

## SETTLEMENT AGREEMENT

### 1. Introduction.

1.1 This Settlement Agreement (“Agreement”) is made and entered into this 1st day of February, 2011 (the “Effective Date”), by and between the National Federation of the Blind, (“NFB”), the National Federation of the Blind of California (“NFB of California”), Deepa Goraya, Bruce Sexton, Jr., and Claire Stanley (collectively, “Plaintiffs”), on the one hand, and the Law School Admission Council, Inc. (“LSAC”), on the other (collectively, “the Parties”). The United States of America (the “United States”) is also a signatory to this Agreement (but not included within the scope of the defined term “Parties” hereunder), because this Agreement also relates to the resolution of administrative complaints filed by NFB against various law schools relating to their use of the lsac.org website, as described in section 1.5 below.

1.2 Plaintiffs NFB, NFB of California, and Deepa Goraya filed a complaint against LSAC in the Superior Court of the State of California, County of Alameda (the “Court”) on February 19, 2009 (the “Lawsuit”). The Lawsuit was assigned the Civil Action No. RG09436691, and was placed on the docket of the Honorable Richard Keller.

1.3 On June 8, 2010, Plaintiffs amended their complaint against LSAC, naming as additional Plaintiffs Bruce Sexton and Claire Stanley, and naming the University of California, Hastings College of Law; Thomas Jefferson School of Law; Whittier Law School; and University of Chapman School of Law as additional Defendants (“Law School Defendants”).

1.4 Plaintiffs’ Amended Complaint in the Lawsuit alleges that LSAC has been in violation of the Disabled Persons Act, California Civil Code §§ 54 et seq., and the Unruh Civil Rights Act, California Civil Code §§ 51 et seq., by maintaining its website, www.lzac.org, in a manner that is inaccessible to blind individuals using screen reader technology. Plaintiffs allege that the barriers on www.lzac.org make it impossible for blind students using screen readers to independently apply to law schools, register for the LSAT, or perform numerous other functions available to potential law students through the website. LSAC has answered the Amended Complaint, denying any liability. Plaintiffs’ Amended Complaint against the Law School Defendants relates to their use of the lsac.org website in conjunction with their application processes and asserts claims both under state law and Titles II and III of the Americans with Disabilities Act.

1.5 On May 5, 2010, the United States, specifically, the Disability Rights Section of the Civil Rights Division of the Department of Justice (“DOJ”), received complaints from the NFB against the University of Chicago School of Law; the University of Miami School of Law; Washington and Lee University School of Law; Northeastern University School of Law; William Mitchell College of Law; University of Denver, Sturm College of Law; Yeshiva University, Cardozo School of Law; Gonzaga University School of Law; and Atlanta’s John Marshall Law School alleging that the

lsac.org website and application service, the primary means by which students apply to the named law schools, is not accessible to individuals who are blind or have low vision in violation of Title III of the American's with Disabilities Act. On October 12, 2010, DOJ received additional complaints from the NFB, against Baylor University School of Law; Capital University Law School; Emory University School of Law; Marquette University Law School; Michigan State University College of Law; Saint Louis University School of Law; Vanderbilt University Law School; and Wake Forest University School of Law, making the same allegations as to those law schools.

1.6 The United States has an interest in the steps that LSAC agrees to take in section 4 of this Agreement, relative to the obligations that the law schools referenced in section 1.5 are alleged to have under the ADA.

1.7 The Parties now wish to effect a complete resolution and settlement of all claims, disputes, and controversies relating to the allegations of the Plaintiffs, including the Lawsuit.

1.8 The United States believes that the actions that LSAC has agreed to take under section 4 of this Agreement address its concerns regarding the accessibility of the lsac.org website. In light of those actions, the United States will resolve the pending investigations relating to the named law schools' use of the lsac.org website, as stated in section 13 of this Agreement.

2. Term of Agreement. This Agreement shall be effective on the date of its execution and shall expire on September 1, 2014.

3. No Admission of Liability. By agreeing to and voluntarily entering into this Agreement, there is no admission or concession by LSAC, direct or indirect, express or implied, that lsac.org is in any way inaccessible or that LSAC or any law school has violated the Unruh Civil Rights Act, California Civil Code §§ 51 et seq., or the Disabled Persons Act, California Civil Code §§ 54 et seq., as alleged by Plaintiffs in the Lawsuit. Likewise, there is no admission or concession by LSAC, direct or indirect, express or implied, that LSAC or any law school has violated the Americans with Disabilities Act, 42 U.S.C. §§ 12181, et seq., or that LSAC is subject to the Americans with Disabilities Act or the referenced state laws with respect to its operation of the lsac.org website or any other website.

4. Accessibility of lsac.org.

4.1 LSAC shall provide "Full and Equal Access" to the lsac.org website as provided herein no later than September 1, 2011 ("Completion Date") and continuing thereafter for the term of this Agreement. "Full and Equal Access" means that www.lsac.org meets the nonvisual requirements of WCAG 2.0, level AA and that blind guests using screen-reader software may acquire the same information and engage in the same transactions as are available to sighted guests with substantially equivalent ease of use. These accessibility requirements extend to all parts of the lsac.org website on which services or products are made available to prospective law school applicants

or to LSAT and Credential Assembly Service registrants, including, but not limited to, the process of applying to law schools through lsac.org, including both the common information input fields and the input fields specific to each participating law school; and the documents and practice tests LSAC makes available online. To achieve Full and Equal Access to the law school applications, LSAC shall provide tools that enable participating law schools who wish to add input fields specific to their law schools' respective applications to do so in a manner that provides Full and Equal Access to blind persons using screen-access software. Law schools that do not use the tools referred to in this paragraph will not be able to have their applications hosted on the LSAC site.

4.2 The requirements set forth in section 4.1 above shall not apply with respect to any third-party websites that are referenced on, or can be accessed by way of links on, the lsac.org website.

4.3 Designated personnel from NFB and LSAC shall confer on a quarterly basis to discuss LSAC's progress prior to the Beta Testing Date until the requirements set forth in section 4.1 above have been met. If any issues arise that affect the anticipated Completion Date, the Parties shall attempt to resolve those issues in good faith.

4.4 No later than April 5, 2011 (the "Beta Testing Date"), LSAC shall provide NFB access to a beta version of the complete lsac.org site substantially as it will be launched on or before the Completion Date. NFB shall test the accessibility of the beta site based on the requirements set forth in section 4.1, report the results to LSAC not later than May 3, 2011, and confer with LSAC about those results as described in section 4.3.

5 Fees for Beta Testing Consulting. For its role in assisting LSAC with meeting the goal in section 4.1, NFB shall be compensated at the rate of \$300 per hour, in an amount not to exceed \$25,000. Within 30 days of the Completion Date, NFB will provide LSAC with an invoice reflecting the services performed by NFB personnel; the dates on which those services were performed; and the number of hours worked on each of the referenced dates, in quarter-hour billing increments.

## 6. Monitoring.

6.1 The NFB will monitor the lsac.org website during the term of this Agreement.

6.2 Beginning approximately six months after the Completion Date, the NFB shall conduct semi-annual (1) automated accessibility testing, and (2) user testing. NFB shall report the results of those tests to LSAC with proposed corrective action to address any accessibility barriers NFB believes are revealed by the testing. After LSAC advises that it has addressed any such barriers, NFB shall conduct a second round of testing and again report its results to LSAC. If that second round reveals accessibility barriers NFB believes need to be fixed, and LSAC subsequently reports that it has

addressed those issues, NFB shall conduct a third round of testing and report those results.

6.3 If, at any time on or after September 1, 2012, the Parties agree that less frequent testing is required, monitoring will thereafter occur with the frequency agreed upon by the Parties.

6.4 NFB shall be compensated at the rate of \$300 per hour for time spent testing and monitoring the Isac.org website during the term of this Agreement as provided in sections 6.2 and 6.3, in an amount not to exceed \$10,000 per annum. Within 30 days of completing a round of testing, NFB will provide LSAC with an invoice reflecting the services performed by NFB personnel; the dates on which those services were performed; and the number of hours worked on each of the referenced dates, in quarter-hour billing increments.

7. Training. LSAC will provide training regarding website accessibility to LSAC employees who have responsibilities relating to the Isac.org website, including employees who are responsible for coding. The training may be conducted on-site at LSAC or at another location. Upon request by NFB, LSAC will provide a written report to NFB on each such training session.

8. Visitor Feedback.

8.1 LSAC shall ensure that feedback received from visitors to Isac.org regarding the accessibility of Isac.org by those using screen-access technology is reported to an LSAC employee responsible for website accessibility issues.

8.2 Upon request, but in any event, no more frequently than quarterly, LSAC shall provide a summary of any complaints received from visitors regarding the accessibility or usability of Isac.org by those using screen reader technology. Each summary shall identify the nature of any complaint, with any confidential student information redacted, and shall indicate whether the issue was resolved. If an issue is not resolved, LSAC shall consult with NFB and NFB shall provide, without charge, up to 10 hours of consultation for each year during the Term of the Agreement. The summaries and their contents shall be used for the sole purpose of monitoring the Isac.org website. Neither the summaries themselves nor their contents shall be admissible as evidence in any judicial proceeding.

9. Dispute Resolution. Any disputes between any Plaintiff and LSAC relating to this Agreement shall be resolved according to the following procedure:

9.1 If any Party believes that a dispute exists relating to this Agreement, it shall notify the other Parties in accordance with section 20. The Parties shall meet and confer in an effort to resolve the dispute.

9.2 If the Parties are unable to resolve the dispute through meet and confer within sixty (60) days (exclusive of any additional period necessary to give LSAC a

reasonable opportunity to implement an agreed-upon resolution), the sole manner for resolving the dispute is for a Party to initiate binding arbitration to be conducted in accordance with section 9.3. The Alameda County Superior Court shall retain jurisdiction over this matter solely for the purposes of confirming and enforcing any arbitration award.

9.3 The arbitration shall be conducted using the commercial rules of the American Arbitration Association (“AAA”) at a location agreed upon by the parties in or near Washington, D.C. There shall be three arbitrators, one selected by the party initiating the arbitration, the second selected by the other party within 20 days of receipt of the request for arbitration, and the third, who shall act as presiding arbitrator, selected by the two party-selected arbitrators within 20 days of the selection of the second arbitrator. All arbitrators shall be impartial and shall have expertise in the area of nonvisual access to websites.

9.4 In the event that any dispute is submitted to arbitration for resolution, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs pursuant to this contractual attorney fee provision.

10. Attorneys’ Fees and Costs. In the interest of achieving a prompt, amicable and cost-effective resolution of this matter, LSAC has agreed to pay three hundred and twenty thousand dollars (\$320,000) to partially reimburse Plaintiffs for attorneys’ fees and costs. Payment will be made within 30 days of LSAC’s receipt of a fully executed copy of the Agreement and a W-9 Form from Plaintiffs’ counsel.

11. Release. Plaintiffs hereby release and discharge LSAC and its officers, employees, attorneys, agents and insurers from any and all claims, actions or liabilities that have been or could have been asserted in the Lawsuit, as well as any and all claims or actions arising out of the inaccessibility of the lsac.org website or any of the content or services available on the lsac.org website throughout the term of this Agreement.

12. Dismissal of Lawsuit and Continuing Jurisdiction.

12.1 Within seven (7) days after this Agreement is fully executed, the Plaintiffs shall request that the Court dismiss Plaintiffs’ action against the Law School Defendants without prejudice, and Plaintiffs shall request that the Court dismiss Plaintiffs’ action against the LSAC with prejudice, subject to the Court retaining jurisdiction solely for purposes of confirming and enforcing any arbitration award in accordance with section 9.2 of this Agreement.

12.2 Plaintiffs and LSAC agree that the Superior Court for the State of California, County of Alameda, shall have continuing jurisdiction as set forth in section 9 of this Agreement.

13. Resolutions of Complaints Filed by NFB with DOJ. Within ninety (90) days after this Agreement is fully executed, the United States will seek to resolve by agreement or otherwise the complaints filed by the NFB and referenced above in section 1.5. Nothing in this Agreement forecloses the United States from taking legal action against law schools named in those complaints if DOJ concludes that the facts and law justify doing so.

14. Public document. A copy of this document or any information contained in it will be made available to any person by the United States on request.

15. Modification. This Agreement can only be amended by written agreement of the Parties hereto.

16. Drafting of this Agreement. This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

17. Execution by Facsimile and in Counterparts. This Agreement may be executed by facsimile or other electronic communication and in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

18. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity not a signatory to this Agreement any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

19. Entire Agreement. This Agreement contains all the agreements, conditions, promises, and covenants between and among the signatories hereto regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

20. Communications. Unless otherwise indicated in the Agreement, all notices or communications required by this Agreement shall be in writing by facsimile or electronic mail and U.S. Mail or overnight delivery service addressed as follows:

20.1 To Plaintiffs or Plaintiffs' Counsel: Daniel Goldstein, Brown, Goldstein & Levy, LLP, 120 E. Baltimore St., Ste. 1700, Baltimore, MD 21202. E-mail: dfg@browngold.com. Fax: (410) 385-0869.

20.2 To the United States: David W. Knight, Disability Rights Section, 1425 New York Avenue, N.W., Room 4040, Washington, DC 20005. Phone: (202) 307-0663. Email: david.w.knight@usdoj.gov. Fax: (202) 307-1198.

20.3 To LSAC: Joan Van Tol, 662 Penn Street, Newtown, PA 18940. E-mail: jvantol@lsac.org. Fax: (215) 968-1169. [With a copy to: Robert Burgoyne, Fulbright & Jaworski L.L.P., Suite 500, 801 Pennsylvania Avenue, NW, Washington, DC 20004. E-mail: rburgoyne@fulbright.com. Fax: (202) 662-4643.]

SO AGREED:

The Law School Admission Council, Inc.

By: \_\_\_\_\_  
JOAN VAN TOL  
General Counsel

The National Federation of the Blind, Inc.

By: \_\_\_\_\_  
MARC MAURER  
President

The National Federation of the Blind of California, Inc.

By: *Mary Willows*  
\_\_\_\_\_  
MARY WILLOWS  
President

\_\_\_\_\_  
DEEPA GORAYA

\_\_\_\_\_  
BRUCE SEXTON, JR.

\_\_\_\_\_  
CLAIRE STANLEY

United States of America

By: \_\_\_\_\_  
ALLISON J. NICHOL, Deputy Chief  
KATHERINE M. NICHOLSON, Trial Attorney  
DAVID W. KNIGHT, Trial Attorney  
Disability Rights Section  
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