

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

IXL LEARNING, INC.,

Defendant.

Case No. [17-cv-02979-VC](#)

**ORDER RE CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 68, 70

1. There is a genuine factual dispute about whether IXL's decision to fire Duane was in retaliation for his complaints about discrimination at the company. Duane complained about discrimination in the Glassdoor.com post, and there is evidence that IXL fired him because of the post. Although IXL argues that its decision to fire Duane was based on other parts of the post, which were generally critical of IXL but did not complain of discrimination, this is an issue for a jury to decide. It is also for a jury to decide whether Duane had an objectively reasonable, good faith belief that IXL engaged in discrimination; on this record, a reasonable jury could conclude that he did. Therefore, IXL's motion for summary judgment on the Title VII retaliation claim is denied.

2. For the reasons stated in the Order Granting Motion to Intervene, Duane's state-law FEHA claim is barred by the doctrine of claim preclusion. Dkt. No. 40. To summarize, IXL waived the right to assert that Duane was barred by the prior dismissal with prejudice from intervening in the EEOC's lawsuit to pursue the claims the EEOC was asserting, but it did not waive the right to assert that Duane was barred from asserting additional claims. And because the prior dismissal with prejudice by definition bars Duane from asserting the FEHA claim, he may not assert it here. IXL's motion for summary judgment on this claim is therefore granted. This renders moot IXL's argument that the FEHA claim is time barred.

3. The motion for summary judgment by the EEOC and Duane is granted as to IXL's affirmative defense of failure to mitigate damages. IXL did not present any evidence that there were suitable positions available which Duane could have discovered but failed to discover. *See E.E.O.C. v. Farmer Bros. Co.*, 31 F.3d 891, 906 (9th Cir. 1994).

4. The motion for summary judgment by the EEOC and Duane on IXL's remaining affirmative defenses is granted because IXL abandoned them in response to the motion. IXL's request for alternative relief regarding remedies is denied as premature.

IT IS SO ORDERED.

Dated: September 21, 2018



VINCE CHHABRIA
United States District Judge