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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

THE DEPARTMENT OF FAIR EMPLOYMENT )  
AND HOUSING, )  
Plaintiff, )  
v. )  
LAW SCHOOL ADMISSION COUNCIL, INC., )  
Defendant. )

No. CV 12-1830-EMC

JOHN DOE *et al.*, and all other similarly )  
situated individuals, )  
Real Parties in Interest. )

**PARTIES' STIPULATIONS  
REGARDING  
PROPOSED ORDER  
REGARDING DISCOVERY<sup>1</sup>**

THE UNITED STATES OF AMERICA, )  
Plaintiff-Intervenor, )  
v. )  
LAW SCHOOL ADMISSION COUNCIL, INC., )  
Defendant. )

ANDREW QUAN, NICHOLAS JONES, and )  
ELIZABETH HENNESSEY-SEVERSON, )  
Plaintiff-Intervenors, )  
v. )  
LAW SCHOOL ADMISSION COUNCIL, INC., )  
Defendant. )

<sup>1</sup> This stipulation and order is submitted jointly by all the parties to this action. Pursuant to Civ. LR 3-4(a), a complete list of the parties is contained on the signature page of this document.

1 **PARTIES' STIPULATIONS REGARDING**  
2 **PROPOSED ORDER REGARDING DISCOVERY**

3 Plaintiff California Department of Fair Employment and Housing (“DFEH”), Plaintiff-  
4 Intervenor the United States, and individual Plaintiff-Intervenors Andrew Quan, Nicholas Jones,  
5 and Elizabeth Hennessey-Severson, (collectively “Plaintiffs”), and the Law School Admission  
6 Council, Inc. (“LSAC” or “Defendant”) mutually seek to reduce the time, expense, and other  
7 burdens of discovery of documents, things, and electronically stored information (“ESI”) that are  
8 within their possession, custody, or control. Therefore, the Plaintiffs and Defendant (collectively  
9 “Parties”) are entering into this Stipulation to govern discovery obligations in this action<sup>2</sup> as a  
10 supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of  
11 Electronically Stored Information, U.S. District Judge Edward M. Chen’s Civil Standing Order  
12 on Discovery, and any other applicable orders and rules. The Parties are aware of the importance  
13 the Court places on cooperation and commit to cooperate in good faith throughout this action  
14 consistent with this Court’s Guidelines for the Discovery of ESI.

14 The Parties stipulate as follows:

15 1) **Obligations to Preserve**

16 a. Preservation of Documents, Things, and ESI. All potentially relevant documents,  
17 things, and ESI, other than those exempted from discovery in paragraph 5, created before or after  
18 the date of entry of this Stipulation and Order, must be preserved in accordance with the Federal  
19 Rules of Civil Procedure (“FRCP”), the Federal Rules of Evidence, this Court’s Guidelines for  
20 the Discovery of ESI, and the relevant controlling principles of law.

21 b. “Draft Document(s).” For the purposes of this litigation, the obligation to  
22 preserve potentially relevant documents, things, and ESI extends to draft paper and electronic  
23 documents, except as provided in paragraph 5. A “draft” document (hereinafter “Draft  
24 Document”) for the purposes of this Stipulation and Order means a preliminary version of a  
25 document that has been shared by the author with another person (by email, print, or otherwise).  
26

27 <sup>2</sup> This stipulation and order is intended to govern the entirety of the action. However, for  
28 purposes of ADR discovery, certain deadlines and timelines contained herein will be adjusted to  
meet the condensed ADR timeframe, as specifically noted in the parties’ Joint Pre-ADR  
Discovery Plan and Proposed Order, filed on March 1, 2013.

1 A Party need not preserve a document before and after every change, so long as Draft  
2 Documents are preserved.

3 c. Red-lined and Marked-up Documents. For the purposes of this litigation, the  
4 obligation to preserve potentially relevant documents, things, and ESI extends to red-lined or  
5 marked-up electronic documents, except as provided in paragraph 5. This obligation extends to  
6 both Draft Documents and finalized documents for which a red-lined or marked-up version  
7 exists.

8 2) **Provisions for the Production of All Documents and ESI**

9 a. Form of Production of Documents and ESI Produced Electronically. Documents  
10 and ESI produced electronically that can be accurately represented in black and white shall be  
11 scanned or converted to single page Tagged Image File Format (“TIFF” or “.tiff format”) files,  
12 using CCITT Group IV compression. All images shall be scanned or converted at 300 d.p.i. and  
13 reflect, without visual degradation, the full and complete information contained on the original  
14 document. Photographs, color brochures, or other like documents that cannot be accurately  
15 represented in black and white or documents that are primarily in color shall be scanned or  
16 converted to JPEG files using a high quality setting. For documents that exist as JPEG in their  
17 native format, the native file with a Bates-numbered TIFF image placeholder sheet will be  
18 provided. The Parties will honor reasonable requests for either the production of the original  
19 document for inspection and copying or production of any color image of the document, thing, or  
20 ESI. All images shall be saved in a directory named IMAGES or IMAGES\_TEXT. Native files  
21 shall be saved in a directory named NATIVE with the proper Windows associated extension.

22 b. Bates Numbering. The Parties agree to produce all imaged documents with a  
23 legible, unique page identifier (“Bates Number”) electronically “burned” onto the image in the  
24 lower right hand corner or at a location that does not obliterate, conceal, or interfere with any  
25 information from the source document. The Bates numbering convention shall be in the format  
26 “XX#####” where “XX” represents the short character abbreviation for the producing Party  
27 and “#####” represents the eight-digit sequential number of the page being produced by that  
28 Party. Documents produced by the Parties shall be abbreviated as follows: California

1 Department of Fair Employment and Housing = DFEH; United States = US; Quan, Jones, and  
2 Hennessey-Severson = QJH; Law School Admission Council, Inc. = LSAC. For example, the  
3 first Bates labeled document produced by the United States should be labeled “US00000001.”  
4 Images shall be named as the Bates Number.tif or Bates Number.jpg. Native files shall be  
5 named as Bates Number.ext.

6 c. Production Media. The Parties agree that documents produced in electronic  
7 format will be produced on CD-ROM, DVD, or external hard drive (the “Production Media”),  
8 depending on the volume of the production, and agree to send all Production Media by courier,  
9 such as Federal Express or UPS. The following are points of contact for document production:

- 10 i. For DFEH:  
11 R. Sybil Villanueva  
12 Department of Fair Employment and Housing  
13 2218 Kausen Drive, Suite 100  
14 Elk Grove, CA 95758
- 15 ii. For the United States:  
16 Nabina Sinha  
17 The U.S. Department of Justice  
18 Civil Rights Division  
19 Disability Rights Section  
20 1425 New York Avenue, N.W., 4<sup>th</sup> Floor  
21 Washington, DC 20005
- 22 iii. For Quan, Jones, and Hennessey-Severson:  
23 Claudia Center  
24 The Legal Aid Society – Employment Law Center  
25 180 Montgomery Street, Suite 600  
26 San Francisco, CA 94104
- 27 iv. For LSAC:  
28 Caroline Mew  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, N.W., 5<sup>th</sup> Floor  
Washington, D.C. 20004

25 All Production Media must be free of viruses. Each piece of Production Media shall identify a  
26 production number corresponding to the production “wave” and a number of the volume of  
27 material in the wave. For example, if the first production wave by a Party comprises document  
28 images on three hard drives, the Party shall label each hard drive in the following manner in  
numeric sequence: “001.001”; “001.002”; “001.003.” If the second production comprises three

1 DVDs, the Party shall label each DVD in the following manner in numeric sequence:  
2 “002.001”; 002.002”; “002.003.” Additional information that shall be identified on the physical  
3 Production Media shall include: (1) the case number, (2) the producing Party’s name, and (3) the  
4 production date. The type of materials on the media (*e.g.*, “Documents,” “OCR Text,” etc.) and  
5 the Bates Number range(s) of the materials on the Production Media shall also be contained on  
6 the Production Media, and where not practicable to do so may be provided in an accompanying  
7 letter.

8 d. Cross Reference File. The Parties shall produce a “cross reference file” in  
9 Concordance Opticon .log format, to accompany the produced images of documents produced  
10 electronically. The cross reference file shall list all images with the corresponding Bates  
11 Numbers and path information for links between the images and, where appropriate, native files.  
12 The cross reference file shall include information about where each document begins and ends,  
13 to facilitate the use of the produced images through Concordance. The Parties shall meet and  
14 confer to the extent reasonably necessary to facilitate the import and use of the produced  
15 materials with Concordance.

16 e. Load File. The Parties shall produce a “load file,” containing the delimiters  
17 specified in Attachment A for documents produced electronically. The load file shall provide the  
18 image cross reference file with Bates Numbers, relative path to images, and document break  
19 indicators. The load files shall be provided in a directory named DATA, in a Concordance  
20 Opticon .log file format. Do not include OCR/extracted text in the DAT file.

21 f. OCR/Extracted Text. The Parties will produce corresponding Optical Character  
22 Recognition (“OCR”) text files for all hard-copy documents produced electronically, and any  
23 electronic documents that require redaction prior to production. For documents that exist  
24 natively in electronic format that have not been redacted and that are produced as images, the  
25 Parties shall produce extracted text files reflecting the full text that has been electronically  
26 extracted from the original, native electronic files. The OCR and extracted text files shall be  
27 produced in ASCII text format and shall be labeled and produced on Production Media in  
28 accordance with the provisions of paragraph 2(c). These text files will be named with the unique

1 Bates Number of the first page of the corresponding document followed by the extension “.txt.”  
2 The OCR and extracted text files shall be produced in a manner suitable for importing the  
3 information into Concordance. OCR and extracted text files shall be saved in a directory named  
4 TEXT. All documents should have an accompanying text file even if zero size.

5 g. The meta data fields specified in Attachment A shall be provided in Concordance  
6 .dat format with standard delimiters.

7 h. Protection of Discovery Materials. Any confidential, individually identifiable  
8 information contained in electronic and paper court filings will be redacted in accordance with  
9 FRCP 5.2, Local Rule 79-5, and any protective order entered in this matter.

10 i. The Parties will produce documents, things, and ESI on a rolling basis, when it is  
11 reasonable to do so, so as to provide each other with documents, things, and ESI as expediently  
12 as possible. When a Party propounds discovery requests pursuant to FRCP 34, the Parties agree  
13 to phase the production of ESI, when reasonable to do so. Following the initial production, the  
14 Parties will continue to prioritize the order of subsequent productions, as needed and to the  
15 extent practicable.

16 3) **Electronically Stored Information**

17 a. Format for Production of Electronic Documents:

18 i. Email will be produced as image files and in their original native file with  
19 related searchable text and metadata (to the extent it exists) as described in  
20 Attachment A. Emails shall be saved or converted to Outlook .MSG or  
21 processed HTML format as the native file format.

22 ii. All spreadsheets, *e.g.*, Excel or Quattropro, and PowerPoint presentations  
23 should be produced only in native format with related searchable text and  
24 metadata (to the extent it exists) as described in Attachment A.

25 Spreadsheets should not be imaged, but a placeholder image must be  
26 included to represent the spreadsheet.

27 iii. All other electronic documents not specifically discussed elsewhere will  
28 be produced as image files and in their original native files with related

1 searchable text and metadata (to the extent it exists) as described in  
2 Attachment A. If said documents in their original form cannot be  
3 converted to TIFF (which will be the default image format unless the  
4 document cannot be rendered as a TIFF image) as described above (*e.g.*,  
5 video, audio, or other proprietary files), the Parties promptly will meet and  
6 confer concerning the form of such production.

7 iv. Documents with children (*e.g.*, emails with attachments, archive files such  
8 as zip, and files with embedded documents) shall be treated as separate  
9 documents. Each document (parent and child) shall have the same  
10 attachment range as a way of identifying the group as specified in the  
11 Attachment Range field of Attachment A.

12 v. In the event that a Party needs to redact a portion of a document for which  
13 only a native file is otherwise produced, *e.g.*, Excel and PowerPoint, the  
14 Parties will provide redacted TIFF images with a corresponding text file  
15 instead of the native file. The Parties agree to meet and confer if  
16 production in this format limits the utility of the produced information.

17 vi. Any encryption or password protection of any file is to be removed or, if  
18 that is not possible, the password(s) provided. If software is required to  
19 open encrypted files, the Party producing the encrypted files must provide  
20 the software. The Parties agree to meet and confer prior to production of  
21 any information for which the password protection or encryption cannot  
22 be removed or the password(s) provided.

23 vii. The Parties shall meet and confer regarding production of ESI contained  
24 within a proprietary or specialized database.

25 viii. If particular documents warrant a different format than specified herein,  
26 the Parties will cooperate to arrange for the mutually acceptable  
27 production of such documents. The Parties agree not to degrade the  
28

1 searchability or utility of documents as part of the document production  
2 process.

3 b. Search Term Process and Criteria. If an ESI search based on search terms is  
4 requested by the propounding Party at the time written requests for production of documents are  
5 served, within two weeks from service of a request for production of documents based on ESI  
6 search terms, the requesting and responding Parties agree to meet and confer regarding the  
7 responding Party's search of ESI, including the proposed search terms by the requesting Party,  
8 the responding Party's technological search capability, and the most effective means of defining  
9 search criteria (such as date ranges, custodians, key words, etc.).<sup>3</sup> Within one week of when the  
10 Parties meet and confer, the responding Party shall propose a search process and criteria to the  
11 requesting Party. The requesting Party will have one week to respond with any suggested  
12 changes to the search process and criteria. Thereafter, the Parties shall confer weekly until the  
13 Parties agree to a search process and criteria. Within forty-five days of when the Parties agree on  
14 the search process and criteria, the producing Party shall produce to the requesting Party non-  
15 privileged ESI located using the agreed-on search process and criteria. Following the initial  
16 production, the Parties will continue to prioritize the order of subsequent productions. Requests  
17 to extend the time period for any given production will state with particularity the reasons for the  
18 requested extension. The Parties agree to further meet and confer as needed throughout  
19 discovery to determine whether modifications should be made to the agreed-on search process or  
20 criteria.

21 i. During the meet and confer for each phase of discovery, each requesting  
22 and responding Party shall be provided with an opportunity to propose  
23 additions or amendments to the proposed process and criteria and search  
24 terms;

25 \_\_\_\_\_  
26 <sup>3</sup> The Plaintiffs will propound their first document requests jointly and, with respect to such  
27 requests, Plaintiffs will designate one representative per Plaintiff's counsel as the primary  
28 negotiator to meet and confer regarding LSAC's search process and criteria. With respect to any  
subsequent document requests, Plaintiffs will again propound their requests under the same  
definitions. In the event that post-ADR discovery is necessary, the parties will meet and confer  
regarding the procedure for subsequent requests for production of documents.

1           ii.       The Parties acknowledge that the agreement to the use of any search terms  
2                   shall not be construed as a waiver of any Party's right to request  
3                   subsequent searches and productions; particularly where there is a  
4                   showing that the agreed-to search process and criteria or search terms have  
5                   resulted in inadequate productions or failed to identify relevant materials.

6           The Parties reserve their right to object to additional requests or  
7           subsequent searches as provided in FRCP 26; and

8           iii.       Documents may be reviewed for privilege, confidentiality, redactions, and  
9                   relevance or responsiveness prior to production.

10          c.       Use of Deduplication Software: Parties agree to use MD-5 hash values to  
11 deduplicate exact duplicate documents across custodians. As noted in Attachment A, MD-5 hash  
12 values will be calculated at the time of collection or processing for all categories of ESI.

13 4)       **Production of Paper Documents:**

14          a.       Format for Production of Certain Paper Documents. The Parties agree to produce  
15 hard-copy documents relating to the individuals specifically named in Plaintiffs' complaints as  
16 TIFF files with related OCR text.

17          b.       Document Unitization. To the extent possible and on a going-forward basis, the  
18 Parties will endeavor to apply unitization practices consistent with the following description:  
19 Each page of a hard copy document produced electronically shall be scanned into an image and  
20 if a document is more than one page, the unitization of the document and any attachments shall  
21 be maintained as it existed in the original when creating the image file. For documents that  
22 contain fixed notes, (*e.g.*, post-it notes), the pages will be scanned both with and without the  
23 notes and those pages will be treated as part of the same document. The relationship of  
24 documents in a document collection (*e.g.*, cover letter and enclosures, email and attachments,  
25 binder containing multiple documents, or other documents where a parent-child relationship  
26 exists between the documents) shall be maintained through the scanning or conversion process.  
27 If more than one level of parent-child relationship exists, documents will be kept in order, but all  
28 will be treated as children of the initial parent document. Such information shall be produced in

1 conformity with the Attachment Range field in Attachment A in a manner which enables the  
2 parent-child relationship among documents in a document collection to be reconstituted by the  
3 receiving Party in Concordance.

4 5) **Preservation Not Required for Certain Documents, Things, and ESI**

5 a. **ESI:**

6 i. The Parties have discussed their preservation obligations and needs and  
7 agree that preservation of potentially relevant ESI will be reasonable and  
8 proportionate. To reduce the costs and burdens of preservation and to  
9 ensure proper ESI is preserved, the Parties agree that data from these  
10 sources could contain relevant information but, under the proportionality  
11 factors, the Parties need not preserve, continue to preserve, or provide a  
12 privilege log for the following categories of ESI:

- 13 a. Voicemail messages;
  - 14 b. SMS messages or other text messages sent to or from a phone or other  
15 mobile communication system;
  - 16 c. Electronic mail or “pin to pin” messages sent to or from a Personal  
17 Digital Assistant (*e.g.*, Blackberry Handheld), provided that a copy of  
18 electronic messages is saved in another reasonably accessible location;
  - 19 d. Other electronic data stored on a Personal Digital Assistant, such as  
20 calendar or contact data or notes;
  - 21 e. Logs of calls made to or from cellular phones;
  - 22 f. Temporary or cache files, including internet history, web browser  
23 cache and cookie files, wherever located;
  - 24 g. Server, system, or network logs;
  - 25 h. Data from photocopiers or fax machines;
  - 26 i. Autosaved copies of electronic documents; and
  - 27 j. Delivery or read receipts of electronic mail.
- 28

- 1           ii.     Electronic Back-up Systems. Potentially relevant ESI, as that term is  
2                     defined in Rule 26 of the FRCP, need not be preserved or described on a  
3                     privilege log if:  
4                     a. It is stored in any electronic backup system for the purpose of system  
5                         recovery or information restoration, including, but not limited to,  
6                         system recovery backup tapes, continuity of operations systems, and  
7                         data or system mirrors or shadows; and  
8                     b. It is routinely purged, overwritten, or otherwise made not reasonably  
9                         accessible in accordance with an established, documented, and routine  
10                         system maintenance policy; and  
11                     c. It has been preserved on other, accessible electronic media.

12           b.     Documents Excluded from Preservation, Production, and Privilege Log  
13 Requirements. The Parties agree that, for purposes of this litigation, the Parties need not  
14 preserve, produce, or create a privilege log for any documents, including Draft Documents as  
15 defined in paragraph 1(b) and Red-lined and Marked-up Documents as defined in paragraph 1(c),  
16 that were:

- 17           i.     created by, and if exchanged, exchanged solely among –  
18                     a. attorneys or legal staff within DFEH, regarding this litigation;  
19                     b. attorneys or legal staff within the United States Department of Justice,  
20                         regarding this litigation;  
21                     c. attorneys or legal staff within the Legal Aid Society of San Francisco –  
22                         Employment Law Center (“LAS”);  
23                     d. attorneys or legal staff of LAS and its clients in this case (the  
24                         individual Plaintiff-Intervenors Andrew Quan, Nicholas Jones, and  
25                         Elizabeth Hennessey-Severson) or other individuals seeking legal  
26                         advice regarding this case;  
27                     e. attorneys or legal staff of Fulbright & Jaworski LLP;

- 1 f. attorneys or legal staff of Fulbright & Jaworski LLP and LSAC  
2 personnel other than LSAC attorneys or legal staff, regarding travel  
3 logistics, litigation scheduling, and other similar administrative matters  
4 as the Parties may agree upon in writing;
- 5 g. attorneys or legal staff of Fulbright & Jaworski L.L.P. and attorneys or  
6 legal staff of LSAC, regarding this litigation; or
- 7 h. attorneys or legal staff of LSAC and other LSAC personnel, regarding  
8 travel logistics, litigation scheduling, and other similar administrative  
9 matters as the Parties may agree upon in writing;
- 10 ii. created on or after June 14, 2012, by attorneys or legal staff of DFEH, the United  
11 States Department of Justice, or LAS, and exchanged solely among DFEH, the  
12 United States Department of Justice, and/or LAS.

13 Nothing in this section imposes upon any Party an obligation to preserve documents that the  
14 Party is not otherwise obligated to preserve.

15 c. Trial-Preparation Protection for Communication Between a Party's Attorney and  
16 Expert Witness. Communications, including, but not limited to, draft, red-lined, and marked-up  
17 reports, between a Party's attorney and any witness required to provide a report under Rule  
18 26(a)(2)(B) of the FRCP shall be protected from disclosure and shall not be produced in  
19 discovery regardless of the form of the communication, nor shall a privilege log be produced for  
20 such communications, except to the extent that the communications:

- 21 i. Relate to compensation for the expert's study or testimony;
- 22 ii. Identify facts or data that the Party's attorney provided and that the expert  
23 considered in forming the opinions to be expressed; or
- 24 iii. Identify assumptions that the Party's attorney provided and that the expert  
25 relied on in forming opinions to be expressed.

26 Communications between a Party's attorney(s) and any non-testifying, litigation expert(s) shall  
27 be protected from disclosure and need not be preserved, and shall not be produced in discovery  
28 regardless of the form of the communication, nor shall a privilege log be produced for such

1 communications. The Parties agree that this provision does not apply to LSAC consultants who  
2 reviewed files of candidates in order to evaluate whether a candidate should receive testing  
3 accommodations or consultants to Plaintiffs who reviewed complaint files prior to filing  
4 Plaintiffs' complaints.

5 d. No Discovery of Material Not Required To Be Preserved. The Parties agree not  
6 to seek discovery of documents, things, and ESI that need not be preserved pursuant to paragraph  
7 5. If any discovery request is susceptible to a construction that calls for the production of ESI  
8 that need not be preserved pursuant to paragraph 5, such items need not be provided or identified  
9 on a privilege log pursuant to Rule 26(b)(5) of the FRCP.

10 6) Other Preservation Obligations Not Affected. This Stipulation and Order in no way  
11 modifies, amends, limits, or obviates any of the Parties' obligations to maintain and preserve  
12 documents, things, and ESI where required by law or as a result of litigation or anticipated  
13 litigation in this case or in any other matter except for the exemptions delineated in paragraph 5.  
14 Also, nothing in this Stipulation and Order shall affect any other obligations of the Parties to  
15 preserve documents, things, and ESI for other purposes, such as pursuant to court order,  
16 administrative order, statute, or in response to other anticipated litigation.

17 7) Preservation Does Not Affect Discoverability or Claims of Privilege. The Parties  
18 agree that by preserving documents, things, and ESI for the purpose of this litigation, they are  
19 not conceding that such material is discoverable, nor are they waiving any claim of privilege.  
20 Except as otherwise provided in paragraph 5, nothing in this Stipulation and Order shall alter the  
21 responsibilities or obligations of the Parties to provide a privilege log for material withheld under  
22 a claim of privilege.

23 8) Privilege Logs. The Parties agree that for each document, thing, or ESI withheld based  
24 on an asserted claim of privilege, the Party asserting the privilege must produce a privilege log  
25 pursuant to Rule 26(b)(5)(A) of the FRCP, except as provided in paragraph 5. The privilege log  
26 must contain sequential numbering for each document, thing, or ESI identified, the Bates  
27 Number (if applicable), the type of document or ESI, whether the document or ESI contains any  
28 attachments, the date, authors, recipients, copyees, privilege(s) claimed, the title of the document

1 or ESI, the subject of the document or ESI, and the basis for the claimed privileges or protections  
2 with information sufficient to establish the elements of each asserted privilege. Attachments to  
3 email (including emails that are attached to another email) should be identified as attachments  
4 and separately logged. Privilege logs shall be produced within twenty-one days of the document  
5 production to which they pertain.

6 9) **Existing Retention Policy.** Notwithstanding subparagraph 5(a), if on the date of this  
7 Stipulation and Order, any Party that has a policy established by that Party's official decision-  
8 making authority responsible for the retention of documents, things, and ESI that results in the  
9 routine preservation of any of the categories of information identified in paragraph 5(a), such  
10 Party may continue to preserve such information in accordance with its policy. However, the  
11 Parties shall have no obligation, in response to discovery requests, to identify, collect, produce,  
12 or create privilege logs for documents, things, or ESI covered by paragraph 5(a).

13 10) **Sanctions.** No Party shall seek sanctions pursuant to the FRCP, the contempt powers of  
14 the Court, or any other authority, against another Party for the failure to preserve documents,  
15 things, or ESI that is not required to be maintained pursuant to paragraph 5.

16 11) **Inadvertent Production of Documents:**

17 a. Pursuant to Fed. R. Evid. 502(d), the Parties agree that a disclosure of  
18 communications, documents, things, and ESI covered by the attorney-client privilege, work  
19 product protection, or governmental privileges, whether inadvertent or otherwise, does not  
20 operate as a waiver of privilege or protection from discovery in this proceeding or in any other  
21 federal or state proceeding, if the holder of the privilege or protection took reasonably prompt  
22 measures, once the holder knew or should have known of the disclosure, to rectify the error.

23 b. If information produced in discovery is subject to a claim of privilege or  
24 protection, the Party making the claim may notify any Party that received the information of the  
25 claim and the basis for it. After being notified, a Party must make prompt and reasonable efforts  
26 to return, sequester, or destroy the specified information and any accessible copies it has; must  
27 not use or disclose the information until the claim is resolved; and must take prompt and  
28 reasonable steps to retrieve the information if the Party disclosed it before being notified. The

1 receiving Party may challenge any claim of privilege and/or inadvertence made by the producing  
2 Party, and the Parties agree that any disputes with respect to this provision should be governed  
3 and conducted in accordance with Judge Chen's Standing Order on Discovery.

4 12) **Sample Production.** On or before fourteen days following the Effective Date of this  
5 Stipulation and Order (as defined in paragraph 18, below), the Parties shall exchange a sample  
6 production of documents formatted to be consistent with this Stipulation and Order. The sample  
7 production shall contain a combination of scanned paper files and ESI, and shall include at least  
8 one spreadsheet and one email. The production need not be relevant to this case, as it is intended  
9 only to test the adequacy of the specifications in this Stipulation and Order and the compatibility  
10 of the Parties' systems. If any Party reports problems with the sample productions, the Parties  
11 shall confer regarding the terms of this Stipulation and Order.

12 13) **Duty to Supplement Discovery Responses.** Parties must supplement their disclosures in  
13 a timely manner, if the Party learns that the disclosure was materially incorrect or incomplete.  
14 Supplementation must be made at appropriate intervals during discovery and with special  
15 promptness as the trial date approaches.

16 14) **Costs of Document Production.** Each Party shall bear the costs of producing its own  
17 documents, things, and ESI; provided, however, that the parties do not waive their right to seek  
18 limitations on the extent of discovery by motion to the Court per FRCP 26.

19 15) **Third-Party Discovery With Respect to Individuals Named in the Plaintiffs'**  
20 **Complaints.**

21 Plaintiffs and LSAC will coordinate to obtain appropriate releases in a timely manner  
22 from the individuals named in Plaintiffs' respective complaints to facilitate third-party discovery.

23 16) **Requirement to Confer.** Before filing any motion regarding the terms of this  
24 Stipulation and Order, compliance with this Stipulation and Order, or other discovery dispute,  
25 the Parties will confer in a good faith attempt to resolve such disputes.

26 17) **Liaisons.** The Parties will identify liaisons to each other who are and will be  
27 knowledgeable about and responsible for discussing their respective ESI. Each e-discovery  
28 liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-

1 discovery, including the location, nature, accessibility, format, collection, search methodologies,  
2 and production of ESI in this matter. The Parties will rely on the liaisons, as needed, to confer  
3 about ESI and to help resolve disputes without court intervention.

4 18) **Miscellaneous:**

5 a. The Stipulation may be executed in counterparts.

6 b. The Effective Date of this Stipulation shall be the date on which the Court enters  
7 the Stipulation.

8 c. This Stipulation may be modified by a Stipulated Order of the Parties or by the  
9 Court for good cause shown.

10 d. Except where expressly noted, none of the meet and confer provisions of this  
11 Stipulation shall be construed to extend the time within which a Party must respond to a  
12 discovery request; rather, such time frames shall be governed by the FRCP. The Parties agree  
13 to meet and confer in good faith to discuss the timeline for production if the producing Party  
14 cannot produce any requested documents or ESI within the thirty day response time provided  
15 under FRCP 34.

16 i. If an ESI search based on search terms is requested by a Party at the time  
17 written requests for production of documents are served, the meet and confer  
18 provisions of section 3)b (“Search Term Process and Criteria”) of this  
19 Stipulation and Order shall apply to the timeline for production of documents  
20 in response to the request for ESI based on search terms.

21 ii. Requests to extend the time period for any given production will state with  
22 particularity the reasons for the requested extension.

23 iii. The Parties agree to further meet and confer as needed throughout discovery  
24 to determine whether modifications should be made to the agreed-on timeline  
25 for production.

26 e. The terms of this Stipulation and Order are not exhaustive. Each Party reserves  
27 the right to subsequently request a meet and confer to address any matters concerning discovery  
28 in this litigation which have not been addressed herein.

1 **IT IS SO STIPULATED**, through Counsel of Record.

2  
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4 United States Attorney  
5 Northern District of California

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Assistant Attorney General  
Civil Rights Division

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25 Attorneys for the United States

26 DEPARTMENT OF FAIR EMPLOYMENT  
27 AND HOUSING

28 /s/ R. Sybil Villanueva  
R. SYBIL VILLANUEVA<sup>4</sup>  
Attorney for Plaintiff Department of Fair  
Employment and Housing

<sup>4</sup> I, R. Sybil Villanueva, hereby attest that I gained the concurrence of all signatories whose signatures are represented by /s/ in the filing of this document.

1 The LEGAL AID SOCIETY - EMPLOYMENT  
2 LAW CENTER  
3 /s/ Claudia Center  
4 CLAUDIA CENTER  
5 Attorney for Plaintiff-Intervenors ANDREW  
6 QUAN, NICHOLAS JONES,

7 FULBRIGHT & JAWORSKI L.L.P.  
8 /s/ Robert Burgoyne  
9 ROBERT A. BURGOYNE  
10 Attorneys for Defendant Law School Admission  
11 Council, Inc.

12 **IT IS ORDERED** that the forgoing Agreement is approved.

13 Signed this 5th day of March, 2013.

14  
15 EDWARD M. CHEN  
16 UNITED STATES JUDGE



## Attachment “A” to Rule 26(f) Stipulation and Order: Metadata Fields

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets	Digital Photos	Paper
Begin_Bates	Text	Bates number for the TIFF image of the first page	Bates number for the TIFF image of the first page	Bates number of the placeholder page	Bates number branded onto a TIFF file that has the same resolution as the native image file.	Bates number for the TIFF image of the first page
End_Bates	Text	Bates number for the TIFF image of the last page	Bates number for the TIFF image of the last page	Bates number of the placeholder page	Bates number branded onto the native image file	Bates number for the TIFF image of the last page
Attachment Range	Text	Bates range starting with the first page of the parent document through the last page of the last attachment. Blank if there are no child documents	Bates range starting with the first page of the parent document through the last page of the last attachment or embedded file. Included only if part of a group of documents like an email or zip file.	Bates range starting with the first page of the parent document through the last page of the last attachment or embedded file. Included only if part of a group of documents like an email or zip file.	Bates range starting with the first page of the parent document through the last page of the last attachment or embedded file. Included only if part of a group of documents like an email or zip file.	Bates range of all documents that were grouped together/ physically attached by clips, staples, or binding or folder. Blank if a single non grouped document
Author	Paragraph	“From” field	<blank>	<blank>	<blank>	<blank>
To	Paragraph	“To” field	<blank>	<blank>	<blank>	<blank>
CC	Paragraph	“CC” field	<blank>	<blank>	<blank>	<blank>
BCC	Paragraph	“BCC” field	<blank>	<blank>	<blank>	<blank>
Subject	Paragraph	“Subject” field	<blank>	<blank>	<blank>	<blank>

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets	Digital Photos	Paper
DateSent	Date	The date the message was sent (format: 9/28/2012)	<blank>	<blank>	<blank>	<blank>
TimeSent	Time	The time the message was sent (format: 11:16:46 AM)	<blank>	<blank>	<blank>	<blank>
MD5Hash	Paragraph	The MD5 hash value calculated when the file was collected or processed.	The MD5 hash value calculated when the file was collected or processed.	The MD5 hash value calculated when the file was collected or processed.	The MD5 hash value calculated when the file was collected or processed.	<blank>
Prod_FilePath	Paragraph	<blank>	The path to the native file on the production media	The path to the native file on the production media	<blank>	<blank>
Orig_File Name	Paragraph	<blank>	Original name of the native file when the file was collected or processed	Original name of the native file when the file was collected or processed	<blank>	<blank>
FileExtension	Text	<blank>	The extension of the file when the file was collected.	The extension of the file when the file was collected.	The extension of the file when the file was collected.	<blank>
DocumentType	Text	“Electronic Mail Message”	“Application File” or “Mail Message Attachment”	“Application File” or “Mail Message Attachment”	“Application File” or “Mail Message Attachment”	“Hard Copy”