

December 10, 2021

VIA E-MAIL

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:

Respondent Bloom Institute of Technology (formerly Lambda, Inc., referred to herein as “Bloom” or the “School”) writes to raise an important threshold issue that has arisen between the parties with respect to the hearing that took place on November 22, 2021.

November 22, 2021 Hearing

At the conclusion of the Nov. 22, 2021 hearing, I understood that Your Honor ordered my client to produce documents in connection with Claimant’s Request Nos. 1-3, subject to agreed-upon search terms, relating to the time period of April 2019 through the date that Claimant signed her ISA, which was July 16, 2019.

As Your Honor likely recalls, Claimant initially took the position that the School should produce documents from all of 2019. Respondent took the position, on the other hand, that the only information or events that could possibly be relevant would be ones from after Claimant alleges she “discovered” the School’s website (i.e., July 2019) through her date of enrollment (i.e., July 16, 2019). Respondent advocated for this timeframe because the School does not believe that information about representations from before Claimant even discovered the School’s website could be relevant and because information about representations from after Claimant enrolled could not be relevant to what Claimant allegedly relied upon.

My understanding from the hearing was that Your Honor did not entirely agree with either party, and instead directed the School to produce documents relating to a time period slightly before the date on which Claimant discovered the School’s website, on the one hand, through the date Claimant enrolled at the School, on the other. That understanding is shared by my associate who was a non-speaking attendee at the hearing and is reflected in his and my

contemporaneous notes from the hearing. It was also conveyed in emails I sent shortly after the hearing.

Relevant Post-Hearing Events

Shortly after the hearing, the parties met and conferred on Monday, November 29, 2021 about the next steps. (See **Exhibit A.**) Among other topics, the parties discussed search terms, the draft protective order proposed by the School, and Respondent's request for limited discovery from Claimant. Since the time frame for the discovery was set at the hearing, neither party raised any issue or concern about the dates or timeframe from which documents would be produced. Indeed, because I understood the timeframe to be a settled issue, during that call, I indicated that, among other things, once search terms were agreed to, I would be producing every document from within the applicable time range, and would not be exempting documents from within the specific time range endorsed by the Arbitrator due to my team's judgments about responsiveness.

On Wednesday, December 1, 2021, at 3:51 p.m. PST, the parties received a forwarded email containing Your Honor's ruling from the hearing. (**Exhibit B.**) That order did not reference the April 2019-July 2019 timeframe, stating instead that the School would be ordered to produce documents in connection with Request Nos. 1-3 "after counsel have met and conferred about limiting the breadth of the requests, through date limitations, search terms, and otherwise," which reaffirmed my understanding that documents from within the particular timeframe identified by the Arbitrator needed to be produced, and that the parties should meet and confer about other parameters to help find documents from outside that date range that might relate to representations made between April 2019 and July 16, 2019. In other words, if a document was sent in December 2019 that commented about the job placement representations made in June 2019, it would still need to be produced, even though it was dated outside of the time frame discussed at the hearing, because it concerned representations from within that time frame—but had a document from December 2019 concerning representations made in December 2019 would not need to be produced, as it would not relate to representations made during the relevant timeframe.

Later that afternoon, on Wednesday, December 1, 2021, at 4:13 p.m. PST, Claimant sent an email following up on the parties' meet and confer conversation. (**Exhibit A.**) In that email, Claimant proposed search terms, but, once again, was silent about any issue concerning the date or time range of the search.

The next day, on Thursday, December 2, 2021, at 7:40 p.m. PST, I responded to Claimant's email, providing additional detail about what the School intended to do with regard to its searches for documents. (**Exhibit A.**) In that email, I outlined the School's intended protocol, which would include producing all documents from within the April 2019-July 2019 timeframe

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that hit on the agreed-upon search terms and searching outside that timeframe for documents relating to representations made within that timeframe.

In response to that email, on Sunday, December 5, at 11:15 a.m. PST, Claimant responded with various suggested changes to the School's protocol, including a suggestion that the School search for documents in 2020, something that was not discussed at the hearing. (**Exhibit A.**)

The next day, confused by the controversy regarding timeframes, I responded to Claimant's email, on Monday, December 6, at 8:40 p.m. PST. (**Exhibit A.**) In that email, I endeavored to make clear what I believed already was: that the relevant timeframe was a settled issue. I also made it clear that the School did not intend to only look for documents that were literally date stamped from within that date range, but that the School would also look outside that date range for documents that spoke to the School's representations about job placement rates that were made during the April-July 2019 timeframe.

On Tuesday, December 7, at 11:36 a.m. PST, Claimant responded to that email, indicating that Claimant had a different view about what was ordered by the Arbitrator, particularly with respect to the timeframe of the documents at issue.

Concerned that this disagreement could quickly devolve into protracted back-and-forths, I suggested that the parties have a call about this specific issue on Wednesday, December 8, 2021. During that call, the parties were able to slightly narrow our understanding of the issue. Claimant's counsel stated that he did not recall Your Honor directing the parties to use the April to July 2019 timeframe as the relevant timeframe, but his understanding was that Your Honor's statements were meant as suggestions to help the parties decide on a relevant time period for Respondent to search. During that call, the parties realized that there was a disagreement about whether Your Honor meant to order the parties to use the April to July 2019 timeframe as the relevant timeframe (while leaving open the possibility of meeting and conferring about potential ways of finding documents from outside that timeframe), or whether Your Honor meant that the parties needed to meet and confer about potential date ranges from scratch.

As the parties have different recollections of what the Arbitrator ordered at the hearing, I write this letter in hopes of obtaining Your Honor's guidance so that the parties can get clarity on this important threshold issue and so the School move forward with its review and production. While I believed this was a settled issue, it is clear from correspondence with Claimant that her counsel believes it is not.

April 2019 Through July 2019 is the Appropriate Timeframe For the Discovery at Issue

Regardless of which understanding of Your Honor's order is correct, the School nevertheless submits that April 1, 2019 to July 16, 2019, is the appropriate timeframe for the discovery at issue.

With respect to the upper bound of that timeframe, Claimant enrolled in the School on July 16, 2019. (See Demand, ¶¶ 75-76.) Representations, and information about whether they were accurate or inaccurate, from after that date could not possibly be relevant to what Claimant relied upon, or did not rely upon, when she decided to enroll at the School.

With respect to the lower bound of that timeframe, Claimant has pleaded that she did not discover the School until July 2019. (See Nguyen Demand, ¶¶ 75-76.) The School respectfully submits, therefore, that representations, and information about whether they were accurate or inaccurate, from before that timeframe could also not be relevant to what Claimant did or did not rely upon.

Respondent notes that this does not mean its searches will be rigidly confined to those date ranges. Respondent anticipates reviewing documents outside that range and producing those documents so long as they share a nexus to the April-July 2019, timeframe. This approach was described in my December 6 email to counsel attached as **Exhibit A**. The purpose of this approach, and why I recall the time limits were imposed by Your Honor at the hearing in the first place, was to keep the relevant document production period to the few months leading up to Claimant's enrollment.

Claimant, on the other hand, has suggested that the School should produce documents from beyond the date of Claimant's enrollment for what appear to be two separate reasons. First, Claimant has suggested that the School cited the same job placement rate after Claimant's date of enrollment, and so documents pertaining to the truth or falsity of those representations should be discoverable as well. Respondent respectfully disagrees; whether something the School said in October 2019, for example, was true or false is not relevant to what Claimant did, or did not, rely upon since she had already made the decision to enroll.

Second, Claimant has suggested that the School should search for documents from 2020 in connection with Request No. 3 because that was when much of the media coverage Claimant identified took place. But, again, Respondent respectfully disagrees with Claimant's position as the School's internal discussions from a year after Claimant made the decision to enroll at the School do not bear on any of the elements of her individual claims.

While the School believes the appropriate timeframe for discovery (to the extent any discovery needs to take place) should only be from the date Claimant discovered the School through her decision to enroll, it understands that Your Honor directed the parties to use a more expansive

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timeframe that included the three (3) months before she discovered the School's website. The School respectfully asks the Arbitrator to reaffirm that guidance and direct the parties to continue to meet and confer about other parameters for finding documents that relate to representations from within that time period. To be absolutely clear, the School has never taken the position that it would only search for documents that are literally from within the timeframe discussed at the hearing; it has, however, taken the position that, to the extent documents are produced, they should relate to representations or discussions from within it.

Conclusion

The School respectfully requests that the Arbitrator provide definitive guidance on this issue so that it can make progress in preparing its production.

Very truly yours,

McMANIS FAULKNER

/s/ Patrick Hammon

PATRICK HAMMON

Cc: Alexander Elson

Phillip Andonian

EXHIBIT A

From: [Hammon, Patrick](#)
To: [Alex Elson](#)
Cc: [Moniz, Lisa](#)
Subject: Re: Call re document exchange & next steps
Date: Friday, December 10, 2021 3:26:09 PM
Attachments: [image001.png](#)
[image002.png](#)

Thanks Alex.

My secretary has been starting and stopping the filing since we have been exchanging emails; she will include this chain so that your most recent comments are included in the submission.

We are going to file now.

Let's chat Monday about a protocol moving forward that we can maybe start with when we get to the protective order issue.

Thanks - and have a great weekend,
Patrick

From: Alex Elson <alex@defendstudents.org>
Sent: Friday, December 10, 2021 3:19:07 PM
To: Hammon, Patrick <phammon@mcmanislaw.com>
Subject: Re: Call re document exchange & next steps

Thank you, Patrick. I do appreciate the heads up and agree about the urgency. If Respondent plans to proceed, please just make clear that Claimant has not had a chance to review the filing, and will submit a statement on Monday (it's 6:20pm EST so I have to sign off shortly).

We can also discuss on Monday a process for submitting joint letters, which I do think will help to streamline some of these narrow disputes.

Thanks and have a nice weekend,

Alex

From: Hammon, Patrick <phammon@mcmanislaw.com>
Date: Friday, December 10, 2021 at 6:06 PM
To: Alex Elson <alex@defendstudents.org>
Subject: Re: Call re document exchange & next steps

Hi Alex,

Thanks for your quick note back.

Sharing letters characterizing one another's positions before submission has not been the

practice of either party in any of our arbitrations. I wrote the prior email to give you a heads-up as a courtesy (which I don't believe either party has done about any issue raised to any of the arbitrators in any of the three arbitrations). If you would like to discuss a protocol of joint letter submissions as we move forward (like, for example, in connection with our upcoming letters regarding the protective order dispute), I would be happy to have that discussion. But given that it is less than a month before our production deadline, I do not think we can wait any longer to raise this issue.

I have taken great pains to be as accurate as possible, by studying my notes and speaking with my colleagues as the letter was drafted. Respondent will have no objection to Claimant filing a response.

I will, of course, attach this email chain to our submission.

Thank you,
Patrick

PATRICK HAMMON
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From: Alex Elson <alex@defendstudents.org>
Sent: Friday, December 10, 2021 2:47 PM
To: Hammon, Patrick <phammon@mcmanslaw.com>
Subject: Re: Call re document exchange & next steps

Thank you, Patrick. If you plan to file a document characterizing our conversation, we respectfully request that you send us a copy first to review, rather than deal with corrections or amendments after the fact. Indeed, rather than submit competing documents on different days, it would seem most convenient for the arbitrator and for the parties to file a single letter seeking clarification on

this narrow issue, with each side stating its view. Does that work?

Best,

Alex

From: Hammon, Patrick <phammon@mcmanislaw.com>

Date: Friday, December 10, 2021 at 5:30 PM

To: Alex Elson <alex@defendstudents.org>

Subject: Re: Call re document exchange & next steps

Hi Alex,

I hope you're doing well. Thanks for taking the time to speak on Wednesday.

We have reviewed our notes carefully, and conferred internally, and continue to believe that the Arbitrator was clear about the timeframe she believed was relevant. To be clear, we think the Arbitrator identified the relevant timeframe as being April 2019 through the date of Claimant's enrollment (July 2019), but invited the parties to meet and confer about other parameters (including date ranges for the School's searches) in case there might be other documents that relate to what was true (or not true) and what was said (or not said) during the April-July 2019 timeframe. While I acknowledge this is a narrow dispute, I do believe it is important we get the Arbitrator's input/feedback sooner than later as it impacts quite a few other issues in our discussions.

Accordingly, we plan on submitting a letter seeking that guidance shortly. I wanted to write to give you a heads-up that that is forthcoming. We attempted to characterize our discussions as accurately as possible, but will obviously send an amendment or provide clarification to the Arbitrator if you think anything we wrote does not synch up with your recollection or our conversations.

Thank you,
Patrick

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From: Alex Elson <alex@defendstudents.org>
Sent: Wednesday, December 8, 2021 1:02 PM
To: Hammon, Patrick <phammon@mcmanislaw.com>
Subject: Re: Call re document exchange & next steps

No worries at all. If it works for you, why don't we try for 2pm your time (or 3 is fine as well if that's better). And if it doesn't work, I can try you tonight a little bit after my train gets in. You can reach me on my cell – 773-206-0510.

Thanks,

Alex

From: Hammon, Patrick <phammon@mcmanislaw.com>
Date: Wednesday, December 8, 2021 at 3:27 PM
To: Alex Elson <alex@defendstudents.org>
Subject: Re: Call re document exchange & next steps

Thanks Alex.

I don't want to burden your night, and I also don't want to put you in an uncomfortable position for the call. Would 7.30 ET be inconvenient/problematic? Happy to wait until tomorrow if it is.

Get [Outlook for iOS](#)

From: Alex Elson <alex@defendstudents.org>
Sent: Wednesday, December 8, 2021 12:05:28 PM
To: Hammon, Patrick <phammon@mcmanislaw.com>
Subject: Re: Call re document exchange & next steps

Hi Patrick,

I'll be on an Amtrak from 4pm to 7:30pm EST today. I'm en route to the station now but could chat at/around 3:30 EST before it departs. Reception/audio can be difficult on the train, but we can also give it a shot at either of the below time slots you mention below. Just let me know.

Thanks,

Alex

Sent from my iPhone

On Dec 8, 2021, at 2:56 PM, Hammon, Patrick <phammon@mcmanislaw.com> wrote:

Hi Alex –

Do you have time this afternoon for a quick conversation regarding the timeframe issue discussed below? Any chance you could connect at 2 or 3 my time?

Thanks,
Patrick

PATRICK HAMMON ([bio](#))

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From: Alex Elson <alex@defendstudents.org>

Sent: Tuesday, December 7, 2021 11:36 AM

To: Hammon, Patrick <phammon@mcmanislaw.com>

Cc: Parkhurst, Andrew <aparkhurst@mcmanislaw.com>; phil@calebandonian.com;
kirin@defendstudents.org

Subject: Re: Call re document exchange & next steps

Thank you, Patrick. Our notes are actually different than what you describe below – Arbitrator McPharlin stated that Respondent was required to produce the “core of what is being asked for” in requests 1-3, and then ordered us to meet and confer over things such as search terms and date ranges, but did not order that a specific date range be provided. This is confirmed by the written order issued on November 22, which provides: “It is ordered that documents be produced pursuant to Requests No. 1, 2, and 3, after counsel have met and conferred about limiting the breadth of the requests, through date limitations, search terms, and otherwise.”

With respect to Request 1, we did discuss limiting the time frame to the date Ms. Nguyen enrolled. But as set forth in my email below, that only makes sense with respect to the representations themselves, not any evidence that the 85.9% rate that Ms. Nguyen relied on was false.

With respect to Request 2, there is no date range in the request precisely for this reason. Any communications that support or contradict the accuracy of the “roughly 50%” statement and the 85.9% rate would be directly relevant, regardless of when those communications took place. Indeed, they are the “core of what is being asked for.” As set forth in my email below, we are not opposed to putting some time limit on the request, such as when the representation came down from the website.

With respect to Request 3, because the request seeks documents and communications regarding 2020 articles about the 2019 placement rates, it follows that the searches need to be conducted during the time period after these articles were published.

We appreciate your statement that Respondent will “look outside the date range,” but it’s not clear what that means. Can you please explain specifically what you are proposing for each request? If it turns out we are saying the same thing, great. If not, as set forth below, one option is to run searches both with and without the date restrictions to see if there is a difference in volume. Or, in the alternative, if we cannot reach agreement we can write a joint letter to the arbitrator with each side explaining its position in a short statement.

With respect to Respondent’s requests, we spoke with Ms. Nguyen on Friday – she does not expect it to be burdensome, but we don’t have confirmation of total volume yet. The process is under way and we will be in touch soon with any updates.

We will send you edits on the PO shortly. We believe the law is clear on the burden issue. If your client has cases indicating that it is somehow different in the AAA context, please feel free to share.

If you would like to have a phone call to discuss, please let us know.

Best,

Alex

From: Hammon, Patrick <phammon@mcmanislaw.com>

Date: Monday, December 6, 2021 at 11:40 PM

To: Alex Elson <alex@defendstudents.org>

Cc: Parkhurst, Andrew <aparkhurst@mcmanislaw.com>, phil@calebandonian.com <phil@calebandonian.com>, kirin@defendstudents.org <kirin@defendstudents.org>

Subject: Re: Call re document exchange & next steps

Hi Alex,

Thanks for your email.

Claimant's Document Requests

The Arbitrator provided specific guidance regarding time limits and date ranges at the hearing. As I'm sure everybody recalls, my client's position regarding the limited window of relevance between (1) when Claimant alleges she first discovered Lambda and (2) when she enrolled at Lambda was made pretty clear at the hearing before the Arbitrator provided that guidance. After both sides presented their arguments (Respondent for a narrow window and Claimant for a broader window), the Arbitrator indicated that the timeframe for RFPs 1-3 would be, at most, April 2019 through the date of Claimant's enrollment.

Regardless of the foregoing, I actually do not think we are that far apart in what we are saying with regard to RFPs 1-2. Indeed, Respondent will not only be looking for documents that are literally from within those dates for purposes of responding to RFPs 1-2. Instead, Respondent will look outside the date range as well to see if there are responsive documents regarding the window endorsed by the Arbitrator.

With regard to RFP 3, I don't mean this to be argumentative, but this is the first I've heard of searching for documents from 2020. My understanding was that the Arbitrator was clear in the guidance she provided about time and date ranges, and that she agreed with Respondent's argument that documents reflecting or relating to events from after Claimant enrolled did not need to be produced. To that end, my client is willing to do exactly what the Arbitrator told it to do by searching for responsive documents from April 2019 through the date Claimant enrolled. Nevertheless, in the interest of moving forward, my client would be willing to look outside that date range for responsive documents, provided that such documents relate to media coverage from within that time frame.

I would be surprised if others had a different recollection of what the Arbitrator said at the hearing about these issues, but if for some reason you believe my notes are inaccurate, please let me know.

Respondent's Document Requests

Can you please provide an update on where we stand in connection with Respondent's document requests? As I indicated in the past, we would like to

work with you to make sure our requests are fair and not overly burdensome, but we haven't heard any reactions to the criteria we proposed. Just let us know.

The Protective Order

When can we expect either a markup or your suggested edits? In a similar vein, as we discussed during our call, if authorities exist that you think my side should review before cementing its position, please let me know.

Thanks,
Patrick

PATRICK HAMMON

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From: Alex Elson <alex@defendstudents.org>
Sent: Sunday, December 5, 2021 11:14 AM
To: Hammon, Patrick <phammon@mcmanslaw.com>
Cc: Parkhurst, Andrew <aparkhurst@mcmanslaw.com>; phil@calebandonian.com <phil@calebandonian.com>; kirin@defendstudents.org <kirin@defendstudents.org>
Subject: Re: Call re document exchange & next steps

Thanks, Patrick. I think we are largely on the same page, but want to flag one open issue with respect to date ranges.

Requests 1 and 2: At the hearing, we discussed that any placement rate representations that came after Linh's enrollment date would not be relevant, and agreed that any such limitation would be reasonable. That remains our position. However, after further thought, because the 85.9% rate that Linh relied on remained on the website for many months after she enrolled, communications about that specific rate (even if it came after she enrolled) would be relevant to the issue of falsity. For the same reason, any communications that support or contradict the

accuracy of the “roughly 50%” statement and the 85.9% rate would be relevant, regardless of when those communications took place. To be clear, we are not seeking data or documents that support new rates that Lambda published *after* the 85.9% rate, but are focused only on the rate that Linh relied on when she enrolled. Would your client agree to provide documents up until the time that the 85.9% rate came down from the website?

Request 3: No disagreement that the order is limited to the job placement rate issue, but I suspect you are correct that it will be a moot point given the scope of the articles. Because most of the relevant stories were published in early 2020, can we agree to a June 2020 end date for that request?

As a practical matter (and to avoid any unnecessary disputes) perhaps it makes sense to run these searches both with and without date restrictions to see if there is even an issue?

We will get edits on the PO to you shortly.

If it’s easier to talk this through on Monday, just let us know.

Best,

Alex

From: Hammon, Patrick <phammon@mcmanislaw.com>
Date: Thursday, December 2, 2021 at 7:40 PM
To: Alex Elson <alex@defendstudents.org>
Cc: Parkhurst, Andrew <aparkhurst@mcmanislaw.com>, phil@calebandonian.com <phil@calebandonian.com>, kirin@defendstudents.org <kirin@defendstudents.org>
Subject: RE: Call re document exchange & next steps
Hi Alex,

Thanks for your email.

I’m still getting my arms wrapped around the dataset from the Lambda Labs case, but, as I mentioned during our call on Monday, I expect to be in a position to have it by end of week.

As a general matter, this looks like a fair and workable start, and I don’t anticipate much controversy, except (possibly) in connection with Request 3, as set forth below. With regard to your comments about the exclamation mark wildcard, I understand what you mean, and can run searches accordingly. With regard to Requests 1 and 2, the proposed search terms you identified to find and produce documents relating to the time period identified by the Arbitrator during the hearing (April 2019 through

Claimant's ISA execution date) generally make sense, assuming we can execute some type of protective order by the production date.

In connection with Request 3, however, I want to note that the Arbitrator indicated at the hearing that my client would only be required to respond to the portion of this request pertaining to Claimant's job placement rate theory—and not the other two threads of the request concerning (i) BPPE approval and (ii) ISA resale. This may ultimately be a moot point as my suspicion is that these issues were all lumped together in the media coverage I think you're trying to capture, but I just wanted to make sure we were on the same page.

Assuming we are on the same page, and barring some unduly burdensome number of hits, my sense is that we will be in a position to agree to this framework shortly.

Thanks,
Patrick

PATRICK HAMMON (bio)

<image002.png>

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From: Alex Elson <alex@defendstudents.org>
Sent: Wednesday, December 1, 2021 4:13 PM
To: Hammon, Patrick <phammon@mcmanslaw.com>
Cc: Parkhurst, Andrew <aparkhurst@mcmanslaw.com>; phil@calebandonian.com;
kirin@defendstudents.org
Subject: Re: Call re document exchange & next steps

Hi Patrick,

Please find search terms below. This does not include Request 5 – for that request, I assume your client can simply pull documents related to the packaging and selling of Claimant's ISA (if any)? Also note – I am using "!" below for the wildcard extender, but am not sure if your system uses a different symbol.

As discussed yesterday, our understanding is that once ready, the search terms will be run over all of the Lambda Labs productions.

We will be in touch soon on items 3 and 4 in your email below.

Requests 1-2

Placement or placed
Rate /10 (employ! or job or low or career)
85.9%
50%
Outcome
“180 days”
Cohort /s (place! or employ! or job)
Denominator
“Career Readiness”

Request 3

Woo
Intelligencer
(NY or “New York”) /5 mag!
“Business Insider”
Chan
Wired
Verge
“The Information”
(press or report or story or article or feature) /s (placement or placed or rate or outcome or fraud or scam or mislead or misrep!)

Thanks and talk to you soon,

Alex

From: Alex Elson <alex@defendstudents.org>
Date: Monday, November 29, 2021 at 6:34 PM
To: Hammon, Patrick <phammon@mcmanslaw.com>, phil@calebandonian.com
<phil@calebandonian.com>, kirin@defendstudents.org
<kirin@defendstudents.org>
Cc: Parkhurst, Andrew <aparkhurst@mcmanslaw.com>
Subject: Re: Call re document exchange & next steps

Thank you, Patrick. 2pm PST/5pm EST tomorrow works for us. I'll send around an invite with a dial in. Your list is similar to ours – we can address all of the below when we talk tomorrow.

Best,

Alex

From: Hammon, Patrick <phammon@mcmanslaw.com>
Date: Monday, November 29, 2021 at 5:34 PM
To: alex@defendstudents.org <alex@defendstudents.org>, phil@calebandonian.com <phil@calebandonian.com>, kirin@defendstudents.org

<kirin@defendstudents.org>

Cc: Parkhurst, Andrew <aparkhurst@mcmanislaw.com>

Subject: RE: Call re document exchange & next steps

Hi Alex,

Thanks for your email. Hope you guys all had a nice holiday break.

With regard to a call, could you speak tomorrow at 2 pm PT? We're in depo starting Wednesday, so we're just a little tight right now on timing.

A few outstanding issues from my perspective (which likely overlap with the ones on your agenda):

Timing Issues: I think we have now moved the disclosure deadlines to an indefinite point in all three arbitrations. I haven't yet formulated a position on when we should re-set those, but if you have views, I'd appreciate hearing them, so I can discuss with my client.

Search Terms: Thank you for the update regarding your proposed search terms. Obviously, the sooner we can get those, the better, so please just keep us posted.

Protective Order: Thank you for the update regarding your comments to the proposed protective order. We look forward to receiving those. Based upon your comments at the first hearing, it sounds like we will likely reach an impasse soon as to the issue of who bears the burden when a designation is challenged, which is fine, but I'd like to get something to the Arbitrator(s) sooner than later, so we can get his or her guidance before the parties start producing documents.

Discovery re: Claimant(s): As you surely know, our position is that the parties did not agree to the type of discovery that your client, Ms. Nguyen, advocated in her arbitration. However, as the Arbitrator apparently disagreed with us—and granted some discovery, it is our view, as expressed during the hearing, that it would be fundamentally unfair for my client to produce information before the hearing, without your client being asked to do the same, which was a view Arbitrator McPharlin seemed to share. To that end, I would propose that Claimant produce the following:

All of her text messages and emails that mention “Lambda”

All of her documents or communications that either relate to, or that Claimant contends support, her allegation (i) that she relied on any of the alleged misrepresentations or (ii) that such reliance caused her harm.

My strong suspicion is that there will not be a lot of documents that are responsive to either responsiveness criterion, but if there are multiple 1000's of documents (particularly in connection with the first standard), and your client believes it would be burdensome to produce them, how about you just let us know, and then we can talk through ways of further limiting?

Thank you,
Patrick

PATRICK HAMMON ([bio](#))

<image003.png>

408.279.8700
mcmanslaw.com

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From: Patrick Hammon <patrickhammon@gmail.com>
Sent: Monday, November 29, 2021 2:59 PM
To: Hammon, Patrick <phammon@mcmanslaw.com>
Subject: Fwd: Call re document exchange & next steps

----- Forwarded message -----

From: Alex Elson <alex@defendstudents.org>
Date: Mon, Nov 29, 2021 at 7:46 AM
Subject: Call re document exchange & next steps
To: Patrick Hammon <patrickhammon@gmail.com>
CC: Philip Andonian <phil@calebandonian.com>, Kirin Jessel <kirin@defendstudents.org>

Hi Patrick,

I hope you had a nice Thanksgiving weekend. We are working now to get you edits to the draft PO as well as a list of proposed search terms. Are you free for a call tomorrow or Wednesday to discuss next steps and timing? If you want to send us some times, we can take it from there.

Thanks,

Alex

Alexander S. Elson | Vice President & Co-founder

National Student Legal Defense Network
[1015 15th St NW, Suite 600 | Washington D.C. 20005](mailto:alex@defendstudents.org)
alex@defendstudents.org | www.defendstudents.org

EXHIBIT B

Moniz, Lisa

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

From: AAA Marina Cortes <MarinaCortes@adr.org>

Sent: Wednesday, December 1, 2021 3:51 PM

To: alex@defendstudents.org <alex@defendstudents.org>; jberger@cpmlegal.com <jberger@cpmlegal.com>; kirin@defendstudents.org <kirin@defendstudents.org>; phil@calebandonian.com <phil@calebandonian.com>; Hammon, Patrick <phammon@mcmanislaw.com>; contact@lambdaschool.com <contact@lambdaschool.com>

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

Counsel,

Below please find a Ruling dated November 22, 2021, from Arbitrator McPharlin.

Respectfully,

/s/

Marina Cortes

Case Administrator

bcc:

Arbitrator McPharlin



**AAA Marina Cortes
Case Administrator**

American Arbitration Association

T: 559 650 8224 F: 855 433 3046 E: MarinaCortes@adr.org
45 E River Park Place West, Suite 308, Fresno, CA 93720
adr.org | icdr.org | aaamediation.org



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From: Linda McPharlin <lmcpfarlin@mstpartners.com>

Sent: Monday, November 22, 2021 3:57 PM

To: AAA Marina Cortes <MarinaCortes@adr.org>

Cc: Dawn Spaulding <dspaulding@mstpartners.com>

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

***** External E-Mail – Use Caution *****

Marina,

Please notify the parties of the ruling on Claimant's Request for Documents, as follows:

To the parties:

A telephone conference was held on November 22, 2021, attended by Claimant's attorneys, Alex Elson, Kirin Jessel, and Phillip Andonian, and Respondent's attorney, Patrick Hammon, to discuss Claimant's October 28, 2021 Request for Documents. (Exhibit B to the October 28 letter)

It is ordered that documents be produced pursuant to Requests No. 1, 2, and 3, after counsel have met and conferred about limiting the breadth of the requests, through date limitations, search terms, and otherwise.

With respect to Request No. 4, the production of deposition transcripts from another case in which Respondent was involved, that request is denied.

With respect to Request No. 5, production is ordered, limited to the packaging and selling of Claimant's ISA to third parties.

Linda McPharlin, Arbitrator

Linda Hendrix McPharlin | McPharlin Sprinkles & Thomas LLP

[160 W. Santa Clara St., Suite 625 | San Jose, CA 95113](#)

[408.293.1900](#), ext. 354

lmcpharlin@mstpartners.com

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From: AAA Marina Cortes <MarinaCortes@adr.org>

Sent: Monday, November 8, 2021 12:58 PM

To: Linda McPharlin <lmcpharlin@mstpartners.com>

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

Arbitrator McPharlin,

Attached, please find correspondence from respondent dated October 28, 2021.

Respectfully,

/s/

Marina Cortes

Case Administrator



**AAA Marina Cortes
Case Administrator**

American Arbitration Association

T: 559 650 8224 F: 855 433 3046 E: MarinaCortes@adr.org
45 E River Park Place West, Suite 308, Fresno, CA 93720
adr.org | icdr.org | aaamediation.org



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From: Linda McPharlin <lmcpfarlin@mstpartners.com>
Sent: Thursday, November 4, 2021 9:53 PM
To: AAA Marina Cortes <MarinaCortes@adr.org>
Subject: FW: Linh Nguyen v. Lambda, Inc, AAA Case No. 01-21-0003-8509

***** External E-Mail – Use Caution *****

Marina,
I do not believe I received the 10.28.21 letter to which respondent responds. Was that provided to AAA?

Linda

Linda Hendrix McPharlin | McPharlin Sprinkles & Thomas LLP
[160 W. Santa Clara St., Suite 625 | San Jose, CA 95113](http://160.W.SantaClaraSt.,Suite625|SanJose,CA95113)
408.293.1900, ext. 354
lmcpfarlin@mstpartners.com

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From: AAA Marina Cortes <MarinaCortes@adr.org>
Sent: Thursday, November 4, 2021 4:31 PM
To: alex@defendstudents.org; jberger@cpmlegal.com; kirin@defendstudents.org; phil@calebandonian.com; phammon@mcmanslaw.com; contact@lambdaschool.com
Subject: FW: Linh Nguyen v. Lambda, Inc, AAA Case No. 01-21-0003-8509

Counsel,

The American Arbitration Association (AAA) acknowledges receipt of the attached letter dated November 1, 2021, from respondent. We note all parties were copied.

By blind copy of this email the aforementioned is being transmitted to Arbitrator McPharlin.

Respectfully,

/s/

Marina Cortes

Case Administrator

bcc:

Arbitrator McPharlin



**AAA Marina Cortes
Case Administrator**

American Arbitration Association

T: 559 650 8224 F: 855 433 3046 E: MarinaCortes@adr.org
45 E River Park Place West, Suite 308, Fresno, CA 93720
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From: Moniz, Lisa <imoniz@mcmanislaw.com>

Sent: Monday, November 1, 2021 2:40 PM

To: AAA Marina Cortes <MarinaCortes@adr.org>

Cc: alex@defendstudents.org; phil@calebandonian.com; jberger@cpmlegal.com; Hammon, Patrick <phammon@mcmanislaw.com>; Bastida, Abimael <abastida@mcmanislaw.com>; Parkhurst, Andrew <aparkhurst@mcmanislaw.com>

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

***** External E-Mail – Use Caution *****

Ms. Cortes,

Please see the attached letter to Arbitrator Linda McPharlin on behalf of Lambda Inc.

Regards,

LISA MONIZ

McManis-Faulkner

Celebrating 50 years of Excellence

1971 - 2021

408.279.8700

mcmanislaw.com

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