

December 13, 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 writes in response to Respondent Bloom Institute of Technology's (formerly Lambda, Inc., referred to herein as "Bloom") letter dated December 10, 2021 ("Bloom Ltr."). At issue is a dispute about whether Bloom must produce all materials related to the falsity of the 85.9% job placement rate that Ms. Nguyen relied on, or only materials that happen to fall within a three month window of time prior to her enrollment.

According to Bloom, this tribunal ruled on November 22 that it need only produce three-months worth of documents that fall between April 2019 and July 16, 2019 (the date Ms. Nguyen signed her ISA). Undersigned counsel respectfully disagrees. According to counsel for Claimant's notes and recollections, this tribunal ruled that Bloom was required to produce the "core of what is being asked for" in Requests 1-3, and ordered the parties to meet and confer over items such as search terms and date ranges, but did not order that a specific date range be provided for each request. 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."

During the hearing, the parties discussed limiting Request 1 such that it would exclude representations that came after Ms. Nguyen enrolled, and that she therefore could not have relied on. Counsel for Claimant agreed that such a limitation would be reasonable, and that remains her position. However, Claimant did not agree that *the entire production* should be so limited. For the reasons set forth below, the strict date limitations that Bloom proposes would not capture the "core of what is being asked for" in Requests 1-3, and would leave to chance whether responsive documents become part of the record.

Requests 1 and 2

The 85.9% placement rate that Ms. Nguyen relied on first appeared on Lambda's website on or around April 2019 and remained on the website until at least December 2019. Demand ¶ 49. These were not separate representations but rather were the same ongoing representation. Therefore, communications about the 85.9% rate are as applicable to students who enrolled in April 2019 as they are to students who enrolled in December 2019. Moreover, communications about the accuracy of that ongoing 85.9% representation—regardless of when they took place—are relevant to whether that rate was false. Likewise, any communications that support or contradict the accuracy of the May 2019 statement to investors that Bloom was "at roughly 50%

placement for cohorts that are 6 months graduated” and that “[p]lacement to date has been manual and one-off, which isn’t possible at scale,” Demand Ex. A, are relevant, regardless of when those communications took place. To be clear, Claimant is not seeking data or documents that support rates that Bloom published *after* the 85.9% rate, but are focused only on the rate that Ms. Nguyen relied on when she enrolled.¹

Bloom contends that “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.” Bloom Ltr. at 4. This misses the point. Bloom’s communications about the ongoing 85.9% placement rate at issue here—no matter when they occurred—are directly relevant, and, based on the November 22 order, should be produced by the January 7 deadline.

Request 3

The November 22 order requires Bloom to provide 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*. Because the request seeks communications regarding articles published as late as February 2020, by necessity the searches must include the time period after those articles were published. Bloom nevertheless contends that no 2020 documents should be provided because “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.” Bloom Ltr. at 4.

To the contrary, these communications would bear directly on whether the representations that Claimant relied upon were false. Many of the articles listed in Request 3 reported that Bloom’s 2019 placement rates (including the rate that Ms. Nguyen relied upon) were false. The February 2020 New York Magazine article cites specifically to the May 2019 Investor memo attached to Ms. Nguyen’s Demand, and states that the “50% placement” rate described in that memo “tells a very different story” than the 85.9% placement rate (the article rounds the rate up to 86%) advertised at the time Ms. Nguyen enrolled.² It also includes an interview with a former employee who “confirmed” that “the company’s own internal numbers . . . seem to indicate a roughly 50 percent or lower placement rate.”³ The company’s internal communications regarding these stories would presumably reveal its executives’ real-time understanding of the discrepancy between the 50% and 85.9% rates, which is directly at issue in this case. *See, e.g., Lambda Labs, Inc. v. Lambda, Inc.*, No. 19-cv-04060, 2020 WL 4036387, at *1 (N.D. Cal. July 17, 2020) (ordering Lambda to provide communications between “senior-level” officials about negative press related to placement rates because the officials were “likely to have substantive discussions about these articles, not just chatter”).

¹ While Bloom stated in an email to Claimant that it would “look outside the date range as well to see if there are responsive documents,” Bloom Ltr., Ex. A, it is not clear what that means. Counsel for Claimant asked counsel for Bloom to clarify this statement, but has not yet received a response. *Id.*

² Vincent Woo, *Lambda School’s Misleading Promises*, N.Y. Magazine (Feb. 19, 2020), available at: <https://nymag.com/intelligencer/2020/02/lambda-schools-job-placement-rate-is-lower-than-claimed.html>

³ *Id.*

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In sum, counsel for Claimant does not believe that this tribunal ordered only a three-month window of documents to be produced; such an order is not what is sought by the plain terms of the requests and would leave to chance whether relevant communications took place during an extremely narrow window of time. Indeed, to cabin these requests so narrowly would ignore potentially important internal communications about how the 85.9% rate was created and whether it was accurate. Further, because Bloom is running search terms over the already-produced documents in the *Lambda Labs* matter, there is no additional burden on the school to provide all documents responsive to the search terms, regardless of the time frame. Accordingly, Ms. Nguyen requests that this tribunal clarify that Bloom should run agreed-upon search terms over the entire *Lambda Labs* production, not merely a three month window within it.

Respectfully Submitted,

/s/ Alexander S. Elson

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