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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and

ADRIAN SCOTT DUANE,

Plaintiff Intervenor,

vs.

IXL Learning, Inc.,

Defendant.

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

**ERRATA: AMENDED JOINT
TRIAL EXHIBIT LIST**

Trial Date Re: October 22, 2018
Courtroom Re: 4, 17th Floor
Judge Re: Hon. Vince Chhabria

Pursuant to this Court's Standing Order for Civil Trials, No. 17, the parties hereby submit their Amended Joint List of Trial Exhibits, attached hereto and incorporated herein.

Respectfully submitted,

Dated Re: October 16, 2018

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

By: /s/ Ami Sanghvi
AMI SANGHVI, Senior Trial Attorney
Attorney for Plaintiff EEOC

Dated Re: October 16, 2018

THE MAREK LAW FIRM

By: /s/ David Marek
DAVID MAREK
Attorney for Plaintiff-Intervenor Duane

Dated Re: October 16, 2018

YOUNG BASILE HANLON & MACFARLANE, PC

By: /s/ Jeffrey D. Wilson
JEFFREY D. WILSON
Attorney for Defendant

LOCAL RULE 5-1(i)(3) ATTESTATION

I, Ami Sanghvi, am the ECF User whose ID and password are being used to file the Joint Proposed Jury Instructions. In compliance with Local Rule 5-1(i)(3), I hereby attest that David Marek and Jeffrey Wilson concurred in this filing

Dated Re: October 16, 2018

/s/ Ami Sanghvi
AMI SANGHVI, Senior Trial Attorney

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
003	Gary Yee, McCreaE, gchat exchanges re Scott Duane using comp. computer for personal use	IXL-0797-IXL-0798	Background; Duane	PLTFS: FRE 401, 402, 403; 404(b)	Relevant (not outweighed by 403 prejudice) as to Duane's background. Plaintiffs do not explain why this evidence would be unfairly prejudicial.	
005	Mattison/Gu email re Bland hire and telework costs (5/19/2014)	IXL-0785	Kate Mattison or Jennifer Gu: Mr. Duane's Reasonable belief	DF: 401; 403	Relevant to showing IXL willingness to hire Bland despite remote work arrangement.	
006	Duane Performance Evaluation (7/10/13-9/12/13)	IXL-1367-IXL-1368	Kate Mattison: Background			
007	Duane Performance Evaluation (7/10/13-11/6/13)	IXL-1375-IXL-1377	Kate Mattison or A. Scott Duane			
008	Mattison/Keyes email string re Duane 60-day performance review (11/1/2013)	IXL-1373	Kate Mattison: Background			
011	Keyes/Mattison email re Math PA team raise eligibility (Duane) (11/20/2014)	IXL-1627-IXL-1628	David Keyes or Kate Mattison: Background			
012	Duane/Keyes email re notice of February 2014 leave	IXL-1388	A. Scott Duane: Reasonable belief			
013	Mattison/Keyes discussion re Duane accommodation request (12/22/2014)	IXL-0817	David Keyes: Mr. Duane's reasonable belief			
014	David Keyes, Kate Mattison gchat exchanges req meeting re	IXL-0818	Background; Reasonable Belief; Office			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	Adrian Scott Duane		Action; Duane; Keyes; Mattison			
015	Keyes/Mattison email forwarding Prado/Mishkin email (1/7/2015)	IXL-1677-IXL-1684	A. Scott Duane: Causal link			
017	Employee Benefits Handbook (January 2013)	IXL-1284-IXL-1322	Maricela Prado: Background			
021	Adrian Scott Duane, Jeremy Murphy gchat exchanges re medical leave	IXL-0806-IXL-0807	Background; Reasonable Belief; Duane; Murphy			
022	Jeremy Murphy gchat with Jessica Morse asking how she feels about Adrian Scott Duane's termination.	IXL-0837-IXL-0839	Background; Murphy			
023	Duane/Prado email string re meeting for medical leave and disability pay (09/23/14 - 09/30/14)	IXL-1603-IXL-1606	A. Scott Duane: Mr. Duane's reasonable belief			
024	Lenore Ockerberg, Maricela Prado gchat exchanges re Scott Duane	IXL-0808-IXL-0809	Background; Reasonable Belief; TBD			
025	Lenore Ockerberg, Maricela Prado gchat exchanges re Scott Duane request work return	IXL-0815-IXL-0816	Background; Reasonable Belief; Request for Accommodation; Duane; TBD			
029	Prado/Mishkin email with Duane Glassdoor post (1/7/2015)	IXL-1666-IXL-1673	PLTFS: Maricela Prado: Causal link			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
			DF: Office Action; Keyes; Mishkin			
030	Email from Penner to Prado re: Glassdoor Review - Scott Duane	IXL-1685-IXL-1687	Reasonable Belief; Office Action; Duane; Prado; Mishkin; keyes	PLTFS: FRE 401, 402, 403, 802, 805.	This is a copy of the Glassdoor post itself, with comments from Penner about the identity of the author, which is not in dispute. Unclear what Plaintiffs are objecting to.	
031	Prado/Mishkin email string re Duane Glassdoor post (1/7/2015)	IXL-1688-IXL-1695	PLTFS: Maricela Prado: Causal link DF: Background; Reasonable Belief; Duane			
037	Isadora Milin to Adrian Scott Duane stating that skills ask students to add 8-10 decimals with 3 decimals places with a sad face. Adrian Scott Duane responds sarcastically "what, you don't think forcing them into drudgery will make them love math?"	IXL-0802	Background; Reasonable Belief; Duane			
038	Scott Duane, Isadora Milin gchat exchanges requesting meeting about project	IXL-0824-IXL-0825	Background; Duane			
039	Duane 2014 Performance	IXL-1674-IXL-1675	David Keyes: Background			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	Review (1/7/2015)					
040	Keyes notes re Duane performance (Jan 2014 - Dec 2014) (01/06/2015)	IXL-1715-IXL-1717	PLTFS: David Keyes: Mr. Duane's Reasonable belief DF: Background; Duane			
042	Keyes/Lenox email re Duane peer review (11/17/2014)	IXL-1626	David Keyes: Background			
043	Kent/Xia/Keyes email string re Duane peer reviews (11/20/2014)	IXL-1629-IXL-1630	David Keyes: Background			
044	David Keyes, Kate Mattison gchat exchanges re Scott Duane leave	IXL-0804	Background; Reasonable Belief; Duane; Request for Accommodation; Keyes; Mattison			
051	Gina Bland, David Keyes g-chat re Adrian Scott Duane termination asking if Gina had heard and David states will be speaking with everyone personally about termination.	IXL-0831-IXL-0832	Background; Office Action; Keyes			
053	Welcome to IXL slides (1/9/2014)	IXL-1394-IXL-1464	Maricela Prado: Mr. Duane's Reasonable belief			
055	List of terminated employees (Undated)	IXL-1240	Paul Mishkin: Pretext	DF: 401; 403	Relevant to HR instability and goes to pretext	

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
059	Penner/Coulon/Davis email forwarding negative Glassdoor review (5/22/2015)	IXL-1828	Paul Mishkin: Pretext	DF: 401; 403; 802; subject to MIL	Relevant to punitive damages, injunctive relief; <i>see also</i> Pltfs Opp to Def. MIL No. 4.	
061	Penner/Mishkin/Ockerberg email string re negative Glassdoor reviews & engagement campaign (07/30/13 - 07/31/13)	IXL-1349	Paul Mishkin: Pretext			
066	EEOC's Determination	EEOC_0001-EEOC_0002	Office Action; Reasonable Belief; Duane; Mishkin	PLTFS: FRE 401, 402, 403; 802; subject to Pltfs. MIL No. 1 [ECF No. 94.]		
068	Mishkin/Duane email re discrimination complaint and 1/8 meeting (1/7/2015)	IXL-1663	PLTFS: Paul Mishkin and A. Scott Duane: Pretext DF: Reasonable Belief.; Request for Accommodation; Duane; Mishkin			
069	IXL/Sequoia Service agreement to Provide Employee Benefits (11/22/2010)	IXL-3547-IXL-3548	Maricela Prado: background			
071	Welcome to IXL slides (Undated)	IXL-2084-IXL-2154	Maricela Prado: Background			
076	Employee Benefits (January 2015)	IXL-3438-IXL-3469	Maricela Prado: Damages			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
078	The Welcome Program slides (05/20/2013)	IXL-2161-IXL-2210	Maricela Prado: Background			
079	Prado/Costantini email string re 2014 401K plan (12/19/14 - 12/22/14)	IXL-3409-IXL-3411	Maricela Prado: Damages			
080	Duane media post re other IXL remote workers and responding posts (12/30/14 7:15:40 p.m.)	EEOC_0233-EEOC_0236	A. Scott Duane: Reasonable belief	DF: 401; 403; 802	Not hearsay because not offered for the truth of the matter asserted. FRE 801(d)(1)(B). Alternatively, subject to the following hearsay exceptions: FRE 803(1); 803(3)	
081	Duane media post re accommodation request and responsive posts (12/23/14 7:52:44 p.m.)	EEOC_0237	A. Scott Duane: Reasonable belief	DF: 401; 403; 802	Not hearsay because not offered for the truth of the matter asserted. FRE 801(d)(1)(B). Alternatively, subject to the following hearsay exceptions: FRE 803(1); 803(3)	
082	Duane media post relaying HR medical questions, with responding posts (09/30/14 3:27:44 p.m.)	EEOC_0241-EEOC_0243	A. Scott Duane: Reasonable belief	DF: 401; 403; 802	Not hearsay because not offered for the truth of the matter asserted. FRE 801(d)(1)(B). Alternatively, subject to the following hearsay exceptions: FRE 803(1); 803(3)	
083	App Academy Job Search Agreement (5/13/2015)	EEOC_0539-EEOC_0540	A. Scott Duane: Damages			
084	App Academy offer of employment (12/14/2015)	EEOC_0605	A. Scott Duane: Damages			
085	App Academy Bootcamp admission (5/7/2015)	EEOC_0624-EEOC_0625	A. Scott Duane: Damages			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
086	Duane 2015 W-2 (2015)	EEOC_0712	A. Scott Duane: Damages			
087	2014 EEO-1 Report (2014)	EEOC_0724	A. Scott Duane: Reasonable belief	DF: 401; 403	Public record supports Duane's observations about workplace demographics	
088	2015 EEO-1 Report (2015)	EEOC_0725	A. Scott Duane: Reasonable belief	DF: 401; 403	Public record supports Duane's observations about workplace demographics	
089	2016 EEO-1 Report (2016)	EEOC_0726	A. Scott Duane: Reasonable belief	DF: 401; 403	Public record supports Duane's observations about workplace demographics	
090	Glassdoor posts (1/14/2018)	EEOC_0727- EEOC_0733	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
091	Collection of Glassdoor negative posts	EEOC_0728- EEOC_0732 EEOC_0737 EEOC_0750- EEOC_0751 EEOC_0754- EEOC_0758 EEOC_0761- EEOC_0762 EEOC_0774- EEOC_0775 EEOC_0782- EEOC_0783 EEOC_0790- EEOC_0791 EEOC_0794 EEOC_0799- EEOC_0800 EEOC_0809- EEOC_0811 EEOC_0814	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
092	Glassdoor reviews (03/18/17 - 05/16/17)	EEOC_0734- EEOC_0740	A. Scott Duane: Reasonable	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
			belief; pretext			
093	Glassdoor reviews (11/27/16 - 02/20/17)	EEOC_0741-EEOC_0746	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
094	Glassdoor reviews (06/27/16 - 11/04/16)	EEOC_0747-EEOC_0752	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
095	Glassdoor reviews (05/06/16 - 07/21/16)	EEOC_0753-EEOC_0759	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
096	Glassdoor reviews (03/12/16 - 04/12/16)	EEOC_0760-EEOC_0765	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
097	Glassdoor reviews (10/15/15 - 03/10/16)	EEOC_0766-EEOC_0771	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
098	Glassdoor reviews (07/20/15 - 10/15/15)	EEOC_0772-EEOC_0778	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
099	Glassdoor reviews (05/24/15 - 07/20/15)	EEOC_0779-EEOC_0785	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
100	Glassdoor reviews (12/30/14 - 05/22/15)	EEOC_0786-EEOC_0792	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802; subject to MIL	FRE 801 (Not offered for truth of posts)	
101	Glassdoor reviews (07/16/14 - 10/27/14)	EEOC_0793-EEOC_0798	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802	FRE 801 (Not offered for truth of posts)	

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
102	Glassdoor reviews (10/03/13 - 05/29/14)	EEOC_0799-EEOC_0804	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802	FRE 801 (Not offered for truth of posts)	
103	Glassdoor reviews (07/02/13 - 09/19/13)	EEOC_0805-EEOC_0812	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802	FRE 801 (Not offered for truth of posts)	
104	Glassdoor reviews (05/03/11 - 06/20/13)	EEOC_0813-EEOC_0817	A. Scott Duane: Reasonable belief; pretext	DF: 401; 403; 802	FRE 801 (Not offered for truth of posts)	
105	Glassdoor COR Decl (5/4/2018)	EEOC_1017-EEOC_1018	Authenticating Doc - Not an exhibit		Can remove if Defendant stipulates as to the authenticity of subpoenaed documents	
106	Mishkin/Duane letter with signed employment offer (2/15/2013)	IXL-0027-IXL-0028	A. Scott Duane: Background			
107	New Hire Checklist (Duane) (7/10/2013)	IXL-1161	A. Scott Duane: Background			
108	Sexual Harassment Policy review acknowledgement (Duane) (7/10/2013)	IXL-1164	A. Scott Duane: Background			
109	Termination Checklist (Duane) (1/8/2015)	IXL-1178	A. Scott Duane: Background			
110	Duane Final Pay (1/7/2015)	IXL-1179	Paul Mishkin or Maricela Prado: Damages			
111	Duane Final Vacation Pay (1/7/2015)	IXL-1180	Paul Mishkin or Maricela Prado: Damages			
112	Option Ledger (Duane) [07/07/2015] (Undated)	IXL-1183	Paul Mishkin or Maricela Prado: Damages			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
113	Employee Benefits Handbook (January 2013)	IXL-1241-IXL-1279	Maricela Prado: Background			
114	Barth/Penner email string re Glassdoor negative posts (06/03/13 - 06/14/13)	IXL-1344-IXL-1345	Karen Penner: Pretext			
115	Glassdoor Employee Engagement Plan for IXL (Undated)	IXL-1350-IXL-1355	Paul Mishkin: Background			
116	Prado/Penner email encouraging positive Glassdoor reviews (9/11/2013)	IXL-1358	Maricela Prado: Background; reasonable manner			
117	Keyes/Mattison email string re peer review of Duane (11/19/2013)	IXL-1384-IXL-1385	David Keyes: Mr. Duane's Reasonable belief			
118	Duane/group email re February 2014 leave (1/30/2014)	IXL-1471	A. Scott Duane: Reasonable belief			
119	Duane/Keyes email string re leave, ADP and PA lunch (02/05/14 - 02/10/14)	IXL-1484	David Keyes or A. Scott Duane: Reasonable belief			
120	Keyes/Duane email string re remote work and projects (05/30/14 - 06/02/14)	IXL-1524-IXL-1525	A. Scott Duane: Reasonable belief			
121	Duane/Keyes/Marshall email re medical leave (9/11/2014)	IXL-1570	A. Scott Duane: Reasonable belief			
122	Keyes email to self re Duane	IXL-1598	David Keyes: Mr. Duane's			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	remote work (9/30/2014)		reasonable belief			
123	Duane/group email re surgery leave (10/3/2014)	IXL-1608	PLTFS: A. Scott Duane: Reasonable belief DF: Request for Accommodation; Duane			
124	Keyes/Duane email with copy of remote plan (12/30/14 10:35 a.m.)	IXL-1649-IXL-1650	PLTFS: A. Scott Duane and David Keyes: Reasonable belief DF: Reasonable Belief; Office Action; Request for Accommodation; Duane; Keyes			
125	Duane/Keyes email re ADA resources (1/7/2015)	IXL-1676	A. Scott Duane and David Keyes: Reasonable belief			
127	Prado/group email with welcome slides and benefits information (6/28/2013)	IXL-2211	Maricela Prado: Background			
128	Prado/Duane & others email with Welcome Program calendar invite (7/10/2013)	IXL-2254	Maricela Prado: Background			
129	The Welcome Program slides (08/18/2013)	IXL-2271-IXL-2333	Maricela Prado: Background			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/ PURPOSE	OBJECTION	RESPONSE	COURT USE
130	Prado/Lee email with Welcome Program 2013-Edit (8/20/2013)	IXL-2334	Maricela Prado: Background			
131	Welcome to IXL slides (08/21/2013)	IXL-2335- IXL-2397	Maricela Prado: Background			
132	Welcome to IXL slides (08/25/13?)	IXL-2400- IXL-2457	Maricela Prado: Background			
133	Lee/Prado email re Welcome Program 2013 edits	IXL-2875	Maricela Prado: Background			
134	IXL Softball ticket (9/18/13)	IXL-2876	Maricela Prado: Background			
135	IXL Softball ticket (9/18/13)	IXL-2877	Maricela Prado: Background			
136	IXL Softball ticket (9/18/13)	IXL-2878	Maricela Prado: Background			
137	IXL Softball ticket (9/25/13)	IXL-2879	Maricela Prado: Background			
138	Lee/Prado email re updated welcome program (9/23/2013)	IXL-3203	Maricela Prado: Background			
139	IXL Basketball ticket (9/23/13)	IXL-3204	Maricela Prado: Background			
140	IXL Softball ticket (9/25/13)	IXL-3205	Maricela Prado: Background			
141	Softball team picture with New Employee Orientation slides (03/20/2014)	IXL-3277- IXL-3346	Maricela Prado: Background			
142	Rodney email with 2015 Benefits Booklet (5/15/2015)	IXL-3437	Maricela Prado: Damages			
143	Keyes/Ockerberg email string re Duane	IXL-3643- IXL-3644	David Keyes: Mr. Duane's			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	accommodation request (11/22/2010)		Reasonable belief			
144	Prado/Ockerberg email string re Duane accommodation request (12/23/2014)	IXL-3645-IXL-3648	Maricela Prado: Mr. Duane's reasonable belief			
145	Prado/Keyes email re Duane remote work plan repercussions (12/19/14 - 12/26/14)	IXL-3661-IXL-3664	Maricela Prado or David Keyes: Mr. Duane's reasonable belief			
146	Keyes/Prado/Mattison email string re Duane remote plan language (12/29/2014)	IXL-3668	Maricela Prado or David Keyes: Mr. Duane's reasonable belief			
147	Keyes/Prado/Mattison email string re Duane remote plan language (12/29/2014)	IXL-3670-IXL-3672	Maricela Prado or David Keyes: Mr. Duane's reasonable belief			
148	Keyes/Duane email with 1/8 performance review calendar invite (12/30/14 1:27 p.m.)	IXL-3673	David Keyes: Causal link			
149	Prado/Keyes email string re Keyes meeting with Duane (1/6/2015)	IXL-3677	David Keyes, Maricela Prado: Causal link			
150	Prado/Mishkin email with collection of Duane email (9/23/14-11/11/14)	IXL-3678-IXL-3683				
151	Mishkin/Duane email with 1/8 meeting invite (google video	IXL-3684	Paul Mishkin: Causal link			

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	hangout) (1/7/2015)					
152	Draft Duane 2014 Annual Review (1/7/2015)	IXL-3686- IXL-3687	David Keyes: Pretext			
153	Mattison/Keyes email string with draft Duane annual review (1/7/2015)	IXL-3688	David Keyes: Pretext			
154	Keyes/Mishkin email forwarding Duane ADA resources (1/7/2015)	IXL-3689	David Keyes: Pretext			
155	Mishkin/Duane email with 1/8 meeting invite (Paul's office) (1/7/2015)	IXL-3690	Paul Mishkin: Casual link			
156	Keyes/Duane email string re continuance of annual review (1/7/2015)	IXL-3692	David Keyes: Pretext			
157	Employee Handbook (2013-2014) (Undated)	IXL-3707- IXL-3731	Maricela Prado: Background			
158	Plan Document and Summary Plan Description for the IXL Learning Health and Welfare Benefit Plan (1/1/2015)	IXL-3732- IXL-3773	Paul Mishkin: damages			
159	Independent Auditor's Report (11/27/2014)	IXL-3775- IXL-3779	Paul Mishkin: damages	DF: Defendant will stipulate to bottom line revenue and income, irrelevant to disclose entire financial statement on public docket; if used IXL requests only	Plaintiffs offered an undisputed fact for review to address Defendant's concerns.	

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
				subtotals and totals be shown with line items redacted or alternatively file the document under seal.		
160	Benefits Confirmation Sheet (2015)	IXL-3780-IXL-3780	Maricela Prado: damages			
161	IXL Grant of incentive Stock options (7/26/2013)	IXL-3781-IXL-3782	A. Scott Duane: damages			
162	ADP Benefit Accrual Audit Report re Duane (9/30/2014)	IXL-3784	Maricela Prado: damages			
163	Vanguard Statement of Account (Duane) (01/01/15 - 03/31/15)	IXL-3785-IXL-3788	A. Scott Duane: damages			
201	Chat with Duane to Wu re: Unnamed guy (Keyes?) nicer than he had to be	EEOC_0365	Reasonable Belief; Duane	PLTFS: FRE 401, 402, 403, 802, 805	Relevant (not outweighed by 403 prejudice) evidence re: Duane's present impression of IXL. Not hearsay: Not offered from the truth of the matter asserted, but to show Duane's state of mind regarding unnamed employee. Would be admissible under FRE 803 (1) and (21) if it were hearsay. FRE 805 is not an objection to admissibility.	
202	Email from Spencer to Duane re: Potential interest in working with IXL; Duane	EEOC_0611-EEOC_0612	Reason for Termination; Reasonableness of beliefs; Duane	PLTFS: FRE 401, 402, 403, 802	Relevant (not outweighed by 403 prejudice) evidence re: Duane's state of mind regarding IXL. Not hearsay: Not offered from the	

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	recommends elsewhere				truth of the matter asserted, but to show Duane's state of mind. (i.e., not whether IXL was really as Duane describes it in this email, but simply that Duane believed it to be the case). Would be admissible under FRE 803(21) if it were hearsay.	
203	Email chain Duane, Mathpa, Keyes to Mattison re: Duane working remotely; slipping back into old habits of lower productivity	IXL-1950	Reasonable Belief; Request for Accommodation; Office Action; Keyes; Duane; Mattison			
205	Duane/Keyes email with doctor's note (12/30/2014)	IXL-1647- IXL-1648	PLTFS: A. Scott Duane and David Keyes: Reasonable belief DF: Reasonable Belief.; Request for Accommodation; Duane	<i>NOTE: His DOB must be redacted from the document.</i>		
209	Text message spreadsheet - REDACTED	EEOC_0713- EEOC_0723	Reasonable Belief.; Request for Accommodation; Office Action; Duane	PLTFS: Inappropriate compilation of records. To the extent a summary is appropriate, should be proposed pursuant to FRE 1006. May be additional specific	This document was EEOC's compilation, produced in this format. We will redact and clarify which portions of this exhibit we will/not use. Relevant (not outweighed by 403 prejudice) as to background and to assess the	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
				objections depending on the conversation at issue, but general objections: FRE 401, 402, 403, 802, 602; 805	reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted. No explanation why this item cannot be authenticated at trial by witness with personal knowledge.	
210	NLRB Transcript	IXL-0229-IXL-0515	Various; Impeachment ; Duane; Keyes; Mishkin	PLTFS: This is not a trial exhibit and subject to FRE: 401, 402, 403, 802; 805; 602—see Standing Order for Civil Trials at ¶38-39; Subject to Pltfs' MIL No. 1 [ECF No. 94.]	See Defendant's Response to Plaintiff's MIL #1. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted. No explanation why this item cannot be authenticated at trial by witness with personal knowledge.	
211	Email from Duane to Morse re: IXL Case	EEOC_0417	Various; Duane	PLTFS: FRE 401, 402, 403, 802, Subject to objections in EEOC MIL No. 1 [ECF No. 94]	See Defendant's Response to Plaintiff's MIL #1. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
212	Chat with Duane and Curiel re: Duane upset over Keyes response to	EEOC_0332-EEOC_0337	Reasonable Belief.; Request for Accommodat			

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	his accommodation request		ion; Office Action; Duane; Curiel			
213	Chat with Duane and Curiel re: Curiel quitting IXL; HR is unprofessional; Duane having a lawyer	EEOC_0291-EEOC_0304	Reasonable Belief.; Request for Accommodation; Office Action; Duane; Curiel	PLTFS: Inappropriate compilation of exhibits without reliance on FRE 1006; Parts of this conversation are Subject to objections in Pltfs MIL No. 1 [ECF No. 94] - i.e. EEOC_000295. Pltfs will likely not object to a compilation exhibit that excludes EEOC_000295	Documents produced by EEOC in this order and reflect a continuous electronic message conversation between Duane and Curiel on two separate days (1/29/15 and 2/5/15). This is not a summary, it is a conversation. Need more information on why EEOC295 is subject to MIL 1, which relates preclusion of governmental proceedings.	
214	Email from Duane to Wu re: Forwarded email regarding Duane's accommodation; Duane applying to other jobs	EEOC_0501-EEOC_0503	Reasonable Belief.; Request for Accommodation; Office Action; Alleged Opposition Activity; Duane			
215	Duane media post requesting legal advice re accommodation request and responsive posts (12/22/14 8:25:32 p.m.)	EEOC_0238-EEOC_0239	PLTFS: A. Scott Duane: Reasonable belief DF: Reasonable Belief.; Request for Accommodation; Office Action; Duane			

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
216	Chat with Duane, Wu, Curiel, Morse re: IXL - HR Slimy; Vacation and Sick Days	EEOC_0375 EEOC_0381	Reasonable Belief.; Request for Accommodation; Office Action; Alleged Opposition Activity; Duane; Curiel			
217	Email between Duane and his father, William, re: IXL situation	EEOC_0499- EEOC_0500	Various; Duane	PLTFS: FRE 403; 802; parts are subject to objections in Pltfs. MIL No. 1 [ECF No. 94]	See Defendant's response to MIL #1. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
219	Performance improvement plan	IXL-3839- IXL-3844	Reasonable Belief; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's Response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Rule 602 has no bearing on the admissibility of the document itself. Not hearsay - not offered for the truth of the matter asserted.	
220	Email from Milin re: Schedule	IXL-3823	Reasonable Belief; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403;802	See Defendant's response to MIL #2.Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					Duane's beliefs about IXL.	
221	Email to Milin re: Curiel working from home	IXL-3827	Reasonable Belief; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL.	
222	Email from Duane to Penner re: Supervising Curiel on Project	IXL-3814-IXL-3815	Reasonable Belief; Background; Duane	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
223	Email from Penner to Duane re: Curiel being tough to manage; working from home; would not want to manage Curiel	IXL-3807-IXL-3808	Reasonable Belief; Background; Duane; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL.	
224	Email from Duane to Milin re: iPad testing; Curiel vacation instead of helping with task	IXL-3631	Reasonable Belief; Duane			
225	Email from Duane to Wu re: Curiel home sick but still going out at night	IXL-3828-IXL-3831	Reasonable Belief; Background; Duane	PLTFS: Subject to objections raised in PLTFS' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
226	Email from Milin to Duane re: Curiel not checking in on iPad testing	IXL-3820	Reasonable Belief; Duane	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
227	Email from Penner to Duane re: Curiel late for work and missed meeting	IXL-3812-IXL-3813	Reasonable Belief; Duane	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
228	Screenshot Duane to Curiel re: Playing hookie together when his trans hurts too much	EEOC_0827	Reasonable Belief; Duane	PLTFS: FRE 401, 402, 403, 106	Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted. Plaintiffs do not explain why this item is incomplete under Rule 106, or what they propose	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					for supplementary context.	
229	Email from Milin to Curiel re: Time Requests	IXL-3833	Reasonable Belief; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
230	Email from Milin to Curiel re: Sick days and Non-sick days	IXL-3832	Reasonable Belief; Curiel; Duane	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
232	Email from Keyes to Curiel re: Testing Help; checking in before Curiel takes the day off	IXL-3816	Reasonable Belief; Curiel; Duane; Keyes	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted.	
233	Screenshot Duane chat re: IXL file structure	EEOC_0844	Reasonable Belief; Office Action; Duane			
234	Screenshot Duane to Curiel re: Part time from home; not wanting to be	EEOC_0825	Reasonable Belief; Office	PLTFS: FRE 401, 402, 403, 106	Relevant (not outweighed by 403 prejudice) as to background and to	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	at work; company sucks		Action; Duane		assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted. Plaintiffs do not explain why this item is incomplete under Rule 106, or what they propose for supplementary context.	
235	Chat between Duane and Zander Keig re: Moving out of Jenna's house; Seeing his old coworkers at hearing; How awful his experience was at IXL	EEOC_0342	Reasonable Belief; Office Action; Duane	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 1 [ECF No. 94]; FRE 401, 402, 403; 802	See Defendant's response to MIL #1. Relevant (not outweighed by 403 prejudice) to show Duane's state of mind. Not hearsay because not offered for truth of the matter asserted.	
236	Glassdoor Invoices	EEOC_1020- EEOC_1022	Office Action; Mishkin	PLTFS: FRE 106 - offer O'Brien Declaration that accompanied the subpoena responses to offer complete evidence of the records. We would agree to combining the two records into one Exhibit.		
237	Email chain re: Assistance needed... please write a Glassdoor review	IXL-1362- IXL-1363	Office Action; Mattison; Keyes			
238	The EEOC's Complaint (ECF No. 1)	n/a	Various	PLTFS: Inappropriate designation of an unsworn pleading; FRE 401, 402, 403,		

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
				602, 802; FRCP 26		
240	Adrian Scott Duane Deposition Transcript	n/a	Various; Duane	PLTFS: FRE 401, 402, 403 – see Standing Order for Civil Trials at ¶¶ 38-39		
243	Emails between Keyes and Duane re: Return update	IXL-1644-IXL-1646	Reasonable Belief; Request for Accommodation; Duane; Keyes			
248	NLRB Complaint and Notice of Hearing	IXL-0549-IXL-0562	Office Action; Duane	PLTFS: FRE 401, 402, 403; 802; subject to Pltfs. MIL No. 1 [ECF No. 94.]		
249	Copy of the Decision of the Administrative Law Judge	IXL-0742-IXL-0778	Office Action; Reasonable Belief; Duane; Keyes; Mishkin	PLTFS: FRE 401, 402, 403; 802; subject to Pltfs. MIL No. 1 [ECF No. 94.]		
250	NLRB Order Dismissing Complaint	IXL-0779	Office Action; Reasonable Belief; Duane; Keyes; Mishkin	PLTFS: FRE 401, 402, 403; 802; subject to Pltfs. MIL No. 1 [ECF No. 94.]		
251	Charge filed by Adrian Scott Duane with the EEOC	IXL-0079-IXL-0107	Office Action; Reasonable Belief; Duane	PLTFS: FRE 401, 402, 403; subject to Pltfs. MIL No. 1 [ECF No. 94.]		
253	Isidora Milin Deposition Transcript	n/a	Various; TBD	PLTFS: FRE 401, 402, 403; 602; 802 – see Standing Order for Civil Trials at ¶¶ 38-39		
254	Image of Isidora Milin as taken from her LinkedIn Account	n/a	Various; TBD	PLTFS: FRCP 26; FRE 401; 402; 403; 602; 901, 1002		

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
257	2014.06.10 DuaneA Keye D Email Exchange Re Working Remote	IXL-1527	Background; Reasonable Belief; Duane	PLTFS: FRE 403		
258	Email from Curiel to Milin	IXL 3809	Background; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as background information. Not hearsay because not offered for truth of the matter asserted.	
270	G-Chat, Adrian Scott Duane, Nina Wu gchat exchanges re complaints about work. Nina Wu suggests to Adrian Scott Duane to present to management in a way to show IXL Learning, Inc. can grow professionally, and when he leaves for next career step, you come out better and more knowledgeable and skilled.	IXL-0783-IXL-0784	Background; Duane			
271	Adrian Scott Duane gchat exchanges with Nina Wu while Adrian Scott Duane out of office working remote and new meds making him sick in the morning so will	IXL-0786-IXL-0787	Background; Reasonable Belief; Duane			

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	likely come to office later.					
272	Adrian Scott Duane requesting work remote for rest of day as not feeling well. David Keyes responds "that's fine. hope you feel better!"	IXL-0788	Background; Reasonable Belief; Duane; Keyes	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
275	Gary Yee, Nina Wu gchat exchanges re Adrian Scott Duane out today and tomorrow.	IXL-0799	Background; Reasonable Belief; Duane	PLTFS: FRE 401, 402, 403	Relevant (not outweighed by 403 prejudice) as to the reasonableness of Duane's beliefs about IXL Plaintiffs do not explain why this evidence would be unfairly prejudicial.	
276	Adrian Scott Duane, David Keyes gchat exchange req sick day on Monday to enter into ADP system.	IXL-0800	Background; Reasonable Belief; Duane; Keyes	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
278	Scott Duane, Richard Cudney gchat exchange re recurring appts on Thursdays	IXL-0803	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
282	Gina Bland, David Keyes gchat exchanges re Adrian Scott Duane and spoke with Scott re going back over dates for working remotely.	IXL-0811	Background; Reasonable Belief; Keyes	PLTFS: FRE 401, 402	Relevant to Duane's arguments about discrimination in remote working plans.	
287	Eric McCrea, Mark Ritterhoff gchat exchanges	IXL-0828-IXL-0829	Background; Mishkin	PLTFS: FRE 401, 402, 403; 602	Relevant to Duane's arguments about discrimination in	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	re subject Glassdoor post and guess as to who the author is. McCrea states his experience at IXL "does not jive with his/her experience."		Keyes; Duane		remote working plans. Rule 602 does not operate to exclude documents that are self-authenticating or can be authenticated at trial.	
288	Mark Ritterhoff, Jeremy Mejia gchat exchanges re subject Glassdoor post and question who author is	IXL-0830	Background; Mishkin Keyes; Duane	PLTFS: FRE 403, 602, 802, 805	Relevant to Duane's arguments about discrimination in remote working plans. Rule 602 does not operate to exclude documents that are self-authenticating or can be authenticated at trial. Rule 805 does not exclude any evidence from trial.	
290	Mark Ritterhoff, McCreaE gchat	IXL-0833- IXL-0834	Background; Keyes; Mishkin	PLTFS: FRE 401, 402; 602	Relevant to show IXL response to Duane Post and termination. Rule 602 does not operate to exclude documents that are self-authenticating or can be authenticated at trial.	
291	David Keyes, Josh Gevirtz gchat exchange re Adrian Scott Duane termination and David Keyes	IXL-0835	Background; Keyes			
293	Kate Mattison to David Keyes approving and stating David's response to Adrian Scott Duane looks good	IXL-1388- IXL-1389	Background; Office Action; Request for Accommodation; Mattison; Keyes	PLTFS: Joint as to IXL-1388 (TR EX 12)		

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
295	Scott Duane, Maricela Prado gchat exchanges re disability restrictions, Maricela Prado instructing Scott to apply soon.	IXL-1936-IXL-1937	Request for Accommodation; Office Action; Duane	PLTFS: Not self-authenticating pursuant to 902(13); Subject to objections in Plaintiffs' MIL No. 1 [ECF No. 94.]; FRE 106, 401, 402, 403	See Defendant's response to MIL #1. Plaintiffs do not identify additional docs that should be offered for context/completeness. Relevant (not outweighed by 403 considerations) to show IXL response to Duane termination. Plaintiffs fail to explain why this document cannot be authenticated at trial.	
296	Scott Duane, Keyes gchat exchanges re PTO	IXL-1938-IXL-1945	Request for Accommodation; Office Action; Background; Duane; Keyes	PLTFS: Not self-authenticating pursuant to 902(13); Subject to objections in Plaintiffs' MIL No. 1 [ECF No. 94.]; FRE 106, 401, 402, 403	See Defendant's response to MIL #1. Plaintiffs do not identify additional docs that should be offered for context/completeness. Relevant (not outweighed by 403 considerations) to show IXL response to Duane termination. Plaintiffs fail to explain why this document cannot be authenticated at trial.	
297	Lenore Ockerberg req. time to speak with David Keyes with Mari re Adrian Scott Duane	IXL-3642	Background; Keyes			
298	Paul Mishkin instructs Maricela Prado to not respond to Adrian Scott Duane	IXL-3701-IXL-3706	Background; Mishkin	PLTFS: Inappropriate compilation of records that were produced as separate records. FRE 106; 401; 402;	Relevant (not outweighed by 403 prejudice) as to the background and the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
				403; 802; not self-authenticating under 902(13)	for truth of the matter asserted. This is not a summary, it is a conversation, and FRE 1006 is therefore inapplicable. 1006 is also inapplicable because this item is not being offered to prove the content of the e-mails, but rather as evidence of the reasonableness of Duane's beliefs about IXL. Plaintiffs do not identify additional docs that should be offered for context/completeness per Rule 106.	
299	Nemo Curiel requests and Isadora Milin approves leaving early at 5 and work remotely rest of day.	IXL-3803	Background; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	Relevant (not outweighed by 403 prejudice) as background information. Not hearsay because not offered for truth of the matter asserted.	
300	Nemo Curiel requests and Isadora Milin approves leaving early at 3 and work remotely rest of day.	IXL-3804	Background; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as background information. Not hearsay because not offered for truth of the matter asserted.	
301	Nemo Curiel working from home today.	IXL-3805	Background; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as background information. Not hearsay because not	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					offered for truth of the matter asserted.	
303	Nemo Curiel requests and Isadora Milin approves leaving	IXL-3810	Background; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as background information. Not hearsay because not offered for truth of the matter asserted.	
307	Nemo Curiel states he's leaving for day and "recovering from last night"	IXL-3835-IXL-3836	Background; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's response to MIL #2. Relevant (not outweighed by 403 prejudice) as background information. Not hearsay because not offered for truth of the matter asserted.	
308	Nina Wu gchat and Adrian Scott Duane responds	IXL-3838	Background; Curiel	PLTFS: Subject to objections raised in Plaintiffs' MIL No. 2 [ECF No. 95]; FRE 401, 402, 403; 802	See Defendant's Response to MIL #2. Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay - not offered for the truth of the matter asserted.	
309	2013.11.11 MattisonK DuaneA Email Exchange Re Req Time Off	IXL-1382-IXL-1383	Background; Reasonable Belief; Mattison; Duane	PLTFS: FRE 401, 402, 403	Relevant (not outweighed by 403 prejudice) as background information and to assess the reasonableness of Duane's belief concerning IXL's conduct.	
310	2013.12.03 MattisonK DuaneA Email	IXL-1386-IXL-1387	Background; Reasonable Belief;	PLTFS: FRE 401, 402, 403	Relevant (not outweighed by 403 prejudice) as	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
	Exchange Re Req Time Off		Mattison; Duane		background information and to assess the reasonableness of Duane's belief concerning IXL's conduct.	
311	2013.12.17 DuaneA MattisonK Email exch re remote request	IXL-1390-IXL-1393	Background; Reasonable Belief; Mattison; Duane	PLTFS: FRE 401, 402, 403	Relevant (not outweighed by 403 prejudice) as background information and to assess the reasonableness of Duane's belief concerning IXL's conduct. This is not a summary, it is a conversation, and FRE 1006 is therefore inapplicable. 1006 is also inapplicable because this item is not being offered to prove the content of the e-mails, but rather as evidence of the reasonableness of Duane's beliefs about IXL.	
313	2014.01.30 DuaneA email exch re surgery, Out of Office	IXL-1471-IXL-1474	Background; Reasonable Belief; Duane	PLTFS: Joint as to only IXL-1471 (Duane/group email re February 2014 leave); however, the remaining records are not; FRE 401, 402, 403, 602, 802	Relevant (not outweighed by 403 prejudice) as background information and to assess the reasonableness of Duane's belief concerning IXL's conduct.. Rule 602 does not operate to exclude evidence where it may be self-authenticating or authenticated at trial. It is not hearsay because it is not	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					being offered for the truth of the matter asserted, but rather to show Duane's state of mind and assess the reasonableness of his beliefs concerning IXL's conduct.	
314	2014.02.26 DuaneA KeyesD Email re schedule from Surgery	IXL-1502- IXL-1504	Background; Reasonable Belief; Keyes; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
315	2014.03.03 DuaneA KeyesD Email Exchange Re PTO	IXL-1506	Background; Reasonable Belief; Duane; Keyes	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
316	2014.03.04 DuaneA Email to Math Team Re PTO	IXL-1507	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
317	2014.04.03 DuaneA Email to Math Team Re Working Remote.	IXL-1511	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
318	2014.05.02 DuaneA Email to Math Team Re Working Remote	IXL-1514	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					outweighed by Rule 403 factors.	
319	2014.05.20 DuaneA Email to Math Team Re Working Remote	IXL-1518	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
320	2014.05.22 DuaneA Email to Math Team Re Working Remote	IXL-1519	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
321	2014.06.04 DuaneA Email to Unknown Re Working Remote	IXL-1526	Background; Reasonable Belief; Duane	PLTFS: FRE 403; Incomplete and not self-authenticating under FRE 902(13)	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors. Plaintiffs do not explain why this item is not self-authenticating or cannot be authenticated at trial.	
322	2014.06.11 DuaneA Keye D Email Exchange Re Time Off Approved	IXL-1529	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
323	2014.07.02 DuaneA Email to Math Team Re Working Remote	IXL-1532	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	

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EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
324	2014.07.17 DuaneA Email to Unknown Re Working Remote	IXL-1538	Background; Reasonable Belief; Duane	PLTFS: FRE 403; Incomplete and not self-authenticating under FRE 902(13);	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors. Plaintiffs do not explain why this item is not self-authenticating or cannot be authenticated at trial.	
325	2014.07.22 DuaneA Email re Working Remote on Tuesdays	IXL-1539	Background; Reasonable Belief; Duane	PLTFS: Incomplete and not self-authenticating under FRE 902(13); FRE 401, 402, 403	Relevant (not outweighed by 403 prejudice) as background information and to assess the reasonableness of Duane's belief concerning IXL's conduct. Plaintiffs do not explain why this item is incomplete per Rule 106, nor why it is not self-authenticating or cannot be authenticated at trial.	
326	2014.07.25 DuaneA Email to Math Team Re Working Remote	IXL-1543	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
327	2014.08.01 DuaneA Email to Unknown Re Working Remote	IXL-1548	Background; Reasonable Belief; Duane	PLTFS: Incomplete and not self-authenticating under FRE 902(13); FRE 401, 402, 403	Relevant (not outweighed by 403 prejudice) as background information and to assess the reasonableness of Duane's belief concerning IXL's conduct. Plaintiffs do	

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					not explain why this item is incomplete per Rule 106, nor why it is not self-authenticating or cannot be authenticated at trial.	
328	2014.08.22 DuaneA Keyes D Email Exchange Re PTO for Chile	IXL-1549	Background; Reasonable Belief; Duane			
329	2014.08.26 DuaneA Email to Unknown Re Working Remote	IXL-1550	Background; Reasonable Belief; Duane	PLTFS: Incomplete and not self- authenticating under FRE 902(13); FRE 106, 401, 402, 403	Relevant (not outweighed by 403 prejudice) as background information and to assess the reasonableness of Duane's belief concerning IXL's conduct. Plaintiffs do not explain why this item is incomplete per Rule 106, nor why it is not self- authenticating or cannot be authenticated at trial.	
330	2014.09.03 DuaneA KeyesD Email Exchange Re Sick Day	IXL-1559- IXL-1560	Background; Reasonable Belief; Duane	PLTFS: FRE 403	Plaintiffs do not dispute the relevance of these documents, yet fail to explain why their admitted relevance would be outweighed by Rule 403 factors.	
331	2014.10.03 DuaneA Email re PTO in Nov - Dec	IXL-1609- IXL-1612	Background; Reasonable Belief; Duane	PLTFS: Inaccurate compilation of records without compliance with FRE 1006; 401, 402, 403	Relevant (not outweighed by 403 prejudice) as to background and to assess the reasonableness of Duane's beliefs about IXL. Not hearsay because not offered for truth of the matter asserted. This is not a summary, it is a	

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/PURPOSE	OBJECTION	RESPONSE	COURT USE
					conversation, and FRE 1006 is therefore inapplicable. 1006 is also inapplicable because this item is not being offered to prove the content of the e-mails, but rather as evidence of the reasonableness of Duane's beliefs about IXL	
338	2014.03.25 Email between Keyes and Mattison regarding Duane's performance	IXL-1508	Rebuttal of allegations; Duane			
340	2014.09.11 Email between Duane and Keyes regarding upcoming surgery leave	IXL-1572	Reasonableness of Beliefs; Duane			
342	Summary of Correspondence from Duane requesting sick leave or remote work	n/a	Various; TBD; Duane	PLTFS: Having not seen this document, Pltfs reserve all objections to this document. To the extent that this is a placeholder for a demonstrative exhibit, the parties should confer with the Court and one another regarding the appropriate process for the use of demonstratives		

AMENDED JOINT TRIAL EXHIBIT LIST

EX NO.	DESCRIPTION	BATES	WITNESS/ PURPOSE	OBJECTION	RESPONSE	COURT USE
343	The parties agree that they may use any exhibit identified, if admitted by the court					