

February 3, 2022

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:

Claimant Linh Nguyen writes to request a telephone conference at this Tribunal's earliest convenience regarding the sufficiency of Respondent's January 21, 2022 document production.

Background

On November 22, 2021, this Tribunal "ordered that documents be produced pursuant to [Claimant's] 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." In an effort to address Respondent's assertion of undue burden, Claimant agreed that Respondent could run searches over documents already produced in *Lambda Labs, Inc. v. Lambda, Inc.*, No. 4:19-cv-04060 (N.D. Cal.).

As set forth in Claimant's October 28 letter to this Tribunal, Claimant made this offer based on the good faith understanding that the documents produced in *Lambda Labs* would directly overlap with the documents relevant to the parties' dispute in this arbitration. The *Lambda Labs* plaintiffs requested the same records that Claimant did, and, over Lambda's objection, the Court ordered them to produce, among other things: (i) internal communications by Lambda executives regarding negative press related to Lambda's placement rates, (ii) student and employee complaints regarding curriculum, instructors, and career placement, and (iii) potential misrepresentations about graduation and employment rates. *Lambda Labs*, No. 19-cv-04060, 2020 WL 4036387, at *1-3 (N.D. Cal. July 17, 2020).¹

Claimant sent the following search terms to Respondent on December 1, 2021, which Respondent agreed to apply to the *Lambda Labs* production:

¹ For some examples of the specific categories of documents that Lambda was required to produce, see Ltr. From Counsel for Labs to Counsel for Lambda, *Lambda Labs*, Dkt. 200-3 at 7-10 (describing multiple categories of placement rate documents that Lambda was required to produce, but had not done so, including but not limited to: (i) "raw data and calculations used to generate Lambda School's student outcome and employment statistics" (RFP No. 85), and the data associated with two outcomes reports (RFP Nos. 90, 93); (ii) documents sufficient to show how Lambda "collects and verifies student placement information, and communications with students concerning such collection or verification" (RFP No. 86); and (iii) documents sufficient to identify "the job titles and full time/part employment time status of all students or graduates" (RFP No. 94)). While Ms. Nguyen does not know what Lambda ultimately produced, it is clear that at least some relevant material was provided. See, e.g., *Lambda Labs*, Dkt. 235-2 at 1-2 (wherein counsel for Lambda informed counsel for Labs that Lambda produced documents in response to RFP 224, which sought "slide decks, presentations, pitches, or reports prepared for actual or potential investors that discuss [Lambda School's] business or marketing plans").

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!)

Before searching the *Lambda Labs* production, Respondent raised an issue with the scope of the November 22 order, stating in a December 10 letter to this Tribunal that it should only be required 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.” On January 14, 2022, this Tribunal rejected Respondent’s position and ordered production of relevant documents as follows:

1. With respect to Requests No. 1 and 2, all documents and data related to communications concerning the 85.9% placement rate that Claimant relied on, whether to investors, students or prospective students, media or otherwise, should be produced, without regard to when the communication occurred.
2. Documents responsive to Request 3, which seeks communications by school executives related to articles and media coverage published in 2020 discussing the veracity of Bloom’s job placement rates in 2019, should be produced.

Respondent made its production on January 21, 2022. Claimant was surprised to receive only 46 documents in total, and only two short email chains: a February 20, 2020 email exchange between CEO Austen Allred and an investor, and a May 8, 2019 email from Ryan Holdaway

(former VP of Outcomes) to Austen Allred and others, which raised concerns about the scope and sufficiency of Respondent's production.²

Claimant raised these concerns with Respondent, and the parties have met twice by phone to discuss. On February 1, Respondent confirmed that they applied Claimant's search terms to the entire *Lambda Labs* production, and that in fact there were only two responsive emails and 46 responsive documents in all.

Claimant finds it utterly implausible that Lambda executives sent a total of two isolated emails that address the placement rates at issue in this case, which have been the center of controversy and litigation for multiple years. Moreover, Claimant is in possession of responsive documents containing one or more of the search terms described above (including a power point presentation that Lambda CEO Austen Allred made to investors in 2019 providing, among other things, that Lambda's "180 day placement rate" was 54%) that Respondent did not produce. Claimant takes Respondent at its word that it searched the *Lambda Labs* production as instructed. As such, Claimant can only surmise that the *Lambda Labs* collection was not as comprehensive or complete as anticipated, and thus was not a sufficient universe of documents in which to confine Respondent's search. Claimant respectfully requests a telephone conference as soon as possible to discuss additional searches Respondent can conduct with little additional burden to ensure the letter and spirit of the Arbitrator's November 22 and January 14 orders is carried out in full.

Respectfully Submitted,

/s/ Alexander S. Elson

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² According to undersigned counsel's review, of the 46 documents produced, half are duplicates or near-duplicates (i.e. versions of the same document) and 19 were already public (such as copies of news articles, blog posts, and other publicly available materials). Respondent also produced a number of peripheral documents, such as a blank Income Share Agreement, a blank enrollment agreement, course catalogs, and multiple presentations for students such as "Cover Letter 101," "Nailing the Interview" and "Hacking LinkedIn." Respondent marked every document in this production as "Confidential." Claimant's production, by comparison, totaled over 190 documents.

Letter from Claimant to Arbitrator McPharlin (February 3, 2022)

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