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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

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8 DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING,

9 Plaintiff,

10 v.

11 LAW SCHOOL ADMISSION COUNCIL  
INC.,

12 Defendant.  
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Case No. 12-cv-01830-EMC (KAW)

**ORDER DENYING JOINT MOTION  
FOR ADMINISTRATIVE RELIEF  
WITHOUT PREJUDICE;  
TERMINATING JOINT DISCOVERY  
LETTER BRIEF**

Re: Dkt. Nos. 206, 207

15 On October 23, 2014, the parties to the above-captioned case filed (1) a joint motion for  
16 administrative relief from this Court's page limits for discovery letter briefs and (2) an oversized  
17 joint discovery letter brief. (Joint Mot., Dkt. No. 206; Joint Ltr., Dkt. No. 207.) In their joint  
18 letter, the parties dispute (1) whether the Consent Decree entered in this case on May 29, 2014  
19 triggers the provisions that govern the return and destruction of materials produced in this  
20 litigation pursuant to the stipulated protective order and (2) whether the United States and the  
21 Department of Fair Employment and Housing ("DFEH") violated that stipulated protective order  
22 by transmitting LSAC's confidential information to the Best Practices Panel created pursuant to  
23 the Consent Decree. (Joint Ltr. at 6.)

24 On July 29, 2014, LSAC requested that all Plaintiffs return or destroy all confidential  
25 information it produced in this matter, as required by paragraph 32 of the stipulated protective  
26 order entered in this case. (Id. at 4.) That paragraph reads:

27 After the expiration of the applicable time period during which any Party may  
28 appeal the final order entered in this Action, or any Party must, by law, maintain  
complete files, a Party may request that Confidential Information (including all

1 copies, abstracts, compilations, summaries, and any other format reproducing any  
2 of the Confidential Information) produced by it be returned or destroyed at the  
3 option of the Receiving Party, which request shall be honored. If the Receiving  
4 Party elects to destroy the information rather than return it, a certificate attesting to  
5 such destruction must be delivered to each Producing Party within 60 days  
6 following such destruction. Nothing in this provision shall limit the rights, if any,  
7 of any Party to object to and seek a ruling of the Court concerning a Party's  
8 retention of any Confidential Information. This paragraph does not require the  
9 destruction of materials protected by the attorney-client privilege or work product  
10 doctrine. In addition, counsel for each Party may retain one complete copy of all  
11 pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
12 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
13 work product, and consultant and expert work product, even if such materials  
14 contain Confidential Information. Any such archival copies that contain or  
15 constitute Confidential Information remain subject to this Protective Order.

16 (Stipulated Protective Order ¶ 32, Dkt. No. 123.)

17 The United States and the DFEH have not complied with the request. (Joint Ltr. at 4.)  
18 They believe that the information is necessary for the implementation of the Consent Decree, and  
19 they have transmitted certain confidential information to the Best Practices Panel. (Id. at 4, 5.)  
20 They also maintain that the disputes raised in the parties' joint letter implicate the interpretation  
21 and implementation of the Consent Decree. (Id. at 1.) The Court agrees.

22 The Consent Decree provides that "[t]he Panel members shall . . . be subject to the terms of  
23 the protective order entered in this case . . . ." (Consent Decree ¶ 7(f), Dkt. No. 203.) It also  
24 states:

25 All Parties agree that any documents or information acquired through performance  
26 of this Consent Decree may be used solely for the purpose of implementing and  
27 enforcing this Consent Decree, and not for any other purpose. The provisions of  
28 the Protective Order (ECF No. 123) remain in effect and applicable to all Parties  
throughout the term of this Decree.

(Id. ¶ 32.) This language notwithstanding, LSAC maintains that the continued retention and use of  
any confidential information LSAC produced violates the protective order. (Joint Ltr. at 6.) This  
position seems to conflict with the above language from the Consent Decree, which could be read  
as extending the term of the protective order and allowing disclosure of confidential information to  
the Panel. It is the province of the presiding judge, however, to decide whether that reading of the  
Consent Decree is appropriate.

Given that the United States and the DFEH plan to file a motion, before the presiding

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judge, regarding the interpretation and implementation of the Consent Decree, the parties' joint letter brief is terminated and their joint motion for administrative relief is denied without prejudice to re-filing after the presiding judge resolves the issues affecting the Consent Decree. The parties may then re-file a joint letter brief, and if necessary, an administrative motion to exceed the applicable page limits, only if the presiding judge's ruling does not resolve the disputes raised in the instant joint letter.

**IT IS SO ORDERED.**

Dated: 11/07/14

  
KANDIS A. WESTMORE  
United States Magistrate Judge