 MR. WILSON: Objection; form, foundation.

21 THE WITNESS: That's right.

22 BY MS. SANGHVI:

23 Q. Is it your testimony -- I think you said
24 earlier that you spoke to Ms. Mattison after the
25 decision to terminate had happened, correct?

1 A. Yes.

2 Q. So was it likely on January 7th, 2015?

3 A. Yes.

4 Q. And what did you tell her?

5 A. I told her that due to the Glassdoor post, that
6 we would be terminating Scott's employment.

7 Q. Did you receive an e-mail from Mr. Duane with
8 links to ADA, Americans with Disabilities Act,
9 resources?

10 A. Yes.

11 Q. Do you know if you received that e-mail from
12 him before or after the decision to terminate him?

13 A. I don't know.

14 Q. What did you do once you received that e-mail
15 from him?

16 A. I don't remember.

17 MS. SANGHVI: I'm going to mark into evidence
18 Exhibit 48.

19 (Document marked Deposition Exhibit 48
20 for identification.)

21 BY MS. SANGHVI:

22 Q. It's a one-page e-mail printout bearing Bates
23 number IXL-1696 from David Keyes to Scott Duane dated
24 January 7th, 2015 at 3:59 p.m.

25 A. (Witness reviewing document.)

1 Q. Does this refresh your recollection of the
2 e-mail that Mr. Duane sent to you with information
3 about the Americans With Disabilities Act?

4 A. Yes.

5 Q. Do you know why Mr. Duane sent this e-mail to
6 you?

7 MR. WILSON: Objection; foundation, form.

8 THE WITNESS: He told me he was going to send
9 me links.

10 BY MS. SANGHVI:

11 Q. When did he tell you that?

12 A. Near the end of the January 6th meeting.

13 Q. What was the context of him -- Mr. Duane
14 telling you that he would send you that information?

15 A. It was in the context of trying to resolve
16 things. He said, "I have links." I said, "Okay."

17 Q. So it was Mr. Duane attempting to move forward,
18 is that correct, in a positive manner?

19 MR. WILSON: Objection, speculation.

20 THE WITNESS: I mean I don't know.

21 BY MS. SANGHVI:

22 Q. The reason I'm asking is when you talked about
23 the January 6th meeting, I think you testified it
24 started off with Mr. Duane being upset and it ended in
25 a more collaborative fashion, if that's an accurate

1 description of it; is that true?

2 A. Yes.

3 Q. So when he talked about the links, was it in
4 the part of the conversation that was collaborative or
5 was it in the part of the conversation that you
6 described as Mr. Duane being upset?

7 MR. WILSON: Objection; form.

8 THE WITNESS: I don't remember which part.

9 BY MS. SANGHVI:

10 Q. What was your reaction to receiving this
11 information?

12 A. Thanks for sending it.

13 Q. I see that that's what you wrote back to
14 Mr. Duane. I'm wondering whether you had an emotional
15 reaction to receiving this document on January 7th at
16 12:45 p.m., which is likely after you have seen his
17 Glassdoor.com post?

18 A. No emotional reaction. Like acknowledgement, I
19 guess.

20 Q. You had a meeting scheduled with Mr. Duane for
21 the following day; is that correct?

22 A. Yes.

23 Q. What was that meeting about?

24 A. It was his performance review.

25 Q. When did you decide to change that meeting?

1 A. When the decision was made to terminate him.

2 MS. SANGHVI: I'm going to mark this as
3 Exhibit 49.

4 (Document marked Deposition Exhibit 49
5 for identification.)

6 BY MS. SANGHVI:

7 Q. It's a one-page calendar entry bearing Bates
8 number IXL-1697 from David Keyes to Scott Duane on
9 January 7th at 4:21 p.m.

10 A. (Witness reviewing document.)

11 Q. When you sent this change -- you changed the
12 meeting to Friday, January 9th knowing that he would no
13 longer be employed, correct?

14 A. Correct.

15 Q. When you sent this at 4:21 p.m. you knew at
16 that time, correct --

17 A. Correct.

18 Q. -- that he was going to be terminated?

19 A. Correct.

20 Q. And did you discuss this decision to move his
21 performance review to the next -- excuse me, to Friday,
22 January 9th with Mr. Mishkin?

23 A. I don't remember.

24 Q. I just want to go back and clean something up
25 that we talked about previously.

1 And I'm going to mark this as Exhibit 50.
2 (Document marked Deposition Exhibit 50
3 for identification.)

4 BY MS. SANGHVI:

5 Q. I've handed you a document that's titled Scott
6 Duane Working Remotely Plan. Bears Bates number
7 IXL-1650. It's a one page document.

8 Is this familiar to you?

9 A. Yes.

10 Q. What is this document?

11 A. It's the plan that I wrote up for when he came
12 back.

13 Q. And I know earlier we talked a little bit
14 about Ms. -- about certain arrangements that you had
15 made with Ms. Milin, Ms. Bland, Mr. Bleecher when they
16 were working remotely.

17 Did you have documents similar to this one for
18 any of those three individuals?

19 A. No.

20 Q. Is it fair to say this is the first time you
21 created this type of detailed document?

22 A. Yes.

23 Q. Did you see Scott again after January 6th, 2015
24 after the meeting with him?

25 A. I don't remember.

1 Q. Once -- were you in the office the date that
2 Mr. Duane was terminated on January 8th, 2015?

3 A. Yes.

4 Q. Do you remember what time Mr. Mishkin met with
5 Mr. Duane?

6 A. No.

7 Q. Where is Mr. Mishkin's office?

8 A. The sixth floor.

9 Q. And where is your office?

10 A. The fourth floor.

11 Q. Was Scott brought back to his cubicle after he
12 had been terminated?

13 A. No.

14 Q. And who was responsible for cleaning out his
15 cubicle?

16 A. Combination of HR and operations.

17 Q. Do you know who specifically?

18 A. No.

19 Q. Was it done during -- you said it was done
20 during the meeting; is that correct?

21 A. Yes.

22 Q. So it was done in the presence of other
23 employees; is that true?

24 A. Yes.

25 Q. At that time did any employees come and ask you

1 what was going on?

2 A. No.

3 Q. How did you communicate to your team that
4 Mr. Duane was no longer working on the team?

5 A. I told them in person that he was being
6 terminated for poor judgment.

7 Q. Did you send an e-mail to the team?

8 A. No.

9 MS. SANGHVI: I'm going to mark as Exhibit 51 a
10 two-page printout of a Gchat conversation between Gina
11 Bland and David Keyes, IXL-0831.

12 (Document marked Deposition Exhibit 51
13 for identification.)

14 BY MS. SANGHVI:

15 Q. Showing you a document dated January 8th, 2015
16 at 12:08 p.m.

17 A. (Witness reviewing document.)

18 Q. In the last quarter of the page -- excuse me,
19 on the second page towards the end you wrote, "Did you
20 see my e-mail about Scott"?

21 Do you see that?

22 A. Uh-huh.

23 Q. Do you know what you're referring to there?

24 A. Yes. Sent the development team e-mail to let
25 other people know who aren't on my team.

1 Q. Ms. Bland was part of the development team?

2 A. Yes. My team is a subset of the development
3 team.

4 Q. So what did you write in the e-mail to the
5 development team?

6 A. I don't remember.

7 Q. Did you write an e-mail to any other teams
8 other than the development team informing them about
9 Mr. Duane no longer working at IXL?

10 A. No.

11 Q. Did you have -- you said you told your team in
12 person. Was that in one group meeting or individual
13 meetings?

14 A. It was not one group meeting. But I can't
15 remember if it was like one-on-one with everybody.

16 Q. Do you remember bringing Ms. Milin and
17 Ms. Morse into your office to have a discussion about
18 Mr. Duane's termination?

19 A. Yes.

20 Q. What do you remember about that meeting?

21 A. I told them why Scott was being terminated. It
22 was short.

23 Q. And what was their reaction?

24 A. Kind of surprised.

25 Q. Did they ask you for any details?

1 A. I don't remember.

2 Q. Who's Joshua Gevirtz?

3 A. Engineer.

4 Q. Is he still working at IXL?

5 A. No.

6 Q. Why not?

7 A. I don't know.

8 MR. WILSON: Objection; form, foundation.

9 THE WITNESS: I don't know.

10 BY MS. SANGHVI:

11 Q. Did you ever supervise him?

12 A. No.

13 Q. Was he ever on your team?

14 A. No.

15 Q. What team was he a part of?

16 A. Engineering team.

17 Q. Did Mr. Gevirtz ever ask you about the reasons
18 for Mr. Duane's termination?

19 A. Yes, he did reach out.

20 Q. When was that?

21 A. I don't remember.

22 Q. What did he reach out about?

23 A. He asked about it.

24 Q. And what was your response?

25 A. I talked to him and said that Scott had an act

1 of poor judgment and was terminated because of it.

2 Q. Have you ever been accused of discrimination in
3 the workplace before?

4 MR. WILSON: Objection; form.

5 THE WITNESS: Before when? Ever?

6 BY MS. SANGHVI:

7 Q. Yes. In your time at IXL, have you ever been
8 accused of discrimination by an employee?

9 A. Scott in the January 6th meeting.

10 Q. Anyone else?

11 A. No.

12 Q. Have you ever posted on Glassdoor.com?

13 A. Yes.

14 Q. When?

15 A. I don't know. I don't know the dates.

16 Q. Was it early in your tenure at -- sorry.

17 Actually, was it about your employment at IXL?

18 A. Yes.

19 Q. And was it early in your tenure at IXL?

20 A. Yeah, first couple of years.

21 Q. Why did you post on Glassdoor?

22 A. To help recruiting.

23 Q. Were you asked to post?

24 A. Yes.

25 Q. By whom?

1 A. Suzanne.

2 Q. Is that Suzanne Pelz?

3 A. Yes.

4 Q. Is she a member of the recruiting team?

5 A. No, she's an engineering lead.

6 Q. Was it a positive review of IXL?

7 A. Yeah.

8 Q. Were you aware of any policy where employees
9 are not permitted to post negative reviews on
10 Glassdoor.com?

11 A. No.

12 Q. Do you have an understanding of IXL's
13 anti-discrimination or equal employment policy?

14 A. Yes.

15 Q. What is that understanding?

16 A. That it's unlawful to discriminate against
17 anyone based on their, you know, protected
18 classification. It's not tolerated.

19 Q. Where is that -- is that a written policy?

20 A. It's in the handbook.

21 Q. What constitutes discrimination in -- as you
22 understand it from the handbook?

23 A. Unjust treatment based on the fact that the
24 person is part of one of these, like, protected
25 classifications.

1 Q. Did you ever receive any training about IXL's
2 policies regarding anti-discrimination?

3 A. Yes.

4 Q. When was that?

5 A. I did two trainings. One was in 2014, summer,
6 on sexual harassment and discrimination and then the
7 other was in 2016 in the summer.

8 Q. And what was the subject matter of that
9 training?

10 A. Also sexual harassment discrimination.

11 Q. What was the format of these trainings?

12 A. Online modules.

13 Q. They -- both the 2014 and the 2016 trainings
14 were online modules?

15 A. Yes.

16 Q. Any other trainings regarding
17 anti-discrimination policies at IXL?

18 A. The orientation training my first week.

19 Q. Who provided that training?

20 A. I don't remember.

21 Q. What kind of training was it?

22 A. General company overview training, workplace,
23 you know, requirements.

24 Q. Was it an in-person orientation?

25 A. Yes.

1 Q. Was it just to orient you or was it a group of
2 people?

3 A. A group.

4 Q. It's fair to say those are all new employees?

5 A. Yes.

6 Q. Was it a slide presentation?

7 A. Yes.

8 Q. What do you remember about anti-discrimination
9 policies from that training?

10 A. That it's unlawful to discriminate and, you
11 know, based on the protected classifications.

12 Q. Any other trainings that you can remember
13 regarding anti-discrimination policies?

14 A. No.

15 Q. Does IXL have any anti-retaliation policies?

16 A. Yes.

17 Q. What is it?

18 A. That it's unlawful to retaliate against someone
19 for basically like executing a protected activity. Or
20 being a part of a protected activity.

21 Q. Anything else?

22 A. No.

23 Q. And where is this policy written?

24 A. Handbook.

25 Q. Do you know what constitutes a protected

1 activity?

2 MR. WILSON: Objection; foundation, form.

3 Go ahead.

4 THE WITNESS: Yeah, like raising concerns to
5 management or HR.

6 BY MS. SANGHVI:

7 Q. Is there a policy about if these concerns have
8 to be truthful?

9 A. I don't know.

10 Q. And did you receive any training on the
11 anti-retaliation prohibitions at IXL specifically?

12 A. I don't know.

13 Q. You don't know or you don't remember?

14 MR. WILSON: Objection; asked and answered.

15 Go ahead.

16 THE WITNESS: I don't remember.

17 BY MS. SANGHVI:

18 Q. Does IXL have any policies or procedures
19 regarding requests for reasonable accommodation?

20 A. Yes.

21 Q. What are they?

22 A. That the manager and the employee should work
23 together towards a reasonable accommodation.

24 Q. Is that written anywhere?

25 A. I don't know.

1 Q. So how did you come to understand that as an
2 IXL policy?

3 A. Through my experience with Scott and working
4 with him on a reasonable accommodation.

5 Q. Have you had to handle any reasonable
6 accommodation requests from employees since Mr. Duane?

7 MR. WILSON: Objection; relevance, form,
8 foundation.

9 Go ahead.

10 THE WITNESS: I don't think so.

11 BY MS. SANGHVI:

12 Q. And is it required to involve human resources
13 in any request for a reasonable accommodation?

14 MR. WILSON: Objection; foundation.

15 THE WITNESS: I don't know.

16 BY MS. SANGHVI:

17 Q. Do you know if you were recommending Mr. Duane
18 for a raise in 2015?

19 A. Yes. Kate requests information on all our
20 employees. I recommended him for an average raise.

21 Q. Are there categories of raises?

22 A. Yes.

23 Q. So average is one. What are the other
24 categories?

25 A. Above average, below average, or none.

1 Q. And the reason that you recommended him for an
2 average raise was because of his positive elements of
3 his performance in 2014; is that correct?

4 A. It's an overall balance look. So positive --
5 positives and areas to improve.

6 Q. I'm going to ask you to take out from your
7 exhibits an exhibit that we've previously marked as
8 Exhibit 39. That is the performance annual review in
9 2014 that you said you drafted, correct?

10 A. Yes.

11 MS. SANGHVI: What I'm marking now as
12 Exhibit 52 is a document that I will represent is the
13 metadata that is attached to this electronically
14 produced document.

15 (Document marked Deposition Exhibit 52
16 for identification.)

17 MS. SANGHVI: I should clarify. It's some of
18 the metadata attached to that document.

19 BY MS. SANGHVI:

20 Q. Do you see where it says that the date created
21 was January 5th, 2015?

22 A. Yes.

23 Q. Does that seem accurate to you, that you
24 created Mr. Duane's performance annual review 2014 on
25 January 5th, 2015?

1 A. Yes.

2 Q. Do you see where it says "date last mod" and
3 then two below that it says "time last mod"?

4 A. Yes.

5 Q. Do you see that it says January 7th, 2015 at
6 11:48 a.m.?

7 A. Yes.

8 Q. Do you know why you might have modified his
9 performance evaluation on January 7th, 2015?

10 A. Pretty common practice for me to write
11 something and then revisit it, make sure it's polished,
12 not the same day, with fresh eyes.

13 Q. Given that Ms. Prado had sent you the
14 Glassdoor.com post at 11:04 a.m., I'm curious as to
15 whether having reviewed that document led you to make
16 any changes on his performance review?

17 A. I don't remember.

18 Q. Did you discuss any modifications that you made
19 to Mr. Duane's performance review with any IXL
20 employee?

21 A. Well, Kate and I -- I mean Kate reviewed it,
22 so, as I testified earlier, she said overall it looks
23 good. So she's the only one who saw it.

24 Q. You received no indication or notification to
25 remove something from his performance evaluation,

1 correct?

2 A. Not to my recollection.

3 MS. SANGHVI: I'm nearing the end of my
4 inquiry, but Mr. Marek is going to ask some follow-up
5 questions. I'll likely take a break after that and if
6 I have any -- I want to review my documents and if I
7 have any follow-up last questions for you.

8 MR. WILSON: Hang on. Just so I'm clear, in
9 the past you have finished your questions, Mr. Marek
10 has asked questions, and then you have asked follow-up,
11 essentially redirect or re-cross, based on scope of
12 what he's asked. What you're saying now is you're
13 going to have him substitute in, and you're not done
14 with your examination?

15 MS. SANGHVI: No, that's not what I'm saying.
16 I was just trying to keep us moving along. But for --
17 to that end, I'm happy to take a break for ten minutes
18 so that I can review now and we can go from there.

19 MR. WILSON: For the record, I just want to if
20 you finished your questions. I know you might have
21 questions after his examination -- Mr. Marek's
22 examination, but that's different than being done,
23 tendering the witness essentially, and then, you
24 know -- that's different than saying, well, I'm not
25 done, we're going to sort of tag team in and out, and

1 then I might continue later. I'd like to know which
2 one it is.

3 I mean if you're done and you just need time to
4 make sure you're done, that's different than we can
5 take a break or not. You know what I mean --

6 MS. SANGHVI: Sure. Let's take a break. Ten
7 minutes.

8 (Break taken from 3:34 to 3:43.)

9 (Roberta Steele enters proceedings.)

10 BY MS. SANGHVI:

11 Q. Mr. Keyes, I wanted to follow up on a point
12 that you made earlier with regards to the
13 recommendation for an average raise for Mr. Duane.

14 Did you recommend Mr. Duane for an average
15 raise because he was one of the more productive members
16 of the team in a variety of ways, including spec
17 writing, phone interviews, mobile testing and QA?

18 A. So there's something I'd like to clarify about
19 spec writing productivity -- there's actually like two
20 things going on here. One is how fast he turns it in
21 for review, and the other how fast it gets to
22 engineering, so like the length of time for review. So
23 then pretty -- pretty consistent that he turned them in
24 quickly, but given how long they took to review, it
25 just took -- took a long time for them to get to

1 engineering.

2 So the average raise was balanced from like
3 turning in work, but then the -- the quality of the
4 work and having to get that quality up is what balanced
5 it out to average.

6 Q. Sorry, I just want to clarify. When you say
7 the average, was his quickness in turning in the specs,
8 was that above average or average? I just want to make
9 sure I understood that.

10 A. In turning in to review was slightly above
11 average. Length time of review was below average.
12 That balanced out to average.

13 Q. It is accurate to say that he was a productive
14 member of the team, though, correct, in November of
15 2014?

16 A. An averagely productive member of the team,
17 given the caveats that we discussed about the remote
18 productivity not being there.

19 Q. I'm going to show you a document that we have
20 marked previously as document Exhibit 11.

21 Do you recognize that document?

22 A. Yes.

23 Q. What is it?

24 A. It's an e-mail to Kate with my notes on the
25 people who report to me.

1 Q. And the date of this e-mail is November 20th,
2 2014, correct?

3 A. Yes.

4 Q. This is while Mr. Duane was on leave?

5 A. Yes.

6 Q. And you were sharing this information for
7 purposes of a recommendation regarding your direct
8 reports' raises, correct?

9 A. Yes.

10 Q. Do you see where it says, "Scott is one of the
11 more productive members of the team in a variety of
12 ways: specs, phone interviews, mobile testing and QA"?

13 A. Yes.

14 Q. Do you have any reason to disagree with that
15 statement, as you sit here today?

16 A. With the description that I gave just now, no.

17 Q. I'm just asking if you have any reason to
18 disagree with that statement there, that first
19 sentence?

20 A. No.

21 MS. SANGHVI: I'm going to let Mr. Marek ask
22 some questions, and I may have follow-up at the end
23 related to his inquiries.

24 EXAMINATION BY MR. MAREK:

25 Q. David Marek. I represent Scott. Good to see

1 you.

2 As you sit here now, do you know what the
3 surgery was that Scott had?

4 A. Yes.

5 Q. What was it?

6 A. Gender transition surgery.

7 Q. Do you know anything more than that?

8 A. No.

9 Q. Do you know if it was top or bottom?

10 A. No.

11 Q. Is that an elective surgery?

12 A. I don't know.

13 Q. Do you think it's an elective surgery?

14 MR. WILSON: Objection; form.

15 Go ahead.

16 THE WITNESS: I'm not really sure what the word
17 "elective" means in the context of your question.

18 BY MR. MAREK:

19 Q. Well, was it a surgery that he was required to
20 have for a medical reason?

21 MR. WILSON: Objection; form and foundation.

22 Go ahead.

23 THE WITNESS: I don't know. I honestly am not
24 sure what the word "elective" is that you're trying to
25 get at.

1 BY MR. MAREK:

2 Q. So I'm saying was it something that he was
3 required to have for a medical reason?

4 MR. WILSON: Same objection.

5 Go ahead.

6 THE WITNESS: No, I guess not.

7 BY MR. MAREK:

8 Q. At the time when this was going on in 2014, did
9 you believe that the surgery that he was having was
10 required for a medical reason?

11 A. I didn't know.

12 Q. Is IXL's policy affected by whether or not the
13 surgery was required for a medical reason?

14 A. I don't think so.

15 Q. What if it wasn't a surgery? For instance, can
16 a person take two months' medical leave to get hair
17 transplants?

18 MR. WILSON: Objection; form.

19 THE WITNESS: If it's covered by disability,
20 then yes.

21 BY MR. MAREK:

22 Q. Whose disability when you say that?

23 A. State. California.

24 Q. So IXL will give medical leave to anything
25 that's covered by California State Disability; is that

1 the policy?

2 MR. WILSON: Foundation.

3 Go ahead.

4 THE WITNESS: Yes.

5 BY MR. MAREK:

6 Q. Where is that policy written?

7 A. I don't know.

8 Q. When did you learn what the surgery was that
9 Scott had?

10 A. When I read Scott's charge.

11 Q. Did you feel misled in some way because you had
12 thought it was a different procedure?

13 A. No.

14 Q. At the party -- at the Christmas party you said
15 that Scott was there with a female date; is that right?

16 A. Yes.

17 Q. But prior to that, you had thought he was a gay
18 man; is that right?

19 A. Yes.

20 Q. At that time did you think that he was --
21 didn't feel comfortable bringing a male date to an IXL
22 holiday party?

23 A. No. 'Cause he brought a male date the year
24 before.

25 Q. So in 2014 do you think that he felt he had to

1 bring a female date to fit in?

2 A. No.

3 Q. Why do you think, then, that he brought a
4 female date if you thought he was gay?

5 MR. WILSON: Objection; form.

6 THE WITNESS: I didn't know. Sometimes people
7 just bring friends to holiday parties as dates.

8 BY MR. MAREK:

9 Q. Did they do things at the party that would have
10 suggested that they were more than just friends?

11 A. No, not that I saw.

12 Q. Were they dancing together?

13 A. No. He didn't even stay for dinner. He left.

14 Q. I understand he didn't stay for dinner. But
15 were they dancing together?

16 A. I didn't see that. Dancing doesn't happen
17 until after dinner usually.

18 Q. So when he was there was -- are you sure he
19 didn't stay for dinner actually?

20 A. I'm pretty sure.

21 Q. Were you involved in any discussions after the
22 fact where people were unhappy that he showed up for
23 dinner, but hadn't RSVP'd for dinner?

24 A. I don't remember.

25 Q. No one ever said that to you?

1 A. I don't remember that, no.

2 Q. Did Ms. Prado say to you that she thought it
3 was not appropriate that he came for dinner even though
4 he didn't RSVP?

5 A. I don't remember.

6 Q. But you're sure he didn't stay for dinner?

7 MR. WILSON: Objection; asked and answered.

8 THE WITNESS: Yes. My team generally sat at
9 the same table. And I went over to say hi to them, he
10 wasn't there, so I concluded he didn't stay for dinner.
11 BY MR. MAREK:

12 Q. Let me just look at -- after Scott sends the
13 e-mail to you on December 22nd -- so if you look at
14 Exhibit 45, am I right your reaction after getting that
15 e-mail was to ask Kate Mattison about it; is that
16 correct?

17 A. I'm sorry, which e-mail?

18 Q. So if you look at Exhibit 45, the one that
19 Scott sends on December 22nd to you -- I'm sorry.
20 Before you send it to him, I apologize. I know his
21 e-mail to you is on the 19th, and you respond on the
22 22nd. And in between that, in between the 19th and
23 22nd, you discuss that with Kate Mattison; is that
24 right?

25 A. Yes.

1 Q. And you even send her a draft of your e-mail on
2 the 22nd to review?

3 A. Yes.

4 Q. And you sent her that by e-mail?

5 A. Probably.

6 Q. Did she have any comments on it?

7 A. No. She said it looks good.

8 MR. MAREK: Jeff, I'm going to ask that you
9 produce that e-mail.

10 MR. WILSON: It was produced.

11 MR. MAREK: The one from Ms. Keyes to
12 Ms. Mattison?

13 MR. WILSON: Uh-huh.

14 BY MR. MAREK:

15 Q. How come you decided to raise that -- to send
16 that draft to Ms. Mattison at that time?

17 A. I wanted a second pair of eyes to make sure I
18 was communicating myself clearly in the situation.

19 Q. And she was your direct manager at the time?

20 A. That's right.

21 Q. Then Scott sends this one back on the 23rd; is
22 that right?

23 A. Yes.

24 Q. And this one on the 23rd, you don't forward to
25 Ms. Mattison, but you do forward to Mr. Mishkin; is

1 that right?

2 A. Either I forwarded it to Paul, or Maricela and
3 Lenore forwarded to Paul. But I forwarded it to
4 Maricela and Lenore.

5 MS. SANGHVI: For the record, I'd like that
6 e-mail also to be produced. And it has not been.

7 BY MR. MAREK:

8 Q. So you don't -- so you're uncertain how this
9 e-mail gets forwarded to Paul; is that right?

10 A. Yes.

11 Q. And then -- but you don't forward it to
12 Ms. Mattison; is that right?

13 A. I don't think so, no.

14 Q. If she was involved in drafting a response or
15 at least, you know, reviewing your draft of the
16 response, why wouldn't you forward her Scott's response
17 to that e-mail?

18 A. Scott's response to that e-mail was, I thought,
19 fairly intense, and so I wanted to talk to Paul.

20 Q. So did you view that as an escalation of sorts?

21 A. Yes.

22 Q. Then on the 24th you had a conversation with
23 Mr. Mishkin; is that right?

24 A. Yes.

25 Q. So that's after you received this e-mail from

1 Scott, but it's before -- before you send your
2 response, which is sent on the 24th; is that right?

3 A. That's right.

4 Q. And then you also sent a draft of this e-mail
5 to Mr. Mishkin to review before you sent it to Scott;
6 is that right?

7 A. That's right.

8 MR. MAREK: We'd also like that one, Jeff, if
9 you haven't already produced it.

10 MR. WILSON: I believe we have, but okay.

11 BY MR. MAREK:

12 Q. How come you sent a draft of your e-mail to
13 Mr. Mishkin?

14 A. That was what we had decided on in our phone
15 conversation, that I did would draft something and he
16 would review it.

17 Q. Who decided that?

18 A. We did collectively in our phone conversation.

19 Q. Who's the "we"?

20 A. Sorry. Paul and myself.

21 Q. When you say you decided it, does that mean
22 Paul said to you do it or did you weigh in as well?

23 A. It was a collaborative conversation. So we
24 were talking about what makes the most sense to do
25 and -- so it was both of us.

1 Q. What was the -- what did you understand the
2 reason was for getting Paul's feedback on that e-mail
3 before sending it out?

4 A. We wanted to address the situation
5 appropriately and make sure Scott knew why I had sent
6 my original response and explain things and then move
7 forward with the accommodation.

8 Q. But prior to the conversation you had with him
9 that day on the 24th, am I right that Mr. Mishkin was
10 not up to speed on the issues with Mr. Duane?

11 A. Correct. It was -- part of the conversation we
12 had was to get him up to speed.

13 Q. But Ms. Mattison had been in the loop the whole
14 time, correct?

15 A. She had been in the loop on the first e-mail.

16 Q. But even before the first e-mail, she knew that
17 Scott went on leave, when he went on leave, and she
18 knew when he was planning to come back, she had known
19 about all of these things, right?

20 MR. WILSON: Objection; form.

21 THE WITNESS: She had known that Scott was
22 going on leave and coming back around the end of the
23 year, yes.

24 BY MR. MAREK:

25 Q. And Mr. Mishkin did not even know that,

1 correct?

2 MR. WILSON: Objection; foundation.

3 THE WITNESS: I don't know.

4 MR. WILSON: You've answered.

5 BY MR. MAREK:

6 Q. But didn't -- you said that Paul asked you some
7 background questions; is that right?

8 A. Yes.

9 Q. So what would -- what are the background
10 questions that he needs to know on the 24th?

11 MR. WILSON: Objection; form.

12 Go ahead.

13 THE WITNESS: He wanted to know why -- what had
14 led up to Scott's most recent e-mail on the 23rd. What
15 the situation was.

16 BY MR. MAREK:

17 Q. Well, I mean at that time when you're having
18 that call, does Mr. Mishkin -- is he even aware that
19 this employee had been out for two months?

20 A. I don't know.

21 Q. But do you remember if you had to tell him that
22 on the call?

23 A. I definitely told him that he was out on leave
24 and he was coming back soon, yeah.

25 Q. And was it your understanding that prior to

1 your telling him that on the call, he didn't know that?

2 A. That was my understanding, yes.

3 Q. And did he know that prior to the surgery he
4 was working out of the office one day a week for the
5 pre-op appointments?

6 A. I don't know if he knew that, but I filled him
7 in on it regardless.

8 Q. Did he know that Scott only wanted this
9 accommodation for a couple of weeks?

10 A. I don't know.

11 Q. Did you tell him that?

12 A. I don't remember.

13 Q. You said that when -- so Scott comes back on
14 the 30th; is that right?

15 A. Yes.

16 Q. And you noticed there was a few things -- you
17 said he was noncommunicative and -- do you remember the
18 testimony on that?

19 A. Yes.

20 Q. Were you involved in any discussions where
21 anyone discussed whether or not he was noncommunicative
22 or these changes were a result of the medical issues
23 that he had?

24 A. No.

25 Q. Looking back now, do you think that that might

1 have contributed to it?

2 MR. WILSON: Objection; foundation.

3 THE WITNESS: I don't know.

4 BY MR. MAREK:

5 Q. But -- so you didn't know what he was out for
6 for two months, he came back, and you noticed the
7 change in his personality, but you didn't think that
8 maybe it was related to the health issue; is that
9 correct?

10 MR. WILSON: Objection; form.

11 THE WITNESS: Yeah, I don't know. He made it
12 pretty clear he wanted this to be private, so I
13 respected that privacy.

14 BY MR. MAREK:

15 Q. So you didn't think it was related to the
16 health issue, and you believed that it was related to
17 the fact that he did not feel you were accommodating
18 him, the issues raised in this e-mail thread on the
19 24th, right?

20 A. Correct.

21 Q. After you met with Scott on the 6th, that's the
22 meeting on the 6th, you said that -- you previously
23 said that you e-mailed Lenore and Maricela; is that
24 correct?

25 A. Can you clarify?

1 Q. Yeah. You said that you -- after that meeting
2 you said, "I immediately e-mailed Lenore and Maricela"?

3 A. After the meeting, yes.

4 Q. Have we seen that e-mail today? Is it one of
5 the e-mails that you looked at today?

6 A. No. I'd like to clarify. It might have been
7 an instant message.

8 MR. MAREK: Jeff, we also ask for that e-mail
9 or instant message, whatever it is.

10 MR. WILSON: To the extent it isn't in the
11 thousands of pages or whatever, I -- I honestly don't
12 know --

13 MR. MAREK: I understand.

14 MR. WILSON: -- without looking first. I don't
15 want to -- I just don't want the record to reflect that
16 I agree or that we've looked for and can't find
17 something, that's all.

18 MR. MAREK: It doesn't reflect that you
19 agreeing in any way. If it hasn't been produced, it
20 does reflect that we're making that request.

21 BY MR. MAREK:

22 Q. After you sent -- what do you remember you put
23 in that e-mail or instant message?

24 A. I said I'd like to meet to discuss Scott.
25 Scott and I just met.

1 Q. Did you tell them anything else about the
2 conversation with Scott?

3 A. In the digital communication, I don't think so.

4 Q. Is there a reason that you were concerned about
5 putting that in writing?

6 A. No.

7 Q. Then you said that you met with them soon
8 after. And that's the meeting that you discussed where
9 you then called Mr. Mishkin. Is that the right --

10 A. Yes.

11 Q. Now, you said when that meeting ended you were
12 optimistic. Do you remember that?

13 A. Yes.

14 Q. You were -- you were optimistic 'cause you
15 thought that you and Scott had made progress and were
16 going to solve the problem?

17 A. We definitely had not solved the problem, but
18 we had made progress in terms of communicating about
19 it.

20 And Paul is very calming, and I was hoping that
21 Scott's meeting with Paul would kind of mitigate the
22 frustration.

23 Q. But if you were optimistic, if that meeting
24 ended in a positive tone, why did you have to bring
25 Paul in at all?

1 A. Because Paul is very calming, and I was hoping
2 that he could finish it off, finish off the solving of
3 the problem. So we had made improvements, but we
4 certainty hadn't solved the problem in that one
5 meeting. And I was hoping Paul would talk to Scott,
6 and Scott would feel heard at the highest levels of the
7 company and we could move forward.

8 Q. Did you give Scott any indication that you or
9 IXL would investigate the issues that he raised at the
10 January 6th meeting?

11 A. That's what the meeting with Paul was meant to
12 start.

13 Q. That was meant to start an investigation into
14 the issues that Scott raised?

15 A. Paul was going to ask Scott questions about it
16 and learn more about it.

17 Q. Isn't it -- I mean was that something that you
18 felt you had already done?

19 A. I don't understand the question.

20 Q. Did you feel that you had already asked Scott
21 questions about the issues?

22 A. I asked him one question in the beginning, but
23 I noticed that he'd been upset and I was wondering if I
24 can do anything to help. And it became clear that the
25 only thing I could do to help was to raise the concerns

1 to HR and upper management, so that's what I did.

2 Q. When you had the meeting with Lenore and
3 Maricela, you said that Scott was convinced that IXL
4 discriminated against him, correct?

5 A. Yes.

6 Q. And did you actually say words to that effect?

7 A. Yes.

8 Q. And did you say -- I assume from that that you
9 did not say words to the effect of "I think Scott's
10 making this whole discrimination claim up," right?

11 A. I didn't say that.

12 Q. Then you told Lenore and Maricela that you
13 think it would be best if he spoke to Paul and "see if
14 we can resolve it;" is that right?

15 A. Yes.

16 Q. And if you already answered, I appreciate it,
17 but I'm going to ask anyway. Why did you think it
18 would be best if he spoke to Paul at that time?

19 A. As I said, Paul is very calming, and I was
20 hoping he could mitigate the situation. He's also the
21 CEO, can't go any higher than him, so Scott's being
22 heard at the highest levels, and I was hoping that
23 would do it.

24 Q. When the meeting ended with you and Scott, did
25 you still think that he was upset about the issues that

1 he had raised?

2 A. I thought he was still a little upset, but
3 definitely less so than at the beginning of the
4 meeting.

5 Q. If you can look at Exhibit 50, the work plan.

6 A. Okay.

7 Q. You see at the bottom it says, "If goals are
8 not being met, other accommodations will need to be
9 considered, such as going back on disability or being
10 in the office more"?

11 A. Yes.

12 Q. Is that referring -- when you say the goals are
13 not being met, are you referring to the general goals?

14 A. No. I'm referring to the goals as laid out as
15 a whole here. So the individual tasks on certain days
16 as well as goals for the week as well as general goals.
17 It all kind of makes one big picture of goals.

18 Q. If -- under the general goals, do you see where
19 it says, "Meet goals set in Friday e-mail consistently
20 and with good quality. Aim to reduce time specs need
21 in first and second round review. Currently it has" --
22 do you see that section?

23 A. Yes.

24 Q. Is that the issue of the length of time you
25 review and how long it takes the specs to get to

1 engineering; is that what you're addressing there?

2 A. Yes.

3 Q. And that problem is one that you felt existed
4 even before Scott went on leave, correct?

5 A. That's right.

6 Q. Why would this accommodation -- why did you --
7 let me ask it better.

8 That was just a general performance problem you
9 had with him; is that right?

10 A. Yes.

11 Q. I mean that wasn't related to this recent
12 request to work from home part time, was it?

13 A. No.

14 Q. So aren't -- are you in effect saying there --
15 that goal is actually saying he just has to perform
16 better than he performed in 2014?

17 MR. WILSON: Objection; form.

18 THE WITNESS: No. So the wording here says,
19 "Aim to reduce time specs need in first and second
20 round review." So this is a general performance
21 objective that applies whether he's in the office or
22 not, but certainly I want him to be working on that
23 throughout this half in office half at home plan.

24 BY MR. MAREK:

25 Q. You're saying, "Currently it has been 10 plus

1 rounds," right?

2 A. That's right.

3 Q. But it should be more like five to seven?

4 A. That's right.

5 Q. So was the point that if he doesn't get it
6 down, then you were going to say he either has to go
7 back on disability leave or spend more time in the
8 office?

9 A. No, no. Like I said, it's a comprehensive
10 picture. We have individual tasks per day, we have
11 goals for the week, and we have general goals. And
12 this general goal is aim to reduce time specs need in
13 first and second round review. So if just one of this
14 whole list of things, you know, isn't being met but
15 everything else is, then I'm not going to, you know,
16 force him to go back on leave or anything like that.

17 And the language here is aim, so he's
18 continuing to work on the performance objective that he
19 should be working on no matter where he is, either at
20 home or in the office.

21 MR. MAREK: I have nothing further.

22 EXAMINATION BY MS. SANGHVI:

23 Q. Two follow-ups.

24 I think you had testified that one of the
25 purposes of meeting with -- of Scott meeting with

1 Mr. Mishkin on -- after he raised the complaints to you
2 on January 6th was that Paul was going to ask questions
3 about the issues and investigate the issues that
4 Mr. Duane was raising; is that correct?

5 A. Yes.

6 Q. That did not happen, though, did it?

7 MR. WILSON: Objection; foundation.

8 THE WITNESS: Correct.

9 BY MS. SANGHVI:

10 Q. And why is that?

11 A. Because the Glassdoor post came to light the
12 next day.

13 Q. As a manager knowing that one of the people on
14 your team had made an accusation of discrimination, did
15 you do anything to check in with the rest of your team
16 after Mr. Duane had been terminated?

17 MR. WILSON: Objection; form.

18 THE WITNESS: What do you mean check in with
19 them?

20 BY MS. SANGHVI:

21 Q. To see if anyone else had any experiences of
22 discrimination.

23 A. No.

24 MR. WILSON: Objection; form.

25 BY MS. SANGHVI:

1 Q. Did you ask anyone in your team if they
2 had felt discriminated against after January 8th,
3 2015?

4 MR. WILSON: Objection; form.

5 THE WITNESS: No.

6 BY MS. SANGHVI:

7 Q. Did you engage in any type of investigation
8 with HR's assistance about any of the allegations --
9 new allegations that Mr. Duane raised in his
10 Glassdoor.com post?

11 A. No.

12 Q. Why not?

13 A. I mean we found the post on January 7th,
14 strongly believed all that to be just a -- a swipe at
15 the company, not true, terminated him on January 8th.
16 I didn't see any reason to investigate it.

17 Q. You believed it to be not true, but you didn't
18 take any steps to investigate the truthfulness,
19 correct?

20 MR. WILSON: Objection; asked and answered
21 before and just now.

22 BY MS. SANGHVI:

23 Q. You can go ahead and answer.

24 A. I did not take steps to investigate it.

25 MS. SANGHVI: I have nothing further.

1 MR. WILSON: All set.

2 (Whereupon, the deposition was concluded at
3 4:14.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SIGNATURE OF DEPONENT

I, the undersigned, DAVID KEYES, do hereby
certify that I have read the foregoing deposition and
find it to be a true and accurate transcription of my
testimony, with the following corrections, if any:

PAGE	LINE	CHANGE

[illegible]

DAVID KEYES, Date

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

Exhibit M

From: Scott Duane [sduane@ixl.com]
Sent: Wednesday, January 07, 2015 8:06 AM
To: Paul Mishkin
Subject: Re: Meet Thursday

Hi Paul,

That sounds good. Looking forward to speaking with you.

Scott

On Wed, Jan 7, 2015 at 4:27 AM, Paul Mishkin <pmishkin@ixl.com> wrote:

Hi Scott,

David told me that you voiced a complaint about discrimination. I'd like to meet with you Thursday at 11 to discuss this. Please let me know if you'd prefer a different time.

Discrimination of any type, including disability discrimination, is unacceptable to me and to IXL, and I need to understand what has been occurring so that I can take action immediately to correct it.

Thanks,
Paul

Exhibit N

From: Karen Penner [kpenner@ixl.com]
Sent: Wednesday, January 07, 2015 3:10 PM
To: maricela prado
Subject: Re: Glassdoor Review - Scott Duane

I know for a fact that this is Scott because of his writing style and use of dashes (-).

His previous review (which he told me about after he wrote it, and we read it together) is below:

Sep 11, 2013

14 people found this helpful



"Nice place to work. "



Current Employee - Product Analyst in San Mateo, CA

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

Pros

Coworkers are smart and generally upbeat and open to collaboration.

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

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

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

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

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

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

Cons

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

Salary is a bit lower than other tech companies.

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

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

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

☒ Recommends ☒ Positive Outlook ☒ Approves of CEO

On Wed, Jan 7, 2015 at 11:01 AM, Karen Penner <kpenner@ixl.com> wrote:

Dec 30, 2014



"Micromanaged and problematic "



Current Employee - Anonymous Employee

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

Pros

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

The company isn't going anywhere right now. They play to the traditional classroom, which is good for profits. You won't have to worry about the company going under (but don't expect the profits to pass onto you, either).

Cons

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

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.

Advice to

Management

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

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

☒ Doesn't Recommend ☐ Neutral Outlook ☒ Disapproves of CEO

Karen Penner

Recruiting Manager | IXL Learning

Direct: 650.372.4351 | Main: 855-255-7700 | Fax: 650.372.4072

777 Mariners Island Blvd., Suite 600

San Mateo, California 94404

<http://www.ixl.com>

--

Karen Penner

Recruiting Manager | IXL Learning

Direct: 650.372.4351 | Main: 855-255-7700 | Fax: 650.372.4072

777 Mariners Island Blvd., Suite 600

San Mateo, California 94404

<http://www.ixl.com>

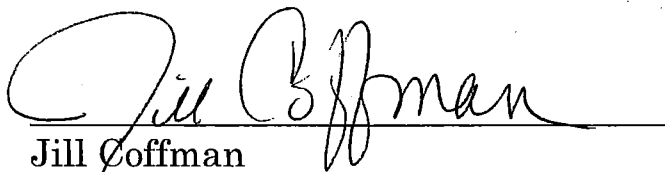
Exhibit O

IMPORTANT NOTICE

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing date, a motion to change the date of hearing should be made within 14 days from the service of the Complaint. Thereafter, it will be assumed that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Later motions to reschedule the hearing generally will not be granted in the absence of a proper showing of unanticipated and uncontrollable intervening circumstances.

All parties are encouraged to fully explore the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and personnel resources for all parties. The Board Agent assigned to this case will be happy to discuss settlement at any mutually convenient time.




Jill Coffman
Acting Regional Director

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

IXL LEARNING, INC.

and

Case 20-CA-153625

ADRIAN SCOTT DUANE, an Individual

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Adrian Scott Duane, an Individual (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that IXL LEARNING, INC. (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Charging Party on June 3, 2015, and a copy was served on Respondent by U.S. mail on June 9, 2015.
2. At all material times, Respondent has been a corporation with an office and place of business in San Mateo, California, and has been engaged in the creation and sale of online educational software service and related products.
3. In conducting its operations during the calendar year ending December 31, 2014, Respondent sold and shipped from its San Mateo, California facility, products and services valued in excess of \$50,000 directly to points outside the State of California.
4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Complaint and Notice of Hearing
Case 20-CA-153625

5. At all material times, Paul Mishkin held the position of Respondent's Chief Executive Officer and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (a) About December 30, 2014, Respondent's employee Adrian Scott Duane engaged in concerted activities for the purposes 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.

(b) About January 8, 2015, Respondent discharged Adrian Scott Duane.

(c) Respondent engaged in the conduct described above in subparagraph 6(b) because Adrian Scott Duane engaged in the conduct described above in subparagraph 6(a) and to discourage employees from engaging in these or other concerted activities.

7. By the conduct described above in subparagraphs 6(b) and (c), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. The unfair labor practice of Respondent described above affects commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practice alleged above in paragraphs 6 and 7, as part of the make whole remedy in this case, the General Counsel seeks an order requiring that Respondent reimburse the Charging Party for all search-for-work and work-related expenses regardless of whether the Charging Party received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period.

Complaint and Notice of Hearing
Case 20-CA-153625

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before August 12, 2015, or postmarked on or before August 11, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or

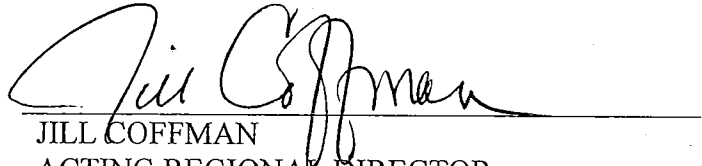
Complaint and Notice of Hearing
Case 20-CA-153625

if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on at 9:00 a.m. October 14, 2015, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at the E.V.S. Robbins Courtroom (Room 306), 901 Market Street, San Francisco, California. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: July 29, 2015


JILL COFFMAN
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Attachments

Exhibit P

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

IXL LEARNING, INC.

and

ADRIAN SCOTT DUANE

Case 20-CA-153625

**ORDER TRANSFERRING PROCEEDING TO
THE NATIONAL LABOR RELATIONS BOARD**

A hearing in the above-entitled proceeding having been held before a duly designated Administrative Law Judge and the Decision of the said Administrative Law Judge, a copy of which is annexed hereto, having been filed with the Board in Washington, D.C.,

IT IS ORDERED, pursuant to Section 102.45 of the National Labor Relations Board's Rules and Regulations, that the above-entitled matter be transferred to and continued before the Board.

Dated, Washington, D.C., April 28, 2016.

By direction of the Board:

Gary Shinnors

Executive Secretary

NOTE: Communications concerning compliance with the Decision of the Administrative Law Judge should be with the Director of the Regional Office issuing the complaint.

Attention is specifically directed to the excerpts from the Board's Rules and Regulations and on size of paper, and that requests for extension of time must be served in accordance appearing on the pages attached hereto. **Note particularly the limitations on length of briefs with the requirements of the Board's Rules and Regulations Section 102.114(a) & (i).**

Exceptions to the Decision of the Administrative Law Judge in this proceeding must be received by the Board's Office of the Executive Secretary, 1015 Half Street SE, Washington, DC 20570, on or before **May 26, 2016**.

**NLRB ADR PROGRAM
FOR SETTLING UNFAIR LABOR PRACTICE CASES
PENDING BEFORE THE BOARD**

Since December 2005, the National Labor Relations Board's alternative dispute resolution (ADR) program has assisted parties in settling unfair labor practice cases pending before the Board. For parties who have chosen to participate in the ADR program, NLRB-assigned neutrals have assisted parties in reaching settlements in approximately 60% of the cases. The Board approved the parties' settlements in each of those cases.

Participation in the Board's ADR program is voluntary, and a party who enters into settlement discussions under the program may withdraw its participation at any time. The Board will provide the parties with an experienced neutral to facilitate confidential settlement discussions to explore resolution options that serve the parties' interests. Depending on the parties' preference, the settlement conferences will be held in person, telephonically, or by videoconference.

The Board established the ADR program in response to the success experienced by other federal agencies and the federal courts in settling contested cases through ADR, as well as the success of the NLRB's own settlement judge program at the trial level. In announcing the Board's decision to make the program permanent, the Chairman stated:

ADR programs provide the parties with several benefits, including savings in time and money; greater control over the outcome of their cases, and more creative, flexible, and customized resolutions of their disputes. Settlement discussions conducted with the assistance of an ADR neutral may broaden resolution options, often by going beyond the legal issues in controversy, and may be particularly useful where traditional settlement negotiations are likely to be unsuccessful or have already been unsuccessful. Our experience with the pilot ADR program demonstrates that participation in the program provides the parties with a process for expeditiously resolving their disputes, which serves to effectuate the purposes of the Act.

Features of the Board's ADR program include:

- The parties may request assignment of an Agency administrative law judge to serve as the neutral. The program director, however, is also available to serve in that capacity. The judge who heard the underlying case will not be appointed.
- The Board will stay further processing of the unfair labor practice case for 30 days from the first meeting with the neutral or until the parties reach a settlement, whichever occurs first. Requests for extension of the stay beyond the 30 days will be granted only with the approval of and in the sole discretion of the neutral and the program director upon a showing that such an extension is supported by good cause. However, no case may be in the program for more than 60 days.

- The preferred method of conducting settlement conferences is to have the parties or their representatives attend in person, and therefore the neutral will make every reasonable effort to meet with the participants face-to-face at the parties' location. Settlement conferences by telephone or through videoconference may be held if the parties so desire.
- Parties may be represented by counsel at the conferences, but representation by counsel is not required. Each party must have in attendance, however, a representative who has the authority to bind the party to the terms of a settlement agreement.
- The parties may be asked to submit to the neutral a confidential pre-conference memo setting forth what is in dispute between the parties, prior settlement efforts, and anything else that the parties would like to bring to the neutral's attention. The memo will be treated as a confidential submission unless the party that prepared the memo authorizes release to the other parties.
- The neutral has no authority to impose a settlement.
- Discussions between the neutral and the participants will be confidential, and there will be no communication between the program and the Board on specific cases submitted to the ADR program, except for procedural information such as case name, number, and status.
- Nothing in the ADR program is intended to discourage or interfere with settlement negotiations that the parties wish to conduct outside the program.
- Deadlines for filing pleadings with the Board will be stayed effective the date that the case enters the ADR program. In the event the case is removed from the program, the time period for filing will begin running again from where it left off.
- Settlements reached are subject to approval in accordance with the Board's existing procedures for approving settlements.
- No party will be charged fees or expenses for using the program.

The Board invites parties who have unfair labor practice cases pending before the Board to consider participating in the ADR program. If you have questions about the program, or if your client would like to participate in the program, please contact the program director, Gary Shimmers, at (202) 273-3737, or by email at gary.shimmers@NLRB.gov.

NLRB Rules and Regulations Procedures for Filing Documents

The following information is provided to help you file certain documents after an administrative law judge's decision has issued. The information provided below is not comprehensive. To fully read the Board's Rules and Regulations with respect to the filing of documents after a judge's decision has issued, please see Sections 102.46 through 102.48 and Sections 102.111 through 102.114 of the Board's Rules and Regulations. A complete copy of the Board's Rules and Regulations may be viewed at the NLRB's public website at www.nlr.gov/reports-guidance/rules-regulations.

Exceptions to Judge's Decision and Briefs in Support of Judge's Decision - Section 102.46 (a) – Within 28 days from the date of the Order Transferring Proceeding to the Board, parties may file exceptions to the administrative law judge's decision, together with a brief in support of the exceptions. Any party may also, within the same time frame, file a brief in support of the judge's decision. Please note that the due date for exceptions is stated at the bottom of the Order Transferring Proceeding to the Board.

- **Example:** If the date of the Order Transferring Proceeding to the Board is October 1, then exceptions are due on October 29.
- **Extensions of Time:** Requests for an extension of time to file exceptions or briefs must be in writing and filed with the Office of the Executive Secretary at least three days prior to the due date for exceptions. In addition, a copy of the extension of time request must be timely served on all parties.

Oppositions to Exceptions - Section 102.46 (d)(1) – 14 days after the last due date for exceptions, any party opposing the exceptions may file an answering brief to the exceptions with the Office of the Executive Secretary.

- **Example:** If the last due date for exceptions is October 29, then the answering brief is due on November 12.
- Per Section 102.46 (d)(2), matters discussed in the answering brief are limited to what is raised in the exceptions and the brief in support of exceptions.
- **Extensions of Time:** Requests for an extension of time to file an answering brief must be made in writing and filed with the Office of the Executive Secretary at least three days prior to the due date for the answering brief. In addition, a copy of the extension of time request must be timely served on all parties.

Cross-Exceptions - Section 102.46 (e) – 14 days after the last due date for exceptions, any party that has not yet filed exceptions may file cross-exceptions and a supporting brief to any portion of the administrative law judge's decision.

- **Example:** If the last due date for exceptions is October 29, then cross-exceptions are due on November 12.
- **Extensions of Time:** Requests for an extension of time to file exceptions or briefs must be in writing and filed with the Office of the Executive Secretary at least three days prior to the due date for exceptions. In addition, a copy of the extension of time request must be timely served on all parties.

Answering Briefs to Cross-Exceptions - Section 102.46 (f)(1) – 14 days after the last due date for cross-exceptions, any party may file an answering brief to the cross-exceptions.

- **Example:** If the last due date for cross-exceptions is November 12, then the answering brief to the cross-exceptions is due on November 26.
- **Extensions of Time:** Requests for an extension of time to file an answering brief must be in writing and filed with the Office of the Executive Secretary at least three days prior to the due date for exceptions. In addition, a copy of the extension of time request must be timely served on all parties.

Reply Brief to Answering Brief - Section 102.46 (h) – 14 days after the last date on which an answering brief is due, any party may file a reply brief to the answering brief.

- **Example:** If the last due date for answering briefs is November 12, then the reply brief is due on November 26.
- The reply brief shall not exceed 10 pages. Requests for permission to exceed this page length will NOT be granted.
- **No extensions of time are permitted for reply briefs.**

Page Limits and Index Requirement - Section 102.46 (j) – Any brief filed pursuant to Section 102.46 must not be combined with any other brief. In addition, except for reply briefs, briefs filed under this section must not exceed 50 pages in length, unless permission to do so is obtained from the Board by motion. The details for this type of a motion are fully set forth in the Board's Rules and Regulations, Section 102.46 (j). Any brief that exceeds 20 pages in length must contain a subject index with page references and an alphabetical table of cases and other authorities cited.

Automatic Adoption of Judge's Decision in Absence of Exceptions - Section 102.48 – If no party files exceptions to the judges' decision, then the finding, conclusions, and recommendations contained in the judge's decision shall automatically become the decision and order of the Board, and all objections and exceptions shall be waived for all purposes.

Computation of Filing Period - Section 102.111 – In computing any period of time under the Board's Rules and Regulations, the day of the act (for example, issuance of the decision) is not to be counted. The last day on which the document is due is to be counted, *unless* that day is a Saturday, Sunday, or a legal holiday, in which case, the time period continues until the next Agency business day. **For instance**, if the due date for exceptions falls on a Monday that is a holiday (such as Labor Day), then the exceptions will be due the following Tuesday.

- In computing the period of time for filing a responsive document, the designated period begins to run on the date the preceding document was required to be received by the Agency, even if the document was filed prior to that date.

Filing Receipt Rules - Section 102.111 (b) –

- The filing of any document by hard-copy must be received before the official closing time of the receiving office on the last day of the time limit.
Example: If a document is filed by hand delivery, the document must be received by the Office of the Executive Secretary prior to 5:00 p.m. *Eastern time* on the due date.
- The electronic filing of any document on the NLRB's website must be received before midnight for the time zone of the receiving office on the last day of the time limit.

Example: If electronically filing a document with the Office of the Executive Secretary in Washington, D.C., then that document must be filed prior to 11:59 p.m. *Eastern time* on the due date.

- Requests for extension of time that are filed within three days of the due date must be based on circumstances not reasonably foreseeable in advance.
- Documents may be hand-delivered to the Board.
- Documents postmarked on the day before (or earlier than) the due date are considered timely even if they are received by the Office of the Executive Secretary after the due date; documents which are postmarked on or after the due date are untimely.

Late Filings - Section 102.111 (c) – A party may file motions, exceptions, requests for review, briefs, and any responses after the due date **only upon good cause shown based on excusable neglect and when no undue prejudice would result.**

- A party that is attempting to file documents after the due date must file, in addition to the documents, a motion that states the reasons for requesting to file in an untimely manner.
- A party must also file an affidavit sworn to by individuals with personal knowledge of the facts relating to the late filing.

Service and Filing Dates - Section 102.112 – The date of service is the day on which the document is placed in the mail, or with a private delivery service, or is delivered in person. If the document is faxed, then the date of service is the date on which the transmission is received.

Service Requirements - Section 102.113 and 102.114 –

- Where the rules require service of documents on other parties, a copy of the documents must also be served on any attorney or other representative who is representing that party. For example, if Company ABC is represented by John Doe, an attorney, then John Doe must be served a copy of the documents.
 - *Please note that exceptions, cross-exceptions, answering briefs, reply briefs, extensions of time, and/or any other motion, must be served on all parties in a case.*
- Service of documents by a party on other parties can be done either personally, by registered mail, certified mail, regular mail, electronic mail (if the document is filed electronically), or by private delivery service. Please note that *service on all parties must be made in the same manner as the filing of the document*, or in a more expeditious manner.
- Failure to follow the procedures relating to timeliness in Section 102.114, may result in: 1) rejection of the document; or 2) withholding a ruling on the matter until service has been completed.
- Papers that are filed with the Board must be typewritten on 8.5 by 11-inch plain white paper; margins must be no less than one inch on each side; typeface must not be smaller than 12 characters per inch; document must be double-spaced. Documents that do not comply with these requirements may be rejected.
- The person or party serving the papers on other parties must submit a written statement of service. This statement must have the following information: 1) the names of the parties served; the date on which these parties were served; and 3) the method of service.

JD(SF)-21-16
San Mateo, CA

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

IXL LEARNING, INC.

and

Case 20-CA-153625

ADRIAN SCOTT DUANE, an Individual

Cecily Vix, Esq.,
for the General Counsel.
Jeffrey D. Wilson Esq.
(Young Basile Hanlon & MacFarlane, P.C.),
for the Respondent.
David Marek, Esq. (Liddle & Robinson),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried in San Francisco, California, on November 5, 2015. Adrian Scott Duane, an individual (the Charging Party or Duane), filed the charge in Case 20-CA-153625 on June 3, 2015. The General Counsel issued the complaint on July 29, 2015, and amended it on October 16 and 22, 2015 (complaint), and the Respondent IXL Learning, Inc. (Respondent or Employer) answered the original complaint on August 12 and the amended complaint on October 27, 2015, generally denying the critical allegations of the complaint.

The complaint alleges the Respondent also violated Section 8(a)(1) of the National Labor Relations Act (Act) by terminating Duane's employment because he engaged in protected concerted activities citing concerns of workplace discrimination in a posting on Glassdoor.com. The complaint further alleges the Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad rule requiring employees to register their complaints about their working conditions with their supervisor before complaining to third parties. Finally, at hearing, the complaint was amended to add one further allegation that Respondent violated the Act under Section 8(a)(1) by discharging Duane to prevent future protected concerted activity.

On the entire record,¹ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation with an office and place of business in San Mateo, California, has been engaged in the creation and sale of online educational software services and related products since 1998. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (G C Exh. 1(f) and 1(n).)²

II. Statement of Facts

A. The Respondent's Background and Operations

Respondent is an educational technology company that provides online services in math and English for K-12 students to use to help develop and practice math and English skills. The company was founded in 1998 by its current Chief Executive Officer Paul Mishkin (Mishkin) and it is located in San Mateo, California, near the Silicon Valley where a number of other technology companies are located. (Tr. 241.) Respondent employs approximately 200 employees, the large majority who work at the San Mateo facility but some who are privileged to work remotely part or full time. (Tr. 200.)

Respondent maintains its own website that K-12 students can use. Respondent's product includes a math practice site where students enter Respondent's website and take practice math tests and Respondent records each student's answers and records all of the data and responses so that teachers and parents can see how well the students are doing. (Tr. 200 and 207.)

Respondent's engineer and product analyst employees write code and a program that generates each of the practice exam questions or problems and the engineer needs a list of specifications from Respondent's management and the documents referred to as "specs" are written by

¹ The transcript in this case is generally accurate, but I correct the transcript (Tr.) as follows: Tr. 36; l. 6, "Nina" should be "Nemo"; Tr. 53; l. 6, "unpermitted" should be "unlimited"; Tr. 61, l. 7, "as" should be "at"; Tr. 86; l. 13, "this gender" should be "cisgender"; Tr. 93; l. 22, "log" should be "long"; Tr. 97; l. 21, "mind" should be "mine"; Tr. 98; l. 8, "her supervisees has" should be "her employees that she supervises has"; Tr. 105, l. 20, "I" should be "in"; Tr. 106; l. 12, "ours" should be "hours"; Tr. 124; l. 13, "Meyers Two" should be "Meyers II"; Tr. 155; l. 21, "replying" should be "relying"; Tr. 198; l. 15, "parxial" should be "Parexel International"; Tr. 210; l. 19, "That's" should be "What's"; Tr. 232; l. 12, "the productivity" should be "being less productive"; Tr. 245; l. 14, "than" should be "that"; Tr. 247; ll. 11-12, "extremely in" should be "extremely important in"; Tr. 251; l. 17, "at that" should be "to"; Tr. 255; l. 4, "fall" should be "all"; Tr. 279; l. 2, "easy on challenging work" should be "easy, unchallenging work".

² Abbreviations used in this decision are as follows: "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for the General Counsel's brief and "R. Br." for the Respondents' brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record. Charging Party counsel, while participating at hearing, did not submit a post-hearing brief.

Respondent's product analyst employees who basically say what each problem is going to be about, what the text in that problem is, how students answer it such as via multiple choice or written answer, etc. (Tr. 206-208.) The code is tested so that by the time of its release to the public by Respondent, the code has been tested and works smoothly without any problems. (Tr. 207.)

As part of its benefits package, Respondent offers its employees unlimited paid sick leave in 2014 and employees were only required to tell their manager they wanted to take a sick day and employees must bring in a doctor's note to explain missed sick days in excess of 3. (Tr. 206.)

B. Glassdoor.com Jobs and Recruiting Services

Since 2013, Respondent subscribes to a jobs and recruiting service from Glassdoor.com primarily for recruitment purposes and the site allows Respondent to recruit highly educated candidates and gives Respondent enhanced services on Glassdoor's website and allows it to put more essential information on the recruitment website. (Tr. 241, 261; Jt. Exh. 1; R. Exh. 9.) Mishkin opined that Glassdoor's main purpose is to help Respondent recruit qualified employees in the competitive technology environment that exists in Silicon Valley. (Tr. 262-263.) Respondent pays extra for an enhanced page on Glassdoor.com that says more about the company, what it is like working at Respondent and shows a video about Respondent and its products. (Tr. 280.) Current and former employees can post anonymous reviews about companies on Glassdoor.com.

Glassdoor's mission is to "help people find the jobs they love and help companies attract top talent." (R. Exh. 9 at 1.) The Glassdoor Essentials Package is touted by Glassdoor to allow Respondent to "Attract Top Talent With Bundled Job Advertising and Employer Branding." (Jt. Exh. 1; R. Exh. 9.) Respondent advertises open positions to prospective new employee candidates using Glassdoor and candidates also use Glassdoor to submit job applications and resumes in response to open positions at various companies including Respondent. One feature that Glassdoor offers to protect member anonymity is described by Glassdoor as:

All contributions submitted to Glassdoor are anonymous to other community members, including employers. Glassdoor does not display your email address, Facebook profile, or any other personal information. All members of our community have the ability to submit a contribution without providing additional information that would allow others to identify you:

- When submitting a company review, interview review, or benefit review to Glassdoor it is optional to provide your location and title.
- You may also submit a salary review to Glassdoor without providing your employer name.

Glassdoor will never post to your Facebook wall without your permission. We will never display your Facebook profile next to any of your submissions....

(R. Exh. 9 at 3.) Thus, there is no ability to comment on a Glassdoor posting the same as one can do on Facebook or Twitter and the nature of Glassdoor.com is not a social media site but rather it is a recruitment tool utilized by Respondent to recruit prospective employees and advertise itself

similar to what Yelp does for restaurants. (Tr. 116-117.) A reviewer of a Glassdoor posting can only post anonymously if the posting is helpful. There is no ability to affix a name to a Glassdoor posting saying whether one agrees or disagrees with the post and employees do not communicate with each other through public or private messages. Id.

5 *C. The Charging Party's Work and Employment at Respondent in First Year*

Duane began working at Respondent in July 2013 as a math team product analyst. Duane has his Ph.D. in mathematics and he opined that Respondent demands that its employees either have their masters or Ph.D. in math or English. (Tr. 25-26.)

10 Duane explained that his work for Respondent involved designing skills that Respondent could incorporate into its website products for students. Duane wrote specifications for those skills, he aligned those skills to the common core curriculum and he designed the Ipad application keyboard and he also reviewed skills and tested the resulting generators for the website. (Tr. 26, 208.)

15 Duane's math team had 2 managers, David Keyes (Keyes) being one of the two and Duane's direct supervisor/manager for the majority of Duane's employment at Respondent. (Tr. 28.) Keyes was the direct supervisor of Duane and 5 other employees in his role as program manager for math content at Respondent from January 2014 through early January 2015. (Tr. 200-01.) In 2014³ and 2015, Keyes direct manager was Kate Mattison (Mattison), the director of products, and Mattison reported to Joe Kent, the director of engineering, and Kent reported to
20 CEO Mishkin. (Tr. 201-202.)

Mishkin described Respondent's employees' ability to work remotely as a privilege subject to the discretion of Respondent's individual managers. (Tr. 202-203, 259.) Keyes described remote work basically broken down into 2 types: (1) that which is requested
25 *sporadically* on a 1-day basis when employees have a sick child at home, a repair person appointment or appliance delivery scheduled, or an extended vacation by a day or two; and (2) a set *regular* remote work schedule on a part time or full time basis with remote work occurring daily or weekly at a set percentage of time preapproved by management. (Tr. 88-90, 226-228; GC Exh. 4 at 1-2.) Keyes opined that almost all Respondent's employees received approval for the sporadic type remote work but that the regular fixed schedule remote work was much less
30 frequent and required a set plan for those who did not have productivity issues. (Tr. 222-224.) Duane admits that for his 25-30 days that he worked partially at home from January--October, 2014, there were no restrictions or reporting requirements tied to this remote work arrangement.

35 Keyes described one employee's, Mathew Bleeker's, remote schedule as being 100 percent at home. Bleeker turned down Respondent's first job offer because he could not move from Louisiana due to his wife's illness so Respondent revised its offer to Bleeker of 100 percent work at home which was later accepted in November or December 2014 by Bleeker before he started after Duane's employment at Respondent ended. Id. Another employee, Gina Bland, was allowed by Respondent to remotely work a 50/50 plan after her first 3 months in the office and she did well and works 100 percent at home as of November 2015. (Tr. 224.)

³ All dates in 2014 unless otherwise indicated.

Duane further opined that he can perform all of his job functions remotely because all of his communications were done online via g-chat or email. (Tr. 46-47.) Keyes agreed that most of the job duties of a math product analyst can be done remotely with the only issue being the testing of all of the devices. (Tr. 203.)

5 Duane described his work at Respondent as being 80-90 percent individual and 10-20 percent collaborative. (Tr. 29.) Duane estimated that on his math team of 15 employees, approximately 5 of 15 or 33 percent were allowed to occasionally work remotely. (Tr. 25.) Non-management employees at Respondent, like Duane, work in cubicles at the San Mateo office while managers have their own private offices. (Tr. 27.) Duane estimates that the nearest
10 manager office to his cubicle was approximately 15 feet away and 30-40 feet away from the next closest manager at Respondent. (Tr. 28, 203.) Karen Penner (Penner), Respondent's recruitment manager, occupied the office closest to where Duane worked while at Respondent. Id.

When he started at Respondent in July 2013, Duane reported to Mattison as his direct supervisor until she was promoted to director of products sometime after August 2013. Keyes
15 was Duane's next direct supervisor who worked with Duane in this capacity until Duane's last day at work on January 8, 2015. (Tr. 26-27.) Keyes assigned Duane what skills he was to design and Keyes reviewed the specifications that Duane wrote for those skills. (Tr. 27.)

Duane had weekly one-on-one meetings with Keyes to check in on the kind of progress Duane was making on his work. (Tr. 107.) At least once or twice Keyes requested Duane to
20 improve his accuracy and thoroughness of the work product that he was creating. Id.

Duane had a conversation with Mattison in August 2013 where he informed her about his disability advocate work with the Fair Education Act. (Tr. 66.) Duane also mentioned to Mattison that he had heard that Respondent planned to expand its product to create social studies skills and Duane told Mattison that he would like to work on such a new project if it came up.
25 (Tr. 66-67.)

Employees at Respondent were allowed to work different hours with some working a 6-7 a.m. to 2-3 p.m. shift while others came in at 10-11 a.m. and worked until 7 or 8 p.m. (Tr. 28.) Employees are expected to work between 8-9 hours days with breaks and lunch with the option of staying or leaving the facility at lunch. Id. Employees were freely able to communicate
30 to co-workers about work and personal matters during work hours and did so usually directly, via email, or g-chat instant messaging or texting. (Tr. 29; GC Exhs. 5 and 8.)

Duane received performance reviews on September 12 and November 12, 2013, which provided that Duane's work performance required improvement in areas such as organization, time management, promptness, and resourcefulness to increase productivity. (R. Exh. 2 at 2.)

35 *D. The Charging Party's Isolated Alleged Protected, Concerted Activities Mostly Outside the Presence of Management*

From time to time in the approximate 17 months that Duane worked at Respondent, he and one or two of his coworkers would discuss work concerns about Respondent most times during lunch outside the direct presence of management. This laundry list of isolated discussions
40 touched upon concerns mostly at the start of Duane's employment about Respondent's unlimited sick leave policy, the common complaint of there being a lack of diversity at Respondent and in

JD(SF)-21-16

the tech industry generally, the lack of supportive creativity in developing Respondent's product, and alleged micro-management of employees by Respondent's CEO Mishkin. Specifically, these isolated discussions are as follows:

1. Duane's Discussions in August 2013.

a. New Skill –

In August 2013, Duane and Keyes spoke when Keyes was still a product analyst like Duane and not yet a supervisor. Duane told Keyes that he had an idea for a new skill on Respondent's website in which students would learn how to make fractals by actually creating fractals. This conversation took place near their cubicles with Keyes, and two other product analyst employees. Keyes responded to Duane saying that he did not think that Respondent's CEO Mishkin would approve the new skill because it was too outside the norm that Respondent created and too different from the skills that were on the website at the time. (Tr. 38-39.)

b. Lack of Diversity –

Also during August 2013, Duane and co-worker Nemo Curiel (Curiel) had a conversation around lunchtime at Duane's cubicle and Curiel told Duane that he had noticed that there were only 2 Latino employees at Respondent including himself and only 2 or 3 African American employees. Duane responded to Curiel that Duane had noticed the same thing but Duane was not surprised by this because it is the tech industry and the tech industry workforce is not very diverse. (Tr. 33.) No manager was directly present. (Tr. 113.)

c. Respondent's Sick Leave Policy –

Again in August 2013, at the start of Duane's employment at Respondent, he and Curiel had another conversation at Duane's cubicle outside the direct presence of any Respondent supervisor or manager around lunchtime. (Tr. 113.) This conversation started with Duane commenting to Curiel that he was nervous because he had inconclusive blood test results and upon hearing this Curiel suggested to Duane that he take a sick day because Duane was nervous about this. Duane responded to Curiel by saying that Duane did not want to take a sick day and be perceived as being lazy and not putting enough time into his work at Respondent. (Tr. 29-30.)

2. Curiel's Sick Leave Conversation with Duane in January 2014

In January 2014, Duane had another conversation with Curiel regarding Respondent's sick leave policy. The conversation involved just the two co-workers outside their cubicles at lunchtime outside the direct presence of any supervisor or manager. Curiel told Duane that he had been called into the HR manager's office because he was using too many sick days. Duane responded by saying that if Respondent's policy is to allow unlimited sick day use then Curiel was within his rights to do that. Curiel responded to Duane by saying that he agreed with Duane but that Curiel would probably take fewer sick days. (Tr. 31-32.) No manager was directly present. (Tr. 113.)

3. Duane's Canceled Video Project Discussions with Curiel, Wu, and Morse in February and April 2014

In February 2014, Curiel, Duane and another product analyst co-worker, Jessica Morse (Morse), went to lunch at a restaurant off-site. At this time, Curiel and Morse told Duane that the video project they had been working on had been canceled. It was a video project to create short videos for 2nd and 3rd graders to learn math. Morse told Duane that she had moved from faraway to take this job at Respondent specifically to work on the video project. Morse told them that she was frustrated that it had been canceled and that she had wasted 3 months of work. Duane responded and said that he echoed her frustrations and that he would also be frustrated if it had happened to him. Curiel and Morse told Duane that they thought Mishkin and Mattison canceled the video project because Morse's direct supervisor had come up with the video idea in the first place. (Tr. 34-35.) No manager was directly present. (Tr. 113.)

Also in March or April 2014, math product analyst Nina Wu (Wu) and Duane were near cubicles when Wu told Duane that she had just started at Respondent and that, like Curiel and Morse above, she also had come to work on the video project that had been recently canceled. (Tr. 35-36, 169-170, 172-174.) Wu told Duane that the project had been canceled before she arrived at Respondent to start her job and that Respondent had not informed her before she arrived on her first day of work that the video project had been canceled. Id. Wu asked Duane if he had any knowledge about the project cancellation as to who canceled it and why it was canceled. Id. Duane responded that based on what he had heard from Curiel and Morse earlier, they believed that CEO Mishkin was responsible for cancelling the video project. (Tr. 36, 236.) Duane also told Wu that it seemed to him that Respondent did not really want to push the boundaries on creativity and that Respondent just wanted to keep its product quality the same as they had been done in the past and was not open to trying new things. Id. No manager was directly present. (Tr. 113.)

4. Duane's Expected Disability Leave Conversation with Wu in May 2014

In May 2014, Duane and Wu had a conversation at a cubicle outside the direct presence of management or outside of Respondent where Duane confided to Wu that he was getting ready to tell his supervisor Keyes that Duane planned to take 2 months off to have gender confirmation surgery. (Tr. 40-41, 175-176.) Duane also told Wu that he felt nervous about this because Duane did not plan to disclose that the surgery was related to his gender transition and Duane was worried that if Keyes later found out that Duane was a transgender that Keyes might not think that the surgery was medically necessary and that Keyes might even feel lied to because Duane had not disclosed that it was for Duane's gender transition. Id. Wu responded by saying that she thought Keyes would react nicely. (Tr. 41.) No manager was directly present. (Tr. 113.)

5. Duane's August 2013, September 2013, February 2014, and July 2014 Glassdoor Discussions with Curiel and/or Respondent's Management

In August 2013, Duane and Curiel discussed Glassdoor postings with manager Penner who told them that Glassdoor had received several negative reviews in the last few months and Respondent believed that they came from one former employee in the sales department. (Tr. 54.) Penner asked Duane and Curiel if they were willing to post positive reviews about Respondent

on Glassdoor. Id. Duane responded to Penner that he would probably be willing to post a review and Curiel told Penner he would think about it. Id.

5 Duane posted a positive review on Glassdoor in September 2013 about Respondent saying that so far he had had a good experience working at Respondent. (Tr. 54-55.) Duane and Curiel spoke more about postings on Glassdoor in September 2013 and Curiel told Duane that he had reviewed the negative reviews that Penner had mentioned in August but that Curiel had not noticed the same negative behavior mentioned in the negative reviews but Curiel told Duane that he was going to keep an eye out as these negative postings were definitely red flags to him. (Tr. 55.) Duane responded that this was reasonable to do but that he had not witnessed anything but good experiences but maybe people in other departments at Respondent experienced negative things. Id. No manager was directly present. (Tr. 113.)

15 On February 24, 2014, Prado emailed employees including Wu about Glassdoor reviews asking the employees to post comments about their work experience at Respondent so to help “paint a picture of what it’s like to work at IXL – which will help us find the best talent” (Tr. 178-180; GC Exh. 12.) Wu did not post anything on Glassdoor in response to Prado’s email. (Tr. 185-186.) Wu described Glassdoor as being like Yelp but for employers and its primary use is for job seekers. (Tr. 186-187.)

20 In July 2014, Duane received another email from Prado about Glassdoor and the email encouraged employees to write positive reviews on Glassdoor. (Tr. 57.) At this same time Mishkin was inquiring into the process with Penner and Glassdoor whether there was any way that a negative review could be taken down from Glassdoor website. (Tr. 270; GC Exh. 14.)

6. Duane’s January 2015 Conversation with Milin Re: New Skill for Kindergartners

25 In early January 2015, co-employee and senior product analyst Isadora Milin⁴ (Milin) met with Duane and she showed him a new skill she was designing for kindergartners. (Tr. 39-40, 113, 204-205.) The new skill involved math and Milin told Duane that she thought the new skill would not be approved because it was beyond or different than Respondent’s traditional skills. Id. Duane responded and told Milin that the new skill was a really good idea and that the Respondent should approve it for design and that it would be silly if Respondent did not pick it up and design it. Id. No manager was directly present. (Tr. 113.)

30 *E. The Charging Party’s Part-Time Work-At-Home Privilege in 2014*

By July 2014, Wu was no longer employed at Respondent and Curiel left employment at Respondent by August 2014. (Tr. 36-37, 129, 167.)

35 In July or August 2014, Duane approached Keyes and advised him that he was going to need an extended medical disability leave absence because he was having surgery and would need approximately 2 months off later in the year. (Tr. 205.) Respondent had an unlimited paid sick leave policy, the terms of which provide that when an employee wants to take a sick day, they tell their manager that they want to take a sick day and they get a paid day off. (Tr. 296.)

⁴ While Milin was formerly a supervisor at Respondent, by January 2015, she was no longer a supervisor or member of Respondent’s management.

Their sick days are unlimited, and there are no criteria for what constitutes “sick” under the policy. Id.

Keyes approved Duane’s plan for 2 months disability leave. Id. Duane never told Keyes that he was either a cisgender or a transgender. (Tr. 86.) Also at no time did Keyes ask Duane what his specific medical procedures were that were related to his disability leave in 2014. (Tr. 87.)

As part of his gender confirmation surgery plan, Duane sought pre-approval and Respondent and Duane entered into a regular remote work agreement to allow Duane to work from home one day per week so he could undergo electrolysis for 2 hours once a week. (Tr. 41.) As part of the pre-operation plan, Duane worked a half day or 4 hours one day per week at home and used sick leave for the other half day or 4 hours when undergoing the pre-surgery procedure one day per week. Keyes, however, opined that rather than just one day per week during this time period, Duane was allowed and actually worked 2 non-consecutive days a week--Tuesdays and Thursdays from home under the agreed remote work plan of 4 hours remote work at home and 4 hours sick leave for the 25-30 days that Duane attended pre-op electrolysis. (Tr. 208.) Since there are 17 weeks from July through October, I find that an average on both Keyes’ and Duane’s estimates equates to the admitted 25-30 days of partial sick leave use by Duane. (Tr. 88-90.)

Duane worked his usual schedule at Respondent the remaining 4 days per week for the months of July through October when this regular remote privilege agreement was in effect. (Tr. 46.) Keyes approved this regular remote privilege plan for Duane.

On October 3, Duane sent an email styled “Gone for Nov & Dec” to his coworkers at Respondent with a copy to Prada and Keyes announcing that he was having “major surgery” that would put him out of work from November 1 through December 30 and that they should send any questions related to work items for their team in advance so that he can respond by the last week of October. The email further referred to Duane’s desire to keep the details of his gender transition surgery private and provided that while Duane was aware that some co-workers might be concerned or curious about his surgery, “this is a matter I’m only discussing in detail with close friends and family ... [s]o I’d prefer not to field questions from coworkers about it ... [and t]hanks in advance for respecting that.” (Tr. 41, 43; GC Exh. 3.)

During the 4-month period that Duane worked from home 4 hours per day, Keyes noted that Duane’s productivity was down for these months compared to when Duane had been working in the office before July. (Tr. 211-212; GC Ex. 4 at 1-2.) Keyes talked to Duane about his decreased productivity during this time period and Duane explained that he was so tired from the pre-operation appointments that Duane could not manage to work afterwards during the last half of the day. (Tr. 211.) As a result, sometime during this pre-op period, Keyes and Duane came up with a revised regular remote work plan where Duane would take half sick days on the Tuesdays and/or Thursdays he had appointments so that he could focus on his appointments and work in the morning for a half day prior to the appointments. (Tr. 212.) Duane admits that during this time period when he worked remotely due to his pre-op electrolysis procedures, he had productivity issues causing him to be less productive with his work assignments as noted by Keyes. (Tr. 94.)

JD(SF)-21-16

As part of his gender confirmation surgery plan, Duane took disability leave for two months - the entire months of November and December 2014--before returning to work on December 30 after surgery. (Tr. 50.) Duane communicated with Keyes while on disability leave. (Tr. 43.)

5 Duane estimates that from July through October 2014, he was allowed to work at home 25-30 total days for medical or health reasons without restrictions and he was satisfied with Respondent's accommodation for his short-term disability at all times up until the time he sought a new and different regular remote work agreement from Respondent in late December 2014. (Tr. 87-90.) Also prior to December 22, 2014, Duane admits that Keyes was very flexible with
10 Duane's need for working remote or taking time off because of sporadic medical issues. (Tr. 87-88, 96.) Until late December 2014, Duane further admits that he did not have any issue, concerns, or complaints with his use of sick leave or Respondent accommodating Duane's need to work remotely. (Tr. 95.) During his employment at Respondent, Duane was approved for every single instance when he requested a remote work day or any time off, including partial
15 days, leaving work early or coming in late. (Tr. 95-96.)

F. The Charging Party's Return to Work at Respondent in December 2014 and Continued Part-Time Work-At Home Privilege

In mid-December 2014, Duane started to look for a new job with a different employer than Respondent. (Tr. 134.)

20 Prior to returning to work on December 30, Duane corresponded to Keyes via email after they both attended Respondent's Christmas party.

On Friday, December 19, Duane emailed Keyes and updated Keyes on Duane's post-surgery condition and to work out a new remote work privilege plan for Duane's return to work on December 30. (Tr. 46-47; GC Exh. 4 at 3.) Duane wrote to Keyes that things were going very
25 well in terms of Duane's healing from his surgery but that he had developed a nonserious condition known as a fistula the day after the Christmas party which Duane believed would "make it challenging to be out of the house for long periods of time until it fully heals" which Duane's doctor opined would be quickly. Id. Due to this new medical condition, Duane further wrote:

30 I'm wondering if you'd be open to me working half days in the office and half days at home for the first few weeks. This would make the transition much easier for me, I think. Let me know what you think. Looking forward to being back at it. Have a good holiday.

Scott [Duane]

35 Id.

On the following Monday, December 22, Keyes responded to Duane's request for an increased regular remote work agreement with Respondent and wrote:

... As far as the plan goes for returning to work, I would prefer that you be in the office for your hours when you come back since you are more productive here. Is

JD(SF)-21-16

there anything we can do to accommodate your situation so that you can work in the office? If you would need to extend your leave to aid in your recovery, that would be totally fine as well. Just let me know! Thanks. David [Keyes]

5 (Tr. 46-47; GC Exh. 4 at 2-3.) Keyes commented that because of Duane's lack of productivity in July-October 2014 during Duane's pre-op procedures, Keyes was concerned about Duane's productivity if Duane came back part time again as he was proposing, half days in the office, half days at home for 5 days a week. (Tr. 212-213.)

On December 23, at approximately 10:30 a.m., Duane had a text message conversation with coworker Morse after receiving Keyes' December 22 response referenced above.

10 Duane starts out saying to Morse: "David [Keyes] is breaking employment law it turns out." (GC Exh. 5 at 1.) Morse responds: "oh yeah? How are you my dear I miss you greatly." Id. Duane responds: "Yep. Lawyer says the case is textbook." Id. Morse next says: "he has to let you work remote ½ days." Id. Duane next says: "Yes he does, as long as I can perform all essential job junctions which of course I can." Id. Morse then says: "yeah totally. I wonder if that was him
15 [Keyes]. Or acting on someone else's behalf." (GC Exh. 5 at 2.) Duane responds: "I am so done with IXL [Respondent] as soon as possible." Id. Morse responds: "yeah how is the job hunt going?" Id. Duane replies: "I wondered too." Id. Morse next says: "I just met w/ a girl at Remind." Id. Duane responds: "Oh nice." Id. Morse concludes by texting: "and I finally applied to IDEO." Id.

20 Duane responded with his counter-proposal to Keyes later on Tuesday afternoon, December 23, and wrote:

... So before I start I want to let you know that I'm writing with the intent of finding a solution with you collaboratively – there's a chance some of this email could be read as combative or hostile, and that is not the tone I'm intending at all. I went
25 ahead and spoke with an employment attorney to check in about what is meant by "reasonable accommodation", and she said with certainty that remote work qualifies here – after all, IXL [Respondent] employees frequently work remotely to take care of children, to wait for repair people, because they're sick, or even just to extend vacations. This situation shouldn't (and legally can't) be treated any differently –that
30 is, under the Americans with Disabilities Act, IXL has to provide me with this accommodation. The attorney I spoke with also provided several online resources to me about the federal law which I am happy to pass onto you so that you can see some examples of how the ADA is implemented. I am also CCing Marciela [Prada], who I believe is still filling in as the HR manager and should be familiar with the
35 protections provided by the ADA. My doctor is happy to provide written documentation, and actually suggested as much remote time as possible so that things heal quickly, particularly the complication that has arisen. I completely understand your concerns about remote work and productivity, and I also understand that your primary responsibility is to make sure the math team meets all of its goals.
40 But the bottom line is, I want to return to work, and I am certain I can perform the essential functions of my job while working remotely 50%. I'd like to find a solution under which I return on the 30th with this accommodation, or something very close to it. I suggest that we find some metrics that we can put in place so that you can

JD(SF)-21-16

monitor my progress to your satisfaction. I'd also suggest making all office time in the morning, so that you're sure to always have a chance to catch me in person to let me know what you'd like prioritized, etc. If there's anything else you'd like to include, such as a weekly productivity review, I'm happy to do that as well. Best,
 5 Scott [Duane]

(GC Exh. 4 at 2.)

At this time with his December 23 counter-proposal email, Duane meant by use of the term "collaboratively" that he was looking to discuss with Keyes a way to come to an accommodation that Duane felt he needed upon returning to work on December 30. (Tr. 99.)
 10 Also, by his December 23 email, Duane was volunteering to provide medical documentation from his doctor to Keyes in support of the accommodation he sought. (Tr. 101-102.) In addition, Duane proposed that there be metrics in place and monitoring of progress in response to the productivity issues that Keyes raised in his earlier email. (Tr. 102.)

Keyes forwarded Duane's December 23 email to Prado and Ockenberg and Keyes
 15 eventually discussed it with Mishkin too on December 24. (Tr. 224, 226.) Keyes says that this email from Duane was the first notification to Mishkin on December 24 that "anything was happening" and that Duane had complained of discrimination or what he believed was unfair treatment with respect to his 50 percent remote work accommodation request. (Tr. 226-227, 243.)

Mishkin wanted to know from Keyes the background as Mishkin had just been drawn into the situation about Duane's current regular remote leave request, Duane's earlier 2-month leave and his pending return to work. (Tr. 232-233.) Keyes informed Mishkin that Duane had gone out on leave for an operation and he is now coming back and he requested to work half time at home 4 hours a day, and Keyes' initial response was that Keyes preferred that Duane be
 25 in the office because of Duane's lower productivity from the preop appointments. Id. Keyes also gave Mishkin information about Duane's agreed part time remote work for 2 half days during his pre-op appointments and then Keyes told Mishkin that while he preferred that Duane be accommodated for work in the office, Keyes said in response to Duane's email of December 23 that he would write a response to Duane's email for Mishkin to review. Id. Keyes admitted to
 30 Mishkin that he planned to accept Duane's offer to work remotely for 50 percent at home beginning on December 30, 2014. Id.

On Wednesday December 24, after consulting with Mishkin and getting his approval, Keyes replied to Duane's counter-proposal and accepts it explaining:

Thanks for the response. We are definitely on the same page here as far as goals are
 35 concerned – that is, having you achieve a complete recovery while also being able to fully contribute to the team when you return. To start, I would like to clarify a couple of things from our previous emails. When you worked remotely the days of your pre-op appointments, I noticed that productivity was down. This is why we tried having you work half days and take half sick days. It is also why I said I preferred
 40 that you return to work in the office full time if we could accommodate you appropriately. You are definitely correct that the IXL development team does allow employees to work remotely in a variety of situations (sick children, waiting for

JD(SF)-21-16

5 repair people, sick, extending vacations, etc...). This is allowed by manager discretion based on the employee's ability to work well in these types of situations. Also, these sorts of working remotely requests are sporadic in nature (a day here, a day there), and are different than working remotely part time every day. These more regular requests are not always granted. Based on your doctor's recommendation, it sounds like reasonable accommodation in your case is to set up a part time remote working situation. It would be great if you could provide written documentation for this – and we can move forward with this plan. I'm happy to come up with performance goals and a progress monitoring plan for you as well. Having your office time be in the morning sounds great to me – thanks for that suggestion! I'm looking forward to having you back and think that the 30th still works. We can talk about specifics of our plan then. Thanks, David

(Tr. 102, 226-228; GC Exh. 4 at 1-2.)

15 Later on December 24, just before midnight, Duane further responds to Keyes' last email and writes:

20 I can understand your concerns, given the brief situation with remote work while trying to balance my pre-op appointments. At that time I was trying my best to contribute, while undergoing lengthy appointments that were physically and mentally exhausting. I did not always keep up, despite my best efforts. In retrospect, I should have requested a reasonable accommodation for my medical situation from the beginning, rather than attempting to keep up with work on those days. I do believe that this situation is very different. What I need is the opportunity to rest my physical body from the kind of everyday movement that most people take for granted – I am not attempting to attend appointments during that time as I was previously. If you feel like I'm not keeping up with work with this accommodation, please tell me directly. I'm happy to reevaluate if necessary. My doctor is not in his office at this time, but he and his staff will get a written statement to you as soon as possible. The 30th still works for me. I'll see you then. Best, Scott [Duane]

(GC Exh. 4 at 1.)

30 The next day, Keyes finishes this email correspondence by writing:

This all sounds good. I've set up a meeting for us on the 30th from 10-11 am. Let me know if you'd prefer a different time. I can get you caught up on what's going on the past couple of months and we can go over a game plan for your part time remote situation. Thanks, David

35 (GC Exh. 4 at 1.)

Duane incorrectly views the December email chain above (GC Exh. 4), as evidence that Keyes and Respondent denied Duane's initial request for disability accommodation in writing. (Tr. 90-93.) However, Duane also admits that after this email exchange from December 19-25, 2014, until he saw the remote work plan on December 30, 2014, Duane was satisfied with Respondent's accommodation for Duane to work remotely while preparing for and returning from surgery. (Tr. 106.)

JD(SF)-21-16

G. The December 30, 2014 Meeting Between Charging Party and Keyes and Charging Party's Negative Posting on Glassdoor.com

On December 30 as planned, Duane returned to Respondent and he met with Keyes in Keyes office. (Tr. 50.) Keyes wanted to inform Duane of personnel changes at Respondent and changes in the math team since he was out and what projects that Keyes had going. (Tr. 50-51.)

Keyes informed Duane that one new product analyst had been hired, Mr. Bleeker, and that he would be working full-time remotely from Louisiana because his wife had recently had a serious medical diagnosis so he needed to take care of her. (Tr. 50.) Keyes next informed Duane that another product analyst, Gina Bland (Bland), would be working 50 percent remotely from Washington DC on alternating months so that she could be with her husband. (Tr. 50-51.)

Keyes also presented Duane with the regular Working Remotely Plan that Keyes drafted based on Duane's suggested schedule and that there be measurable metrics and which provided that Duane work 50 percent remotely - Mondays from 6:30 to 10:30 a.m. at home and 12 p.m. to 4 p.m. at his office at Respondent and Tuesdays through Fridays 7 a.m. to 11 a.m. at Respondent and 12 to 4 p.m. at home. (Tr. 213; GC Exh. 6.) The plan also required that Duane check in with Keyes twice a week in person and twice a week by email. (Tr. 51.) Despite the clear language in the plan, Duane testified that the terms included his coming to the Office every day at 8 a.m. and staying until noon and then working from home the rest of the day from 1 p.m.-5 p.m. (Tr. 51.)

Duane did not voice any complaints about the regular 50 percent remote work plan that Keyes presented on December 30 which was exactly what Duane had requested earlier in the late December email chain referenced above. (Tr. 212-213.)

At the December 30 meeting with Keyes or soon thereafter, Duane became upset. (Tr. 106.) Duane explains that it was a combination of 2 things-(1) Duane felt that the hours in his regular remote work plan were more restrictive than they needed to be given the type of work being done; and (2) Duane's being informed by Keyes that 2 colleagues also had regular remote work plans--one of whom was a brand new hire who received a much more flexible 100 percent remote work plan working remotely from another state which Duane believed was unfair. *Id.* Duane did not mention any prior discussions with other Respondent employees during the December 30 meeting with Keyes.

As stated above, detail that Duane was unaware of included: Mathew Bleeker's regular remote schedule was 100 percent at home as Bleeker turned down Respondent's first job offer because he could not move from Louisiana due to his wife's illness so Respondent revised its offer and offered 100 percent work at home which was later accepted in November or December 2014 by Bleeker before he started after Duane's employment at Respondent ended. (Tr. 222-224.) Another employee, Gina Bland, was allowed by Respondent to regularly work remotely a 50/50 plan after her first 3 months had been 100 percent in the office and she did well. (Tr. 224.) No evidence was presented showing that Duane ever viewed or inquired about the specific remote work restrictions placed on Bleeker or Bland. (Tr. 88.) Duane's view in late December 2014, that his regular remote work plan that he received on December 30, 2014, was more restrictive than other Respondent employees is also based his view that employees with children were allowed *sporadic* remote work in contrast to what Duane received from July through October 2014 when he was less productive. (Tr. 88-90.)

JD(SF)-21-16

After meeting with Keyes the morning of December 30, Duane met with Morse in Respondent's parking lot on his way home and Duane told Morse about the meeting with Keyes and how they went over the regular 50 percent remote work plan for Duane. (Tr. 52-53.) Duane complained to Morse that he felt that his remote work plan was more restrictive than other people's remote plans. Id.

Morse responded to Duane by citing a study about sick leave that said that companies that allow unlimited sick leave to employees actually end up with employees using less sick leave than companies with limited sick leave. (Tr. 53.) Duane responded to Morse by telling her that the study results make sense because there was definitely a culture of guilt around taking sick leave at Respondent. Id.

At approximately 10:36 p.m. on December 30, Duane and former Respondent employee Wu have an email exchange where Duane complains about Respondent and tells Wu he has started applying to other employers, he's eagerly looking forward to the next step, and he is committed to moving on from Respondent, he's much less secretive about his trans status and that if Mind is still hiring mathematicians, he was going to apply. (R. Exh. 4.) Duane also mischaracterized Keyes requesting a doctor's note when, in fact, Duane volunteered to provide one for his regular 50 percent remote leave plan counterproposal. (Tr. 134-142; GC Exh. 4 at 1-2; R Exh. 4.)

Also late on December 30, Duane makes an anonymous posting to Glassdoor.com entitled "Micromanaged and problematic." (GC Exh. 7.) Duane admits that he did not state anywhere in the posting that he was speaking on behalf of other Respondent employees as it next alerts prospective recruits that it is from an anonymous current employee who doesn't recommend [working at Respondent to job seekers], gives Respondent a neutral outlook and mentions the CEO under the title of the post as quick reference points. Id. The posting next specifically provides:

I have been working at [Respondent] IXL Learning full-time (More than 3 years)[⁵]

Pros

Easy, unchallenging work, good medical benefits, free drinks. Hours are not too crazy. The people are generally well-meaning and nice. The company isn't going anywhere right now. They play to the traditional classroom, which is good for profits. You won't have to worry about the company going under (but don't expect the profits to pass onto you, either).

Cons

Don't expect a challenge working here. This company sets the bar extremely high for who they hire, and then it gives their smart, talented employees boring, menial work to fill the day. The CEO is overly involved in every product, every decision, every everything. There are no politics if you fit in. If you don't – that is, if you're

⁵ This statement is untrue. Duane did not work for Respondent for 3 years as of December 30. Tr. 123. He worked approximately less than 1.5 years.

JD(SF)-21-16

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.

Advice to Management

Choose one: listen to the ideas of a group of smart, talented employees, or micromanage a group of mediocre employees. Don’t pull the bait and switch on employees who can do way better. Build a culture that encourages respect for people of all walks of life.

Helpful (14)

(Tr. 125; GC Exh. 7.) While Duane admitted that he knew that his December 30 Glassdoor.com posting was going to be reaching potential or prospective new recruits to let them know of what he felt was a bait and switch or a misleading campaign to recruit employees (Tr. 116117), he also alleges that he made the posting because he was concerned about some of the treatment that he and other employees had received in the workplace and Duane also thought it was important to share those concerns with other employees. (Tr. 57.) I find this statement not credible that Duane was concerned or even considered other current coworkers at Respondent when he made this statement as none of his formerly-mentioned coworkers, Wu or Curiel, remained employed at Respondent after August 2014 and Morse and Duane were interviewing and intended to leave Respondent’s employment as of December 30. Duane also alleges that his posting implies that the complaints listed in the posting are both for Duane and other Respondent employees. (Tr. 124-125.) I find this statement highly speculative and again not credible as the posting came from Duane as an anonymous individual and does not imply any type of group message. The evidence shows that by December 30, Duane is the only employee at Respondent with the individual concerns listed in the December 30 posting. Duane also admits that he was upset on December 30, 2014, when he made his December 30 Glassdoor posting. (Tr. 106.)

Duane worked remotely part time the first week of January 2015 and Keyes noticed that Duane seemed visibly upset and non-communicative during this time period. (Tr. 213-214.) As a result of Duane being visibly frustrated or upset during this time period, Keyes set up a meeting with Duane for January 6, 2015, because Duane’s conduct was pretty unusual. (Tr. 214.)

H. The January 6, 2015 Meeting Between Charging Party and Keyes and Charging Party’s Text Description of the Meeting Afterwards to Morse

On January 6, 2015, Duane and Keyes met in Keyes office and Keyes asked Duane if everything was all right because Duane did not appear to be happy at the office. Duane believed that the meeting revolved around his disability accommodation. (Tr. 60.)

Keyes opened the morning meeting by telling Duane that Keyes had noticed that Duane had been upset since he came to work on December 30 and Keyes asked whether there was

JD(SF)-21-16

anything Keyes could do to help Duane. (Tr. 215.) Duane responded to Keyes by telling him that he was unhappy with some of his work assignments, Duane felt that his ideas were not really listened to, and that there was a lot of creative work to be done in the workplace. (Tr. 61.)

5 Duane also told Keyes that he was not just upset about the initial denied accommodation flip-flop by Respondent. (Tr. 61-62.) Duane also mentioned that he was upset about Prado's training of Duane on the second or third day of work in July 2013 when Prado skipped over the disability training saying to the trainee employees including Duane simply that: "You're all healthy, you don't need this [disability training]. Id. Duane says that in July 2013, he knew that he would probably have to take disability leave during his employment at Respondent and he
10 really needed the skipped training information. Id.

Duane also told Keyes that Brad Marshall (Marshall), Respondent's former HR manager, had initially given Duane incorrect information about the amount of time that Duane could take on disability and that had, for a while, changed Duane's plans for surgery. (Tr. 62.)

15 Duane also says he mentioned to Keyes being upset because Prado had asked Duane an inappropriate question about Duane's arm, which ended up being the donor site for his surgery and that this was just another example in a long line of inappropriate things that had happened around disability in the workplace. Id.

20 Finally, Duane also responded by telling Keyes that he was very upset at how Respondent handled Duane's return from disability leave, the ADA compliance and Respondent's disability accommodation to Duane and Duane told Keyes that he knew for a fact that Respondent had discriminated against him. (Tr. 61, 215-216.) Duane repeated to Keyes that Keyes had denied him something that Duane was legally entitled to receive, the disability accommodation, and by initially denying Duane that disability leave accommodation, Duane felt uncomfortable in the workplace. (Tr. 63.)

25 Keyes responded by defending his acceptance of Duane's regular 50 percent remote work plan proposal, getting emotional, his voice wavering a little bit, and telling Duane that he was really sorry they had to have the conversation, that Keyes was upset that Duane was unhappy and that it was not Keyes' intention to make Duane feel upset in any way. Keyes tried to explain to Duane that Keyes was trying to work with Duane on Duane's returning to work in
30 late December at Respondent and Keyes again asked Duane if Respondent could accommodate Duane in the office. (Tr. 215.) Keyes did not think he had discriminated against Duane and was upset that Duane thought that Keyes had discriminated against him with the regular 50 percent remote work plan and believed from Duane's reaction that Keyes' statements to Duane were somehow inadequate so Keyes told Duane that Keyes would bring the issue up with upper
35 management, Ockenberg, and Mishkin. Id. Duane did not speak about any other Respondent employees at this meeting. (Tr. 216.)

40 Duane responded to Keyes by admitting that his decreased productivity when undergoing pre-op procedures was different than his current condition and regular 50 percent remote work plan accommodation as Duane just needed to rest at home under the current regular 50 percent remote work plan which was working well for Duane at the time. (Tr. 63-64.) Keyes responded by telling Duane that he had noticed that Duane had been doing a really great job and that Duane

JD(SF)-21-16

had complied with the terms of the regular 50 percent remote work plan accommodation and met all of his goals so far. (Tr. 64.)

5 Duane believed that Keyes was sincere when he got emotional at their meeting. (Tr. 126-127.) At his January 6, 2015 meeting with Keyes, Duane did not mention discussions with other Respondent employees prior to the meeting. (Tr. 216.) Also, Duane admitted to Keyes that Duane only assumed that other employees with remote work plans at Respondent did not have to check in regularly with their managers as he did because their remote work was sporadic while Keyes believably explained that this was not true. (Tr. 88, 221-223.)

10 Immediately after the meeting, Keyes emailed Prado and Ockenberg and met with them and Mishkin soon thereafter to discuss Duane's discrimination claim. (Tr. 217.) Keyes recommended that Duane speak to Mishkin about the claim and see if it can be resolved. Id. Mishkin responded to Keyes and told him he could meet with Duane later that same week. Id.

15 After meeting with Keyes and later that same morning of January 6, 2015, Duane and Morse had the following text exchange initiated by Duane describing his earlier meeting with Keyes:

Duane (CP): OMG [Oh my god], I just made David [Keyes] almost cry.

Morse (M): What?! Why. I'll be at work at 9:15.

20 CP: He called me in and said you don't seem happy & I said well IXL [Respondent] hasn't treated me well around my disability. And then I just kept talking. Jenna says I'm self-righteous.

M: Oh wow.

CP: She is right & now David [Keyes] knows.

M: Oy well do u feel better or worse

CP: Better

25 M: I want to hear about it more. But not in office.

CP: Ya

M: Over a drank. [siq.]

CP: Yes

M: What were his parting words.

30 CP: Said he's going to escalate it to Ockenberg⁶ on my behalf. Wants me to know that he will try to earn my trust back & that he's my advocate. Omg he was so upset.

M: Oh man.

⁶ In January 2015, Lenore Ockenberg was Respondent's head of operations according to Duane at hearing. Tr. 63.

CP: It's hard being a straight cisgender able bodied white guy sometimes.

M: Scott [Duane]! Omg hah.

CP: So many marginalized people you don't understand.

M: Be mic [siq.] Nice Hahahahaha

5 CP: Yeah yeah

M: Ur so cold lol [laugh out loud].

CP: You're right. I am.

M: Escalate what to Lenore though. Isn't he the issue sort of?

10 CP: I brought up everything, Marciela [Prado] asking inappropriate questions, skipping the disability part of training, his handling of the accommodations, Brad [] giving me wrong info. It's a systems problem. Sometimes my mouth won't close.

M: Someone needs to tell it like it is. You should be a disability advocate.

CP: Yes, I shall just make everyone feel terrible & they will cave. Maybe I'll meet up w/ you guys....

15 (Tr. 63; GC Exh. 8.) Duane opined that he exaggerated Keyes crying at their meeting and that he was sarcastic when he said to Morse that it was hard for Keyes to be a straight cisgender able bodied white guy sometimes. (Tr. 126-127.)

20 Also on January 6, 2015, around noon in the parking lot at Respondent's facility, Duane and Morse spoke in person and Duane reiterated what happened earlier in his meeting with Keyes. Morse said she was glad someone was speaking up and telling them what they needed to know although Morse herself had had a better experience with Respondent's sick leave use when she earlier experienced a neck injury. (Tr. 73-74, 97.) Duane believed that Morse had a different supervisor than Duane and that Morse's supervisor was more willing to accommodate her. (Tr. 97.)

25 On January 7, 2015, early in the morning, Mishkin emailed Duane and told him that Keyes had told Mishkin that Duane had "voiced a complaint about discrimination" and that Mishkin would like to meet with Duane Thursday [January 8] at 11 a.m. to discuss this. (Tr. 245; GC Exh. 10; R. Exh 6.) Mishkin also wrote to Duane that "[d]iscrimination of any type, including disability discrimination is unacceptable to Mishkin and to Respondent and Mishkin
30 needs to understand what has been occurring so that he can take action immediately to correct it. Id. At this point in time, Mishkin had not made any decision about Duane's continued employment. (Tr. 245.)

Also on January 7, Duane accepted Mishkin's meeting invite at 8:06 a.m. and wrote; "That sounds good. Looking forward to speaking with you." (R. Exh. 6.)

35 On January 7, 2015, in late morning, Keyes first learned of Duane's Glasdoor.com posting from December 30. (Tr. 218.) Prado sent Keyes, Ockenberg, and Mishkin an email on

January 7 with the December 30 posting saying “Hi everyone, I hate to assume who this is from ... but please read this review from Glassdoor for yourselves.” (Tr. 218-219; R. Exh. 8.)

After first seeing the December 30 Glassdoor posting on January 7, 2015, Keyes was asked if he thought Duane had written the December 30 Glassdoor posting and Keyes said he
 5 believed the December 30 posting came from Duane. (Tr. 225.) Mishkin also first learned of Duane’s December 30 post on Glassdoor after Prado sent an email with the post to him later on January 7. (Tr. 245-246.)

Upon reading Duane’s December 30 post, Mishkin believed it amounted to defamation and he decided that the post was unacceptable and that Duane would have to be terminated as a
 10 result of the recklessness of untrue statements in the December 30 posting to Glassdoor because Mishkin also opined that Duane’s posting was an “outrageous” form of “defamation” because it was posted in a public forum on Glassdoor, which Mishkin believed was an “extremely important [tool] in recruiting candidates” in a tight job market. (Tr. 246-248, 272.) Mishkin also believed that Duane’s December 30 Glassdoor posting was “blatantly untrue” and “also ... the
 15 way it was written and the place it was posted were specifically designed to hurt the Company [Respondent]” because it would be seen by prospective recruits. (Tr. 272-273.) Keyes also opined that Duane was terminated because of his December 30 Glassdoor posting. (Tr. 225.)

I. The January 8, 2015 Meeting Between Charging Party and Respondent’s CEO and the Resulting Discharge of Charging Party

20 On January 8, 2015, Duane met with Mishkin at 11 a.m. in Mishkin’s office. (Tr. 220.) Mishkin asked Duane how things were with Keyes now and Mishkin told Duane that Mishkin understood that Duane had some issues related to discrimination that he wanted to discuss that he raised with Keyes on January 6, 2015. (Tr. 76, 248.)

Duane said that things were fine with Keyes now and Duane repeated to Mishkin what he
 25 had told Keyes about it being about Duane thinking that Keyes initially rejected Duane’s request for a regular 50 percent remote work plan last December and how this position by Keyes was “illegal.” (Tr. 76-77, 248, 273.) Duane admitted to Mishkin that he had productivity issues in the past when working remotely. (Tr. 256.) Duane repeated Prado’s skipping over disability training on Duane’s second or third day of work in July 2013. Id.

30 Duane then added one more complaint about when in December 2013 Penner told Duane that one of Respondent’s employees that she supervises, Bridget, had Lupus and needed kidney surgery and decided to add onto that a plastic surgery procedure. (Tr. 76, 98, 249.) Penner told Duane that she reluctantly granted the sick leave request which led Duane to believe that Respondent’s unlimited sick leave policy probably was not unlimited. (Tr. 98.)

35 Mishkin responds to Duane’s complaints by telling Duane that he would talk to Prado and Penner about Duane’s complaints and Mishkin said that HR is a difficult specialty and that there is really no way to be an expert in Human Relations. (Tr. 77, 148, 250, 273.)

Mishkin next asked Duane if there were any other complaints other than those he raised with Keyes and the new one about Penner. Duane also told Mishkin that it was not legal what
 40 Keyes had done--or what Respondent had done with regard to Duane’s disability accommodation request and that it was not really a gray area with regard to HR. Id. Instead, Duane told Mishkin,

JD(SF)-21-16

HR is very cut and dry, in Duane's situation, in particular. Id. At no time during his January 8, 2015 meeting with Mishkin did Duane mention any earlier discussions with other Respondent employees that led to the December 30 posting or his meeting that day with Mishkin. (Tr. 152.) Instead, all of the issues raised by Duane with Mishkin on January 8, 2015, were Duane's individual concerns and specific to his medical leave and disability issues.

After Duane listed all his complaints to Mishkin, Mishkin pulled out a printout of Duane's December 30 Glassdoor posting and said to Duane: "Now I want to talk about something else." (Tr. 77-78, 250-251, 273; GC Exh. 7.) Mishkin continued by saying "I know what this is and I want to talk about it." Id.

Duane responded by asking Mishkin why they were discussing the Glassdoor posting when Duane had come in to discuss discrimination in the workplace. Id. Mishkin responded to Duane saying that they had already addressed Duane's complaints about discrimination and now they were going to talk about the Glassdoor posting. Id.

Duane told Mishkin that anonymity exists online for a reason and Duane did not think that it was fair that Mishkin was asking him about the posting. (Tr. 251.) Mishkin responded by telling Duane that: "You posted this online in a very public place. I have a right to ask you about it." Id.

Mishkin told Duane that Mishkin was bothered by Duane's posting because what Duane insinuates in the posting completely goes against Mishkin's values and the values that Mishkin worked so hard to cultivate at Respondent. Id. Mishkin next read the paragraph in the posting that begins: "There are no politics if you fit in." Id.

Duane immediately responded to Mishkin by saying he wrote the posting because he was upset when he wrote it. (Tr. 122, 251.)

Mishkin continued to quote the posting and said to Duane that "you know, what you're saying here [in your posting] is if you're not, if you work for IXL and you're not white or Asian, if you are not a straight or a mainstream gay, if you don't like sports, if you don't have kids, that you'll be discriminated against. That's the claim you are making." (Tr. 252.)

Duane responds by telling Mishkin that when he looks around Respondent those are the kind of people that he sees and as a result, Duane told Mishkin that he has a hard time connecting with people. Id.

Mishkin next asked Duane whether he is talking about discrimination or about friendships? (Tr. 150, 252.)

Duane replies saying that "those things blend together." Id.

Duane next apologized to Mishkin for making the December 30 Glassdoor posting and repeated that he was mad or upset when he made the posting and Duane asked Mishkin if Mishkin wanted Duane to take the posting down. (Tr. 79-80, 252-253.)

Mishkin responded to Duane by saying that he would like that if the posting came down but "it's already out there in the public." (Tr. 253.)

JD(SF)-21-16

The two next discussed the part of the posting saying that the CEO is really involved in every product and Duane accused Mishkin of canceling the video project. Mishkin told Duane that the video project was Mishkin's original idea and that it was canceled by Mishkin because "it wasn't an effort that made sense for us [Respondent] as a company." (Tr. 148-149, 253-254.)

5 Mishkin returned to the posting alleging different treatment based on ethnicity, sexual preference, or having children and Mishkin asked Duane if Duane has any evidence of Respondent's alleged different treatment. (Tr. 254.) Duane responded by telling Mishkin that "as a queer person," Duane doesn't feel that he fits in and Duane also told Mishkin that he sees employees with kids being able to work from home sporadically. Id.

10 Duane next repeated his claim about Keyes denying Duane's initial request for a regular 50 percent remote work plan on December 22 and saying that this was illegal and Duane also acknowledged that there were productivity issues with him working at home in the summer of 2014 and Duane admitted that he had not been productive working at home in the past. (Tr. 255.) Mishkin then asked Duane if he thought that Keyes had a right to ask Duane about being less
15 productive working at home in the past and whether that should be factored into a future remote work agreement. Id. Duane's response to this question was simply "Yes, but that [Keyes initial hesitation in granting Duane's request for 50% work at home in December 2014] was still illegal." Id.

20 Mishkin asked Duane whether he had brought up any of his concerns with Keyes and Duane said "Well, I might have mentioned something a couple of days ago." (Tr. 255.) Duane next told Mishkin that Duane had planned to mention something and that he had been struggling a lot with health issues and low energy and Mishkin asked Duane how he came up with the energy to make the December 30 Glassdoor posting and not find the energy to talk to your manager? (Tr. 255-256.)

25 Mishkin and Duane opined that Respondent does not have a rule or policy requiring employees to talk to management about work problems before disclosing them to third parties. (Tr. 146-147, 256.) Mishkin, however, thought it was inappropriate that Duane did not speak to a supervisor about his complaints about Respondent before going to Glassdoor with his posting on December 30 and Mishkin believed it was common decency for Respondent's employees to go
30 to their supervisors first to air their complaints or concerns. (Tr. 274, 281-282.) Mishkin credibly denied that Duane's termination resulted in any way from his not airing his complaints or concerns first with supervisors before posting on Glassdoor. Id.

Mishkin concluded the meeting by telling Duane that he was sorry for whatever Duane was going through health wise and Mishkin thanked Duane for sharing his concerns and
35 complaints. Id. Mishkin repeated to Duane that Mishkin would talk to Penner and Prada about Duane's concerns. Id.

Mishkin went on to terminate Duane's employment at Respondent and saying that what Duane did in his December 30 posting on Glassdoor was unacceptable, it showed extremely poor judgment and poor ethical values. (Tr.80, 256-257.) Mishkin also told Duane that Mishkin could
40 not trust Duane, Mishkin could not imagine ever trusting Duane, or ever being able to work with Duane and Mishkin believes that Duane was understanding the gist of their conversation when

Duane got up and told Mishkin that “You’ll be hearing from my lawyer,” and just stormed out of Mishkin’s office. (Tr. 256-257.)

III. ANALYSIS

5

A. Credibility Legal Standards

A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 13–14 (2014); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party’s failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party’s agent). Credibility findings need not be all-or-nothing propositions--indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 14. To the extent that I have made them, my credibility findings are set forth above in the findings of fact for this decision.

As stated above, while Duane admitted that he knew that his December 30 Glassdoor.com posting was going to reach potential or prospective recruits to let them know that he felt that Respondent had a bait and switch or a misleading campaign to recruit employees (Tr. 116-117), Duane further makes the unbelievable statement that he also made the posting because he was concerned about some of the treatment that he and other employees had received in the workplace and Duane also thought it was important to share those concerns with other employees. (Tr. 57.) I find this testimony non-credible as it was apparent at hearing that until Respondent reasonably hesitated in granting Duane his regular 50 percent remote work privilege proposal, Duane was very satisfied with the extensive leave and remote work accommodation that Respondent had awarded to him with no reservations. With one foot out the door as of mid-December 2014 when Duane started looking for a new job and had applied to work at other employers, Duane admits he was upset and I find that he threw a tantrum on December 30 with his personal gripe comprised of his unsupported and mistaken belief that Respondent had discriminated against him somehow by accepting the regular 50 percent remote work privilege that Duane himself put forth. Duane confuses Respondent’s *sporadic* remote work plan that has no restrictions and is regularly granted to employees with a more formal *regular* remote work privilege that has built in restrictions to monitor productivity and is granted based on merit at the discretion of Respondent’s supervisors.

Duane’s credibility was further weakened when he misrepresented the length of his employment at Respondent in the December 30 Glassdoor.com posting as he more than doubled his actual employment time with Respondent and said he worked at Respondent for 3 years or 36 months rather than just 17 months. Also, Duane was not believable when he told Wu that Respondent had rejected a disability accommodation proposal and was requiring Duane to obtain a doctor’s note before considering the regular 50 percent remote work privilege plan. I find these statements untrue and I further find that Duane volunteered the regular 50 percent remote work privilege plan and to provide the doctor’s note and to comply with specific metrics to gauge

productivity. (GC Exh. 4 at 2-3.) Also I find that Duane was unreasonable in his belief that Respondent had discriminated against him by awarding the 50 percent remote work privilege that Duane had requested that came with metrics or restrictions to gauge work productivity especially given Duane's admitted prior history of being less productive working remotely.

5 Duane was also not believable when he stated that he thinks his posting *implies* that the complaints listed in the posting are both for Duane *and other Respondent employees*. (Tr. 124-125.) While it is true that the posting could have been seen by Duane's coworkers, it is apparent here that a negative posting, like Duane's, was intended for prospective employees and not Duane's coworkers as all prior discussions by Duane and his coworkers about negative comments posted to Glassdoor.com were specifically aimed at protecting Respondent's ability to recruit and find the best talent. (Tr. 54-57, 178-187.) I reject this testimony as I find that the December 30 Glassdoor.com posting was intended by Duane as his individual gripe posted to hurt Respondent's ability to recruit prospective employees. I further find that the posting was Duane's reckless and impetuous reaction to Respondent's reasonable hesitation to immediately accepting Duane's regular 50 percent remote work privilege Duane proposed due to Duane's earlier productivity problems. Duane admits that he was upset on December 30, 2014, when he made his December 30 Glassdoor.com posting. (Tr. 106.) He also admits that prior to December 30, he was satisfied with Respondent's flexibility and his use of Respondent's paid sick leave and disability leave benefits. I find that Duane's erroneous belief that Respondent's remote work privilege was applied to him in a discriminatory way was what set him off to make his December 30 posting and there is no evidence that any other employee was similarly situated or even shared Duane's belief that Respondent's remote work privilege was discriminatory.

25 The posting amounts to childish ridicule of Respondent without there being an ongoing labor dispute present. Duane did not mention discussions with other Respondent employees during the December 30 meeting with Keyes or his January 6 or 8 meetings with Keyes or Mishkin. As stated above, I further find this statement untrue that Duane was concerned or even considered other coworkers at Respondent when he posted on December 30 as none of his formerly-mentioned coworkers, Wu or Curiel, remained employed at Respondent after August 2014 and Morse and Duane were both interviewing at other employers and intended to leave Respondent's employment as of December 30. Duane's posting also does not imply that the complaints listed in the posting are for other Respondent employees because this statement is highly speculative and again not credible as the posting came from Duane as an anonymous individual with his single gripe about Respondent's remote work privilege and does not imply any type of group message. The evidence shows that by December 30, Duane is the only employee at Respondent with the individual concerns listed in the December 30 posting.

40 I also reject any statement by Duane that his friend Morse was solicited by him to assist him with his complaint of Respondent's alleged remote work privilege discrimination and that she joined his cause when she allegedly told him on January 6, 2015, after Duane's anonymous December 30 Glassdoor.com posting, that "she was glad that someone was speaking up and, you know, telling them [Respondent] what they needed to know." (Tr. 74.) This January 6, 2015 parking lot conversation took place without management hearing the conversation and, more importantly, *after* the anonymous December 30 Glassdoor.com posting. Moreover, Morse was not called as a witness to testify at hearing and there is no evidence that she was unavailable to

JD(SF)-21-16

testify or was ever part of any group of employees that received a regular remote work privilege at Respondent. Finally, there is no evidence that Morse was part of any group of employees who shared Duane's concern that Respondent's remote work plan was discriminatory. Moreover, like Duane, Morse had had a good experience with Respondent's sick leave use when she earlier experienced a neck injury. (Tr. 73-74, 97.)

Keyes was the most believable of all witnesses and testified in a non-hesitant confident manner about Duane's employment at Respondent and the events leading up to Duane's termination on January 8, 2015. I conclude that Keyes related the facts accurately, logically, and to the best of his ability to do so. Keyes provided generally specific and detailed testimony.

Mishkin was also a credible witness who answered questions directly without coaching in a naturally conversant fashion and believably testified about the same events leading to Duane's termination and the high risk of detrimental effect that Duane's December 30 posting would have to Respondent's business and its continued ability to recruit prospective employees.

For these reasons, I credit Keyes' and Mishkin's testimony over Duane's where there is a conflict.

B. Duane's December 30 Glassdoor.com posting was not a protected, concerted activity

Complaint paragraph 6(a) alleges that about December 30, 2014, Duane engaged in concerted activities for the purposes 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.⁷

In general, the test for evaluating whether an employer's conduct or statements violate Section 8(a)(1) of the Act is whether the statements or conduct have a reasonable tendency to interfere with, restrain, or coerce protected activities. *Id.*; *Station Casinos, LLC*, 358 NLRB No. 153, slip op. at 18-19 (2012); *Yoshi's Japanese Restaurant & Jazz House*, 330 NLRB 1339, 1339 fn. 3 (2000). Apart from a few narrow exceptions, an employer's subjective motivation for its conduct or statements is irrelevant to the question of whether those actions violate Section 8(a)(1) of the Act. See *Station Casinos, LLC*, *supra*.

Thus, the initial inquiry to be made in this case is whether Duane engaged in protected concerted activity when he posted concerns of workplace discrimination on the Glassdoor.com website on December 30, 2014.

"To be protected under Section 7 of the Act, employee conduct must be both 'concerted' and engaged in for the purpose of 'mutual aid or protection.'" *Fresh & Easy Neighborhood*

⁷ Duane's specific charge in this case was limited to the following: "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." GC Exh. 1(a).

Market, 361 NLRB No. 12, slip op. at 3 (2014). For the reasons set forth below, I find Duane's individual complaints criticizing management were not concerted or protected.

1. *The December 30 Glassdoor.com posting is not concerted activity.*

The Board has held that activity is concerted if it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), revd. sub nom *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action" and where an individual employee brings "truly group complaints to management's attention." *Meyers II*, 281 NLRB at 887. An individual employee's complaint is concerted if it is a "logical outgrowth of the concerns of the group." *Every Woman's Place*, 282 NLRB 413 (1986); *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992), after remand, 310 NLRB 831 (1993), enf., 53 F.3d 261 (9th Cir. 1995).

The question of whether an employee has engaged in concerted activity is a factual one based on the totality of record evidence. See, e.g., *Ewing v. NLRB*, 861 F.2d 353 (2d Cir. 1988). The Board has found that "ostensibly individual activity may in fact be concerted activity if it directly involves the furtherance of rights which inure to the benefits of fellow employees." *Anco Insulations, Inc.*, 247 NLRB 612 (1980). An employee's activity will be concerted when he or she acts formally or informally on behalf of the group. *Oakes Machine Corp.*, 288 NLRB 456 (1988). Concerted activity has been found where an individual solicits other employees to engage in concerted or group action even where such solicitations are rejected. *El Gran Combo de Puerto Rico*, 284 NLRB 1115 (1987), enf., 853 F.2d 966 (1st Cir. 1988). Conversely, concerted activity does not include activities of a purely personal nature that do not envision group action. See *United Association of Journeymen & Apprentices of the Pipefitting Industry of the United States and Canada, Local Union 412*, 328 NLRB 1079 (1999); *Hospital of St. Raphael*, 273 NLRB 46, 47 (1984); *National Specialties Installations*, 344 NLRB 191, 196 (2005).

The Board held that whether an employee's activity is concerted depends on the manner in which the employee's actions may be linked to those of her coworkers. *Fresh & Easy Neighborhood Market*, supra at 3. The Supreme Court has observed that "[t]here is no indication that Congress intended to limit [Section 7] protections to situation in which an employee's activity and that of his fellow employees combine with one another in any particular way." *NLRB v. City Disposal Systems*, 465 U.S. at 835. Concertedness is analyzed under an objective standard. *Fresh & Easy Neighborhood Market*, supra at 4. Employees act in a concerted fashion for a variety of reasons, some altruistic and some selfish. Id. citing *Circle K Corp.*, 305 NLRB 932, 933 (1991), enf. mem. 989 F.2d 498 (6th Cir. 1993). Solicited employees do not have to share an interest in the matter raised by the soliciting employee for the activity to be concerted. Id. at 6, citing *Mushroom Transportation*, 330 F.2d 683, 685 (3d Cir. 1964), *Circle K Corp.*, 305 NLRB at 933; *Whittaker Corp.*, 289 NLRB 933, 934 (1988); and *El Gran Combo*, 284 NLRB 1115, 1117 (1987).

JD(SF)-21-16

In this case, I find no evidence that on December 30, 2014, when Duane posted his personal gripes on Glassdoor.com., he was engaged in concerted or group action or acting in any way on behalf of any fellow coworker at that time with similar discrimination claims. I further find that the posting is Duane's own purely personal complaint that is mistakenly based on Duane's unreasonable belief that he was wronged by Respondent when Respondent accepted Duane's own 50 percent regular remote work plan. The discrimination charge and complaint allegations are limited to Duane's alleged remote work plan discrimination allegation and any expansion or added rationale for Duane's December 30 posting are not credible. Furthermore, Duane's complaint about the alleged discriminatory remote work privilege award was an individual one. He sought a 50 percent remote work privilege only for himself. His requests were predicated not on a collective-bargaining agreement but on the negotiations he commenced in mid-December 2014 which resulted in Respondent accepting all of Duane's 50 percent remote work privilege terms. Duane's endeavors were commenced without prior support by fellow workers and no evidence was introduced to show that any other employee shared Duane's complaint about being awarded a discriminatory remote work privilege by Respondent. See *Tampa Tribune*, 346 NLRB 369, 371-372 (2006) (Employee who raised a personal gripe complaint about favoritism was speaking only for himself and there was no evidence that his coworkers even shared his belief that favoritism existed so no protected concerted activity); see also *National Wax Co.*, 251 NLRB 1064, 1064-1065 (1980) (Same).

Duane's friend, Morse, did not testify or confirm what was alleged in his charge that Duane felt his 50 percent regular remote work plan was more restrictive than other employees' regular remote work plans. (Tr. 53.) As stated above, I reject Duane's testimony that his December 30 posting was made by him for other Respondent employees as it is unsupported by a preponderance of the evidence. Also, Duane testified that Morse responds not that she too was also "concerned about the company's discriminatory practices" with its remote work plan privilege as alleged in Duane's charge but rather Morse simply cited a study about sick leave that purportedly said that companies that allow employees to take unlimited sick leave actually end up having employees taking less sick leave. I find that at no time did Morse complain to Duane about similar discriminatory practices, nor did Duane ever seek to initiate, enlist, solicit, ask for help, request any assistance, or induce group action either from Morse or others either leading to his December 30 Glassdoor.com posting or in the posting itself. Instead, Duane's reference to alleged discriminatory practices by Respondent related only to his personal mistaken belief that Respondent had wronged him by the way it accepted his 50 percent remote work privilege proposal.

The Board in *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3-4, held that an employee who approached her coworkers with a concern implicating the terms and conditions of their employment, *and solicited or sought their help in pursuing it*, was acting in a concerted nature. (Emphasis added.) Here, as stated above, Duane did not approach Morse or any of his coworkers with his discrimination concern or solicit or seek their help before he angrily posted his criticisms of Respondent on Glassdoor.com on December 30, 2014.

Moreover, Duane's December 30 Glassdoor.com posting alone is distinguishable from *Triple Play Sports*, 361 NLRB No. 31, slip op. at 4 (2104), where the Board affirmed an administrative law judge who found that a social media website known as Facebook discussion

amongst 4 employees was *concerted* activity because it involved four current employees and was “part of an ongoing sequence” of discussions that began in the workplace about the Respondent’s calculation of employees’ tax withholding. Noting that the employees, in their Facebook conversation, discussed issues they intended to raise at an upcoming staff meeting as well as possible avenues for complaints to government entities, the judge also found that the participants were seeking to initiate, induce, or prepare for group action. As a result, the judge concluded that the Facebook discussion was concerted under the standard set forth in *Meyers Industries*, 281 NLRB 882, 887 (1986).

Here, Duane’s posting on Glassdoor.com was not a social media posting like Facebook or Twitter. Instead, Glassdoor.com is a website used by Respondent and prospective employees as a key recruiting tool to recruit prospective employees. Other than a single anonymous “helpful” mark without any ability for discussion, the anonymous December 30 posting was Duane’s final personal salvo against Respondent on his way to a new employer. I further find that Duane posted his anonymous exit message to the general public and used Glassdoor.com as his attempt to harm Respondent’s recruiting efforts. The posting was not part of any ongoing sequence of discussions between Duane and his fellow coworkers as the two coworkers he complained with most earlier in 2013 and early 2014 about subjects entirely separate from any complaint involving Respondent’s discriminatory regular remote work privilege, Curiel and Wu, had already left the company well before December 30.⁸ More importantly, there is no evidence put forth that anyone other than Duane shared his individual concern that Respondent’s remote work privilege was being awarded in a discriminatory way.

I do not find that Duane engaged in concerted activity when he posted his anonymous December 30, 2014 Glassdoor.com to voice his concerns of workplace discrimination as alleged in paragraph 6(a) of the complaint. The credited evidence does not show that any of Duane’s conversations were concerted or directed to his coworkers. In each conversation leading up to his posting, Duane spoke of only his own issues with Keyes and Mishkin and did not mention any sort of concerted discussion with a coworker, group action or concern. At hearing, Duane failed to credibly show that his issues about Respondent’s remote work privilege extended to any other coworker beyond his own mistaken belief that that he had been mistreated or discriminated against in any way by Respondent. Duane failed to list any other employee’s like-minded concerns of discrimination at his meeting with Keyes or Mishkin or in the December 30 Glassdoor.com posting. In addition, even when Duane complained to Keyes and Mishkin, he did so in pursuit of his personal interest regarding how he was being treated by Keyes in the 50 percent remote work privilege and not how he and others were being treated. Duane never credibly claimed to act or intend to act on behalf of any other employee and he did not seek to initiate, induce, or prepare for group action when he met with Keyes or Mishkin. Based on the foregoing, I find the General Counsel has failed to adduce evidence sufficient to establish that Duane’s December 30 Glassdoor.com posting was concerted.

I also find that no evidence was presented which proves that before their meeting on January 6, 2015, Keyes and Respondent had knowledge of the details of Duane’s medical

⁸ The General Counsel makes note of Duane’s coworker Morse’s January 6, 2015 comment to Duane that “someone needs to tell it like it is.” I find that this is not evidence that the December 30 posting is a concerted action as the comment is made, unknown to management, *after* the personal posting was made by Duane in a fit of anger .

procedures in 2014 or that Respondent was aware that Duane was a transgender or disability activist. Duane admits through his texts and emails with coworkers and former coworkers that his surgery was a private matter and even Morse, a close friend and confidante to Duane, was unaware that Duane was a disability advocate as of January 2015. (See GC Exhs. 3 and 8.) I once again find and reject that the evidence of the results of an internet search in November 2015 using the Google search engine should disclose to Respondent or make it apparent that Duane was such an activist as of December 2014 and I find this evidence too speculative and inadmissible.

In addition, there is no evidence that other employees shared Duane's concerns about Respondent's alleged discriminatory awarding of its remote work privileges or alleged shoddy human relations department work. While it appears that Morse empathized with Duane, there is no evidence that Morse also shared a remote work privilege with Respondent or that Duane and Morse sought to act as a group to challenge Respondent's regular remote work privileges or allegedly shoddy human relations department work. Moreover, after Duane's December 30 posting, Morse stated that she was satisfied with how her supervisor handled her own sick leave use. Also there was no evidence put forth by the General Counsel that any conversation that Duane had with any coworker leading up to his December 30 Glassdoor.com posting was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of Respondent's employees. See *Mushroom Transportation*, supra at 685 (Conversation between 2 employees constitutes concerted activity only if "at the very least it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of employees.).

I further find that even when concerns, unknown to management,⁹ were voiced in 2013 or early 2014 by or in Duane's presence before Wu and Curiel left Respondent's employment, nothing was done to take further group action beyond these isolated events such as the filing of grievances, there were no work stoppages or strikes, and no petition was circulated. Duane never credibly claimed to act or intend to act on behalf of any other employees and he did not seek to initiate, induce, or prepare for group action when he made his December 30 Glassdoor.com posting or met with Keyes or Mishkin.

In addition, I find that there is no connection between Duane's December 30 posting/his resulting termination and any of Duane's alleged protected concerted discussions with coworkers in 2013, 2104, and January 2015. First of all, as referenced above, most of the discussions occurred outside the direct presence of management and the General Counsel has not satisfied her burden of proving by a preponderance of evidence that Keyes, Mishkin, or any of Respondent's managers knew of these isolated and attenuated discussions between Duane and his coworkers. More importantly, Duane's December 30 Glassdoor.com posting admittedly was generated by him as his angry reaction to Respondent's award to him of his requested remote work privilege which is unrelated to Duane's discussions with coworkers in 2013, 2014, and 2015 on entirely different subjects and not Respondent's remote work privilege.

⁹ I reject the General Counsel's argument that these "discussions were likely overheard by [Penner] her" because her office was located approximately 10-15 feet from a group of cubicles. GC Br. at 2. I find this argument speculative and unsupported by the evidence especially when most of the conversations occurred during the lunch hour or outside Respondent's premises.

Once again, Duane admitted that before his December 30 meeting with Keyes, he was satisfied with his use of Respondent's earlier partial remote work privilege and his sick leave and disability leave benefits that Duane had used 25-30 days of partial sick leave and 2 full months of disability leave in 2014. Duane's only real gripe as of December 30 was his false belief that Respondent had discriminated against him when awarding him the 50 percent remote work privilege he had requested.

Furthermore, by December 30, Morse and Duane were actively seeking to leave Respondent and there is no evidence that there were any other coworkers who would share or benefit from Duane's posting. I find that Duane intended his December 30 Glassdoor.com posting to direct prospective employees to ignore Respondent's recruiting attempts and go elsewhere for employment. This also shows that Duane's posting was intended to harm Respondent's ability to recruit new employees and not benefit coworkers. Hence, Duane's mere griping or "concerns" with Respondent were purely personal in nature and not concerted activity undertaken for mutual aid or protection.

The General Counsel argues in her closing brief that I should follow the holdings in *Caval Tool Division, Chromalloy Gas Turbine Corp.*, 331 NLRB No. 101 (2000), and *Whittaker Corp.*, 289 NLRB No. 116 (1988), and find that Duane's December 30 Glassdoor.com posting is a concerted activity. (GC Br. at 17.)¹⁰ In *Caval Tool, Inc.*, for example, an outburst by one questioning employee was considered concerted activity when the employee interrupted a group meeting between employees and management by voicing her disgruntlement with the company's newly announced coffee break policy. *Caval Tool, Inc.*, supra at 863. Similarly, in *Whittaker Corp.*, an employee's spontaneous remarks at a group meeting of employees gathered to hear the company's president announce that the employees' anticipated wage increases would not be forthcoming was held to be concerted activity as his statements implicitly elicited support from his fellow employees against the announced change. *Whittaker Corp.*, supra at 934. The facts in these cases are distinguishable, however. Here, Duane's December 30 posting was generated by him anonymously into a public forum as his angry individual response to Respondent's personal award to him of the 50 percent remote work privilege he had requested that was specific to Duane and did not involve an announced change in a common employee benefit affecting all employees at a group meeting. Moreover, the December 30 posting was intended by Duane to harm Respondent's continuing ability to recruit prospective employees and not to initiate or induce any group action. Unlike social media posting, Duane's anonymous December 30 posting did not initiate any group discussion. I further find that this anonymous December 30 posting

¹⁰ The General Counsel also cites to the case *Salt River Valley Water Users Assn.*, 99 NLRB 849, 853 (1952), enf'd. 206 F.2d 325 (9th Cir. 1953) and argues that Duane's December 30 Glassdoor.com posting was Duane's preliminary step to acting in concert and therefor the posting is a concerted activity. GC Br. at 15. The facts in *Salt River Valley* are distinguishable from the facts in this case as *Salt River Valley* involved an employee Sturdivant found to be acting in a preliminary step to acting in concert when he circulated a petition among his coworker employees, otherwise known at the time as "zanjeros," designating himself as agent to take any action necessary to collect back wages allegedly owed the employees by the employer. Here, Duane's anonymous Glassdoor.com posting was not a similar preliminary step to acting in concert as his act of anonymous posting was made in anger as a childish ridicule of Respondent to hurt Respondent's ability to recruit on Duane's way out of the company and represents his individual action complaining anonymously that his remote work privilege was awarded to him in a discriminatory manner without any fellow coworker employees sharing this same complaint.

having garnished 15 anonymous “helpful” marks does not equate to the potential for group discussion nor does it solicit or initiate coworker assistance or group action and it is not concerted activity. .

5 The General Counsel also argues that Duane’s anonymous December 30 posting is also protected under the Board’s doctrine of “inherently concerted” activity and she cites to cases where the Board has held that employee communications about wages, work schedules, and job security are inherently concerted. See GC Brief at 17-19 and cases listed therein. The facts in these cases are distinguishable from the facts in this case, however, because they involved actual discussions amongst coworkers about wages, work schedules and job security. Here, Duane’s explanation for his December 30 posting is that he was upset about Respondent’s award to him of his 50% remote work privilege which I find is not an inherently concerted activity as it is not an employer benefit affecting all employees. Rather, remote work is a privilege awarded to employees who earn it through metrics that reflect stable or increased productivity. Also, Duane’s anonymous one-way posting did not allow for any further discussion from anyone in response to the anonymous posting the same as a social media posting allows on Facebook, Twitter, or Instagram. Moreover, as stated above, by December 30, Duane and Morse intended to leave their employment at Respondent and there is no evidence that the posting was a discussion amongst Duane and his coworkers intended to induce group action to make it “inherently concerted.” Instead, Duane intended his impulsive one-way posting to hurt Respondent’s ability to recruit new employees on his way out to a new job.¹¹

2. The December 30 posting is unprotected under the Act.

25 Even assuming arguendo that Duane engaged in concerted activity, I find his December 30 Glassdoor.com posting was not protected. To be protected under the Act, the activity must relate to Section 7 rights. [“S]ome concerted activity bears a less immediate relationship to employees’ interests as employees than other such activity,” and “at some point the relationship becomes so attenuated that an activity cannot fairly be deemed to come within the ‘mutual aid or protection’ clause.” *Eastex, Inc. v. NLRB*, 437 U.S. 556, 567–568 (1978). Simply put, it is difficult to see how Duane’s complaints were aimed at improving “the interests of employees qua employees.” See *G & W Electric Specialty Co.*, 154 NLRB 1136, 1137 (1965).

35 The concept of “mutual aid or protection” focuses on the goal of the concerted activity; whether the employee or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. *Fresh & Easy Neighborhood Market*, supra at 4-5 citing *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978). Employee motive is not relevant to whether the activity is engaged in for mutual aid or protection. *Fresh & Easy Neighborhood Market*, supra at 6. The analysis focuses on whether there is a link between employee activity and matters concerning the workplace or employees’ interests as employees. Id. Although personal vindication may be among the soliciting employee’s goals, that does not mean that the soliciting employee failed to embrace the larger purpose of drawing management’s

¹¹ The same effect would be reached in the analogous situation where an employee hires a skywriting company to fly across the Silicon Valley over the lunch hour or during rush hour traffic with a similar anonymous one-way message disparaging an employer that was posted by Duane on December 30.

attention to an issue for the benefit of all of his or her fellow employees. *St. Rose Dominican Hospitals*, 360 NLRB No. 126, slip op. at 4 (2014).

Furthermore, employee discussions that do not include representatives of their employer are protected. The Board has made clear that employee discussions with coworkers are indispensable initial steps along the way to possible group action and are protected regardless of whether the employees have raised their concerns with management or talked about working together to address those concerns. *Hispanics United of Buffalo*, 359 NLRB 368, 370 (2012), citing *Relco Locomotives*, 358 NLRB 298, 315 (2012), *affd.* and incorporated by reference at 361 NLRB No. 96 (2014). Protection is not denied because employees have not authorized another employee to act as their spokesperson. *NLRB v. City Disposal Systems*, 465 U.S. 822, 835 (1984).

Here, some of the complaints beyond Duane's specific charge in this case are unprotected and largely concern Duane's impression that Respondent's product, online math tests, could be produced in a more creative way but for CEO Mishkin's hand's on "micromanagement." The Board has held that employee activity aimed at bringing about a change in management hierarchy is normally unprotected because it lies outside the sphere of legitimate employee interest. See *NLRB v. Oakes Machine Corp.*, 897 F.2d 84 (2d Cir. 1990).

These complaints of how Respondent's "product" is created are not thereby converted into a working condition. "In general, 'employee efforts to affect the ultimate direction and managerial policies of the business are beyond the scope' of Section 7." *Riverbay Corp.*, 341 NLRB 255, 257 (2004) (quoting *Lutheran Soc. Serv. of Minnesota*, 250 NLRB 35, 41 (1980)). The quality of the "product" is among these managerial prerogatives that are "not encompassed by the 'mutual aid or protection' clause." *Lutheran Soc. Serv. of Minnesota*, *supra* at 42.

Factory workers, too, may manifest a strong interest in the goods they produce, but the nature of those goods is not a condition of employment . . ." *Waters of Orchard Park*, 341 NLRB 642, 645–646 (2004). I find Duane's complaints criticizing management's decision to cancel a video project or micromanaging its employees were not protected activities. Duane failed to show how his concerns about the cancellation of a video project or Respondent founder and CEO Mishkin's alleged micromanagement would benefit his fellow employees. Moreover, as discussed below, criticisms about management's decision to cancel a project are not criticisms about working conditions, but are instead criticisms of Respondent's product.

Other than attenuated common complaints against management and Respondent's policies, Duane did not have any significant concerns with Keyes or Respondent until his return to work on December 30, 2014, when Duane began using the 50 percent remote work privilege that he first proposed to Respondent earlier that month. Duane's impulsive posting to Glassdoor.com the night of December 30 was the direct result of his mistaken judgment that Respondent was discriminating against him by requiring him to enter into a regular remote privilege agreement. I find that there was no evidence presented to show that Respondent discriminated against Duane or any employee in its remote work privilege program and that Respondent was justified and acted reasonably based on Duane's past decreased productivity

working remotely when Respondent presented Duane with the 50 percent remote work privilege that Duane had requested.

5 Here, Duane's remote work privilege gripe/discrimination claim and resulting
anonymous posting to Glassdoor.com are individual in nature as only Duane is complaining
about Respondent's remote work privilege being applied improperly and only Duane's
individual interests were being advanced by his discrimination complaint posting and not those
of his coworkers. Duane never solicited Morse's help or any coworker's assistance in
10 complaining about alleged remote work privilege discrimination. Unless Duane's coworkers
were solicited by Duane to assist him in complaining to management about alleged remote plan
privilege discrimination, I find that Duane was not acting for the purpose of mutual aid or
protection with his December 30 Glassdoor.com posting. See *Fresh & Easy Neighborhood*
Market, supra at 6-8 (Board finds that employee's solicitation of her coworker colleagues'
15 assistance in complaining to the employer about a harassment incident was for the purpose of
mutual aid or protection).

Consequently, I find that Duane, as a disgruntled employee with one foot out the door
who was actively seeking new employment, made his anonymous December 30 Glassdoor.com
posting specifically to harm Respondent's business and its ability to recruit prospective
20 employees and not as a concerted protected activity. Based on the foregoing, I find the General
Counsel failed to establish that Duane engaged in activity protected by Section 7 through his
December 30 Glassdoor.com posting.

25 In addition, the Board has long recognized that an employer has a legitimate interest in
preventing the disparagement of its products or services and, relatedly, in protecting its
reputation from defamation and reckless disparagement. Section 7 rights are balanced against
these interests, if and when they are implicated. In striking that balance, the Board applies these
principles in accordance with the Supreme Court's decisions in *Jefferson Standard*, 346 U.S. 464
(1953) and *Linn v. Plant Guards Local 114*, 383 U.S. 53 (1966).
30

In *Jefferson Standard*, the Court upheld the discharge of employees who publicly
attacked the quality of their employer's product and its business practices without relating their
criticisms to a labor controversy. The Court found that the employees' conduct amounted to
disloyal disparagement of their employer and, as a result, fell outside the Act's protection. 346
35 U.S. at 475-477. In *Linn*, the Court limited the availability of State-law remedies for defamation
in the course of a union organizing campaign "to those instances in which the complainant can
show that the defamatory statements were circulated with malice and caused him damage." 383
U.S. at 64-65. The Court indicated that the meaning of "malice," for these purposes, was that the
statement was uttered "with knowledge of its falsity, or with reckless disregard of whether it was
40 true or false." Id. at 61.

Applying these precedents, the Board has held that "employee communications to third
parties in an effort to obtain their support are protected where the communication indicated it is
related to an ongoing labor dispute between the employees and the employers and the
45 communication is not so disloyal, reckless, or maliciously untrue as to lose the Act's protection."

MasTec Advanced Technologies, 357 NLRB 103, , 107 (2011) (quoting *Mountain Shadows Golf Resort*, 330 NLRB 1238, 1240 (2000)).

Turning to the facts of this case, I find that Duane's allegation in his December 30 Glassdoor.com posting to the general public that Respondent discriminated against him when it awarded him the same 50 percent remote work privilege that he had earlier requested was maliciously untrue and made by him with reckless disregard of whether it was true or false as his real intention in his angered state of mind was to hurt or damage Respondent's ability to recruit prospective employees who used Glassdoor.com to arrange interviews and seek employment.

The first prong of the *Jefferson Standard* test is not at issue here. There was no ongoing labor dispute at Respondent on December 30 when Duane posted his individual untrue complaints of discrimination because at that time only Duane's personal complaint existed sparked as only his angry response to the 50 percent% remote work privilege award. No other employees were involved at that time with the same unreasonable complaint concerning Respondent's remote work privilege. Duane himself admitted he had no issues or complaints with Respondent's paid sick leave policy or disability leave program before December 30 as Duane had been granted all of the paid sick leave and disability leave he requested before December 30, 2014. (Tr. 87-96.) Thus, I find that there was no ongoing labor dispute at the time of Duane's December 30 Glassdoor.com posting.

As to the second prong of the test, I further find that Duane's angry childish posting was "so disloyal and reckless as to lose the Act's protection" under *Jefferson Standard* and its progeny. See *MasTec*, 357 NLRB 103, at 107. The posting disparaged Respondent by recklessly stating that most of Respondent's "management has no idea what the word 'discrimination' means, nor do they seem to think it matters." (GC Exh. 7.) Statements are maliciously untrue and unprotected, "if they are made with knowledge of their falsity or with reckless disregard for their truth or falsity." *Mastec*, supra at 107 (citations omitted). The mere fact that statements are false, misleading or inaccurate is insufficient to demonstrate that they are maliciously untrue. *Id.* (internal quotation marks and citations omitted).

Duane's discrimination comments are maliciously untrue as Duane made them with reckless disregard for their truth or falsity. My examination of Duane's December 30 Glassdoor.com posting shows that it exceeded the standard of the Supreme Court, which holds that even the most repulsive speech enjoys immunity provided it falls short of deliberate or reckless untruth. *Linn*, supra at 63. Under the standard set forth in *Linn* and its progeny, the Respondent has the burden to establish that the comments were maliciously untrue. *Springfield Library & Museum*, 238 NLRB 1673, 1673 (1979). The Respondent has met this burden.

Here, with one foot out the door, I find that Duane's angry posting on the Glassdoor.com recruiting website was intended by him to hurt Respondent's ability to compete and recruit new employees and contained reckless untruths that Respondent discriminated against its employees. As stated above, Duane unreasonably became angry thinking he had been discriminated against by Respondent when Respondent did no such thing. Respondent simply accepted Duane's 50 percent remote work privilege proposal when it awarded him the privilege of working remotely. Duane mischaracterized the events leading up to the written December 30 remote work privilege

plan when he told Wu that Respondent required Duane to obtain a doctor's note before considering a remote work plan and that Respondent required that specific metrics to gauge productivity be in place. Both of these suggestions came from Duane who volunteered to provide these before the work plan was finalized. In addition, Duane falsely told to Wu that Respondent rejected his 50 percent remote work plan proposal as Respondent through Keyes simply and reasonably hesitated in accepting Duane's 50 percent remote work proposal due to Duane's prior low productivity working remotely in the summer of 2014. Respondent then accepted Duane's 50 percent remote work proposal in its entirety with no changes. With this background, I further find that Duane's angry discrimination complaint in his December 30 Glassdoor.com posting was recklessly untrue and not protected by the Act. Accordingly, I find that Duane's December 30 Glassdoor.com posting lost protection under *Linn*.

I further find that Duane's discrimination complaint was so disloyal or recklessly disparaging as to lose the protection of the Act.

In summary, the disloyalty standard is at base a question of whether the employees' efforts to improve their wages or working conditions through influencing strangers to the labor dispute were pursued in a reasonable manner under the circumstances. Product disparagement unconnected to a labor dispute, breach of important confidences, and threats of violence are clearly unreasonable ways to pursue a labor dispute. On the other hand, suggestions that a company's treatment of its employees may have an effect upon the quality of the company's products, or may even affect the company's own viability are not likely to be unreasonable, particularly in cases when the addressees of the information are made aware of the fact that a labor dispute is in progress. Childish ridicule may be unreasonable, while heated rhetoric may be quite proper under the circumstances. Each situation must be examined on its own facts, but with an understanding that the law does favor a robust exchange of viewpoints. The mere fact that economic pressure may be brought to bear on one side or the other is not determinative, even if some economic harm actually is suffered. The proper focus must be the manner by which that harm is brought about.

Sierra Publishing Company v. NLRB, 889 F.2d 210, 220 (9th Cir. 1989).

Here, under the totality of facts, I find that Duane's angry and impulsive discrimination complaint is better characterized as childish ridicule in the nature of a personal attack on Respondent's ability to recruit new employees than as related to a legitimate labor dispute or ongoing grievances from a group of employees. As such, I further find that Duane's December 30 posting was so disloyal and recklessly disparaging of Respondent as to lose protection under the Act. See also *Jefferson Standard*, supra at 472 (NLRA doesn't protect "calculated devastating attacks upon an employer's reputation and products.") Hence, Duane's December 30 Glassdoor posting was not protected by the Act, and his discharge was lawful. The Respondent's action terminating his employment did not violate Section 8(a)(1) of the Act.

C. *The Respondent did not violate Section 8(a)(1) by terminating Duane for posting on Glassdoor.com before bringing a complaint to management and therefore Respondent maintained an overbroad rule.*

5 The General Counsel amended her complaint paragraphs 6(b) and 6(e) in this action on October 22, 2015, to add a further allegation that Duane was terminated for violating an unlawful rule prohibiting employees from bringing workplace complaints to third parties without first raising them with their supervisor. The General Counsel therefore argues that Respondent maintains an overbroad rule that unlawfully interferes with the statutory right of employees to
10 communicate their employment-related complaints to persons and entities other than the employer (including a union or the Board) and cites the case *Kinder-Care Learning Centers*, 299 NLRB 1171, 1172 (1990), in support of her argument. In addition, the General Counsel argues that even if the rule is unwritten, it remains unlawful as verbally promulgated rules also violate the Act. *Hyundai America Shipping Agency*, 357 NLRB 681, 695 (2011), review granted in part and decision reversed in part, *Hyundai Am. Shipping Agency, Inc. v. NLRB*, 2015 WL 6875278 at
15 3, (D.C. Cir., No. 11-1351, 11/6/15) (“[M]erely encouraging and not requiring employees to take actions potentially implicating their Section 7 rights doesn’t amount to an employer’s attempt to ‘interfere with, restrain, or coerce’ them in violation of Section 8(a)(1).”).

20 The General Counsel argues in her brief that “Duane’s testimony about the words Mishkin used implied it was a requirement that employees must first go to management with their complaints.” (GC Br. At 8.) I reject this argument as being unsupported by the evidence as I have found, as stated above, that Mishkin and Duane both agreed that Respondent does not have such a rule or policy requiring employees to talk to management about work problems before
25 disclosing them to third parties. (Tr. 146-147, 256.) In addition, I further find that Mishkin credibly denied that Duane’s termination resulted in any way from his not airing his complaints or concerns first with supervisors before posting on Glassdoor.com. (Tr. 274, 281-282.)

30 I find that the General Counsel has failed to prove either the existence of an unlawful policy or the unlawful termination of Duane for violating any unlawful Respondent rule or policy.

D. *There is no evidence that Respondent’s termination of Duane was a “preemptive strike” to suppress future protected concerted activity.*

35 The General Counsel amended her complaint in this action at hearing to add a further allegation that Respondent fired Duane to suppress protected concerted activity by other employees and cites *Paraxel International, LLC*, 356 NLRB 516, 519 fn. 9 (2011), in support of her argument. In *Paraxel*, an employee was terminated because the employer did not want her to
40 discuss wages and discrimination with other employees. An employer violates the Act when it acts to prevent future protected activity. *Paraxel International, LLC*, 356 NLRB 516, 519 fn. 9 (2011). “After all, the suppression of future protected activity is exactly what lies at the heart of most unlawful retaliation against past protected activity.” *Id.*

45 I further find that the General Counsel has failed to prove her “preemptive strike” theory in this case as there is no evidence that Mishkin considered any chance that Duane would later

JD(SF)-21-16

attempt to engage in future protected concerted activity with other employees especially when no such discussions ever came up in Duane's meetings with Keyes on January 6 or Mishkin on January 8, 2015. As a result, I further find that no evidence was provided that Mishkin's decision to discharge Duane on January 8 was motivated in any way by a desire to preempt future Section 7 activity. Instead, as stated above, Mishkin discharged Duane for his disparaging December 30 posting at a time when Duane was readying to resign from Respondent after being satisfied with Respondent's flexibility in granting him 25-30 days of sporadic remote work and 2 months of disability leave and Duane was terminated because he made his angry, impulsive, and false claim of discrimination against Respondent in his December 30 Glassdoor.com posting intended by Duane to harm Respondent's reputation and dissuade prospective employee recruits from coming to Respondent for employment.

I therefore find that the General Counsel failed to prove that Respondent discharged Duane for unlawful reasons, and Respondent did not violate Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

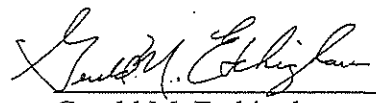
1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, as alleged in the complaint.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I issue the following recommended¹²

ORDER

The complaint is dismissed.

Dated: Washington D.C. April 28, 2016


Gerald M. Etchingham,
Administrative Law Judge

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Exhibit Q

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.

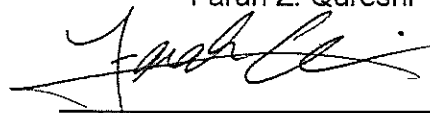
No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

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

Exhibit R

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented to: Agency(ies) Charge No(s): ☐ FEPA ☒ EEOC 500-2015-02025	
CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC State or local Agency, if any			
Name (indicate Mr. Ms. Mrs.) Mr. Adrian Scott Duane			12/13/1984
Street Address 2303 Park Blvd, Apt. 5		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 ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☒ RETALIATION ☐ AGE ☒ DISABILITY ☐ OTHER (Specify below)		DATE(S) DISCRIMINATION TOOK PLACE Earliest 7/10/2013 Latest 1/8/2015 ☐ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)): Please see the attached EEOC Charge of Discrimination.		EQUAL EMPLOYMENT OPPORTUNITY COMMISSION NEW YORK DISTRICT OFFICE MAR 17 2015 DATE RECEIVED	
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 CostaOn 3-10-2015

Date

before me,

Marianela De Lotto, Notary Public

Here Insert Name and Title of the Officer

personally appeared Askeian 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

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: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Exhibit S



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.

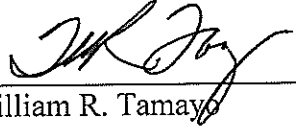
Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended, as incorporated by reference in Section 107 (a) of Title I of the Americans with Disabilities Act, as amended, requires that if the Commission determines that there is reasonable cause to believe that the charge is true, it shall 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

Exhibit T

David Marek (SBN: 290686)
 The Marek Law Firm, Inc.
 228 Hamilton Avenue
 Palo Alto, California 94301
 david@marekfirm.com
 917-721-5042
 Attorney for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

ADRIAN SCOTT DUANE,

Plaintiff,

-against-

IXL LEARNING, INC. and PAUL MISHKIN,

Defendants.

X

:

:

:

:

:

:

:

:

:

X

Case No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Adrian Scott Duane, through his attorneys, The Marek Law Firm, Inc., for his Complaint against IXL Learning, Inc. (“IXL” or the “Company”) and Paul Mishkin (collectively “Defendants”), alleges as follows:¹

INTRODUCTION

1. Plaintiff, Adrian Scott Duane – a transgender man with an undergraduate degree from the in Mathematics from Carleton College, and a Ph.D. in Mathematics from the University of California, San Diego – worked for Defendant IXL as a product analyst. Although Duane consistently received positive feedback for his work, IXL, an online education platform, terminated his employment less than two weeks after he returned from a medical leave of absence

¹ Duane intends to amend this Complaint to assert additional claims under the Title I of the Americans with Disabilities Act of 1990, the Americans with Disabilities Act Amendments Act of 2008, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and the California Family Rights Act upon receipt of of his right-to-sue letter from the EEOC.

1 during which he had phalloplasty surgery as part of his gender confirmation. When IXL refused
2 to accommodate his post-surgery medical needs, Duane posted on Glassdoor.com that IXL
3 discriminated against him and others and disclosed other information about the working conditions
4 at IXL, and he also informed his direct manager that IXL discriminated against him. Within days
5 of Duane's assertion of his protected rights and having recently learned that Duane's medical leave
6 was for gender confirmation surgery, IXL's CEO Paul Mishkin terminated Duane's employment
7 because he asserted his protected rights.

8 JURISDICTION

9
10 2. This Court has jurisdiction over this action under 28 U.S.C. § 1331. The amount
11 in controversy exceeds \$75,000.

12 3. The Court has personal jurisdiction over the Defendant under California Code of
13 Civil Procedure § 410.10 and because the Defendant's actions in this state give rise to the claims
14 at issue herein.

15 VENUE

16 4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2), as both parties
17 reside in this District and a substantial part of the events giving rise to the claims occurred in this
18 District.

19 PARTIES

20
21 5. Plaintiff Duane is a transgender man who resides in Oakland, California. He
22 obtained his undergraduate degree in Mathematics from Carleton College in 2007, and his Ph.D.
23 in Mathematics in June 2013 from the University of California, San Diego. He was employed by
24 Defendant IXL in its San Mateo, California headquarters as a Product Analyst from July 10, 2013
25 until it unlawfully terminated his employment on January 8, 2015.

1 6. IXL, a Delaware corporation, is a web-based educational software company with
2 its headquarters and principal place of business located at 777 Mariners Island Boulevard, Suite
3 600, in San Mateo, California. IXL employs approximately 200 employees; although most work
4 out of its San Mateo office, many employees work remotely from locations throughout the United
5 States.

6 7. Mishkin is the founder and CEO of IXL. He is a resident of California. He made
7 the decision to terminate Duane's employment because Duane asserted his protected rights on
8 Glassdoor.com and to his manager.

9
10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 **A. Duane Was Qualified For His Position At IXL And Was Recognized By**
12 **His Team, Supervisor, And CEO For His Outstanding Performance.**

13 8. Duane joined IXL in July 2013 after receiving his Ph.D. in mathematics in June
14 2013 from the University of California, San Diego. Duane excelled at IXL and was recognized
15 for his outstanding performance. Duane was qualified for his position and performed his duties in
16 a professional and competent manner throughout his employment with the Company.

17 9. IXL gave Duane three performance reviews over the course of his employment with
18 the Company. Duane received his first review on September 12, 2013, after 60 days of
19 employment at IXL from Kate Mattison. Mattison supervised Duane between July 10, 2013, and
20 December 31, 2013. Mattison rated all aspects of Duane's performance between a 3 and 4 on a
21 1-5 scale, denoting performance that "consistently meets" or was "consistently above"
22 expectations. In this review, Mattison noted that "Scott has a very positive attitude and great
23 enthusiasm. He is willing to tackle any project and volunteers to take on new responsibilities."

1 10. Duane received his second performance review from Mattison after 90 days of
2 employment with IXL on November 6, 2013. In this review, Mattison also ranked Duane's
3 performance between a 3 and 4, indicating that his performance consistently met or was above
4 IXL's expectations.

5 11. Duane received his third performance review in or around January 2014 from David
6 Keyes, who supervised him from January 1, 2014, until IXL terminated his employment on
7 January 8, 2015. Keyes rated all aspects of Duane's performance at a 4 or 5, and noted that Duane
8 had improved in all areas that Mattison had outlined opportunities for growth. Keyes also praised
9 Duane's work handling mobile device platforms, and for becoming a leader in mobile testing. As
10 a result of this review, Keyes assigned Duane the project of designing IXL's mobile icons for
11 precalculus so that Duane could engage in additional creative roles within the Company.
12

13 12. IXL awarded Duane two "team trophy" awards for his work. Keyes awarded
14 Duane a "team trophy" for designing icons for the precalculus grade, which appear on IXL's iPad
15 app. Keyes awarded Duane a second "team trophy" for his design of an innovative mobile
16 keyboard, which was well-received by IXL's mobile software engineers.

17 13. IXL's CEO, Mishkin, also recognized Duane's excellent work for the Company.
18 In August 2014, Mishkin stated that he was impressed by Duane's work designing precalculus
19 skills in sinusoidal graphing, matching polynomial functions and graphs, writing series in sigma
20 notation, and finding recursive formulae for sequences.

21 14. On or around September 2014, Mattison sent an email to Duane and Keyes praising
22 the skills that Duane designed for the August 2014 product release.
23

24 15. Throughout his employment, IXL's Sales team used skill sets that Duane designed
25 to market the Company's product to potential customers at conferences and other industry events.
26

1 The sinusoidal graphing skill that Duane developed was particularly popular among math teachers
2 and school principles.

3 **B. IXL Did Not Object To Duane’s Flexible Schedule Before He Became Disabled.**

4 16. During his January 2014 performance review and before Duane became disabled,
5 Duane asked Keyes about his work schedule. Duane is involved in community organizing work,
6 and would occasionally work irregular hours—for example, by coming in at 7:00 a.m. and working
7 until 3:30 p.m., or beginning work at 11:00 a.m. and working until 7:30 p.m. Duane brought up
8 this issue during his performance review because Duane wanted to ensure that keeping an irregular
9 schedule was not a problem for Keyes or for the Company. Keyes told Duane that his irregular
10 hours were “absolutely fine,” because Duane always got his work done and made sure not to miss
11 any meetings.
12

13 **C. In 2014, Duane Took Medical Leave To Have Phalloplasty Surgery.**

14 17. In July 2014, Duane informed his supervisor, Keyes, that he needed to have surgery,
15 which was scheduled to take place on November 3, 2014. Duane also told Keyes that Duane would
16 need to be out for between six and eight weeks to recover after the surgery. Finally, Duane told
17 Keyes that he would need to have weekly pre-operative appointments to prepare for his surgery.

18 18. Keyes told Duane that he could work remotely on the days that he had pre-operative
19 medical appointments.
20

21 19. After speaking with Keyes in July 2014, Duane spoke with IXL’s then-Human
22 Resources manager, Brad Marshall, about his upcoming surgery. Duane asked Marshall about his
23 options for disability leave and pay. Marshall informed Duane that he could take three months of
24 medical leave under the California Medical Rights Act. Marshall also told Duane that he could
25
26

1 only be paid for six weeks of disability—which Duane later found out was incorrect, as Duane was
2 in fact eligible to receive up to 52 weeks of paid disability.

3 20. Marshall also told Duane that he would have to cash out all of his vacation days
4 before he could begin to take disability leave, and that Duane could not take paid sick days for the
5 week between his last day of work and the beginning of his State Disability Insurance (“SDI”)
6 pay.

7 21. IXL terminated Marshall in September 2014, one day before he and Duane were
8 scheduled to discuss Duane’s upcoming phalloplasty surgery. The Company promoted Maricela
9 Prado to take over Human Resources. Prado is a close friend of Penner.
10

11 22. Duane was concerned that Prado would not respect his medical privacy. In his
12 experience, both Prado and Penner inappropriately disclosed employees’ personnel issues to
13 members of IXL who they regarded as friends.

14 23. At the time that Duane needed to disclose his upcoming gender confirmation
15 surgery to IXL, Duane was concerned that Prado would not respect his medical privacy.

16 24. Before meeting with Prado, Duane spoke with Keyes about his concerns. Duane
17 told Keyes that he was concerned with keeping his upcoming medical leave private, and that he
18 wanted to ensure that Prado did not disclose his medical information to other employees. Keyes
19 told Duane that he should make clear to Prado that he wanted his medical information to remain
20 strictly confidential during their meeting. Duane emailed Prado that same day stating that his
21 medical information should remain private.
22

23 25. Duane’s last day at work before his surgery was October 30, 2014.

24 **D. IXL Refused To Reasonably Accommodate Duane’s Disability.**
25
26

1 26. On or about December 11, 2014, Duane attended the IXL holiday party with his
2 girlfriend. Based on the reaction of his colleagues, it was apparent that his colleagues were
3 surprised Duane, who most people believed to be a cisgender gay man, had a partner perceived to
4 be a lesbian woman. This caused IXL employees to question his sexuality and gender identity.
5 Because Duane has published articles on being transgender, a Google search of Plaintiff would
6 have revealed his transgender status.

7 27. On Friday, December 19, Duane emailed Keyes to update Keyes as to his recovery.
8 Duane told Keyes that he had suffered a surgical complication that made it challenging for him to
9 be out of the house for extended periods of time. Duane told Keyes that he still planned to return
10 to work on December 30, but asked Keyes whether he would be able to work half days in the office
11 and half days at home as an accommodation for this surgical complication.

12 28. Keyes replied to Duane's email requesting a modified schedule on Monday,
13 December 22. Keyes stated that "I would prefer that you be in the office for your hours when you
14 come back since you are more productive here." Keyes asked whether there was anything that
15 the Company could do to "accommodate your situation so that you can work in the office."

16 29. Being physically present in the office did not affect Duane's ability to perform the
17 essential functions of his job in any manner. As a Product Analyst, Duane could perform all of
18 the functions of his job anywhere that he could log into the IXL system—essentially, any location
19 with a secure internet connection.

20 30. IXL routinely allowed other employees to work remotely even full time in order to
21 accommodate personal and family obligations. At one point, Duane's supervisor, Keyes, informed
22 Duane that the Company had hired at least one employee with job tasks substantially similar to
23 Duane's with the understanding that the employee would work remotely 100% of the time.
24
25
26

1 31. Duane replied to Keyes' email on December 23, 2014. In this email, Duane made
2 clear that he believed IXL's failure and refusal to offer him a "reasonable accommodation"
3 constituted illegal workplace discrimination and retaliation. Duane also offered to provide written
4 documentation from his physician regarding his disability, and noted that his physician had
5 suggested that Duane work remotely as much as possible, especially after the complication.

6 32. In this email, Duane requested to work in the office for half days and work from
7 home during the other half, which was a reasonable accommodation for his disability and would
8 not have burdened the Company in any way.

9 33. Keyes immediately forwarded Duane's December 23, 2014 email to Maricela
10 Prado and Lenore Ockerberg, IXL human resources representatives. At this time, Duane's
11 December 23, 2014 email was also forwarded to Mishkin, and Keyes discussed Duane's
12 allegations with Mishkin.

13 34. Duane submitted a note from his physician to IXL on December 29, 2014,
14 explaining that his requested accommodation for a modified work-from-home schedule was
15 medically necessary. This note was on the letterhead of Brownstein & Crane Surgical Services
16 and included the website www.brownsteincrane.com. Brownstein & Crane's websites
17 immediately identifies itself as "Gender Surgery in San Francisco." The entire website announces
18 the medical practice's specialty of providing transgender surgeries.

19 35. If IXL did not know before receipt of the note from Duane's doctor that he was
20 transgender, surely IXL knew at that time. In addition, IXL would have learned that all of the
21 work time Duane had missed in 2014 was due to his gender reassignment surgery.

22 36. Duane returned to IXL on December 30, 2014. Duane met with Keyes that day.
23 During that meeting, Keyes told Duane that another employee would be working 100% remotely
24
25
26

1 to care for his sick wife. Keyes also told Duane of another IXL employee who was on a 50%
2 remote-work schedule because her husband lived in the District of Columbia.

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

9
10 **E. IXL Terminated Duane’s Employment After Duane Complained That IXL
Unlawfully Discriminated Against Him And Other Non-Conforming Employees.**

11 38. After his disappointing meeting with Keyes on December 30, Duane posted an
12 anonymous review of the Company on Glassdoor.com, stating in relevant part that:

13 The company isn’t going anywhere right now. They play to the
14 traditional classroom, which is good for profits. You won’t have to
15 worry about the company going under (but don’t expect the profits
to pass onto you, either).

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

19 There are no politics if you fit in. If you don’t—that is, if you’re not
20 a family-oriented white or Asian straight or mainstream gay person
21 with 1.7 kids who really likes softball—then you’re likely to find
22 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.

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

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

40. As a result of IXL's direct encouragement to do so, Duane had posted a comment about IXL in the past, and he was aware that many of his colleagues reviewed IXL's Glassdoor site and posted their opinions of IXL on this site.

41. On January 6, 2015, Keyes asked to speak with Duane in Keyes' office. In this one-on-one meeting, Keyes stated that Duane seemed unhappy since returning from medical leave. Duane told Keyes that he believed IXL had “discriminated” against him in connection with his return from surgery.

42. During the January 6, 2015, meeting, Duane noted to Keyes that he had been working hard and meeting all of the goals outlined in their December 30, 2014 correspondence. Keyes agreed that Duane had met all of the goals they had discussed and stated that he noticed and appreciated Duane's work ethic and productivity.

43. After Duane outlined his grievances to Keyes, Keyes appeared receptive, and stated that he would escalate his concerns to Lenore Ockerberg, Prado's supervisor in the Human Resources Department. Keyes stated that he would keep Duane informed as to the progress of the escalation of his concerns. Keyes also apologized profusely for having discriminated against Duane.

1 44. Keyes told Duane, “I’m really sorry that you felt discriminated against” and that “I
2 didn’t mean to discriminate against you.” He continued that, “I can totally understand why you
3 would feel this way.”

4 45. Keyes escalated Duane’s allegations of discrimination to human resources and IXL
5 senior management, including Mishkin. Among other things, Keyes and Mishkin had a phone call
6 after the January 6, 2015 meeting during which Keyes informed Mishkin that Duane believed he
7 was the victim of unlawful employment discrimination. Keyes also informed human resources of
8 Duane’s allegations.

9 46. Although Glassdoor posts are anonymous, IXL human resources, who found
10 Duane’s December 30 Glassdoor post, believed Duane had published this post because the
11 complaints closely resembled the allegations of discrimination that Duane had made to Keyes on
12 January 6. Human resources informed Mishkin, among others, that they believed Duane had
13 authored the December 30 Glassdoor post.

14 47. On January 7, 2015 at 4:27 a.m., the day after his meeting with Keyes, Duane
15 received an email from Mishkin, the CEO of IXL. Mishkin’s email to Duane stated that Mishkin
16 had heard that Duane had complaints regarding discrimination, and that Duane wanted to discuss
17 these complaints with Mishkin. Mishkin set up to meet with Duane on January 8, 2015 at 11:00
18 a.m.

19 48. On January 7, 2015, Duane sent Keyes an email with a series of links to websites
20 that provide information on the Americans With Disability Act, as a follow up to the allegations
21 of discrimination that Duane had made at their meeting on January 6.
22
23
24
25
26

49. Prior to his meeting with Duane on January 8, 2015, Mishkin decided to terminate Duane's employment and even had security pack and remove Duane's personal effects from his work area.

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

51. After a brief discussion of his disability concerns, Mishkin presented Duane with the December 30, 2014 review that Duane had posted anonymously on Glassdoor.com. Mishkin said to Duane, "I think you know what this is."

52. Mishkin appeared angry and upset about the instances of discrimination that Duane's Glassdoor post identified, and demanded evidence behind the statements that Duane had posted. Mishkin specifically asked Duane what he meant by "mainstream gay."

53. As IXL's CEO, Mishkin had access to Duane's medical records and the disability paperwork that Duane had submitted to Human Resources regarding his gender confirmation surgery. In addition, Mishkin was aware that Duane, who had been perceived as a gay, attended the Company's holiday party with a female date and that Duane had submitted a letter from his doctor who performed gender confirmation surgery.

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

55. According to Defendants, IXL and Mishkin terminated Duane's employment allegedly because of his Glassdoor post which included allegations of discrimination and the disclosure of other working conditions at IXL.

56. Other IXL employees had posted negative comments about IXL on Glassdoor and had not been terminated.

57. After Duane left Mishkin's office, Duane found that IXL employees had cleaned out his desk and that Human Resources had prepared the paperwork associated with his discharge from the Company. It was apparent that Mishkin had intended to terminate him before their meeting had started.

F. The EEOC Issued A Reasonable Cause Finding That IXL Retaliated Against Duane.

58. On March 17, 2015, Duane filed a Charge of Discrimination and Retaliation with the Equal Employment Opportunity Commission ("EEOC") asserting that IXL discriminated and retaliated against Duane on the basis of his gender and disability. In his Charge, Duane asserted his rights under Title I of the Americans with Disabilities Act of 1990, the Americans with Disabilities Act Amendments Act of 2008, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and California Family Right Act, and invoked the jurisdiction of both the DFEH and the EEOC to investigate the Charge.

59. On April 22, 2016, the EEOC, after conducting its investigation into Duane's allegations, issued its Determination, finding that "there is reasonable cause to believe that the

Respondent discriminated against [Duane] in retaliation for protesting against discriminatory conduct, in violation of the statutes.”

60. The EEOC has not yet issued a right-to-sue letter.

FIRST CAUSE OF ACTION
(Retaliation in Violation of the Family and Medical Leave Act)

110. Duane repeats and realleges the allegations contained in paragraphs 1 through 109 as if fully set forth herein.

111. Duane is a citizen of the United States and was an “eligible employee” of Defendant IXL within the meaning of 29 U.S.C. § 2611(2)(A) at all times relevant to this action. At the time that Duane requested to take FMLA leave, he had worked for IXL for at least 12 months and had performed at least 1,250 hours of service with IXL for the previous 12-month period.

112. IXL is an “employer” within the meaning of 29 U.S.C. § 2611(4)(A) at all times relevant to this action, and employed more than 50 people within 75 miles of the worksite where Duane was employed.

113. Duane timely requested medical leave from IXL permitted under the Family and Medical Leave Act.

114. IXL treated Duane adversely because he took the leave he was entitled to under the FMLA.

115. IXL retaliated against Duane because he took an FMLA leave of absence, by, among other things, terminating his employment less than two weeks after returning from FMLA leave.

116. IXL willfully violated the FMLA.

1 117. As a proximate result of IXL's retaliation against Duane on the basis of his exercise
2 of rights under the FMLA, Duane has suffered substantial losses, including lost back pay.

3 118. As a result of IXL's unlawful conduct, it is also liable for liquidated damages,
4 interest, and attorneys' fees and costs.

5
6 **SECOND CAUSE OF ACTION**
7 **(Wrongful Termination In Violation Of Public Policy Against IXL and Mishkin)**

8 119. Duane repeats and realleges the allegations contained in paragraphs 1 through 118
9 as if fully set forth herein.

10 120. At all times relevant to this action, the public policy of the State of California, as
11 codified, expressed, and mandated in California Government Code §§12900 *et seq.* is to prohibit
12 employers from discriminating and retaliating against an individual on the basis of sex, gender
13 identity, gender expression, disability, and decision to take protected medical leave. This public
14 policy of the State of California is designed to protect all employees and to promote the welfare
15 and well-being of the community at large.

16 121. In addition, California Labor Code § 232.5(a) prohibits an employer from
17 "require[ing], as a condition of employment, that an employee refrain from disclosing information
18 about the employer's working conditions." Section 232.5(c) prohibits an employer from
19 terminating, or otherwise disciplining, an employee "who discloses information about the
20 employer's working conditions."

21 122. Accordingly, the actions of IXL and Mishkin in terminating Duane's employment
22 on the grounds alleged and described herein (namely, because of his Glassdoor.com post and
23 subsequent complaints to his manager about IXL's discrimination, retaliation, and working
24 conditions) were wrongful and in contravention of the express public policy of the State of
25
26

California, to wit, the policy set forth in the California Fair Housing and Employment Act and the laws and regulations promulgated thereunder and/or Labor Code §§ 232.5(a) and (c).

123. As a proximate result of IXL's and Mishkin's actions described herein, Duane has suffered actual, consequential, and incidental financial losses, including without limitation loss of salary and benefits, and the intangible loss of employment-related opportunities in his field and damage to his professional reputation, all in an amount to be determined at trial.

124. Duane claims such amounts as damages pursuant to Civil Code §§ 3287 and 3288 and/or any other provisions of law providing for prejudgment interest.

125. As a proximate result of IXL's and Mishkin's wrongful acts together and separately, Duane has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Duane is informed and believes and thereupon alleges that he will continue to experience such physical and emotional suffering for a period of time in the future not presently ascertainable, all in an amount to be determined at trial.

126. The acts taken toward Duane were carried out by IXL's officers, directors, and managing agents acting in a willful, malicious, egregious, deliberate manner and in conscious disregard for Duane's rights and safety, justifying an award of punitive damages in a sum appropriate to punish Defendants and deter others in IXL's industry from engaging in similar conduct.

1 WHEREFORE, while reserving the right to seek additional damages as available, Duane demands
2 judgment against Defendants as follows:

3 A. On the First Claim against IXL, back pay, front pay, and employment benefits,
4 liquidated damages, interest, and attorneys' fees and costs, plus an order enjoining IXL from
5 engaging in the wrongful practices alleged herein, all in the maximum extent allowable by law;

6 B. On the Second Claim against IXL and Mishkin, back pay, front pay, and
7 employment benefits, interest, and attorneys' fees and costs, as well as compensatory damages
8 including those resulting from Duane's emotional distress and mental anguish in an amount to be
9 determined at trial;

10 C. All such other and further relief as this Court deems just and proper.

11 Dated: January 6, 2017

12
13
14 THE MAREK LAW FIRM, INC.

15 By: /s/ David Marek
16 David Marek
17 228 Hamilton Avenue
18 Palo Alto, California 94301
19 (917) 721-5042
20 david@marekfirm.com
21
22
23
24
25
26

Exhibit U

IMAI, TADLOCK, KEENEY & CORDERY, LLP

R. RANDY WERTZ

rrwertz@itkc.com

220 Montgomery Street, Suite 301

San Francisco, California 94104

Telephone: (415) 675-7000

Facsimile: (415) 675-7008

YOUNG BASILE HANLON & MACFARLANE, PC

JEFFREY D. WILSON (PRO HAC VICE)

wilson@youngbasile.com

NATASHA R. MENEZES (PRO HAC VICE)

menezes@youngbasile.com

3001 W. Big Beaver Road, Suite 624

Troy, Michigan 48084

Telephone: (248) 649-3333

Facsimile: (248) 649-3338

Attorneys for Defendants

IXL Learning, Inc. and Paul Mishkin

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADRIAN SCOTT DUANE,

Plaintiff,

v.

IXL LEARNING, INC. and PAUL MISHKIN,

Defendants.

Case No.: 3:17-cv-00078-WHA

**STIPULATION FOR DISMISSAL
WITH PREJUDICE**

To the Honorable William H. Alsup, United States District Judge:

Defendants IXL Learning, Inc. (“IXL”) and Paul Mishkin (“Mishkin”) (collectively, the “Defendants”) and Plaintiff Adrian Scott Duane (“Plaintiff”), by and through their undersigned counsel, hereby agree and stipulate pursuant to Fed. R. Civ. P. 41(a) to the dismissal of all claims pending in this action by Plaintiff against Defendants with prejudice, waiving all rights of appeal. The parties agree not to pursue any costs or attorneys’ fees incurred during the course of this action.

1 IT IS SO STIPULATED.

2
3 DATED: June 22, 2017

4 /s/ David Marek (with permission)

5 David Marek
6 The Marek Law Firm
7 228 Hamilton Avenue
8 Palo Alto, California 94301
9 Telephone: (917) 724-5042

10 *Attorneys for Plaintiff*

/s/ Jeffrey D. Wilson

Jeffrey D. Wilson
Young Basile Hanlon & MacFarlane, PC
3001 W. Big Beaver Road
Suite 624
Troy, Michigan 48084
Telephone: (248) 649-3333
Facsimile: (248) 649-3338

Attorneys for Defendants

11
12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13
14 Dated: _____, 2017

United States District Judge

Exhibit V

IMAI, TADLOCK, KEENEY & CORDERY, LLP

R. RANDY WERTZ

rrwertz@itkc.com

220 Montgomery Street, Suite 301

San Francisco, California 94104

Telephone: (415) 675-7000

Facsimile: (415) 675-7008

YOUNG BASILE HANLON & MACFARLANE, PC

JEFFREY D. WILSON (PRO HAC VICE)

wilson@youngbasile.com

NATASHA R. MENEZES (PRO HAC VICE)

menezes@youngbasile.com

3001 W. Big Beaver Road, Suite 624

Troy, Michigan 48084

Telephone: (248) 649-3333

Facsimile: (248) 649-3338

Attorneys for Defendants

IXL Learning, Inc. and Paul Mishkin

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADRIAN SCOTT DUANE,

Plaintiff,

v.

IXL LEARNING, INC. and PAUL MISHKIN,

Defendants.

Case No.: 3:17-cv-00078-WHA

**STIPULATION FOR DISMISSAL
WITH PREJUDICE**

To the Honorable William H. Alsup, United States District Judge:

Defendants IXL Learning, Inc. (“IXL”) and Paul Mishkin (“Mishkin”) (collectively, the “Defendants”) and Plaintiff Adrian Scott Duane (“Plaintiff”), by and through their undersigned counsel, hereby agree and stipulate pursuant to Fed. R. Civ. P. 41(a) to the dismissal of all claims pending in this action by Plaintiff against Defendants with prejudice, waiving all rights of appeal. The parties agree not to pursue any costs or attorneys’ fees incurred during the course of this action.

IT IS SO STIPULATED.

DATED: June 22, 2017

/s/ David Marek (with permission)

David Marek
The Marek Law Firm
228 Hamilton Avenue
Palo Alto, California 94301
Telephone: (917) 724-5042

Attorneys for Plaintiff

/s/ Jeffrey D. Wilson

Jeffrey D. Wilson
Young Basile Hanlon & MacFarlane, PC
3001 W. Big Beaver Road
Suite 624
Troy, Michigan 48084
Telephone: (248) 649-3333
Facsimile: (248) 649-3338

Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June 27, 2017



United States District Judge

Exhibit X

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---000---

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 ISIDORA MILIN

Taken before DIANA L. GONZALEZ

CSR No. 7935

March 2, 2018

I N D E X

	PAGE
EXAMINATION BY MS. SANGHVI	5, 62
EXAMINATION BY MR. MAREK	54

E X H I B I T S

	PAGE
DEPOSITION	
Exhibit 37 One-page chat conversation between Isidora Milin and Scott Duane on August 26th, 2014 Bates stamped IXL-0802	31
Exhibit 38 Two-page Gchat session between Isidora Milin and Scott Duane dated Wednesday, January 7, 2015 Bates stamped IXL-0824 and IXL-0825	69

DEPOSITION OF ISIDORA MILIN

BE IT REMEMBERED, that pursuant to Notice, and on the 2nd day of March, 2018, commencing at the hour of 1:02 p.m., in the offices of U.S. Equal Employment Opportunity Commission, The Phillip Burton Federal Building, 450 Golden Gate Avenue, 5 West, San Francisco, California, before me, DIANA L. GONZALEZ, a Certified Shorthand Reporter, personally appeared ISIDORA MILIN, produced as a witness in said action, and being by me first duly sworn, was thereupon examined as a witness in said cause.

---o0o---

APPEARANCES:

For the Plaintiff:

AMI SANGHVI
U.S. Equal Employment Opportunity Commission
The Phillip Burton Federal Building
450 Golden Gate Avenue, 5 West
San Francisco, California 94102
(415) 522-3071
ami.sanghvi@eeoc.gov

For the Plaintiff-Intervenor:

DAVID MAREK
The Marek Law Firm, Inc.
228 Hamilton Avenue
Palo Alto, California 94301
(650) 721-5042
david@marekfirm.com

1 For the Defendant IXL Learning, Inc.:

2 JEFFREY D. WILSON
3 Young Basile
4 3001 West Big Beaver Road, Suite 624
5 Troy, Michigan 48084
6 (248) 649-3333
7 wilson@youngbasile.com
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 ISIDORA MILIN,
2 sworn as a witness,
3 testified as follows:

4 EXAMINATION BY MS. SANGHVI:

5 Q. Good morning. Or good afternoon. Sorry. My
6 name is Ami Sanghvi, and I'm an attorney with the Equal
7 Employment Opportunity Commission. We're a federal
8 agency charged with enforcing the country's
9 anti-discrimination laws in the workplace.

10 I'm going to have everyone identify themselves
11 for the record.

12 MR. WILSON: Jeff Wilson on behalf of IXL.

13 BY MS. SANGHVI:

14 Q. Can you please state your name for the record.

15 A. Isidora Milin.

16 Q. What is your address, Ms. Milin?

17 A. 580 McAllister Street, Apartment 419,
18 San Francisco.

19 Q. And your date of birth?

20 A. October 30th, 1981.

21 Q. What is your phone number?

22 A. (217) 417-3697.

23 MS. SANGHVI: Off the record.

24 (Off the record from 1:03 to 1:03.)

25 BY MS. SANGHVI:

1 Q. Ms. Milin, have you been deposed before?

2 A. No.

3 Q. Have you ever sued anyone?

4 A. No.

5 Q. Have you ever been sued?

6 A. No.

7 Q. So I'm going to go through a few basic
8 explanatory statements, and then we'll get started.

9 The way a deposition works is I'm going to ask
10 you questions, and you have to answer truthfully and
11 you are answering under the penalty of perjury. It's
12 basically just like you're in a court of law, even
13 though there's no judge that's present here today.

14 To that end, because questioning proceeds just
15 as it would if you were at trial, you cannot consult
16 with anyone or anything including the attorney during
17 the questioning.

18 Do you understand that?

19 A. Yes.

20 Q. If you don't understand one of my questions,
21 let me know, and I'm happy to rephrase it.

22 Do you understand that?

23 A. Yes.

24 Q. We will take breaks as needed, but not while a
25 question is pending; is that clear?

1 A. Yes.

2 Q. There is a court reporter here, as you know,
3 transcribing your words. And to that end we must be
4 careful about a few things that often happen naturally
5 when people are talking. First, you must answer every
6 question with words rather than gestures or sounds?

7 Do you understand that?

8 A. Yes.

9 Q. Please wait until I have fully completed my
10 question before you answer so that the court reporter
11 can transcribe everything accurately.

12 Do you understand that?

13 A. Yes.

14 Q. Before the depo can be used in court, you will
15 be provided with the opportunity to read it over and to
16 correct any transcription errors that you find. Is
17 that clear?

18 A. Yes.

19 Q. What is your understanding of why you were
20 called here today?

21 A. Because I was employed at IXL at the same time
22 when -- as when the events relevant for the case took
23 place.

24 Q. What -- do you understand that this is -- this
25 deposition is related to the EEOC suing IXL Learning?

1 A. Yes.

2 Q. Do you consider Jeff Wilson sitting beside you
3 to be your attorney?

4 A. No.

5 Q. Did you meet anyone in advance of this
6 deposition to prepare?

7 A. I have discussed the deposition with my
8 attorney, Hunter Smith.

9 Q. What's the name of your attorney?

10 A. Hunter Smith.

11 Q. Without telling me the contents of your
12 discussion with Mr. Smith, when did you last speak with
13 him?

14 A. Over the phone two days ago.

15 Q. And Mr. Smith represents you in this matter in
16 your -- is he a personal attorney?

17 A. Just personal.

18 Q. Did you meet anyone else in advance of this
19 deposition?

20 A. I have met with Jeff Wilson.

21 Q. When did you meet Mr. Wilson?

22 A. Right before. Earlier today.

23 Q. At what time?

24 A. Around 11:30.

25 Q. How long did you meet?

1 A. For about an hour.

2 Q. Where did you meet?

3 A. At the second floor of this building.

4 Q. Did you review any documents at that time?

5 A. No.

6 Q. Let the record reflect that Mr. Duane's

7 counsel, David Marek, has joined.

8 MR. MAREK: Hello. How are you?

9 THE WITNESS: Hi.

10 BY MS. SANGHVI:

11 Q. And did you -- what did you discuss at that
12 meeting?

13 A. We discussed depositions in general and then
14 went over the instances where my name is brought up
15 relevant to this case.

16 Q. In what instances did you go over?

17 A. Situations where I might have appeared in a
18 chat conversation or events while I was employed at
19 IXL.

20 Q. Approximately how many chats did you go over?

21 A. A couple.

22 Q. Would that be two?

23 A. Two or three, yeah. I don't want to classify
24 them as chats. Chats is not technically correct, but
25 just instances where my name was mentioned.

1 Q. And have you met anyone other than Mr. Wilson
2 and your phone conversation with Mr. Smith with regards
3 to this deposition?

4 A. No.

5 Q. Have you told anybody about your presence today
6 at this deposition?

7 A. I have told my manager, David Keyes.

8 Q. Anyone else?

9 A. I have let some team members know I will be
10 unavailable due to an appointment. I did not specify
11 any further what type of appointment or what it regards
12 to, but I blocked it off on my calendar and canceled
13 some meetings so that I could attend.

14 Q. And have -- other than the individuals at
15 IXL -- or other than telling Mr. Keyes about your
16 presence today, have you told anybody else that you
17 were appearing for a deposition today that we have not
18 already covered?

19 A. No.

20 Q. Apart from your meeting with Mr. Wilson, did
21 you review any documents in advance of your deposition
22 today? Excuse me, any documents to prepare for your
23 deposition today.

24 A. No.

25 Q. Did you review any e-mails to prepare for your

1 deposition today?

2 A. I did look at a couple of e-mails I got from HR
3 and IXL's attorneys, just about the mechanics of this
4 deposition, yes.

5 Q. Have you signed any written statements relating
6 to the facts related to this lawsuit?

7 A. No.

8 Q. Have you made any recorded statements at all
9 related to the facts underlying this lawsuit?

10 A. Written statements?

11 Q. Recorded statements.

12 A. No.

13 Q. Have you spoken to any reporters relating to
14 the facts underlying this lawsuit?

15 A. No.

16 Q. Have you posted any statements about the facts
17 relating to this lawsuit on internet or social media?

18 A. No.

19 Q. Are you on any medication that might impair
20 your ability to testify truthfully today?

21 A. No.

22 Q. Are you on any substances that might impair
23 your ability to testify truthfully?

24 A. No.

25 Q. Is there any reason why you feel as though you

1 would be impaired from giving complete and truthful
2 testimony?

3 A. No.

4 Q. Do you think the fact that you're currently
5 employed at IXL impairs your ability to provide
6 truthful testimony?

7 A. It shouldn't.

8 Q. Have you ever been arrested?

9 A. No.

10 Q. Are you married?

11 A. No.

12 Q. Do you have any kids?

13 A. No.

14 Q. Can you tell me what your highest level of
15 education has been?

16 A. Ph.D.

17 Q. Where did you receive the Ph.D. from?

18 A. Stanford University.

19 Q. What year did you receive your Ph.D.?

20 A. 2008.

21 Q. What was the subject matter of your Ph.D.?

22 A. Mathematics.

23 Q. What did you do your thesis on?

24 A. Contact geometry.

25 Q. How many years did it take you to complete your

1 Ph.D. at Stanford?

2 A. Five years.

3 Q. So is it accurate that you were performing
4 Ph.D. work from 2003 to 2008?

5 A. Yes.

6 Q. Prior to -- excuse me. Were you working in
7 this time period between 2003 to 2008?

8 A. I was working part time as a graduate teaching
9 assistant.

10 Q. And that's at Stanford?

11 A. Yes.

12 Q. Prior to 2003, were you in -- where were you?

13 A. I was an undergraduate student.

14 Q. Where were you an undergraduate student?

15 A. At Harvard University.

16 Q. Did you graduate Harvard in 2003?

17 A. Yes.

18 Q. Did you attend Harvard for four full years?

19 A. Yes.

20 Q. So it's accurate to say you began at Harvard in
21 1999?

22 A. Yes.

23 Q. In 2008 once you received your Ph.D., what did
24 you do next?

25 A. I went to Israel on a research fellowship.

1 Q. How long was that research fellowship?

2 A. For one school year.

3 Q. Was that through a school or a program?

4 A. The fellowship was at Tel Aviv University
5 School of Mathematical Sciences.

6 Q. What was your fellowship in?

7 A. The same subject as my dissertation, contact
8 geometry.

9 Q. In 2009 what did you do next when you completed
10 your research fellowship?

11 A. I started a position at the University of
12 Illinois Urbana-Champaign.

13 Q. What was that position?

14 A. J.L. Dube research assistant professor in the
15 mathematics department.

16 Q. What does J.L. Dube stand for?

17 A. The -- he's a mathematician. The assistant
18 professorship is named in his honor.

19 Q. So is it fair to say you were working with
20 undergraduate students or graduate students?

21 A. Mostly undergraduate students. But I did teach
22 some classes with graduate enrollment as well.

23 Q. How long were you at the university?

24 A. Three years.

25 Q. Why did you leave?

1 A. It was a three-year position.

2 Q. And in 2012 what did you do next?

3 A. I started working at IXL in October 2012.

4 Q. What position were you hired into?

5 A. Product analyst.

6 Q. Who hired you?

7 A. I believe the hiring manager was Kate Mattison
8 at the time.

9 Q. Was Kate Mattison also your direct supervisor
10 at the time?

11 A. Yes.

12 Q. Does she remain your supervisor?

13 A. No.

14 Q. Do you remain a product analyst?

15 A. No.

16 Q. So for how long did you hold the position of
17 product analyst?

18 A. I was promoted to senior product analyst at the
19 end of 2013, beginning of 2014. After that, at some
20 point, there was a general change of job titles from
21 product analyst to curriculum designer, which made me a
22 senior curriculum designer. I do not remember when
23 that happened exactly.

24 Q. So when you said you were -- you became a
25 senior product analyst end of 2013, beginning of 2014,

1 is it correct to say the title change to senior
2 curriculum designer happened at some point after the
3 beginning of 2014?

4 A. Yes.

5 Q. Did your job change in any way?

6 A. When I became a senior product analyst, yes.

7 Q. How so?

8 A. At that time -- or shortly before I started
9 supervising other people on the team and had more
10 design review responsibilities.

11 Q. And this is all -- was it still within the math
12 team?

13 A. Yes.

14 Q. How long did you remain a senior curriculum
15 designer?

16 A. At some point I was promoted to senior
17 curriculum designer II, Roman numeral. This was -- I
18 don't remember the exact date. Should have been end of
19 2016, beginning of 2017.

20 Q. What is your current title?

21 A. Lead curriculum designer.

22 Q. Sorry?

23 A. Lead curriculum designer.

24 Q. So end of 2016, beginning of 2017 when you were
25 a senior curriculum designer II, how long did you hold

1 that position?

2 A. I'll say that technically that is the same
3 position I have now. There has again been a general
4 change and renaming so that senior curriculum designer
5 II has been renamed into lead curriculum designer at
6 the beginning of this year.

7 Q. It's fair to say that your job responsibilities
8 have not changed in this new title of lead curriculum
9 designer?

10 A. Job responsibilities change and evolve over
11 time, not necessarily always in sync with official
12 changes in job title.

13 Q. So I want to focus our attention to the period
14 of time from October 2012 to the end of 2013 when you
15 were just a product analyst. Who was your supervisor
16 at that time?

17 A. Kate Mattison.

18 Q. Did you receive performance evaluations as a
19 product analyst?

20 A. Yeah, I did.

21 Q. Can you describe those?

22 A. I don't remember the details of those
23 evaluations.

24 Q. Were they written?

25 A. I believe so.

1 Q. Did you receive feedback, other than written
2 performance evaluations, from Kate Mattison?

3 A. Yes.

4 Q. What form would that take?

5 A. During regularly scheduled meetings, during
6 end-of-the-year longer meetings, and on an ongoing
7 basis through her reviews of my work in general.

8 Q. Was her commentary about your performance
9 generally positive?

10 A. Yes.

11 Q. Did she ever note for you areas of improvement?

12 A. Yes.

13 Q. Was she ever critical of your performance?

14 A. Beyond noting areas of improvement, the overall
15 tone I would not call it critical.

16 Q. What were some areas of improvement that you
17 recall her noting for you as a product analyst?

18 A. Balancing my attention to quality with making
19 sure things move along in the production process. That
20 would at least be my interpretation of the feedback I
21 received. Possibly not what she intended me to take
22 away from it.

23 Q. And at the end of 2013, beginning of 2014 when
24 you moved into the role of senior product analyst, who
25 was your supervisor?

1 A. My supervisor changed. David Keyes started
2 supervising me at the time.

3 Q. I believe you mentioned earlier that he remains
4 your supervisor; is that correct?

5 A. Yes.

6 Q. Has he been your supervisor essentially from
7 the beginning of 2014 to present time?

8 A. Yes.

9 Q. How would you describe him as a supervisor?

10 A. He has changed his management style since he
11 first became a manager in 2014. So maybe you can
12 specify what time period you'd like me to comment on.

13 Q. Sure. Why don't we talk about when you first
14 began being supervised by Mr. Keyes, can you describe
15 his management style?

16 A. Methodical, emphasis on organization and
17 timelines.

18 Q. How has that changed?

19 A. That -- that is still the same, but I think
20 that more recently now that he supervises more
21 experienced people, he has given us more responsibility
22 to manage projects in a way that we see fit.

23 Q. So is it fair to say in the beginning of your
24 time being supervised by him, he gave less
25 responsibility for you to be able to independently

1 manage your work?

2 A. Yes. That could have been a reflection of what
3 experience he perceived me to have at the time, yeah.

4 Q. Around when do you -- did you perceive a change
5 in him providing more responsibility to employees to
6 lead their work?

7 A. It -- I don't think there was any particular
8 moment. It's a -- it's kind of gradual evolution.

9 Q. During your time as a senior product analyst
10 from 2014 to -- through 2016, I believe you indicated
11 that you supervised some individuals. Can you talk
12 about that experience a little bit?

13 A. I supervised two product analysts, Nemo Curiel
14 and Jessica Morse.

15 Q. What time period was this?

16 A. For Nemo starting in summer of 2013, roughly,
17 until spring of following year. I -- I really don't
18 know the exact dates so -- and for Jessica, starting in
19 the fall of 2013 until the summer of 2014.

20 Q. And what were you -- so you were their direct
21 supervisor during this period of time?

22 A. With Nemo I might have been treated as a
23 supervisor in training, so I'm not entirely sure that I
24 was formally listed as his supervisor from the very
25 beginning.

1 Q. Were you responsible for evaluating his work?

2 A. Yes.

3 Q. And who did you report to during this time?

4 A. During the summer and fall of 2013, I reported
5 to Kate Mattison. And starting in January 2014, I
6 started reporting to David Keyes.

7 Q. So when you took on the role of supervising,
8 your reporting structure did not change from what you
9 earlier testified?

10 A. No, but it changed while I was a supervisor.

11 Q. Understood. Thank you.

12 And for Jessica Morse, you were her direct
13 supervisor for the entirety of the time that you've
14 indicated, from the fall of 2013 to summer of 2014?

15 A. Yes.

16 Q. And what happened in the summer of 2014 that
17 you were no longer supervising Nemo Curiel and Jessica
18 Morse?

19 A. There were priorities on the team as far as
20 products that we wanted to focus on, they were more
21 advanced math material, and I had the qualifications to
22 work on it that other team members perhaps didn't. So
23 my focus changed to working on developing advanced high
24 school materials.

25 Q. Prior to developing advanced high school

1 materials, what type of materials were you working on?

2 A. I worked on a prototype project to develop math
3 content videos while still maintaining some
4 responsibilities in other areas, including high school
5 content development.

6 Q. Can you talk about this prototype project for
7 math content, be a little bit more -- what does that
8 mean to be a prototype project?

9 A. It was something that we wanted to try and
10 build a model for, how math content video could be
11 created, what the process should be, and see whether
12 it's something that the company can produce.

13 Q. When did you begin that project?

14 A. There probably were some early discussions
15 about what that could involve on -- in, I want to say,
16 early 2013, possibly before.

17 Q. Were Nemo Curiel and Jessica Morse assigned to
18 this prototype project?

19 A. They were hired to work on it.

20 Q. And what happened with that project?

21 A. When we produced the initial prototypes, it was
22 decided at the end of 2013 that the company will not go
23 ahead with producing a large number of these videos.
24 Basically decided not to move on.

25 Q. Who made that decision?

1 A. I believe the decision was made at the highest
2 level of discussions between the CEO Paul, Kate. But I
3 wasn't a part of the -- of that discussion.

4 Q. So you were leading the prototype project, but
5 you were not a part of the discussion on whether or not
6 to continue the project?

7 A. So I was part of some discussions about how the
8 prototype went. The deciding discussion, yes, I was
9 not a part of it.

10 Q. Why not, do you know? If you know.

11 A. I don't know.

12 Q. Did that bother you?

13 A. I'm not sure.

14 Q. You worked on this prototype project for
15 essentially the better part of a year, hired two
16 individuals to work on the project and then it was
17 canceled without your input. My question is, did that
18 bother you?

19 MR. WILSON: Objection; asked and answered
20 twice.

21 Go ahead and answer.

22 THE WITNESS: So let me clarify. I'm not sure.
23 When the project was first started, I raised objections
24 to its very nature. I thought that -- it may not be
25 IXL's competitive advantage to invest in videos as

1 opposed to more interactive content. I did feel it was
2 an interesting responsibility to manage this project,
3 so I took it on and I gave it my all.

4 But to a certain degree I understood structural
5 reasons for why it might have been canceled, even
6 without being part of that discussion since I kind of
7 raised certain concerns about the project very early on
8 before I was even assigned to it. So when I say I'm
9 not sure whether I was bothered, I will say that the
10 more precise statement is I understood the whys of the
11 decision very well.

12 BY MS. SANGHVI:

13 Q. How was it communicated to you that the project
14 was canceled?

15 A. Through a conversation with Kate one-on-one.

16 Q. And then did you communicate that decision to
17 Nemo Curiel and Jessica Morse?

18 A. Yes.

19 Q. Sorry. I should also ask, other than Nemo
20 Curiel and Jessica Morse who were hired to work on this
21 prototype project, was there anyone else assigned to
22 work on it?

23 A. Yes.

24 Q. Who was that?

25 A. There was a contract animator.

1 Q. Do you remember her name?

2 A. She was paid per hour. Marilia Poggiali.

3 Q. Anyone else?

4 A. There might have been one or two more contract
5 animators, but we worked with them on earlier
6 prototypes, so they weren't really affected by that
7 final decision.

8 Q. So when Kate Mattison explained to you that the
9 project had been canceled, did she indicate to you
10 what -- well, strike that. Sorry.

11 Is it accurate to say during the time that you
12 worked on the prototype project, that that was one of
13 your primary responsibilities?

14 A. Yes.

15 Q. So when the project was canceled, did
16 Ms. Mattison indicate to you what your new primary
17 responsibility could be?

18 A. Yes.

19 Q. And what was that?

20 A. There were several. One of them was working on
21 developing creative word problems for lower elementary
22 grades. Another, possibly more important one, was
23 contributing to the development of precalculus, so
24 advanced high school materials that I referred to
25 before.

1 Q. Did Ms. Mattison indicate what Nemo Curiel and
2 Jessica Morse would be shifting their attention to?

3 A. Yes.

4 Q. And what was that?

5 A. For Jessica it was working on the word problems
6 project. For Nemo it was working on general lower
7 elementary grade projects that were underway before,
8 during and after the video project.

9 Q. Did Ms. Mattison indicate whether you would
10 continue to supervise Mr. Curiel and Ms. Morse?

11 A. Yes.

12 Q. And were you to continue supervising them?

13 A. Yes.

14 Q. So how long did you continue supervising
15 Ms. Morse?

16 A. Several months.

17 Q. Just so I'm clear on the time frame, the video
18 project was canceled when?

19 A. At the very end of 2013 or very beginning of
20 2014, some -- several weeks around that time.

21 Q. So you continued to supervise Ms. Morse until
22 December of 2014 was your testimony earlier, correct?

23 A. Yes.

24 Q. And what happened in the summer of 2014 with
25 regards to Ms. Morse and your supervision of her?

1 A. It became clear that more of my time should be
2 spent on precalculus materials, and I stopped
3 supervising her.

4 Q. With regards to Mr. Curiel in the spring of
5 2014, what happened with regards to your supervision of
6 him?

7 A. He gave notice and left IXL.

8 Q. Do you know why Mr. Curiel left?

9 A. To pursue other opportunities.

10 Q. In the summer of 2014 when you were no longer
11 supervising Ms. Morse, did you supervise anyone else at
12 that time?

13 A. No.

14 Q. Did you consider it a demotion of sorts to no
15 longer have a direct report?

16 A. I did not.

17 Q. Did you want to supervise other individuals at
18 that time in the summer of 2014?

19 A. I was not sure.

20 Q. Do you supervise anyone right now?

21 A. No.

22 Q. So since the summer of 2014, have you
23 supervised anyone?

24 A. No.

25 Q. Do you believe that IXL is an employer that

1 encourages creativity?

2 A. I believe there are many people at IXL who try
3 to encourage creativity, yes.

4 Q. Do you consider yourself one of them?

5 A. Yes.

6 Q. Can you name a few others?

7 A. Desiree Stanley manages the science team,
8 Christine Kiekhaefer -- I don't know how to pronounce
9 her last name -- she manages the, among other things,
10 illustrations for the math team. I'm trying not to --
11 Christina Proctor is a member of the math team in the
12 North Carolina office. Several others.

13 Q. Do you believe Paul Mishkin encourages
14 creativity?

15 A. I do. I do.

16 Q. How so?

17 A. By making it very clear at company meetings
18 that we should strive for quality.

19 Q. He's made it clear to strive for quality. I'm
20 asking you how he -- why you believe he encourages
21 creativity?

22 MR. WILSON: Objection; form.

23 THE WITNESS: I have not had direct contact
24 with Paul in terms of working together on projects for
25 a very long time, so I cannot give other specific

1 examples where he may or may not have encouraged
2 creativity more directly with employees that he
3 collaborates with more directly. To the extent that
4 people feel empowered to pursue quality creatively,
5 that's the extent in which I -- I say that company
6 employees get that message in company meetings.

7 BY MS. SANGHVI:

8 Q. Do you feel like you've ever expressed
9 frustration around IXL's welcomeness for creative
10 thinking?

11 A. Yeah.

12 Q. With whom?

13 A. Probably several people on the math team.

14 Q. Do you remember any names?

15 A. I would say Scott, Meagan, Gina. Several
16 people who have worked on math content at the same time
17 as I have.

18 Q. Is that Gina Bland?

19 A. Yes.

20 Q. And that is Scott Duane, just to be clear?

21 A. Yes.

22 Q. Do you recall a conversation where Mr. Duane
23 was suggesting an idea about teaching fractals to kids
24 by allowing them to create fractals?

25 A. I don't remember the specific idea, no.

1 Q. Do you recall instances where David Keyes
2 discouraged a new creative idea because he did not
3 believe that Mr. Mishkin would entertain nontraditional
4 ideas?

5 MR. WILSON: Objection; form.

6 THE WITNESS: Not specifically. I would not
7 exclude it, but not specifically.

8 BY MS. SANGHVI:

9 Q. But it's possible that that could have
10 happened, correct?

11 A. Yeah.

12 Q. In or around January of 2015, do you recall
13 working on a skill for kindergartners?

14 A. Yes.

15 Q. What was that skill?

16 A. It was a skill teaching kindergartners how to
17 sort images based on properties.

18 Q. You chuckled a little bit. I'm curious why.

19 A. Because we're making it. So that is how I
20 could remember what it was, yeah.

21 Q. Have you ever felt frustrated with IXL's
22 paradigm for how it teaches skills?

23 MR. WILSON: Same objection; form.

24 THE WITNESS: I've often given suggestions for
25 improvements, but I wouldn't associate frustration with

1 the way I've suggested those improvements.

2 MS. SANGHVI: I'm marking Exhibit 37.

3 (Document marked Deposition Exhibit 37
4 for identification.)

5 BY MS. SANGHVI:

6 Q. Ms. Milin, I'm going to show you a document
7 that the court reporter is marking as Exhibit 37. it's a
8 one-page document bearing Bates number IXL-0802. It's
9 a printout, it appears, to be of a chat conversation
10 between yourself and Scott Duane on August 26th, 2014.

11 A. (Witness reviewing document.)

12 Q. Are you familiar with this document?

13 A. With the document, no.

14 Q. Sorry. Are you familiar -- do you recall this
15 conversation?

16 A. Not the particular conversation, no. But the
17 contents do not surprise me.

18 Q. So can you expand on that a little bit?

19 A. In our work as curriculum designers, one of our
20 main responsibilities is to log what we would call
21 change requests or enhancements or sometimes bugs about
22 things that should be changed in what we currently
23 have. If we saw a skill where the settings allow the
24 skill to ask students something that's unreasonable, we
25 would log a bug. And in our chats as -- you know, work

1 chats while logging those bugs, we would sometimes
2 point out change examples and we have to change this.

3 Q. So Exhibit 37 is an example of a problem that
4 Mr. -- excuse me, that you discovered that needed to be
5 fixed; is that correct?

6 A. Yes.

7 Q. Mr. Duane responded, "What, you don't think
8 forcing them into drudgery will make them love math?"

9 Do you see that?

10 A. Yeah.

11 Q. Do you know -- did you ever have conversations
12 with Mr. Duane about IXL forcing kids into drudgery to
13 love a subject?

14 A. I don't remember specific conversations with
15 Scott or anyone. But I have generally expressed
16 sentiment on the team, certainly, that we need to make
17 sure our skills are engaging and not repetitive. I
18 have probably done so on several occasions.

19 Q. Did you feel like -- excuse me. In what
20 context would you raise those sentiments?

21 A. While reviewing the designs of other team
22 members.

23 Q. And who would you raise those sentiments to?

24 A. To the designer in question I would comment on
25 the document, specifying the design.

1 Q. Did you feel as though IXL was open -- IXL as a
2 company was open to that sentiment that you expressed
3 about -- as you've explained it earlier?

4 MR. WILSON: Objection; form.

5 THE WITNESS: Insofar as me actually getting
6 the documents changed, I -- I had no problem getting
7 other designers to change their designs based on my
8 feedback.

9 BY MS. SANGHVI:

10 Q. Did you feel comfortable -- excuse me. Did you
11 ever experience frustrations while working on your
12 assignments?

13 MR. WILSON: Objection.

14 Go ahead.

15 THE WITNESS: That's very general.

16 BY MS. SANGHVI:

17 Q. It was. Let me clarify for you. That's a fair
18 point.

19 So in the context of working on -- for example,
20 the precalculus skills, did you ever experience
21 frustration?

22 MR. WILSON: Same objection.

23 THE WITNESS: I can -- the best I can do is
24 provide one or two examples. Our testing
25 infrastructure wasn't the best. There was room for

1 improvement. So some of our processes were not as
2 efficient as they could be. That certainly was one
3 source of frustration.

4 Another source may be -- would be that we had
5 to prioritize a certain subset of content to deliver
6 things on time, so perhaps you might feel a little bit
7 disappointed that a certain piece of content did not
8 make it in. That's in general.

9 I -- I would say that the first example is an
10 example of frustration of insufficiency. The second
11 example is more of a disappointment.

12 BY MS. SANGHVI:

13 Q. Did you feel comfortable expressing instances
14 in which you felt disappointed with an end result --

15 MR. WILSON: Objection.

16 BY MS. SANGHVI:

17 Q. -- to your supervisor?

18 MR. WILSON: Withdrawn.

19 THE WITNESS: Yes.

20 BY MS. SANGHVI:

21 Q. Do you recall any instances in which you did
22 express your disappointment with the end product to
23 your supervisor David Keyes?

24 A. I might recall some that have happened more
25 recently just because they're more fresh in my memory

1 rather than from the time period that we're discussing.

2 Q. That's fine. Feel free to explain.

3 A. I have certainly expressed sentiments that we
4 should have more images, that we should work with more
5 illustrators.

6 I will make a general claim that I'm known on
7 the team as a somewhat outspoken team member who
8 upholds quality standards and constantly reminds
9 everyone they could be doing better so -- including in
10 my one-on-one meetings with David, yeah.

11 Q. And are you comfortable telling David he could
12 do better?

13 A. Yes.

14 Q. Have you ever had occasion to express
15 disappointment, as you put it, to -- directly to Paul
16 Mishkin?

17 A. No.

18 Q. Would you feel comfortable doing so?

19 MR. WILSON: Objection; form.

20 Go ahead.

21 THE WITNESS: If I felt the occasion called for
22 it, I would set up a meeting.

23 BY MS. SANGHVI:

24 Q. Have you ever set up a meeting with Paul
25 Mishkin with regards to feeling disappointed about an

1 end product?

2 A. So I don't think it's correct to say that I had
3 been disappointed about an end product. I think
4 it's -- the sentiment I was expressing before is that
5 there were certain things I felt we could do better.
6 So my overall sentiment wasn't a strong disappointment.
7 I did not really feel the need to call a meeting
8 regarding those we could do better sentiments that I
9 shared with the team. I felt it's more efficient to
10 share them with the team rather than have a meeting
11 with Paul. Those things would have been too detailed
12 for his attention.

13 Q. This is a general question. But do you believe
14 that IXL is the kind of workplace where you can express
15 your disappointment or complaints about something
16 without fear of repercussion?

17 A. I think it is.

18 Q. Would you agree that there's a culture at IXL
19 that people do not speak negatively against Jennifer Gu
20 or Paul Mishkin? Would you agree with that statement?

21 MR. WILSON: Objection; foundation, calls for
22 speculation.

23 Go ahead.

24 THE WITNESS: I think the company's too large
25 for me to have a good overview of how people in various

1 departments at the company feel.

2 BY MS. SANGHVI:

3 Q. Do you feel as though you could speak
4 negatively -- speak publicly and negatively about
5 Jennifer Gu without suffering some repercussion?

6 A. I haven't had the occasion to test that.

7 Q. My question is whether you would feel
8 comfortable doing so.

9 MR. WILSON: Objection.

10 THE WITNESS: I'm not sure.

11 BY MS. SANGHVI:

12 Q. And would you feel comfortable making negative
13 commentary about Paul Mishkin?

14 A. Again, I'm not sure.

15 Q. Can you -- have you had any occasion to --
16 excuse me, I'm going to strike that.

17 I think earlier you said it had been quite some
18 time since you had worked on a project or product where
19 Mr. Mishkin was involved; is that accurate?

20 A. Where I directly collaborated with him, yes.

21 Q. Have you ever directly collaborated with him?

22 A. During the video project, yes.

23 Q. And was it your experience that Mr. Mishkin was
24 very involved in that product?

25 MR. WILSON: Objection; form.

1 THE WITNESS: He was involved. Given the
2 nature of the project, I felt that was called for.

3 BY MS. SANGHVI:

4 Q. Have you had the occasion to need assistance of
5 the human resources department at IXL?

6 A. Yes.

7 Q. On what occasions can you remember?

8 A. Regarding my work visa, regarding my Green Card
9 application, and regarding possibly some general
10 questions I had about health insurance or benefits.

11 Q. Who specifically have you worked with in human
12 resources on these issues?

13 A. Lenore Ockerberg, Maricela Prado and Charla
14 Rodney. I believe that mostly covers it.

15 Q. Were you generally satisfied --

16 A. Sorry, also Brad Marshall. I -- I don't --
17 it's possible there are more names. I just -- I don't
18 remember, yeah.

19 Q. Were you generally satisfied with -- or
20 dissatisfied, excuse me, with the assistance they
21 provided?

22 A. There might have been some aspects of -- of my
23 immigration cases that were complex and derived -- did
24 not always have full confidence that the HR department
25 was equipped to handle it. That was just a personal

1 sentiment. More of a -- yeah, personal sentiment given
2 the complexity of the cases.

3 Q. And how did you handle that situation given the
4 complexity of your immigration situation?

5 A. Tried not to think about it.

6 Q. Can you describe IXL as a workplace?

7 A. You mean physically?

8 Q. That's -- no. Can you describe -- how would
9 you describe the culture at IXL?

10 A. It's overall kind of quietly professional.
11 People often prefer to communicate over messaging
12 systems which evolve over time sometimes at the cost of
13 face-to-face communication. There is a -- a lot of
14 collaboration happening that is invisible to an outside
15 observer given this dynamic. It is a company that has
16 grown fast in head count over the past couple of years,
17 so the culture has evolved quite a bit over the past
18 couple of years as well given newly hired employees.

19 Q. Have you made any friends at IXL?

20 A. Yes.

21 Q. Do you socialize with any co-workers outside of
22 work?

23 A. I tend to limit that. And even the friends
24 I've made are not necessarily on the math team.

25 Q. I'm just curious, whether math team or not, do

1 you socialize outside of work with any of your
2 co-workers?

3 A. Did you say within the math team? Can you --

4 Q. Regardless of what team the individual is in,
5 if they are an IXL employee, do you spend time with any
6 IXL employee outside of the workplace?

7 A. Yes, I have, on occasion.

8 Q. And who would that be?

9 A. Natalia Buldrini. She's an illustrator, now a
10 contract illustrator at IXL. I have also maybe once or
11 twice had drinks after work with Gina, who no longer
12 works at IXL.

13 I suspect I'm an outlier in terms of not
14 socializing almost at all with other employees.

15 Q. And is that a choice you make voluntarily?

16 A. Yes. Mostly due to location of these
17 after-work events being close to the office, and I live
18 in San Francisco.

19 Q. Have you ever participated in any
20 company-sponsored activities?

21 A. Yes.

22 Q. Can you describe a few?

23 A. One was pop trivia, answering trivia questions
24 in teams. There are holiday parties. I will admit to
25 skipping several, for the record. There are team

1 outings. Those happen during work hours when an
2 afternoon is scheduled for an entire team to pursue a
3 creative or social activity in the afternoon, so escape
4 the room type. Puzzle solving games are popular for
5 that.

6 Q. Do you remember a person by the name of Nina
7 Wu?

8 A. Yes.

9 Q. Were you familiar with Ms. Wu?

10 A. Yes.

11 Q. I'm going to move into talking specifically
12 about your interactions with Scott Duane.

13 Do you remember when you first met Mr. Duane?

14 A. Must have been soon after he started, but I
15 don't remember the exact occasion.

16 Q. You do remember that you were already working
17 there when he began?

18 A. Yes.

19 Q. Do you remember any of your first impressions
20 after meeting him?

21 A. Just a general sense that I was happy to have a
22 new person on the team.

23 Q. Were you aware when he was your co-worker that
24 he was transgender?

25 A. No.

1 Q. Have you since been made aware of that fact?

2 A. Yes.

3 Q. How did you learn that?

4 A. He friended me on Facebook shortly after being
5 let go.

6 Q. So is it fair to say you learned from his
7 Facebook feed or his posts on Facebook?

8 A. I think so. I'm not entirely sure, but I think
9 so.

10 Q. When you were -- when he was your co-worker,
11 did you have any impressions about his sexual
12 orientation?

13 A. I really tend not to think of people's personal
14 life at work, partly because I don't socialize with
15 them outside of work.

16 Looking back at some of my interactions with
17 him, I must have assumed he was a gay man, but I can't
18 give specific instances where that assumption
19 manifested itself.

20 Q. Would you consider yourself friendly with him
21 at least at work?

22 A. Yes.

23 Q. Did you have an opinion about his work
24 performance?

25 A. Insofar as I reviewed some of his designs and

1 received feedback from him as well, yes.

2 Q. And what was your opinion of his work
3 performance?

4 A. That it was high quality and he cared about it.

5 Q. Did you have any negative interactions with
6 Mr. Duane?

7 A. No.

8 Q. And at some point -- and this might be a
9 collaborative process and my unfamiliarity with your
10 work, but feel free to expand on it. But was Scott
11 assigned to review your specs?

12 A. Yes.

13 Q. Was that a common occurrence between
14 co-workers?

15 A. Yes. People review each other's work in a
16 nonhierarchal fashion.

17 Q. And is it that you are paired up with a
18 specific person to review one another's specs for a
19 certain period of time, or is there another process for
20 which that happens?

21 A. It -- it changes, and sometimes the assignments
22 are per project or short term. It may not be a
23 reciprocal relationship.

24 Q. When you were working with Scott between July
25 of 2013 until he was terminated in January of 2015,

1 were you aware that Scott took medical leaves of
2 absence?

3 A. Yes.

4 Q. How did you become aware of that fact?

5 A. In one instance he e-mailed the team saying
6 he'll be away. It also was communicated, I think,
7 through the course of work alerting people that if they
8 collaborate closely with him on something, certain
9 things need to be finished before he goes on leave. So
10 in that context of timelines, it must have been
11 communicated either in a meeting or through messages.

12 Q. Did you have any occasion to believe that
13 Mr. Duane wasn't getting his work done?

14 A. No.

15 Q. You had no experience where you were left
16 waiting for something from Mr. Duane?

17 A. No, not that I remember.

18 Q. You have no experience of Mr. Duane giving you
19 or working -- excuse me, I'm going to take that back.

20 You have no experiences of Mr. Duane missing
21 deadlines?

22 A. No. Not that I remember.

23 Q. Did you ever talk to other people about
24 Scott -- Mr. Duane's medical leaves of absence?

25 A. I don't think so, except for adjusting our

1 timelines as mentioned previously.

2 Q. Did you ever hear other people talking about
3 Mr. Duane's medical leaves of absence?

4 A. Again, except for timeline adjustment, I don't
5 recollect other people discussing it in my presence.

6 Q. Did you ever ask Mr. Duane the reason behind
7 his medical leave of absence?

8 A. I do not remember doing so.

9 Q. And you are aware that Mr. Duane was
10 terminated, correct?

11 A. Yes.

12 Q. When did you become aware of that fact?

13 A. I was -- the day it happened.

14 Q. How did you learn that he was terminated?

15 A. David Keyes informed me.

16 Q. How did he inform you?

17 A. Shortly after it happened, he called me into
18 his office to tell me that it had happened in person.

19 Q. And what did he tell you?

20 A. He told me that -- and I believe Jess Morse was
21 also present during this conversation. He told me that
22 Scott was let go for violation of company policy.

23 Q. Did he tell you what company policy Scott Duane
24 violated?

25 A. I believe he explicitly said he's not at

1 liberty to give any more details.

2 Q. Was anyone other than David Keyes and Jessica
3 Morse present for that conversation?

4 A. No.

5 Q. Do you know if Mr. Keyes was calling every
6 person in the math team into his office to provide this
7 information?

8 A. He might have mentioned calling in two of us
9 specifically because we worked with Scott more closely.

10 Q. Do you recall him saying anything else in that
11 meeting?

12 A. No.

13 Q. Did you ask any questions at that meeting?

14 A. I believe I expressed shock and disbelief, but
15 I did not ask questions.

16 Q. Why were you shocked?

17 A. I had a meeting with Scott earlier that day
18 that I felt was productive. And not being familiar
19 with absolutely anything that could have led to his
20 being let go, I was surprised that it happened.

21 Q. So Mr. Duane had been out on leave of absence
22 until December 30th of 2014, and this termination
23 happened on January 8th. So you had a period of
24 approximately a week to work together; that's correct?

25 A. Yeah.

1 Q. Did you -- in that period of time, other than
2 this one productive meeting, did you have other
3 positive experiences with Mr. Duane?

4 A. I do not remember that week very well. Yeah,
5 it -- in terms of specific meetings or reviews, no.

6 Q. Do you have a general sense that Mr. Duane was
7 angry or upset at work that week?

8 A. I don't remember having that impression, no.

9 Q. Did you ever learn after -- so I think we were
10 talking about the meeting with Mr. Keyes at which you
11 expressed shock about Mr. Duane's termination.

12 What happened when you left that meeting?

13 A. I walked back to my office. I think I saw that
14 his cube was being emptied out, and I remember that
15 detail.

16 Q. Was Mr. Duane present there?

17 A. No.

18 Q. Do you remember approximately what time this
19 meeting was with Mr. Keyes or when in the day?

20 A. Generally around midday that is -- I don't
21 remember more precisely.

22 Q. And who was cleaning out his cubicle?

23 A. I don't remember.

24 Q. Did you have any conversations -- sorry, you
25 said you walked back to your office. What did you do

1 next?

2 A. I sat down and blanked for a bit. It was --
3 blanked.

4 THE COURT REPORTER: I'm sorry, it was what?

5 THE WITNESS: I sat down and blanked for a bit.
6 It was not my most productive hour.

7 MR. WILSON: Off the record.

8 (Off the record from 2:20 to 2:20.)

9 BY MS. SANGHVI:

10 Q. Did you have an occasion to speak with
11 Ms. Morse after that meeting about the knowledge you
12 learned that Mr. Duane had been terminated?

13 A. I don't remember discussing it with her, no.

14 Q. So you were both in the meeting together, you
15 both learned -- sorry, I'm going to strike that.

16 Did Ms. Morse appear shocked at the meeting?

17 A. I was shocked myself, so I might have not been
18 the most observant participant. I really can't say how
19 she reacted. I don't remember.

20 Q. Were you friendly with Ms. Morse?

21 A. Yes.

22 Q. So if not that day but at any point thereafter,
23 did you talk to Ms. Morse about Mr. Duane's
24 termination?

25 A. Yes.

1 Q. How much after you think?

2 A. Maybe in the weeks that followed. I -- I don't
3 remember exactly.

4 Q. Do you recall that conversation?

5 A. I don't recall specific conversation.

6 Q. What do you recall about that?

7 A. I recall expressing a sentiment that I missed
8 Scott on the team to both Jess and possibly other
9 colleagues who sit nearby.

10 Q. And in that discussion about the sentiments
11 about missing Scott, were there any discussions around
12 why did he get fired?

13 A. Immediately after he was fired? I refrained
14 from discussing it at work.

15 Q. Did you ever learn -- other than Scott being
16 let go for violation of company policies, did you ever
17 learn why Mr. Duane was terminated?

18 A. After reading some Facebook posts and seeing
19 the Glassdoor posting, I formed some partial picture of
20 events, very partial.

21 Q. When you're referring to seeing Facebook posts,
22 are you referring to Mr. Duane's Facebook posts?

23 A. Yes.

24 Q. And you mentioned the Glassdoor post. When did
25 you -- what Glassdoor post are you referring to?

1 A. There is a post that he apparently made shortly
2 before he was let go.

3 Q. And how did you learn about that Glassdoor post
4 that Mr. Duane made before he was let go?

5 A. I learned about it after he was let go. On
6 occasion I would check Glassdoor because I was involved
7 in recruiting, so I would see what -- what people write
8 about IXL on there.

9 Q. So how did you learn after the post, how did
10 you learn about it? You said you learned about it
11 after he had made the post, and I'm just curious how
12 you came upon it.

13 A. You can go on Glassdoor and look at most recent
14 posts and -- to see what people have recently said.

15 Q. The Glassdoor posts are anonymous; is that
16 correct?

17 A. Yes.

18 Q. So what I'm trying to understand is how did you
19 learn that Mr. Duane made a Glassdoor post?

20 A. He might have mentioned it on Facebook. I'm
21 not sure, but I -- I think that might have been the
22 case.

23 Q. What was your reaction to seeing the Glassdoor
24 post?

25 MR. WILSON: Objection; form.

1 THE WITNESS: Overall it seemed like he was
2 very upset, that made me wonder why.

3 BY MS. SANGHVI:

4 Q. Did it make you feel as though you should not
5 post negative things on Glassdoor.com?

6 MR. WILSON: Objection; form.

7 THE WITNESS: No, it did not.

8 BY MS. SANGHVI:

9 Q. Did it make you concerned about the fact that
10 he spoke negatively about the company and was
11 terminated?

12 MR. WILSON: Objection; form.

13 THE WITNESS: At the time when I read the post
14 I did not know what precise role it had in his
15 termination.

16 BY MS. SANGHVI:

17 Q. As you sit here today, do you know?

18 A. I don't think I have full knowledge, no.

19 Q. Do you have any knowledge?

20 A. Yeah. The partial knowledge I have is that it
21 was a major factor in his termination, yes. That's the
22 impression I have based on what I've pieced together.

23 Q. And I'm trying to understand what the basis of
24 your impression that it was a major factor in his
25 termination, what that comes from?

1 A. Googling this case and seeing news reports
2 about it, seeing this cited in short news reports as
3 the major reason, and it being an interesting legal
4 question. That's what the news reports say.

5 Q. Was there a lot of discussion about the
6 Glassdoor -- this particular Glassdoor post in the
7 office after it had been made?

8 A. I don't remember any.

9 Q. So it wasn't as though people just stopped
10 working, couldn't -- just talked about this Glassdoor
11 post all day long, was it?

12 A. No.

13 Q. Would you -- is it fair to say the work
14 continued?

15 A. Yes.

16 Q. You said you were involved in recruiting; is
17 that correct?

18 A. Yes.

19 Q. After this Glassdoor post, which I'll represent
20 was made on December 30th, 2014, have you remained
21 involved in recruiting?

22 A. Yes.

23 Q. Has anyone ever brought this Glassdoor post up
24 specifically to you in your interviewing of candidates
25 for IXL?

1 A. Not specifically, no.

2 Q. And in any way?

3 A. No.

4 Q. Do you feel as though this Glassdoor --
5 actually, strike that.

6 I'm likely to move into another area, and it's
7 been an hour and a half, so I think this will likely be
8 a good place for a break. Let's take ten minutes.

9 (Break taken from 2:29 to 2:49.)

10 BY MS. SANGHVI:

11 Q. Ms. Milin, I want to just move into the area of
12 what trainings you might have received while at IXL.

13 Have you ever received any training related to
14 anti-discrimination policies at the company?

15 A. I believe there was sexual harassment training.

16 Q. And was that in person or online?

17 A. Online, I think.

18 Q. Do you remember how many times you've taken an
19 online sexual harassment training while employed at
20 IXL?

21 A. Might have been a couple of times. I do not
22 remember exact number.

23 Q. And it is your memory that that training was
24 focused on sexual harassment?

25 A. Yes, although I do not exclude the possibility

1 it covered other things.

2 Q. Are you familiar with IXL's policy regarding
3 anti-discrimination in the workplace?

4 A. Not the details, no.

5 Q. Are you familiar with any IXL policies
6 regarding retaliation?

7 A. No.

8 Q. Have you received any training related to
9 retaliation?

10 A. Specifically, no.

11 MS. SANGHVI: I'm actually going to stop for
12 now. Mr. Marek has a few questions. I might have a
13 few at the end.

14 EXAMINATION BY MR. MAREK:

15 Q. Hi. So my name is David. I represent Scott.
16 Can I ask, are you -- what's your visa status
17 now?

18 A. I'm a permanent resident.

19 Q. Was that sponsored by IXL?

20 A. Yes.

21 Q. Can I show you this one. It's Exhibit 27. And
22 is this the post that you had seen, the Glassdoor post?

23 A. Yes.

24 Q. Let me ask this before I get there. In your
25 professional life, do you feel that you have been

1 discriminated against?

2 A. I do not exclude the possibility entirely. I
3 think it would be naive to do so.

4 Q. And would that be possibly on the basis of your
5 gender?

6 A. Yeah.

7 Q. Have you ever brought a formal complaint to any
8 employer about that?

9 A. No, not employer. No.

10 Q. When you were -- you worked at the University
11 of Illinois for three years; is that right?

12 A. Yes.

13 Q. And when you were there, did any issues of
14 discrimination or differential treatment ever come up?

15 A. No, no specific issues that I recall.

16 Q. And then am I -- just to make sure I'm right.
17 You went straight from the University of Illinois to
18 IXL?

19 A. There was a period of maybe two months when I
20 was not employed. Yes.

21 Q. But professionally --

22 A. Yes.

23 Q. -- that was your next job?

24 A. That was my next point on the résumé, yes.

25 Q. When you started IXL, what was the role you

1 were in?

2 A. Product analyst.

3 Q. And do you know when Keyes started, what role
4 was he in?

5 A. Product analyst.

6 Q. Who started first, you or him?

7 A. He started first.

8 Q. Do you know how much before you?

9 A. Ten months up to a year, roughly a year.

10 Q. So when you started there, you and he had the
11 same title?

12 A. Yes.

13 Q. Did you both report to the same person?

14 A. Yes.

15 Q. Do you know his educational background?

16 A. Yes. Ph.D. in math.

17 Q. Do you know where he has a Ph.D. from?

18 A. University of Colorado Boulder.

19 Q. How does a person try to get a promotion at
20 IXL? Meaning, do you have to apply for it or they
21 just -- someone comes and tells you?

22 MR. WILSON: Objection; foundation and form.

23 THE WITNESS: It probably happens different
24 ways in different teams. I wouldn't really know. I
25 can only talk about my promotions.

1 BY MR. MAREK:

2 Q. How did it work for you?

3 A. I would get positive peer reviews. The peer
4 reviews are solicited, manager looks at the peer
5 reviews. That's -- that's my understanding of the
6 process. And they get told in their yearly evaluation
7 what promotion they're up for perhaps the following
8 year or what goals they need to fulfill to get there.

9 Q. And have your reviews been positive at IXL?

10 MR. WILSON: Objection; form.

11 THE WITNESS: Peer reviews are kept
12 confidential, so I -- I -- I don't get to read them.
13 But I believe they were.

14 BY MR. MAREK:

15 Q. So just -- so at some point, am I right that
16 Keyes got promoted to a role above product analyst?

17 MR. WILSON: Objection; form, foundation.

18 THE WITNESS: Yes, he's not the product analyst
19 anymore.

20 BY MR. MAREK:

21 Q. So what's his title now?

22 A. Senior program manager.

23 Q. Do you know how many people report to him?

24 A. Directly four, including myself.

25 Q. And then in -- when you say directly, is there

1 some -- is it -- there's more that report in to the
2 other four?

3 A. Yes.

4 Q. So how many people on the team total?

5 A. Between 20 and 30.

6 Q. And how many report to you directly?

7 A. Zero.

8 Q. Are there any that -- I mean this is probably a
9 ridiculous question. I assume there's none indirectly?
10 I think -- just to make sure I'm understanding you
11 right.

12 A. What does indirectly mean?

13 Q. I don't know. I mean we're using the word
14 "indirectly," so I wanted to make sure -- it's not like
15 there's another way that I'm overlooking.

16 A. No.

17 MR. WILSON: Objection; form.

18 BY MR. MAREK:

19 Q. But at some point way back to 2014 you had two
20 people who reported to you, Curiel and Jessica Morse;
21 is that right?

22 A. Yes.

23 Q. And how come -- how come you have no more
24 managerial responsibilities?

25 MR. WILSON: Objection; form, foundation.

1 THE WITNESS: It sounds like you're asking me
2 to describe David's decision process regarding my
3 career trajectory.

4 BY MR. MAREK:

5 Q. No. Well, if you know -- I'd like you to
6 describe what your understanding is of why that
7 happened. I realize you're not -- you can only tell me
8 what you observe and perceive.

9 A. One observation --

10 MR. WILSON: Objection; form.

11 THE WITNESS: -- I can make is that the company
12 has made efforts to define different kinds of
13 leadership, including those that do not involve having
14 direct reports.

15 BY MR. MAREK:

16 Q. Do you know who makes more money, you or David?

17 MR. WILSON: Objection; form.

18 THE WITNESS: Salary information is private. I
19 have no idea.

20 BY MR. MAREK:

21 Q. If you look at this Exhibit 27, do you see
22 where it says underneath -- sort of the middle
23 paragraph, it says, "Treatment in the workplace in
24 terms of who gets flexible hours, interesting projects,
25 praise, promotions and a big yearly raise is different

1 and seems to run right along these characteristics."

2 Do you see that?

3 A. Yeah.

4 Q. Have you ever been involved in any
5 conversations about IXL that reflect that concept?

6 MR. WILSON: Objection; form.

7 THE WITNESS: Reflect that concept in general?

8 BY MR. MAREK:

9 Q. Yes. That these things -- this kind of
10 treatment is linked to whether or not you fit in,
11 whether you're family oriented, white or Asian, those
12 kinds of things.

13 MR. WILSON: Same objection to form.

14 THE WITNESS: I don't remember directly
15 reflecting on this, but I would not exclude that I have
16 discussed these issues in general and how they're
17 reflected at IXL in particular.

18 BY MR. MAREK:

19 Q. Would you agree or -- that that's an accurate
20 statement about how things worked at IXL?

21 MR. WILSON: Objection; form, foundation.

22 THE WITNESS: I would not -- I would not agree,
23 but I do understand it as one person's sentiment and it
24 does trouble me.

25 BY MR. MAREK:

1 Q. In your observation, did you see a correlation
2 between things like promotions and whether somebody --
3 and someone's ethnicity or whether or not they were
4 participating in softball or had children at IXL?

5 MR. WILSON: Objection; compound. Form.

6 THE WITNESS: My position at IXL did not give
7 me access to the type of information I need to make a
8 fair judgment call. Again -- yeah, to make a fair
9 judgment call either way.

10 BY MR. MAREK:

11 Q. In general, have you ever been involved in
12 discussions about sexual discrimination in technology
13 companies?

14 A. I must have been.

15 Q. But you -- any that you remember while you were
16 at IXL?

17 A. I don't remember a specific conversation that I
18 could discuss in detail.

19 Q. Did IXL ever put on any -- either -- I'm sorry.
20 While you were at IXL, did you ever attend any seminars
21 or panel discussions where you spoke about women in the
22 math and sciences?

23 A. There was an event, Girl Geek Dinner, but I did
24 not speak on the panel. But there -- yeah.

25 MR. WILSON: Did you say Girl Geek Dinner?

1 THE WITNESS: Yes.

2 BY MR. MAREK:

3 Q. But you attended, though?

4 A. I -- I knew that it was happening, but I wasn't
5 involved in its organization or kind of -- I might have
6 stayed a bit after work but not for the entire length,
7 no.

8 Q. Did IXL make any particular efforts to design
9 curriculum intended to attract women into the math and
10 sciences, meaning its students?

11 A. Not specifically. But I do remember having
12 discussions with other team members about ensuring that
13 our word problems do not promote stereotypes, gender
14 stereotypes in particular.

15 Q. And was that something that Scott was also
16 mindful of?

17 A. Yes.

18 MR. MAREK: I have nothing further. Thanks.

19 MS. SANGHVI: I have a few follow-up questions.

20 EXAMINATION BY MS. SANGHVI:

21 Q. Let's pick up right where Mr. Marek left off.

22 You recall in the time that you worked with
23 Scott that you had conversations regarding concern, if
24 that's the right word, that IXL's material may have
25 some gender stereotypes; is that correct?

1 MR. WILSON: Objection; form.

2 THE WITNESS: I think that was a more general
3 conversation among the subset of the math team.

4 BY MS. SANGHVI:

5 Q. I was a little confused earlier. I think you
6 said that Keyes has four people directly reporting to
7 him. You're one of them. Who are the other three?

8 A. Christine Kiekhaefer, Luke Corazza and Matt
9 Bleecher.

10 Q. How many people report to Christine?

11 A. Zero.

12 Q. How many people report to Luke Corazza?

13 A. Between five and ten.

14 Q. And how many people Matthew --

15 A. I don't remember exactly.

16 Q. How many people report to Matthew Bleecher?

17 A. Close to 15, not all directly. Matt supervises
18 some managers.

19 Q. And I was also a little unclear. You and David
20 Keyes were peers, correct, both as product analysts?

21 A. We had the same job title when I started, yes.

22 Q. And the -- is it correct that Kate Mattison who
23 was your supervisor moved into another role?

24 A. I'm not sure about the ways in which her role
25 changed at the time, but she was supervising many

1 people right before that change.

2 Q. What I'm trying to understand is at IXL, is
3 there sort of a call for this position is opened up,
4 who wants to apply for it? And I'm speaking --
5 actually, strike all of that. I'm going to step back
6 for a second.

7 When -- you said David Keyes is currently a
8 senior program manager, correct?

9 A. Yes.

10 Q. Did he move from product analyst to senior
11 program manager?

12 A. It was a more gradual progression through
13 several job titles.

14 Q. In early 2014 when David Keyes started to
15 supervise you, do you remember what his title was?

16 A. Senior product analyst.

17 Q. And had there been a -- is there kind of like a
18 job opening or some sort of opening, hey, product
19 analysts, you can come and apply for a senior product
20 analysts role; is that how it works?

21 A. There is a set of general goals and guidelines
22 for what achievements are considered sufficient to
23 promote someone to a -- what would now be called senior
24 curriculum designer is the new equivalent of that job
25 title. That documentation is more recent than the time

1 frame we're talking about.

2 Q. And if you were interested and you believe that
3 you had met the goals necessary for that position, do
4 you have to submit like a promotion packet to a
5 committee that reviews it? How is that decision made,
6 as far as you know?

7 MR. WILSON: Objection; form, foundation.

8 THE WITNESS: Since I'm not a manager right
9 now, I am not familiar with the process for how those
10 promotion decisions get made or evaluated beyond that
11 documentation that I mentioned that's somewhat --
12 somewhat recent. That's available to the entire
13 curriculum design team.

14 BY MS. SANGHVI:

15 Q. At the time that Mr. Keyes was made a senior
16 product analyst, did you -- were you interested in that
17 role?

18 A. We got promoted simultaneously to senior
19 product analyst at the exact same time.

20 Q. Then how is it that if you both had the same
21 role, why was he supervising you?

22 A. I cannot answer that question.

23 Q. But you both have the same title; is that
24 correct?

25 A. Yes.

1 Q. You earlier had said -- when Mr. Marek asked
2 you if you had ever made any formal complaints of
3 discrimination, you said not formal, no.

4 Have you made informal complaints of
5 discrimination at any of your professional experiences?

6 A. No. The -- I would say less than informal
7 concern I did raise in my most recent annual review of
8 David Keyes is that I'd like us to do a better job of
9 retaining women on the team.

10 Q. And when you raised that concern with
11 Mr. Keyes, what was his reaction?

12 A. Annual reviews are confidential. I do not
13 believe he has access to that document. It's my peer
14 review of him as my manager --

15 Q. I see.

16 A. -- and is therefore confidential.

17 Q. And who is that peer review submitted to?

18 A. His manager.

19 Q. Who is that?

20 A. Kate Mattison.

21 Q. Did you receive any feedback from Ms. Mattison
22 regarding your recommendation?

23 A. We had a follow-up meeting.

24 Q. Can you tell me about that follow-up meeting?

25 MR. WILSON: Objection; form, foundation.

1 THE WITNESS: We discussed a variety of -- of
2 things.

3 BY MS. SANGHVI:

4 Q. I'm specifically curious about -- you testified
5 that you made a recommendation that IXL do a better job
6 at retaining female engineers -- female employees; is
7 that correct?

8 MR. WILSON: Objection.

9 THE WITNESS: I stated that I think we could be
10 doing a better job. I did not make any specific
11 recommendations as to how we might do that.

12 BY MS. SANGHVI:

13 Q. So just so I understand it correctly, you
14 stated that you believed IXL could do a better job at
15 retaining female employees, correct?

16 MR. WILSON: Objection; form.

17 THE WITNESS: Math team specifically. I might
18 have said something like on our team.

19 BY MS. SANGHVI:

20 Q. So in that follow-up meeting you had with
21 Ms. Mattison, did you speak with Ms. Mattison about
22 your comment that you believed that the team could do a
23 better job at retaining female employees?

24 MR. WILSON: Same objection; form.

25 THE WITNESS: I would say that the focus was on

1 other concerns I raised.

2 BY MS. SANGHVI:

3 Q. And what other concerns did you raise?

4 A. They're more of a development process nature,
5 ensuring that projects are staffed appropriately, and
6 that they have the needed resources. And those are the
7 concerns I maybe raised more seriously in my review.

8 Q. So it --

9 A. They were more central to the conversation.

10 Q. Fair to say that your statement that the math
11 department needs to do a better job of retaining female
12 employees was not discussed at that meeting?

13 MR. WILSON: Objection; form.

14 THE WITNESS: Not directly.

15 BY MS. SANGHVI:

16 Q. Has anyone discussed that with you since you
17 put that in a peer review document?

18 A. No.

19 Q. Just to follow-up on one point you made
20 earlier. I think earlier you said you had a meeting
21 with Duane the day he was fired; is that correct?

22 A. Yes.

23 MS. SANGHVI: I'm going to mark as Exhibit 38 a
24 two-page document. It's a printout of a Gchat session
25 between Isidora Milin and Scott Duane dated Wednesday,

1 January 7, 2015 bearing Bates number IXL-0824.

2 (Document marked Deposition Exhibit 38
3 for identification.)

4 BY MS. SANGHVI:

5 Q. Do you recognize this document? Do you recall
6 this conversation with Mr. Duane?

7 MR. WILSON: Take your time.

8 THE WITNESS: After reading it I do.

9 BY MS. SANGHVI:

10 Q. And is this the -- it seems as though you're
11 discussing scheduling a meeting. The meeting that you
12 just referenced that you had with Mr. Duane, was
13 that -- are you referencing that same meeting?

14 A. Yes.

15 Q. And just so I understand it correctly, you had
16 originally planned on meeting with Mr. Duane on Friday;
17 is that correct?

18 A. Can I have a moment to read through the
19 messages?

20 Q. Yes, of course.

21 A. (Witness reviewing document.)

22 Yeah, it sounds like we originally meant to
23 meet on Friday.

24 Q. And then that -- and that would be Friday,
25 January 9th given that this was on Wednesday,

1 January 7th; is that correct?

2 A. Yes.

3 Q. So then you ended up actually meeting Mr. Duane
4 on Thursday, January 8th because his annual review got
5 moved to Friday; is that correct?

6 A. Yes.

7 MS. SANGHVI: I have nothing further. Thank
8 you for your time, Ms. Milin.

9 (Whereupon, the deposition was concluded at
10 3:17 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SIGNATURE OF DEPONENT

I, the undersigned, ISIDORA MILIN, do hereby
certify that I have read the foregoing deposition and
find it to be a true and accurate transcription of my
testimony, with the following corrections, if any:

PAGE	LINE	CHANGE

[illegible]

ISIDORA MILIN, Date

REPORTER'S CERTIFICATE

I, DIANA L. GONZALEZ, a Shorthand Reporter,
State of California, do hereby certify:

That ISIDORA MILIN, 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 9th day of March 2018.

DIANA L. GONZALEZ, CSR NO. 7935
State of California

Exhibit Y

In the Matter Of:

U.S. EEOC vs IXL LEARNING

3:17-cv-02979-VC

NEMO CURIEL

April 17, 2018

NEMO CUIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

1

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4
5 U.S. EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

6 Plaintiff,)

7 and)

8 ADRIAN SCOTT DUANE,)

9 Plaintiff-Intervenor,)

10 v.)

11 IXL LEARNING, INC.,)

12 Defendant.)

13
14
15 DEPOSITION OF

16 NEMO CUIEL

17
18 April 17, 2018

19 10:16 a.m.

20
21 44 Montgomery Street, Suite 1100

22 San Francisco, California

23
24 Sarah J. Bingham, CSR #13720

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

2

1 APPEARANCES OF COUNSEL

2
3 FOR THE PLAINTIFF U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

4 Ami Sanghvi, Esq.
Equal Employment Opportunity Commission
5 350 The Embarcadero, Suite 500
San Francisco, CA 94105
6 Ami.sanghvi@eeoc.gov

7
8 FOR THE PLAINTIFF-INTERVENOR:

9 David Marek
The Marek Law Firm, Inc.
228 Hamilton Avenue
10 Palo Alto, CA 94301
917-721-5042
11 David@marekfirm.com

12
13 FOR THE DEFENDANT:

14 Jeffrey D. Wilson, Esq.
Young Basile Hanlon & Macfarlane, P.C.
3001 W. Big Beaver Road, Suite 624
15 Troy, Michigan 48084
248-649-3333
16 wilson@youngbasile.com

17
18 -o0o-
19
20
21
22
23
24
25

NEMO CUIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

3

INDEX OF EXAMINATION

Witness: NEMO CUIEL

EXAMINATION	PAGE
Mr. Wilson	6

INDEX TO EXHIBITS

DEFENDANTS	DESCRIPTION	PAGE
Exhibit 1	Subpoena To Testify At A Deposition In A Civil Action (Subsequently remarked as Exhibit 218)	13
Exhibit 2	IXL Performance Improvement Notice to Nemo Curiel, Bates IXL-3839-3844 (Subsequently remarked as Exhibit 219)	22
Exhibit 3	E-mail to Nemo Curiel from imilin@ixl.com, dated 03/21/14, Bates IXL-3823 (Subsequently remarked as Exhibit 220)	27
Exhibit 4	E-mail to Isidora Milin from Nemo Curiel, dated 04/18/14, Bates IXL-3827 (Subsequently remarked as Exhibit 221)	29
Exhibit 5	Chat between Scott Duane and Karen Penner, dated 03/11/14, Bates IXL-3814-3815 (Subsequently remarked as Exhibit 222)	31
Exhibit 6	Chat between Scott Duane and Karen Penner, dated 02/21/14, Bates IXL-3807-3808 (Subsequently remarked as Exhibit 223)	34

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018

4

INDEX TO EXHIBITS (CONTINUED)

DEFENDANTS	DESCRIPTION	PAGE
Exhibit 7	E-mail between Scott Duane and Isidora Milin, dated 03/17/14, Bates IXL-3631 (Subsequently remarked as Exhibit 224)	34
Exhibit 8	Chat between Scott Duane and Nina Wu, dated 04/18/14, Bates IXL-3828-3831 (Subsequently remarked as Exhibit 225)	34
Exhibit 9	Chat between Scott Duane and Isidora Milin, dated 03/18/14, Bates IXL-3820 (Subsequently remarked as Exhibit 226)	34
Exhibit 10	Chat between Scott Duane and Karen Penner, dated 03/10/14, Bates IXL-3812-3813 (Subsequently remarked as Exhibit 227)	34
Exhibit 11	Message from Scott Duane to Nemo C, dated 08/02/14, Bates EEOC_000827 (Subsequently remarked as Exhibit 228)	34
Exhibit 12	E-mail between Isidora Milin and Nemo Curiel, dated 04/22/14, Bates IXL-3833 (Subsequently remarked as Exhibit 229)	46
Exhibit 13	E-mail between Isidora Milin and Nemo Curiel, dated 04/18/14, Bates IXL-3832 (Subsequently remarked as Exhibit 230)	47
Exhibit 14	Messages among Scott Duane, Nina Wu, Nemo C, Jessica Morse, dated 08/02/14, Bates EEOC_000375-000381 (Subsequently remarked as Exhibit 231)	56
Exhibit 15	E-mail from David Keyes to Nemo, CC to Isidora, dated 03/11/14, Bates IXL-3816 (Subsequently remarked as Exhibit 232)	62

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

5

INDEX TO EXHIBITS (CONTINUED)

DEFENDANTS	DESCRIPTION	PAGE
Exhibit 16	Facebook post by Scott Duane, dated 07/23/14, Bates EEOC_000844 (Subsequently remarked as Exhibit 233)	77
Exhibit 17	Message from Scott Duane to Nemo C, dated 12/25/14, Bates EEOC_000825 (Subsequently remarked as Exhibit 234)	77

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

6

DEPOSITION OF NEMO CURIEL

April 17, 2018

NEMO CURIEL,

having been first duly sworn, testified as follows:

MR. WILSON: Let the record reflect this is
the deposition of Nemo Curiel, taken pursuant to a
subpoena served on Mr. Curiel and to be used for all
purposes permitted by the Federal Rules of Evidence,
Federal Rules of Civil Procedure.

EXAMINATION

BY MR. WILSON:

Q. Sir, could you state your full name for the
record?

A. Nemo Curiel.

Q. And is that C-u-r-i-e-l?

A. Correct.

Q. Okay. Now, I've -- I'm not sure that I've been
saying it right, but I've been saying Curiel or Curiel.

A. Close.

Q. Does it matter?

A. Curiel would be most accurate.

Q. Okay.

A. Or something close to that.

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

7

1 Q. So if I mispronounce your name, I apologize.

2 A. Okay.

3 Q. So have you ever had your deposition taken
4 before?

5 A. No.

6 Q. Nothing like this where you're in a room and a
7 court reporter's transcribing things that you are asked
8 and --

9 A. Correct, no.

10 Q. Okay. So as you know, you're here because you
11 received a subpoena --

12 A. Mm-hm.

13 Q. -- is that right?

14 A. Yes.

15 Q. And there's a lawsuit that's taking place between
16 the EEOC and IXL Learning, and also Scott Duane is
17 Intervenor Plaintiff in that case along with the EEOC. And
18 I represent IXL Learning, and it's my office that served
19 you with that subpoena for you to appear and testify.
20 Okay?

21 A. (Witness nods head.) Yes.

22 Q. Okay. We have a written deposition transcript
23 that's being made of what happens today. Because of that,
24 unlike -- yeah. Unlike normal conversation, we need to
25 respond or communicate verbally instead of nods of the head

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

8

1 and shakes --

2 A. Mm-hm.

3 Q. -- and things like that and uh-huhs and huh-uhs.

4 I'll try to remind you, and others will remind

5 you, if you don't respond verbally. And if we say

6 something like, "Is that a 'yes'?" or "Is that 'yes?' or

7 "Was that 'no'?" just know that we're not asking you to

8 change your testimony or expand it, it usually is just to

9 confirm that a non-verbal response was what you intended it

10 to be.

11 A. Right.

12 Q. And as you kind of already motioned with your

13 hands, we have to wait for each other to talk and respond

14 and let the person answer before we talk again so that we

15 have a clear record.

16 A. Right.

17 Q. Do you understand that?

18 A. I do.

19 Q. Okay. Is there any reason medically that you

20 would not understand what this proceeding is about and be

21 able to answer truthfully questions about your time at IXL

22 and since then?

23 A. Any condition medically? No.

24 Q. No medication you're on that would impair your

25 ability to answer truthfully?

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

9

1 A. No.

2 Q. If I ask you a question and you are not sure what
3 I'm asking, for some reason it was a long question, you
4 don't understand what I said because of it being long, or
5 for any other reason, I would encourage you to just tell me
6 that and I will try to rephrase or change it in some way so
7 that it can be clearer. Okay?

8 A. Okay.

9 Q. If you need to take a break at any time, just,
10 you know, let us know and we can do that.

11 A. Okay.

12 Q. We're not going to be here very long --

13 A. Okay. Good.

14 Q. -- which I'm sure is a good thing for you.

15 A. Yes, definitely.

16 Q. But I am going to show you some documents and ask
17 you some questions. And if we get through without a break,
18 that's fine, but if you want to stop, just let us know
19 and -- stretch your legs, go to the bathroom, anything like
20 that. Okay?

21 A. Sounds good.

22 Q. All right. Were you -- strike that.

23 Did you bring any documents or anything with
24 you today to produce to IXL pursuant to any kind of
25 subpoena?

NEMO CUIRTEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

10

1 A. Aside from what I was delivered -- or I

2 brought that, I should say.

3 Q. The actual document, that subpoena form that you

4 received?

5 A. Yes.

6 Q. No other documents, no other messages, anything

7 like that?

8 A. No.

9 Q. Okay. When was the first time that you can

10 recall talking to Scott Duane about this lawsuit?

11 A. I don't have a clear date.

12 Q. Are you represented by an attorney at all for

13 matters of this deposition?

14 A. No.

15 Q. Okay. Did you prepare by talking to anyone or

16 reading anything for this deposition?

17 A. I spoke to Ami.

18 Q. Okay. Anyone else?

19 A. Nope.

20 Q. Did you talk to Scott Duane at all about the fact

21 that you were going to have to give a deposition?

22 A. I don't recall.

23 Q. When was the last time you spoke to Scott?

24 A. Maybe a few weeks ago maybe. Not sure.

25 Q. When was the last time you spoke to him about

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

11

1 anything related to this case?

2 A. I also don't recall that.

3 Q. When did you speak with Ami about -- Ami, sorry,
4 about this deposition?

5 A. Ten minutes ago.

6 Q. Okay. And what did you guys discuss?

7 A. Sort of just the nature of the deposition and
8 how it functions, I suppose.

9 Q. And what?

10 A. Since it's my first one, just kind of how it
11 goes.

12 Q. Did you talk to anybody else about the
13 deposition, the fact that you're giving it or what you
14 might be asked?

15 A. So repeat. Anyone else about?

16 Q. Have you talked to anybody else about this
17 deposition and what you're going to be asked?

18 A. No.

19 Q. Have you talked to anybody else about what you
20 might be asked?

21 A. What I might be asked. I don't think so.

22 Q. When was the last time that you spoke to either
23 Nina Wu or Jessica Morse?

24 A. Maybe last week.

25 Q. Have you talked to them about this case at all?

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

12

1 A. Briefly.

2 Q. When was that?

3 A. I don't have a clear date.

4 Q. Was it within the last year?

5 A. Yes.

6 Q. Was it the last time that you just referred to?

7 A. I don't know.

8 Q. What do you recall discussing about this case
9 with either of them?

10 MS. SANGHVI: Objection. Compound.

11 Go ahead.

12 BY MR. WILSON:

13 Q. And you can answer the -- that's an objection
14 that's preserved, and then you can go ahead and answer.

15 A. What was the question again?

16 MR. WILSON: Can you read that again?

17 (Record read.)

18 THE WITNESS: That it was happening and I
19 think maybe that, you know, people were like calling,
20 things like that, I think. Something about that.

21 BY MR. WILSON:

22 Q. People were calling?

23 A. Just, you know, like the papers and things
24 like that, the serving of the papers. Something about
25 that.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

13

1 Q. Did you talk to Nina about getting served with a
2 subpoena?

3 A. I don't recall.

4 Q. Same thing, did you talk to Jessica about getting
5 served with a subpoena?

6 A. No.

7 Q. Did either of them talk to you about whether they
8 were getting calls or served with subpoenas?

9 A. Yes.

10 Q. Can you just tell us what you remember about that
11 discussion?

12 A. Yes, I believe just about getting the phone
13 calls. It was about that.

14 Q. Did either of them, Jessica or Nina, tell you
15 that they were going to be testifying?

16 A. No.

17 Q. Did either Nina or Jessica talk to you about
18 producing documents such as communications with you?

19 A. No.

20 Q. Okay.

21 (Deposition Exhibit 1 was marked for
22 identification.)

23 BY MR. WILSON:

24 Q. So I've marked as Exhibit 1 in this deposition --

25 A. Should I go ahead?

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

14

1 Q. -- a document, if you could just take a look at
2 it.

3 A. All righty.

4 Q. Have you seen that document before?

5 A. I believe so.

6 Q. Okay.

7 A. This is the one with today's -- yes.

8 Q. Okay. And this is the document that you brought
9 with you, or a copy of it, that you referenced earlier?

10 A. I believe so, yes.

11 Q. Okay. What do you understand the reason is for
12 you being called in to give a deposition?

13 A. What do I understand the reason for me being
14 called in for this deposition?

15 Q. Mm-hm.

16 A. Can you be more specific?

17 Q. Why do you think you were served with a subpoena
18 and asked to come in and give a deposition in this case?

19 A. I suppose to get more information from someone
20 who was around during that time.

21 Q. "During that time" being --

22 A. Working at IXL.

23 Q. Sorry?

24 A. Working at IXL.

25 Q. Okay. Did you talk to Scott at all about, you

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

15

1 know, "Why am I being brought into this, deposed? Why am I
2 getting served?" any of those kinds of questions?

3 A. No.

4 MS. SANGHVI: Objection. Vague as to time.

5 BY MR. WILSON:

6 Q. "No"? Okay.

7 When you spoke to Scott about this case at any
8 point in time, did Scott tell you anything about what he
9 testified about you?

10 A. No.

11 Q. Did Scott talk to you at all, since either of you
12 worked at IXL, about your use of sick leave?

13 A. I don't recall.

14 Q. Okay. Where are you working now?

15 A. Right here, Oakland Rising.

16 Q. What is that?

17 A. It's a nonprofit organization in Oakland.

18 Q. Could you just tell me a little bit about what it
19 is?

20 A. The org does -- engages and mobilizes folks to
21 vote and build progressive political power.

22 Q. Is your job there anything like the product
23 analyst job you had at IXL?

24 A. No.

25 Q. Let me rephrase that.

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
16

1 Is the substance of what you're doing similar in
2 any way to what you were doing at IXL?

3 A. The substance of what I'm doing. No.

4 Q. What's your -- do you have a job title at Oakland
5 Rising?

6 A. Yes.

7 Q. What is it?

8 A. Movement and technology management.

9 Q. What was your position at IXL?

10 A. Product analyst dash mathematics, I think.

11 Q. In the math department?

12 A. Yes, yes.

13 Q. So at Oakland Rising you are involved in
14 technology but you're not writing math content for practice
15 exams?

16 A. Correct.

17 Q. Is Oakland Rising a job you've had since leaving
18 IXL or did you have other jobs?

19 A. No and yes.

20 Q. What was the first job you had after leaving IXL?

21 A. I think it was Hack Reactor. Hack Reactor.

22 Q. What does that mean?

23 A. It's a coding bootcamp.

24 Q. Was that job different in kind and type than the
25 job you were doing at IXL?

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
17

- 1 A. Sort of.
- 2 Q. What was the next job you had after that?
- 3 A. I did freelance work.
- 4 Q. And after doing the freelance work, was your next
- 5 job at Oakland Rising?
- 6 A. Yes.
- 7 Q. Before working at IXL, had you worked at any tech
- 8 companies?
- 9 A. Yes.
- 10 Q. Which ones?
- 11 A. Guru.
- 12 Q. Is that the only one?
- 13 A. I think so.
- 14 Q. What did you do at Guru, basically?
- 15 A. I wrote educational math content.
- 16 Q. Would you characterize IXL as being in education
- 17 technology?
- 18 A. Yeah.
- 19 Q. Have you worked in education technology since
- 20 IXL?
- 21 A. Yes.
- 22 Q. As a freelancer or as a full-time employee?
- 23 A. As a full-time employee.
- 24 Q. Was that the company immediately after IXL?
- 25 A. Yes.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

18

1 Q. Okay. Excuse me. When you left IXL, am I right
2 that that was May 2014?

3 A. Yes, that is correct.

4 Q. And did you leave IXL to find other employment?

5 A. In part.

6 Q. Do you recall what you told anybody at IXL in
7 exit interviews and things like that about why you were
8 leaving?

9 A. I don't.

10 Q. You voluntarily quit your job at IXL; is that
11 right?

12 A. Correct.

13 Q. When you told HR at the time that you were
14 quitting --

15 A. Mm-hm.

16 Q. -- did you give them like two weeks' notice or
17 something along those lines?

18 A. Correct.

19 Q. Did you tell someone at IXL in HR that until
20 those two weeks were up you didn't want the information to
21 be shared with anybody else?

22 A. I believe so, yes.

23 Q. And was that information shared with anybody
24 else, to your knowledge?

25 A. Yes.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

19

1 Q. Okay. And was that by HR?

2 A. I think so, yes.

3 Q. Was there a medical reason that you left at all?

4 MS. SANGHVI: Objection.

5 Go ahead.

6 THE WITNESS: What does that mean?

7 BY MR. WILSON:

8 Q. When you quit at IXL, was it because of any
9 medical problem that created a problem for you working
10 there?

11 A. In part.

12 Q. Without describing the exact nature of that
13 medical problem, can you tell me, was it your decision that
14 whatever medical problem you had meant that you couldn't do
15 that job in your mind?

16 MS. SANGHVI: Objection.

17 BY MR. WILSON:

18 Q. Go ahead.

19 A. I don't know what that means. Not this one.

20 MS. SANGHVI: You can --

21 THE WITNESS: Oh.

22 MR. WILSON: Well, you don't -- objections are
23 for the record.

24 THE WITNESS: Uh-huh.

25 MR. WILSON: Because if you don't object now,

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
20

1 if either side doesn't object to a question, for
2 instance, then you might not have the right to bring it
3 up later.

4 THE WITNESS: Okay.

5 MR. WILSON: So Mr. Marek also might object
6 and, if you can, just try to answer the question anyway.

7 THE WITNESS: Okay. Repeat the question.

8 MR. WILSON: Thank you.

9 (Record read.)

10 THE WITNESS: No.

11 BY MR. WILSON:

12 Q. Did you ever get criticized at IXL for using sick
13 leave?

14 A. Criticized. Maybe.

15 Q. Do you know -- or strike that.

16 Can you explain why you say maybe?

17 A. Because I suppose criticized has like a
18 negative connotation to it.

19 Q. Yes.

20 A. But amongst peers, maybe it wasn't necessarily
21 like criticizing whereas from HR it's a little
22 different.

23 Q. Can you describe why it's different from HR?

24 A. Why it's different from HR, if they bring
25 something up, well, because I suppose it has

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
21

1 repercussions.

2 Q. Did anyone from HR criticize your use of sick
3 leave at IXL?

4 A. Yes.

5 Q. Can you explain who?

6 A. His name was -- I don't recall his name.

7 Q. Do you recall what the criticism was?

8 A. Something about taking too many sick days,
9 something along those lines.

10 Q. Do you recall when that was in relation to when
11 you quit?

12 A. Prior.

13 Q. Months prior, weeks prior, days?

14 A. Maybe weeks.

15 Q. You had, at some point, a performance improvement
16 plan that was issued to you about being in the office or
17 giving notice of time off. Do you recall that?

18 A. I don't.

19 Q. Okay. I'm going to show that to you. It's not
20 to drudge up things, I'm just going to ask you questions.

21 A. No, no, go for it.

22 MS. SANGHVI: I'm going to --

23 MR. WILSON: Didn't mean to -- hang on. I

24 haven't introduced it yet. I'm about to. And I'm

25 prefacing what I'm going to say here --

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
22

1 THE WITNESS: Mm-hm.

2 MR. WILSON: -- by saying it's not my intent
3 to embarrass you, I just need to ask you questions.
4 Okay.

5 MS. SANGHVI: I'm going to have a standing
6 objection for any documents referenced or put in front
7 of the witness today that are in between the Bates range
8 of IXL-3790 to 3844. For the record, these records were
9 produced after the close of fact discovery in this case.
10 These records were also produced 12-and-a-half hours
11 prior to the start of this deposition today, which is
12 under no circumstances a reasonable amount of time nor
13 is it courteous to the other side to dump over 140
14 documents on the eve of a deposition.

15 So we have a standing objection to the use of
16 any documents in this range.

17 MR. WILSON: Okay.
18 (Deposition Exhibit 2 was marked for
19 identification.)

20 BY MR. WILSON:

21 Q. So I'm going to ask you to take a look at what
22 I've marked as Exhibit 2. And this is a six-page document,
23 although there is a bunch of blank pages, I think, in
24 between.

25 But on the first page, it's from Isidora Milin to

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
23

1 you, dated March 19th, 2014, and the reference is a
2 performance improvement plan. Do you see that? Do you see
3 that in front of you?

4 A. Do I see it? Yes.

5 Q. Okay. Do you recall ever receiving this
6 performance improvement plan? And take your time if you
7 need to thumb through it.

8 MS. SANGHVI: I'm going to also put an
9 objection on the record that this six-page document has
10 three blank pages so -- four blank pages so it's unclear
11 if it's a complete record.

12 MR. WILSON: Okay.

13 So keep going.

14 THE WITNESS: Are these blank intentionally?

15 MR. WILSON: I think that's the way it was
16 copied.

17 THE WITNESS: What was the question?

18 BY MR. WILSON:

19 Q. Have you ever seen this before?

20 A. I suppose since it's signed right there by me,
21 I -- yeah, I don't recall this very much. Part of it
22 rings a bell.

23 Q. Okay. Just asking you about the first page.

24 A. Uh-huh.

25 Q. So on the first page, there is a step one and a

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
24

1 step two.

2 A. Right.

3 Q. In step one, there is a reference to reliability.

4 A. Mm-hm.

5 Q. And if you see, it says, "Nemo has had frequent
6 absences and has periodically decided to work from home
7 with minimal notice. He has been late to meetings on
8 multiple occasions. This behavior creates uncertainty with
9 team members as to Nemo's reliability and has generated
10 concern amongst the team members that he may not be able to
11 complete urgent tasks."

12 Having read that paragraph, does that refresh
13 your recollection at all about receiving this kind of
14 performance improvement plan in March 2014?

15 A. Sort of, yeah.

16 Q. Okay. Do you know if any of your team members
17 had concerns about your absences and your working at home?

18 A. No. For the most part, no.

19 Q. Did Scott Duane ever complain to you about you
20 taking too much time off?

21 A. No.

22 Q. Do you know whether Scott complained to your
23 supervisor about you taking time off?

24 MS. SANGHVI: Objection. Calls for the
25 witness to speculate.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
25

1 THE WITNESS: I don't know that.

2 BY MR. WILSON:

3 Q. In step two in the "Reliability" paragraph --
4 step two is basically the corrective action plan -- it
5 requires "Be in the office" -- or strike all that.

6 In step two, it says "Reliability: Be in the
7 office for a minimum of 8 hours per day (excluding
8 lunch)," and then it goes on from there. And you can
9 read that paragraph yourself.

10 A. Mm-hm.

11 Q. And when you're done reading, I'm asking if that
12 refreshes your recollection about any corrective action
13 plan at that time about attendance.

14 A. What was the last word?

15 Q. "About attendance."

16 A. Uh-huh. If this refreshes my memory? Is that
17 the question?

18 Q. (Nods head.)

19 A. Yeah. Vaguely, as before, yes.

20 Q. Did this kind of -- strike that.

21 Did that improvement plan have any part in why
22 you quit your job at IXL?

23 A. Not directly.

24 Q. Indirectly did it have any role in why you
25 decided to leave?

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
26

1 A. I suppose. I mean, everything fits into the
2 story, right? So --

3 Q. It was not the primary reason?

4 A. It was not.

5 Q. Okay. Do you know who Karen Penner is?

6 A. Karen Penner, yes.

7 Q. Do you know what her job was at IXL when you were
8 there?

9 A. I think she was like head recruiter or
10 something like that.

11 Q. Was she your supervisor at all?

12 A. She was not.

13 Q. Isidora Milin was your supervisor?

14 A. Correct.

15 Q. Did Karen Penner ever talk to you about your use
16 of sick leave or your working at home?

17 A. I don't recall that at the moment.

18 Q. I noticed you have something that says "capoeira"
19 on it on your wrist; is that right?

20 A. Yes.

21 Q. Is that like a martial art?

22 A. Yes.

23 Q. Were you involved in capoeira while at IXL?

24 A. Yes.

25 Q. When you were employed at IXL, were you friends

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
27

1 socially outside the workplace with Scott Duane?

2 A. Yes.

3 Q. Were you friends with him before working at IXL?

4 A. No.

5 Q. You've maintained a relationship since --

6 A. Yes.

7 Q. -- IXL?

8 A. Yes.

9 (Deposition Exhibit 3 was marked for
10 identification.)

11 BY MR. WILSON:

12 Q. Show you Exhibit 3, which is an official exhibits
13 tab, if you can pull that up when you get a chance.

14 A. Yes, got it.

15 Q. Okay. This is a little hard to read because it's
16 the way it was pulled out of the system, but this is an
17 e-mail from Isidora Milin to you, Scott Duane, and David
18 Keyes, dated March 21, 2014.

19 And if you take a look at it, you will see that
20 it's a response to an e-mail you wrote on March 21st to
21 Isidora. Do you see that?

22 A. The e-mail?

23 Q. Yes.

24 A. Yes.

25 Q. Okay. In this e-mail you say, "Hi Isidora, I'm

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
28

1 writing to inform you that I have a medical appointment
2 this Monday afternoon and for that reason I'll be leaving
3 the office...around 2:30. I can complete my workday from
4 home after the appointment, which I expect should take
5 under about an hour, no more. Moreover, I'm writing to
6 request next Friday March 28th, off. I'll punch it into
7 ADP. Have a good day."

8 Do you recall writing that?

9 A. I don't recall that at the moment.

10 Q. Okay. Do you know whether or not you changed
11 after that performance improvement plan the week before how
12 you communicated your need to use sick leave or work at
13 home?

14 MS. SANGHVI: Objection. Vague.

15 THE WITNESS: Repeat.

16 BY MR. WILSON:

17 Q. Do you know after -- following -- strike all
18 that.

19 Following that performance improvement plan,
20 which was a week before this e-mail --

21 A. Uh-huh.

22 Q. -- did you change your approach to informing IXL
23 or requesting time off from IXL?

24 A. Did I change how I requested time off from
25 IXL. I don't recall that at the moment.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
29

1 Q. Okay. Do you recall after receiving that
2 performance improvement plan you were required to provide
3 more information about the need for sick leave in order to
4 take it?

5 MS. SANGHVI: Objection. Vague.

6 THE WITNESS: Required to provide more
7 information. I don't think that is the case. Or I
8 don't think that was the case.

9 (Deposition Exhibit 4 was marked for
10 identification.)

11 BY MR. WILSON:

12 Q. Exhibit 4 -- I'm just going to kind of rifle
13 through some of these.

14 A. Mm-hm.

15 Q. Should pop up on your screen in a moment.

16 Exhibit 4 is an April 18th e-mail from you to
17 Isidora explaining that you are going to have to work for
18 the rest of the day at home and that you were feeling a
19 little funny in the morning, thought it would be okay, so
20 on and so forth. Do you see this?

21 A. Yes.

22 Q. Do you recall writing this e-mail?

23 A. I don't recall at the moment.

24 Q. Was Isidora your direct supervisor at that time?

25 A. Yes.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
30

1 Q. How would you characterize her response generally
2 to your need for working at home or taking days off for
3 sick leave?

4 MS. SANGHVI: Objection. Compound. Vague as
5 to time.

6 THE WITNESS: Repeat.

7 MR. WILSON: Can you repeat?

8 (Record read.)

9 THE WITNESS: Conflicted. Yeah.

10 BY MR. WILSON:

11 Q. Why do you say that?

12 A. I think she was personally okay or, whatever,
13 more compassionate or sympathetic, but I think she was
14 also feeling pressure from her supervisors to do it
15 differently.

16 Q. In what way do you think she was or do you know
17 that she was feeling pressure?

18 A. Repeat.

19 Q. Can you describe what you mean by her feeling
20 pressure?

21 A. I got the sense that she was just being told
22 to do things a little different than what she would
23 maybe naturally or normally do.

24 Q. Was that your sense based on what you saw or did
25 someone tell you that that was the case?

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

31

1 A. It was my sense based on just my interactions
2 with her and interactions with her supervisors.

3 Q. Did she ever tell you that she was having
4 pressure from her supervisors about your use of days off?

5 A. I don't recall that at the moment.
6 (Deposition Exhibit 5 was marked for
7 identification.)

8 BY MR. WILSON:

9 Q. Exhibit 5 is a document dated March 11, 2014.
10 Does this type of communication look familiar to you in any
11 way based on your time at IXL?

12 MS. SANGHVI: Objection. Foundation. Witness
13 is not even a recipient on this e-mail.

14 BY MR. WILSON:

15 Q. Do you understand my question? I'm asking about
16 this type of communication.

17 A. I actually didn't hear. Repeat, please.

18 Q. Does this type of messaging, does this look
19 familiar to you from your days at IXL?

20 A. Does this type of --

21 MS. SANGHVI: Objection. Vague.

22 THE WITNESS: -- "messaging" -- can you be
23 more specific?

24 BY MR. WILSON:

25 Q. Do you know if this is Gchat?

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
32

1 A. I have no idea.

2 Q. Do you recall using Gchat to communicate at IXL
3 when you were there?

4 A. Yes.

5 Q. This is a set of messages back and forth from
6 Scott Duane to Karen Penner. And at one point they are
7 talking about how Scott has to supervise you on a project,
8 which is about the middle of the page.

9 A. Mm-hm.

10 Q. Show you where. Okay. So do you see that?

11 A. Yes.

12 Q. Okay. Scott says, "and i have to supervise Nemo
13 on this project." Do you recall him being your supervisor
14 on any projects?

15 A. So my supervisor was Isidora, but we worked on
16 a few projects together.

17 Q. Would he be in a supervisory role on those
18 projects that you worked together with Scott on?

19 A. I suppose define "supervisory role."

20 Q. Well, I'm asking based on what you see here that
21 Scott Duane said to Karen Penner, March 11, 2014 --

22 A. Uh-huh.

23 Q. -- that, quote, "i have to supervise Nemo on this
24 project."

25 A. Uh-huh.

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
33

1 Q. Do you know what that means?

2 MS. SANGHVI: Objection. Calls for
3 speculation about another person's state of mind --

4 BY MR. WILSON:

5 Q. Go ahead.

6 MS. SANGHVI: -- and a communication to which
7 he was not even a part of.

8 MR. WILSON: Your objection is well noted.

9 BY MR. WILSON:

10 Q. Go ahead.

11 A. Repeat the question.

12 Q. Do you know that what this means to say from
13 Scott, "i have to supervise Nemo on this project"?

14 A. I don't know.

15 Q. Okay. Was there ever a time at IXL when he
16 supervised you on a project?

17 A. Was there never a time when he supervised you
18 on a project. Can you rephrase that?

19 Q. Do you recall if there was ever a time at IXL --

20 A. Uh-huh.

21 Q. -- when Scott Duane supervised you on any project
22 that you were working on?

23 A. I don't recall that right now.

24 Q. Scott says, "and he," meaning you, "doesn't take
25 criticism very well, i'm discovering." Do you recall any

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

34

1 instances where Scott criticized you and you didn't take it
2 very well?

3 A. I don't recall that right now.

4 Q. So just thinking back to March 2014 --

5 A. Mm-hm.

6 Q. -- you don't have any independent recollection of
7 Scott criticizing you as a supervisor on any projects that
8 you worked on?

9 MS. SANGHVI: Objection. Asked and answered
10 multiple times.

11 THE WITNESS: I don't recall that right now.
12 Yeah.

13 (Deposition Exhibits 6 through 11 were
14 marked for identification.)

15 THE WITNESS: Can I get more water?

16 THE REPORTER: Can we go off the record?

17 MR. WILSON: Of course.

18 (Recess taken from 10:57 to 11:08.)

19 (Mr. Marek not present.)

20 BY MR. WILSON:

21 Q. Were you able to find the water?

22 A. Yes, and a snack.

23 Q. Were there any questions that you have about the
24 deposition that you needed to ask?

25 A. No.

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
35

1 Q. Did you and Ms. Sanghvi talk about the
2 deposition, clear anything?

3 A. No.

4 Q. I marked Exhibit 6. I don't know if you have it
5 available.

6 A. Yes, I have 6 through 11.

7 Q. Can you pull up 6?

8 A. Mm-hm.

9 Q. This is a February 21, 2014, Gchat between Scott
10 Duane and Karen Penner.

11 In the middle of the page, Scott says that -- in
12 a response to Karen saying "nemo ditched again?" Scott
13 said, quote, "working from home." Do you see that?

14 A. Yes.

15 MS. SANGHVI: Objection. Foundation.

16 BY MR. WILSON:

17 Q. Do you know whether or not in February 2014 you
18 and Scott Duane were riding together to work?

19 MS. SANGHVI: Objection. Vague.

20 THE WITNESS: Oh, I don't recall that right
21 now.

22 BY MR. WILSON:

23 Q. Okay. You can see here, it says, "who is
24 approving this?"

25 Scott says, "i was supposed to give him a ride?"

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
36

1 A. Mm-hm.

2 Q. Does that refresh your recollection at all about
3 whether in that time frame you and Scott Duane were
4 commuting together?

5 A. Yeah, we were carpooling --

6 Q. Okay.

7 A. -- during some time, yes.

8 Q. Okay. And then near the end of the page, Karen
9 says, "poor isisora."

10 Scott says, "i know."

11 Karen says, "i would NOT want to manage Nemo."

12 Goes onto the next page.

13 A. Okay.

14 Q. Scott says, "i think nemo would be tough to
15 manage." "He challenges everything."

16 Do you have any recollection of discussing with
17 Scott anything about you challenging Isidora on anything?

18 MS. SANGHVI: Objection. Vague.

19 THE WITNESS: Me challenging Isidora. I don't
20 recall that right now.

21 BY MR. WILSON:

22 Q. I mean, after you have read this exchange between
23 Scott and Karen --

24 A. Mm-hm.

25 Q. -- my question is does anything refresh any

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
37

1 recollection you might have of a discussion with Scott
2 around that time about you challenging everything with
3 Isidora?

4 MS. SANGHVI: Objection. Asked and answered.

5 THE WITNESS: Me challenging everything with
6 Isidora. I don't recall that conversation right now.

7 BY MR. WILSON:

8 Q. Karen says, "he prob still thinks he gets the
9 summer off," and they both laughed at that. Do you know
10 whether in a prior job you had your summers off?

11 A. Do I know whether in a prior job -- I do know.
12 Yes.

13 Q. And did you?

14 A. In some, yes.

15 Q. Did you talk to Scott at all about any -- strike
16 that.

17 Do you recall ever talking to Scott in 2014
18 about conversations he was having with Karen Penner
19 about you being difficult to manage?

20 A. Talking to Scott, 2014, about him talking to
21 Karen. I don't recall that right now.

22 Q. The next document is Exhibit 7. I'll tell you
23 what: What I'll do is just put it up on your screen
24 because it's one page. Do you see this?

25 A. 7?

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
38

1 Q. Exhibit 7 on your screen?

2 A. Yes.

3 Q. Okay. This is a March 17th e-mail exchange
4 between Isidora and Scott Duane? And this was a couple
5 days before the performance improvement plan?

6 A. Mm-hm.

7 Q. The first e-mail is from Scott saying, "I was
8 just wondering if Nemo was taking vacation time this week.
9 Hes helping out with a bunch of iPad testing, which Id like
10 to be done by the end of the week. Im trying to plan to
11 see if it needs to be redistributed."

12 Do you recall around March 17, 2014, working on
13 any iPad testing, similar projects with Scott Duane?

14 A. I don't recall the dates. I do recall the
15 iPad testing.

16 Q. Is it possible that Scott was supervising you on
17 that iPad project?

18 A. I think he was leading the -- like those tasks
19 or the projects.

20 Q. At IXL, were there occasions where there were
21 projects and team members among your peers would be
22 appointed for that project?

23 A. Team members among --

24 Q. Like -- sorry. At that point in time, in 2014,
25 when a particular project came up in your department, were

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
39

1 there occasions where certain members of your department
2 formed teams to work on that project?

3 MS. SANGHVI: Objection.

4 THE WITNESS: I don't recall that right now.

5 BY MR. WILSON:

6 Q. Okay. Isidora responded saying, "Nemo took
7 Friday off, as well as Monday morning (today). He should
8 be in the office around noon...I'll make sure to remind him
9 to send out vacation alerts to [the] mathpa list in the
10 future."

11 Do you recall whether Isidora talked to you about
12 that?

13 A. About this --

14 Q. About sending out vacation alerts.

15 A. I don't recall that.

16 Q. Do you know whether or not Scott had any
17 criticism of you prior to getting that performance
18 improvement plan regarding your reliability?

19 MS. SANGHVI: Objection. Vague as to time.
20 Calls for speculation.

21 Go ahead.

22 BY MR. WILSON:

23 Q. Go ahead.

24 A. Repeat.

25 Q. I'll rephrase.

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
40

1 A. Yes.

2 Q. Prior to getting your performance improvement

3 plan, which was March 19th --

4 A. Uh-huh.

5 Q. -- do you know whether or not Scott Duane had any

6 criticism of you related to your reliability?

7 MS. SANGHVI: Objection. Calls for

8 speculation.

9 THE WITNESS: Yeah, I don't know.

10 BY MR. WILSON:

11 Q. Okay. Was it ever brought to your attention one

12 way or another by Isidora regarding whether Scott had any

13 concerns or complaints about your reliability?

14 A. I don't recall, but probably not.

15 Q. Why do you say "probably not"?

16 A. It just doesn't sound like something that I

17 would have gotten. I'll just say I don't recall --

18 Q. Okay.

19 A. -- because that's -- I guess.

20 Q. That's fair. Okay. Next exhibit is Exhibit 8 --

21 A. Oops.

22 Q. -- which is a four-page Gchat on April 18, 2014.

23 I want to ask you a question about, really, the first part

24 of this.

25 Now, this is between Scott and Nina Wu. You know

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

41

1 who Nina Wu is, right?

2 A. Yes.

3 Q. And Scott says, "wait, okay, soooooo nemo went
4 home sick...and then is going to capoeira and on a date
5 tonight...I'm sick too."

6 Do you know whether or not around April 18, 2014,
7 you had gone home sick and then had your capoeira and a
8 date later that day?

9 MS. SANGHVI: Objection. Foundation. Calls
10 for speculation. Witness is not a recipient of this.

11 MR. WILSON: You can just say "form" instead
12 of -- instead of throwing out all these speaking
13 objections.

14 BY MR. WILSON:

15 Q. So go ahead.

16 A. Repeat the question, please.

17 MR. WILSON: Sure. Can you repeat?
18 (Record read.)

19 THE WITNESS: I don't recall that right now.

20 BY MR. WILSON:

21 Q. If you could look at Exhibit 9, it's one page,
22 I'll put it up on your screen. Exhibit 9 is a Gchat
23 between Isidora and Scott, dated March 18, 2014.

24 And Isidora says, "Hi Scott - did Nemo check in
25 with you re: iPad testing (he's out sick today)?"

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
42

1 Scott said, "no, I was just talking to David
2 about that." And then he says, few seconds later, "well, i
3 take it back, he sent a brief e-mail which I will forward
4 you." Scott says, "i asked him how far he'd gone on" --
5 "gotten on the testing, but I've not heard back."

6 Isidora says, "OK thanks!"

7 Do you know whether or not you were out sick
8 on April -- I'm sorry, on March 18, 2014?

9 A. I don't recall that.

10 Q. So this would have been the day before your
11 performance improvement plan that we looked at --

12 A. Right.

13 Q. -- earlier.

14 A. Mm-hm.

15 Q. When you got that performance improvement plan,
16 did you have a meeting with Isidora face-to-face about that
17 performance improvement plan?

18 A. I don't recall that.

19 Q. Do you have any knowledge based on what either
20 Isidora said or Brad Marshal in HR said about Scott Duane's
21 exchange here with Isidora playing any role in getting a
22 performance improvement plan?

23 MS. SANGHVI: Objection. Vague.

24 BY MR. WILSON:

25 Q. Go ahead.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
43

1 A. One more time.

2 Q. So let me rephrase.

3 Do you know whether or not Scott's exchange here
4 with Isidora the day before your performance improvement
5 plan played any role in you getting that performance
6 improvement?

7 MS. SANGHVI: Objection. Calls for
8 speculation.

9 BY MR. WILSON:

10 Q. Go ahead.

11 A. I have no idea.

12 (Mr. Marek entered the proceedings.)

13 MR. WILSON: So I would ask that you just
14 object to form instead of saying things like "Calls for
15 speculation" or "This witness doesn't know this" or
16 "This is based on something someone else said."

17 I think you've -- you're crossing a line now,
18 and you can state your objections to form, and this
19 witness will be able to answer whether he knows or he
20 doesn't.

21 BY MR. WILSON:

22 Q. Let me ask you, sir: Do you know whether or not
23 Scott Duane was critical about your reliability
24 specifically with respect to this i-testing project --

25 MS. SANGHVI: Objection. Vague.

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018
44

1 BY MR. WILSON:

2 Q. -- iPad-testing project?

3 MS. SANGHVI: Objection. Vague.

4 BY MR. WILSON:

5 Q. Go ahead.

6 A. Do I know whether Scott Duane was critical --

7 Q. Of your reliability with --

8 A. -- of my reliability. I don't know that.

9 Q. Exhibit -- could you look at Exhibit 10? This is
10 a March 10, 2014, exchange between Scott Duane and Karen
11 Penner.

12 And on the second page, I want to ask you about a
13 exchange starting at the middle of the page where Scott
14 says, "dude, nemo was an hour late today." And then he
15 says, "he missed our weekly meeting."

16 Do you know whether on March 10th you were late
17 to work and missed a weekly meeting on that day?

18 A. I don't recall that specific date.

19 Q. Do you recall ever discussing with Scott in or
20 around March 10, 2014, that you were late to work and
21 missed a weekly meeting?

22 A. Do I recall discussing with Scott in or around
23 March 10th about being late and missing a weekly
24 meeting. I don't recall that.

25 Q. Okay. Do you know how many days you worked at

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
45

1 home either the entire day or part of the day while
2 employed at IXL?

3 MS. SANGHVI: Objection. Vague. Compound.

4 THE WITNESS: I don't know.

5 BY MR. WILSON:

6 Q. Did you have any particular allotment of how many
7 days you could work at home while at IXL?

8 A. There was a -- like a -- it's -- no, I
9 don't -- I'll say this: There was the -- what's it
10 called? -- unlimited paid time off or something like
11 that or something in that direction. But I don't
12 know -- I don't know specifically about what you're
13 asking.

14 Q. Okay. Was there any problem that you experienced
15 at IXL with taking a sick day for a medical appointment or
16 because you just don't feel good and ever not going into
17 work?

18 A. One more time.

19 Q. Yeah. Was there ever any problem that you
20 encountered while at IXL with taking a sick day because of
21 either a medical appointment or not feeling good?

22 A. Uh-huh. At work. I suppose not from a
23 specific instance.

24 Q. Let's see this document. Pardon me. Going to
25 mark as Exhibit 12.

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018

46

1 (Deposition Exhibit 12 was marked for
2 identification.)

3 BY MR. WILSON:

4 Q. It's one page and I'm just going to put it up on
5 your screen.

6 A. Okay.

7 Q. This is a --

8 MS. SANGHVI: Jeff, really quick, it just
9 occurred to me you're not following the numbering so
10 you're going to have to change the numbers.

11 MR. WILSON: Well, we can figure that out
12 later.

13 BY MR. WILSON:

14 Q. This is a one-page exchange between yourself and
15 Isidora, dated April 22nd, where you e-mailed her saying
16 you have these two time off requests. And she responded
17 saying, "can you enter these into ADP so I approve them?"

18 Do you recall having this exchange with her?

19 A. I don't recall.

20 Q. Do you recall whether or not you had to enter
21 anything into ADP to characterize an absence as a sick day?

22 A. Do I recall -- one more --

23 Q. Do you recall whether or not when -- you needed
24 to characterize --

25 A. Oh.

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
47

1 Q. -- the reason you were off by entering something
2 into ADP?

3 A. I -- I don't recall that.

4 Q. Okay. Now, in this time off request you note
5 that the hours that you needed were for, quote, "personal
6 time."

7 A. Mm-hm.

8 Q. At that point in time in 2014, was there a
9 difference between personal time and sick leave at IXL?

10 A. Personal time and sick leave. I don't know.
11 I don't recall.

12 Q. Okay. Did Isidora ever deny you any time off
13 that you requested?

14 A. Oh, I don't recall. I don't recall.

15 Q. Okay.

16 A. But I want to say no.

17 Q. Okay.

18 (Deposition Exhibit 13 was marked for
19 identification.)

20 BY MR. WILSON:

21 Q. Okay. I'm going to show you Exhibit 13, which
22 I'm going to just put up on your screen. It's one page.
23 And this is a e-mail exchange between you and Isidora on
24 April 18th, where you on April 18th gave this notice that
25 you were going to have to work -- sorry. Strike all that.

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018
48

1 On April 18th, according to this e-mail, you
2 sent Isidora notice that you were going to have to go
3 home and work the rest of the day there. And you --
4 feeling a little funny in the morning, thought you'd be
5 okay, but it was an incorrect assumption.

6 Do you recall sending this e-mail?

7 A. I don't recall right now.

8 Q. Okay. In response, Isidora writes, "Hi Nemo! I
9 hope you're feeling...better. Following up on my comments
10 today about aiming for a clear line between sick and
11 non-sick days," and then you can read through yourself what
12 she says.

13 A. Mm-hm.

14 Q. Do you recall discussing with her or even getting
15 this e-mail from her about sick and non-sick days at IXL?

16 A. I don't recall that --

17 Q. Okay.

18 A. -- at the moment.

19 Q. Isidora says, "When sick, please enter hours
20 under 'sick' in ADP." And then she says, "If you're
21 working from home, please turn your chat on, as that's the
22 only way to be reached in those circumstances..."

23 Do you know whether or not that was the procedure
24 that you were supposed to follow when taking either a sick
25 day or work at home?

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
49

1 A. Do I know whether or not that was the
2 procedure. I don't know. I don't think we had a formal
3 procedure.

4 Q. Okay.

5 A. Or I don't recall it.

6 Q. And sitting here today, this doesn't refresh your
7 recollection on whether you and Isidora had this discussion
8 about entering into ADP sick versus personal time or
9 work-at-home time?

10 A. It does not.

11 Q. Okay. Do you know whether or not, based on your
12 recollection, you were denied by anyone at IXL a sick day
13 or a partial sick day that you requested?

14 MS. SANGHVI: Objection. Vague as to time.
15 Compound.

16 THE WITNESS: Repeat, please.

17 BY MR. WILSON:

18 Q. Okay. Do you know -- I'll strike that and I'll
19 give you a lead-in.

20 I already asked you about whether Isidora
21 rejected or denied any request for sick days or to work
22 at home. I've already asked you that.

23 My question is do you know whether anyone at
24 IXL during your time at IXL --

25 A. Mm-hm.

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
50

1 Q. -- either denied or rejected your request for
2 sick leave or work at home?

3 A. Deny or rejected. I don't recall that. Yeah,
4 I don't recall.

5 Q. Okay. When you were at IXL in 2014 --

6 A. Mm-hm.

7 Q. -- so those five months in 2014, do you know who
8 was at the same level as you in the math department? Like
9 Scott Duane and others? Do you know who those people were?

10 MS. SANGHVI: Objection.

11 THE WITNESS: Do I know who was in the same
12 level?

13 BY MR. WILSON:

14 Q. Yeah, I don't know how you would call it so I'm
15 having a little difficulty here. But same rank that you
16 were in --

17 A. Uh-huh.

18 Q. -- the math department at IXL in 2014?

19 A. In terms of salary or responsibilities or --

20 Q. Well, let me -- let me back up.

21 A. Uh-huh.

22 Q. You were a product analyst --

23 A. Yes.

24 Q. -- for mathematics, right?

25 A. Yes.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

51

1 Q. Do you know how many other product analysts for
2 mathematics there were in 2014 while you were working
3 there?

4 A. I can give an approximation.

5 Q. Please.

6 A. Like eight, something like that.

7 Q. Was Scott Duane one of them?

8 A. Yes.

9 Q. Was Jessica Morse one of them?

10 A. Yes.

11 Q. Was Nina Wu one of them?

12 A. Yes.

13 Q. Do you know the names of any others?

14 A. Richard something.

15 Q. Sure.

16 A. I think David was -- David Keyes --

17 Q. David Keyes?

18 A. -- was math something.

19 There's a face of a lady. Can't remember her
20 name.

21 Q. Okay. That's okay.

22 A. And maybe another one.

23 Q. Were all these people that you're thinking of
24 supervised by Isidora?

25 A. No.

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
52

1 Q. Okay. How many people were, in 2014 while you
2 were there, supervised by Isidora?

3 A. I don't know.

4 Q. Okay. Was Jessica Morse supervised by Isidora?

5 A. I don't know exactly. I want to say yes but I
6 don't know exactly.

7 Q. Did you receive any promotions while at IXL?

8 A. I suppose I have to say define "promotion."

9 Q. Any increase in job title to the next level.

10 A. In job title. Sort of.

11 Q. Can you explain that?

12 A. I was originally hired as -- in like an intern
13 capacity of sorts. And then after a number of months, I
14 suppose, promoted to non-intern status or something like
15 that.

16 Q. Sure. So intern to product analyst?

17 A. Yeah.

18 Q. Was there any other higher position that you
19 achieved at IXL?

20 A. No.

21 Q. Okay. Were you given raises at IXL?

22 A. Absolutely not.

23 Q. Not?

24 A. No.

25 Q. Okay. You were employed for approximately one

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
53

1 year; is that right?

2 A. Yeah, like -- I think 11 months.

3 Q. Were you, to your knowledge, due for a raise at
4 any point in those 11 months?

5 A. Do I know if I was due for a raise. Can you
6 explain that?

7 Q. Did you have any point in time in those 11 months
8 where you expected that you were going to get a raise and
9 you didn't get one?

10 A. Yes.

11 Q. What point in time in those 11 months would that
12 have been to the best of your recollection?

13 A. In the transition from intern to non-intern.

14 Q. Did you ask for any additional compensation at
15 that transition?

16 A. Yes.

17 Q. What was the response?

18 A. I was offered less, so a reduction, so I
19 requested more than the reduction to meet what I was
20 making as an intern.

21 Q. So you -- as a result of you requesting that,
22 your compensation stayed the same?

23 A. Correct.

24 Q. Got it. Do you know whether or not you were paid
25 a higher salary than Scott Duane?

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
54

1 A. I do know.
2 Q. What do you know?
3 A. That I was not.
4 Q. So Scott was paid more than you?
5 A. Yes.
6 Q. And how much more?
7 A. I don't -- maybe like 10 to 15,000 more a
8 year, something like that.
9 Q. Do you know why that was?
10 A. I don't.
11 Q. Do you know whether or not you were paid more or
12 less than Jessica Morse?
13 A. I think I did. Yeah.
14 Q. What do you recall?
15 A. I think I made more than her.
16 Q. Did you ever discuss that with her?
17 A. I don't recall that.
18 Q. Do you know whether or not you made more or less
19 than Nina Wu?
20 A. I don't know that.
21 Q. Did you ever discuss with Scott Duane your salary
22 as compared to Jessica Morse's salary?
23 A. I don't recall but maybe.
24 Q. Exhibit 11 is a one-page e-mail I'm going to put
25 up in front of you. Sorry. It's a one-page Facebook

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
55

1 message, I guess.

2 And if you could read that and tell me if you
3 have seen that before.

4 A. I mean, I don't recall exactly.

5 Q. Okay. So this is dated August 2, 2014. And it
6 appears to be Scott messaging you talking about David
7 having said, "anytime my," quote, "'condition' is too much
8 I should just take a sick day. So maybe we can play hooky
9 together sometime when my trans hurts too much."

10 Does that refresh any recollection about whether
11 you had any discussion with him about that subject?

12 MS. SANGHVI: Objection. Vague.

13 THE WITNESS: Can you clarify the question a
14 little bit?

15 BY MR. WILSON:

16 Q. Do you recall having that kind of discussion in
17 August 2014 with Scott Duane?

18 A. I don't recall.

19 Q. When did you learn that Scott was transgender?

20 A. Probably in 2013.

21 Q. How did you learn that?

22 A. How did I learn that. I don't think it was an
23 instance, I think it was a series of things and
24 conversations, things like that.

25 Q. Did Scott disclose that to you or did someone

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
56

1 other than Scott disclose it to you?

2 A. Scott disclosed to a number of people, I
3 think, at some point, and it -- I think I knew before
4 that. Something like that.

5 Q. Okay. Do you know whether or not after August 2,
6 2014, Scott took any time off by claiming his condition was
7 hurting too much so that you two -- you two could play
8 hooky together?

9 MS. SANGHVI: Objection. Vague.

10 THE WITNESS: I don't know.

11 BY MR. WILSON:

12 Q. You don't know?

13 A. I don't recall that, yeah.

14 (Deposition Exhibit 14 was marked for
15 identification.)

16 BY MR. WILSON:

17 Q. Exhibit 14 is a one-page document -- no, seven
18 pages. So I'd ask if you could open that up.

19 Do you recognize -- just from the first page
20 there, do you recognize what type of communication this
21 is --

22 A. No.

23 Q. -- based on the format?

24 A. No.

25 Q. Okay. Do you see how it says Scott Duane, and

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
57

1 then an arrow to the right, and then Nina Wu, Nemo C,

2 Jessica Morse? Do you see that?

3 A. Mm-hm.

4 Q. "Yes"?

5 A. Yes.

6 Q. And this is dated August 4, 2014. And if you
7 wanted, you can take a look at these pages. And I'm going
8 to ask you if you recall having this chat.

9 A. I don't recall right now.

10 Q. Okay. So on page seven of seven, if you could go
11 to that. All right. Are you there?

12 A. Yes.

13 Q. Okay. Now, this is dated August 1, 2014.

14 A. Mm-hm.

15 Q. You were not with the company at the time
16 obviously, right?

17 A. Correct.

18 Q. And Scott appears to be messaging Nina, Nemo, and
19 Jessica about unlimited sick time, not -- "actually kind of
20 not unlimited at all." And then you can read the rest.

21 Do you recall getting this particular message
22 from Scott?

23 A. I don't right now.

24 Q. Regardless if you recall this particular message,
25 do you recall in August 2014 talking to Scott personally,

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018
58

1 on the phone, through electronic just communications

2 anything about having to use vacation for part of his time

3 off?

4 A. Repeat the question, please.

5 Q. Do you recall having any discussion with Scott in

6 any manner around August 2014 about him having to use

7 vacation for part of his time off?

8 A. The conversation sounds familiar. I don't

9 know about the around August 1st.

10 Q. Okay. So page six of seven, there's a response

11 from you that just said, "Computer company." Do you know

12 what you were -- what you meant by that comment?

13 A. I don't -- I don't recall.

14 Q. Okay. And then to page four is you saying, "So

15 vague and shitty." Do you know what you were referring to

16 there?

17 A. I don't know.

18 Q. Okay. And then page three is you saying, "Yeah.

19 That sucks man. Sorry. But totally worth it to be there."

20 Do you know what you were referencing there?

21 A. I don't. No, I don't right now.

22 Q. Okay. Around this period of time, summer of

23 2014, did Scott ever tell you that he was going to leave

24 IXL once he was able to get his surgery paid for?

25 A. Repeat that.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
59

1 MR. WILSON: Can you read that back?

2 (Record read.)

3 THE WITNESS: I don't recall that right now.

4 I also have to -- I just went to get water but

5 I need to use the facilities now.

6 MR. WILSON: Okay. You need to take a break
7 for the restroom? Okay.

8 So let's go off the record.

9 (Recess taken from 11:47 to 11:53.)

10 MR. WILSON: Back on the record.

11 BY MR. WILSON:

12 Q. Do you recall in 2014 Scott Duane telling you to
13 be cautious about being perceived as abusing IXL's sick
14 leave policy?

15 A. I don't recall that, no.

16 Q. Do you recall having any discussions with Karen
17 Penner about Glassdoor reviews being posted about IXL that
18 were negative postings related to the sales department?

19 A. That's very specific. One more time, please.

20 Q. Do you recall discussing with Karen Penner --

21 A. Mm-hm.

22 Q. -- any negative Glassdoor posts that she believed
23 was from someone in the sales department?

24 A. I don't recall that.

25 Q. Do you recall Karen Penner asking you if you'd be

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
60

1 willing to write favorable Glassdoor posts while you were
2 there?

3 A. That's vague. I don't recall that.

4 Q. Do you recall reading any negative Glassdoor
5 posts while at IXL at the request of Karen Penner?

6 A. At the request of Karen Penner. I don't
7 recall that.

8 Q. Do you have any recollection of telling Karen
9 Penner that you read the negative reviews on Glassdoor
10 about IXL and they were not what you had noticed about IXL?

11 A. Repeat once more, please.

12 Q. Sure. Do you recall having any discussion with
13 Karen Penner --

14 A. Mm-hm.

15 Q. -- while at IXL --

16 A. Mm-hm.

17 Q. -- where you said words to the effect of "I read
18 the negative reviews on Glassdoor and they don't reflect
19 what I believe is the atmosphere at IXL"?

20 A. No, I don't recall that.

21 Q. I may have asked you this, but did you ever have
22 any discussion with Scott Duane about your salary as
23 compared to others in the office?

24 A. As compared to others in the office. I don't
25 fully recall but I think we discussed salaries at some

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

61

1 point.

2 Q. Do you recall discussing why you made a different

3 salary than Jessica Morse?

4 A. I don't recall that.

5 Q. Okay. Did you believe that you were paid more

6 than Jessica Morse because you're a male and she's female?

7 A. Did I believe that I was paid more than

8 Jessica Morse because I'm male and she's female. Did I

9 believe then?

10 Q. Yes.

11 A. No.

12 Q. Do you believe --

13 A. No, I didn't believe that.

14 Q. I'm sorry. Did you believe while you were at IXL

15 that you were paid more in salary than Jessica Morse

16 because you were Latino?

17 A. No.

18 Q. Did you ever have any discussion with Scott Duane

19 while you were at IXL about the diversity of IXL,

20 particularly of Latinos and non-Latino employees?

21 A. The beginning part of the question one more

22 time?

23 Q. Do you recall ever having any discussions with

24 Scott Duane about the diversity of IXL, particularly Latino

25 and non-Latino employees?

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
62

1 A. I believe we discussed that at some point,
2 yes.

3 Q. Do you recall what you discussed?

4 A. I don't recall the details precisely. But I
5 recall there being a comment of there were few Latinos,
6 myself included.

7 Q. Did you make that comment or did he make that
8 comment?

9 A. I don't recall that.

10 Q. Do you recall Scott saying anything like "That's
11 the tech industry," "That's typical of the tech industry"?

12 A. I don't recall that.

13 Q. Okay.

14 (Deposition Exhibit 15 was marked for
15 identification.)

16 BY MR. WILSON:

17 Q. Exhibit 15 is -- I'll just put it up on your
18 screen because it's one page.

19 A. Okay.

20 Q. It is a March 11, 2014, e-mail from David Keyes
21 to you, copying Isidora with the subject line "Testing
22 help." And if you could just take a look at that e-mail.

23 Please tell me if you recall receiving this.

24 A. I don't recall this -- receiving this
25 particular e-mail.

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
63

1 Q. So the e-mail says, "In the future, if I've
2 requested your help with testing please check in with me,
3 Isidora, or the other PA helping out (in this case, Scott)
4 before you take off for the day."

5 Do you recall what this particular instance was
6 about?

7 A. I don't.

8 Q. Do you know whether or not at that point in time
9 David Keyes was in a supervisory role with relation to you?

10 A. With relation to me.

11 (Mr. Marek left the proceedings.)

12 THE WITNESS: I don't recall. I think he
13 became -- I don't know if this was before or after.

14 BY MR. WILSON:

15 Q. Do you recall having any discussion with Isidora
16 or David Keyes about what David wrote in this e-mail?

17 A. I don't recall that.

18 Q. Okay. And then do you recall discussing with
19 Scott at all what David put in this e-mail?

20 A. I don't.

21 Q. When -- strike that.

22 Do you recall learning from Scott at any point
23 in time that he had requested a remote work arrangement
24 following his surgery?

25 MS. SANGHVI: Objection. Vague as to time.

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

64

1 THE WITNESS: Repeat, please.

2 BY MR. WILSON:

3 Q. Do you recall --

4 MR. WILSON: Well, can you just read that back?

5 (Record read.)

6 THE WITNESS: I recall him mentioning the
7 working from home. I don't necessarily recall him
8 mentioning the request. So that's --

9 BY MR. WILSON:

10 Q. In December 2014 --

11 A. Uh-huh.

12 Q. -- do you know whether or not Scott was out of
13 work due to his gender reassignment surgery?

14 A. I don't recall that.

15 Q. Do you recall whether Scott Duane told you in
16 December 2014 that he had been denied a reasonable
17 accommodation in returning to work from that surgery?

18 A. I don't recall that for that particular time.

19 Q. Okay. When you were employed at IXL, did you
20 feel that you had a flexible work schedule?

21 A. To a degree, yes.

22 Q. When you were working at IXL, were you satisfied
23 with the projects that had been assigned to you?

24 A. In part.

25 Q. Were you dissatisfied with the type of projects

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
65

1 that was assigned to you at any point in time?

2 A. Some of them, yes.

3 Q. And can you characterize what your

4 dissatisfaction was?

5 A. At some point the projects changed. So I was

6 originally hired to do a -- specific sort of sets of

7 tasks and projects that were abruptly dropped, and then

8 we were reassigned to different projects with -- yeah.

9 And those were, I suppose, not what I had signed up for

10 originally.

11 Q. Was there any point in time where you became

12 dissatisfied with assignments that were assigned to you

13 personally instead of some other person or other employee?

14 MS. SANGHVI: Objection. Misstates his

15 testimony.

16 BY MR. WILSON:

17 Q. Or was it more what you just described about

18 assignments being picked up or dropped?

19 A. I don't know that I fully understand.

20 Q. Okay. Do you recall ever reading the

21 December 2014 Glassdoor post that Scott placed online at

22 Glassdoor?

23 A. I don't recall right now.

24 Q. Do you recall whether Scott Duane ever told you

25 that he was fired for posting a negative review on

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
66

1 Glassdoor?

2 A. I remember him mentioning something about
3 that.

4 Q. Just to the best of your recollection, did you
5 review that post after he told you that?

6 A. I don't remember.

7 Q. So just sitting here today, if I didn't put it in
8 front of you, is it your testimony that you wouldn't know
9 what specifically he had stated in that Glassdoor posting?

10 A. Repeat.

11 Q. Unless I put the posting in front of you --

12 A. Uh-huh.

13 Q. -- sitting here today --

14 A. Uh-huh.

15 Q. -- you could not tell me what he complained about
16 in the Glassdoor post?

17 A. Unless you put it in front of me. One more
18 time, please.

19 Q. All right.

20 A. This is --

21 Q. Without seeing it, without putting it in front of
22 you --

23 A. Uh-huh.

24 Q. -- would you be able to tell me what he wrote in
25 that Glassdoor post?

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
67

1 A. Oh. No.

2 Q. Whether or not you recall what he wrote in it, do
3 you recall any discussions with Scott about whether you
4 believed the review was accurate or inaccurate or fair or
5 not fair?

6 MS. SANGHVI: Compound.

7 THE WITNESS: Did we have any discussions
8 about whether it was fair or not fair. I don't recall
9 that.

10 BY MR. WILSON:

11 Q. Did you ever make any complaints to human
12 resources of discrimination at IXL?

13 A. Any complaints of discrimination.

14 MS. SANGHVI: Objection. Vague.

15 THE WITNESS: Formally?

16 BY MR. WILSON:

17 Q. Yes.

18 A. No.

19 Q. Okay. Have you ever complained to your
20 supervisor formally or informally of discrimination against
21 you based on your ethnicity or your national origin?

22 A. I don't recall exactly.

23 Q. Do you believe you were pressured to leave IXL
24 because of your use of personal time or sick time?

25 A. Pressured to leave. I think I was pressured

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
68

1 some. I don't know about to leave.

2 Q. Other than any e-mails I've shown you --

3 A. Mm-hm.

4 Q. -- today, can you recall any pressure or
5 discussions by IXL management with you about your use of
6 sick or personal time?

7 A. Yes.

8 Q. What do you recall?

9 A. A meeting with the then, I guess, HR manager
10 person, a man. I forget his name.

11 Q. Okay. Can you tell me what you recall from that
12 meeting?

13 A. He brought up the -- the sick days. He
14 brought up the sick days saying something like -- he
15 started going in the direction of saying that I needed
16 to sort of like approve or see what it was about, and I
17 immediately brought up that's none of their business.
18 And he backed off and he kind of rephrased it a little
19 bit. Yeah. Something like that.

20 Q. Would that have been Brad Marshal --

21 A. Yes.

22 Q. -- in HR? Okay.

23 A. Brad.

24 Q. When you said "That's none of your business," are
25 you referring to "It's none of your business of what is

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
69

1 causing me to use a sick day"?

2 A. Correct.

3 Q. Okay.

4 A. Yes. He was inquiring a little bit indirect

5 but rather direct about why I was taking the -- the sick

6 days. And that's what I mentioned. I -- I forget the

7 wording I used, but something along the lines of "This

8 is inappropriate." Yeah.

9 Q. You said that?

10 A. Yes.

11 Q. I'm just trying to make sure the record's clear.

12 A. I don't recall like because I -- I don't

13 recall the exact wording or phrasing.

14 Q. Right.

15 A. But it was, you know, this is something you

16 discuss with your doctor and not with -- HR person.

17 Q. Following that meeting with Brad, were you ever

18 denied a day off for sick leave while at IXL?

19 A. I don't recall that.

20 Q. Okay. Do you know whether or not at that time

21 Brad Marshal was only indirectly making that kind of

22 request to you as opposed to other employees who also use

23 sick leave?

24 A. I have no idea.

25 MS. SANGHVI: Just for the record, objection.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
70

1 BY MR. WILSON:

2 Q. Do you know -- do you know whether or not IXL was
3 requesting that kind of information from anyone who used
4 sick leave at that point in time at IXL?

5 MS. SANGHVI: Objection.

6 THE WITNESS: I have no idea.

7 BY MR. WILSON:

8 Q. Okay.

9 A. I don't know that.

10 Q. Did you discuss that with anyone at IXL other
11 than Brad?

12 A. Can you specify?

13 Q. Yes. Did you discuss, other than with Brad, IXL
14 making the request directly or indirectly that Brad made?

15 MS. SANGHVI: Objection.

16 THE WITNESS: Probably.

17 BY MR. WILSON:

18 Q. Do you remember who?

19 A. Probably Scott. Maybe -- yeah, probably Scott
20 or a couple of colleagues.

21 Q. Did anyone else tell you that they also have been
22 asked to that -- for that kind of information when using
23 sick leave?

24 A. I don't recall that right now.

25 Q. And just so I understand, at that point in time

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018

71

1 when you had that discussion with Brad, it was your belief
2 that using sick leave at IXL did not require any
3 corroboration or other information about the fact that it
4 was for sick leave; is that right?

5 MS. SANGHVI: Objection. Vague.

6 THE WITNESS: One more time.

7 BY MR. WILSON:

8 Q. Yeah. It was a poorly-framed question. I'm
9 trying to frame it the right way. Let me try again.

10 At that period of time when you talked to Brad
11 Marshal, was it your belief that IXL was not allowed to
12 ask you for corroboration or other information when
13 using sick leave to explain why you needed the sick
14 leave?

15 MS. SANGHVI: Objection. Vague.

16 THE WITNESS: Was it my belief that IXL was --
17 one more time.

18 BY MR. WILSON:

19 Q. Yeah. So you said -- you used words to the
20 effect of "That's inappropriate" --

21 A. Mm-hm.

22 Q. -- "to ask me why I'm taking the leave"; is that
23 right?

24 A. Yes.

25 Q. And what I'm trying to get specifically is was it

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
72

1 your belief at that time that asking you why you needed the
2 sick leave was inappropriate or asking specifics about like
3 your medical condition was inappropriate?

4 A. Asking specifics about medical condition, yes.

5 Q. So for instance, just to round this out, at that
6 point in time when you talked to Brad Marshal, was it your
7 position that IXL management could, for instance, say "I
8 need to know whether you were really sick or faking it just
9 to get the day off"? What was your understanding at that
10 time?

11 A. Repeat the question one more time.

12 Q. Yeah. So at that point in time when you talked
13 to Brad Marshal, and saying "That's inappropriate" or words
14 to that effect --

15 A. Uh-huh.

16 Q. -- was it that he was asking for verification
17 that you were actually in need of sick leave for a medical
18 reason or that he was asking "Tell me what medical reason
19 it is that was causing your use of sick leave"?

20 A. As I mentioned, it was a little indirect slash
21 direct. But my feeling was that he was crossing the
22 boundary into the "Tell me what it is," which is why I
23 mentioned the -- however I phrased it, which I don't
24 recall the exact wording, but the -- you know, "That's
25 inappropriate" or --

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
73

1 Q. Okay. So at that point in time, was it
2 appropriate, in your view, for IXL to ask for generic
3 confirmation that you needed to take a sick day for a
4 medical reason without getting into the specifics of what
5 it is?

6 MS. SANGHVI: Objection. Calls for legal
7 speculation.

8 BY MR. WILSON:

9 Q. Go ahead.

10 A. Was it appropriate for IXL to ask for -- one
11 more time.

12 MR. WILSON: Can you read that back?

13 (Record read.)

14 MS. SANGHVI: Objection. Calls for a legal
15 speculation.

16 BY MR. WILSON:

17 Q. Go ahead.

18 A. I suppose it depends on what "generic" means.
19 I -- yeah. Yeah, I don't -- my view was that specifics
20 were not -- specifics of medical conditions are not
21 okay, which is what I mentioned.

22 Q. Okay.

23 A. No.

24 Q. But at that point in time, just so I understand
25 what it was that you felt crossed the line and more

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
74

1 importantly what didn't cross the line --

2 A. Uh-huh.

3 Q. -- is if HR came to you and said, "Someone said
4 they saw you out dancing or in capoeira on a day that you
5 took off for sick leave, and so I need confirmation that
6 you were in fact sick that day," would that cross the line
7 in your view at that point in time?

8 MS. SANGHVI: Objection.

9 THE WITNESS: In this hypothetical situation,
10 yes.

11 BY MR. WILSON:

12 Q. And did you have that kind of discussion with
13 Scott Duane or did it not come up?

14 MS. SANGHVI: Objection. Vague.

15 THE WITNESS: Which -- which kind of
16 discussion?

17 BY MR. WILSON:

18 Q. About whether that kind of request from HR, for
19 verification that you were in fact in need of sick leave,
20 came up with Scott Duane?

21 A. I don't recall that.

22 Q. Okay. Was there any other way that you can tell
23 me that IXL inappropriately applied its sick leave with
24 respect to you?

25 A. Inappropriately applied its sick leave with

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

75

1 respect to me. I don't recall.

2 Q. As an example, there was never any point in time
3 at IXL where you were denied paid time off, vacation time,
4 or sick leave based on your national origin or ethnicity,
5 correct?

6 A. I don't recall.

7 Q. Did you ever participate in any social events at
8 IXL that were sponsored by IXL?

9 A. Yes.

10 Q. Which ones?

11 A. There were a number of them, I suppose.

12 Q. Did you play on any sports teams?

13 A. Sports teams. I -- yeah, I think so. I
14 think -- yeah.

15 Q. Do you recall --

16 A. We --

17 Q. Sorry.

18 A. Continue. Maybe this will jog my memory.

19 Q. Do you recall any particular sporting team or
20 event that you were in that was sponsored by IXL?

21 A. Sponsored by IXL. There was like a baseball
22 team --

23 Q. Okay.

24 A. -- which I wasn't a part of. But there were
25 sometimes sort of games during like lunchtimes and

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
76

1 things like that. I don't recall if that was sponsored
2 by IXL but I participated in those.

3 Q. Did you ever play on the softball team?

4 A. Probably not.

5 Q. Did you ever feel any treatment in the workplace
6 that was different towards you because you didn't play on
7 the softball team?

8 A. Huh. Did I ever feel treated differently.
9 Slightly, I suppose.

10 Q. In what way?

11 A. The softball team was some of the managers and
12 I think they'd been doing it for some years or
13 something. It was -- it was celebrated -- it was
14 celebrated explicitly in front of everyone, I suppose,
15 something like that, whereas maybe other sports were not
16 or people who didn't participate were not, I suppose, or
17 not as much.

18 Q. So the difference in treatment would be that one
19 was a celebrated sort of team more than kickball or some
20 other team?

21 A. Correct.

22 Q. Okay. Excuse me. I think that might be it.
23 Can you give me two minutes? I'm going to
24 check a couple things, we'll go off the record, and I
25 think that's it. But just give me a two-minute break.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018

77

1 Okay?

2 (Discussion off the record.)

3 MR. WILSON: Back on the record.

4 MS. SANGHVI: Wait. Sorry.

5 (Discussion off the record.)

6 (Deposition Exhibits 16 and Exhibit 17

7 were marked for identification.)

8 BY MR. WILSON:

9 Q. I'm going to show you Exhibit 16, which I'm going
10 to put on your screen. One page. This was produced to us
11 by the EEOC and it appears to be July 23, 2014, Facebook
12 chat or some sort of messaging.

13 Do you recognize this format of communication?

14 A. Yeah, sort of.

15 Q. Okay. So there's a -- I'm zooming in a little
16 bit.

17 A. Mm-hm.

18 Q. There's a post that Scott put on Facebook. And
19 you see it says, "8 reacted," and you were one of them, the
20 first one. Do you see that?

21 A. Yeah. Uh-huh.

22 Q. Right there.

23 A. Yes, yes, yes.

24 Q. Okay. And then there's just a lengthy discussion
25 about spreadsheets and binary and different things like

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
78

1 that. Down near the end, there's some -- there's comments
2 by you. Do you see those?

3 A. Oh, yes.

4 Q. Do you recall this discussion in July of 2014?

5 A. I don't.

6 Q. You wrote, "Write some suggestions in the
7 suggestion box. They'll use it as toilet paper."

8 And Scott's response is "Penisarm is all I have
9 to say." Do you know what he means there?

10 A. I think I do.

11 Q. What do you think it means?

12 A. For -- what's it called? Phalloplasty, is
13 that the right term?

14 Q. Right.

15 A. I think they take tissue from your arm and
16 they make a phallus.

17 Q. Right. Do you recall having any discussions at
18 this point in time, in July of 2014, with Scott Duane about
19 him staying at IXL long enough to get his phalloplasty
20 covered by insurance?

21 A. I don't recall that.

22 Q. When you look at this exchange between Scott and
23 you where he makes that response, "Penisarm is all I have
24 to say," and then he says it again a couple of messages
25 down, did you take that to mean that he was putting up with

NEMO CUIRIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
79

1 the issues he's complaining about at IXL just so that he
2 can get his surgery?

3 A. I don't know.

4 Q. All right. Let me back out of that and show you
5 one other document.

6 Now, this is on December 25th -- December 25,
7 2014. Also appears to be a Facebook chat. And if you
8 want -- here, I'm going to -- does it flip for you?

9 A. No. Oh, yes, it does.

10 Q. Scott is texting you or messaging you saying, on
11 that date, "It's definitely going to be better for me to be
12 at home part time. Standing and sitting upright are tiring
13 for long periods of time. But also, no of course I don't
14 want to be there full time. That company sucks."

15 Do you see that?

16 A. I do.

17 Q. Do you recall getting this?

18 A. I don't.

19 Q. Do you recall discussing with Scott at any point
20 in time between -- I'll put that back the way it was -- at
21 any point in time between July and December of 2014 that
22 Scott was ready to leave IXL as soon as he could get his
23 surgery completed?

24 MS. SANGHVI: Objection. Asked and answered
25 multiple times in a row.

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
80

1 BY MR. WILSON:

2 Q. Okay. Go ahead.

3 A. I don't recall that at the moment.

4 Q. Do you still have a Facebook account?

5 A. Yes.

6 Q. And do you have a primary e-mail account that you
7 use for personal e-mail like Gmail or something like that?

8 A. Yes.

9 Q. Which one?

10 A. Oh, Gmail.

11 Q. Gmail. What is your Gmail e-mail address? I
12 think it's somewhere in these documents, but can you just
13 tell me?

14 A. Yes. It's n, as in Nemo, c-u-r-i-e-l.

15 Q. @Gmail?

16 A. Correct.

17 Q. And one other thing. Do you communicate with
18 Scott Duane by any other text, instant message, or similar
19 platform?

20 MS. SANGHVI: Objection. Vague.

21 THE WITNESS: Any other --

22 BY MR. WILSON:

23 Q. Instant messaging or texting platform than
24 Facebook or Gmail?

25 A. Texting, I suppose.

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
81

1 Q. Just --

2 A. But I mentioned that before.

3 Q. Like on your phone?

4 A. Yes.

5 Q. Is that iMessage or some other text?

6 A. Yeah, like the phone message.

7 Q. What kind -- is it Apple iPhone?

8 A. Yes.

9 Q. So just to be clear, it's -- the ways in 2014 to
10 now that you communicated electronically with Scott would
11 be Gchat when -- at IXL, Gmail, text messaging, Facebook;
12 is that right?

13 A. Those are some. Maybe there are some other
14 things but I don't recall.

15 Q. Do you remember, sitting here today, any other
16 forms of electronic communication between you and Scott
17 between those -- between that period of time?

18 A. I don't recall but -- right now.

19 MR. WILSON: Okay. All right. I don't have
20 any other questions for you.

21 THE WITNESS: Okay. Great.

22 MS. SANGHVI: Great.

23 MR. WILSON: If she doesn't, then -- we're
24 still on the record. What will happen is -- we're
25 done --

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
82

1 THE WITNESS: Mm-hm.

2 MR. WILSON: -- and a transcript will be
3 created.

4 THE WITNESS: Uh-huh.

5 MR. WILSON: And I have your address. Were
6 you served at home with this subpoena?

7 THE WITNESS: At home and at the office --

8 MR. WILSON: Okay.

9 THE WITNESS: -- which was less than ideal.

10 MR. WILSON: Yeah. Took a long -- took a long
11 time finding you.

12 We have to -- we are going to send you a copy
13 of this transcript for you to review and you have
14 30 days to review it.

15 Will you send that to him directly?

16 So we're off the record.

17 (Discussion off the record.)

18 MR. WILSON: Back on the record.

19 MS. SANGHVI: He wasn't actually referring to
20 me so that's why I was waiting for the opportunity.

21 But we would like the opportunity to read and
22 sign according to the rules. And the EEOC will provide
23 Mr. Curiel with a copy of his deposition transcript, at
24 which point you will have the opportunity to read it and
25 review it for any errors, indicate those errors, and

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
83

1 then send it back to the reporter.

2 THE WITNESS: Thanks.

3 MR. WILSON: Thank you for that.

4 (Deposition concluded at 12:38 p.m.)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
84

ESQUIRE ERRATA SHEET

Esquire Job ID: J2068156

Case Caption: EEOC vs. IXL Learning

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have
read the entire transcript of my Deposition taken
in the above-captioned matter or the same
has been read to me and the same is true and
accurate, save and except for changes and/or
corrections, if any, as indicated by me on the
DEPOSITION ESQUIRE ERRATA SHEET hereof, with the
understanding that I offer these changes as if still
under oath. Signed on the _____ day of
_____, 20____.

NEMO CURIEL

NEMO CURIEL
U.S. EEOC vs IXL LEARNINGApril 17, 2018
85

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

NEMO CURIEL

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
86

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

NEMO CURIEL

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
87

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 NEMO CURIEL, 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 26th day of April, 2018.

Sarah J. Bingham
CSR #13720

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: 1..ADP

	62:14, 17	41:6, 23	3844	80:15
1	15,000	42:8	22:8	
	54:7	44:10, 20		A
1		47:8	4	
13:21, 24	16	50:5, 7, 18		ability
57:13	77:6, 9	51:2 52:1	4	8:25
	17	55:5, 17	29:9, 12,	abruptly
10	38:12	56:6	16 57:6	65:7
44:9, 10,	77:6	57:6, 13,		absence
20 54:7	17th	25 58:6,	5	46:21
10:57	38:3	23 59:12		absences
34:18	18	62:20	5	24:6, 17
10th	40:22	64:10, 16	31:6, 9	Absolutely
44:16, 23	41:6, 23	65:21		52:22
11	42:8	77:11	6	abusing
31:9	18th	78:4, 18		59:13
32:21	29:16	79:7, 21	6	accommodati
34:13	47:24	81:9	34:13	on
35:6	48:1		35:4, 6, 7	64:17
53:2, 4, 7,	19th	21		account
11 54:24	23:1 40:3	27:18	7	80:4, 6
62:20	1st	35:9		accurate
11:08	58:9	21st	7	6:23 67:4
34:18		27:20		achieved
11:47	2	22nd	37:22, 25	52:19
59:9		46:15	38:1	action
11:53		23		25:4, 12
59:9	2	77:11		actual
12	22:18, 22	25	8	10:3
45:25	55:5 56:5	79:6		additional
46:1	2013	25th	8	53:14
	55:20	79:6	25:7	address
12-and-a-	2014	28th	40:20	80:11
half	18:2 23:1	28:6	77:19	82:5
22:10	24:14	2:30	9	ADP
13	27:18	28:3		28:7
47:18, 21	31:9		9	46:17, 21
14	32:21	3	41:21, 22	47:2
56:14, 17	34:4	3		48:20
140	35:9, 17	27:9, 12	@	49:8
22:13	37:17, 20	30		
15	38:12, 24	82:14	@gmail	
	40:22			

NEMO CUIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: afternoon..call

afternoon	77:11	64:23	42:19	box
28:2	79:7	65:1,12	43:16	78:7
ahead	Apple	assignments	49:11	Brad
12:11,14	81:7	65:12,18	56:23	42:20
13:25	applied	assumption	67:21	68:20,23
19:5,18	74:23,25	48:5	75:4	69:17,21
33:5,10	appointed	atmosphere	basically	70:11,13,
39:21,23	38:22	60:19	17:14	14 71:1,
41:15	appointment	attendance	25:4	10 72:6,
42:25	28:1,4	25:13,15	Bates	13
43:10	45:15,21	attention	22:7	break
44:5	approach	40:11	bathroom	9:9,17
73:9,17	28:22	attorney	9:19	59:6
80:2	approve	10:12	beginning	76:25
aiming	46:17	August	61:21	Briefly
48:10	68:16	55:5,17	behavior	12:1
alerts	approving	56:5	24:8	bring
39:9,14	35:24	57:6,13,	belief	9:23
allotment	approximate	25 58:6,9	71:1,11,	20:2,24
45:6	ly		16 72:1	brought
allowed	52:25	B	believed	10:2 14:8
71:11	approximate		59:22	15:1
Ami	on	back	67:4	40:11
10:17	51:4	32:5 34:4	bell	68:13,14,
11:3	April	42:3,5	23:22	17
amount	29:16	50:20	binary	build
22:12	40:22	59:1,10	77:25	15:21
analyst	41:6 42:8	64:4	bit	bunch
15:23	46:15	73:12	15:18	22:23
16:10	47:24	77:3	55:14	38:9
50:22	48:1	79:4,20	68:19	business
52:16	arm	82:18	69:4	68:17,24,
analysts	78:15	83:1	77:16	25
51:1	arrangement	backed	blank	C
anytime	63:23	68:18	22:23	
55:7	arrow	baseball	23:10,14	c-u-r-i-e-l
apologize	57:1	75:21	bootcamp	6:17
7:1	art	based	16:23	80:14
appears	26:21	30:24	boundary	call
55:6	assigned	31:1,11	72:22	50:14
57:18		32:20		

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: called..correct

called 14:12,14 45:10 78:12	challenging 36:17,19 37:2,5	clearer 9:7	compared 54:22 60:23,24	condition' 55:7
calling 12:19,22	chance 27:13	close 6:21,25 22:9	compassiona te 30:13	conditions 73:20
calls 13:8,13 24:24 33:2 39:20 40:7 41:9 43:7,14 73:6,14	change 8:8 9:6 28:22,24 46:10	coding 16:23	compensatio n 53:14,22	confirmatio n 73:3 74:5
capacity 52:13	changed 28:10 65:5	comment 58:12 62:5,7,8	complain 24:19	Conflicted 30:9
capoeira 26:18,23 41:4,7 74:4	characteriz e 17:16 30:1	comments 48:9 78:1	complained 24:22 66:15 67:19	connotation 20:18
carpooling 36:5	chat 48:21 57:8 77:12 79:7	communicate 7:25 32:2 80:17	complaining 79:1	content 16:14 17:15
case 7:17 11:1,25 12:8 14:18 15:7 22:9 29:7,8 30:25 63:3	check 41:24 63:2 76:24	communicate d 28:12 81:10	complaints 40:13 67:11,13	Continue 75:18
causing 69:1 72:19	circumstanc es 22:12 48:22	communicati on 31:10,16 33:6 56:20 77:13 81:16	complete 23:11 24:11 28:3	conversatio n 7:24 37:6 58:8
cautious 59:13	claiming 56:6	communicati ons 13:18 58:1	completed 79:23	conversatio ns 37:18 55:24
celebrated 76:13,14, 19	clarify 55:13	commuting 36:4	Compound 12:10 30:4 45:3 49:15 67:6	copied 23:16
challenges 36:15	clear 8:15 10:11 12:3 35:2 48:10 69:11 81:9	companies 17:8	Computer 58:11	copy 14:9 82:12,23
		company 17:24 57:15 58:11 79:14	concern 24:10	copying 62:21
			concerns 24:17 40:13	correct 6:18 7:9 16:16 18:3,12, 18 26:14 53:23 57:17 69:2 75:5
			condition 8:23 56:6 72:3,4	

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: corrective..discussed

76:21	crossed	41:8	64:16	76:18
80:16	73:25	42:10	69:18	differently
corrective	crossing	43:4	75:3	30:15
25:4,12	43:17	44:17	deny	76:8
corroborati	72:21	45:1,15,	47:12	difficult
on	Curiel	20 46:21	50:3	37:19
71:3,12	6:16,20,	48:3,25	department	difficulty
couple	23 82:23	49:12,13	16:11	50:15
38:4		55:8 63:4	38:25	direct
70:20	D	69:1,18	39:1	29:24
76:24		72:9 73:3	50:8,18	69:5
78:24	dancing	74:4,6	59:18,23	72:21
court	74:4	days	depends	direction
7:7	dash	21:8,13	73:18	45:11
courteous	16:10	30:2	deposed	68:15
22:13	date	31:4,19	15:1	directly
covered	10:11	38:5	deposition	25:23
78:20	12:3	44:25	7:3,22	70:14
created	41:4,8	45:7	10:13,16,	82:15
19:9 82:3	44:18	48:11,15	21 11:4,	disclose
creates	79:11	49:21	7,13,17	55:25
24:8	dated	68:13,14	13:21,24	56:1
critical	23:1	69:6	14:12,14,	disclosed
43:23	27:18	82:14	18 22:11,	56:2
44:6	31:9	December	14,18	discovering
criticism	41:23	64:10,16	27:9 29:9	33:25
21:7	46:15	65:21	31:6	discovery
33:25	55:5	79:6,21	34:13,24	22:9
39:17	57:6,13	decided	35:2 46:1	discriminat
40:6	dates	24:6	47:18	ion
criticize	38:14	25:25	56:14	67:12,13,
21:2	David	decision	62:14	20
criticized	27:17	19:13	77:6	discuss
20:12,14,	42:1	define	82:23	11:6
17 34:1	51:16,17	32:19	describe	54:16,21
criticizing	55:6	52:8	20:23	69:16
20:21	62:20	degree	30:19	70:10,13
34:7	63:9,16,	64:21	describing	discussed
cross	19	delivered	19:12	60:25
74:1,6	day	10:1	details	62:1,3
	25:7 28:7	denied	62:4	
	29:18	49:12,21	difference	
		50:1	47:9	

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: discussing..exhibit

discussing	14:1, 4, 8	42:20	effect	entering
12:8	22:22	dude	60:17	47:1 49:8
36:16	23:9 31:9	44:14	71:20	entire
44:19, 22	37:22	due	72:14	45:1
48:14	45:24	53:3, 5	electronic	errors
59:20	56:17	64:13	58:1	82:25
61:2	79:5	dump	81:16	ethnicity
63:18	documents	22:13	electronica	67:21
79:19	9:16, 23		lly	75:4
discussion	10:6		81:10	eve
13:11	13:18	E	embarrass	22:14
37:1 49:7	22:6, 14,		22:3	event
55:11, 16	16 80:12	e-mail	employed	75:20
58:5	dropped	27:17, 20,	26:25	events
60:12, 22	65:7, 18	22, 25	45:2	75:7
61:18	drudge	28:20	52:25	exact
63:15	21:20	29:16, 22	64:19	19:12
71:1	Duane	31:13	employee	69:13
74:12, 16	7:16	38:3, 7	17:22, 23	72:24
77:2, 5, 24	10:10, 20	42:3	65:13	EXAMINATION
78:4	24:19	47:23	employees	6:12
82:17	27:1, 17	48:1, 6, 15	61:20, 25	exams
discussions	32:6, 21	54:24	69:22	16:15
59:16	33:21	62:20, 22,	employment	exchange
61:23	35:10, 18	25 63:1,	18:4	36:22
67:3, 7	36:3	16, 19	encountered	38:3
68:5	38:4, 13	80:6, 7, 11	45:20	42:21
78:17	40:5	e-mailed	encourage	43:3
dissatisfac	43:23	46:15	9:5	44:10, 13
tion	44:6, 10	e-mails	end	46:14, 18
65:4	50:9 51:7	68:2	36:8	47:23
dissatisfie	53:25	earlier	38:10	78:22
d	54:21	14:9	78:1	excluding
64:25	55:17	42:13	engages	25:7
65:12	56:25	education	15:20	Excuse
ditched	59:12	17:16, 19	enter	18:1
35:12	60:22	educational	46:17, 20	76:22
diversity	61:18, 24	17:15	48:19	exhibit
61:19, 24	64:15	EEOC	entered	13:21, 24
doctor	65:24	7:16, 17	43:12	22:18, 22
69:16	74:13, 20	77:11		27:9, 12
document	78:18	82:22		
10:3	80:18			
	Duane's			

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: exhibits..give

29:9,12,		48:4	formally	17:22,23
16 31:6,9	F	72:21	67:15,20	fully
35:4		feeling...	format	60:25
37:22	face	better.	56:23	65:19
38:1	51:19	48:9	77:13	functions
40:20		felt	formed	11:8
41:21,22	face-to-	73:25	39:2	funny
44:9	face	female	forms	29:19
45:25	42:16	61:6,8	81:16	48:4
46:1	Facebook	figure	forward	future
47:18,21	54:25	46:11	42:3	39:10
54:24	77:11,18	find	Foundation	63:1
56:14,17	79:7	18:4	31:12	
62:14,17	80:4,24	34:21	35:15	G
77:6,9	81:11	finding	41:9	
exhibits	facilities	82:11	four-page	games
27:12	59:5	fine	40:22	75:25
34:13	fact	9:18	frame	gave
77:6	10:20	fired	36:3 71:9	47:24
exit	11:13	65:25	freelance	Gchat
18:7	22:9 71:3	fits	17:3,4	31:25
expand	74:6,19	26:1	freelancer	32:2 35:9
8:8	fair	flexible	17:22	40:22
expect	40:20	64:20	frequent	41:22
28:4	67:4,5,8	flip	24:5	81:11
expected	faking	79:8	Friday	gender
53:8	72:8	folks	28:6 39:7	64:13
experienced	familiar	15:20	friends	generally
45:14	31:10,19	follow	26:25	30:1
explain	58:8	48:24	27:3	generated
20:16	favorable	forget	front	24:9
21:5	60:1	68:10	22:6 23:3	generic
52:11	February	69:6	54:25	73:2,18
53:6	35:9,17	form	66:8,11,	give
71:13	feel	10:3	17,21	10:21
explaining	45:16	41:11	76:14	14:12,18
29:17	64:20	43:14,18	full	18:16
explicitly	76:5,8	formal	6:14	35:25
76:14	feeling	49:2	79:14	49:19
	29:18		full-time	51:4
	30:14,17,			76:23,25
	19 45:21			

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: giving..instance

giving	27:15	hours	22:19	inappropria
11:13		22:10	27:10	tely
21:17	head	25:7 47:5	29:10	74:23,25
	7:21,25	48:19	31:7	included
Glassdoor	25:18		34:14	62:6
59:17,22	26:9	HR	46:2	
60:1,4,9,		18:13,19	47:19	incorrect
18 65:21,	hear	19:1	56:15	48:5
22 66:1,	31:17	20:21,23,	62:15	increase
9,16,25	heard	24 21:2	77:7	52:9
	42:5	42:20		
Gmail		68:9,22	Im	independent
80:7,10,	helping	69:16	38:10	34:6
11,24	38:9 63:3	74:3,18		
81:11	Hes		imessage	indirect
	38:9	huh-uhs	81:5	69:4
good		8:3	immediately	72:20
9:13,14,	higher		17:24	indirectly
21 28:7	52:18	human	68:17	25:24
45:16,21	53:25	67:11		69:21
		hurting	impair	70:14
Great	hired	56:7	8:24	
81:21,22	52:12			
	65:6	hurts	importantly	industry
guess		55:9	74:1	62:11
40:19	home			
55:1 68:9	24:6,17	hypothetica	improvement	inform
	26:16	l	21:15	28:1
Guru	28:4,13	74:9	23:2,6	informally
17:11,14	29:18		24:14	67:20
	30:2		25:21	
guys	41:4,7	I	28:11,19	information
11:6	45:1,7		29:2 38:5	14:19
	48:3,21,	i-testing	39:18	18:20,23
H	25 49:22	43:24	40:2	29:3,7
	50:2 64:7	Id	42:11,15,	70:3,22
Hack	79:12	38:9	17,22	71:3,12
16:21	82:6,7		43:4,6	informing
		idea		28:22
hands	home. '	32:1	inaccurate	
8:13	35:13	43:11	67:4	inquiring
		69:24		69:4
hang	hooky	70:6	inappropria	
21:23	55:8 56:8		te	instance
		ideal	69:8	20:2
happen	hope	82:9	71:20	45:23
81:24	48:9		72:2,3,	55:23
		identificat	13,25	63:5
happening	hour	ion		72:5,7
12:18	28:5			
hard	44:14	13:22		

NEMO CUIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
 Index: instances..lawsuit

instances	27:17,21,	19 32:2	52:4	kickball
34:1	25 29:17,	33:15,19	54:12,22	76:19
instant	24 32:15	38:20	57:2,19	kind
80:18,23	36:17,19	45:2,7,	61:3,6,8,	8:12 9:24
insurance	37:3,6	15,20	15	11:10
78:20	38:4	47:9	job	16:24
intended	39:6,11	48:15	15:22,23	24:13
8:9	40:12	49:12,24	16:4,17,	25:20
intent	41:23,24	50:5,18	20,24,25	29:12
22:2	42:6,16,	52:7,19,	17:2,5	55:16
intentional	20,21	21 58:24	18:10	57:19
ly	43:4	59:17	19:15	68:18
23:14	46:15	60:5,10,	25:22	69:21
interaction	47:12,23	15,19	26:7	70:3,22
s	48:2,8,19	61:14,19,	37:10,11	74:12,15,
31:1,2	49:7,20	24 64:19,	52:9,10	18 81:7
intern	51:24	22 67:12,	jobs	kinds
52:12,16	52:2,4	23 68:5	16:18	15:2
53:13,20	62:21	69:18	jog	knew
Intervenor	63:3,15	70:2,4,	75:18	56:3
7:17	isisora	10,13	July	knowledge
interviews	36:9	71:2,11,	77:11	18:24
18:7	issued	16 72:7	78:4,18	42:19
introduced	21:16	73:2,10	79:21	53:3
21:24	issues	74:23		
involved	79:1	75:3,8,	K	L
16:13	IXL	20,21		
26:23	7:16,18	76:2	Karen	lady
ipad	8:21 9:24	78:19	26:5,6,15	51:19
38:9,13,	14:22,24	79:1,22	32:6,21	late
15,17	15:12,23	81:11	35:10,12	24:7
41:25	16:2,9,	IXL's	36:8,11,	44:14,16,
ipad-	18,20,25	IXL-3790	23 37:8,	20,23
testing	17:7,16,	22:8	18,21	Latino
44:2	20,24		44:10	61:16,24
iphone	18:1,4,6,	J	59:16,20,	Latinos
81:7	10,19	Jeff	25 60:5,	61:20
Isidora	19:8	46:8	6,8,13	62:5
22:25	20:12	Jessica	Keyes	laughed
26:13	21:3	11:23	27:18	37:9
	25 22	13:4,14,	51:16,17	lawsuit
	26:7,23,	17 51:9	62:20	7:15
	25 27:3,7		63:9,16	
	28:22,23,			
	25 31:11,			

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: lead-in..message

10:10	legs	making	marked	19:14
lead-in	9:19	53:20	13:21,24	58:12
49:19	lengthy	69:21	22:18,22	medical
leading	77:24	70:14	27:9 29:9	19:3,9,
38:18	level	male	31:6	13,14
learn	50:8,12	61:6,8	34:14	28:1
55:19,21,	52:9	man	35:4 46:1	45:15,21
22	lines	58:19	47:18	72:3,4,
learning	18:17	68:10	56:14	17,18
7:16,18	21:9 69:7	manage	62:14	73:4,20
63:22	list	36:11,15	77:7	medically
leave	39:9	37:19	Marshal	8:19,23
15:12	long	management	42:20	medication
18:4	9:3,4,12	16:8 68:5	68:20	8:24
20:13	78:19	72:7	69:21	meet
21:3	79:13	manager	71:11	53:19
25:25	82:10	68:9	72:6,13	meeting
26:16	looked	managers	martial	42:16
28:12	42:11	76:11	26:21	44:15,17,
29:3 30:3	lunch	manner	math	21,24
47:9,10	25:8	58:6	16:11,14	68:9,12
50:2	lunchtimes	March	17:15	69:17
58:23	75:25	23:1	50:8,18	meetings
59:14		24:14	51:18	24:7
67:23,25	M	27:18,20	mathematics	members
68:1		28:6 31:9	16:10	24:9,10,
69:18,23	made	32:21	50:24	16 38:21,
70:4,23	7:23	34:4	51:2	23 39:1
71:2,4,	54:15,18	38:3,12	mathpa	memory
13,14,22	61:2	40:3	39:9	25:16
72:2,17,	70:14	41:23	matter	75:18
19 74:5,	maintained	42:8	6:22	mentioned
19,23,25	27:5	44:10,16,	matters	69:6
75:4	make	20,23	10:13	72:20,23
79:22	39:8 62:7	62:20	meaning	73:21
leaving	67:11	Marek	33:24	81:2
16:17,20	69:11	20:5	means	mentioning
18:8 28:2	78:16	34:19	19:19	64:6,8
left	makes	43:12	33:1,12	66:2
18:1 19:3	78:23	63:11	73:18	message
63:11		mark	78:9,11	55:1
legal		45:25	meant	57:21,24
73:6,14				

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: messages..objection

80:18	Mm-hm	11:23	59:18,22	noon...i'll
81:6	7:12 8:2	51:9 52:4	60:4,9,18	39:8
messages	14:15	54:12	65:25	normal
10:6 32:5	18:15	57:2	nemo	7:24
78:24	22:1 24:4	61:3,6,8,	6:16 24:5	note
messaging	25:10	15	32:12,23	47:4
31:18,22	29:14	Morse's	33:13	noted
55:6	32:9 34:5	54:22	35:12	33:8
57:18	35:8	motioned	36:11,14	notice
77:12	36:1,24	8:12	38:8 39:6	18:16
79:10	38:6	Movement	41:3,24	21:17
80:23	42:14	16:8	44:14	24:7
81:11	47:7	multiple	48:8	47:24
middle	48:13	24:8	57:1,18	48:2
32:8	49:25	34:10	80:14	noticed
35:11	50:6	79:25	Nemo's	26:18
44:13	57:3,14		24:9	60:10
Milin	59:21	N	Nina	number
22:25	60:14,16		11:23	52:13
26:13	68:3		13:1,14,	56:2
27:17	71:21	names	17 40:25	75:11
mind	77:17	51:13	41:1	numbering
19:15	82:1	national	51:11	46:9
33:3	mobilizes	67:21	54:19	numbers
minimal	15:20	75:4	57:1,18	46:10
24:7	moment	naturally	no'	
minimum	26:17	30:23	8:7	O
25:7	28:9,25	nature	nods	
minutes	29:15,23	11:7	7:21,25	Oakland
11:5	31:5	19:12	25:18	15:15,17
76:23	48:18	necessarily	non-intern	16:4,13,
mispronounc	80:3	20:20	52:14	17 17:5
e	Monday	64:7	53:13	object
7:1	28:2 39:7	needed	non-latino	19:25
missed	months	34:24	61:20,25	20:1,5
44:15,17,	21:13	46:23	non-sick	43:14
21	50:7	47:5	48:11,15	objection
missing	52:13	68:15	non-verbal	12:10,13
44:23	53:2,4,7,	71:13	8:9	15:4
Misstates	11	72:1 73:3	nonprofit	19:4,16
65:14	morning	negative	15:17	22:6,15
	29:19	20:18		
	39:7 48:4			
	Morse			

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: objections..plan

23:9	25:5,7	63:3	participate	periods
24:24	39:8	pages	d	79:13
28:14	60:23,24	22:23	76:2	person
29:5 30:4	82:7	23:10	peers	8:14
31:12,21	office...	56:18	20:20	65:13
33:2,8	around	57:7	38:21	68:10
34:9	28:3	paid	Penisarm	69:16
35:15,19	official	45:10	78:8,23	person's
36:18	27:12	53:24	Penner	33:3
37:4	one-page	54:4,11	26:5,6,15	personal
39:3,19	46:14	58:24	32:6,21	47:5,9,10
40:7 41:9	54:24,25	61:5,7,15	35:10	49:8
42:23	56:17	75:3	37:18	67:24
43:7,25	online	paper	44:11	68:6 80:7
44:3 45:3	65:21	78:7	59:17,20,	personally
49:14	Oops	papers	25 60:5,	30:12
50:10	40:21	12:23,24	6,9,13	57:25
55:12	open	paragraph	people	65:13
56:9	56:18	24:12	12:19,22	phalloplast
63:25	opportunity	25:3,9	50:9	y
65:14	82:20,21,	Pardon	51:23	78:12,19
67:14	24	45:24	52:1 56:2	phallus
69:25	opposed	part	76:16	78:16
70:5,15	69:22	18:5	perceived	phone
71:5,15	order	19:11	59:13	13:12
73:6,14	29:3	23:21	performance	58:1
74:8,14	org	24:18	21:15	81:3,6
77:24	15:20	25:21	23:2,6	phrased
80:20	organizatio	33:7	24:14	72:23
objections	n	40:23	28:11,19	phrasing
19:22	15:17	45:1	29:2 38:5	69:13
41:13	origin	58:2,7	39:17	picked
43:18	67:21	61:21	40:2	65:18
occasions	75:4	64:24	42:11,15,	place
24:8	originally	75:24	17,22	7:15
38:20	52:12	79:12	43:4,5	period
39:1	65:6,10	partial	period	58:22
occurred	p	49:13	71:10	Plaintiff
46:9		participate	81:17	7:17
offered		75:7	periodicall	plan
53:18		76:16	y	21:16
office			24:6	23:2,6
7:18				24:14
21:16				
	PA			

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: platform..quote

25:4,13, 21 28:11, 19 29:2 38:5,10 39:18 40:3 42:11,15, 17,22 43:5	poorly- framed 71:8 pop 29:15 position 16:9 52:18 72:7	68:4 pressured 67:23,25 primary 26:3 80:6 prior 21:12,13 22:11 37:10,11 39:17 40:2	project 32:7,13, 24 33:13, 16,18,21 38:17,22, 25 39:2 43:24 44:2 projects 32:14,16, 18 34:7 38:13,19, 21 64:23, 25 65:5, 7,8	66:7,11, 17 77:10, 18 79:20 putting 66:21 78:25
platform 80:19,23 play 55:8 56:7 75:12 76:3,6 played 43:5 playing 42:21 point 15:8 21:15 32:6 38:24 47:8 53:4,7,11 56:3 61:1 62:1 63:8,22 65:1,5,11 70:4,25 72:6,12 73:1,24 74:7 75:2 78:18 79:19,21 82:24 policy 59:14 political 15:21 poor 36:9	post 65:21 66:5,16, 25 77:18 posted 59:17 posting 65:25 66:9,11 postings 59:18 posts 59:22 60:1,5 power 15:21 practice 16:14 precisely 62:4 prefacing 21:25 prepare 10:15 present 34:19 preserved 12:14 pressure 30:14,17, 20 31:4	problem 19:9,13, 14 45:14, 19 procedure 48:23 49:2,3 proceeding 8:20 proceedings 43:12 63:11 produce 9:24 produced 22:9,10 77:10 producing 13:18 product 15:22 16:10 50:22 51:1 52:16 progressive 15:21	prob 37:8 promoted 52:14 promotion 52:8 promotions 52:7 provide 29:2,6 82:22 pull 27:13 35:7 pulled 27:16 punch 28:6 pursuant 9:24 put 22:6 23:8 37:23 41:22 46:4 47:22 54:24 62:17 63:19	question 9:2,3 12:15 20:1,6,7 23:17 25:17 31:15 33:11 36:25 40:23 41:16 49:23 55:13 58:4 61:21 71:8 72:11 questions 8:21 9:17 15:2 21:20 22:3 34:23 81:20 quick 46:8 quit 18:10 19:8 21:11 25:22 quitting 18:14 quote

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: raise..related

32:23	ready	22,24	received	18
35:13	79:22	46:18,19,	7:11 10:4	record's
47:5 55:7	reason	20,22,23	receiving	69:11
	8:19 9:3,	47:3,11,	23:5	records
R	5 14:11,	14 48:6,	24:13	22:8,10
	13 19:3	7,14,16	29:1	recruiter
raise	26:3 28:2	49:5	62:23,24	26:9
53:3,5,8	47:1	50:3,4	recess	redistribut
raises	72:18	54:14,17,	34:18	ed
52:21	73:4	23 55:4,	59:9	38:11
	reasonable	16,18	recipient	reduction
range	22:12	56:13	31:13	53:18,19
22:7,16	64:16	57:8,9,	41:10	reference
rank	reassigned	21,24,25	recognize	23:1 24:3
50:15	65:8	58:5,13	56:19,20	referenced
reached	reassignmen	59:3,12,	77:13	14:9 22:6
48:22	t	15,16,20,	recollectio	referencing
reacted	64:13	24,25	n	58:20
77:19	recall	60:3,4,7,	24:13	referred
Reactor	10:10,22	12,20,25	25:12	12:6
16:21	11:2 12:8	61:2,4,23	34:6	referring
read	13:3	62:3,4,5,	36:2,16	58:15
12:16,17	15:13	9,10,12,	37:1	68:25
20:9	18:6	23,24	49:7,12	82:19
24:12	21:6,7,	63:5,12,	53:12	reflect
25:9	10,17	15,17,18,	55:10	60:18
27:15	23:5,21	22 64:3,	60:8 66:4	refresh
30:8	26:17	6,7,14,	record	24:12
36:22	28:8,9,25	15,18	6:15 8:15	36:2,25
41:18	29:1,22,	65:20,23,	12:17	49:6
48:11	23 31:5	24 67:2,	19:23	55:10
55:2	32:2,13	3,8,22	20:9 22:8	refreshes
57:20	33:19,23,	68:4,8,11	23:9,11	25:12,16
59:1,2	25 34:3,	69:12,13,	30:8	rejected
60:9,17	11 35:20	19 70:24	34:16	49:21
64:4,5	36:20	72:24	41:18	50:1,3
73:12,13	37:6,17,	74:21	59:2,8,10	related
82:21,24	21 38:12,	75:1,6,	64:5	11:1 40:6
reading	14 39:4,	15,19	69:25	59:18
10:16	11,15	76:1	73:13	
25:11	40:14,17	78:4,17,	76:24	
60:4	41:19	21 79:17,	77:2,3,5	
65:20	42:9,18	19 80:3	81:24	
	44:18,19,	81:14,18	82:16,17,	
		receive		
		52:7		

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: relation..schedule

relation	33:18	resources	Richard	sales
21:10	39:25	67:12	51:14	59:18,23
63:9,10	43:2	respect	ride	Sanghvi
relationshi	rephrased	43:24	35:25	12:10
p	68:18	74:24	riding	15:4
27:5	reporter	75:1	35:18	19:4,16,
reliability	34:16	respond	rifle	20 21:22
24:3,9	83:1	7:25 8:5,	29:12	22:5 23:8
25:3,6	reporter's	13	righty	24:24
39:18	7:7	responded	14:3	28:14
40:6,13	represent	39:6	rings	29:5 30:4
43:23	7:18	46:16	23:22	31:12,21
44:7,8	represented	response	Rising	33:2,6
remember	10:12	8:9 27:20	15:15	34:9
13:10	request	30:1	16:5,13,	35:1,15,
51:19	28:6 47:4	35:12	17 17:5	19 36:18
66:2,6	49:21	48:8	role	37:4
70:18	50:1	53:17	25:24	39:3,19
81:15	60:5,6	58:10	32:17,19	40:7 41:9
remind	64:8	78:8,23	42:21	42:23
8:4 39:8	69:22	responsibil	43:5 63:9	43:7,25
remote	70:14	ities	room	44:3 45:3
63:23	74:18	50:19	7:6	46:8
repeat	requested	rest	round	49:14
11:15	28:24	29:18	72:5	50:10
20:7	47:13	48:3	row	55:12
28:15	49:13	57:20	79:25	56:9
30:6,7,18	53:19	restroom	rules	63:25
31:17	63:2,23	59:7	82:22	65:14
33:11	requesting	result		67:6,14
39:24	28:23	53:21	S	69:25
41:16,17	53:21	returning		70:5,15
49:16	70:3	64:17	salaries	71:5,15
58:4,25	requests	review	60:25	73:6,14
60:11	46:16	65:25	salary	74:8,14
64:1	require	66:5 67:4	50:19	77:4
66:10	71:2	82:13,14,	53:25	79:24
72:11	required	25	54:21,22	80:20
repercussio	29:2,6	reviews	60:22	81:22
ns	requires	60:9,18	61:3,15	82:19
21:1	25:5			satisfied
rephrase				64:22
9:6 15:25				schedule
				64:20

NEMO CUIRIL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: Scott..speculation

Scott	78:18,22	8:1	75:4	soooooo
7:16	79:10,19,	shared	sick...and	41:3
10:10,20,	22 80:18	18:21,23	41:4	sort
23 14:25	81:10,16	shitty	side	11:7 17:1
15:7,8,11	Scott's	58:15	20:1	24:15
24:19,22	43:3 78:8	show	22:13	52:10
27:1,17	screen	9:16	sign	65:6
32:6,7,	29:15	21:19	82:22	68:16
12,18,21	37:23	27:12	signed	75:25
33:13,21,	38:1	32:10	23:20	76:19
24 34:1,7	41:22	47:21	65:9	77:12,14
35:9,11,	46:5	77:9 79:4	similar	sorts
12,18,25	47:22	shown	16:1	52:13
36:3,10,	62:18	68:2	38:13	sound
14,17,23	77:10	sick	80:18	40:16
37:1,15,	seconds	15:12	sir	sounds
17,20	42:2	20:12	6:14	9:21 58:8
38:4,7,	send	21:2,8	43:22	speak
13,16	39:9	26:16	sitting	11:3
39:16	82:12,15	28:12	49:6	speaking
40:5,12,	83:1	29:3 30:3	66:7,13	41:12
25 41:3,	sending	41:5,7,25	79:12	specific
23,24	39:14	42:7	81:15	14:16
42:1,4,20	48:6	45:15,20	situation	31:23
43:23	sense	46:21	74:9	44:18
44:6,10,	30:21,24	47:9,10	six-page	45:23
13,19,22	31:1	48:10,15,	22:22	59:19
50:9 51:7	series	19,20,24	23:9	65:6
53:25	55:23	49:8,12,	slash	specificall
54:4,21	served	13,21	72:20	y
55:6,17,	7:18	50:2 55:8	Slightly	43:24
19,25	13:1,5,8	57:19	76:9	45:12
56:1,2,6,	14:17	59:13	snack	66:9
25 57:18,	15:2 82:6	67:24	34:22	71:25
22,25	serving	68:6,13,	social	specifics
58:5,23	12:24	14 69:1,	75:7	72:2,4
59:12	set	5,18,23	socially	73:4,19,
60:22	32:5	70:4,23	27:1	20
61:18,24	sets	71:2,4,13	softball	speculate
62:10	65:6	72:2,8,	76:3,7,11	24:25
63:3,19,	shakes	17,19		speculation
22 64:12,		73:3		33:3
15 65:21,		74:5,6,		
24 67:3		19,23,25		
70:19				
74:13,20				
77:18				

NEMO CURIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: spoke..testing

39:20	step	58:22	surgery	tasks
40:8	23:25	summers	58:24	24:11
41:10	24:1,3	37:10	63:24	38:18
43:8,15	25:3,4,6	supervise	64:13,17	65:7
73:7,15	stop	32:7,12,	79:2,23	team
spoke	9:18	23 33:13	sympathetic	24:9,10,
10:17,23,	story	supervised	30:13	16 38:21,
25 11:22	26:2	33:16,17,	system	23 75:19,
15:7	stretch	21 51:24	27:16	22 76:3,
sponsored	9:19	52:2,4		7,11,19,
75:8,20,	strike	supervising	T	20
21 76:1	9:22	38:16		teams
sporting	20:15	supervisor	tab	39:2
75:19	25:5,20	24:23	27:13	75:12,13
sports	28:17	26:11,13	taking	tech
75:12,13	37:15	29:24	7:15 21:8	17:7
76:15	47:25	32:13,15	24:20,23	62:11
spreadsheet	49:18	34:7	30:2 38:8	technology
s	63:21	67:20	45:15,20	16:8,14
77:25	subject	supervisors	48:24	17:17,19
standing	55:11	30:14	69:5	telling
22:5,15	62:21	31:2,4	71:22	59:12
79:12	subpoena	supervisory	talk	60:8
start	7:11,19	32:17,19	8:13,14	Ten
22:11	9:25 10:3	63:9	10:20	11:5
started	13:2,5	suppose	11:12	term
68:15	14:17	11:8	13:1,4,7,	78:13
starting	82:6	14:19	17 14:25	terms
44:13	subpoenas	20:17,25	15:11	50:19
state	13:8	23:20	26:15	testified
6:14 33:3	substance	26:1	35:1	15:9
43:18	16:1,3	32:19	37:15	testify
stated	sucks	45:22	talked	7:19
66:9	58:19	52:8,14	11:16,19,	testifying
status	79:14	65:9	25 39:11	13:15
52:14	suggestion	73:18	71:10	testimony
stayed	78:7	75:11	72:6,12	8:8 65:15
53:22	suggestions	76:9,14,	talking	66:8
staying	78:6	16 80:25	10:10,15	testing
78:19	summer	supposed	32:7	38:9,13,
	37:9	35:25	37:17,20	15 41:25
		48:24	42:1 55:6	
			57:25	

NEMO CUIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: text..vacation

42:5	18:13	82:11	transcribin	50:17,21
62:21	21:17		g	64:11
63:2	22:12	times	7:7	66:12,14,
text	23:6	34:10		23 72:15
80:18	24:20,23	79:25	transcript	74:2
81:5,11	25:13	tiring	7:22	77:21
	28:23,24	79:12	82:2,13,	82:4
texting	29:24	tissue	23	
79:10	30:5	78:15	transgender	uh-huhs
80:23,25	31:11		55:19	8:3
thing	33:15,17,	title	transition	uncertainty
9:14 13:4	19 36:3,7	16:4	53:13,15	24:8
80:17	37:2	52:9,10		
things	38:8,24	today	treated	unclear
7:7 8:3	39:19	7:23 9:24	76:8	23:10
12:20,23	43:1	22:7,11	treatment	understand
18:7	45:10,18	39:7	76:5,18	8:17,20
21:20	46:16	41:25		9:4
30:22	47:4,6,8,	44:14	truthfully	14:11,13
43:14	9,10,12	48:10	8:21,25	31:15
55:23,24	49:8,9,	49:6	turn	65:19
76:1,24	14,24	66:7,13	48:21	70:25
77:25	53:7,11	68:4	two-minute	73:24
81:14	56:6	81:15	76:25	understandi
thinking	57:15,19	today's	type	ng
34:4	58:2,7,22	14:7	16:24	72:9
51:23	59:19	toilet	31:10,16,	unlike
thinks	61:22	78:7	18,20	7:24
37:8	63:8,23,	told	56:20	unlimited
thought	25 64:18	18:6,13	64:25	45:10
29:19	65:1,11	30:21	typical	57:19,20
48:4	66:18	64:15	62:11	upright
throwing	67:24	65:24		79:12
41:12	68:6	66:5	U	urgent
thumb	69:20	tonight...		24:11
23:7	70:4,25	i'm	Uh-huh	
time	71:6,10,	41:5	19:24	v
8:21 9:9	17 72:1,	totally	23:24	
10:9,23,	12 73:1,	58:19	25:16	vacation
25 11:22	11,24	tough	28:21	38:8
12:6	74:7	36:14	32:22,25	39:9,14
14:20,21	75:2,3	trans	33:20	58:2,7
15:4,8	78:18	55:9	40:4	75:3
	79:12,13,		45:22	
	14,20,21			
	81:17			

NEMO CUIREL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: vague..zooming

vague	77:4	34:17,20	72:13	worth
15:4		35:16,22		58:19
28:14	waiting	36:21	work	
29:5 30:4	82:20	37:7	17:3,4	wrist
31:21	wanted	39:5,22	24:6	26:19
35:19	57:7	40:10	28:12	write
36:18	water	41:11,14,	29:17	60:1 78:6
39:19	34:15,21	17,20	35:18	
42:23	59:4	42:24	39:2	writes
43:25		43:9,13,	44:17,20	48:8
44:3 45:3	ways	21 44:1,4	45:7,17,	writing
49:14	81:9	45:5	22 47:25	16:14
55:12	week	46:3,11,	48:3,25	28:1,5,8
56:9	11:24	13 47:20	49:21	29:22
58:15	28:11,20	49:17	50:2	
60:3	38:8,10	50:13	63:23	written
63:25		55:15	64:13,17,	7:22
67:14	weekly	56:11,16	20	wrote
71:5,15	44:15,17,	59:1,6,	work-at-	17:15
74:14	21,23	10,11	home	27:20
80:20	weeks	62:16	49:9	63:16
	10:24	63:14	workday	66:24
Vaguely	18:20	64:2,4,9	28:3	67:2 78:6
25:19	21:13,14	65:16		Wu
verbally		67:10,16	worked	11:23
7:25 8:5	weeks'	70:1,7,17	15:12	40:25
	18:16	71:7,18	17:7,19	41:1
verificatio	WILSON	73:8,12,	32:15,18	51:11
n	6:13	16 74:11,	34:8	54:19
72:16	12:12,16,	17 77:3,8	44:25	57:1
74:19	21 13:23	80:1,22	working	
versus	15:5	81:19,23	14:22,24	y
49:8	19:7,17,	82:2,5,8,	15:14	
view	22,25	10,18	17:7 19:9	
73:2,19	20:5,8,11	83:3	24:17	year
74:7	21:23	wondering	26:16	12:4 53:1
	22:2,17,	38:8	27:3 30:2	54:8
voluntarily	20 23:12,	word	33:22	years
18:10	15,18	25:14	35:13	76:12
vote	25:2	wording	38:12	yes'
15:21	27:11	69:7,13	48:21	8:6
	28:16	72:24	51:2	
	29:11	words	64:7,22	z
W	30:7,10	60:17	workplace	
	31:8,14,	71:19	27:1 76:5	zooming
wait	24 33:4,			
8:13 41:3	8,9			

NEMO CUIEL
U.S. EEOC vs IXL LEARNING

April 17, 2018
Index: ..zooming

77:15

Exhibit Z



Isidora Milin

San Francisco Bay Area | E-Learning

275
connections

Current	IXL Learning
Previous	IXL Learning, University of Illinois at Urbana-Champaign, Tel Aviv University
Education	Stanford University

Exhibit AA

ROBERTA L. STEELE, SBN 188198 (CA)
 MARCIA L. MITCHELL, SBN 18122 (WA)
 AMI SANGHVI, SBN 4407672 (NY)
 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
 San Francisco District Office
 450 Golden Gate Avenue, 5th Fl. W, POB 36025
 San Francisco, CA 94102
 Telephone No. (415) 522-3071
ami.sanghvi@eeoc.gov

Attorneys for Plaintiff EEOC

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

vs.

IXL Learning, Inc.,

Defendant.

Case No.: 17-cv-02979

COMPLAINT

Civil Rights – Employment Discrimination

DEMAND FOR A JURY TRIAL

NATURE OF THE ACTION

Plaintiff United States Equal Employment Opportunity Commission (EEOC) brings this action pursuant to Title VII of the Civil Rights Act of 1964, Title V of the Americans with Disabilities Act, and Title I of the Civil Rights Act of 1991 to correct the unlawful employment practice of retaliation. The EEOC alleges that Defendant, IXL Learning, Inc., discriminated against its former employee, Charging Party Adrian Scott Duane, by terminating his employment for engaging in protected opposition activity. The EEOC seeks to provide appropriate relief to Charging Party and seeks injunctive relief against Defendant.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§451, 1331, 1337, 1343, and 1345.
2. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII, 42

U.S.C. § 2000e-5(f)(1) and (3) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3. This action is also authorized and instituted pursuant to Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

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

PARTIES

5. Plaintiff Equal Employment Opportunity Commission (EEOC) is the federal agency charged with the administration, interpretation, and enforcement of Title VII and Title I of the ADA, and is expressly authorized to bring this action pursuant to 42 U.S.C. § 2000e-5(f)(1) and (3) and 42 U.S.C. § 12117(a) (incorporating by reference Section 706 (f)(1) and (3) of Title VII).

6. At all relevant times, Defendant IXL Learning, Inc. (IXL) has been headquartered in San Mateo, California and has had another office in North Carolina. IXL has at all relevant times engaged in an industry affecting commerce within the meaning of Section 701(h) of Title VII, 42 U.S.C. § 2000e(h) (incorporating by reference Section 2(c) of the Labor Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 et seq.) and Sections 101(5) and 101(7) of the ADA, 42 U.S.C. §§ 12111(5) and (7). Defendant has employed well over fifteen people for at least twenty calendar weeks in the current or preceding year, and is therefore an "employer" under 42 U.S.C. § 2000e(b).

7. At all relevant times, IXL has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

ADMINISTRATIVE PROCEDURES

8. More than thirty (30) days prior to the initiation of this lawsuit, Adriane Scott Duane filed a charge of discrimination with the EEOC alleging, *inter alia*, that IXL discriminated against him in violation of the retaliation provisions of Title VII and the ADA.

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

3 10. On June 22, 2016, EEOC invited IXL to join with the EEOC in informal methods of
4 conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

5 11. The EEOC communicated with IXL to provide IXL the opportunity to remedy the
6 discriminatory practices described in the Letter of Determination.

7 12. The EEOC was unable to secure from IXL a conciliation agreement acceptable to the
8 Commission.
9

10 13. On July 28, 2016, the EEOC issued a Notice of Failure of Conciliation.

11 14. All conditions precedent to the initiation of this lawsuit have been fulfilled.

12 **STATEMENT OF CLAIMS**

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

14 16. During his employment, Duane perceived IXL's workforce as almost entirely White or
15 Asian. He discussed with coworkers his impressions about the culture at IXL being unwelcoming to
16 employees who are not White or Asian American, who are not able-bodied, and who do not fit into
17 neat categories of gender identity, orientation, and expression.
18

19 17. Throughout his employment, employees probed Duane with inappropriate questions about
20 his gender identity and orientation. On at least one occasion, after seeing scars on Duane's chest, an
21 employee asked another co-worker if Duane used to be a girl. Similarly, upon learning that Duane
22 was in a relationship with a woman, a co-worker asked Duane if it was his first time dating a
23 woman.
24

25 18. IXL provided employees with unlimited sick leave as a benefit of employment.

26 19. In July 2014 Duane notified his supervisor about the need for approximately 6-8 weeks of
27 leave for a surgery in November.
28

1 20. In September 2014, IXL approved Duane's disability leave and processed the necessary
2 paperwork for California State Disability Insurance benefits.

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

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

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

9 24. At the conclusion of his leave, Duane developed post-operative complications, which
10 required rest in order to effectuate a full recovery.

11 25. Duane requested a 50% remote work arrangement in order to accommodate his recovery.
12 Duane's manager resisted providing the accommodation and instead suggested that Duane take
13 additional leave until he was able to return.

14 26. Duane informed IXL that he consulted with an employment attorney who advised that
15 remote work requests because of a medical condition qualified as a reasonable accommodation
16 under the Americans with Disabilities Act.

17 27. After Duane's self-advocacy, IXL relented and allowed Duane to work from home 50% of
18 the time. IXL informed Duane that it planned to set up a system to monitor his remote work
19 progress.

20 28. Duane provided a note from his surgeon supporting his reasonable accommodation request.
21 The surgeon advised that Duane work remotely for at least four more weeks for postoperative
22 healing.

23 29. IXL presented Duane with a detailed remote work plan upon Duane's return to work on
24 December 30, 2014. That day Duane learned that at least two other employees were permitted to
25
26
27
28

1 work remotely between 50% and 100% of the time and were not subject to such a detailed remote
2 work arrangement. Duane understood that these employees were cisgender, heterosexual, and non-
3 disabled.

4 30. That evening Duane posted a message on Glassdoor.com, a jobs recruiting and ratings
5 website, which stated, in relevant part: “There are no politics if you fit in. If you don’t –that is, if
6 you’re not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who
7 really likes softball – then you’re likely to find yourself on the outside. Treatment in the workplace,
8 in terms of who gets flexible hours, interesting projects, praise, promotions, and a big yearly raise, is
9 different and seems to run right along these characteristics.” Duane also posted “[m]ost
10 management do not know what the word ‘discrimination’ means, nor do they seem to think it
11 matters.”
12

13 31. On January 6, 2015, Duane directly reported, in a meeting with his supervisor, his concerns
14 about experiencing discrimination in the workplace. The supervisor promised to alert the CEO
15 about Duane’s complaints.
16

17 32. On January 7, 2015, CEO Paul Mishkin emailed Duane to set up a meeting for January 8,
18 2015 to discuss his discrimination complaints.

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

23 34. On January 7, 2015, CEO Mishkin decided to fire Duane the following day.

24 35. On January 8, 2015, Duane met with CEO Mishkin and outlined the concerns he had about
25 discrimination.

26 36. During the meeting, CEO Mishkin confronted Duane about the Glassdoor.com post. After
27 confirming that Duane had written the post, CEO Mishkin terminated Duane’s employment.
28

37. IXL admits that the reason for terminating Duane was the December 30, 2014 post on Glassdoor.com

38. IXL retaliated against Duane by terminating him for engaging in legally protected employment activities by publicly posting on a website his opposition to discrimination at IXL in violation of the Title VII and ADA retaliation provisions. 42 U.S.C. §§ 2000e-3(a), 12203(a).

39. As a direct and proximate result of IXL's violation of 42 U.S.C. §§ 2000e-3(a) Duane suffered actual damage, including but not limited to losses in compensation and benefits, humiliation, emotional distress, and loss of enjoyment of life.

40. As a direct and proximate result of IXL's violation of 42 U.S.C. §12203(a) Duane suffered actual damage, including but not limited to losses in compensation and benefits.

41. IXL's unlawful actions were intentional, willful, malicious, and/or done with reckless disregard for Duane's federally protected rights.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

- A. Issue a permanent injunction prohibiting IXL, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them from retaliating against employees who have reasonably engaged in activities protected by Title VII based on a reasonable and good faith belief that the conduct opposed is, or could become, unlawful.
- B. Issue a permanent injunction prohibiting IXL, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them from retaliating against employees who have reasonably engaged in activities protected by the ADA based on a reasonable and good faith belief that the conduct opposed is, or could become, unlawful.
- C. Order IXL to institute and carry out policies, practices, and programs which allow employees to engage in protected activity, and which eradicate the effects of its past and present unlawful employment practices.

D. Order IXL to make Duane whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

E. Order IXL to make Duane whole, by providing compensation for past and future nonpecuniary losses resulting from the unlawful retaliation complained of in paragraphs 30 to 38 above, including emotion pain, suffering, inconvenience, loss of enjoyment of life, and humiliation.

F. Order IXL to pay Duane punitive damages for its malicious and reckless conduct, as described in paragraphs 30 to 38 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

DEMAND FOR A JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

Dated: May 24, 2017

/s/ Roberta L. Steele
ROBERTA STEELE
Regional Attorney

Dated: May 24, 2017

/s/ Marcia L. Mitchell
MARCIA L. MITCHELL
Supervisory Trial Attorney

Dated: May 24, 2017

/s/ Ami Sanghvi
AMI SANGHVI, Senior Trial Attorney
Equal Employment Opportunity Commission
San Francisco District Office
450 Golden Gate Avenue, 5th Fl. W., POB 36025
San Francisco, CA 94102

Attorneys for Plaintiff

Exhibit BB

DAVID MAREK, SBN 290686
 THE MAREK LAW FIRM, INC.
 228 Hamilton Avenue
 Palo Alto, California 94301
david@marekfirm.com
 917-721-5042

Attorney for Plaintiff-Intervenor

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

ADRIAN SCOTT DUANE,

Plaintiff-Intervenor,

vs.

IXL Learning, Inc.,

Defendant.

Case No.: 17-cv-02979 (VC)

COMPLAINT IN INTERVENTION

Civil Rights – Employment Discrimination

DEMAND FOR A JURY TRIAL

NATURE OF THE ACTION

Plaintiff-Intervenor, Adrian Scott Duane, intervenes in this action commenced by the U.S. Equal Employment Opportunity Commission (“EEOC”). The EEOC asserted claims pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), Title V of the Americans with Disabilities Act (the “ADA”), and Title I of the Civil Rights Act of 1991 (“Title I”) that Defendant IXL Learning, Inc. (“IXL”) discriminated and retaliated against its former employee, Duane, by terminating his employment for engaging in protected opposition activity. Duane hereby asserts claims against IXL arising from the same conduct under Title VII, the ADA, and the California Fair Employment and Housing Act (“FEHA”).

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1367. Section 1367 provides

1 that, “Such supplemental jurisdiction shall include claims that involve joinder or intervention of
2 additional parties.”

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

5 **PARTIES**

6 3. Plaintiff Equal Employment Opportunity Commission (EEOC) is the federal agency charged
7 with the administration, interpretation, and enforcement of Title VII and Title I of the ADA.
8

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

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

14 **ADMINISTRATIVE PROCEDURES**

15 6. Duane has exhausted all of his administrative remedies required to bring his claims under
16 Title VII, ADA, and FEHA.
17

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

21 8. On April 22, 2016, the EEOC issued a Letter of Determination finding reasonable cause to
22 believe that IXL violated the retaliation provisions of Title VII and the ADA.
23

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

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

26 **FACTUAL ALLEGATIONS**

27 11. Duane, a transgender man, began working for IXL as a Product Analyst in July 2013.
28

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

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

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

11 15. In July 2014 Duane notified his supervisor, David Keyes, about the need for approximately
12 6-8 weeks of leave for a surgery in November.

13 16. In September 2014, IXL approved Duane's disability leave and processed the necessary
14 paperwork for California State Disability Insurance benefits.
15

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

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

20 19. For approximately six weeks prior to his leave, IXL permitted Duane to work remotely so he
21 could attend weekly pre-operation appointments.
22

23 20. Duane started approximately eight weeks of approved short-term disability leave on October
24 30, 2014 in order to undergo and recover from gender confirmation surgery.

25 21. At the conclusion of his leave, Duane developed post-operative complications, which
26 required rest in order to effectuate a full recovery, and made it challenging to be out of his home for
27 long periods of time.
28

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

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

7 24. Keyes immediately forwarded Duane's December 23, 2014 email to Maricela Prado and
8 Lenore Ockerberg, IXL human resources representatives. On or around December 23, 2014,
9 Duane's December 23, 2014 email was also forwarded to Paul Mishkin, IXL's CEO, and then
10 shortly after forwarding this email Keyes discussed Duane's allegations with Mishkin.

11 25. On December 29, 2014, Duane provided a note from his surgeon supporting his reasonable
12 accommodation request. The surgeon advised that Duane work remotely for at least four more
13 weeks for postoperative healing. This note was on the letterhead of Brownstein & Crane Surgical
14 Services and included the website www.brownsteincrane.com. Brownstein & Crane's websites
15 immediately identifies itself as "Gender Surgery in San Francisco." The entire website announces
16 the medical practice's specialty of providing transgender surgeries.

17 26. After Duane's self-advocacy, IXL relented and allowed Duane to work from home 50% of
18 the time.

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

24 28. That evening Duane posted a message on Glassdoor.com, a jobs recruiting and ratings
25
26
27
28

1 website, which stated, in relevant part: “There are no politics if you fit in. If you don’t –that is, if
2 you’re not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who
3 really likes softball – then you’re likely to find yourself on the outside. Treatment in the workplace,
4 in terms of who gets flexible hours, interesting projects, praise, promotions, and a big yearly raise, is
5 different and seems to run right along these characteristics.” Duane also posted “[m]ost
6 management do not know what the word ‘discrimination’ means, nor do they seem to think it
7 matters.”
8

9 29. During Duane’s employment at IXL, IXL encouraged employees to use Glassdoor – a
10 service that IXL paid for and closely monitored – as a means to communicate with employees,
11 potential employees, and management. For instance, by email dated February 24, 2014, Prado
12 instructed IXL employees, including Duane, to “take a moment to login to Glassdoor.com and post
13 some comments about your work experience.” At IXL events, CEO Mishkin had also orally
14 instructed IXL employees to do the same.
15

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

18 31. On January 6, 2015, Duane directly reported, in a meeting with Keyes, his concerns about
19 experiencing discrimination in the workplace. Keyes promised to alert the CEO about Duane’s
20 complaints.
21

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

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

27 34. On January 8, 2015, Duane met with CEO Mishkin and outlined the concerns he had about
28

1 discrimination.

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

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

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

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

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

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

14 40. IXL has at all relevant times engaged in industry affecting commerce within the meaning of
15 Section 701(h) of Title VII, 42 U.S.C. § 2000(e)(h).
16

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

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

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

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

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

SECOND CAUSE OF ACTION
(Violation of ADA)

46. Duane repeats and realleges the allegations contained herein.

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

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

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

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

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

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

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

THRID CAUSE OF ACTION
(Violation of FEHA Gov. Code § 12940(h) and (m))

54. Duane repeats and realleges the allegations contained herein.

1 55. Government Code § 12940(h) provides that it is unlawful to retaliate against a person
2 “because the person has opposed any practice forbidden under [Government Code §§ 12900 through
3 12966] ...”

4 56. Duane is a “person” under Gov. Code § 12925(d).

5 57. IXL is an “employer” under Gov. code § 12926(d).

6 58. As alleged herein, IXL violated FEHA by terminating Duane’s employment for opposing
7 IXL’s employment practices forbidden under FEHA, including his opposition to IXL’s
8 discriminatory employment practices and his opposition to IXL’s failure to accommodate. Duane
9 opposed these practices by engaging in legally protected employment activities, including
10 complaining to his manager in email and in a meeting, and publicly posting his opposition on
11 Glassdoor.
12

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

14 60. As a proximate result of IXL’s violation of the FEHA, Duane has suffered substantial losses,
15 including lost back pay with prejudgment interest, in amounts to be determined at trial, and other
16 affirmative relief necessary to eradicate the effects of IXL’s unlawful employment practices,
17 including attorneys’ fees and costs.
18

19 61. Duane also seeks an award of compensation for past and future nonpecuniary losses resulting
20 from the unlawful retaliation complained of herein, including emotional pain, suffering,
21 inconvenience, loss of enjoyment of life, and humiliation.
22

23 62. Duane also seeks an award of punitive damages for IXL’s malicious and reckless conduct, as
24 described herein, in amounts to be determined at trial.
25
26
27
28

PRAYER FOR RELIEF

Wherefore, Duane respectfully requests that this Court:

- A. Order IXL to make Duane whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- B. Order IXL to make Duane whole, by providing compensation for past and future nonpecuniary losses resulting from the unlawful retaliation complained of herein, including emotion pain, suffering, inconvenience, loss of enjoyment of life, and humiliation.
- C. Order IXL to pay Duane punitive damages for its malicious and reckless conduct, as described herein, in amounts to be determined at trial.
- D. Grant such further relief as the Court deems necessary and proper in the public interest.
- E. Award Duane his attorneys' fees and the costs of this action.

DEMAND FOR A JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff requests a jury trial on all questions of fact raised by its complaint.

Dated: December 21, 2017

THE MAREK LAW FIRM, INC.

By: /s/ David Marek

David Marek

228 Hamilton Avenue

Palo Alto, California 94301

(917) 721-5042

david@marekfirm.com

Attorney for Intervenor-Plaintiff