

October 14, 2021

**Via Email**

Arbitrator Linda H. McPharlin, Esq.  
c/o Marina Cortes, Case Administrator  
American Arbitration Association  
MarinaCortes@adr.org

Re: *Linh Nguyen v. Lambda, Inc.*, AAA Case No. 01-21-0003-8509

Dear Arbitrator McPharlin:

Pursuant to the October 8, 2021 order in this matter, Claimant Linh Nguyen submits this response opposing Lambda's September 15, 2021 letter seeking leave to file a motion to dismiss. Ms. Nguyen respectfully submits that each issue raised by Lambda is so clearly without merit that briefing would be a waste of time and resources.

*First*, Lambda claims that Ms. Nguyen lacks standing under the California Unfair Competition Law ("UCL") because she does not allege a loss of money or property. But taking out an Income Share Agreement ("ISA") that indebts her to up to \$30,000 in tuition payments is clearly economic harm under the UCL. Regardless, as indicated in her Demand, Ms. Nguyen started making payments on her ISA in June 2021, Demand ¶ 90, and to date has made over \$10,000 in payments. *See* Exhibit A (attaching Claimant's payment history and monthly ISA payment receipts).

*Second*, Lambda claims that its educational services are not "goods" or "services" under the California Consumer Legal Remedies Act ("CLRA"). To the contrary, California courts have examined this question directly and determined that education is a "service" under the CLRA.<sup>1</sup>

*Third*, Lambda contends that Ms. Nguyen fails to allege the "who, what, when, and where" of the misrepresentation made to Lambda students and that they do not have "notice of the particulars of Claimant's allegations." This is not a serious argument. Ms. Nguyen has filed a 40 page Demand that *quotes* and provides screen shots of the false statements on Lambda's website, and alleges what dates those statements were operative. *See, e.g.*, Demand ¶¶ 11–13 and 46–59. Lambda knows exactly what it is being accused of.

*Finally*, Lambda contends that Ms. Nguyen fails to plead facts sufficient to establish that she relied on the representations at issue. This is wrong for multiple reasons. First, on these facts

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<sup>1</sup> *See, e.g., Russ v. Apollo Grp., Inc.*, No. 09-cv-904, 2009 WL 10674112, at \*3 (C.D. Cal. Sept. 23, 2009) ("The Defendants have not provided sufficient authority for the Court to find that the legislature intended to omit education . . . from the definition of 'services' [under the CLRA]."); *Anderson v. SeaWorld Parks and Entm't, Inc.*, No. 15-cv-02172, 2016 WL 8929295, at \*12 (N.D. Cal. Nov. 7, 2016) ("[T]here is no language in the pertinent portions of the CLRA . . . that might lead to a conclusion that the legislature did not intend the CLRA to cover 'entertainment' or 'education' as 'services.'"); *Claiborne v. Water of Life Cmty. Church*, No. 17-cv-0771, 2017 WL 9565337, at \*9-10 (C.D. Cal. Aug. 25, 2017) (relying on *Anderson* and *Russ* to conclude that defendant provided plaintiff "a service of financial education that is covered by the CLRA" and explaining that "education" was listed as a service under section (b) of the Model National Consumer Act, upon which the CLRA was based).

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reliance is presumed under UCL.<sup>2</sup> Regardless, even without such a presumption, “[it] is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [the plaintiff’s] decision.”<sup>3</sup> Here, Ms. Nguyen repeatedly and clearly alleges that she read and relied on the placement rates and statements that Lambda only got paid if she did, and that both were critical to her decision to enroll.<sup>4</sup> This is more than enough.

Accordingly, Ms. Nguyen respectfully submits that briefing on these issues would be futile.

Respectfully Submitted,

/s/ Alexander S. Elson

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<sup>2</sup> Under the UCL, a showing of materiality gives rise to “a presumption, or at least an inference, of reliance.” *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (Cal. 2009). Because express or implied claims about Lambda’s job placement rates are presumptively material, there is therefore a presumption or inference of reliance. *See, e.g., Telebrands Corp.*, 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at \*41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were *per se* material because they were express, and “that even if they were implied claims, they were material because the claims relate to the efficacy of the product”).

<sup>3</sup> *In re Tobacco II Cases*, 46 Cal. 4th at 327 (internal quotation marks omitted) (explaining that reliance on the misrepresentation does not have to be “the sole or even the predominant or decisive factor influencing” the individual’s decision).

<sup>4</sup> *See Demand* ¶ 14 (“Ms. Nguyen relied on Lambda’s advertised job placement rate of over 80% and its promise that Lambda would not get paid until she did when she decided to enroll at Lambda in July of 2019, financed by an ISA.”); ¶ 62 (“Ms. Nguyen read this statement on Lambda’s website prior to enrolling. Knowing that Lambda only got paid if she obtained employment was important to her decision to attend the school.”); ¶ 78 (“Prior to signing the ISA, Ms. Nguyen read and relied on Lambda’s representations that its job placement rate was over 80%. Lambda’s record of successfully placing students was critical to her decision to enroll.”); ¶ 124 (“Lambda made statements to Ms. Nguyen: (a) that were false representations of material fact; (b) that Lambda knew were false or were made recklessly and without regard for their truth; (c) that Lambda intended Ms. Nguyen to rely upon; (d) that Ms. Nguyen reasonably relied upon; (e) that Ms. Nguyen’s reliance upon was a substantial factor in causing damage to her; and (f) that caused damages to Ms. Nguyen.”); ¶ 127 (“Ms. Nguyen reasonably relied on these widely disseminated representations. Had she known the truth, she would not have enrolled at Lambda.”).

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*Attorneys for Claimant*

Cc: Patrick Hammon, Attorney for Respondent



**Linh Nguyen**  
LAMBDA SCHOOL WEB PROGRAM

**CURRENT BALANCE** ⓘ  
**\$0.00**

Amount Past Due	\$0.00
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**Next Payment**

Due Date	11/1/2021
Amount Due	\$0.00
Autopay	Not scheduled

[Show Details](#)

**PAYMENT CAP** ⓘ

\$10,979 paid	\$30,000 total
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**PAYMENT TERM** ⓘ

6 months qualified	24 total
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Exh. A - Claimant Linh Nguyen's Oct. 14, 2021  
Ltr to Arb. McPharlin

From: Leif <[support@leif.org](mailto:support@leif.org)>  
Date: Sun, Jun 6, 2021 at 9:53 PM  
Subject: ISA Payment Succeeded  
To: <[linh.ng67@gmail.com](mailto:linh.ng67@gmail.com)>



Hi Linh Nguyen,

Your payment for **\$2,195.83** due on **06/01/2021** posted successfully from your account.

[View Payments](#)

Thanks!

Team Leif

Leif Technologies, Inc.  
829 Washington Street, New York, NY 10014  
[Support/FAQ](#)

Exh. A - Claimant Linh Nguyen's Oct. 14, 2021  
Ltr to Arb. McPharlin

From: Leif <[support@leif.org](mailto:support@leif.org)>  
Date: Wed, Jul 7, 2021 at 9:45 PM  
Subject: ISA Payment Succeeded  
To: <[linh.ng67@gmail.com](mailto:linh.ng67@gmail.com)>



Hi Linh Nguyen,

Your payment for **\$2,195.83** due on **07/01/2021** posted successfully from your account.

[View Payments](#)

Thanks!

Team Leif

Leif Technologies, Inc.  
829 Washington Street, New York, NY 10014  
[Support/FAQ](#)

Exh. A - Claimant Linh Nguyen's Oct. 14, 2021  
Ltr to Arb. McPharlin

From: Leif <[support@leif.org](mailto:support@leif.org)>  
Date: Wed, Aug 4, 2021 at 8:12 PM  
Subject: ISA Payment Succeeded  
To: <[linh.ng67@gmail.com](mailto:linh.ng67@gmail.com)>



Hi Linh Nguyen,

Your payment for **\$2,195.83** due on **08/02/2021** posted successfully from your account.

[View Payments](#)

Thanks!

Team Leif

Leif Technologies, Inc.  
829 Washington Street, New York, NY 10014  
[Support/FAQ](#)

Exh. A - Claimant Linh Nguyen's Oct. 14, 2021  
Ltr to Arb. McPharlin

From: Leif <[support@leif.org](mailto:support@leif.org)>  
Date: Mon, Sep 6, 2021 at 9:19 PM  
Subject: Payment Succeeded  
To: <[linh.ng67@gmail.com](mailto:linh.ng67@gmail.com)>



Hi Linh Nguyen,

Your payment for **\$2,195.83** due on **09/01/2021** posted successfully from your account.

[View Payments](#)

Thanks!

Team Leif

Leif Technologies, Inc.  
829 Washington Street, New York, NY 10014  
[Support/FAQ](#)

Exh. A - Claimant Linh Nguyen's Oct. 14, 2021  
Ltr to Arb. McPharlin

From: Leif <[support@leif.org](mailto:support@leif.org)>  
Date: Mon, Sep 20, 2021 at 9:20 PM  
Subject: Payment Succeeded  
To: <[linh.ng67@gmail.com](mailto:linh.ng67@gmail.com)>



Hi Linh Nguyen,

Your payment for **\$2,195.83** due on **10/01/2021** posted successfully from your account.

[View Payments](#)

Thanks!

Team Leif

Leif Technologies, Inc.  
829 Washington Street, New York, NY 10014  
[Support/FAQ](#)