AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between HEATHER D. NYE, Claimant, v. LAMBDA, INC. D/B/A LAMBDA SCHOOL; JOHN DOES 1-9, Respondents.	AAA Case No. 01-21-0003-8512

CLAIMANT HEATHER D. NYE'S REPLY IN SUPPORT OF HER DISPOSITIVE MOTION ON HER CLAIM THAT RESPONDENT LAMBDA SCHOOL WAS UNLAWFULLY OPERATING WITHOUT A LICENSE AT THE TIME SHE ENROLLED

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As a California company with its headquarters and principal place of business in San Francisco, Lambda is subject to the laws of the state of California. One of those laws, California Education Code § 94886, bars private postsecondary educational intuitions from doing business without "approval to operate." Another, Section 94917, provides that when educational institutions violate this law, any "note, instrument, or other evidence of indebtedness relating to payment" for its programs is "not enforceable."

Lambda did not receive approval to operate by the California Bureau of Private Postsecondary Education ("BPPE") until August 17, 2020, over one year after Ms. Nye's ISA was fully executed. Because Ms. Nye's ISA is a "note, instrument, or other evidence of indebtedness relating to payment for [her] educational program," under the California Education Code, and therefore under the UCL's unlawful prong, the ISA, *as a matter of law*, is "not enforceable."

In its response brief ("Response"), Lambda attempts to muddy this straightforward analysis. But nothing among its smattering of legal arguments changes the simple fact that Lambda was not approved to operate as a private postsecondary educational institution. Likewise, nothing in its submission alters the fact that—as an unapproved institution at the time she enrolled—the ISA that Ms. Nye entered is consequently "not enforceable."

ARGUMENT

I. Ms. Nye's Submission Establishes That She Is Entitled To Judgment

Ms. Nye's motion ("Mot.") rests on three clear and undisputed facts: (1) Ms. Nye's ISA, which constituted her agreement to pay for attendance at Lambda, was fully executed on June 19, 2019 (Demand Ex. B); (2) Lambda has not released Ms. Nye from her obligations under her

ISA (Response & Demurrer, *passim*); and (3) unbeknownst to Ms. Nye at the time, the BPPE did not approve Lambda to operate until more than a year later, on August 17, 2020 (Mot. Ex. D). Ms. Nye has proffered sufficient evidence to establish each of these facts, while Lambda has proffered none to dispute them. Accordingly, because Lambda has not established the existence of a genuine dispute, Ms. Nye is entitled to judgment as a matter of law. *See, e.g.*, *Brother Records, Inc. v. Jardine*, 318 F.3d 900, 908-09 (9th Cir. 2003) ("'[T]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'") (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

Of these facts, Lambda appears to contest only one: that it did not have approval to operate until August 17, 2020. *See* Response at 24. But the BPPE's orders and decisions—already proffered in this case—establish otherwise, and Lambda has not provided any contrary evidence, stating only that it had "various licenses to operate as a business" beforehand. *Id*. Whatever those "various licenses" may have been, they were not approval by the BPPE to operate. And indeed, the BPPE has already said as much.[1]

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[1] This tribunal may take judicial notice of the BPPE's orders and decisions, as they are "official acts" of the executive department of the state of California. *See* Cal. Evid. Code § 452(c); *see also Rodas v. Spiegel*, 87 Cal. App. 4th 513, 518 (Cal. Ct. App. 2001) (finding that courts may take judicial notice of "[o]ffical acts [including] records, reports and orders of administrative agencies"); *Beaver v. Tarsadia Hotels*, 29 F. Supp. 3d 1294, 1319-20 (S.D. Cal. 2014), *aff'd,* 816 F.3d 1170 (9th Cir. 2016) ("Courts can take judicial notice of records and reports of administrative bodies.") (internal quotation omitted); *Lundquist v. Cont'l Cas. Co.*, 394 F. Supp. 2d 1230, 1243 (C.D. Cal. 2005) ("It is well established that a court may take judicial notice of records and reports of administrative bodies, such as notices and opinion letters issued by the California DOI.") (internal quotation omitted); *Wible v. Aetna Life Ins. Co.,* 375 F. Supp. 2d 956, 966 (C.D. Cal.2005) (taking judicial notice of an opinion letter issued by the California DOI over defendants' hearsay and lack of authentication objections).

Judicial notice is further appropriate because the BPPE posts its determinations on its website. *See, e.g.,* https://www.bppe.ca.gov/enforcement/actions/lamba_ord.pdf *and*

First, on March 20, 2019, the BPPE issued a citation in which it stated that, following an "investigation" and considering "evidence obtained," it "determined [that Lambda] is operating without Bureau approval." (Mot. Ex. A). Second, on July 24, 2019, the BPPE "affirmed" the March 2019 citation, noting that Lambda had presented "[n]o new substantive facts," and that the "evidence confirms that [Lambda] violated the requirement for an Approval to operate." (Mot. Ex. B). Third, on August 21, 2019, the BPPE denied Lambda's May 14, 2019 "Application for Approval to Operate for an Institution Non-Accredited," stating that the BPPE was "unable to grant approval." (Mot. Ex. C). Fourth, on November 25, 2019, the BPPE issued an order denying Lambda's updated application for approval, explaining that "at this time the Bureau is unable to grant approval, based on the requirements of the California Education Code." (Attached hereto as Exhibit A). Fifth, on June 22, 2020, the BPPE issued another order denying Lambda's further updated application for approval to operate, explaining that "the Bureau cannot at this time approve Lambda's application." (Attached hereto as Exhibit B). Finally, on August 17, 2020, the BPPE issued an order approving Lambda's application. (Mot. Ex. D). The approval letter stated that the BPPE had completed its review of Lambda's "Application for Approval to Operate," including "supplemental documentation" received on August 14, 2020. *Id.* at 1. The BPPE found that "[a]pproval to operate is granted *effective August 17, 2020*." *Id.* (emphasis added). It further ordered Lambda to "post this approval information in a prominent location so prospective

https://www.bppe.ca.gov/enforcement/actions/1819150_lambda_affirmed.pdf. Courts routinely take judicial notice of information found on government agency websites. *Daniels-Hall v. Nat'l Educ. Ass'n,* 629 F.3d 992, 998 (9th Cir. 2010) (taking judicial notice of information "made publicly available by government entities" where "neither party dispute[d] the authenticity of the web sites or the accuracy of the information displayed therein"); *Lee v. City of L.A.,* 250 F.3d 668, 689 (9th Cir. 2001) ("[U]nder Fed. R. Evid. 201, a court may take judicial notice of 'matters of public record.'"); *Paralyzed Veterans of Am. v. McPherson*, No. C064670SBA, 2008 WL 4183981, *5 (N.D. Cal. Sept. 9, 2008) (explaining that courts routinely "take judicial notice of factual information found on the world wide web" and that this is "particularly true of information on government agency websites") (citing cases).

students and other interested parties are aware of your approval to operate." *Id.* These documents establish that Lambda was not approved to operate by the BPPE until August 17, 2020.

Lambda has proffered *no evidence* to dispute these three operative facts. As such, this tribunal can enter judgment for Ms. Nye without holding a hearing.

II. Lambda's Litany of Arguments Do Not Provide A Basis To Deny Ms. Nye's Motion

Unable to provide any evidence to counter the undisputed facts, Lambda relies on a series of legal arguments to muddy the water, complicate a clear issue, and avoid an adverse result. As we explain below, none of the positions advanced by Lambda alter the facts or legal conclusions that flow from them.

A. The UCL Applies to This Case

Lambda first argues that California law does not apply because Ms. Nye was physically located in Texas while taking courses from a California-based company. Response at 12-14. This argument is wrong and ignores decades of precedent applying the UCL to remedy wrongful, in-state conduct by an in-state entity, regardless of the location of the injured party. *See, e.g.*, *Norwest Mortg., Inc. v. Super. Ct.*, 72 Cal. App. 4th 214, 224-25 (Cal. Ct. App.1999) ("[California] statutory remedies may be invoked by out-of-state parties when they are harmed by wrongful conduct occurring in California.").

It strains credulity for Lambda to suggest that it is not a California company subject to the UCL. Lambda's own course catalog provide that its "headquarters is located" in San Francisco, Mot. Ex. E at 6, and it has filed documents with the Securities & Exchange Commission stating

that its "principal place of business" is at that same address.[2] Indeed, the very fact that Lambda applied for approval with the BPPE, pursuant the California Education Code, demonstrates that it aware that the laws of California apply. Remarkably, however, Lambda suggests that Ms. Nye is basing her position on the "mere[] . . . existence of offices in California." Response at 13. The undeniable reality is that Lambda is a California entity, operating in California, and subject to the laws and regulations of California, including the Education Code and the UCL.[3] Further, Lambda's failure to obtain BPPE approval prior to executing Ms. Nye's ISA flows entirely from its conduct in California. Even Lambda's key case makes clear that the UCL applies in these circumstances. *See Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1208 (Cal. 2011) ("[T]he UCL reaches any unlawful business act or practice committed in California.").[4]

Multiple California courts have found that the UCL applies based on California connections less substantial than Lambda's. In *In re iPhone 4S Consumer Litigation,* plaintiffs asserted UCL and CLRA claims against Apple based on alleged misrepresentations regarding the functionality of the iPhone 4's "Siri" feature. No. C12–1127 CW, 2013 WL 3829653 at *4-5 (N.D. Cal. July 23, 2013). Because the wrongful conduct "originated in California," the court

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[2] *See, e.g.,* Lambda Inc., United States Securities & Exchange Commission Form D at 1 (listing 250 Montgomery Street, 16th Floor, San Francisco, California 94104 as Lambda's "principal place of business"), *available at:* https://sec.report/Document/0001821413-20-000001/primary_doc.html.

[3] Notably, Lambda did not raise this choice-of-law argument in its demurrer, which is based exclusively on California substantive law and relegates to a footnote that it "does not necessarily agree that California law governs" but that it "assumes California law governs for the sake of this Motion." Demurrer at 7 n. 2. Had Lambda thought seriously that anything other than California law applied to this proceeding, it would have said so.

[4] In determining whether the UCL applies to non-California residents, courts consider "where the defendant does business, whether the defendant's principal offices are located in California, where class members are located, and the location from which advertising and other promotional literature decisions were made." *In re Toyota Motor Corp.,* 785 F. Supp. 2d 883, 917 (C.D. Cal. 2011).

held that "California's presumption against the extraterritorial application of its statutes therefore does not bar the claims of the out-of-state Plaintiffs, because this principle is one against an intent to encompass conduct occurring in a foreign jurisdiction in the prohibitions and remedies of a domestic statute." *Id.* at *7 (internal quotation omitted). Numerous cases are in accord. *See TRC & Assocs. v. NuScience Corp.*, No. 2:13–cv–6903–ODW, 2013 WL 6073004, at *5 (C.D. Cal. Nov. 18, 2013) ("[T]he alleged fraudulent conduct occurred in California. The Complaint is not based solely on a commercial transaction outside of California, but is instead based on material misrepresentations originating in California."); *Wang v. OCZ Tech. Group, Inc.,* 276 F.R.D. 618, 630 (N.D. Cal. 2011) ("Though [non-California Plaintiff's] allegations of OCZ's California-based conduct [under the UCL and FAL] are general, they provide a sufficient basis at the pleading stage for the invocation of California law. . . . [T]he facts alleged are that the misleading marketing, advertising, and product information are 'conceived, reviewed, approved or otherwise controlled from [OCZ's] headquarters in California.'"); *In re Mattel, Inc.,* 588 F. Supp. 2d 1111, 1119 (C.D. Cal. 2008) ("[Non-California] Plaintiffs have adequately alleged that Mattel and Fisher–Price's conduct occurred, if at all, in—or had strong connections to—California. Plaintiffs complain of misrepresentations made in reports, company statements, and advertising that are reasonably likely to have come from or been approved by Mattel corporate headquarters in California." (citation omitted)). Here, the misconduct by Lambda is its disregard of California law, determined by a California regulator—the California connection could not be stronger.[5]

[5] Lambda's cases are inapposite. As set forth above, *Sullivan,* a case about overtime payments to out-of-state employees, holds that "the UCL reaches any unlawful business act or practice committed in California." *Sullivan,* 51

B. The Choice-of-Law Provision in Ms. Nye's ISA Does Not Govern Her Tort and Consumer Protection Claims

As another attempt to escape California law, Lambda contends that New York law governs the parties' relationship, based on a provision in Ms. Nye's ISA. Response at 14. But that provision is irrelevant because it only applies to the "validity, interpretation, construction and performance *of [the ISA]*," all transactions "*pursuant to [the ISA*]," and the respective rights of parties "*under [the ISA]*." Demand Ex. B (Claimant's ISA) at ¶ 23(F) (emphasis added). But Ms. Nye's claims in this proceeding are premised in tort and consumer protection, based on her enrollment at Lambda, and are not contract claims regarding the "validity, interpretation, construction and performance" of the ISA.

Moreover, even when parties contractually agree to a choice-of-law clause, "tort claims are not governed by [that] contractual choice-of-law provision." *Invs. Equity Life Ins. Co of Hawaii, Ltd. v. ADM Invs. Servs., Inc.,* 1 F. App'x 709, 711 (9th Cir. 2001); *see also Sutter Home Winery, Inc. v. Vintage Selections, Ltd.,* 971 F.2d 401, 407-08 (9th Cir. 1992) (holding that tort claims are not governed by contractual choice-of-law provisions); *Consol. Data Terminals v. Applied Digital Data Sys.*, 708 F.2d 385, 390 n. 3 (9th Cir. 1983) (holding that "tort law and the law of punitive damages, are not controlled by the contract choice of law provision"). In *Narayan v. EGL, Inc.*, for example, the Ninth Circuit held that an employment agreement with a Texas choice-of-law provision did not prevent the plaintiff from pursuing statutory claims under the California Labor Code because the statutory claims "do not arise out of the contract, involve

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Cal. 4th at 1208. And Lambda concedes that the holding in *Silverman v. Wells Fargo* is based on the fact that plaintiff could not "connect *any* of the particular wrongdoing . . . to the State of California," Response at 13-14 (quotations omitted) (emphasis added), hardly the case here.

interpretation of any contract terms, or otherwise require there to be a contract," but, instead, whether the California Labor Code had been violated would be determined by examining the Labor Code itself. 616 F.3d 895, 898-99 (9th Cir. 2010); *see also Billings v. Ryze Claim Sols., LLC*, No. 1:17-cv-1600, 2018 WL 2762117, at *10 (E.D. Cal. June 7, 2018) ("The Agreement's choice of law provision is limited to interpretation and enforcement of the Agreement itself. [The plaintiffs'] statutory claims are separate and independent from the Agreement and do not depend upon or require the interpretation of the Agreement or any contract for enforcement.").[6]

Similarly, Ms. Nye's claims do not depend on or require interpretation of the ISA; they depend solely on the application of state law to the date when both parties agree she executed the document. Furthermore, there is "nothing in the provision that could be interpreted as a waiver of [Ms. Nye's] right to bring [California claims] that are separate and independent of the Agreement." *Yotrio Corp. v. Coop*, No. 18-cv-10101, 2019 WL 1877598, at *2 (C.D. Cal. Apr. 12, 2019). The choice-of-law provision is irrelevant and does not apply to this proceeding.

Lambda's cases are inapposite. In *Campusano v. BAC Home Loans Servicing LP*, there was "no reasonable question that all disputes relating to the mortgage transaction" at issue fell within the "broad wording of the choice-of-law provision." No. 11-cv-04609 AHM (JCX), 2012 WL 13008750, at *3 (C.D. Cal. Jan. 20, 2012). The court determined that the provision "encompasse[d] all causes of action arising from or related to that agreement" and determined

[6] *See also Med. Instrument Dev. Lab'ies v. Alcon Lab'ies*, No. C 05-1138 MJJ, 2005 WL 1926673, at *3 (N.D. Cal. Aug. 10, 2005) (holding that contract provision that the "Agreement is to be performed in accordance with the laws of the State of Texas and shall be construed and enforced with the laws of the State of Texas" did not explicitly control non-contractual claims related to the contract); *Thompson & Wallace of Memphis, Inc. v. Falconwood Corp.*, 100 F.3d 429, 432-33 (5th Cir. 1996) (holding that "tort causes of action are separate from the agreement and its enforcement, and thus the choice-of-law provision [that New York law was to be applied to 'the agreement and its enforcement'] does not govern them").

that there was a "strong logical relationship between the selected law and the transaction," *id.*, none of which is true here, as New York has no connection to the conduct at issue. Moreover, the court found that most of the out-of-state class members would "prefer to litigate under the laws of their own jurisdiction" and that the provision was therefore "logically related to the parties' needs and is relatively consumer friendly." *Id.* By contrast, neither Ms. Nye nor Lambda nor the conduct at issue have any connection to New York. Lambda also cites to *Mazza v. Am. Honda Motor Co.*, which is even further afield as it does not involve a choice-of-law provision at all. Rather, it addresses the unrelated issue of when California law may be used on a class wide basis if "the interests of other states are not found to outweigh California's interest in having its law applied." 666 F.3d 581, 590 (9th Cir. 2012) (quotations omitted).

C. The California Education Code Applies Because Lambda is a California Company, with its Headquarters and Principal Place of Business in California, and Because all of the Conduct at Issue Occurred in California

Lambda next contends that Ms. Nye only alleged that its conduct was unlawful "in California," Response at 15, and, by extension, that it was free to ignore California law with respect to its out-of-state students. By this logic, a California school could skirt the requirements of the California Education Code entirely so long as it enrolled students who reside outside of the state. If Lambda were correct, then California institutions could, for example, have disregarded the Education Code during the pandemic for those of its students who took courses online from out-of-state. Not so. Lambda's failure to obtain approval in the state from which its operations were based had consequences for all of its students.[7]

[7] In addition, the plain language of the BPPE citations required Lambda to, among other things: "cease to operate as a private postsecondary educational institution" and "discontinue recruiting or enrolling students and

Lambda also contends that the California Education Code does not apply because it was not "intended to govern the activities of educational institutions operating outside California." Response at 15. But again, Lambda cannot seriously contend that it was "operating outside of California."[8] As evidenced by the BPPE citations applying the California Education Code—not to mention Lambda's own application to the BPPE for approval—Lambda's conduct is governed by California law generally and the California Education Code specifically.

D. The Relief Ms. Nye Seeks is Available Under the UCL

Ms. Nye agrees with Lambda that "[i]njunctions are the primary form of relief available under the UCL . . ." Response at 16 (quotations omitted). That's exactly what she is asking for: "Ms. Nye therefore requests that the Arbitrator . . . (iii) order Lambda to cancel Ms. Nye's ISA and enjoin Lambda from ever collecting on her ISA." Mot. at 6. Courts have consistently held that they can enjoin enforcement of contracts under the UCL. *See Robinson v. U-Haul Co. of California*, 4 Cal. App. 5th 304, 314-17 (Cal. Ct. App. 2016) (affirming an injunction against future enforcement of non-competition covenant in dealer contracts); *see also Dowell v. Biosense Webster, Inc.*, 179 Cal. App. 4th 564, 575 (Cal. Ct. App. 2009) (affirming summary adjudication under the UCL enjoining enforcement of a contract that violated California's Business and Professional Code); *Saitsky v. DirecTV, Inc.*, No. CV 08-7918 AHM (CWX), 2009 WL 10670629, at *8-10 (C.D. Cal. Sept. 22, 2009) (allowing, under the UCL, a declaration that a contract be deemed unenforceable to survive motion to dismiss).

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cease all instructional services and advertising in any form or type of media, including the https://lambdaschool.com." These requirements also were not limited to California students.

[8] To the extent there was any doubt, *see* Cal. Educ. Code § 94850.5 (defining "out-of-state" providers as those "without a physical presence in this state").

Lambda also argues that the arbitrator cannot enjoin enforcement of the ISA because its unlawful activity has ceased. Response at 18. Not so. The California Education Code provides that any "instrument . . . of indebtedness relating to payment for an educational program is not enforceable by an institution unless, at the time of execution . . . the institution held an approval to operate." Cal. Educ. Code § 94917. On March 20, 2019, the BPPE found that Lambda was "operating without Bureau approval," Mot. Ex. A at 1, a condition that did not change until August 17, 2020, Mot. Ex. D. Ms. Nye and Mr. Allred executed Ms. Nye's ISA in the interim, on June 19, 2019, rendering it unenforceable pursuant to Section 94917. The ISA has been in force ever since, including its binding reporting obligations and, if the employment requirements are met, to make up to $30,000 in payments to Lambda. Demand Ex. B at ¶¶ 2, 4-10. While she has not made payments to Lambda—yet—Lambda has not relieved her of any of her contractual obligations, and can exact consequences if she fails to meet them, unless this tribunal enjoins their enforcement.

Lambda also argues that Section 94917 is not violated by enforcement of the ISA, because Ms. Nye executed the agreement in June 2019, when the BPPE's Order of Abatement was stayed as a result of Lambda's appeal of the Citation. But the fact that Lambda may have had a temporary reprieve from certain requirements of the Citation did not render it an *approved* institution. Lambda was not approved in March 2019 when the Citation was issued, in June 2019 when Ms. Nye signed her ISA, in July 2019 when its appeal was rejected, or at any time until August 17, 2020, when the BPPE finally approved her program and several others. The enforcement of Ms. Nye's ISA is a continuing violation of Section 94917 of the California Education Code, actionable under the UCL, which the arbitrator has authority to enjoin.

E. Ms. Nye's UCL Claim May Be Premised On Lambda's Violations of the California Education Code

Lambda argues, curiously, that Ms. Nye has not shown that her UCL claim may be premised on violations of the California Education Code, Response at 19, despite agreeing with her that the *San Mateo* case "indicates in non-binding dicta that all provisions of the Education Code confer such rights upon students." *Id.* at 21; *see also Daghlian v. DeVry Univ., Inc.*, 582 F. Supp. 2d 1231, 1236 (C.D. Cal. 2007) ("Plaintiff's claim . . . under the 'unlawful' prong of the UCL—predicated on defendants' purported failure to provide enrolling students the written disclosure mandated by [the] California Education Code . . . was suitable for classwide adjudication . . ."). Lambda cites no cases holding otherwise, which is not surprising since it is well-accepted that "the UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law." *San Mateo Union High Sch. District v. Educ. Testing Servs.*, No. 13-cv-3660, 2013 WL 4711611, at *11 (N.D. Cal. Aug. 30, 2013) *see also Farmers Ins. Exch. v. Super. Ct.*, 2 Cal. 4th 377, 383 (Cal. 1992) ("[A]n action based on [the UCL] to redress an unlawful business practice 'borrows' violations of other laws and treats these violations . . . as unlawful practices, independently actionable under Cal. Bus. & Prof. Code § 17200 et seq., and subject to the distinct remedies provided thereunder.") (quotations and citations omitted).

Lambda makes two arguments to evade the case law applying the unlawful prong to violations of the California Education Code. First, it contends that *San Mateo* only extends to the specific Education Code violations asserted in that case, not "section 94917, 94886, 94943, or 94902 of the Education Code, which are the statutes actually cited in Claimant's Motion."

Response at 20.[9] Under this stingy theory of precedent—not supported by any caselaw—litigants could only argue that the UCL incorporates a section of a statute if that specific section had been the subject of a prior UCL case. No UCL case would ever get off the ground. That is not what happened in *San Mateo*, which found that the UCL incorporates certain section of the Education Code, without reference to any prior precedent so holding.

Second, Lambda argues that Ms. Nye "has not cited to any authority that dispositively resolves the question of whether, or not, she has a private right action under the specific provisions in the California Education Code referenced in her Motion." *Id*. Ms. Nye need not assert a private right of action under the Education Code because, as Lambda concedes in the very next sentence: "the absence of a private right of action does not generally foreclose the availability of a UCL claim." *Id*.[10]

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[9] Lambda casts doubt on whether Section 94917 of the Education Code—which provides that a student's "note, instrument, or other evidence of indebtedness" is not enforceable unless the school has approval to operate—applies to income share agreements. Response at 21, note 3 (stating that the BPPE "would be best positioned to decide" the issue). But the BPPE has already decided the issue, stating in its June 22, 2020 order that Lambda's ISA is "an instrument or evidence of indebtedness" under the California Education Code. *See* Exhibit B at 5 (June 22, 2020 Denial of Lambda's Application for Approval to Operate). Furthermore, as set forth in Ms. Nye's Opposition to Lambda's Demurrer, this issue has also been decided by the California Department of Financial Protection and Innovation. *See* Claimant's Opp. to Resp. Demurrer at 13-14 (citing *In the Matter of Student Loan Servicing Act License Application of Meratas Inc.* NMLS No. 2120180, Consent Order at ¶ M (Ca. Dep't of Fin. Prot. and Innovation Aug. 5, 2021), *available at:* https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf. ("ISAs made solely for use to finance a postsecondary education are 'student loans' for the purposes of the SLSA [California Student Loan Servicing Act]."). The Consumer Financial Protection Bureau recently made similar findings under federal law. *Id.* at 14 (citing *In the Matter of Better Future Forward, Inc., et al*., CFPB No. 2021-CFPB-0005, Consent Order at ¶ 1 (Sept. 7, 2021) (finding that "ISAs are loans and do create debt").

[10] Indeed, California courts have consistently recognized that a valid UCL claim under the unlawful prong does not require that the underlying law provide a private right of action. *See, e.g.*, *VP Racing Fuels, Inc. v. Gen. Petroleum Corp.*, 673 F. Supp. 2d 1073, 1081 (E.D. Cal. 2009) ("[T]he State of California has provided that any unlawful business practices, including violations of laws for which there is no direct private right of action, may be redressed by private action under the UCL; it is not necessary that the predicate law provide for private civil enforcement."); *Rose v. Bank of Am., N.A.,* 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.") (quotations omitted).

The most Lambda can argue is that "an *actual prohibition* of a private right of action [forecloses the availability of a UCL claim]." *Id.* at 20-21 (emphasis added). That is not the case here. "[T]o bar a UCL action, another statute must *absolutely preclude* private causes of action or clearly permit the defendant's conduct." *Zhang v. Super. Ct.*, 57 Cal. 4th 364, 379-80 (Cal. 2013) (emphasis added); *see also Newton v. Am. Debt Servs., Inc*., 75 F. Supp. 3d 1048, 1058 (N.D. Cal. 2014) (only if there is "a clear legislative directive barring court enforcement" can plaintiffs be barred from employing the UCL). If the California Education Code expressly prohibited private rights of action regarding the sections relied upon by Ms. Nye, Lambda could have and would have cited that authority. Its statement that "[t]he California Education Code *does not clearly delineate* where the state's power to enforce the code's requirement is exclusive and where claimants are empowered to bring civil actions on their own," Response at 19-20 (emphasis added), gives away the game—there is nothing in the Education Code that "absolutely precludes" private rights of action relating to the provisions at issue in this case. As such, the unlawful prong applies.

F. Dispositive Relief is Appropriate Because There is No Dispute that Lambda Lacked Approval to Operate When it Executed Ms. Nye's ISA

Lambda proclaims, but cannot and does not show, that the record is disputed regarding when it obtained BPPE approval to operate. Response at 22-27. The record could not be clearer. On March 20, 2019, the BPPE cited Lambda for operating without a license. Mot. Ex. A. Likely realizing its error, Lambda submitted an "Application for Approval to Operate for an Institution Non-Accredited" to the BPPE on May 14, 2019. *See* Mot. Ex. C at 1. On July 24, 2019, the BPPE affirmed the March 20, 2019 Citation. On August 21, 2019, the BPPE denied Lambda's application seeking approval to operate. Mot. Ex. C. On November 25, 2019, the BPPE denied

Lambda again. Ex. A. And then denied Lambda yet again on June 22, 2020. Ex. B. Finally, on August 17, 2020, Lambda's application was "granted effective August 17, 2020." Mot. Ex. D. These BPPE determinations—which are all properly a part of the record (see Section I above)—leave no dispute that Lambda did not receive approval to operate until August 17, 2020. When an educational institution does not have "approval to operate," any "note, instrument, or other evidence of indebtedness relating to payment" for its programs is "not enforceable." Cal. Educ. Code § 94917. None of these facts are in dispute, and argument at the hearing will do nothing to change them.

Lambda nevertheless argues that the Citation and Citation Affirmance do not establish that Lambda violated the California Education Code. But both documents state definitively that Lambda was in violation of multiple provisions of the Education Code, including those requiring Lambda to be approved. Mot. Exs. A & B at 1-2. To the extent there is any doubt, Lambda's application for approval was subsequently denied three times before it was finally approved on August 17, 2020. Lambda cannot get around that fundamental, dispositive fact.

Despite this clear record, Lambda next proclaims that the facts do *not* establish that it lacked approval to operate when it executed Ms. Nye's ISA. Lambda claims that Ms. Nye fails to "spell out precisely what 'an approval to operate' means or requires," Response at 24, and appears to suggest that there are multiple "means for obtaining such approval" in addition to the BPPE application process. *Id.*

"Approval to operate" is not an ambiguous phrase – there is nothing that Ms. Nye needs to "spell out" in order for this tribunal to determine if Lambda was approved by the BPPE when it executed her ISA. Whatever theoretical licenses or approvals Lambda is suggesting it may

have had (but is keeping secret from this tribunal), Response at 24, they did not make it compliant with the California Education Code, as the BPPE found.

Even if the Citation were stayed when Ms. Nye enrolled, that would not change the one thing that mattered– Lambda's lack of BPPE approval to operate. And even that stay was short-lived—Lambda lost its appeal and was both unapproved and under an Order of Abatement for most of Ms. Nye's tenure at the school. Lambda cites no authority for its assertion that its initiation of the approval process somehow rendered it approved "[b]y implication." Response at 25. None of these desperate arguments undermine the undisputed fact—established clearly in the BPPE orders—that Lambda did not obtain approval until August 17, 2020.

Lambda further suggests that, because it was in communication with the BPPE, it therefore could not have been operating without a license. Response at 25-26. But Lambda points to no authority or communication from the BPPE stating or even implying that it was granted a reprieve from the plain terms of the California Education Code, let alone that its initiation of the approval process somehow counted as an approval to operate. To the contrary, post-Citation communications from the BPPE reminded Lambda that it did *not* have approval to operate. *See, e.g.* Mot. Ex. C at 3 (August 21, 2019 letter from the BPPE denying Lambda's application for approval to operate and reminding Lambda to abide by the requirements in the Citation). To the extent there is any doubt, a spokesperson for the BPPE stated publicly that there was no stay on the citation order, and that if Lambda was still operating while its registration was pending, it would be in violation of state law. *See* Demand ¶ 96.

Finally, Lambda argues that a separate section of the Education Code that governs "orderly institutional closure and teach-outs," Cal. Educ. Code § 94926, excuses it from the

BPPE's order to cease operations. Response at 26-27. But the BPPE citation did not tell Lambda "not to immediately suspend all operations," while it submitted a school closure plan, *id.*, it expressly told Lambda to do both. Worse, Lambda did neither. Section 94926 did not excuse Lambda from BPPE's order to cease operations; it's just another provision it violated. Regardless, these school closure provisions are not at issue—the only fact that matters is that Lambda executed Ms. Nye's ISA without proper approval. The timing and process for Lambda's closure is irrelevant.

G. This Motion is Timely

Lambda also seeks to avoid the ramifications for its misconduct by claiming that it should have the opportunity to prove one or more of the *twenty-two* affirmative defenses that it claims in its Answer. But it never explains how any specific affirmative defense bears on its unlawful conduct, nor has it proffered evidence to support any one of its defenses. And of course Lambda could have, in response to Ms. Nye's motion, put forth facts, evidence or legal argument to support its defenses. But it has not, and instead simply claims that its vague invocation of affirmative defenses in its answer should trump Ms. Nye's right to have a dispositive motion adjudicated.[11]

H. There is No Reason to Abstain From Deciding This Motion Now

Finally, Lambda posits that even if this tribunal determines that Ms. Nye should prevail, it should not decide the issues because they "involve[]wholesale policy determinations better suited for a legislature or an administrative agency, rather than a judge." Response at 29. That

[11] While Lambda concedes that its affirmative defenses will only impact the remedy (not its liability), this concession is inapposite here because once Ms. Nye establishes Lambda's liability, section 94917 of the Education Code renders her ISA "not enforceable," without qualification.

could not be further from reality; Ms. Nye has brought claims—as she is entitled to—invoking laws that will provide remedies for Lambda's unlawful conduct. Lambda, having *required* Ms. Nye to bring her claims in this forum, cannot now claim that this forum is somehow inappropriate.[12] Whether Lambda violated California law by unlawfully executing an ISA falls squarely within the authority of this tribunal to decide, and all of the information needed to make the decision is a part of the record right now.

This case is not of the sort where abstention has been found appropriate. For example, in *Alvarado v. Selma Convalescent Hospital*, cited by Lambda, the court recognized that certain cases involving "complex economic policy" may be better handled by a legislature or administrative agency. 153 Cal. App. 4th 1292, 1298 (Cal. Ct. App. 2007).[13] This is not that. Nor is it the sort of case, also mentioned in *Alvarado*, where it would be "unnecessarily burdensome" for the tribunal to monitor and enforce injunctive relief, *id.*; declaring the ISA unenforceable and providing other relief to Ms. Nye, based on the circumstances particular to her, is straightforward and well-within the Arbitrator's purview.

CONCLUSION

Lambda was operating without BPPE approval at the time it executed Ms. Nye's ISA. Therefore, her ISA is, as a matter of law, "not enforceable." Ms. Nye therefore requests that the

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[12] Curiously, Lambda suggests that it is "problematic" for Ms. Nye to ask the Arbitrator to apply the California Education Code to the facts presented and impose consequences for Lambda's violations of law. *See* Response at 30. The very role of an arbitrator in a contested proceeding such as this is to interpret the law and apply facts to the law in reaching a determination.

[13] Other cases cited by Lambda are similar in this regard. *See, e.g.*, *Cal. Grocers Ass'n. v. Bank of Am.,* 22 Cal. App. 4th 205, 218-19 (Cal. Ct. App. 1994) (finding abstention to be appropriate because the case "implicates a question of economic policy" that is "more properly left to the Comptroller of the currency"); *Shamsian v. Dep't of Conservation,* 136 Cal. App. 4th 621, 642 (Cal. Ct. App. 2006) (finding abstention to be appropriate because the relief sought would "potentially risk throwing the entire complex economic arrangement out of balance").

Arbitrator: (i) declare that her ISA is not enforceable pursuant to the California Education Code and UCL; (ii) declare that, until August 17, 2020, Lambda conducted business as a private postsecondary educational institution without approval to operate, in violation of the California Education Code and UCL; (iii) order Lambda to cancel Ms. Nye's ISA and enjoin Lambda from ever collecting on her ISA; and (iv) provide all such further relief as the Arbitrator deems just and proper.

Dated: November 23, 2021

Respectfully Submitted,

/s/ Alexander S. Elson
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November 25, 2019

Juli Tarca
Lambda School
250 Montgomery Street, 16th Floor
San Francisco, CA 94104

RE: Application for Approval to Operate for an Institution Not Accredited, #32274

Dear Ms. Tarca:

The Bureau for Private Postsecondary Education (Bureau) is in receipt of your Application for Approval to Operate for an Institution Non Accredited, received May 14, 2019. The Bureau makes every effort to be as complete and thorough as possible in our initial review of all documents.

Unfortunately, at this time the Bureau is unable to grant approval, based on the requirements of the California Education Code (CEC) and Title 5 of the California Code of Regulations (CCR), in the Sections outlined below (The Educational Programs may be subject to a further in-depth review once we have corrected all of these deficiencies listed). Prior to approval, the Bureau must receive the following information:

Application Section	Issue	Current Law Code
9	Exemplars of Student Agreements • Income Sharing Agreements typically negate the institution's ability to disclose the true cost of a program. If the amount owed is subject to change, it cannot be satisfactorily disclosed to the public and enrolling students. Please explain if and how your ISA model circumnavigates this issue. • Please provide copies of all enrollment documents beyond the required enrollment agreement, including ISA agreements. • Please be aware, your enrollment agreement cannot be finally approved until a determination has been made by the Bureau Chief regarding your request for an alternative refund calculation. Please be prepared to provide a final draft enrollment agreement if requested (after the request for alternative refund calculations has been addressed).p	CCR 71180 CEC 94902
12	Instruction and Degrees Offered • Please schedule a demonstration of Zoom (and possibly Slack) with assigned Senior Education Specialist Joanna Murray.	CCR 71210 CCR 71710 CCR 71715 CCR 71716 CCR 71850 CCR 71865

16	Faculty • Please provide *tentative* signed contracts for all proposed faculty members.	CCR 71250 CCR 71720
18	Libraries and Other Learning Resources • During the online demonstration (to be scheduled), please be prepared to explain and demonstrate student access of online learning resources sufficient to support instruction for each program.	CCR 71270
20	Catalog • Please be prepared to provide a final draft catalog when requested (after the request for alternative refund calculations has been addressed).	CCR 71290 CCR 71810 CCR 71750 CCR 71770

Please submit all requested information to my attention by **December 26, 2019**. Failure to provide this information may result in the denial of your application. If you have any further questions, please feel free to call me at (916) 320-3872 or email at Joanna.Murray@dca.ca.gov.

Sincerely,

JOANNA L MURRAY
Senior Education Specialist
Quality of Education Unit

STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

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June 22, 2020

COPY

Cecilia Ziniti, Esq.
General Counsel
Lambda School
250 Montgomery St., 16th Floor
San Francisco, CA 94104

Re: Lambda ISA in connection with Application for Approval to Operate for an Institution not Accredited, # 32274

Dear Ms. Ziniti:

This letter responds to your January 7, 2020 and February 27, 2020 letters, as well as the Gough & Hancock legal memorandum attached to your January 7 letter (the Lambda Memo), which evaluates generally the propriety of income sharing agreements (ISAs) under the California Private Postsecondary Education Act of 2009 (the Act), Education Code section 94800, et seq.

The Bureau for Private Postsecondary Education (the Bureau) is charged with interpreting and determining compliance with the Act, and in exercising its powers and performing its duties, the Bureau's priority is public protection. (Ed. Code, §§ 94875 & 94932.) The Bureau appreciates your helpful explanation of Lambda School's ISA, and your efforts to address the Bureau's previously-identified deficiencies about the school's application. As discussed below, however, the agreements do not comport with state disclosure and refunds laws and, for this reason, the Bureau cannot approve them.

As you know, in general, ISAs are educational program financing contracts between institutions and students, in which students agree to pay a percentage of their future income in exchange for an education. Depending on the terms of the ISA, it may cap the total amount a student owes under the agreement, charge interest, include varying income thresholds that trigger a student's obligation to pay, and defer payments at times when a student earns less than the income threshold.

Neither the Act nor its implementing regulations expressly contemplate ISAs as an educational program financing method. Generally speaking, the laws governing private postsecondary educational institutions are formed around educational programs with fixed up-front costs, rather than indeterminate and variable costs that only become clear

upon obtaining work after the program is complete. Accordingly, the Act and its implementing regulations require institutions to make up-front disclosures to students regarding the true cost of their educational programs. Disclosures are required in the enrollment agreement, catalog, annual report, and the Student Performance Fact Sheets. (Ed. Code, §§ 94911, 94909, 94923; § 71800, subd. (e), 74112, subd. (f).) These costs include tuition and other fees, and they are used to calculate a student tuition recovery fund assessment and benefit, and refunds when a student withdraws or a school closes.

Under the Lambda ISA, students agree to pay Lambda a portion of their future income in return for receiving Lambda's educational program. (ISA at ¶ 2.) Your January 7, 2020, letter identified some of the key features of the Lambda ISA:

1. Payments are due when the student accepts a job making at least $50,000 annually in gross earned income.
2. The payments on the ISA are in the amount of 17% of that student's gross earned income, monthly. This percentage is fixed and cannot change.[1]
3. After 24 payments or when payments made total more than the $30,000 tuition amount (whichever is sooner), payments stop.
4. For months during which earned income is less than the monthly amount equal to $50,000 annually, no payment is due.
5. If there are more than 60 total months where no payment is due, the ISA obligation terminates even if no payments have ever been made.

In addition, students must seek employment immediately following their completion of or withdrawal from the program, and any time thereafter that they make less than the minimum income threshold. (ISA at ¶¶ 4.a. & 10.e.) In the event of a withdrawal from the program, a student "may be entitled to a pro rata reduction" of the 17 percent income share amount, or the length of the payment term, at Lambda's sole discretion. (ISA at ¶ 7.d.) The ISA also includes detailed provisions governing student projected income and income reconciliation. (ISA at ¶¶ 4.c. & 5.) The ISA constitutes the entire agreement between Lambda and a student regarding payment for the educational program. (ISA at ¶ 23.a.)

Lambda's ISA financing model does not comport with the laws governing private postsecondary educational institutions because the inherent uncertainty in the actual program cost cannot be reconciled with the up-front disclosures that must be given to students.

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[1] The ISA provides that Lambda may increase the income share percentage to a maximum of 150% or add a fixed monthly underpayment fee if a student under-reports income. (ISA at ¶ 5.b.i.)

Prior to enrollment, Lambda must provide prospective students with a school catalog, which must contain a "schedule of total charges for a period of attendance and an estimated schedule of total charges for the entire educational program."[2] (Ed. Code, § 94909, subd. (a)(9).)

Students must also execute an enrollment agreement with Lambda to enroll at the school. (Ed. Code, § 94902, subd. (a).) Like the catalog, the enrollment agreement must include a "schedule of total charges," "the total charges for the current period of attendance, the estimated total charges for the entire educational program, and the total charges the student is obligated to pay upon enrollment." (Ed. Code, § 94911, subds. (b) & (c); see also Cal. Code Regs., tit. 5, § 71800, subd. (e) [itemizing the charges that must be listed in an enrollment agreement, including the cost of tuition].)

"Total charges" is defined as "the sum of institutional and noninstitutional charges." (Ed. Code, § 94870.) "Institutional charges" are "charges for an educational program paid directly to an institution." (Ed. Code, § 94844.) "Noninstitutional charges" are "charges for an educational program paid to an entity other than an institution that are specifically required for participation in an educational program." (Ed. Code, §94850.) The term "charge" is not defined in the Act, but the dictionary defines "charge" as "the price set or asked for something" and "a debt or an entry in an account recording a debt." (American Heritage Dict. (2d Collegeed. 1985), p. 260].) Tuition refers to the "cost for instruction normally charged on a per unit or per hour basis." (Cal. Code Regs., tit. 5, § 70000, subd. (ab).)

Under the Lambda ISA, the amount students will eventually be charged to complete Lambda's educational program is uncertain. Lambda's enrollment agreement lists the tuition cost and total charges at $30,000, which is also the maximum amount charged under the ISA for completing the program. But the enrollment agreement also refers students to the ISA for additional "detailed disclosures and additional information about payment, deferrals, and other important items." And under the ISA, as your letter acknowledges, the total cost "for a student electing an ISA will vary depending on the student. A student may end up paying less, but students would never pay more than what is disclosed." Thus, while the enrollment agreement reflects a fixed $30,000 tuition cost, in actuality, the program costs somewhere between $0 and $30,000, depending on a student's future income. Since the cost of tuition will vary by student, the disclosure of a fixed $30,000 cost neither accurately reflects the total program costs, nor does it comport with the requirement to disclose the cost "normally charged" for tuition.[3]

An example illustrates why the Lambda ISA financing model does not conform to the Act and regulations. Even though the enrollment agreement lists the tuition and total charges as fixed at $30,000, under the Lambda ISA, a student making $50,000 per year

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[2] With respect to Lambda's program, the "period of attendance" and the "entire educational program" are the same. (See Ed. Code, § 94854.)

[3] You indicate in your letter that 98% of Lambda students enter into an ISA.

would actually pay just $17,000 for the educational program after 24 months. By contrast, a student earning $100,000 per year would pay the full $30,000 in less than 21 months for the same educational program. Other students who complete the program may each end up paying a different amount over a different duration. In all cases, at the point of initial disclosure, the total cost of the educational program is uncertain, because the amount each student will end up paying is uncertain. Because there is no true fixed cost for the program for students executing an ISA, Lambda cannot accurately disclose the total charges or tuition with certainty.

Lambda's ISA financing also does not comport with the laws governing cancellations, withdrawals and refunds. Institutions must have a refund policy for the return of unearned institutional charges if the student cancels an enrollment agreement or withdraws during a period of attendance. (Ed. Code, § 94920, subd. (d).) "The refund policy for students who have completed 60 percent or less of the period of attendance shall be a pro rata refund." (*Ibid.*) Likewise, when an institution defaults on the enrollment agreement, it must provide refunds to students on a pro rata basis if the school established a teach-out program. (Ed. Code, § 94927.) If no such teach-out is offered, the institution must provide a total refund. (*Ibid.*) Refunds must be paid within 45 days of cancelation or withdrawal, and the enrollment agreement must contain the institution's refund policy. (Ed. Code, §§ 94911, subd. (e)(2), 94920, subd. (e); Cal. Code Regs., tit. 5, §§ 71750, subd. (e), 71800, subd. (d).)

The Bureau's regulations prescribe how pro rata refunds must be calculated. Such refunds "shall be no less than the total amount owed by the student for the portion of the educational program provided subtracted from the amount paid by the student . . . ." (Cal. Code Regs., tit. 5, § 71750, subd. (c).)

For students that execute Lambda's ISA, the amount owed to Lambda is uncertain, and no amounts are owed until after a student completes or withdraws from the program, and after a student earns income that exceeds the minimum income threshold. (ISA at ¶¶ 4.a.) Consequently, Lambda cannot comply with the law's refund requirements. Lambda must have a pro rata refund policy for students who completed 60 percent or less of their coursework, or in the event of a default. (Ed. Code, §§ 94920, subd. (d), 94927.) The refund policy cannot be less than the total amount owed by the student for the completed portion of the program, subtracted from any amount paid by the student. Since, however, it is not possible to accurately calculate in advance the amount a student owes for a portion of the program, Lambda cannot adopt a policy that conforms to the Act and regulations. Moreover, the Act and regulations contemplate a "refund" and "return" of monies already paid within 45 days of cancelation or withdrawal, not a future reduction in the amount eventually owed. Thus, the Lambda ISA financing model does not comport with the Act and regulations.

The Bureau may authorize an alternative method for calculating tuition refunds, but only in cases in which the prescribed refund calculations "cannot be utilized because of the unique way in which the educational program is structured . . . ." (Ed. Code, § 94921.)

The enrollment agreement proposes an alternative pro rata refund policy, but Lambda's proposed alternative is a consequence of the unique way Lambda's *financing* is structured, and not the unique way its *educational program* is structured. For this reason, the Bureau may not approve the alternative refund calculation reflected in the enrollment agreement. (See Cal. Code Regs., tit. 5, § 71800, subd. (d).)

In addition, the withdrawal and refund policies described in the enrollment agreement conflict with the ISA. The enrollment agreement provides that students may withdraw without owing any tuition or penalty before the last class of "Sprint 5"—i.e., week five or week 10 of the program, depending on whether the student attends full-time or part-time. Students who withdraw between Sprint 5 and Sprint 12 are responsible for a pro-rata portion of the total amount ($30,000) that may ultimately be paid to Lambda under the ISA. The enrollment agreement provides that the pro rata amount will be "communicated to your ISA service provider for adjustment." Although withdrawal relieves students of the enrollment agreement's obligations, it does not relieve them of their ISA obligations. The enrollment agreement provides that for students electing to finance their education via an ISA, "the terms of that agreement control your obligations under it."

Contrary to the enrollment agreement, which provides for a pro rata reduction in the total amount owed, the ISA provides little information about how withdrawals and refunds will be calculated. It provides that Lambda may reduce on a pro rata basis the income share percentage owed to Lambda under the agreement, or reduce the length of the payment term, at Lambda's "sole discretion." (ISA at ¶ 7.d.) Lambda is not bound under the ISA to the pro rata cost reduction that is specified in the enrollment agreement, nor is it required to make any reduction in the total amount charged to students. Thus, the enrollment agreement does not accurately reflect Lambda's refund policy, in view of the ISA.

Finally, we do not agree with the suggestion in the Lambda Memo that Lambda's ISA is not subject to Article 12 of the Act relating to consumer loans. In particular, Education Code section 94916 requires an institution extending credit or lending money for charges such as tuition to provide a specified notice to students on "any note, instrument, or other evidence of indebtedness taken in connection with that extension of credit or loan . . . ." The enrollment agreement denotes that the ISA is such a loan, and the Bureau concurs. The enrollment agreement incorporates the notice requirement specified in Education Code section 94916, signifying that Lambda is an institution that extends credit or lends money. Indeed, under the ISA, Lambda credits students up to $30,000 in tuition costs in exchange for a share of their future income. As an instrument or evidence of indebtedness, the ISA should also contain the consumer notice specified in section 94916, but it does not.

For these reasons, the Bureau cannot at this time approve Lambda's application. If you have any questions regarding this letter or would like to continue our discussion, please contact me at your convenience.

Very truly yours,

Douglas L. Smith

Douglas L. Smith