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19 *Attorneys for Plaintiff EEOC*

20 UNITED STATES DISTRICT COURT  
 21 NORTHERN DISTRICT OF CALIFORNIA

22 U.S. EQUAL EMPLOYMENT  
 23 OPPORTUNITY COMMISSION,

24 Plaintiff,

25 and

26 ADRIAN SCOTT DUANE,

27 Plaintiff Intervenor,

28 vs.

IXL Learning, Inc.,

Defendant.

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

**PLAINTIFF’S EX PARTE MOTION TO  
 LIFT STAY AND SEEK AN EXTENSION  
 OF TIME TO FILE ANY NOTICE OF  
 APPEAL**

Courtroom: 4, 17<sup>th</sup> Floor  
 Judge: Hon. Vince Chhabria

Plaintiff Equal Employment Opportunity Commission (EEOC) moves ex parte to lift the current stay of litigation deadlines ordered due to the lapse in appropriations and government shutdown. [ECF No. 166] The EEOC also moves ex parte for confirmation that that the stay due to

1 the shutdown encapsulates an extension to the deadline to file an appeal<sup>1</sup>, and if not, seeks a thirty  
2 (30) day extension of time to file an appeal to the United States Court of Appeals for the Ninth  
3 Circuit from the judgment entered against the EEOC on December 21, 2018. [ECF No. 163] *See*  
4 Fed. R. App. P. 4(a)(1)(5)(B); L.R. 7-10. The original deadline for filing a Notice of Appeal was  
5 February 19, 2019. *See* Fed. R. App. P. 4(a)(1)(B)(ii). Plaintiff-Intervenor does not oppose this  
6 motion or the extension. If the Court does not confirm that the stay order included an extension of  
7 the deadline to file an appeal, Defendant opposes the extension of thirty (30) days sought here. *See*  
8 Declaration of Ami Sanghvi in Support of Ex Parte Motion for Relief, dated February 1, 2019, at  
9 ¶8.

10 Due to a temporary lapse of certain federal appropriations on December 21, 2018, the EEOC  
11 was shut down for thirty-five (35) days and did not resume business until January 28, 2019. As a  
12 federal government agency, the EEOC is subject to the Antideficiency Act, which provides that an  
13 “officer or employee of the United States Government ... may not ... involve [the] government in a  
14 contract or obligation for the payment of money before an appropriation is made unless authorized  
15 by law” and “may not accept voluntary services ... or employ personal services exceeding that  
16 authorized by law except for emergencies involving the safety of human life or the protection of  
17 property.” *See* 31 U.S.C. § 1341(a)(1)(B); 31 U.S.C. §1342. Such emergencies “do [ ] not include  
18 ongoing, regular functions of the government the suspension of which would not imminently  
19 threaten the safety of human life or the protection of property.” *Id.* The entry of the judgment  
20 triggers the EEOC Associate General Counsel, Appellate Services review process and therefore,  
21 because of the shutdown, the EEOC has not completed its process for determining whether to pursue  
22 an appeal. *See* EEOC Regional Attorneys’ Manual, Office of General Counsel Appeal Procedures,  
23 ¶3(a). [https://www.eeoc.gov/eeoc/litigation/manual/3-5-a\\_ogc\\_appeal\\_procedures.cfm#section1](https://www.eeoc.gov/eeoc/litigation/manual/3-5-a_ogc_appeal_procedures.cfm#section1)  
24 (last accessed, January 31, 2019).

25 \_\_\_\_\_  
26 <sup>1</sup> The EEOC files this request for relief in an abundance of caution even though it believes this Court’s December 27,  
27 2018 stay order renders this motion unnecessary. However, because of the jurisdictional nature of a notice of appeal and  
28 in light of the specific requirements for extensions of such notices set forth in 28 U.S.C. § 2107(c) and Federal Rule of  
Appellate Procedure 4(a)(5), we request that this Court explicitly grant the relief requested. Moreover, because of time  
discrepancy between the maximum extension permissible, thirty days, and the 35-day shutdown, the EEOC also seeks to  
clarify the deadline for filing a notice of appeal.



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**DECLARATION OF AMI SANGHVI  
IN SUPPORT OF PLAINTIFF'S  
EX PARTE MOTION TO LIFT STAY  
AND IF NECESSARY SEEK AN  
EXTENSION OF TIME TO FILE ANY  
NOTICE OF APPEAL**

Courtroom: 4, 17<sup>th</sup> Floor  
Judge: Hon. Vince Chhabria

I, Ami Sanghvi, declare as follows:

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

1 2. Plaintiff Equal Employment Opportunity Commission (EEOC) moved ex parte on December  
2 26, 2018 for a stay in the litigation of this matter due to the lapse in appropriations and government  
3 shutdown. The EEOC sought to extend all deadlines for the same number of days as the EEOC's  
4 lapse in funding.

5 3. This Court ordered the stay on December 27, 2019. [ECF No. 166]

6 4. The EEOC shut down at midnight on December 21, 2018 and reopened for business on  
7 January 28, 2019, resulting in a thirty-seven (37) day cessation of work.

8 5. The EEOC now moves ex parte to lift this Court's order dated December 27, 2018.

9 6. The EEOC also moves ex parte for confirmation that the stay due to the shutdown  
10 encapsulates an extension to the deadline to file an appeal, and if not, seeks a thirty (30) day  
11 extension of the deadline to file a notice of appeal with the Ninth Circuit Court of Appeals.

12 7. On January 29, 2019, I emailed IXL's counsel to seek consent for our motion.

13 8. On January 31, 2019, IXL counsel responded that they would not agree to a thirty-day  
14 extension but only an extension of the deadline from February 19 to February 28, 2019.

15 9. Plaintiff-Intervenor does not oppose the EEOC's request to extend the deadline.

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19 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
20 and correct.

21  
22  
23 Respectfully submitted,

24 Dated: February 1, 2019

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

25 By: /s/ Ami Sanghvi  
26 AMI SANGHVI, Senior Trial Attorney  
27 Attorney for Plaintiff EEOC  
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Case No.: 3:17-cv-02979-VC

**PROPOSED ORDER**

Courtroom: 4, 17<sup>th</sup> Floor  
Judge: Hon. Vince Chhabria

Upon Motion and good cause appearing,

**IT IS HEREBY ORDERED** that the stay ordered on December 27, 2019 (ECF No. 166) is lifted and all pending deadlines in this matter were extended.

**IT IS HEREBY FURTHER ORDERED** that based on a showing of good cause, the

1 EEOC's time period to file a notice of appeal with the Ninth Circuit Court of Appeals is extended by  
2 thirty (30) days pursuant to Fed. R. App. P. 4(a)(5).

3 DATED this 1st day of February, 2019.  
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6 United States District Judge Vince Chhabria  
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