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17 Attorneys for Defendant

18 IXL Learning, Inc.

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

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U.S. EQUAL EMPLOYMENT OPPORTUNITY : Case No.: 3:17-cv-02979-VC  
COMMISSION, :

22 Plaintiff, :

23 v. :

24 IXL LEARNING, INC., :

25 Defendant. :

26 **ANSWER TO COMPLAINT,  
AFFIRMATIVE DEFENSES, AND  
RELIANCE ON JURY DEMAND**  
27 

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28 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.



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.

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

1 goals. But the bottom line is, I want to return to work, and I am certain I  
2 can perform the essential functions of my job while working remotely  
3 50%. I'd like to find a solution under which I return on the 30<sup>th</sup> with this  
4 accommodation, or something very close to it. I suggest that we find some  
5 metrics that we can put in place so that you can monitor my progress to  
6 your satisfaction. I'd also suggest making all office time in the morning,  
7 so that you're sure to always have a chance to catch me in person to let me  
8 know what you'd like prioritized, etc. If there's anything else you'd like to  
9 include, such as weekly productivity review, I'm happy to do that as well.

10 27. After Duane's self-advocacy, IXL relented and allowed Duane to work from home 50%  
11 of the time. IXL informed Duane that it planned to set up a system to monitor his remote work progress.

12 **ANSWER:** Denied. Defendants state that IXL granted Duane's proposal of working remotely 50% of  
13 the time with metrics in place to monitor Duane's progress and productivity, stating the following in  
14 response to Duane's email:

15 Based on your doctor's recommendation, it sounds like reasonable  
16 accommodation in your case is to set up a part time remote working  
17 situation. It would be great if you could provide written documentation for  
18 this – and we can move forward with this plan. I'm happy to come up with  
19 performance goals and a progress monitoring plan for you as well. Having  
20 your office time be in the morning sounds great to me – thanks for that  
21 suggestion!

22 28. Duane provided a note from his surgeon supporting his reasonable accommodation  
23 request. The surgeon advised that Duane work remotely for at least four more weeks for postoperative  
24 healing.

25 **ANSWER:** Defendant admits that Duane voluntarily provided a note from his surgeon dated  
26 December 29, 2014, which advised that Duane be allowed to work remotely for at least four more  
27 weeks.

28 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](http://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.

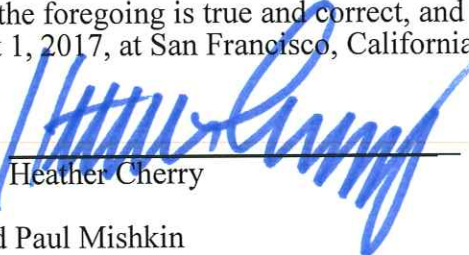


**CERTIFICATE OF SERVICE**

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

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