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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.: 3:17-cv-02979-VC

JOINT PROPOSED VOIR DIRE

Pretrial Date: October 15, 2018
Time: 10:00 am
Courtroom: 4, 17th Floor
Judge: Hon. Vince Chhabria

Trial Date: October 22, 2018

1 Plaintiff Equal Employment Opportunity Commission (“EEOC”), Plaintiff-Intervenor Adrian
2 Scott Duane (“Duane”) and Defendant IXL Learning, Inc., jointly submit the following proposed
3 voir dire questions for the jury panel pursuant to the “Standing Order for Civil Trials Before Judge
4 Chhabria” (July 30, 2018). *See* Part A below. If a question is answered in the affirmative by a
5 proposed juror, counsel requests leave to ask follow-up questions. This joint filing also lists separate
6 proposed voir dire questions from a party where the other party has objected to a question, indicated
7 its basis (or bases for doing so), and included a brief response by the party proponent to the proposed
8 voir dire question. (*See* Part B, Plaintiffs’ Proposed Voir Dire, and then also Part C, “Defendant's
9 Proposed Voir Dire”).
10

11 In addition, Plaintiffs will request at the final Pretrial Conference that the Court use a
12 questionnaire to be submitted to each potential juror prior to the first day of trial. A jury
13 questionnaire, if permitted, may allow individuals to respond more candidly to potentially sensitive
14 questions than they would in open court during voir dire. Also, the results of a jury questionnaire
15 given to the parties prior to trial will help streamline the jury selection process because
16 determinations as to potential juror bias may be made in advance. If the Court approves use of the
17 questionnaire, Plaintiffs would be willing to meet and confer with Defendant regarding the exact
18 form of the questionnaire, should Defendant have any proposed modifications, and submit it to the
19 Court for final approval.
20
21

22 Plaintiff believes the following proposed questions marked with an asterisk (*) are more
23 appropriate for a questionnaire: (1) Joint Question Nos. 4, 5, 15, 16, 17 and 20-23; & (2) Plaintiffs'
24 Question Nos. 1-5. If the Court is not inclined to distribute advance jury questionnaires, however,
25 Plaintiff urges that all of the following questions be posed to the panel.
26

27 The Court reads the Parties' Joint Statement of the Case (in lieu of each party providing a
28 recitation).

A. Parties' Joint Proposed Voir Dire

Proposed Voir Dire Question	
A. General	
1	1. Having heard the Joint Statement of the Case, do any of you know of any reason why you
2	would have any difficulty being a juror in this type of case or in assessing any legal
3	responsibility involving the parties in this case?
4	2. Have you or anyone close to you ever been employed by IXL Learning, Inc.?
5	3. Have any of you or anyone close to you ever used an IXL Learning, Inc. product?
6	3.a. For those of you who have used, or had anyone close to you use an IXL Learning, Inc.
7	Product, would this in any way affect your ability to sit as a juror?
8	
9	
10	B. Gender Presentation
11	4. Have you ever known a person whose gender presentation does not conform to your idea of
12	how a man or a woman should look, behave or act?*
13	5. Does anyone have any personal, religious or ethical beliefs or values about people who are
14	gay or transgender that would make it uncomfortable for you to consider a case involving a gay
15	or transgender individual and that person's legal rights?*
16	5.a. If you answered "yes" to the foregoing question, would it be important to you to not
17	have to leave your personal, religious or ethical beliefs about people who are gay or
18	transgender outside this court room in order to be a juror in this case?*
19	5.b. If you answered "yes" to any of the foregoing questions, please describe how those
20	beliefs might affect your ability to be fair and impartial in this case?*
21	
22	
23	C. Familiarity With Business Practices
24	
25	6. Have you or anyone close to you ever received any training or had experiences in any of the
26	following areas: Law; Economics; Human Resources; Employee Benefits; Internet Access;
27	Education Technology?
28	7. Have any of you, or anyone close to you, ever served in a supervisory or management
	position within a company, government agency, or community service organization?

Proposed Voir Dire Question
8. Do any of you currently own a business, owned a business in the past, or has anyone close to you owned or used to own a business?
9. Have you or anyone close to you ever worked in a human resources capacity for any company or other organization, whether or not your job title or the job title contained the words "Human Resources"?
10. Have any of you ever had responsibility for hiring, firing or for promoting people?
11. Have any of you had to discipline people you supervised or to fire them for any reason?
11.a. Please describe what happened?
11.b. How do you feel about that aspect of your job?
12. Has anyone complained about decisions you have made as a supervisor?
12.a. Please describe what happened?
13. Have you ever been involved in evaluating the need for or implementing an accommodation for someone with a disability?
14. Have you or anyone close to you ever worked as an insurance claims adjuster?
D. Personal Feelings About EEO
15. Have you or anyone close to you ever been inconvenienced or burdened in any way because a co-worker received an accommodation for a disability?*
16. Some people believe that employers face too many rules and regulations in the operation of their businesses?*
16.a. Do any of you feel that way?*
17. Does anyone believe that claims of employment discrimination are often exaggerated?*
E. On Line Activity
18. How many of you use sites like FaceBook, or Instagram?
F. Damages
19. Do you feel our society makes too much of civil rights?

1	Proposed Voir Dire Question
2	19.a. If so, why?
3	G. Involvement With The Legal System
4	20. Have you or anyone close to you ever accused an employer, or a potential employer, of violating federal or state law?*
5	21. Have you or anyone close to you formally or informally been accused of a violation of workplace laws discrimination or harassment by anyone, including an applicant, co-worker, supervisor or subordinate?*
6	22. Is there anyone who believes that it is wrong to file a lawsuit?*
7	23. Would you be suspicious of someone who filed a lawsuit?*
8	24. Does anyone have any negative feelings about the U.S. Government or the EEOC being a plaintiff in a lawsuit?
9	
10	
11	

B. Plaintiffs' Proposed Voir Dire

15	Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
16	A. General				
17	1. For example, do you believe an employer should be able to refuse to hire a person whose gender presentation may make them uncomfortable?*		X	Argumentative; irrelevant.	Goes to juror bias.
18					
19	2. For example, do you think an employer should be able to fire an employee because the person is transgender?*		X	Argumentative; irrelevant.	Goes to juror bias.
20					
21	3. Does anyone believe that discrimination based on disability, race or against people who are transgender is no longer a		X	Argumentative; irrelevant.	Goes to juror bias.
22					
23					
24					
25					
26					
27					
28					

Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
problem in the United States?*				
4. Do you have any hesitation about or disagreement with U.S. laws that allow an employee to publicly accuse an employer of discrimination?*		X	Argumentative.	Goes to juror bias.
5. Do you believe that it is permissible for an employer to make hiring, assignment or termination decisions based on an employee's disability or gender identity?*		X	Argumentative; irrelevant.	Goes to juror bias.
E. On Line Activity				
6. Have you ever read an on-line review about a hotel or a restaurant?		X	Argumentative; irrelevant.	Goes to juror beliefs and practices.
7. If you have read an on-line review about a hotel or a restaurant, would you also consider the hotel's or restaurant's response to the review in order to make your hotel or restaurant decision?		X	Argumentative; irrelevant.	Goes to juror beliefs and practices.
F. Damages				
8. Do any of you have any hesitation about making a company pay money to compensate someone who proves discrimination based on disability, sexual		X	Argumentative; irrelevant.	Goes to juror bias.

Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
orientation, or gender identity?				
9. Do any of you believe that limitations are appropriate for the amount of money that a jury can award to a discrimination victim in certain cases?		X	Argumentative; irrelevant.	Goes to juror bias.
10. Is anyone troubled by the fact that a civil case requires a lesser burden of proof than a criminal case does?		X	Argumentative; irrelevant; judge will instruct the jury as to the relevant legal standards; confusion.	Goes to juror bias.

C. Defendant's Proposed Voir Dire

IXL Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
A. Employment				
1. What are (were) your job responsibilities?		X	Vague; irrelevant.	
2. What do you (did you) like about your job?		X	Vague; irrelevant.	
3. What do you (did you) dislike about your job?		X	Vague; irrelevant.	
5. What are (were the occupations of anyone living with you)?		X	Vague; irrelevant.	
6. Do you have any experience or training in any of the following areas?				
6.a. Education		X	Vague; irrelevant.	

IXL Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
6.b. Computers		X	Vague; irrelevant.	
7. Why? If so, has anybody ever made a complaint against you as a supervisor? If so, describe what happened.		X	Follow-Up Questions are vague; irrelevant.	
8. Have you ever been terminated from your employment? If yes, describe what happened.		X	Vague; irrelevant.	
9. Have you ever had a dispute of any type with a supervisor or a subordinate?		X	Vague; irrelevant.	
B. Family				
2. What grade of school?		X	This is Not in Judge Chhabria's App. A at p. 12 (Oct. 6, 2018 Standing Order) and is otherwise vague; irrelevant.	
3. Do they use computers in the class room?		X	This is Not in Judge Chhabria's App. A at p. 12 (Oct. 6, 2018 Standing Order) and is otherwise vague; irrelevant.	
C. Discrimination				
1. Has anybody ever made a complaint that you or one of your family members discriminated or retaliated		X	Vague; irrelevant.	

IXL Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
1 2 3 against a person on the job?				
4 5 6 2. Have you, any member of your family, or any close friend ever complained of discrimination or retaliation?		X	Too general and invasive.	
7 8 9 10 11 3. Have you ever filed an EEOC charge or a charge of discrimination or retaliation with any administrative agency? What was the nature of the charge? What was the outcome?		X	Too general and invasive.	
12 13 14 4. Have you ever quit a job because you thought you were treated unfairly? If yes, please describe.		X	Too general and invasive.	
15 16 17 5. Have you ever filed or considered filing a lawsuit against an employer? If yes, please describe.		X	Too general and invasive.	
18 19 20 21 6. Does anyone have a problem with a supervisor terminating an employee for failure to work professionally with colleagues and co-workers?		X	Too general and invasive.	
22 23 7. Have you ever felt discriminated against by an employer?		X	Too general and invasive.	
24 25 26 8. Have you ever felt that you have been wrongfully discharged or retaliated against by an employer?		X	Too general and invasive.	
27 28				

IXL Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
D. Experience with Legal System				
1. Have you ever filed any type of lawsuit?		X	Too general and invasive.	
1.a. What was the dispute leading to the lawsuit?		X	Too general and invasive.	
1.b. What was the outcome of the lawsuit?		X	Too general and invasive.	
1.c. How did you feel about the lawsuit?		X	Too general and invasive.	
2. Has anyone close to you ever filed a lawsuit?		X	Too general and invasive.	
2.a. What was the dispute leading to the lawsuit?		X	Too general and invasive.	
2.b. What was the outcome of the lawsuit?		X	Too general and invasive.	
3. How many were civil disputes? Criminal?		X	Too general and invasive.	
3.a. How many reached a verdict?		X	Too general and invasive.	
G. Questions Relating to the Case				
1.a. [If someone other than the juror] Who?		X	Vague; irrelevant.	

IXL Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
1.b. When did you [or the person you know] work at IXL?		X	Vague; irrelevant.	
1.c. What did you [or the person you know] do at IXL?		X	Vague; irrelevant.	
2. IXL is in the business of created online software for use in classrooms. Have you or someone else you know ever worked in this field?		X	Vague; irrelevant.	
H. Capacity to Serve				
1. Do any of you have a medical or mental condition which may impede your ability to serve as a juror? If so, is there any reasonable accommodation which would permit you to serve?		X	Vague; irrelevant.	
2. This trial may last for more than an entire week and up to two weeks. Are you suffering from any health or personal difficulties which would prevent you from sitting as a juror for that length of time or impair your ability to hear, pay attention to, or fairly evaluate all the testimony of witnesses and arguments of counsel that will be presented throughout the duration of this trial? Is there anyone on this jury panel who would suffer a serious personal		X	Vague; irrelevant.	

IXL Proposed Voir Dire Question	Agree	Not Agree	Basis for Objection	Response
hardship if required to serve on the jury?				
3. Do you know _____ (list key witnesses, lawyers)? If so can you provide details?	X			

Dated: October 9, 2018

Respectfully submitted,
 EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION

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

Dated: October 9, 2018

THE MAREK LAW FIRM

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

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 Voir Dire Question. In compliance with Local Rule 5-1(i)(3), I hereby attest that David Marek and Jeff Wilson concurred in this filing

Dated: October 9, 2018

/s/ Ami Sanghvi
 AMI SANGHVI, Senior Trial Attorney