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ANDREW QUAN, NICHOLAS JONES and
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING,

Plaintiff,

v.

LAW SCHOOL ADMISSION COUNCIL,
INC., *ET AL.*,

Defendants.

JOHN DOE *et al.*, and all other similarly
situated individuals,

Real Parties in Interest

Case No. CV 12-1830-EMC

FIRST AMENDED COMPLAINT FOR
DAMAGES, EQUITABLE RELIEF, AND
ATTORNEYS' FEES AND COSTS FOR
VIOLATIONS OF THE AMERICANS WITH
DISABILITIES ACT OF 1990, 42 U.S.C. §
12101, *ET SEQ.*; CALIFORNIA'S UNRUH
CIVIL RIGHTS ACT, CAL. CIVIL CODE §
51, *ET SEQ.*, AND CALIFORNIA'S UNFAIR
BUSINESS PRACTICES ACT, CAL. BUS. &
PROF. CODE § 17200, *ET SEQ.*

ANDREW QUAN, NICHOLAS JONES, and
ELIZABETH HENNESSEY-SEVERSON,

Plaintiff-Intervenors,

v.

LAW SCHOOL ADMISSION COUNCIL,
INC.,

Defendant.

1 Plaintiff-Intervenors ANDREW QUAN, NICHOLAS JONES, and ELIZABETH
2 HENNESSEY-SEVERSON complain and allege as follows:

3 **INTRODUCTION**

4 1. This is an action for relief from Defendant's violation of the civil rights of Plaintiff-
5 Intervenors ANDREW QUAN, NICHOLAS JONES, and ELIZABETH HENNESSEY-
6 SEVERSON. These violations, which are more particularly alleged herein, include disability-
7 based discrimination in violation of the Americans with Disabilities Act (ADA), disability-based
8 discrimination in violation of California's Unruh Civil Rights Act, and unlawful business
9 practices in violation of California's Unfair Business Practices Act.

10 2. Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON are individuals
11 with disabilities within the meaning of federal and state disability nondiscrimination laws,
12 including Title III of the ADA and California's Unruh Civil Rights Act.

13 3. Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON requested
14 accommodations from Defendant LSAC for the Law School Admission test (LSAT). In
15 violation of law, Defendant LSAC imposed upon Plaintiff-Intervenors onerous and unnecessary
16 documentation requirements and subjected them to an arbitrary, ineffective, and unpredictable
17 evaluation and appeals procedure. In violation of law, Defendant LSAC refused to make
18 reasonable modifications to testing conditions for Plaintiff-Intervenors. In violation of law, after
19 finally providing testing accommodations to Plaintiff-Intervenor HENNESSEY-SEVERSON,
20 Defendant LSAC refused to provide her with an LSAT score in the same format as her
21 nondisabled peers.

22 4. Plaintiff-Intervenors seek declaratory and injunctive relief, equitable relief, actual
23 damages, treble damages, restitution, reasonable attorneys' fees and costs, as well as other
24 appropriate relief as determined by this court.

25 **JURISDICTION**

26 5. This court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §
27 1331. Plaintiff-Intervenors bring this suit under Title III of the ADA, 42 U.S.C. § 12181, *et seq.*

1 These conditions limit and substantially limit several major life activities. She is an individual
2 with a “disability” within the meaning of federal and state disability nondiscrimination laws,
3 including Title III of the ADA and California’s Unruh Civil Rights Act.

4 7. Defendant LSAC is a Delaware corporation with its headquarters in Newtown,
5 Pennsylvania. The LSAC administers the LSAT throughout the United States, including in this
6 judicial district. The LSAC is a “person that offers examinations or courses related to
7 applications, licensing, certification, or credentialing for secondary or post-secondary education,
8 professional, or trade purposes” within the meaning of Title III of the ADA. The LSAC is also a
9 “public accommodation” within the meaning of Title III of the ADA. The LSAC is a “business
10 establishment” within the meaning of California’s Unruh Civil Rights Act.

11 STATEMENT OF FACTS

12 LSAC and the Law School Admission Test (LSAT)

13 8. Defendant LSAC administers the Law School Admission Test (LSAT), a half-day,
14 standardized test used in the admissions decisions of virtually all ABA-accredited law schools,
15 and many non-accredited law schools. The test consists of five multiple choice sections (35
16 minutes each) and one writing sample (35 minutes). Approximately 150,000 LSATs are
17 administered worldwide each year. Defendant LSAC also offers a “Credential Assembly
18 Service” to law schools, in which applicants to law school upload undergraduate transcripts,
19 evaluations, and application materials. LSAC then disseminates the application materials, along
20 with an applicant’s LSAT score report, to law schools.

21 9. Applicants with disabilities may seek testing accommodations on the LSAT pursuant to
22 the LSAC’s policies, procedures, and practices. As alleged herein, these policies, procedures,
23 and practices are inconsistent with the requirements of state and federal laws and operate to
24 discriminate against and exclude persons with disabilities.

25 10. Under the LSAC’s policies, procedures, and practices, disabled applicants seeking
26 testing accommodations must complete and submit an extensive portfolio of current and
27 historical materials including medical and/or psychological documentation by a stated deadline.

1 (a) Each disabled applicant seeking testing must submit a three-page application
2 form, a score report from past standardized tests, a verification of accommodations received on
3 each of those tests, and one three-page medical form filled out by a qualified professional, as
4 necessary to document the applicant's condition(s).

5 (b) Depending upon the type of disability, applicants are required to submit additional
6 documentation.

7 (c) Applicants with "cognitive and psychological impairments," a category which
8 includes learning disorders, processing deficiencies, and ADHD, are referred to a three-page,
9 single-spaced document detailing extensive additional requirements, including:

- 10 • Full psychoeducational and/or neuropsychological evaluation which addresses
11 sensory-motor, auditory, attention, and visual-spatial issues; receptive and
12 expressive language; immediate and delayed memory; achievement; and
13 intelligence; and which includes a comprehensive diagnostic interview;
- 14 • Complete aptitude assessment such as Wechsler Adult Intelligence Scale, Fourth
15 Edition (WAIS-IV);
- 16 • Comprehensive achievement battery;
- 17 • Timed reading comprehension measure;
- 18 • Timed writing measures if additional time on the nonscored writing section is
19 requested;
- 20 • Measures of spelling and grammar skills if a computer with spelling and/or
21 grammar check is requested;
- 22 • Objective data measures (such as the CPT-II or TOVA) and tests measuring
information processing (such as WAIS-IV) for applicants with
information/attention processing diagnoses (including ADHD); and
- 23 • Personality tests (LSAC recommends submitting an objective test such as the
MMPI-II or MCMI-III and a projective testing instrument like the Rorschach) for
24 applicants seeking accommodations based on psychiatric disorders.

25 All tests for cognitive and psychological disabilities must be no older than three years if the
26 applicant is under the age of twenty-one, or five years if the applicant is over twenty-one.

27 (d) Applicants who are blind or who have other visual disabilities must submit, in
28 addition to the standard requirements, a four-page Evaluation Report filled out by their treating
practitioner.

1 (e) Applicants with “physical/medical impairments” must submit, in addition to the
2 standard requirements, a two-page Physical Evaluation Report.

3 (f) Applicants with hearing impairments must submit, in addition to the standard
4 requirements, a comprehensive psycho-educational assessment.

5 (g) Applicants seeking testing accommodations based upon more than one type of
6 impairment must comply with the documentation requirements of each type of impairment.

7 11. The LSAC’s documentation requirements for testing accommodations are frequently
8 onerous and unnecessary. For example, applicants seeking testing accommodations related to a
9 learning disability typically can demonstrate a history of testing accommodations in other
10 contexts and can provide copies of psycho-educational testing and evaluation documents
11 conducted throughout K-12. Yet to comply with the LSAC’s rigid documentation requirements,
12 including the specific tests required and the requirement that the testing be less than three or five
13 years old (depending upon the age of the individual), these applicants must often hire
14 psychologists and other medical professionals to administer and compile the battery of required
15 tests and reports. The out-of-pocket costs can total thousands of dollars.

16 12. The LSAC’s documentation requirements are frequently unclear. For example, various
17 testing measures are described as “preferred” or “helpful” but the requirements nowhere explain
18 the relative weight or preference given to such instruments, or the risks involved with providing
19 an alternate measure.

20 13. The LSAC’s procedures for receiving, evaluating, and reconsidering requests for testing
21 accommodations are vague, ambiguous, and arbitrary.

22 (a) While LSAC publications set forth specific deadlines for requesting
23 accommodations, applicants are urged to submit requests “well in advance” of the deadlines or
24 “there will be little or no opportunity to rectify deficiencies in documentation or seek
25 reconsideration.” No definition is provided for “well in advance.” Related, the deadline for
26 “reconsideration,” which is Defendant LSAC’s label for its appeals process, is the same deadline
27 as for submitting an original request for testing accommodations. An applicant can thus meet or
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1 exceed the initial deadline, be denied, and not have any time remaining for an appeal.

2 (b) The standards by which applications are evaluated initially and upon
3 reconsideration are opaque. Denial letters are frequently cursory (*e.g.*, “the documentation you
4 provided did not reflect an impairment related to taking the LSAT.”).

5 (c) As a result, it is extraordinarily difficult for an applicant to determine what is
6 missing from his or her application, obtain that information from a permitted source, and submit
7 the information in time to obtain accommodation prior to a scheduled test date.

8 14. Those applicants who are successful in obtaining testing accommodations from the
9 LSAC do not receive an LSAT score in the same format as their nondisabled peers. Unlike the
10 test scores issued by the College Board or by Educational Testing Service (ETS), such as the
11 SAT, PSAT, and GRE, the scores of persons who take the LSAT with testing accommodations
12 are “flagged” – they are accompanied by a letter disclosing that the test was taken under
13 nonstandard testing conditions.

14 **Andrew Quan**

15 15. Plaintiff-Intervenor ANDREW QUAN has ADHD, dysgraphia, hypotonia, and a visual-
16 motor integration deficit with slow processing speed. ADHD (Attention Deficit-Hyperactive
17 Disorder) is a neurobehavioral condition with common symptoms of difficulty paying attention,
18 staying on task, and controlling impulses. Dysgraphia, a learning disability that affects the motor
19 and information processing skills associated with writing, can result in spelling errors, “bad”
20 handwriting, difficulty expressing thoughts in writing, and/or difficulty organizing letters,
21 numbers, and words on a line or page. Hypotonia refers to decreased muscle tone, which can
22 affect an individual’s mobility, posture, breathing, speech, and reflexes. The diagnosis “visual-
23 motor integration deficit” is correlated with the code for “Learning Disability Not Otherwise
24 Specified” in the DSM (Diagnostic and Statistical Manual of Mental Disorders) IV. Mr. QUAN
25 also has physical disabilities, in part related to the above-referenced disabilities. These
26 conditions limit and substantially limit several major life activities including reading,
27 concentrating, and the operation of a major bodily function (brain).

1 16. Mr. QUAN was first diagnosed with disabilities when he was nine years old. Mr. Quan
2 has consistently received accommodations in school, beginning in the fourth grade. He received
3 accommodations for the ACT, a pre-college standardized exam. Mr. QUAN attended the
4 University of California, Santa Cruz, where he received accommodations for his disabilities,
5 such as double time on exams, a quiet testing environment, use of a scribe, and use of a laptop
6 for essay exams. Mr. QUAN graduated from UC Santa Cruz with honors in June 2012.

7 17. Mr. QUAN has wanted to become a lawyer since he was a child. He seeks to advocate
8 for the civil rights of persons with disabilities.

9 18. When he registered for the October 2011 LSAT, Mr. QUAN applied for accommodations
10 largely equivalent to those he received in college: extra time, a private testing space, a non-
11 Scantron answer sheet, and the use of a scribe or a laptop. His application included extensive
12 documentation regarding his disabilities and listed the accommodations he had received in the
13 past. He submitted LSAC's required forms (a three-page "Evaluator Form" filled out by
14 licensed psychologist; a three-page "Evaluator Form" filled out by an M.D.; a three-page
15 "Physical Evaluation Report filled out by an M.D.; and a four-page "Candidate Form" which he
16 filled out). He also provided an April 22, 2008 psycho-educational assessment report confirming
17 and analyzing his disabilities based upon a review of his special education history and the results
18 of psychometric testing (WAIS-III, Developmental Test of Visual Motor Integration (VMI), the
19 Beery Developmental Test of Motor Coordination, and Test of Visual-Perceptual Skills – Upper
20 Level (TVPS-UL)), and noting "greatly varying" test results with "significant" gaps between
21 verbal aptitude/ability and visual-motor integration skills. He also provided confirmation that he
22 had received testing accommodations while a student at UC Santa Cruz, and copies of IEP
23 documentation confirming special education services in high school from Fall 2004 through
24 Spring 2008, including the granting of extra time and other accommodations on tests.

25 19. In a letter dated September 7, 2011, Defendant LSAC requested additional
26 documentation, including "testing results and a full diagnostic report from a comprehensive up-
27 to-date psychoeducational/neuropsychological assessment" in compliance with the LSAC's
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1 guidelines. Mr. QUAN provided additional documentation; he also researched and wrote a letter
2 to Defendant LSAC, arguing that under both the ADA and 2010 U.S. Department of Justice
3 (DOJ) regulations, his documentation was sufficient. He noted that obtaining and providing the
4 required testing and report would cost thousands of dollars, and would not be covered by his
5 insurance.

6 20. Thereafter, on September 13, 2011, Defendant LSAC denied Mr. QUAN's request for
7 testing accommodations. The denial letter reiterated the need to provide "testing results and a
8 full diagnostic report from a comprehensive up-to-date psychoeducational/neuropsychological
9 assessment," emphasis in original, in compliance with the LSAC's guidelines. (The
10 psychoeducational assessment provided by Mr. QUAN had been completed three and a half
11 years earlier in March/April 2008.) The letter further stated that any such compliant report
12 would not be considered for the October 2011 LSAT: "Since the receipt deadline for this
13 administration of the LSAT has passed, no further consideration will be given to your request for
14 accommodations until all of the aforementioned documentation is received for a **future** LSAT
15 only." The LSAC never responded to Mr. QUAN's concurrent request for testing
16 accommodations related to his physical disabilities.

17 21. Mr. QUAN took the October 2011 LSAT without accommodations. Mr. QUAN's non-
18 accommodated score was inconsistent with his academic achievement.

19 22. Mr. QUAN next registered for December 2011 LSAT. He again applied for
20 accommodations, and provided documentation, by LSAC, by the stated deadline. By October
21 31, 2011, Mr. QUAN was again denied accommodations.

22 23. Mr. QUAN contacted the Legal Aid Society – Employment Law Center (LAS-ELC).
23 On November 11, 2011, LAS-ELC counsel notified Defendant LSAC that its handling of Mr.
24 QUAN's request for testing accommodations violated Department of Justice 2010 regulations
25 designed to address the "inappropriate or burdensome" standards used by testing agencies such
26 as the LSAC when evaluating requests for testing accommodations.

1 comprehension, and concentration are thus all affected by his disability. Mr. JONES also
2 experiences migraines and fatigue as a result of his visual conditions.

3 28. Mr. JONES took the September 2009 LSAT without accommodations. His non-
4 accommodated score was not commensurate with his academic record, and the score report
5 provided by Defendant LSAC showed that the large majority of incorrect answers occurred at the
6 end of each section, when Mr. JONES was running out of time. Mr. JONES is and historically
7 has been a strong student; Mr. JONES graduated Salutatorian from high school and his
8 cumulative undergraduate LSAC-calculated GPA was 3.98/4.00.

9 29. On or about October 20, 2009, after learning about testing accommodations from his
10 board certified ophthalmologist and retinal surgeon, Mr. JONES applied for accommodations on
11 the December 2009 LSAT. Mr. JONES requested time-and-a-half on both the multiple choice
12 and written portions of the exam (i.e., an additional 17.5 minutes for each 35-minute section).
13 He also requested a 5-minute break between each section. In support of his request, Mr. JONES
14 submitted a three-page "Candidate Form" and a four-page "Evaluator Form" completed by his
15 treating provider, a board-certified ophthalmologist and retinal surgeon, which listed Mr.
16 JONES's diagnoses and described the practical effects of Mr. JONES's visual conditions. Mr.
17 JONES also wrote a two-page letter describing his struggle to complete the LSAT in the allotted
18 time due to his disability, and explaining that he had not sought accommodations in the past
19 because he had not known they existed.

20 30. In a letter dated October 27, 2009, Defendant LSAC denied Mr. JONES's request for
21 accommodations. Defendant gave no reason for the denial and provided no suggestions as to
22 how Mr. JONES might successfully appeal. The letter stated only that the documentation
23 submitted "did not reflect an impairment related to taking the LSAT" and that if Mr. JONES
24 wished to seek reconsideration, "new information must be provided by your evaluator." The
25 letter noted that the deadline for reconsideration was November 3, 2009 – a week away and the
26 same deadline for an initial request for accommodations.

1 31. Mr. JONES appealed this decision prior to the November 3 deadline. On short notice,
2 he obtained and provided a supplemental, two-page letter from his treating ophthalmologist and
3 retinal surgeon which detailed the link between Mr. JONES's conditions and his reading speed
4 and reading ability, as well as the fatigue and headaches that accompany Mr. JONES's disability.
5 The ophthalmologist stressed Mr. JONES's need for accommodations on the LSAT.

6 32. On November 9, 2009, Defendant LSAC again denied Mr. JONES's appeal in a three-
7 sentence letter. The letter stated that a "Vision Rehabilitation Specialist" had reviewed his file
8 and that Mr. JONES had not demonstrated that he had a "significant visual condition."

9 33. Mr. JONES contacted the LAS-ELC. On November 24, 2009, LAS-ELC counsel
10 notified Defendant LSAC that Mr. JONES's visual conditions constitute disabilities affecting his
11 reading speed and stamina, thereby impairing his ability to sit for the LSAT without
12 accommodations. Counsel explained that Mr. JONES had not previously requested or received
13 accommodations, but had obtained such modifications informally by working with flexible
14 instructors and accessing on-line courses. Counsel requested that accommodations be put in
15 place for the December 5, 2009 LSAT.

16 34. On December 1, 2009, Defendant LSAC responded that "Mr. Jones does not
17 demonstrate that his visual difficulties ... affect his ability to take the LSAT without
18 accommodations. In fact, he took the September 2009 LSAT *without* requesting
19 accommodations and was able to complete every item on each section" (italics in original).
20 Although Mr. JONES submitted supplemental material prior the November 3, 2009 deadline,
21 Defendant LSAC stated that "further reconsideration is not possible as the deadline for seeking
22 reconsideration was November 3, 2009."

23 35. On December 3, 2009, LAS-ELC counsel sent a further letter to Defendant LSAC.
24 Counsel noted that the content of the prior communications from the LSAC violated a 2002
25 settlement agreement between LSAC and the DOJ, prohibiting LSAC from considering prior
26 performance on standardized testing when evaluating an accommodations request, and requiring
27 that defendant LSAC provide "clear written explanations" in denial letters, and that neither the
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1 initial denial nor the denial of reconsideration had done so. Defendant LSAC did not change its
2 position and Mr. JONES was not granted testing accommodations.

3 36. Mr. JONES again took the LSAT without accommodations on December 5, 2009. His
4 score was, again, not commensurate with his academic record. The score report provided by
5 Defendant LSAC, again, revealed that the large majority of incorrect answers occurred at the end
6 of each section.

7 37. Mr. JONES took the test again in February 2010 without accommodations; his score did
8 not significantly change. As the February 2010 LSAT was an undisclosed test, no detailed score
9 report was provided by Defendant LSAC.

10 38. Mr. JONES applied to law school using results from his non-accommodated LSAT
11 scores. Because he was not satisfied with his score, Mr. JONES applied to more than thirty
12 schools, including all of the public law schools in California. He was denied admission, or was
13 waitlisted, to almost all of the higher-ranked schools to which he applied. Mr. JONES is
14 currently a 3L at a private law school, where he pays full tuition. He is informed and believes,
15 and thereupon alleges, that he would have qualified for scholarship monies with an
16 accommodated LSAT score.

17 **Elizabeth Hennessey-Severson**

18 39. Plaintiff-Intervenor ELIZABETH HENNESSEY-SEVERSON has Reading Disorder,
19 Disorder of Written Expression, Mathematics Disorder, and ADHD-I (Attention Deficit-
20 Hyperactive Disorder-Inattentive). These conditions limit and substantially limit several major
21 life activities including reading, concentrating, and the operation of a major bodily function
22 (brain). Her combined learning disabilities cause Ms. HENNESSEY-SEVERSON to have
23 impaired reading, writing, and math abilities. Her ADHD-I results in difficulty with sustained
24 concentration, processing speed, distractibility, and difficulties with planning and organization.

25 40. Ms. HENNESSEY-SEVERSON was first diagnosed with her disabilities in 2002, while
26 she was in high school, although she began manifesting symptoms years earlier, while in grade
27 school. Ms. HENNESSEY-SEVERSON received the accommodation of extra time both in high
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1 school and as an undergraduate at Dartmouth College. She also received extra time as an
2 accommodation on the SAT.

3 41. Ms. HENNESSEY-SEVERSON wants to be a civil rights attorney working on behalf of
4 individuals in the criminal justice system. She worked for two years as a paralegal in San
5 Francisco after graduating from college.

6 42. Ms. HENNESSEY-SEVERSON applied to take the LSAT on April 27, 2011, in
7 advance of the May 3, 2011 deadline. She requested extra time on both the multiple choice and
8 reading portions of the LSAT (20 extra minutes for each 35-minute section), and 10-minute
9 breaks between each section. She submitted extensive documentation to Defendant LSAC which
10 established her disabilities and confirmed prior testing accommodations received. Ms.
11 HENNESSEY-SEVERSON submitted LSAC's required forms, including: a four-page
12 "Candidate Form"; a two-page "Evaluator Form" addressing her learning disabilities filled out
13 by a licensed psychologist with a specialty in pediatric neuropsychology; and a second two-page
14 "Evaluator Form" addressing her ADHD-I filled out by the same licensed psychologist. Ms.
15 HENNESSEY-SEVERSON also provided a complete psycho-educational assessment dated July
16 2009; a previous psycho-educational assessment dated October 2002; confirmation that she had
17 received testing accommodations while a student at Dartmouth; and confirmation that she had
18 received testing accommodations on the SAT.

19 43. Defendant LSAC denied Ms. HENNESSEY-SEVERSON's request by letter dated April
20 29, 2011. In the letter, Defendant LSAC "acknowledged" that Ms. HENNESSEY-SEVERSON
21 had a learning disorder, but stated that her documentation did not demonstrate a "limitation of a
22 major life activity" which affected her ability to take the test under standard (non-
23 accommodated) conditions. To support its decision, Defendant LSAC cited Ms. HENNESSEY-
24 SEVERSON's high IQ score and her "very superior" and "high average" scores on portions of
25 her psycho-educational assessment. The letter stated that Ms. HENNESSEY-SEVERSON had
26 until May 3, 2011, to seek reconsideration – four days away and the same deadline for an initial
27 request for accommodations.

1 44. By May 3, 2011, Ms. HENNESSEY-SEVERSON requested reconsideration of the
2 denial, and submitted a five-page letter from her psychologist in support of her request. The
3 psychologist explained that the “very superior” and “high average” scores that Defendant LSAC
4 cited to support its denial were achieved by Ms. HENNESSEY-SEVERSON on untimed
5 measures of reading, whereas on other, timed, measures, the results were “poor.” The
6 psychologist inserted three tables comparing HENNESSEY-SEVERSON’s performance various
7 timed versus untimed scores.

8 45. On May 10, 2011, Defendant LSAC sent a letter to Ms. HENNESSEY-SEVERSON
9 stating: “After full consideration of all of the documentation submitted on your behalf, there has
10 been no change in our decision.”

11 46. Thereafter, Ms. HENNESSEY-SEVERSON sought legal counsel to obtain testing
12 accommodations on the LSAT. For some months, these efforts were unavailing. Recently,
13 Defendant LSAC granted Ms. HENNESSEY-SEVERSON testing accommodations for the June
14 2012 LSAT. Defendant LSAC did not grant all of the accommodations requested by Ms.
15 HENNESSEY-SEVERSON. As well, Ms. HENNESSEY-SEVERSON’s score is subject to
16 Defendant LSAC’s “flagging” policy.

17 47. Ms. HENNESSEY-SEVERSON intends to register to take the LSAT again at some point
18 over the next several years. She intends to again request testing accommodations. She intends to
19 apply to law schools in California.

20 **FIRST CLAIM FOR RELIEF**
21 **Disability-Based Discrimination in Violation of**
22 **Title III of the Americans with Disabilities Act**
23 **42 U.S.C. § 12181 *et seq.***

24 48. Plaintiff-Intervenors incorporate by reference as if fully set forth herein the allegations
25 contained in paragraphs 1 through 47 above.

26 49. As a privately operated service establishment whose operations affect commerce, the
27 LSAC and the services it provides constitute a public accommodation. *See* 42 U.S.C. §
28 12181(7), (7)(F); *Powell v. Nat’l Bd. of Med. Exam’rs*, 364 F.3d 79, 85 (2d Cir. 2004) (defendant

1 National Board of Medical Examiners “concedes that its services constitute a public
2 accommodation covered by Title III.”).

3 50. Title III of the ADA prohibits discrimination against a person with a disability in the full
4 and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations
5 of any place of public accommodation. 41 U.S.C. § 12182(a).

6 51. Such prohibited discrimination includes the use of “eligibility criteria that screen[s] out
7 or tends to screen out” individuals with disabilities from equal enjoyment of the services,
8 privileges, or advantages being offered, as well as the use of “standards or criteria or methods of
9 administration [that] have the effect of discriminating on the basis of disability.” 42 U.S.C. §
10 12182 (b)(2)(A)(i), (b)(1)(D)(i).

11 52. Such prohibited discrimination includes the failure to make to make “reasonable
12 modifications to policies, practices, or procedures, when such modifications are necessary to
13 afford such goods, services, facilities, privileges, advantages, or accommodations to individuals
14 with disabilities.” 42 U.S.C. § 12182 (b)(2)(A)(ii). A public accommodation “shall” make these
15 reasonable modifications. 28 C.F.R. § 36.302 (a).

16 53. Such prohibited discrimination includes providing individuals with disabilities an
17 “unequal benefit” compared to that of individuals without disabilities. 42 U.S.C. §
18 12182(b)(1)(A)(ii).

19 54. At all times relevant herein, and through to the present, Plaintiff-Intervenors QUAN,
20 JONES, and HENNESSEY-SEVERSON were and are individuals with disabilities who required
21 reasonable modifications to participate on a full and equal basis on the LSAT and who are
22 entitled to protection against prohibited disability discrimination.

23 55. By imposing upon Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-
24 SEVERSON onerous and unnecessary documentation requirements to support requests for
25 testing accommodations, and by subjecting them to arbitrary, ineffective, and unpredictable
26 evaluation and appeals procedures, Defendant LSAC violated Title III of the ADA. By refusing
27 to make reasonable modifications to testing conditions for Plaintiff-Intervenors QUAN, JONES,
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1 and HENNESSEY-SEVERSON, Defendant LSAC violated Title III of the ADA. After
2 ultimately granting testing accommodations to Plaintiff-Intervenor HENNESSEY-SEVERSON,
3 but refusing to provide her with an LSAT score in the same format as her nondisabled peers,
4 Defendant LSAC violated Title III of the ADA.

5 56. As a result of Defendant LSAC's unlawful actions and inactions, Plaintiff-Intervenors
6 QUAN, JONES, and HENNESSEY-SEVERSON were forced to obtain and submit burdensome
7 and unnecessary documentation in support of their requests for testing accommodations. When
8 their requested accommodations were nevertheless denied, Plaintiff-Intervenors QUAN, JONES,
9 and HENNESSEY-SEVERSON were subjected to the stress and aggravation of the LSAC's
10 capricious appeals process. Denied accommodations even after appealing, Plaintiff-Intervenors
11 QUAN, JONES, and HENNESSEY-SEVERSON were then forced to seek legal counsel.
12 Nevertheless denied accommodations, Plaintiff-Intervenors QUAN and JONES were forced to
13 take the LSAT without the modifications that would have enabled them to earn a score that
14 effectively measured their aptitudes and abilities. After nearly 12 months of being denied
15 accommodations, and then granted some of the testing accommodations she requested, Plaintiff-
16 Intervenor HENNESSEY-SEVERSON was subjected to the Defendant LSAC's policy and
17 practice of "flagging" accommodated test scores.

18 57. Without an effectively accommodated LSAT score, Plaintiff-Intervenors QUAN and
19 JONES were denied the opportunity to compete for admission to law schools on an equal basis
20 with their nondisabled peers. With an accommodated but "flagged" LSAT score, Plaintiff-
21 Intervenor HENNESSEY-SEVERSON was denied a test score in an equivalent format as her
22 nondisabled peers.

23 58. As a result of the Defendant LSAC's unlawful testing accommodation policies,
24 procedures, and practices, Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON
25 experienced emotional distress, extensive inconveniences, and financial burdens. The exclusion
26 of disabled test-takers including Plaintiff-Intervenors from equal access to the LSAT is
27 associated with additional outcomes, such as the denial of the experience, scholarship money,
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1 and career opportunities that are available via admission to and graduation from higher-ranking
2 law schools.

3 59. In taking the above-described actions and inactions, Defendant LSAC failed to make
4 any good faith effort or attempt to comply with the ADA.

5 60. As a direct and proximate result of the unlawful acts described herein, Plaintiff-
6 Intervenors QUAN, JONES, and HENNESSEY-SEVERSON have suffered and continue to
7 suffer injuries.

8 61. Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON are entitled to
9 equitable relief, including declaratory and injunctive relief, attorneys' fees and costs, and such
10 other relief as the court considers to be appropriate.

11 **SECOND CLAIM FOR RELIEF**

12 **Failure to Provide an Accessible Examination in**
13 **Violation of Title III of the Americans with Disabilities Act**
14 **42 U.S.C. § 12189**

15 62. Plaintiff-Intervenors incorporate by reference the allegations in paragraphs 1 through
16 61, as though fully set forth herein.

17 63. Title III of the ADA specifies that “[a]ny person that offers examinations or courses
18 related to applications, licensing, certification, or credentialing for secondary or post-secondary
19 education, professional, or trade purposes shall offer such examinations or courses in a place and
20 manner accessible to persons with disabilities or offer alternative accessible arrangements for
21 such individuals.” 42 U.S.C. § 12189.

22 64. To ensure that “the key gateways to education and employment are open to individuals
23 with disabilities,” 28 C.F.R. § 36 app. B, examinations, like the LSAT, must be administered to
24 an individual with a disability so that “the examination results accurately reflect the individual’s
25 aptitude or achievement level or whatever other factor the examination purports to measure,
26 rather than reflecting the individual’s impaired sensory, manual, or speaking skills[.]” *Id.* at §
27 36.309(b)(1)(i). Meeting this standard may require the test administrator to make modifications
28 to the examination for an individual with a disability, including “changes in the length of time

1 permitted for completion of the examination and adaptation of the manner in which the
2 examination is given.” *Id.* at § 36.309(b)(2).

3 65. Testing entities such as Defendant LSAC are required to assure that any requests for
4 documentation are “reasonable and limited to the need for the modification, accommodation, or
5 auxiliary aid or service requested.” *Id.* at § 36.309(b)(1)(iv).

6 66. When considering requests for accommodations, a testing entity such as defendant
7 LSAC must give “considerable weight” to documentation of an individual’s past
8 accommodations on testing given under similar conditions. *Id.* at § 36.309(b)(1)(v).

9 67. When considering requests for accommodations, a testing entity such as defendant
10 LSAC must “respon[d] in a timely manner to requests for modifications, accommodations or aids
11 to ensure equal opportunity for individuals with disabilities.” *Id.* at § 36.309(b)(1)(vi).

12 68. At all times relevant herein, and through to the present, Plaintiff-Intervenors QUAN,
13 JONES, and HENNESSEY-SEVERSON were and are individuals with disabilities who required
14 reasonable modifications to participate in a fair, full, and equal basis on the LSAT.

15 69. By imposing upon Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-
16 SEVERSON onerous and unnecessary documentation requirements to support requests for
17 testing accommodations, and by subjecting them to arbitrary, ineffective, and unpredictable
18 evaluation and appeals procedures, Defendant LSAC has violated Title III of the ADA. By
19 refusing to make reasonable modifications to testing conditions for Plaintiff-Intervenors QUAN,
20 JONES, and HENNESSEY-SEVERSON, Defendant LSAC has violated Title III of the ADA.
21 After ultimately granting some of the testing accommodations requested to Plaintiff-Intervenor
22 HENNESSEY-SEVERSON, but refusing to provide her with an LSAT score in the same format
23 as her nondisabled peers, Defendant LSAC violated Title III of the ADA.

24 70. In taking the above-described actions and inactions, Defendant LSAC failed to make
25 any good faith effort or attempt to comply with the ADA.

26 71. As a direct and proximate result of the unlawful acts described herein, Plaintiff-
27 Intervenors QUAN, JONES, and HENNESSEY-SEVERSON have suffered and continue to

1 suffer injuries.

2 72. Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON are entitled to
3 equitable relief, including injunctive and declaratory relief, attorneys' fees and costs, and such
4 other relief as the court considers to be appropriate.

5 **THIRD CLAIM FOR RELIEF**
6 **Disability-Based Discrimination in Violation of**
7 **California's Unruh Civil Rights Act**
8 **Cal. Civ. Code § 51, *et seq.***

9 73. Plaintiff-Intervenors incorporate by reference the allegations in paragraphs 1 through
10 72, as though fully set forth herein.

11 74. California's Unruh Act provides that "all persons ... no matter what their sex, race,
12 color, religion, ancestry, national origin, or disability are entitled to the full and equal
13 accommodations, advantages, facilities, privileges, or services in all business establishments of
14 every kind whatsoever" Cal. Civ. Code § 51(b). Further, "[a] violation of the right of any
15 individual under the federal Americans with Disabilities Act of 1990 (P.L. 101-336) ... also
16 constitute[s] a violation of [the Act]." Cal. Civ. Code § 51(f).

17 75. Under the Act, and as required by the ADA, a business establishment must make
18 reasonable modifications in policies, practices, or procedures, when such modifications are
19 necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to
20 individuals with disabilities, and may not engage in discrimination against a person with a
21 disability, as defined. *See* para. 49 to 53 and 63 to 67, *supra*.

22 76. Further, in 2012, the California Legislature adopted California Education Code, section
23 99161.5. The new law describes its provisions as coextensive with the protections of the Unruh
24 Civil Rights Act. *See* Cal. Educ. Code § 99161.5(e) ("This section shall not provide greater
25 protections to persons with disabilities than those provided by Section 51 of the Civil Code.").

26 77. Subsection (a)(1) of section 99161.5(e) states: "The test sponsor of the Law School
27 Admission Test shall provide testing accommodations to a test subject with a disability who
28 makes a timely request to ensure that the Law School Admission Test accurately reflects the

1 aptitude, achievement levels, or other factors that the test purports to measure and does not
2 reflect the test subject's disability. This paragraph does not constitute a change in, but is
3 declaratory of, existing law.”

4 78. Subsection (c) of section 99161.5 states: “(c)(1) The test sponsor of the Law School
5 Admission Test shall not notify a test score recipient that the score of any test subject was
6 obtained by a subject who received an accommodation pursuant to this section. (2) The test
7 sponsor of the Law School Admission Test shall not withhold any information that would lead a
8 test score recipient to deduce that a score was earned by a subject who received an
9 accommodation pursuant to this section. (3) This subdivision does not constitute a change in,
10 but is declaratory of, existing law.”

11 79. California’s Education Code, section 99161.5, further states that, when determining
12 whether to grant an accommodation to the test subject, “the test sponsor of the Law School
13 Admission Test shall, consistent with existing law, give considerable weight to documentation of
14 past modifications, accommodations, or auxiliary aids or services received by the test subject in
15 similar testing situations[.]” Cal. Educ. Code § 99161.5(b).

16 80. California’s Education Code, section 99161.5, further states that the decision of whether
17 or not to approve a request for an accommodation on the LSAT shall be conveyed to the
18 requester within a reasonable amount of time. When an accommodation is denied, the test
19 sponsor shall state the reasons for the denial in writing, and shall provide a timely appeals
20 process. Cal. Educ. Code § 99161.5(a)(2), (3).

21 81. California’s Education Code, section 99161.5, further prohibits the practice of “flagging”
22 LSAT scores, by prohibiting the test sponsor from “notify[ing] a test score recipient that the
23 score of any test subject was obtained by a subject who received an accommodation pursuant to
24 this section,” or from “withhold[ing] any information that would lead a test score recipient to
25 deduce that a score was earned by a subject who received an accommodation[.]” Cal. Educ. Code
26 § 99161.5(c).

27 82. With respect to any acts or inactions of Defendant LSAC occurring prior to January 1,
28

1 2013, Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON cite to section
2 99161.5 of the California Education Code as an interpretive tool in construing the Unruh Civil
3 Rights Act as it then existed. Plaintiff-Intervenors do not seek retroactive application of section
4 99161.5 to conduct that occurred prior to its effective date.

5 83. At all times relevant herein, and through to the present, Plaintiff-Intervenors QUAN,
6 JONES, and HENNESSEY-SEVERSON were and are individuals with disabilities who required
7 reasonable modifications to participate in a fair, full, and equal basis on the LSAT.

8 84. In violation of their right to be free from disability-based discrimination under
9 California's Unruh Civil Rights Act, Defendant LSAC imposed upon Plaintiff-Intervenors
10 QUAN, JONES, and HENNESSEY-SEVERSON onerous and unnecessary documentation
11 requirements to support requests for testing accommodations, and subjected them to an arbitrary,
12 ineffective, and unpredictable evaluation and appeals procedure. In violation of their right to be
13 free from disability-based discrimination under California's Unruh Civil Rights Act, Defendant
14 LSAC refused to provide Plaintiff-Intervenors QUAN, JONES and HENNESSEY-SEVERSON
15 with the reasonable modifications they needed to take the LSAT on an equal basis with other
16 nondisabled test takers. In violation of her right to be free from disability-based discrimination
17 under California's Unruh Civil Rights Act, Defendant LSAC refused to provide Plaintiff-
18 Intervenor HENNESSEY-SEVERSON – who was ultimately granted some of the testing
19 accommodations she requested after months of delay – with a test score in an equivalent format
20 as her nondisabled peers.

21 85. Plaintiff-Intervenor HENNESSEY-SEVERSON intends to take the LSAT again, and to
22 again seek reasonable accommodations. Plaintiff-Intervenor HENNESSEY-SEVERSON intends
23 to apply to law schools, including law schools in California.

24 86. In taking the above-described actions and inactions, Defendant LSAC failed to make any
25 good faith effort or attempt to comply with state and federal laws.

26 87. Defendant LSAC's unlawful actions were intentional, willful, malicious and/or done
27 with reckless disregard to Plaintiff-Intervenors' right to be free from discrimination based on
28

1 their disabilities.

2 88. As a direct and proximate result of the unlawful acts described herein, Plaintiff-
3 Intervenor QUAN, JONES, and HENNESSEY-SEVERSON have suffered and continue to
4 suffer injuries, including emotional injuries.

5 89. Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON are entitled to
6 actual damages, treble damages, attorneys' fees and costs, declaratory and injunctive relief, and
7 other appropriate relief as determined by this court.

8 **FOURTH CLAIM FOR RELIEF**
9 **Unlawful Business Practices in Violation of**
10 **California's Unfair Business Practices Act**
11 **Cal. Bus. & Prof. Code § 17200, *et seq.***

12 90. Plaintiff-Intervenors incorporate by reference as if fully set forth herein the allegations
13 contained in paragraphs 1 through 89, above.

14 91. California's Unfair Business Practices Act prohibits "any unlawful, unfair or fraudulent
15 business act or practice." Cal. Bus. & Prof. Code § 17200.

16 92. Defendant LSAC committed and is committing unlawful and unfair business practices,
17 including but not limited to: violations of Titles III of the ADA; violations of the Unruh Civil
18 Rights Act; and violations of section 99161.5 of the California Education Code.

19 93. With respect to any acts or inactions of Defendant LSAC occurring prior to January 1,
20 2013, Plaintiff-Intervenors QUAN, JONES, and HENNESSEY-SEVERSON cite to section
21 99161.5 of the California Education Code as an interpretive tool in construing the Unruh Civil
22 Rights Act as it then existed. Plaintiff-Intervenors do not seek retroactive application of section
23 99161.5 to conduct that occurred prior to its effective date.

24 94. As a result of these unfair business practices, Plaintiff-Intervenors QUAN, JONES and
25 HENNESSEY-SEVERSON have suffered injuries in fact, as described herein.

26 95. As a result of these unfair business practices, Plaintiff-Intervenors QUAN, JONES and
27 HENNESSEY-SEVERSON have also lost money or property, such losses incurred due to
28 postage, mileage, telephone, Xeroxing, and faxing associated with the unlawful documentation

1 and appeals process, and additional application fees associated with the effects of receiving an
2 LSAT score that did not effectively measure their aptitude and abilities. Mr. QUAN expended
3 additional monies on two LSAT review courses and for assistance with his applications to ensure
4 that his personal statement explained the disparity between his academic record and his test
5 score. Ms. HENNESSEY-SEVERSON also expended additional monies on two LSAT review
6 courses, and was required to hire a lawyer. Plaintiff-Intervenors QUAN, JONES, and
7 HENNESSEY-SEVERSON have further been denied the benefit of the service which they
8 purchased from defendant LSAC, that is, a professional examination that lawfully and fairly
9 measured their abilities and aptitudes, and that provided a test score in a format equivalent to that
10 granted to nondisabled peers.

11 96. Plaintiff-Intervenors QUAN, JONES and HENNESSEY-SEVERSON are entitled to
12 restitution, injunctive relief, declaratory relief, attorneys' fees and costs, and other appropriate
13 relief as determined by this court.

14 **DECLARATORY AND EQUITABLE RELIEF**

15 97. Plaintiff-Intervenors incorporate by reference the allegations in paragraphs 1 through
16 94, as though fully set forth herein.

17 98. Defendant LSAC's unlawful policies, procedures, and practices, and their impacts upon
18 persons with disabilities, are longstanding. However, because these unlawful actions and
19 inactions affect persons taking an entrance examination for law school, and these persons
20 inevitably move on from taking the LSAT to either entering or not entering law school, the
21 claims of the Plaintiff-Intervenors are capable of repetition, yet evading review.

22 99. A present and actual controversy exists between Plaintiff-Intervenors QUAN, JONES,
23 and HENNESSEY-SEVERSON and Defendant concerning their rights and respective duties.
24 Plaintiff-Intervenors contend that Defendant violated their rights under the ADA and the Unruh
25 Civil Rights Act. Plaintiff-Intervenors are informed and believe, and thereon allege, that
26 defendant LSAC denies these allegations. Declaratory relief is therefore necessary and
27 appropriate.

