

October 28, 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:

Claimant Linh Nguyen requests that Lambda be ordered to turn over documents and transcripts “necessary to understand and decide the dispute” about the accuracy of Lambda’s job placement rates and representations regarding Income Share Agreements (ISAs). AAA Cons. Rule 34(a). The burden on Lambda of doing so is minimal, as it has already compiled, reviewed and produced most, if not all, of these materials for another case, *Lambda Labs, Inc. v. Lambda, Inc.*, No. 4:19-cv-04060 (N.D. Cal.). Multiple Lambda employees—including CEO Austen Allred—were deposed on these topics, but only limited excerpts of their transcripts are publicly available.

Over the last month, counsel for the parties have been unable to reach agreement over the exchange of information. See Exhibit A (email correspondence between counsel). On October 15, Lambda represented that it was “willing to consider requests for specific documents (or specific categories of documents).” *Id.* at 7. Claimant subsequently requested five categories of documents, *id.* at 1-2, after which Lambda changed its position and stated that it would only accept requests for a “specific document or particular piece of information,” *id.* at 1. Throughout these negotiations—in an effort to limit any burden on Lambda—Claimant has offered to limit her requests to relevant documents already reviewed and produced in the *Lambda Labs* matter, *id.* at 5-6, 8-9. Lambda rejected these proposals as well, incorrectly stating that Claimant was seeking a “blank check into discovery from an unrelated case,” *id.* at 7. In its most recent email, Lambda terminated the negotiations it had invited over categories of documents, stating “we do not expect the parties will be able to resolve this issue by meet and confer,” *id.* at 1.

As set forth below, Mr. Allred has publicly claimed that Lambda’s conflicting job placement numbers were accurate, but provided only hypotheticals and no actual evidence. Requiring Lambda to provide relevant materials would allow this tribunal to assess Lambda’s explanation against actual facts, without sacrificing efficiency or imposing an undue burden on the school. Attached hereto as Exhibit B are Claimant’s five narrowly tailored requests for information.

I. The exchange of information is necessary to provide for a “fundamentally fair process” as required by AAA Rule 22.

Lambda publicly touted an 85.9% job placement rate to the public—including prospective students—at the same time it was telling investors privately: “We’re at roughly 50% placement for cohorts that are 6 months graduated” and “[p]lacement to date has been manual and one-off, which isn’t possible at scale.” Demand ¶ 12. In public posts, Mr. Allred has claimed that these “are different numbers that precisely and accurately answer different questions,” and that Claimant should have “perform[ed] [her] own analyses” and “tak[en] the time to understand the

data.”¹ But Lambda has not made any data available for her to do that, and Mr. Allred’s posts do not provide Lambda’s actual outcomes data.²

Ms. Nguyen is not seeking broad discovery. Instead, her requests seek the information that supports or contradicts Mr. Allred’s explanations regarding these disparate numbers. Lambda’s internal documents and communications will reveal definitively the number of students who enrolled, completed, and obtained qualifying jobs at the times relevant to this proceeding.³ Lambda’s internal communications regarding negative stories about their placement rates will reveal Lambda executives’ understanding of the discrepancy between the numbers, as opposed to their post-hoc rationalizations.⁴ Lambda cannot rest on Mr. Allred’s mere assurance that everything was accurate when the actual evidence is so readily available (see below), nor cherry-pick which documents regarding placement rates it wants to rely on at the hearing.⁵

II. The production Ms. Nguyen seeks will not be burdensome because Lambda was ordered to compile and produce the same information in the *Lambda Labs* matter.

In order to minimize Lambda’s burden, Claimant has offered to accept documents that Lambda has already reviewed and produced in *Lambda Labs*.

The *Lambda Labs* plaintiff (“Labs”) alleged trademark infringement against Lambda, and raised issues that are directly pertinent here. As the court explained, “[o]ne particular harm Labs alleges is that customer confusion between Labs and School harms Labs’ goodwill because School’s

¹ See Exhibit C at 4, 8. (Austen Allred, “Lambda School and Outcomes Reporting,” Lambda School Website (May 19, 2021), available at: <https://lambdaschool.com/the-commons/lambda-school-and-outcomes-reporting>. Mr. Allred has provided similar explanations in other forums. For example, addressing this issue on September 7, 2021, Mr. Allred tweeted: “This is literally comparing two different metrics. 1. Starting students / hired students 2. Graduated students / hired students within 180 days.” See <https://twitter.com/Austen/status/1435410331266740225>.

² Exhibit C at 6-7 (analyzing a “hypothetical cohort of 100 students”).

³ According to recent reporting, the discrepancies between Lambda’s job placement representations and true outcomes continues. See Vincent Woo, *Lambda School promised a fast and cheap path to a lucrative tech career. Leaked documents and former students cast doubt on that claim*, Business Insider (Oct. 25, 2021) (citing internal documents revealing that Lambda “placed only 30% of its 2020 graduates in qualifying jobs during the first half of 2020” which was “in stark contrast to the 74% placement rate it advertised for its 2019 graduates”), available at: <https://www.businessinsider.com/lambda-school-promised-lucrative-tech-coding-career-low-job-placement-2021-10>

⁴ These internal communications are also important to Ms. Nguyen’s intentional misrepresentation claim.

⁵ Ms. Nguyen is also entitled to documents regarding her claim that Lambda sold ISAs to investors despite its widely disseminated representation that “[w]e don’t get paid until you do, so we’re in this together.” Demand ¶ 61. At the same time that it made this representation publicly, Lambda privately told Investor Y Combinator that: “Currently we sell some income share agreements to hedge funds.” *Id.* ¶ 64. Despite substantial evidence that Lambda was selling ISAs to investors, Mr. Allred has stated publicly that: (i) Lambda never gets paid upfront for an ISA, *id.* ¶ 68, (ii) selling ISAs allows Lambda to “operate without going bankrupt,” *id.* ¶ 67; and (iii) Lambda used to sell ISAs in “the early days” but as of January 2020, “it’s not true,” *id.* ¶ 70. Ms. Nguyen is entitled to know whether Lambda did or did not sell ISAs to investors.

business is a scam. There are some unkind press reports indicating that School’s curriculum is deficient, that its claims about job placement for its students are exaggerated and even fraudulent, and that for some students the experience has been so bad they’ve begun to organize. The present RFPs are targeted at those issues.” *Lambda Labs*, No. 19-cv-04060, 2020 WL 4036387, at *1 (N.D. Cal. July 17, 2020). The court allowed Labs’ discovery, over Lambda’s objections, because “if the curriculum is terrible and School’s job placement claims are cooked up, that is relevant.” *Id.* The court allowed discovery on a range of issues relevant here, including: (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. *Id.* at 1-3; *see also Lambda Labs*, No. 19-cv-04060, 2021 WL 1176672, at *4 (N.D. Cal. Mar. 29, 2021) (requiring Lambda to provide documents sufficient to identify its process for bundling and selling ISAs to investors).⁶

Labs deposed Mr. Allred on February 26, 2021, and covered topics that are highly relevant to Claimant’s case.⁷ Labs also deposed former “director of career readiness” Sabrina Baez on January 15, 2021, *Lambda Labs*, Dkt. 182-1, and Labs’ Rule 30(b)(6) deposition covered multiple relevant topics, including efforts to respond to criticism from negative press regarding job placement, and the facts surrounding the sale of ISAs. *See Labs’ Sec. Am Rule 30(b)(6) Notice, Lambda Labs Dkt. 140-4 at 5-6.*

Ms. Nguyen does not seek general, broad or burdensome discovery. Rather, the attached requests seek only those specific documents and transcripts that are directly relevant to her allegations. Ms. Nguyen respectfully requests that Lambda be required to produce responsive materials within two weeks of an order on this issue, and that the upcoming exchange of information, witness, expert, and dispositive motion deadlines be reset until three weeks after such productions are completed.⁸

⁶ 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”).

⁷ *See* Redacted and Excerpted Deposition Transcript of Austen Allred, *Lambda Labs*, Dkt. 235-3 at 5 (wherein the attorney for Labs states that Mr. Allred “just said [] we don’t get paid until students get hired”); *id.* at 19 (wherein Mr. Allred describes a “a blog post about a new deal that we struck to finance ISAs”).

⁸ In the alternative, to the extent Lambda’s objection rests on the burden of identifying responsive documents from its *Lambda Labs* productions, Claimant is willing to accept, as offered previously, documents responsive to targeted search terms run over the productions, tailored specifically to the allegations at issue. *See* Exh. A at 6.

Letter from Claimant to Arbitrator McPharlin (October 28, 2021)

Respectfully Submitted,

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