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7 Attorneys for Respondent,
Lambda Inc.

8 AMERICAN ARBITRATION ASSOCIATION
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11 HEATHER NYE,
12 Claimant,
13 vs.
14 LAMBDA, INC.,
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16 Respondent.
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AAA Case No.: 01-21-0003-8512

**LAMBDA, INC.'S ANSWER TO
CLAIMANT'S DEMAND FOR
ARBITRATION**

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1 Respondent, Lambda Inc. (“Respondent”) responds to Claimant Heather Nye’s
2 (“Claimant”), Demand for arbitration (“Demand”) as follows:

3 **ANSWER**

4 Respondent, by and through its attorneys, answers the allegations set forth in the Demand
5 for Arbitration filed by Claimant, as follows:

6 **GENERAL DENIAL**

7 Respondent generally denies each and every allegation of the Demand, and the whole
8 thereof, including those causes of action applicable to it, and further denies that Claimant is
9 entitled to the relief requested or any relief at all, that the Claimant is entitled to civil penalties in
10 the sum or sums alleged, in any other sum, or at all, and that the Claimant is entitled to any
11 attorneys’ fees, administrative costs or costs of suit.

12 **AFFIRMATIVE DEFENSES**

13 Respondent hereby states the following defenses to the Demand, but does not assume the
14 burden of proof on any such defense except as required by applicable law. Respondent reserves
15 the right to assert additional defenses or otherwise supplement this Answer upon discovery of
16 facts or evidence rendering such action appropriate.

17 **FIRST AFFIRMATIVE DEFENSE**

18 (Failure to State a Cause of Action)

19 (By Respondent, as to all Causes of Action)

20 The Demand, and each cause of action therein, fails to state facts sufficient to constitute a
21 cause of action.

22 **SECOND AFFIRMATIVE DEFENSE**

23 (Failure to Mitigate)

24 (By Respondent, as to all Causes of Action)

25 Respondent alleges and avers that Claimant has failed to exercise care and diligence to
26 mitigate any alleged damages Claimant may have suffered as a consequence of Respondent’s
27 alleged actions.

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THIRD AFFIRMATIVE DEFENSE

(Damages Claimant’s Fault)

(By Respondent, as to all Causes of Action)

Respondent alleges and avers that, on information and belief, to the extent Claimant suffered any damages alleged in the Demand, it was not caused by the Respondent, but by the willful, reckless, or negligent conduct of Claimant.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

(By Respondent, as to all Causes of Action)

The Demand, and each cause of action therein, is barred by the equitable doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(Waiver, Estoppel, and Consent)

(By Respondent, as to all Causes of Action)

The Demand, and each cause of action therein, are barred by the doctrines of waiver, estoppel, and consent.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

(By Respondent, as to all Causes of Action)

Respondent alleges that any recovery on the Demand, and each cause of action therein, is untimely and barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

(By Respondent, as to all Causes of Action)

The Complaint, and each and every purported cause of action alleged therein, is barred by the applicable statutes of limitation, including without limitation California Code of Civil Procedure §337.

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EIGHTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

(By Respondent, as to all Causes of Action)

Respondent alleges and avers that Claimant’s claims are barred because Respondent exercised reasonable care to prevent and correct any behavior, and Claimant unreasonably failed to take advantage or preventative or corrective opportunities.

NINTH AFFIRMATIVE DEFENSE

(Damages Are Speculative)

(By Respondent, as to all Causes of Action)

Respondent alleges and avers that Claimant’s Demand, and each cause of action therein, is barred as Claimant’s prayer for damages is speculative.

TENTH AFFIRMATIVE DEFENSE

(Attorneys’ Fees)

(By Respondent, as to all Causes of Action)

Respondent alleges and avers that Claimant is not entitled to recover attorneys’ fees under California Code of Civil Procedure section 1021.5, California Government Code section 12965, or on any other basis.

ELEVENTH AFFIRMATIVE DEFENSE

(Attorneys’ Fees)

(By Respondent, as to all Causes of Action)

Respondent alleges and avers that Claimant’s Demand, and each cause of action therein, is barred because Claimant is prosecuting this litigation for an improper purpose, and Claimant’s claims are frivolous and entitle Respondent to an award of reasonable expenses and attorneys’ fees.

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TWELFTH AFFIRMATIVE DEFENSE

(Ratification)

(By Respondent, as to all Causes of Action)

Respondent alleges and avers that Claimant’s Demand, and each cause of action therein, is barred by the fact that Claimant knowingly participated in and ratified the alleged actions and omissions alleged in the Demand.

THIRTEENTH AFFIRMATIVE DEFENSE

(Justification)

(By Respondent, as to all Causes of Action)

Respondent alleges that each and every cause of action in Claimant’s Demand, and each cause of action therein, is barred because Respondent’s conduct was justified.

FOURTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

(By Respondent, as to all Causes of Action)

Respondent alleges that any recovery on the Demand, and each cause of action therein, is barred because the Demand seeks remedies in excess of any amount actually owed to Claimant.

FIFTEENTH AFFIRMATIVE DEFENSE

(Acquiescence)

(By Respondent, as to all Causes of Action)

Respondent alleges that Claimant’s Demand, and each cause of action therein, is barred because Claimant, through its actions, acquiesced to Respondent’s conduct.

SIXTEENTH AFFIRMATIVE DEFENSE

(Proximate Cause)

(By Respondent, as to all Causes of Action)

Respondent alleges that Claimant’s Demand, and each cause of action therein, is barred because no conduct by or attributable to Respondent was either the cause, or the proximate cause, of the damages alleged by Claimant. Rather, the damages alleged by Claimant were caused, either in whole or in part, by Claimant’s own acts or omissions or by the acts or

1 omissions of persons or entities other than Respondent. Claimant's damages, if any, must be
2 reduced accordingly.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 (Good Faith)

5 (By Respondent, as to all Causes of Action)

6 Respondent alleges that Claimant's Demand, and each cause of action therein, is barred
7 because at all times complained of, Respondent acted without malice and in good faith, and that
8 all actions taken by Respondent with regard to Claimant were taken for lawful reasons and in
9 good faith.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 (Limitation of Damages)

12 (By Respondent, as to all Causes of Action)

13 Respondent alleges that any alleged damages in this matter, including any purported
14 punitive damages, are expressly limited by contract.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 (Waiver of Consequential and Other Damages)

17 (By Respondent, as to all Causes of Action)

18 Respondent alleges that Claimant has waived and released most, if not all, claims for
19 consequential, indirect, special or punitive loss or damage, whether in contract, tort, or
20 otherwise.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 (Failure to Provide Notice)

23 (By Respondent, as to all Causes of Action)

24 Respondent alleges that Claimant was required to provide notice of this dispute before
25 filing a demand for arbitration and failed to do so, resulting in damage to Respondent.

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PRAYER FOR RELIEF

WHEREFORE, Respondent prays for judgment against Claimant as follows:

1. That the Demand be dismissed in its entirety with prejudice;
2. That Claimant take nothing by the Demand;
3. That Respondent be awarded reasonable attorneys' fees, expert witness fees, and costs of suit; and
4. For such other and further relief as the arbitrator shall deem just and proper.

DATED: July 9, 2021

McMANIS FAULKNER

/s/ Patrick Hammon
PATRICK HAMMON
TYLER ATKINSON
ABIMAEEL BASTIDA

Attorneys for Respondent,
LAMBDA, INC.

1 **PROOF OF SERVICE**
2 **STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

3 I am employed in the County of Santa Clara, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 50 West San Fernando Street, 10th
5 Floor, San Jose, California 95113. My email address is: acervantes@mcmanslaw.com.

6 On July 9, 2021, I served the foregoing document described as:

7 **LAMBDA INC.'S ANSWER TO CLAIMANT'S DEMAND FOR ARBITRATION**

8 on the parties in this action by placing a true copy(ies) or the original(s) thereof enclosed
9 in a sealed envelope(s) addressed as follows:

9 Alexander S. Elson
10 Maya H. Weinstein
11 NATIONAL STUDENT LEGAL DEFENSE
12 NETWORK
13 1015 15th St., N.W., Ste. 600
14 Washington, D.C. 20005
15 alex@defendstudents.org
16 maya@defendstudents.org

Attorneys for Claimant,
Heather Nye

13 Phillip Andonian
14 CALEBANDONIAN PLLC
15 1100 H St., N.W., Ste. 315
16 Washington, D.C. 20005
17 phil@calebandonian.com

16 Justin Berger
17 COTCHETT, PITRE & McCARTHY, LLP
18 San Francisco Airport Office Center
19 840 Malcolm Road
20 Burlingame, CA 94010
21 JBerger@cpmlegal.com

20 **(BY ELECTRONIC MAIL)**

21 Based on a court order or an agreement of the parties to accept service by email or
22 electronic transmission, I caused the documents to be sent to the persons at the e-mail
23 addresses listed above or on the attached service list.

23 **(STATE)**

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on July 9, 2021, at San Jose, California.

27 */s/ Ana Cervantes*

28 _____
ANA CERVANTES