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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, )	Case No. CV 12-1830-EMC
v. )	
LAW SCHOOL ADMISSION COUNCIL, INC., )	
Defendant. )	
<hr/>	
THE UNITED STATES OF AMERICA, )	
Plaintiff-Intervenor, )	<del>[PROPOSED]</del> CONSENT DECREE
v. )	
LAW SCHOOL ADMISSION COUNCIL, INC., )	
Defendant. )	
<hr/>	
ANDREW QUAN, NICHOLAS JONES, and )	
ELIZABETH HENNESSEY-SEVERSON, )	
Plaintiff-Intervenors, )	
v. )	
LAW SCHOOL ADMISSION COUNCIL, INC., )	
Defendant. )	

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1 **INTRODUCTION**

2 This matter is before the Court for entry of a consent decree agreed upon by the Parties –  
3 Plaintiff California Department of Fair Employment and Housing (“DFEH”); Plaintiff-Intervenor  
4 the United States of America (“United States”); individual Plaintiff-Intervenors Andrew Quan,  
5 Nicholas Jones, and Elizabeth Hennessey-Severson (“individual Plaintiff-Intervenors”) (each a  
6 “Plaintiff” and collectively “Plaintiffs”); and the Law School Admission Council, Inc.  
7 (“LSAC”). Plaintiffs allege that LSAC discriminates against individuals with disabilities who  
8 take, or seek to take, the Law School Admission Test (“LSAT”) with testing accommodations, in  
9 violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.*,<sup>1</sup> based on  
10 LSAC’s alleged failure to offer the LSAT in a manner accessible to individuals with disabilities  
11 and on LSAC’s policy of annotating, or “flagging,” test scores achieved with the testing  
12 accommodation of extended time.<sup>2</sup> LSAC denies all of Plaintiffs’ allegations.

13 Prior to the commencement of this litigation, the United States and the DFEH had not  
14 issued a regulation or technical assistance publication explicitly addressing score annotation by  
15 any private entity that offers examinations or courses related to applications, licensing,  
16 certification, or credentialing for secondary or post-secondary education, professional or trade  
17 purposes. However, the United States and the DFEH maintain that 42 U.S.C. § 12189 and 28  
18 C.F.R. § 36.309 prohibit score annotation. LSAC disputes the position of the United States and  
19 the DFEH on this issue. The United States and the DFEH further maintain that, under 42 U.S.C.

20  
21 \_\_\_\_\_  
22 <sup>1</sup> A violation of the ADA constitutes a violation of the Unruh Act, Cal. Civ. Code section 51(f). All  
23 references to the ADA are intended to include alleged ADA violations that by incorporation would violate  
24 California law. Nothing in this Consent Decree is intended to waive California law.

25 <sup>2</sup> The DFEH and the individual Plaintiff-Intervenors additionally allege violations of the California Unruh  
26 Civil Rights Act (California Civil Code section 51 *et seq.*) and California Education Code section  
27 99161.5. The individual Plaintiff-Intervenors also allege violations of the Unfair Competition Act  
28 (California Business and Professions Code section 17200 *et seq.*).

1 § 12206(e), LSAC is not excused from compliance with the requirements of the ADA because of  
2 any failure to receive technical assistance.

3 Plaintiffs and LSAC agree that it is in the Parties' best interests, the DFEH believes it is  
4 in the public interest of California, and the United States believes it is in the public interest, to  
5 fully and finally resolve this matter on mutually agreeable terms without trial of any issues of  
6 fact or law raised in any of the Plaintiffs' complaints, and without resort to protracted litigation.  
7 Further, the Parties acknowledge and agree that there has been no adjudication as to the merits of  
8 any of the claims raised herein, and the fact that LSAC has entered into this Consent Decree  
9 should in no way be considered evidence of guilt or liability that it has violated the law in any  
10 way. The Parties hereby agree and stipulate to the Court's entry of this Consent Decree,  
11 including the Order and Permanent Injunction, resolving the Plaintiffs' complaints against  
12 LSAC.

13 Now it is hereby ORDERED AND DECREED as follows:

14 **PARTIES**

15 1. Plaintiffs are: (1) the DFEH, a California state agency charged with enforcing the  
16 rights of all Californians under the California Unruh Civil Rights Act ("Unruh Act"), Cal. Civ.  
17 Code §§ 51 *et seq.*; (2) the United States of America; and (3) Andrew Quan, Nicholas Jones, and  
18 Elizabeth Hennessey-Severson, individuals with alleged disabilities who claim that they were  
19 subjected to discrimination by LSAC.

20 2. Defendant LSAC is a Delaware non-profit corporation headquartered at 662 Penn  
21 Street, Newtown, Pennsylvania 18940. LSAC administers the LSAT multiple times each year  
22 across the United States.

23 3. LSAC is a "person" that offers examinations related to applications for post-  
24 secondary education within the meaning of 42 U.S.C. § 12189 and a "private entity" that offers  
25 examinations related to applications for post-secondary education within the meaning of  
26

1 28 C.F.R. § 36.309. The LSAT is a secure examination, and LSAC routinely takes steps to  
2 protect the security of LSAT examination content.

3 **INJUNCTIVE RELIEF**

4 4. General Obligations. LSAC shall comply with the requirements of 42 U.S.C.  
5 § 12189 of the ADA and its implementing regulation at 28 C.F.R. § 36.309 (and California law  
6 where applicable), including, *inter alia*, the obligation to offer the LSAT in a place and manner  
7 accessible to persons with disabilities.

8 a. Pursuant to 28 C.F.R. § 36.309(b)(1)(i), LSAC shall select and administer  
9 the LSAT so as to best ensure that, when the LSAT is administered to an individual with a  
10 disability that impairs sensory, manual, or speaking skills, the LSAT results accurately reflect the  
11 individual’s aptitude or achievement level or whatever other factor the examination purports to  
12 measure, rather than reflecting the individual’s impaired sensory, manual, or speaking skills  
13 (except where those skills are the factors that the LSAT purports to measure).

14 b. Pursuant to 28 C.F.R. § 36.309(b)(3), LSAC shall provide appropriate  
15 auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless LSAC can  
16 demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement  
17 of the skills or knowledge the examination is intended to test or would result in an undue burden.

18 5. LSAC Shall Ensure That Documentation Requests Are Reasonable And Limited  
19 To The Need For The Testing Accommodation<sup>3</sup> Requested.

20 a. For those candidates whose documentation establishes that they previously  
21 were approved to receive testing accommodations on any standardized examination offered in  
22 the United States related to applications for post-secondary admission,<sup>4</sup> and with respect to the

23 <sup>3</sup> The commonly used term “testing accommodation” refers, collectively, to “modifications,  
24 accommodations, or auxiliary aids or services” as referenced in 28 C.F.R. § 36.309.

25 <sup>4</sup> For purposes of Paragraph 5(a), these examinations are the LSAT, SAT I and II, ACT, GED, GRE,  
26 GMAT, DAT, and MCAT examinations, unless this list is modified by agreement of the Parties.



1 testing accommodations for which they were previously approved, LSAC shall require no more  
2 documentation than proof of the approval for such testing accommodations, and certification by  
3 the candidate through a checkmark box on the candidate form that the candidate is still  
4 experiencing the functional limitations caused by the disability(ies) for which testing  
5 accommodations were approved. Acceptable proof of prior testing accommodations shall consist  
6 of a letter or similar documentation from the other test sponsor confirming that testing  
7 accommodations were approved and specifically identifying what those approved testing  
8 accommodations were. Upon receipt of such proof in accordance with LSAC's established  
9 deadlines, without further inquiry or request for additional documentation, LSAC shall grant  
10 those previously approved testing accommodations, or the equivalent testing accommodation  
11 offered on the LSAT,<sup>5</sup> with respect to requests for extended time up to double time<sup>6</sup> as well as  
12 certain other testing accommodations that are listed in Exhibit 1. Testing accommodations will  
13 only be provided in accordance with this Paragraph 5(a) if the testing can be administered on one  
14 day. If the requested testing accommodations cannot be administered on one day, they will be  
15 evaluated in accordance with Paragraphs 5(b)-(d). If the requested testing accommodation is one  
16 that is not covered by this Paragraph 5(a) and Exhibit 1, it will be evaluated in accordance with  
17 Paragraphs 5(b)-(d).

18  
19 \_\_\_\_\_  
20 <sup>5</sup> For example, LSAC shall provide a candidate who submits appropriate documentation that she received  
21 double time for the GRE with extended time for both the multiple choice sections and the writing section  
22 of the LSAT – despite the fact that the GRE may not specify the sections on which a candidate received  
23 extended time. Likewise, a candidate may submit appropriate documentation showing that she previously  
24 received the testing accommodation of “large block answer sheet” on the ACT. If that exact testing  
25 accommodation is not offered for the LSAT, LSAC shall grant the closest equivalent testing  
26 accommodation provided for the LSAT – such as an alternate non-Scantron answer sheet.

27 <sup>6</sup> Although candidates who previously received in excess of double time will be granted double time  
28 under this provision, LSAC will consider the balance of requested extended time, and any other testing  
accommodations not previously received on a standardized examination related to applications for post-  
secondary admission, under the provisions of Paragraphs 5(b)-(d).

1           b.       For those requests that do not meet the requirements of Paragraph 5(a) in  
2 whole or in part, any request from LSAC for documentation with respect to any part of a request  
3 not covered by Paragraph 5(a) shall be reasonable and limited to the need for the testing  
4 accommodation requested.

5           c.       Subject to any further direction from the Panel as set forth in  
6 Paragraph 7(c)(ii):

7           i.       Requests by candidates who were previously approved to receive  
8 extended time in excess of double time,<sup>7</sup> or any testing accommodation not covered by  
9 Paragraph 5(a) and Exhibit 1, for any standardized examination related to applications for post-  
10 secondary admission, and who seek the same testing accommodations on the LSAT, will be  
11 subject to LSAC's then-applicable documentation requirements, as revised herein.

12           ii.       Requests by candidates who seek more extended test time or break  
13 time than they previously were approved to receive as a testing accommodation for any  
14 standardized examination related to applications for post-secondary admission<sup>8</sup> will be subject to  
15 LSAC's then-applicable documentation requirements, as revised herein.

16           iii.       When reviewing the requests identified in this Paragraph 5(c),  
17 LSAC will not re-evaluate whether the candidate has a covered disability within the meaning of  
18 the ADA.

19           d.       In evaluating testing accommodation requests under Paragraphs 5(b)-(c):

20           i.       LSAC shall consider all facts and explanations offered by the  
21 candidate regarding his or her history or the need for the requested testing accommodations,  
22

---

23 <sup>7</sup> For such requests, LSAC shall automatically grant double time on the LSAT, consistent with the  
24 provisions of Paragraph 5(a).

25 <sup>8</sup> For such requests, LSAC shall automatically grant the amount of extended test time or break time  
26 previously approved by the other testing entity, subject to the requirements of Paragraph 5(a).

1 including factors such as late-in-life diagnosis of disability, recent onset of a disability,  
2 progression of a disability, lack of resources, or having a non-traditional educational background.

3 ii. LSAC shall give considerable weight to documentation of past  
4 testing accommodations received in similar testing situations not covered by Paragraph 5(a), as  
5 well as such testing accommodations provided in response to an Individualized Education  
6 Program (IEP)<sup>9</sup> or a Section 504 Plan.<sup>10</sup>

7 iii. LSAC shall consider documentation provided by a qualified  
8 professional<sup>11</sup> who has made an individualized assessment of the candidate.

9 iv. LSAC agrees to update the information and forms provided to  
10 candidates regarding the recency of testing used in support of a testing accommodation request  
11 based on a mental or cognitive impairment to permit such candidates to submit testing conducted  
12 within five years of the date of the request for testing accommodations on the LSAT in support  
13 of their testing accommodation request, instead of within three years as currently required for  
14 certain candidates.

15 v. LSAC may consider objective evidence relating to the candidate's  
16 diagnosed impairment and its impact on the candidate.

17 vi. LSAC shall not reject or deny a candidate's application for a  
18 particular testing accommodation based solely on the candidate's average or above average IQ  
19 score and/or high level of academic success.

20 \_\_\_\_\_  
21 <sup>9</sup> An IEP describes the special education and related aids and services provided under the Individuals with  
22 Disabilities Education Act (IDEA).

23 <sup>10</sup> A Section 504 Plan describes special or regular education and related aids and services provided  
24 pursuant to section 504 of the Rehabilitation Act of 1973.

25 <sup>11</sup> A "qualified professional," as that term is used throughout this Decree, is "licensed or otherwise  
26 properly credentialed and possess[es] expertise in the disability for which modifications or  
27 accommodations are sought." 28 C.F.R. pt. 36, app. A, at 784.



1 Barring unforeseen circumstances, LSAC will respond to each request for testing  
2 accommodations within 14 business days of its receipt. Therefore, if a request is received within  
3 two weeks of the deadline, you may not have the opportunity to supplement your file if, after  
4 review of your request, we determine that additional information is needed to make a decision.  
5 Additionally, you may not be able to request reconsideration of our decision.” This language is  
6 subject to further direction from the Panel regarding the need for and availability of an appeals  
7 process and, if needed, what that process should be, as set forth in Paragraph 7(c)(iii)(7).

8 g. LSAC agrees to revise its Guidelines for Documentation of Cognitive  
9 Impairments to eliminate the following language: “Please note that if you are currently taking  
10 medication, you should consider being evaluated while on your medication. Any deviation from  
11 this practice must be explained by your evaluator.” LSAC further agrees to revise its Evaluator  
12 Form to eliminate the request for an “explanation” if a candidate was not on his or her prescribed  
13 medication during the evaluation. LSAC may continue to ask evaluators whether a candidate  
14 was on his or her prescribed medication during the evaluation, followed by the words, “If  
15 relevant and appropriate, please comment.”

16 h. The provisions of Paragraph 5, including any changes to LSAC’s policies  
17 or practices required by Paragraph 5, shall be implemented for the next administration of the  
18 LSAT following entry of this Decree by the Court (“Effective Date”). However, if the next  
19 administration of the LSAT is less than two months away from the Effective Date, LSAC shall  
20 implement the changes for the second administration of the LSAT following the Effective Date  
21 of this Decree.

22 6. LSAC Shall Diversify The Expert Consultants It Uses To Review Requests For  
23 Testing Accommodations. LSAC shall increase the number of expert consultants and diversify  
24 the areas of expertise of the expert consultants it uses to review and evaluate requests for testing  
25 accommodations.

1           7.       LSAC Shall Implement Best Practices As Established By A Panel Of Experts To  
2 Be Agreed Upon By The Parties<sup>12</sup> To Comply With 28 C.F.R. § 36.309.

3                 a.       Panel. The Panel shall be comprised of five experts: two selected by  
4 LSAC; two selected by the United States and the DFEH; and a fifth selected by those four  
5 experts from a list prepared by the United States and the DFEH. For their two selections, the  
6 United States/DFEH and LSAC will each select one individual with expertise in the provision of  
7 testing accommodations within the context of standardized test administration and one individual  
8 with expertise in cognitive disabilities. The Parties will select their experts within ten (10) days  
9 of the Effective Date. Within five (5) days of confirmation of service by all the selected experts,  
10 the United States and the DFEH will give to the four experts a list of three additional experts,  
11 each of whom shall have expertise in ADA compliance. The individuals listed for possible  
12 selection as this fifth Panel member shall not have previously assisted or consulted with any  
13 Party (including the individual Plaintiff-Intervenors) for purposes of this litigation. No Panel  
14 member can be an attorney who has previously personally represented a party adverse to LSAC  
15 or the United States in a lawsuit or government agency proceeding involving LSAC; LSAC shall  
16 provide a list of all such attorneys to the United States and the DFEH by the Effective Date of  
17 the Decree. Within five (5) days, the four selected experts will choose a fifth expert from the list  
18 provided by the United States and the DFEH. Within five (5) days of the fifth expert confirming  
19 his or her willingness to serve on the Panel, all of the chosen experts will be notified of the final  
20 composition of the Panel by joint letter from the Parties. During the period of their service under  
21 this Consent Decree and through conclusion of any reconvening of the Panel (or expiration of the  
22 time period for reconvening the Panel) pursuant to Paragraph 7(d)(vi), members of the Panel  
23  
24

25 <sup>12</sup> All references to the “Parties” in Paragraph 7 refer solely to the United States, the DFEH, and LSAC.  
26

1 may not personally represent anyone, or serve as expert witnesses for anyone, who is adverse to  
2 LSAC in any pending lawsuit or government agency proceeding.

3           b.       Duties. It shall be the Panel’s duty to prepare a written report establishing  
4 Best Practices that comport with the requirements of 28 C.F.R. § 36.309, all of which LSAC  
5 shall implement to the extent that it is not already following such Best Practices. When  
6 establishing the Best Practices, the Panel shall clearly and expressly state in writing whether  
7 each Best Practice is already being followed by LSAC or needs to be implemented by LSAC.  
8 The Best Practices shall be consistent with the provisions of this Decree and shall not violate the  
9 ADA or its implementing regulations, or California law where applicable. The United States  
10 and the DFEH agree that, for the four-year term of this Decree, neither the United States nor the  
11 DFEH will assert in any forum that LSAC has violated the ADA, its implementing regulations,  
12 or any provision of California law by taking actions in compliance with any of the Best  
13 Practices that have not been challenged by a Party pursuant to Paragraphs 7(d)(iv)-7(d)(vii)  
14 below or, if challenged, have not been invalidated by the Court. The Panel shall determine how  
15 many of the five Panel members must agree on each Best Practice in order for it to be imposed  
16 as a Best Practice.

17           c.       Issues To Be Addressed By Panel.

18           i.       Diversification. The Panel shall provide LSAC with  
19 recommendations on how to diversify its expert consultants, in terms of numbers and areas of  
20 expertise, which LSAC shall implement.

21           ii.       Documentation. The Panel shall consider and establish the type  
22 and scope of appropriate documentation that may be requested from candidates whose requests  
23 fall under Paragraphs 5(b)-(d) above. The Panel shall include in its consideration the  
24 documentation requirements for candidates who have received some of their requested testing  
25 accommodations for a standardized examination related to applications for post-secondary

1 admission but who request additional testing accommodations, or in excess of double time, for  
2 the LSAT,<sup>13</sup> consistent with the terms of Paragraph 5(b) above.

3                   iii.           Review of Testing Accommodation Requests. The Panel shall  
4 address the following elements of the process for reviewing and evaluating testing  
5 accommodation requests:

- 6                                   1) Reviewers. The Panel shall consider and establish the appropriate  
7                                   qualifications for persons, such as LSAC staff and/or outside  
8                                   consultants, who make substantive adverse decisions on requests  
9                                   for testing accommodations.
- 10                                  2) Qualified Professionals. The Panel shall determine whether more  
11                                  than one qualified professional should review a documented  
12                                  request for testing accommodations before LSAC may deny the  
13                                  request in whole or in part.
- 14                                  3) Criteria and guidelines for reviewers. The Panel shall consider and  
15                                  establish criteria and guidelines for use by persons who review or  
16                                  evaluate testing accommodation requests.
- 17                                  4) Written recommendations from reviewers. The Panel shall  
18                                  consider whether there should be particular parameters for written  
19                                  recommendations from any outside consultant who reviews or  
20                                  evaluates requests for testing accommodations and, if so, what  
21                                  those parameters should be. The Panel shall also consider whether  
22                                  there should be particular parameters for internally documenting  
23                                  written decisions by LSAC personnel who make substantive  
24                                  decisions on requests for testing accommodations and, if so, what  
25                                  those parameters should be.
- 26                                  5) Written explanations for denials of testing accommodation  
27                                  requests. The Panel shall consider whether there should be  
28                                  particular parameters for written explanations provided by LSAC  
29                                  to candidates whose requests for testing accommodations are  
30                                  partially or fully denied and, if so, what those parameters should  
31                                  be.
- 32                                  6) Automatic review of partial and full denials. The Panel shall  
33                                  consider whether an automatic review of partial and/or full denials

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34 <sup>13</sup> For example, a candidate may have received 50% extended time previously (to which he or she is  
35 entitled under Paragraph 5(a)) but may request 100% additional time for the LSAT (where the additional  
36 extended time is subject to Paragraphs 5(b)-(d)).



1 is warranted and, if warranted, how such a review should be  
2 conducted.

3 7) Timely/streamlined appeals process. The Panel shall consider  
4 whether there should be a process available, beyond that already  
5 provided by LSAC, to candidates who wish to seek review of  
6 LSAC's decision to deny a candidate's request and, if so, what that  
7 process should be relative to LSAC's existing registration  
8 deadlines.

9 8) Training. The Panel shall consider and establish the parameters,  
10 such as content and timing of, training for persons (both LSAC  
11 staff and outside consultants) who evaluate or review testing  
12 accommodation requests.

13 iv. Other. The Best Practices shall not invalidate or conflict with any  
14 other provisions of this Decree.

15 d. Process. The Panel shall complete its written report within six (6) months  
16 after the fifth Panel member has been appointed in accordance with Paragraph 7(a). Upon  
17 agreement of the Parties, the Panel may be granted additional time if necessary to complete its  
18 report. Except as otherwise explicitly stated in this Decree, LSAC is not required by this  
19 Decree to implement changes to its policies or forms prior to the Panel's completion of its  
20 written report.

21 i. At its first meeting, the Panel shall establish a process with  
22 measurable benchmarks to effectuate its duties herein and a time frame for achieving those  
23 benchmarks.

24 ii. At the Panel's first meeting, the Parties shall have the opportunity  
25 to present their views on the issues addressed herein to the full Panel.

26 iii. The Panel shall also give each of the Parties an opportunity to  
27 comment in writing on the Panel's draft Best Practices at least two (2) weeks prior to the  
28 issuance of a final report.

iv. Within two (2) months of the issuance of the Panel's final report,  
any Party may appeal to the Court for appropriate relief if any of the Panel's final Best Practices,

1 as written, are believed to violate the ADA or its implementing regulations, or California law  
2 where applicable, or to conflict with the provisions of this Decree. If any Party intends to file  
3 such an appeal with the Court, the Party must first notify all other Parties of its intent in writing  
4 within one (1) month of the issuance of the final report. Such notice must include a list of the  
5 Best Practice(s) the Party intends to challenge, as well as the Best Practice(s) for which  
6 implementation will, and will not, be stayed during the pendency of the appeal, subject to the  
7 dispute-resolution provisions set out in Paragraph 7(d)(v).

8 v. LSAC shall implement the Best Practices no later than six (6)  
9 months following either the expiration of the one (1) month notice period required under  
10 Paragraph 7(d)(iv) or LSAC's receipt of a written agreement by all Parties not to challenge the  
11 Best Practices pursuant to Paragraph 7(d)(iv), whichever comes first. If, however, any Party  
12 submits notification that it intends to appeal to the Court with respect to any of the Panel's final  
13 Best Practices pursuant to Paragraph 7(d)(iv), LSAC's implementation of the Best Practice(s)  
14 subject to appeal, as well as any other Best Practice(s) identified by the appealing Party as  
15 subject to the stay in its notice under Paragraph 7(d)(iv), are stayed pending a final determination  
16 by the Court with respect to the appealed Best Practice(s). During the duration of any such stay,  
17 LSAC shall continue to implement all other Best Practices. If a dispute arises as to whether  
18 implementation of any of the other Best Practices should be stayed pending appeal, the Parties  
19 shall meet and confer, and a good faith effort shall be made by the Parties to resolve such  
20 differences promptly. If the United States, the DFEH, or LSAC believes that resolution cannot  
21 be achieved, it shall promptly notify the other two Parties in writing and shall specify its final  
22 position with regard to the dispute. Thereafter, any of these Parties may pursue the issue with  
23 the Court.<sup>14</sup>

24  
25 <sup>14</sup> The provisions of Paragraph 21(b) do not apply to any pursuit by the DFEH of relief from the Court  
26 under this Paragraph 7(d)(v) or Paragraph 7(d)(vii), and the DFEH will not be entitled to payment of any

1 vi. Within two (2) months of the United States' and the DFEH's  
2 receipt, pursuant to Paragraph 23, of LSAC's first annual report after LSAC's implementation of  
3 the Best Practices for at least one test administration, or at any time prior to that, any of the  
4 Parties may request in writing that the Panel be reconvened to consider revising the Best  
5 Practices, in which event the Panel shall be reconvened to make recommendations regarding  
6 whether revisions are necessary to the applicable Best Practice(s). For purposes of this  
7 paragraph, the Panel will only consider "revisions" to the Best Practices that fall within the ten  
8 (10) topics for consideration by the Panel defined in Paragraphs 7(c)(i)-7(c)(iii) above. The  
9 Panel shall provide its recommendations in a written report to be completed within three (3)  
10 months of the Panel being reconvened; provided, however, that with the agreement of all the  
11 Parties, the Panel may be granted additional time to issue this report. The Panel shall give the  
12 Parties an opportunity to comment in writing on the Panel's draft revised Best Practices at least  
13 two (2) weeks prior to the issuance of the final revised Best Practices.

14 vii. The Parties shall have two (2) months from the issuance of the  
15 final revised Best Practices to appeal to the Court for appropriate relief if any of the Panel's final  
16 revised Best Practices, as written, are believed to violate the ADA or its implementing  
17 regulations, or California law where applicable, or to conflict with the provisions of this Decree.  
18 If any Party intends to file such an appeal with the Court, the Party must first notify all other  
19 Parties of its intent in writing within one (1) month of the issuance of the final revised Best  
20 Practices. Such notice must include a list of the Best Practice(s) the Party intends to challenge,  
21 as well as the Best Practice(s) for which implementation will, and will not, be stayed during the  
22 pendency of the appeal, subject to the dispute-resolution provisions discussed in this paragraph,  
23 below. LSAC shall implement any final revised Best Practices no later than four (4) months

24 \_\_\_\_\_  
25 attorneys' fees or costs by LSAC if it prevails on any issue brought before the Court under Paragraphs  
26 7(d)(v) or 7(d)(vii).

1 following either the expiration of the one-month notice period required under this paragraph or  
2 LSAC's receipt of a written agreement by all Parties not to challenge the final revised Best  
3 Practices pursuant to this paragraph, whichever comes first. If, however, any Party provides  
4 notification of its intent to appeal to the Court with respect to any of the Panel's final revised  
5 Best Practices under this paragraph, implementation of the revised Best Practice(s) subject to  
6 appeal, as well as any other Best Practice(s) identified by the appealing Party as subject to the  
7 stay in its notice under this paragraph, are stayed pending a final determination by the Court with  
8 respect to the appealed Best Practice(s). During the duration of any such stay, LSAC shall  
9 continue to implement all other Best Practices. If a dispute arises as to whether implementation  
10 of any of the other Best Practices should be stayed pending appeal, the Parties shall meet and  
11 confer, and a good faith effort shall be made by the Parties to resolve such differences promptly.  
12 If the United States, the DFEH, or LSAC believes that resolution cannot be achieved, it shall  
13 promptly notify the other two Parties in writing and shall specify its final position with regard to  
14 the dispute. Thereafter, any of these Parties may pursue the issue with the Court.

15 e. Communications. The Panel may:

16 i. Have ex parte communications at any time with the Parties,  
17 including counsel for the Parties and employees, agents, contractors, and all others working for  
18 or on behalf of the Parties. Any such communications with employees, agents, or contractors of  
19 LSAC must be arranged through in-house counsel for LSAC, and counsel for LSAC may be  
20 present for such communications if counsel's presence is requested by the Panel or any LSAC  
21 employee, agent, or contractor involved in such communication.

22 ii. Request meetings with the Parties, individually or in combination.  
23 The purpose of these meetings shall include, among other things, prioritizing areas for the Panel  
24 to review and discussing areas of concern.

1                   iii.           Speak with anyone else the Panel deems necessary for  
2 accomplishing its duties under this Decree, including without limitation current or past test-  
3 takers. LSAC, however, will be under no obligation to provide the names or contact information  
4 of current or past test-takers to the Panel. To the extent the Panel deems it necessary to  
5 communicate with any current or past test-takers, LSAC agrees to facilitate such  
6 communications upon request.

7                   iv.           Individual Panel members shall not engage in any ex parte  
8 communications without the knowledge and approval of all other Panel members.

9                   v.           The Panel shall disclose to the Parties prior to issuance of its final  
10 report all individuals with whom the Panel or any of its members have communicated, the Panel  
11 members participating in the communication(s), and the date(s) of such communication(s), but it  
12 need not disclose the substance of such communication(s).

13                  f.           Access. LSAC shall direct all employees to cooperate fully with the  
14 Panel. LSAC will request that its contractors cooperate fully with the Panel. No Party shall  
15 interfere with the independent functions of the Panel. Information or documents obtained in  
16 performing their duties hereunder may only be used by Panel members for the purposes of  
17 considering, establishing, and reporting on the Best Practices pursuant to this Decree. The Panel  
18 members shall further be subject to the terms of the protective order entered in this case: ECF  
19 No. 123, Parties' Stipulated Protective Order Respecting Confidential Information ("Protective  
20 Order").

21                  g.           Final Report. The Panel's final report shall be publicly available. If the  
22 final report contains confidential information, as defined in the Protective Order, such  
23 information shall be redacted from the publicly available final report.

24                  h.           Cost. All reasonable fees, costs, and expenses of the Panel shall be borne  
25 by LSAC, but the Panel and its members are neither agents nor contractors of the United States,  
26

1 the DFEH, or LSAC. The Panel shall provide sufficiently detailed monthly invoices justifying  
2 any fees, costs, and expenses. Panel members shall be paid a standard reasonable rate, to be  
3 determined by the Parties following identification of the proposed Panel members. If the Parties  
4 cannot reach agreement on the rate to be paid, the issue shall be submitted to Magistrate Judge  
5 Joseph Spero for resolution. LSAC shall reimburse all reasonable expenses incurred by the  
6 Panel, or any of its members, in the course of the performance of the duties of the Panel in  
7 accordance with LSAC's current applicable policies, practices, and procedures for  
8 reimbursement of employee travel and expenses, excluding the approval process applicable to  
9 LSAC staff and employees and the requirement that air travel be charged to LSAC's corporate  
10 account or an LSAC corporate credit card. The Court retains the authority to resolve any dispute  
11 that may arise regarding the reimbursement of fees and costs charged by the Panel. The Court  
12 shall be the final arbiter of what costs and expenses shall be reimbursed by LSAC.

13 8. Tracking and/or Maintenance of Testing Accommodation Data.

14 a. For each candidate who requests testing accommodations subsequent to  
15 the Effective Date of this Decree, LSAC shall maintain for the term of the Decree and track in a  
16 readily searchable format the following information for each specific request by that candidate:  
17 (a) date the candidate requested testing accommodations; (b) candidate's date of birth; (c) LSAC  
18 account number; (d) test date requested; (e) disabilities for which the candidate requested testing  
19 accommodations; (f) each testing accommodation requested; (g) each testing accommodation  
20 previously received on standardized tests (if documented by the candidate); (h) whether the  
21 candidate ever had a Section 504 Plan (if documented by the candidate); (i) whether the  
22 candidate ever had an IEP (if documented by the candidate); (j) whether LSAC requested  
23 additional documentation from the candidate; (k) for each testing accommodation requested,  
24 whether the request was granted in full or denied in full or denied in part; (l) date of LSAC's  
25 decision letter for each requested testing accommodation; (m) the name of any outside

1 consultant(s) who reviewed the request; (n) the name(s) of all other individual(s) who reviewed  
2 the request for the purpose of making a substantive decision whether to grant or deny the request;  
3 (o) reasons each requested testing accommodation was denied in full or denied in part, if  
4 applicable; and (p) fees paid to LSAC by the candidate relating to the LSAT. LSAC shall have  
5 eight (8) weeks after the Effective Date of this Decree to have such database(s) in place.

6 b. For any lawsuit or any complaint filed with a government agency alleging  
7 that LSAC improperly failed to provide testing accommodations following LSAC's final  
8 determination regarding a test taker's request for testing accommodations for the LSAT, LSAC  
9 shall maintain the complaint and documentation reflecting any response by LSAC and the  
10 resolution (if any) for the term of the Decree and track in a readily searchable format the  
11 following information: (1) the nature of the complaint, (2) the name of the candidate on whose  
12 behalf the complaint was sent, and (3) the outcome of the complaint (if any). LSAC shall have  
13 eight (8) weeks after the Effective Date of this Decree to have such database in place. For the  
14 term of the Decree, LSAC shall maintain appropriate supporting documentation for the  
15 information being tracked pursuant to this paragraph.

16 c. Subject to its standard document retention schedule, but at minimum for  
17 the term of the Decree, LSAC agrees to maintain in the candidates' accommodated testing files  
18 copies of correspondence received by LSAC on behalf of candidates whose testing  
19 accommodation requests have been denied, in whole or in part, by LSAC.

20 d. LSAC agrees to establish a separate electronic mailbox and corresponding  
21 email address dedicated to the receipt of complaints (other than complaints filed with courts or  
22 government agencies) alleging that LSAC improperly failed to provide testing accommodations  
23 following LSAC's final determination regarding a test taker's request for testing  
24 accommodations on the LSAT. LSAC shall post this email address on the accommodated testing  
25 webpage (currently located at <http://lsac.org/jd/lsat/accommodated-testing>), to remain posted for  
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1 the term of this Decree. LSAC will instruct candidates that the subject line of emails sent to this  
2 email address should contain the candidate's LSAC account number and that a copy of any  
3 complaints sent by mail or facsimile should also be sent to this email address. LSAC shall have  
4 four (4) weeks after the Effective Date of this Decree to have such an electronic mailbox in  
5 place. LSAC will maintain any correspondence sent to this email address for the term of this  
6 Decree and shall provide such documents and/or information in a timely manner to the United  
7 States, and to the DFEH (to the extent that such documents and information pertain to  
8 individuals who tested in California), upon reasonable request.

9 e. To the extent that any of the documents, information, and/or data  
10 described in Paragraph 8 is provided to the United States pursuant to this Decree (and/or to the  
11 DFEH for individuals testing in California), LSAC may redact the names, addresses, and any  
12 other personally identifiable information, unless otherwise expressly stated herein, of any current  
13 or past test-takers before providing the documents, information, and/or data.

#### 14 **PERMANENT INJUNCTION ON SCORE ANNOTATIONS**

15 9. **Permanently Discontinue Score Annotating.** LSAC shall permanently discontinue  
16 all forms of the practice of annotating score reports of candidates who receive the testing  
17 accommodation of extended test time due to disability. For candidates applying to law school  
18 after the Effective Date of this Decree, LSAC shall henceforth provide the same information on  
19 test score reports for all candidates for whom score reports are provided.

20 All relief provided for in this Decree with respect to LSAT test score reports and/or score  
21 annotations is solely prospective in nature. No monetary relief is being paid by LSAC on the  
22 basis of its prior score annotation practices.

#### 23 **CIVIL PENALTY**

24 10. **Civil Penalty (\$55,000).** The ADA authorizes the Attorney General to seek, and  
25 the Court to award, civil penalties of fifty-five thousand dollars (\$55,000) for a first violation of  
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1 Title III of the ADA. 42 U.S.C. §§ 12188(b)(2)(C) & (b)(3); 28 C.F.R. §§ 36.504(a)(3) & (b).  
2 The United States believes the imposition of a civil penalty in this case is warranted to vindicate  
3 the public interest in eliminating discrimination on the basis of disability. LSAC denies that a  
4 civil penalty is warranted in this case, but, in the interest of settling this litigation and without  
5 admitting any wrongdoing, LSAC shall pay the amount of fifty-five thousand dollars (\$55,000)  
6 to the United States as a civil penalty. LSAC shall issue a check in the amount of fifty-five  
7 thousand dollars (\$55,000), payable to the “United States Treasury,” to be delivered by counsel  
8 for LSAC to counsel for the United States identified in Paragraph 29 within five (5) days of the  
9 Effective Date of this Decree.

10 **MONETARY RELIEF**

11 11. Payments To Individuals (\$7,675,000.00). LSAC agrees to pay seven million, six  
12 hundred and seventy-five thousand dollars (\$7,675,000.00) in compensatory damages, to be  
13 apportioned as detailed below. None of the payments provided for in this Decree, other than  
14 those set forth in Paragraph 10, constitute payment of exemplary or punitive damages. LSAC is  
15 making these payments without conceding either liability or entitlement to claimed damages.

16 a. Monetary Relief To Individuals Named In The United States’ And The  
17 DFEH’s Complaints (\$945,000). LSAC agrees to pay a sum of nine hundred and forty-five  
18 thousand dollars (\$945,000) to the Plaintiffs for compensation of the individuals named in  
19 Plaintiffs’ complaints, as follows: five hundred and eighty-five thousand dollars (\$585,000) to  
20 the DFEH; two hundred and twenty-five thousand dollars (\$225,000) to the United States; and  
21 one hundred and thirty-five thousand dollars (\$135,000) to be distributed to individual Plaintiff-  
22 Intervenors Andrew Quan, Nicholas Jones, and Elizabeth Hennessey-Severson. Payment of  
23 these sums shall be rendered to respective counsel for the United States, the DFEH, and the  
24 individual Plaintiff-Intervenors within fourteen (14) days after LSAC’s receipt of all signed  
25 releases. For all individuals named in the United States’ and the DFEH’s complaints, other than  
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1 the individual Plaintiff-Intervenors, these releases will be in the form of Exhibit 3. The United  
2 States and the DFEH shall have thirty (30) days after the Effective Date of this Decree to obtain  
3 releases from all of the individuals named in their complaints (other than the individual Plaintiff-  
4 Intervenors) and/or to inform LSAC of those individuals who have not provided releases. If any  
5 individual named in the United States' or the DFEH's complaint does not execute his or her  
6 release during this thirty (30) day period, his or her payment amount will be added to the  
7 Residual Amount referenced in Paragraph 17 of this Decree. Payment shall be made by LSAC  
8 through checks issued in the name of each individual<sup>15</sup> named in the Plaintiffs' complaints who  
9 has provided a signed release, to be delivered by LSAC to the applicable counsel identified in  
10 Paragraph 29 and footnote 18.<sup>16</sup> All individuals entitled to payment under this Paragraph 11(a)  
11 will provide completed and executed W-9 Forms to LSAC as a condition precedent to receiving  
12 payment under the terms of this Decree.

13           b.       Compensation Fund For Individuals Who Requested Testing  
14 Accommodations For The LSAT Between January 1, 2009 And May 20, 2014 And Who Are  
15 Eligible Persons Under This Decree (\$6,730,000). Within forty-five (45) days after the Effective  
16 Date of this Decree, LSAC shall deposit the sum of six million, seven hundred and thirty  
17 thousand dollars (\$6,730,000) in an interest-bearing qualified settlement account for Eligible  
18 Persons under this Decree ("Compensation Fund"). This account shall be established within ten  
19 (10) days of retention of the Third-Party Claims Administrator (described in Paragraph 11(b)(iii))  
20

21 <sup>15</sup> The Plaintiffs anticipate that some checks may need to be issued for the benefit of a named individual  
22 and, in such instances, LSAC shall issue the check as designated by Plaintiffs' counsel for one or more  
particular individuals named in their complaints.

23 <sup>16</sup> For those individuals named solely in the DFEH's complaint, checks will be delivered to counsel for  
24 the DFEH at the address listed in Paragraph 29(b). For those individuals named solely in the United  
25 States' complaint, checks will be delivered to counsel for the United States at the address listed in  
Paragraph 29(a). For the individual Plaintiff-Intervenors, checks shall be sent to their attorneys at the  
26 Legal Aid Society – Employment Law Center at the address listed in footnote 18.

1 below). This account shall be established, maintained, and administered by the Administrator,  
2 and shall be identified on payment checks using the short-hand title, "LSAC Consent Decree."  
3 Title to this account shall be in the name of "LSAC for the benefit of aggrieved individuals  
4 pursuant to Order of the Court in Civil Action 3:12-cv-01830-EMC." LSAC shall submit written  
5 verification to the United States and the DFEH that the funds have been deposited. The initial  
6 deposit, and all interest accrued on that amount, shall make up the Compensation Fund and be  
7 available for compensation of Eligible Persons under this Decree. LSAC shall bear all costs of  
8 administering the Compensation Fund, including costs associated with establishing the account,  
9 maintaining it, and issuing payments. On written request to the Administrator, copies of account  
10 statements shall be provided within seven (7) days to the United States and the DFEH.

11 i. Potential Eligible Persons. "Potential Eligible Persons" are  
12 individuals who requested testing accommodations on the LSAT between January 1, 2009 and  
13 May 20, 2014, provided that they have not entered into a prior written release agreement with  
14 LSAC that applies to the request(s) for testing accommodations for which they would otherwise  
15 be eligible to submit a claim under this Decree. An individual who executed such a prior written  
16 release shall nonetheless be potentially eligible if he or she requested a testing accommodation  
17 for an administration of the LSAT that was not the subject of the release. LSAC agrees to  
18 provide the United States and the DFEH a list of the individuals who both requested testing  
19 accommodations on the LSAT between January 1, 2009 and May 20, 2014 and signed a release  
20 of claims against LSAC, with the dates of the releases, within ten (10) days of the Effective Date  
21 of this Decree.

22 ii. Eligible Persons. "Eligible Persons" are those Potential Eligible  
23 Persons who timely submit completed claims forms and properly executed releases in the form  
24 of Exhibit 3 ("Release") to the Administrator within the Claims Period. Any Potential Eligible  
25 Person may decline all monetary benefits from this Decree by not returning a signed Release.

1 The Decree does not limit the legal rights of any Potential Eligible Person who does not return a  
2 signed Release within the Claims Period or any individual who is not a Potential Eligible Person  
3 under this Decree.

4                   iii.     Retention Of Claims Administrator. A Third-Party Claims  
5 Administrator (“Administrator”) will have access to and control of the Compensation Fund for  
6 the purpose of compensating Eligible Persons. Within twenty (20) days of the Effective Date,  
7 LSAC, the United States, and the DFEH will agree upon a third-party organization to serve as  
8 Administrator. Within thirty (30) days of the Effective Date, LSAC will contract to retain the  
9 Administrator to conduct the activities set forth in this Decree (“Retention Date”). LSAC will  
10 obtain the United States’ consent to the contract prior to its execution. The United States shall  
11 consult with the DFEH regarding any provisions specific to California claimants or processes, if  
12 any, prior to consenting to such contract. LSAC will bear all costs associated with the claims  
13 administration. LSAC’s contract with the Administrator will require that the Administrator  
14 comply with the provisions of this Decree, as applicable to the Administrator, and with all  
15 confidentiality and privacy restrictions applicable to the Parties in this matter, including the  
16 Protective Order (ECF No. 123). The Administrator’s contract will also require the  
17 Administrator to work cooperatively with the United States and the DFEH in the conduct of the  
18 Administrator’s activities, including reporting regularly to and providing all requested  
19 information to the United States and the DFEH. All information and data provided to the  
20 Administrator pursuant to this Decree shall be used by the Parties and the Administrator only for  
21 the purposes of implementing this Decree.

22                   iv.     Duties Of The Claims Administrator. The duties of the  
23 Administrator shall include: (1) locating current addresses of Potential Eligible Persons; (2)  
24 communicating with Potential Eligible Persons; (3) distributing documents to Potential Eligible  
25 Persons; (4) tracking the return of claim forms, releases, and other documents; (5) tracing  
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1 Potential Eligible Persons whose notices are returned as undeliverable; (6) reviewing documents  
2 provided by the Parties and Potential Eligible Persons; (7) compiling a list of Eligible Persons  
3 pursuant to the criteria set forth in this Decree and any further reasonable instructions provided  
4 by the United States that would not result in significant additional administration costs; (8)  
5 distributing payments to Eligible Persons; (9) reporting to the United States, the DFEH, and  
6 LSAC on the distribution process; (10) verifying fund balances; (11) filing tax returns as  
7 required by law; (12) establishing and maintaining an accessible<sup>17</sup> website providing information  
8 about the claims process; (13) establishing cost-free means for Potential Eligible Persons to  
9 contact it, including both email and a toll-free number (and accompanying TTY text telephone  
10 number); and (14) such other duties that are reasonably necessary to carry out the provisions of  
11 this Decree as set forth in the contract with the Administrator. In no event shall the  
12 Administrator send payment to any Eligible Person for whom the Administrator does not have a  
13 properly executed Release.

14 v. Dispute Resolution. In the event the United States or the DFEH  
15 has reason to believe that the Administrator is not materially complying with the terms of its  
16 contract with LSAC, the United States and LSAC will meet and confer for the purpose of  
17 agreeing on a course of action to effect the Administrator’s material compliance with its contract.  
18 In the event that the United States and LSAC are unable to so agree, the United States or LSAC  
19 may present the matter to the Court. To the extent any dispute involves California claimants or  
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21 <sup>17</sup> For the purposes of this Consent Decree, websites will be considered “accessible” if they comply with  
22 the Level A and Level AA Success Criteria and Conformance Requirements of the Web Content  
23 Accessibility Guidelines 2.0 (Dec. 11, 2008) (“WCAG 2.0 Level AA”), published by the World Wide  
24 Web Consortium (“W3C”), Web Accessibility Initiative (“WAI”), available at [www.w3.org/TR/WCAG/](http://www.w3.org/TR/WCAG/).  
25 “Websites,” as used herein, includes: (i) all web pages, web applications, resources, and services within  
the website domain, its subdomains, and related domains; and (ii) all of the information, resources, files,  
databases, images, graphics, text, audio, video, multimedia, services, code, and any other communications  
sent by or retrieved from the website to members of the public accessing it.

1 processes, the United States will consult with the DFEH regarding such disputes prior to  
2 reaching agreement with LSAC or presenting the matter to the Court.

3 vi. Potential Eligible Persons List To Administrator. Within ten (10)  
4 days of the Retention Date, LSAC shall deliver to the Administrator a “Potential Eligible Persons  
5 List” that includes the following information, if known to LSAC, in electronic format for every  
6 individual who requested testing accommodations for the LSAT from January 1, 2009 through  
7 May 20, 2014:

- 8 1) name;
- 9 2) LSAC identification number; and
- 10 3) contact information, including permanent address, last known  
addresses, phone numbers, and email addresses.

11 This information shall be provided in a computerized format. LSAC will provide the  
12 Administrator any additional information reasonably requested by the Administrator in  
13 furtherance of any aspect of the claims process pursuant to this Decree, including social security  
14 numbers for particular individuals if known to LSAC and if provision of such information is  
15 legally permitted.

16 vii. Notice By LSAC.

- 17 1) LSAC Website. Within ten (10) days after the Retention  
18 Date, and through the start of the Claims Period (as defined  
19 in Paragraph 11(b)(x)), LSAC will publish the Notice in the  
20 form of Exhibit 2(a). Within ten (10) days of the start of  
21 the Claims Period, LSAC will replace the Exhibit 2(a)  
22 Notice with the Notice in the form of Exhibit 2(b), which it  
23 will publish for the remainder of the Claims Period. For  
24 purposes of this paragraph, “publish” means to maintain on  
25 LSAC’s website in an accessible and conspicuous location  
(*i.e.*, directly linked from the primary web portals used by  
26 customers, with the description “Americans with  
Disabilities Act Claims Fund”). Such Notice (and all  
27 LSAC content linked to the Notice, if any) shall be in an  
28 accessible format to individuals who are blind or have low  
vision, as described in footnote 17.

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2) To Law Schools. Within ten (10) days after the start of the Claims Period, LSAC shall make a one-time distribution of the Notice, attached hereto as Exhibit 2(b), to every law school LSAC has reported LSAT scores to since January 1, 2009. LSAC shall determine the method for delivery of such Notice.

viii. Notice By Administrator. Within ten (10) days after the standards are established by the Administrator and approved by the United States pursuant to Paragraph 12, the Administrator shall send the Release (attached hereto as Exhibit 3) and an approved claim form and notice (to be prepared by the Administrator in consultation with LSAC and the United States pursuant to Paragraph 12) (collectively, the "Notice Package"), via first-class, postage-prepaid U.S. mail and via electronic mail if possible, to each individual on the Potential Eligible Persons List. The claim form will instruct the Potential Eligible Person to provide a permanent address to which any payment under this Decree can be mailed for a period of up to twelve (12) months following delivery of the claim form.

ix. Locating Potential Eligible Persons. The Administrator will utilize all reasonable methods routinely used by companies that administer litigation and government enforcement compensation funds to locate each Potential Eligible Person. For every individual on the Potential Eligible Person List whose Notice Package is returned to the Administrator as undeliverable, the Administrator will conduct a trace and search for additional contact information using reasonably available methods and technology. Within fifteen (15) days of receiving a returned Notice Package as undeliverable, the Administrator shall mail the Notice Package via first class, postage-prepaid U.S. mail to all additional addresses generated for the individual from the Administrator's database search, and also attempt to reach the individual by phone and electronic mail if possible.

x. Claims Period. Potential Eligible Persons shall have one-hundred eighty days (180) from the date that the Notice Package is sent to all Potential Eligible Persons

1 (“Claims Period”) within which to submit a claim and all required documentation to the  
2 Administrator in connection with this Decree.

3 12. Establishment Of Standards. Subject to the terms of this Decree, the  
4 Administrator shall create a notice and claim form in consultation with LSAC and the United  
5 States, and propose standards to: (1) distribute and collect claim forms from Potential Eligible  
6 Persons; (2) distribute and collect Releases from Potential Eligible Persons; (3) fix deadlines for  
7 all required processes; and (4) address any other considerations associated with establishing,  
8 maintaining, and distributing payment to Eligible Persons. Within thirty (30) days of the  
9 Retention Date, the Administrator shall send the proposed notice, claim form, and standards to  
10 LSAC, the DFEH, and the United States. Within fifteen (15) days of receipt of the proposed  
11 notice, claim form, and standards, the United States, following consultation with LSAC and the  
12 DFEH regarding California claimants and processes, shall communicate its approval of or any  
13 changes to the notice, claim form, and standards to the Administrator, who shall accept and  
14 implement any such changes. No procedures beyond those in this Decree or approved by the  
15 United States pursuant to this paragraph shall be imposed on any Eligible Person.

16 13. Claims Reporting. At regular intervals, but in no event less frequently than every  
17 thirty (30) days after the Notice Package is sent to all Potential Eligible Persons, the  
18 Administrator shall send the United States and the DFEH a list containing: (1) the names of all  
19 Potential Eligible Persons who submitted a claim form and/or Release; (2) identification of all  
20 Eligible Persons; and (3) if applicable, a brief description of why any Potential Eligible Person  
21 was deemed not eligible. Within thirty (30) days of the close of the Claims Period, the  
22 Administrator shall provide the United States, the DFEH, and LSAC with a proposed distribution  
23 list that includes the information referenced above in this paragraph plus the proposed amount of  
24 compensation to be awarded to each Eligible Person. The proposed compensation per Eligible  
25



1 Person shall be determined by dividing the Compensation Fund (\$6,730,000) by the total number  
2 of Eligible Persons, with each Eligible Person receiving the same payment amount.

3 The United States shall have thirty (30) days after receiving the proposed final list from  
4 the Administrator to submit any corrections. Before submitting any such corrections, the United  
5 States shall consult with the DFEH regarding any California claimants. The Administrator shall  
6 make any changes or corrections submitted by the United States and, no later than ninety (90)  
7 days after the close of the Claims Period, the Administrator shall issue to the United States, the  
8 DFEH, and LSAC the final list containing the names of Eligible Persons and amounts to be paid  
9 (“Final Distribution List”).

10 The determination of Eligible Persons and the amount awarded as contained in the Final  
11 Distribution List are final and non-appealable. No individual or Party may request a review by  
12 the Court or the Administrator of these determinations.

13 14. Payment. The Administrator’s contract shall require the Administrator to set forth  
14 deadlines, subject to approval of the United States in consultation with the DFEH, so that  
15 payments are promptly sent within a reasonable amount of time after the date the Administrator  
16 issues the Final Distribution List in accordance with Paragraph 13. All such payments shall be  
17 void if not cashed or deposited within ninety (90) days after the date of issue. If a check is  
18 returned as undeliverable and/or goes uncashed after ninety (90) days from the date of issue, the  
19 Administrator shall make reasonable attempts to contact and reissue checks to such individuals  
20 for the next thirty (30) days.

21 15. No Set-Off. LSAC will not be entitled to a set-off, or any other reduction, of the  
22 amount of payments to Eligible Persons, resulting from unpaid debts or otherwise, except as  
23 expressly provided herein.

24 16. Notification Of Final Payment. The Administrator will notify LSAC, the United  
25 States, and the DFEH in writing on the day when all payments of monetary relief to Eligible

1 Persons required by this Decree have been sent.

2 17. Residual Amount In Compensation Fund. Within thirty (30) days after the  
3 mailing of the last payment to an individual on the Final Distribution List, the Administrator  
4 shall notify the United States, the DFEH, and LSAC in writing of the remaining balance of the  
5 Compensation Fund (the “Residual Amount”). Any payments made to Eligible Persons that are  
6 returned or not cashed or deposited within the applicable ninety (90) day period, subject to the  
7 procedures set forth in Paragraph 14 for reissuing checks, will be added to the Residual Amount,  
8 as will any remaining interest accrued on the Compensation Fund.

9 The entire Residual Amount shall be distributed in equal amounts to the DFEH Fair  
10 Employment and Housing Enforcement and Litigation Fund, and LSAC, to be used by each for  
11 purposes of implementing this Decree.

12 18. Taxes. Eligible Persons shall be solely responsible for paying any taxes they owe  
13 resulting from payments they receive under this Decree. LSAC shall be solely responsible for  
14 paying any applicable federal, state, and/or local taxes owed by the Compensation Fund, if any  
15 (*i.e.*, any such tax payments shall not be deducted from the Compensation Fund or from any  
16 monetary award to Eligible Persons).

17 **OTHER RELIEF**

18 19. Renewed Requests For Testing Accommodations. Individuals who requested  
19 testing accommodations from LSAC between January 1, 2009 and the Effective Date of the  
20 Decree, and who were denied their requested testing accommodations in whole or in part, shall  
21 be entitled to reregister to take the LSAT and to reapply for testing accommodations under the  
22 revised policies and procedures established by this Decree that are in effect at the time of their  
23 renewed testing accommodation request. Standard fees shall apply.

24 20. Specific Testing Accommodations For Named Individuals. The individuals  
25 named in Plaintiffs’ complaints shall be entitled to take one (1) free administration of the LSAT

1 with their request for testing accommodations handled in accordance with the revised policies  
2 and procedures established under this Decree, as in effect at the time of their renewed request for  
3 testing accommodations.

4 **ATTORNEY FEES AND COSTS FOR THE DFEH AND**  
5 **INDIVIDUAL PLAINTIFF-INTERVENORS**

6 21. The DFEH, individual Plaintiff-Intervenors, and LSAC agree that:

7 a. Within five (5) days of the Effective Date of this Decree, LSAC shall pay  
8 to the DFEH nine hundred thousand dollars (\$900,000) and to the Legal Aid Society –  
9 Employment Law Center, attorneys for individual Plaintiff-Intervenors Quan, Jones, and  
10 Hennessey-Severson,<sup>18</sup> one hundred thousand dollars (\$100,000) in full settlement of any claim  
11 by the DFEH and/or the individual Plaintiff-Intervenors or their attorneys for attorney fees and  
12 costs for work on or relating to the litigation up through the term of the Decree, subject only to  
13 Paragraph 21(b) below.

14 b. The DFEH shall be entitled to reasonable attorney fees and costs for work  
15 performed on any prevailing motion to enforce the Consent Decree. If the DFEH is entitled to  
16 seek payment of such fees and costs hereunder, the DFEH agrees to send LSAC a statement of  
17 its work on any such motion, which shall include a list of hours worked by each DFEH staff  
18 person, hourly rate, and any costs incurred. In the event LSAC disagrees with the DFEH's  
19 statement of work or its requested payment amounts or rates, it shall notify the DFEH in writing  
20 within five (5) days after receipt of the statement, and LSAC and the DFEH will attempt to  
21 informally resolve any dispute over the statement. In the event LSAC and the DFEH cannot  
22 reach an informal resolution of any such dispute, they shall submit the matter to this Court for  
23

24 <sup>18</sup> Payment to these three named individual Plaintiff-Intervenors shall be made to their attorneys, Legal  
25 Aid Society – Employment Law Center, attention Jinny Kim, 180 Montgomery Street, Suite 600, San  
26 Francisco, CA 94104.

1 binding determination. LSAC shall deliver payment to the DFEH no later than ten (10) days  
2 after receiving the DFEH’s statement or five (5) days after the resolution of any dispute.

3 c. Except as expressly provided herein, no Plaintiff shall be entitled to  
4 recover attorney fees or costs related to this litigation.

5 **ADA MONITOR AND REPORTING**

6 22. Notice By LSAC. Within forty-five (45) days of the Effective Date of this  
7 Decree, LSAC shall publish and maintain this Decree on its website by providing a link to the  
8 Decree, with the following language: “LSAC has entered into a Consent Decree with the  
9 California Department of Fair Employment and Housing and the United States regarding testing  
10 accommodations for individuals with disabilities nationwide. For further information and to read  
11 the text of the Decree, please visit [http://www.ada.gov/lsac\\_consentdecree.htm](http://www.ada.gov/lsac_consentdecree.htm).” This language  
12 and a link to the Decree shall be prominently posted on the main company webpage (currently  
13 located at <http://lsac.org/>) and on the accommodated testing webpage (currently located at  
14 <http://lsac.org/jd/lsat/accommodated-testing>), to remain posted for the term of this Decree. This  
15 language, link, and Consent Decree shall be in an accessible format to individuals who are blind  
16 or have low vision, as described in footnote 17.

17 LSAC further agrees to revise the information on its website to notify candidates that it  
18 does not annotate scores, with the following language: “LSAC does not annotate the score  
19 reports of individuals with disabilities who take the LSAT with testing accommodations,  
20 including the testing accommodation of extended time. All accommodated scores are reported in  
21 the same manner as non-accommodated scores.” This language will be included in the  
22 accommodated testing information currently found at [http://www.lsac.org/jd/lsat/accommodated-](http://www.lsac.org/jd/lsat/accommodated-testing)  
23 [testing](http://www.lsac.org/jd/lsat/accommodated-testing). LSAC will also include the following question and answer on the “Frequently Asked  
24 Questions” section of its website (currently found at [http://www.lsac.org/docs/default-source/jd-](http://www.lsac.org/docs/default-source/jd-docs/faq-non.pdf)  
25 [docs/faq-non.pdf](http://www.lsac.org/docs/default-source/jd-docs/faq-non.pdf)): (Question) “How are accommodated scores reported to law schools?”

1 (Answer) “Scores earned with testing accommodations, including the testing accommodation of  
2 extended time, are reported in the same manner as non-accommodated scores.” These changes  
3 to the website shall be made within thirty (30) days of the Effective Date of this Decree.

4 23. Reporting By LSAC. Within forty-five (45) days after each national  
5 administration of the LSAT during the term of this Decree, beginning with the first  
6 administration of the LSAT at least two (2) months after the Effective Date of this Decree,  
7 LSAC will provide a written report (“Report”) to the ADA Monitor, the United States, and the  
8 DFEH. Each Report shall provide the data required to be tracked in Paragraph 8 for the prior  
9 administration of the LSAT. Eighteen (18) months after the Effective Date of this Decree, and  
10 annually thereafter, LSAC shall also report to the ADA Monitor, the United States, and the  
11 DFEH: (a) LSAC’s actions taken to comply with this Decree; (b) any further actions LSAC plans  
12 to take to comply with this Decree; (c) if applicable, the timeline for implementation of any  
13 further actions LSAC plans to take to comply with this Decree; and (d) if applicable, any  
14 difficulties LSAC has had, or anticipates having, in complying with this Decree. If any Report  
15 contains confidential information, as defined in the Protective Order, it shall be treated in  
16 accordance with the terms of the Protective Order (ECF No. 123).

17 LSAC shall maintain appropriate supporting records for the information contained in the  
18 Reports, including, but not limited to, those described in Paragraph 8, and give access to such  
19 information to the United States, the DFEH (to the extent that such information pertains to  
20 individuals who tested in California), and/or the ADA Monitor, upon reasonable request.

21 “Access” in this paragraph is defined as access to the supporting records in LSAC’s office in  
22 Newtown, Pennsylvania, for a period of no longer than five (5) business days and during  
23 LSAC’s regular business hours, following at least ten (10) days’ written notice to LSAC.

24 24. ADA Monitor. Within sixty (60) days after the Effective Date of this Decree,  
25 LSAC shall retain an independent ADA Monitor, to be mutually agreed upon by the United  
26

1 States, the DFEH, and LSAC. The purpose of the ADA Monitor is to assist the United States,  
2 the DFEH, and the Court in evaluating LSAC's compliance with the Decree. No Party, nor any  
3 employee or agent of any Party, shall have any supervisory authority over the ADA Monitor's  
4 activities or interfere with the independent functions of the ADA Monitor (although LSAC shall  
5 have authority to supervise the ADA Monitor's movements and access if the ADA Monitor is on  
6 site at LSAC's offices). The ADA Monitor shall not be an employee or current contractor of any  
7 Party. The ADA Monitor shall not be affiliated with any Party and shall not be an individual  
8 who has assisted or consulted with any Party for purposes of this litigation. Except upon  
9 approval of the other Parties, neither the Disability Rights Section of the Civil Rights Division in  
10 the United States Department of Justice, the DFEH, nor LSAC shall offer or guarantee the ADA  
11 Monitor employment or future benefits, in any form, including a position as a consultant or  
12 independent contractor, during the term of the Consent Decree and for a period of two (2) years  
13 following expiration of this Decree. During the term of this Consent Decree, the ADA Monitor  
14 may not personally represent anyone, or serve as an expert witness for anyone, who is adverse to  
15 LSAC or any of the Plaintiffs in any pending lawsuit or government agency proceeding.

16       25. Audits By ADA Monitor. The ADA Monitor shall conduct audits of LSAC's  
17 compliance with this Decree, by first evaluating LSAC's Reports described in Paragraph 23, and  
18 then by requesting access to additional information, such as LSAC data and personnel, and  
19 independently observing LSAC operations, to the extent reasonable and deemed necessary by the  
20 ADA Monitor in order to evaluate LSAC's compliance with those provisions of the Decree  
21 subject to the audit, as set out in this paragraph. The ADA Monitor will audit LSAC's  
22 compliance at the following intervals after the Effective Date of this Decree: one (1) year; two  
23 (2) years; and four (4) years. The one (1) year audit will address LSAC's compliance with the  
24 reporting requirements contained in Paragraphs 8 and 23. The two (2) year and four (4) year  
25 audits will address LSAC's compliance with the reporting requirements contained in Paragraphs

1 8 and 23 and LSAC’s implementation of the Best Practices discussed in Paragraph 7. LSAC  
2 shall maintain the data described in Paragraph 8 throughout the term of this Consent Decree.

3 26. Audit Reports By ADA Monitor. At the conclusion of each audit, the ADA  
4 Monitor will provide a written report (“Audit Report”) to LSAC, the United States, and the  
5 DFEH regarding LSAC’s compliance with those provisions of the Decree subject to the audit, as  
6 set out in Paragraph 25. Each Audit Report shall provide: (a) the scope of the audit; (b) a  
7 detailed list of the data collected and interviews conducted, if any, in the course of the audit; (c)  
8 any difficulties with conducting the audit; (d) an itemized assessment as to whether LSAC is  
9 complying with those provisions of the Decree subject to the audit; (e) what data the ADA  
10 Monitor relied upon in reaching this assessment, and what data contradicts this assessment, if  
11 any; and (f) the ADA Monitor’s recommendations for further remediation if he or she determines  
12 that compliance is deficient.

13 a. Access. LSAC shall provide the ADA Monitor with reasonable access, as  
14 needed, to all LSAC staff, facilities, and documents that are relevant to evaluate compliance with  
15 the reporting requirements contained in Paragraphs 8 and 23 and LSAC’s implementation of the  
16 Best Practices discussed in Paragraph 7. LSAC shall direct all employees to cooperate fully with  
17 the ADA Monitor. LSAC will request that its contractors cooperate fully with the ADA  
18 Monitor. All non-public information obtained by the ADA Monitor shall be maintained in a  
19 confidential manner, and all information obtained by the ADA Monitor shall be used only for the  
20 purposes of implementing this Decree. The ADA Monitor shall also be subject to the terms of  
21 the Protective Order (ECF No. 123). Upon request from the United States, or the DFEH (with  
22 respect to documents and information pertaining to individuals who tested in California), LSAC  
23 will provide the requesting Party with access to the data underlying the ADA Monitor’s Audit  
24 Reports and may provide the United States, and the DFEH (to the extent that such documents  
25 and information pertain to individuals who tested in California), with access to additional  
26

1 information as reasonably requested. Such information and data shall be used by the Parties only  
2 for the purposes of implementing this Decree. "Access" in this paragraph and Paragraph 25 is  
3 defined as access to LSAC's materials in LSAC's office in Newtown, Pennsylvania, for a period  
4 of no longer than five (5) business days and during LSAC's regular business hours, following at  
5 least ten (10) days' written notice to LSAC.

6 27. Communications. The ADA Monitor may:

7 a. Have ex parte communications at any time with the Parties, including  
8 counsel for the Parties and employees, agents, contractors, and all others working for or on  
9 behalf of the Parties. Any such communications with employees, agents, or contractors of LSAC  
10 must be arranged through in-house counsel for LSAC, and counsel for LSAC may be present for  
11 such communications if counsel's presence is requested by the ADA Monitor or by any LSAC  
12 employee, agent, or contractor involved in such communications.

13 b. Speak with anyone else the ADA Monitor deems necessary for  
14 accomplishing its duties under this Decree.

15 28. Cost. All reasonable fees, costs, and expenses of the ADA Monitor shall be  
16 borne by LSAC, but the ADA Monitor is not an agent or contractor of the United States, the  
17 DFEH, or LSAC. The ADA Monitor shall provide sufficiently detailed monthly invoices  
18 justifying any fees, costs, and expenses. The ADA Monitor shall be paid on the basis of a  
19 standard reasonable rate to be agreed upon by the United States, the DFEH, and LSAC. If the  
20 Parties cannot agree on a reasonable rate, the issue shall be presented to Magistrate Judge Joseph  
21 Spero for resolution. LSAC shall reimburse all reasonable expenses incurred by the ADA  
22 Monitor in the course of the performance of the duties of the ADA Monitor in accordance with  
23 LSAC's current applicable policies, practices, and procedures for reimbursement of employee  
24 travel and expenses, excluding the approval process applicable to LSAC staff and employees and  
25 the requirement that air travel be charged to LSAC's corporate account or an LSAC corporate  
26



1 credit card. The Court retains the authority to resolve any dispute that may arise regarding the  
2 reimbursement of fees and costs charged by the ADA Monitor. The Court shall be the final  
3 arbiter of what costs and expenses shall be reimbursed by LSAC.

4 **ADDITIONAL TERMS**

5 29. Notification. All documents and communications required to be sent to one or  
6 more Parties under the terms of this Decree shall be sent to the following individuals by  
7 overnight courier or, where practicable, by e-mail (at the election of the sending party) to:

8 a. For the United States:

9 Chief  
10 ATTN: US v. LSAC – DJ # 202-62-342  
11 Disability Rights Section  
12 Civil Rights Division  
13 United States Department of Justice  
14 1425 New York Avenue, NW, 4th Floor  
15 Washington, DC 20005  
16 nabina.sinha@usdoj.gov

17 b. For the DFEH:

18 ATTN: DFEH v. LSAC  
19 Department of Fair Employment and Housing  
20 2218 Kausen Drive, Suite 100  
21 Elk Grove, CA 95758  
22 mari.mayeda@dfeh.ca.gov

23 c. For LSAC:

24 Joan Van Tol  
25 General Counsel  
26 Law School Admission Council, Inc.  
27 662 Penn Street  
28 Newtown, PA 19640  
jvantol@lsac.org

Bob Burgoyne  
Fulbright & Jaworski LLP  
801 Pennsylvania Avenue, NW  
Washington, DC 20004  
robert.burgoyne@nortonrosefulbright.com

1           30. Term Of This Decree. This Decree shall become effective as of the date that it is  
2 entered by the Court and shall remain in effect for four (4) years from that date. However,  
3 LSAC's agreement to discontinue score annotations as stated in Paragraph 9 shall continue in  
4 perpetuity beyond the term of this Decree, absent agreement of the United States and the DFEH.  
5 The Court shall retain continuing and exclusive jurisdiction for the duration of the Decree to  
6 enforce the terms of the Decree. The United States, the DFEH, and/or LSAC may apply to the  
7 Court for such further orders as may be necessary for, or consistent with, the enforcement of this  
8 Decree.

9           31. Disputes. If a dispute arises with respect to the United States', the DFEH's, or  
10 LSAC's compliance with, interpretation of, or implementation of, the terms of this Decree, a  
11 good faith effort shall be made by the Parties to the dispute to resolve such differences promptly  
12 in accordance with the following procedure.

13           If the United States, the DFEH, or LSAC believes a dispute must be resolved, it shall  
14 promptly notify the other two Parties in writing of the issue together with relevant facts and  
15 analysis. The Party against whom the complaint is issued shall be given a reasonable period of  
16 time (not to exceed thirty (30) days) to provide a response. Within a reasonable time thereafter  
17 (not to exceed fifteen (15) days), the Parties to the dispute shall meet and confer by telephone  
18 and attempt to resolve the issue informally. If the United States, the DFEH, or LSAC believes  
19 that resolution cannot be achieved, it shall promptly notify the other two Parties in writing and  
20 shall specify its final position with regard to the dispute. Thereafter, any of these Parties may  
21 pursue the issue with the Court.

22           Nothing in this procedure shall prevent the United States, the DFEH, or LSAC from  
23 promptly bringing an issue before the Court when, in the moving Party's view, the facts and  
24 circumstances require immediate court attention. The moving Party's papers shall explain the  
25 facts and circumstances that necessitate immediate court action. In any enforcement motion  
26

1 brought by any Party, no Party will object to the admissibility, on hearsay grounds, of the ADA  
2 Monitor's Audit Reports.

3 32. Use of Information. All Parties agree that any documents or information acquired  
4 through performance of this Consent Decree may be used solely for the purpose of implementing  
5 and enforcing this Consent Decree, and not for any other purpose. The provisions of the  
6 Protective Order (ECF No. 123) remain in effect and applicable to all Parties throughout the term  
7 of this Decree.

8 33. Scope. This Decree does not purport to remedy any violations or potential  
9 violations of the ADA or the Unruh Act, other than as set forth in Paragraph 34 below. Except  
10 as explicitly provided herein, this Decree does not affect LSAC's continuing responsibility to  
11 comply with the ADA.

12 34. Releases. Each Plaintiff hereby releases, acquits, and forever discharges LSAC  
13 and its attorneys, agents, administrators, officers, employees, directors, members, and  
14 contractors, from any and all claims, demands, and causes of action, if any, under the ADA, the  
15 California Unruh Civil Rights Act, the California Education Code (§ 99161.5), and/or the  
16 California Unfair Competition Law, as each law is in effect on the Effective Date of the Decree,  
17 that are known or reasonably could have been known (whether asserted or unasserted), and that  
18 arise out of or relate to any dealings, actions, or events involving LSAC's review or evaluation of  
19 requests for testing accommodations on the LSAT and/or its reporting of accommodated test  
20 scores, from January 1, 2009 until the Effective Date of this Consent Decree, specifically  
21 including, but not limited to, all causes of action that were or could have been asserted in any of  
22 the complaints filed by the Plaintiffs or any other controversy arising from or relating to any  
23 individual's request for testing accommodations on the LSAT and/or LSAT score reports.

1 If applicable, Plaintiffs waive any rights he/she/it has, or after signing this Decree  
2 becomes aware that he/she/it may have had, under California Civil Code section 1542, which  
3 provides as follows:

4 A general release does not extend to claims which the creditor does not know or  
5 suspect to exist in his or her favor at the time of executing the release, which if  
6 known by him or her must have materially affected his or her settlement with the  
debtor.

7 The consideration recited herein is accepted by each Plaintiff in full satisfaction of all  
8 claimed and unclaimed damages and losses arising out of or related to any of the complaints filed  
9 by the Plaintiffs or any other controversy arising from or relating to any individual's request for  
10 testing accommodations on the LSAT and/or LSAT score reports during the time referenced  
above.

11 35. Pending Complaints. The United States and the DFEH will close their  
12 investigations of all complaints received by the United States Department of Justice or the  
13 DFEH, respectively, against LSAC that allege disability discrimination in its provision of testing  
14 accommodations and/or its reporting of accommodated test scores under the ADA (or California  
15 law where applicable) for the time period of January 1, 2009 to the Effective Date of the Decree.

16 36. Binding. This Decree shall be binding on the United States, the DFEH, Andrew  
17 Quan, Nicholas Jones, Elizabeth Hennessey-Severson, and LSAC, including all principals,  
18 agents, executors, administrators, representatives, employees, successors in interest,  
19 beneficiaries, assigns, and legal representatives thereof. LSAC shall have a duty to notify all of  
20 its successors in interest of the existence and terms of this Decree.

21 37. Non-Waiver. Failure by any Party to seek enforcement of this Decree pursuant to  
22 its terms with respect to any instance or provision will not be construed as a waiver of such  
23 enforcement with regard to other instances or provisions.  
24

1           38.     Severability. If any provision of this Decree is determined by any court to be  
2 unenforceable, the other provisions of this Decree shall nonetheless remain in full force and  
3 effect, provided, however, that if the severance of any such provision materially alters the rights  
4 or obligations of the Parties, the Plaintiffs and LSAC shall engage in good faith negotiations in  
5 order to adopt mutually agreeable amendments to this Decree as may be necessary to restore the  
6 Parties as closely as possible to the initially agreed upon relative rights and obligations.

7           39.     Litigation Holds. The Parties agree that, as of the Effective Date of this Decree,  
8 for purposes of the Parties’ preservation obligations pursuant to Federal Rule of Civil Procedure  
9 26 and/or common law, litigation is not “reasonably foreseeable” concerning the claims raised in  
10 any of the Plaintiffs’ complaints. To the extent that any Party previously implemented a  
11 litigation hold to preserve documents and/or electronically stored information related to the  
12 claims asserted in any of the Plaintiffs’ complaints, the Party is no longer required to maintain  
13 such a litigation hold. Nothing in this paragraph relieves the Parties of their obligations to  
14 maintain documents, information, and/or data as imposed by this Decree.

15           40.     Authority. The signatories represent that they have the authority to bind the  
16 respective Parties identified below to the terms of this Decree.

1 By their signatures below, the Parties respectfully consent to the entry of this Consent

2 Decree, including the Order and Permanent Injunction.

3 **FOR THE CALIFORNIA**  
4 **DEPARTMENT OF FAIR**  
5 **EMPLOYMENT AND HOUSING:**

6 PHYLLIS W. CHENG  
7 Director

8 JON ICHINAGA  
9 Chief Counsel

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11  
12  
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14  
15   
16 \_\_\_\_\_  
17 MARI MAYEDA  
18 PHOEBE LIU  
19 JULIA MONTGOMERY  
20 JONI CARRASCO  
21 SAMI HASAN  
22 IRINA TRASOVAN  
23 Attorneys  
24 Department of Fair  
25 Employment and Housing  
26 2218 Kausen Drive, Suite 100  
27 Elk Grove, CA 95758

23 5-19-14


24 Date

**FOR THE UNITED STATES**  
**OF AMERICA:**

JOCELYN SAMUELS  
Acting Assistant Attorney General  
Civil Rights Division

EVE L. HILL  
Deputy Assistant Attorney General  
Civil Rights Division

REBECCA B. BOND  
Chief  
ROBERTA KIRKENDALL  
Special Legal Counsel  
KATHLEEN P. WOLFE  
Special Litigation Counsel  
Disability Rights Section  
Civil Rights Division

15   
16 \_\_\_\_\_  
17 NABINA SINHA  
18 MEGAN E. SCHULLER  
19 Attorneys  
20 Disability Rights Section  
21 Civil Rights Division  
22 U.S. Department of Justice  
23 950 Pennsylvania Avenue, N.W. – NYA  
24 Washington, D.C. 20530  
25 Telephone: (202) 307-0663  
26 Facsimile: (202) 305-9775  
27 Nabina.Sinha@usdoj.gov

5-19-14

24 Date

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**FOR THE UNITED STATES  
OF AMERICA, CONTINUED:**

MELINDA HAAG  
United States Attorney  
Northern District of California

ALEX G. TSE  
Chief, Civil Division  
Assistant United States Attorney

*Melanie L. Proctor*

MELANIE L. PROCTOR  
Assistant United States Attorney  
United States Attorney's Office  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102  
Telephone: (415) 436-6730  
Facsimile: (415) 436-6748  
Melanie.Proctor@usdoj.gov

*May 19, 2014*  
Date

1 **FOR ANDREW QUAN, NICHOLAS JONES, AND ELIZABETH HENNESSEY-**  
2 **SEVERSON:**

3 Date: \_\_\_\_\_

4 \_\_\_\_\_  
ANDREW QUAN

5  
6 Date: \_\_\_\_\_

7 \_\_\_\_\_  
NICHOLAS JONES

8 Date: \_\_\_\_\_

9 \_\_\_\_\_  
ELIZABETH HENNESSEY-SEVERSON

10  
11 APPROVED AS TO FORM:

12 \_\_\_\_\_  
13 JINNY KIM

14 The Legal Aid Society – Employment Law Center  
15 180 Montgomery Street, Suite 600  
16 San Francisco, CA 94104  
17 Attorneys for Plaintiff-Intervenors Andrew Quan,  
18 Nicholas Jones, and Elizabeth Hennessey-Severson

19  
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21  
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25  
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5/13/14

\_\_\_\_\_

Date



1 **FOR ANDREW QUAN, NICHOLAS JONES, AND ELIZABETH HENNESSEY-**  
2 **SEVERSON:**

3 Date: 5-13-2014

Andrew Quan  
4 ANDREW QUAN

5  
6 Date: \_\_\_\_\_

\_\_\_\_\_  
7 NICHOLAS JONES

8 Date: \_\_\_\_\_

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9 ELIZABETH HENNESSEY-SEVERSON

10  
11 APPROVED AS TO FORM:

\_\_\_\_\_  
12 JINNY KIM  
13 The Legal Aid Society – Employment Law Center  
14 180 Montgomery Street, Suite 600  
15 San Francisco, CA 94104  
16 Attorneys for Plaintiff-Intervenors Andrew Quan,  
17 Nicholas Jones, and Elizabeth Hennessey-Severson

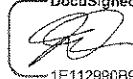
\_\_\_\_\_  
18 Date

1 FOR ANDREW QUAN, NICHOLAS JONES, AND ELIZABETH HENNESSEY-  
2 SEVERSON:

3 Date: \_\_\_\_\_

4 \_\_\_\_\_  
ANDREW QUAN

DocuSigned by:

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6 Date: 5/15/2014

7 \_\_\_\_\_  
NICHOLAS JONES

8 Date: \_\_\_\_\_

9 \_\_\_\_\_  
ELIZABETH HENNESSEY-SEVERSON

10  
11 APPROVED AS TO FORM:

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San Francisco, CA 94104

15 Attorneys for Plaintiff-Intervenors Andrew Quan,  
Nicholas Jones, and Elizabeth Hennessey-Severson

16  
17 \_\_\_\_\_  
18 Date

1 **FOR ANDREW QUAN, NICHOLAS JONES, AND ELIZABETH HENNESSEY-**  
2 **SEVERSON:**

3 Date: \_\_\_\_\_

4 \_\_\_\_\_  
ANDREW QUAN

5  
6 Date: \_\_\_\_\_

7 \_\_\_\_\_  
NICHOLAS JONES

8 Date: 05/13/2014

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10 \_\_\_\_\_  
ELIZABETH HENNESSEY SEVERSON

11 APPROVED AS TO FORM:

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15 Attorneys for Plaintiff-Intervenors Andrew Quan,  
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Date

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1 **FOR THE LAW SCHOOL ADMISSION COUNCIL, INC.:**

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6 JOAN E. VAN TOL  
7 General Counsel  
8 Law School Admission Council, Inc.  
662 Penn Street  
Newtown, PA 18940

8

9

5/19/2014

Date

10

11 **APPROVED AS TO FORM:**

11



12 ROBERT A. BURGOYNE  
13 CAROLINE MEW  
14 Fulbright & Jaworski LLP  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

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5/19/14

Date

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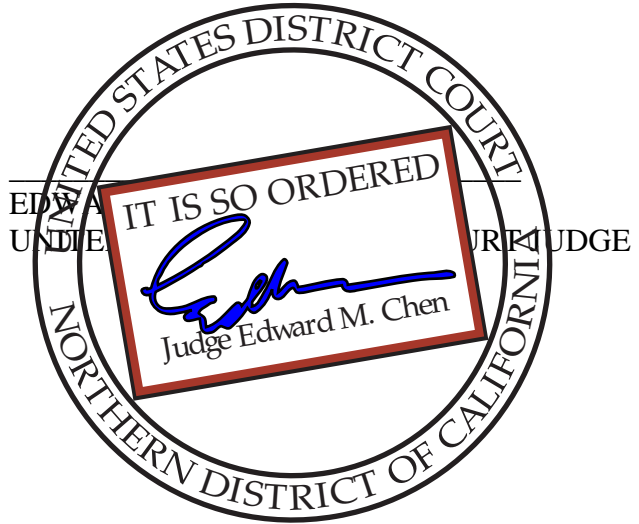
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**ORDER AND PERMANENT INJUNCTION**

**IT IS SO ORDERED**, and LSAC is accordingly permanently enjoined from all forms of the practice of annotating score reports of candidates who receive the testing accommodation of extended test time due to disability, and, for candidates applying to law school after entry of this Order, LSAC shall henceforth provide the same information on test score reports for all candidates for whom score reports are provided, this 29th day of May, 2014.



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# EXHIBIT 1

**TESTING ACCOMMODATIONS AVAILABLE**  
**UNDER CONSENT DECREE**  
**PARAGRAPH 5(a)**

1. Braille version of LSAT
2. Large-print (18 pt.) test book
3. Screen-readable HTML test (including, where applicable, use of screen reader software (e.g., JAWS))
4. Extended time up to double time
5. Use of computer and printer for the Writing Sample
6. Use of spell check
7. Alternate non-Scantron answer sheet
8. Use of a reader
9. Use of an amanuensis (scribe)
10. Additional rest time during breaks (standard break is 10-15 minutes between third and fourth sections)
11. Breaks between sections
12. Sit/stand with a podium
13. Wheelchair accessibility (if table is requested, specify height)
14. Separate room (e.g., small group testing)
15. Private testing room (e.g., low-distraction test setting)
16. Stop-the-clock breaks
17. Scratch paper
18. Voice recognition software (e.g., Dragon)
19. Physical prompts (e.g., for test-takers with hearing impairments)
20. Reserved or assigned seating location (e.g., seating near the exam proctor)
21. Bring and eat food
22. Permission to bring insulin, check blood sugar
23. Permission to bring and take medications
24. Earplugs
25. Use of line marker
26. Use of magnification devices (e.g., magnification reading glasses, handheld video magnifier, closed circuit television (CCTV), ZoomText)
27. Ability to pace (walk around)
28. Marking answer choices in the test book
29. Book stand

# EXHIBIT 2(a)





## NOTICE OF NATIONWIDE SETTLEMENT



### **IF YOU APPLIED FOR TESTING ACCOMMODATIONS FOR THE LAW SCHOOL ADMISSION TEST (LSAT) YOU MAY BE ELIGIBLE FOR A MONETARY AWARD FROM A \$6.73 MILLION NATIONWIDE COMPENSATION FUND**

The **Law School Admission Council (LSAC)** has entered into a Consent Decree with the **California Department of Fair Employment and Housing (DFEH)** to settle a statewide lawsuit and with the **U.S. Department of Justice (DOJ)** to settle a nationwide lawsuit. This resolution addresses alleged violations of the Americans with Disabilities Act (ADA) and the California Unruh Civil Rights Act, including LSAC's alleged failure to offer the LSAT in a manner accessible to individuals with disabilities.

**If you applied for testing accommodations from LSAC between January 1, 2009 and May 20, 2014, you may be eligible to receive a payment from a \$6.73 million nationwide compensation fund.**

TO BE ELIGIBLE FOR CONSIDERATION FOR PAYMENT, YOU MUST SUBMIT A CLAIM. THE DEADLINE TO SUBMIT A CLAIM HAS YET TO BE DETERMINED AND WILL BE POSTED HERE WITHIN FOUR MONTHS OF **[INSERT DATE OF ENTRY OF CONSENT DECREE]**.

You may obtain information on how to submit a claim by:

1. Sending an e-mail with your name, address, and telephone number to **[insert email address to be designated by Claims Administrator]**, or
2. Calling the Claims Administrator at **[insert toll free voice and TTY telephone numbers to be designated by Claims Administrator]**.

Claimants who receive a payment from this fund must sign a release of any related claims against LSAC.

For more information or for a copy of the Consent Decree, visit [www.dfeh.ca.gov](http://www.dfeh.ca.gov) or [www.ada.gov](http://www.ada.gov).

# EXHIBIT 2(b)



## NOTICE OF NATIONWIDE SETTLEMENT



**IF YOU APPLIED FOR TESTING ACCOMMODATIONS  
FOR THE LAW SCHOOL ADMISSION TEST (LSAT)  
YOU MAY BE ELIGIBLE FOR A MONETARY AWARD FROM A  
\$6.73 MILLION NATIONWIDE COMPENSATION FUND**

**► DEADLINE TO RESPOND IS [INSERT DATE], 2014 ◀**

The **Law School Admission Council (LSAC)** has entered into a Consent Decree with the **California Department of Fair Employment and Housing (DFEH)** to settle a statewide lawsuit and with the **U.S. Department of Justice (DOJ)** to settle a nationwide lawsuit. This resolution addresses alleged violations of the Americans with Disabilities Act (ADA) and the California Unruh Civil Rights Act, including LSAC's alleged failure to offer the LSAT in a manner accessible to individuals with disabilities.

**If you applied for testing accommodations from LSAC between January 1, 2009 and May 20, 2014, you may be eligible to receive a payment from a \$6.73 million nationwide compensation fund.**

**TO BE ELIGIBLE FOR CONSIDERATION FOR PAYMENT, YOU MUST SUBMIT A CLAIM BY [INSERT DATE WHICH IS 180 DAYS AFTER DATE WHEN ALL NOTICE PACKAGES ARE SENT TO POTENTIAL ELIGIBLE PERSONS].**

You may obtain information on how to submit a claim by:

1. Sending an e-mail with your name, address, and telephone number to [insert email address to be designated by Claims Administrator], or
2. Calling the Claims Administrator at [insert toll free voice and TTY telephone numbers to be designated by Claims Administrator].

Claimants who receive a payment from this fund must sign a release of any related claims against LSAC.

For more information or for a copy of the Consent Decree, visit [www.dfeh.ca.gov](http://www.dfeh.ca.gov) or [www.ada.gov](http://www.ada.gov).

# EXHIBIT 3

**RELEASE OF CLAIMS**

For and in consideration of acceptance of the relief offered to me by the Law School Admission Council, Inc. ("LSAC"), pursuant to a Consent Decree between LSAC, the California Department of Fair Employment and Housing ("DFEH"), and the United States of America, arising out of Civil Action 3:12-cv-01830-EMC (the "Consent Decree"):

I, \_\_\_\_\_ (print name), hereby release and forever discharge LSAC and its current, past, and future officers, directors, shareholders, employees, and agents, of and from any legal and/or equitable claims arising out of the facts identified in the DFEH's and the United States' respective Complaints, as amended, filed in the United States District Court for the Northern District of California, Case No. 3:12-cv-01830-EMC, and any other claims, known or unknown, relating to my request(s) for testing accommodations on the Law School Admission Test ("LSAT") and/or the reporting of my scores on any administration of the LSAT preceding the date of this Release. Excluded from this Release are any rights and claims that cannot be waived by law.

This Release constitutes the entire agreement between myself and LSAC with regard to the claims identified above, without exception or exclusion.

I acknowledge that a copy of the Consent Decree has been made available to me. By signing this Release, I acknowledge that I have been provided the opportunity to review the Consent Decree with an attorney of my choosing, and that I understand that I am solely responsible for paying any applicable federal, state and local taxes I owe as a result of receiving payment under this Consent Decree.

In signing this Release, I hereby waive any rights that I have, or after signing this Release become aware that I may have had, under California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Date: \_\_\_\_\_  
Signature

Full Mailing Address: