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[Filing fee exempt, Gov. Code, § 6103]

BY FAX

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

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THE DEPARTMENT OF FAIR EMPLOYMENT)
AND HOUSING, an agency of the State of)
California,)

Plaintiff,)

vs.)

LAW SCHOOL ADMISSION COUNCIL, INC.,)
a Delaware tax exempt corporation, and DOES)
ONE through TEN, inclusive,)

Defendants.)

Case No. 10 12621479

GROUP AND CLASS ACTION
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

[FEHA, Gov. Code, § 12900 et seq. and
Unruh Civil Rights Act, Civ. Code, § 51 et
seq.]

Jury Trial Demanded

JOHN DOE, JANE DOE, PETER ROE,)
RAYMOND BANKS, KEVIN COLLINS,)
RODNEY DECOMO-SCHMITT, ANDREW)
redacted, ELIZABETH HENNESSEY-)
SEVERSON, OTILIA IOAN, ALEX JOHNSON,)
NICHOLAS JONES, CAROLINE LEE,)
ANDREW QUAN, STEPHEN SEMOS,)
GAZELLE TALESHPOUR, KEVIN)
VIELBAUM, AUSTIN WHITNEY, and all other)
similarly situated individuals,)

Real Parties in Interest.)



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1 Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (Department or
2 DFEH) alleges the following against defendant LAW SCHOOL ADMISSION COUNCIL, INC.
3 (LSAC), a Delaware tax exempt Corporation, and DOES ONE through TEN, inclusive:

4 PARTIES

5 1. DFEH is the state agency charged with enforcing the right of all Californians under
6 the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.) “to the full and equal
7 accommodations, advantages, facilities, privileges, or services in all business establishments of every
8 kind whatsoever.” (Civ. Code, § 51, subd. (a).) Government Code section 12948 makes a violation
9 of the Unruh Act a violation of the Fair Housing and Employment Act (FEHA) (Gov. Code, § 12900
10 et seq.). The FEHA empowers the DFEH to investigate and prosecute Unruh Act claims within the
11 state, including those that adversely affect, in a similar manner, a group or class. (Gov. Code, §§
12 12961, 12965.)

13 2. Each real party in interest, John Doe, Jane Doe, Peter Roe, Raymond Banks, Kevin
14 Collins, Rodney Decomo-Schmitt, Andrew **redacted**, Elizabeth Hennessey-Severson, Otilia Ioan,
15 Alex Johnson, Nicholas Jones, Caroline Lee, Andrew Quan, Stephen Semos, Gazelle Taleshpour,
16 Kevin Vielbaum, and Austin Whitney, applied to LSAC for reasonable accommodations on the Law
17 School Admissions Test (LSAT) between January 19, 2009 and February 6, 2012. Each real party
18 was denied a reasonable accommodation, either in whole or in part, within this same time frame. At
19 the time of applying for reasonable accommodations, each real party resided in California.

20 3. Real parties in interest John Doe, Jane Doe, and Peter Roe wish to participate in this
21 litigation anonymously. Each real party seeks to retain their privacy interest in the details of their
22 disability and need for accommodation. Each of these real parties has expressed a legitimate fear of
23 negative professional ramifications should their true names be associated with this litigation. A
24 motion requesting the court’s permission to proceed under fictitious names for these two real parties
25 is filed concurrently with this complaint.

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b. Differential Treatment and Retaliation Against Examinees Granted Extended

Time: All disabled individuals in the State of California who took the LSAT with the accommodation of extra time from January 19, 2009 to February 6, 2012.

9. **Class Representative**: The Director of the DFEH, with the assistance of the 17 named real parties in interest, will fairly and adequately represent the class. Government Code section 12961 authorizes the Director to pursue this litigation as a class representative. Section 12961 authorizes the DFEH to seek class relief without being certified as the class representative. Nonetheless, this lawsuit meets the criteria for class certification.

10. **Manageability**: Class treatment of this dispute would save time and money by bringing all like claims before this court. For LSAC policies that affect a large group of applicants in a similar fashion, such as subjecting applicants to unlawful inquiries and flagging certain scores, treatment as a class is a superior method of adjudication, as compared to multiple individual suits where each plaintiff would allege an identical harm. Class treatment would neatly aggregate these claims, preventing duplicative litigation and potential inconsistencies in the ultimate findings.

11. **Numerosity**: The class is estimated to include hundreds of LSAT applicants. It would be impracticable to join each of these applicants who requested reasonable accommodation during the three-year time frame and to bring them individually before the court for adjudication. The members of this class are fully ascertainable and there exists a probability that the individual members will ultimately be available to come forward to prove their separate damage-related claims to a portion of the total class recovery, if any.

12. **Commonality**: There exists for the class a well-defined community of interest such that common questions of both law and fact predominate over individual interests or claims.

13. **Typicality**: The class claims raised by the real parties in interest are typical of those held by other members of the class. Each applicant for reasonable accommodation was subject to an unlawful inquiry about mitigation measures, and each test-taker, who was granted extra time, had his or her test score segregated and flagged.



1 14. **Adequacy of Representation:** With the assistance of the real parties in interest, the
2 DEFH will fairly and adequately represent the interests of all members of the class in the adjudication
3 of their similar legal claims.

4 **JURISDICTION AND VENUE**

5 15. The DFEH realleges and incorporates by reference each and every allegation
6 contained in paragraphs 1 through 14, inclusive, as if fully set forth herein.

7 16. This action arises under the FEHA, specifically Government Code section 12948,
8 which incorporates the Unruh Act into the enforcement structure of the FEHA, giving the DFEH
9 jurisdiction over Unruh Act violations occurring within the state. By virtue of its incorporation into
10 the Unruh Act, a violation of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101
11 et seq.) also constitutes a violation of the Unruh Act. (Civ. Code, § 51, subd. (f).)

12 17. At all times relevant to this complaint, LSAC was a business establishment as defined
13 by Civil Code section 51, subdivision (b). LSAC offers and administers its LSAT at multiple
14 locations in the State of California several times a year.

15 18. At all times relevant to this complaint, real parties in interest John Doe, Jane Doe,
16 Peter Roe, Raymond Banks, Kevin Collins, Rodney Decomo-Schmitt, Andrew redacted, Elizabeth
17 Hennessey-Severson, Otilia Ioan, Alex Johnson, Nicholas Jones, Caroline Lee, Andrew Quan,
18 Stephen Semos, Gazelle Taleshpour, Kevin Vielbaum, Austin Whitney, and all other similarly
19 situated individuals, were “persons” within the meaning of Government Code section 12925,
20 subdivision (d), and Civil Code section 51, subdivision (b).

21 19. On May 9, 2010, Jane Doe filed a verified complaint of discrimination in writing with
22 the Department pursuant to Government Code section 12960, alleging that LSAC unlawfully denied
23 her full and equal access to the LSAT within the preceding one year, in violation of the FEHA and
24 Unruh Act. A redacted copy of this complaint is attached hereto as Exhibit I.

25 20. On January 12, 2010, Nicholas Jones filed a verified complaint of discrimination in
26 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
27 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation



1 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
2 2.

3 21. After receiving the complaints of Jane Doe and Mr. Jones, and beginning an
4 investigation into their allegations, the Department came to believe that LSAC's policies and
5 practices toward disabled applicants requesting reasonable accommodation were affecting a larger
6 group or class of applicants in a similar manner.

7 22. On July 22, 2010, the Department issued a document entitled "Notice of Class Action
8 Complaint and Director's Complaint" describing the affected group or class as "all disabled
9 individuals in the State of California who have or will request a reasonable accommodation for the
10 Law School Admission Test (LSAT), administered by the LSAC, and who have or will be unlawfully
11 denied such request from January 19, 2009 to the conclusion of the Department's investigation of this
12 complaint." A redacted copy of this complaint is attached hereto as Exhibit 3.

13 23. During its investigation of the class action and Director's complaint, the DFEH
14 propounded administrative discovery to determine whether other people had been harmed by LSAC's
15 discriminatory practices within the state. The DFEH's efforts to obtain this information from
16 defendant included the filing of a superior court petition to compel LSAC to respond to its discovery
17 requests. Although Government Code section 12960, subdivision (d), provides that the DFEH has
18 one year from the date of the filing of its complaint until the filing of its accusation, this time is
19 extended by the pendency of a court action to enforce administrative discovery. (Gov. Code, §
20 12963.5, subd. (f).) Therefore, this action is timely filed.

21 24. With the court's assistance, the DFEH was able to discover and notify other persons
22 who were harmed by defendant's discriminatory practices. Some of these people elected to file
23 individual complaints as follows.

24 25. On August 29, 2011, Alex Johnson filed a verified complaint of discrimination in
25 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
26 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation

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1 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
2 4.

3 26. On August 31, 2011, John Doe filed a verified complaint of discrimination in writing
4 with the Department pursuant to Government Code section 12960, alleging that LSAC unlawfully
5 denied him full and equal access to the LSAT within the preceding one year, in violation of the
6 FEHA and Unruh Act. A redacted copy of this complaint is attached hereto as Exhibit 5.

7 27. On September 26, 2011, Elizabeth Hennessey-Severson filed a verified complaint of
8 discrimination in writing with the Department pursuant to Government Code section 12960, alleging
9 that LSAC unlawfully denied her full and equal access to the LSAT within the preceding one year, in
10 violation of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as
11 Exhibit 6.

12 28. On October 3, 2011, Caroline Lee filed a verified complaint of discrimination in
13 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
14 unlawfully denied her full and equal access to the LSAT within the preceding one year, in violation
15 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
16 7.

17 29. On October 6, 2011, Raymond Banks filed a verified complaint of discrimination in
18 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
19 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
20 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
21 8.

22 30. On October 7, 2011, Gazelle Taleshpour filed a verified complaint of discrimination in
23 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
24 unlawfully denied her full and equal access to the LSAT within the preceding one year, in violation
25 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
26 9.

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1 31. On October 11, 2011, Peter Roe filed a verified complaint of discrimination in writing
2 with the Department pursuant to section Government Code section 12960, alleging that LSAC
3 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
4 of the FEHA and Unruh Act. A redacted copy of this complaint is attached hereto as Exhibit 10.

5 32. On October 11, 2011, Stephen Semos filed a verified complaint of discrimination in
6 writing with the Department pursuant to section Government Code section 12960, alleging that LSAC
7 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
8 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
9 11.

10 33. On October 14, 2011, Rodney DeComo-Schmitt filed a verified complaint of
11 discrimination in writing with the Department pursuant to Government Code section 12960, alleging
12 that LSAC unlawfully denied him full and equal access to the LSAT within the preceding one year,
13 in violation of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto
14 as Exhibit 12.

15 34. On October 17, 2011, Andrew [redacted] filed a verified complaint of discrimination
16 in writing with the Department pursuant to Government Code section 12960, alleging that LSAC
17 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
18 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
19 13.

20 35. On October 19, 2011, Kevin Collins filed a verified complaint of discrimination in
21 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
22 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
23 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
24 14.

25 36. On October 24, 2011, Otilia Ioan filed a verified complaint of discrimination in
26 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
27 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation



1 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
2 15.

3 37. On October 28, 2011, Andrew Quan filed a verified complaint of discrimination in
4 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
5 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
6 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
7 16.

8 38. On October 28, 2011, Austin Whitney filed a verified complaint of discrimination in
9 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
10 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
11 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
12 17.

13 39. On November 7, 2011, Kevin Vielbaum filed a verified complaint of discrimination in
14 writing with the Department pursuant to Government Code section 12960, alleging that LSAC
15 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
16 of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
17 18.

18 40. On February 6, 2012, the DFEH issued a Group and Class Accusation before the
19 California Fair Employment and Housing Commission (Commission), charging LSAC with
20 violations of the Unruh Act. The Group and Class Accusation was properly served on LSAC by
21 certified mail.

22 41. On February 17, 2012, the DFEH issued a First Amended Group and Class Accusation
23 before the Commission. This accusation was properly served on the LSAC by certified mail.

24 42. Pursuant to Government Code section 12965, subdivision (c)(1), LSAC elected to
25 have this dispute heard in civil court in lieu of a hearing before the Commission, and so notified the
26 Department in writing, on or about February 22, 2012. A true and correct copy of "Respondent's
27 Notice of Transfer of Proceedings to Court" is attached hereto as Exhibit 19.



1 reiterate that Mr. Doe's intelligence is much as it was when he was originally seen (10/26/10) and
2 with IQ scores as noted in that report, all within the average range with the exception of Processing
3 Speed (4th percentile)."

4 66. LSAC granted Mr. Doe nine additional minutes for the multiple choice and writing
5 sample sections (125 percent), with an additional 15 minutes of break time between sections three
6 and four, for the February and June 2011 LSAT.

7 **Jane Doe**

8 67. Jane Doe, a resident of Oakland (Alameda County), requested that defendant provide
9 her with reasonable accommodations on each of two administrations of the LSAT examination, one
10 in February 2010 and a second in June 2010.

11 68. Ms. Doe has attention deficit disorder (ADD). Her condition makes it difficult to
12 retain attention and focus, and significantly impairs her ability to conceptually organize and sequence
13 abstract ideas.

14 69. Ms. Doe requested that LSAC accommodate her with time and a half (150 percent) on
15 the multiple choice and writing sample sections of the LSAT.

16 70. In support of her request, Ms. Doe submitted medical documentation, verification that
17 she had received the accommodation of time and a half (150 percent) as an undergraduate university
18 student, and proof that she had received extended time (150 percent) on the Graduate Record Exam
19 (GRE).

20 71. On January 15, 2010, LSAC denied Ms. Doe's accommodation requests, explaining
21 that her documentation did not demonstrate that she had a disability, which affected her ability to take
22 the LSAT.

23 72. Ms. Doe reapplied for accommodations on the June 2010 LSAT, requesting the same
24 accommodation of time and a half (150 percent) on the multiple choice and writing sample sections.

25 73. LSAC also denied this request. When Ms. Doe asked for an explanation for the denial,
26 defendant replied in writing that it was "not obligated to provide accommodations that are not
27 warranted or supported by the documentation."



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Peter Roe

74. Peter Roe, a resident of San Jose (Santa Clara County), requested that defendant make accommodations for the September 2009 LSAT at California State University, East Bay.

75. Mr. Roe has reading and math disorders, characterized by impaired auditory attention span and low visuomotor processing speed. These learning disorders substantially impact his ability to process written material, particularly under timed conditions.

76. Mr. Roe requested 20 extra minutes for the multiple choice sections and 30 extra minutes for the writing sample section of the LSAT. He also requested a reader and permission to use a computer dictation program.

77. In support of his request, Mr. Roe submitted a neuropsychological evaluation documenting his learning disabilities.

78. LSAC denied Mr. Roe any accommodation, noting that he had neglected to submit a "timed reading comprehension measure" in conformance with LSAC's guidelines, he had no history of educational accommodation, and his test results demonstrated an "average range of functioning."

79. Mr. Roe requested reconsideration of LSAC's denial, submitting the results of an additional reading comprehension test that documented Mr. Roe's reading problems and recommended that he receive an accommodation of time and a half (150 percent).

80. After reconsideration, LSAC stood by its previous decision to deny accommodation.

Raymond Banks

81. Raymond Banks, a resident of San Francisco (County of San Francisco), requested that defendant make accommodations for the February 2011 LSAT at San Francisco State University.

82. Mr. Banks had a longstanding and severe injury to his shoulder muscle. As a result of this injury, Banks suffered from nerve damage, carpal tunnel syndrome, and chronic pain, all of which limited his ability to write.

83. Mr. Banks requested five additional minutes to complete each multiple-choice test section of the LSAT, 10 additional minutes on the writing sample section, five-minute breaks between each test section, a large table to write on, and permission to wear a splint on his wrist.



1 91. Collins asked LSAC to reconsider its decision to deny him double time. LSAC stood
2 by its previous decision that time and a half was appropriate.

3 **Rodney DeComo-Schmitt**

4 92. Rodney DeComo-Schmitt, a resident of Marin County, requested that defendant make
5 accommodations for the October 2010 LSAT offered at Sonoma State University.

6 93. Mr. DeComo-Schmitt suffers from a reading disorder, causing a significant
7 discrepancy between his verbal abilities and his visual-spatial abilities, especially under timed
8 conditions.

9 94. Mr. DeComo-Schmitt requested time and a half (150 percent) on the multiple-choice
10 sections of the exam, extra rest and break time, and permission to use a computer for the writing
11 sample.

12 95. In support of his request, Mr. DeComo-Schmitt submitted a thorough
13 psychoeducational assessment and proof that he had received time and a half (150 percent) on his
14 SAT exam.

15 96. LSAC at first refused to consider Mr. DeComo-Schmitt's request for reconsideration,
16 asserting that it had been submitted past the deadline for the October 2010 exam. Later, LSAC denied
17 any accommodation to Mr. DeComo-Schmitt for the December 2010 exam, asserting that the
18 documentation he had submitted did not demonstrate a limitation of a major life activity which
19 affected his ability to take the LSAT.

20 97. Mr. DeComo-Schmitt requested reconsideration of LSAC's decision, submitting a
21 letter from his psychologist contending that LSAC had misinterpreted the psychological testing.

22 98. LSAC stood by its denial of accommodation, informing Mr. DeComo-Schmitt that he
23 was registered for the December 2010 LSAT as a standard test taker.

24 **Andrew redacted**

25 99. Andrew redacted, a Saratoga resident (Santa Clara County), requested that defendant
26 make accommodations for the December 2010 LSAT offered at Santa Clara University.

27



1 100. As a child, Andrew [redacted] was in a car accident and suffered a traumatic brain
2 injury, which significantly impacted his cognitive abilities, memory, and attention. At the time that he
3 applied for the LSAT, Andrew [redacted] had been diagnosed with a reading disorder and a learning
4 disorder (weak short-term auditory memory).

5 101. Andrew [redacted] requested that defendant accommodate him by granting double
6 time on the multiple choice and writing sample sections of the LSAT, and additional break and rest
7 time.

8 102. In support of his request, Andrew [redacted] submitted a complete psychoeducational
9 assessment documenting his disability and need for accommodation, copies of an Individualized
10 Educational Plan (IEP) from his high school showing that he had received extended time on tests, and
11 proof that he had received accommodation for the SAT.

12 103. On October 18, 2012, LSAC notified Andrew [redacted] that it would provide him
13 with time and a half (150 percent) for the multiple choice and writing sample sections of the LSAT,
14 instead of the double time that he had requested. LSAC did approve the extra rest and break time,
15 explaining that it had fully considered the materials that Andrew [redacted] had submitted, but “it is
16 our judgment that the alternative accommodations you have been granted are appropriate and
17 reasonable for your documented disability.”

18 104. With the assistance of his psychologist, Andrew [redacted] asked LSAC to reconsider
19 its decision to deny him double time. LSAC replied that it was too late to reconsider any decision
20 related to the December 2010 test.

21 **Elizabeth Hennessey-Severson**

22 105. Elizabeth Hennessey-Severson, a resident of San Francisco (San Francisco County),
23 requested that defendant make accommodations for the June 2011 LSAT at University of California,
24 Hastings College of the Law.

25 106. Ms. Hennessey-Severson has reading, written expression and mathematics disorders,
26 and ADHD. These conditions impair her working memory and her ability to plan, organize, and
27 devote sustained attention to language-based tasks, particularly reading.



Caroline Lee

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2 133. Caroline Lee, a resident of Oakland (Alameda County), requested that defendant make
3 accommodations for the December 2010 LSAT offered in the City of Oakland.

4 134. Ms. Lee suffers from ADHD and a reading disorder, causing her reading to be labored
5 and excessively slow, and impairing her short-term memory.

6 135. Ms. Lee requested time and a half (150 percent) on the LSAT multiple choice and
7 writing sample, as well as extended breaks during the exam, a quiet testing environment, and the use
8 of a laptop to compose all written work.

9 136. In support of her request, Ms. Lee submitted proof that she had received extended
10 testing time of 150 percent while a student at City College of San Francisco (CCSF) and that she had
11 taken the SAT and ACT with accommodations. She also submitted a psychoeducational assessment
12 that had been performed while she was a student at CCSF.

13 137. LSAC replied in writing to Ms. Lee that she needed to submit additional
14 documentation in order for her request to be considered, asking for: “[t]esting results and a full
15 diagnostic report from a comprehensive up-to-date psychoeducational/neuropsychological assessment
16 that comply with the Law School Admissions Council, Inc. Guidelines for Documentation of
17 Cognitive Impairments.”

18 138. Ms. Lee then obtained and submitted a full psychoeducational evaluation in February
19 2011, which documented her ADHD and reading disorder. Her psychologist recommended that she
20 receive 150 percent extended time, as well as the other previously requested accommodations.

21 139. LSAC then requested that Ms. Lee submit several additional documents and reports.
22 Ms. Lee did so.

23 140. In April 2011, defendant denied all of Ms. Lee’s requested accommodations,
24 informing her that: her performance on academic measures was commensurate with her ability,
25 negating a finding of impairment; her documentation failed to support the diagnosis of an attention
26 disorder; and her request for additional time on the writing sample was not considered because her
27 psychologist had not administered the right tests.



1 141. Ms. Lee requested that LSAC reconsider its denial of accommodation. This request
2 was accompanied by a letter from her psychologist, who contended that LSAC had misinterpreted the
3 psychoeducational assessment.

4 142. After reconsideration, LSAC stood by its initial decision to deny accommodations.

5 **Andrew Quan**

6 143. Andrew Quan, a resident of Hayward (Alameda County), requested accommodation
7 for the October 2011 LSAT offered at the University of California, Santa Cruz.

8 144. Mr. Quan has ADHD, a visual-motor integration deficit with slow processing speed,
9 hypotonia, and dysgraphia.

10 145. Mr. Quan requested that LSAC provide him with the accommodations of double time
11 on the multiple choice and writing sample portions of the exam, 10-minute breaks between each
12 section of the test, and the use of a computer for the writing sample.

13 146. In support of his request, Mr. Quan submitted to LSAC proof that he had been
14 accommodated with the use of a computer on his ACT exams. He also submitted a 2008
15 psychoeducational assessment from high school, showing that Mr. Quan suffered from "significant
16 deficits in visual-motor integration and fine motor skills." Included within that assessment was a
17 2008 IEP documenting dysgraphia, attention deficit, visual processing, and sensory motor skills
18 disorders which qualified him for special educational services, the use of a laptop computer, a scribe,
19 and extra examination time.

20 147. LSAC requested that Mr. Quan provide further documentation to support his request,
21 including "testing results and a full diagnostic report from a comprehensive up-to-date
22 psychoeducational/neuropsychological assessment that comply with [LSAC Guidelines]."

23 148. Mr. Quan contested LSAC's need for additional documentation, asserting that it was
24 unnecessary, unaffordable, and burdensome.

25 149. LSAC responded that if Mr. Quan wanted any accommodation in the future, he would
26 need to submit "substantive documentation to support your request for your hypotonia/dysgraphia
27 disorders."



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Stephen Semos

150. Stephen Semos, a resident of Rancho Palos Verdes (Los Angeles County), requested that defendant make accommodations for the December 2010 LSAT at Whittier Law School (Costa Mesa).

151. Mr. Semos has ADHD and dysgraphia, which significantly impair his reading, writing, organization, and general academic performance.

152. Mr. Semos requested time and a half (150 percent) on both the multiple-choice and writing sample portions of the exam, additional break time of five to eight minutes.

153. In support of his request, Mr. Semos submitted proof that he had received: accommodations on the SAT; an IEP from the Palos Verdes Peninsula Unified School District identifying Mr. Semos as learning disabled; a letter verifying that he had received accommodations while a student at the University of California, Irvine, of time and a half (150 percent) on tests; and a complete psychoeducational assessment by his doctor, a neuropsychologist.

154. LSAC's first response was to ask Mr. Semos to provide additional documentation in order to consider his accommodation request, including a full report of two particular tests for cognitive disabilities, the Nelson-Denny Reading Test (NDRT) and the Conner's Continuous Performance Test-II. LSAC also informed Mr. Semos that the deadline for the December 2010 LSAT had passed, but that he could request accommodation for future exams.

155. Mr. Semos then submitted his documentation for the February 2011 LSAT.

156. In response, LSAC denied all of Mr. Semos' requests for accommodation on the basis that his test scores were generally commensurate with his abilities and thus did not demonstrate a learning disability.

157. Mr. Semos' neuropsychologist requested that LSAC reconsider its denial. Mr. Semos' doctor wrote: "Your denial letter written to Mr. Semos selectively highlighted the above average scores and thereby masked the patterns of deficits in processing speed and fine motor speed noted in my neuropsychological report."



1 181. In support of this request, Mr. Whitney submitted medical forms from four different
2 doctors, each of whom supported his need for extra testing time. Dr. Larry Snyder explained:
3 “Patient has significant fatigue due to medications taken for previous spinal injury - this will affect
4 his performance in TIMED conditions.” Dr. Carol Jessop wrote that, due to Mr. Whitney’s spinal
5 cord injury with chronic, neuropathic pain, he needed extra time to compensate for the effects of the
6 pain medication which cause fatigue. Dr. Jessop explained: “This is a significant problem for Austin
7 Whitney as he is taking medications . . . that cause him to be sleepy and fatigued. This drowsiness
8 makes him slower in his response to test questions. If an exam has a time limit, he will definitely
9 need extra time to complete it.”

10 182. LSAC then granted Mr. Whitney the extra break time that he requested, and agreed to
11 provide a wheelchair accessible testing site, but denied his request for extra testing time. “If you
12 choose to have your cognitive disorder (alluded to by Carol Jessop, MD) considered,” defendant
13 wrote, “you must provide a current psychoeducational/neuropsychological assessment or
14 neuropsychological evaluation as per our Guidelines for Documentation of Cognitive Impairments.”

15 183. Mr. Whitney asked defendant to reconsider its decision to deny additional testing time,
16 and three of his doctors wrote to LSAC in support of his request.

17 a. Dr. Snyder wrote, “His pain and spacticity are a constant distraction and put
18 him at a significant disadvantage as a test taker. In addition, the medication he is taking causes
19 significant fatigue and makes it difficult to concentrate. The medication side effects do not impair
20 cognition but can slow processing speed. For these reasons, he should be afforded extra time when
21 taking this standardized test.”

22 b. Dr. Jessop wrote, “I would like to emphasize that the nature of Mr. Whitney’s
23 condition is physiological (pain issues) and NOT cognitive or due to a learning disorder. Our request
24 for extra time on the exam is based solely on physiological effects of chronic, severe neuropathic
25 pain, and the fatiguing side effects of pharmaceutical pain killers. Thus, because he doesn’t have a
26 learning disability, I feel strongly that neuropsychological or psychoeducational testing would be
27 irrelevant in his case.”



1 c. Dr. Hedelman wrote, "Patient's significant impacts on concentration, reading,
2 writing, ability to attend class is secondary to his unpredictable, severe neuropathic pain and the
3 associated pain management medications. Patient does not have an underlying cognitive impairment
4 requiring neuropsych[ological] testing."

5 184. LSAC refused to reconsider its decision, responding: "We have no objective evidence
6 to support Dr. Carol Jessop, MD's conclusion that your thought processes are not as fast as they
7 could be without medication."

8 185. In 2011, at LSAC's behest, Mr. Whitney was evaluated by a psychologist, who
9 determined that he required double time on examinations due to the effect that his pain medication
10 was having on his cognitive abilities.

11 186. In response to a second accommodation request by Mr. Whitney with the
12 psychologist's report as supporting documentation, LSAC awarded him 10 additional minutes on
13 each section of the exam. LSAC provided no rationale for denying his request for double time.

14 **FIRST CLASS CAUSE OF ACTION**

15 **Unlawful Consideration of Mitigation Measures**

16 **(42 U.S.C. § 12102(4)(E)(1)(i)(I))**

17 187. The DFEH realleges and incorporates by reference each and every allegation
18 contained in paragraphs 1 through 186, inclusive, as if fully set forth herein.

19 188. The ADA, 42 U.S.C. § 12102(4)(E)(1)(i)(I), requires that "any determination of
20 whether an impairment substantially limits a major life activity shall be made without regard to the
21 ameliorative effects of mitigating measures such as medication." The ADA is incorporated into the
22 Unruh Act by Civil Code section 51, subdivision (f).

23 189. By requiring applicants to take the medication prescribed for their disabilities while
24 being evaluated for accommodations or explain their failure or refusal to do so, LSAC violates the
25 rights of class members under the FEHA, Unruh Act, and ADA,

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1 the individual's aptitude or achievement level or whatever other factor the examination purports to
2 measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills." (28
3 C.F.R. § 36.309.)

4 195. By adhering to a blanket policy of annotating scores taken under extended time
5 conditions, defendant is communicating to law schools that it does not know whether or not the
6 applicants' exam results accurately reflect aptitude or achievement. Therefore, LSAC is breaching its
7 duty under the FEHA, Unruh Act, and ADA to ensure that the examination results accurately reflect
8 the individual's aptitude or achievement level. (28 C.F.R. § 36.309(b)(1)(i).)

9 196. As a direct result of the unlawful practices of defendants as alleged herein, class
10 members have incurred out of pocket losses, including test registration fees and medical bills, in an
11 amount to be proven at trial.

12 197. As a further and direct result of the unlawful practices of defendants as alleged herein,
13 class members have suffered emotional distress, anxiety, lost opportunity, frustration, humiliation,
14 and loss of dignity and self-esteem, in an amount to be proven at trial.

15 198. Defendants have engaged in, and by their refusal to comply with the law, have
16 demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination
17 described herein unless and until they are enjoined, pursuant to the police power granted by
18 Government Code sections 12920 and 12920.5, and pursuant to section 12974, from failing or
19 refusing to comply with the mandates of the FEHA, Unruh Act, and the ADA. Unless and until
20 defendants are enjoined from failing or refusing to comply with the mandates of these laws, class
21 members' right to full and equal access to places of public accommodation will continue to be
22 violated. Plaintiff lacks any plain, speedy, adequate remedy at law to prevent such harm, injury and
23 loss, which will continue until the court enjoins the complained of unlawful conduct and grants other
24 affirmative relief as prayed for herein.

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THIRD CLASS CAUSE OF ACTION

Coercion, Intimidation, Threats, or Interference with ADA Rights - Flagging

(42 U.S.C. § 12203)

199. The DFEH realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 186, inclusive, as if fully set forth herein.

200. The ADA makes it unlawful to “coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, any right granted or protected by this Act.” (42 U.S.C. § 12203.)

201. LSAC’s policy of annotating tests scores administered under extended time conditions discourages applicants from seeking such an accommodation, and punishes those who receive it, in violation of the FEHA, Unruh Act, and ADA.

202. As a direct result of the unlawful practices of defendants as alleged herein, class members have incurred out of pocket losses, including test registration fees and medical bills, in an amount to be proven at trial.

203. As a further and direct result of the unlawful practices of defendants as alleged herein, class members have suffered emotional distress, anxiety, lost opportunity, frustration, humiliation, and loss of dignity and self-esteem, in an amount to be proven at trial.

204. Defendants have engaged in, and by their refusal to comply with the law, have demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination described herein unless and until they are enjoined, pursuant to the police power granted by Government Code sections 12920 and 12920.5, and pursuant to section 12974, from failing or refusing to comply with the mandates of the FEHA, Unruh Act, and the ADA. Unless and until defendants are enjoined from failing or refusing to comply with the mandates of these laws, class members’ right to full and equal access to places of public accommodation will continue to be violated. Plaintiff lacks any plain, speedy, adequate remedy at law to prevent such harm, injury and loss, which will continue until the court enjoins the complained of unlawful conduct and grants other affirmative relief as prayed for herein.



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FOURTH CAUSE OF ACTION – REAL PARTIES IN INTEREST ONLY

Denial of Reasonable Accommodation

(42 U.S.C. § 12189 and 28 C.F.R. § 36.309(b)(1)(iv))

205. The DFEH realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 186, inclusive, as if fully set forth herein.

206. The ADA requires that any person offering examinations related to post-secondary education or profession “shall offer such examinations or courses in a place and manner accessible to persons with disabilities.” (42 U.S.C. § 12189.) As part of this duty to make an examination accessible, the regulations require that any documentation requested be “reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested.” (28 C.F.R. § 36.309(b)(1)(iv).)

207. LSAC breached its duty to make the LSAT accessible to people with disabilities by requiring excessive amounts of documentation and denying a reasonable accommodation to each real party in interest, in violation of the FEHA, Unruh Act, and ADA.

208. As a direct result of the unlawful practices of defendants as alleged herein, real parties have incurred out of pocket losses, including test registration fees and medical bills, in an amount to be proven at trial.

209. As a further and direct result of the unlawful practices of defendants as alleged herein, real parties have suffered emotional distress, anxiety, lost opportunity, frustration, humiliation, and loss of dignity and self-esteem, in an amount to be proven at trial.

210. Defendants have engaged in, and by their refusal to comply with the law, have demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination described herein unless and until they are enjoined, pursuant to the police power granted by sections 12920 and 12920.5, and pursuant to section 12974, from failing or refusing to comply with the mandates of the FEHA, Unruh Act, and the ADA. Unless and until defendants are enjoined from failing or refusing to comply with the mandates of these laws, class members’ right to full and equal access to places of public accommodation will continue to be violated. Plaintiff lacks any plain,



1 speedy, adequate remedy at law to prevent such harm, injury and loss, which will continue until the
2 court enjoins the complained of unlawful conduct and grants other affirmative relief as prayed for
3 herein.

4 **FIFTH CAUSE OF ACTION – REAL PARTIES IN INTEREST ONLY**

5 **Coercion, Intimidation, Threats, or Interference with ADA Rights**

6 **(42 U.S.C. § 12203)**

7 211. The DFEH realleges and incorporates by reference each and every allegation
8 contained in paragraphs 1 through 186, inclusive, as if fully set forth herein.

9 212. The ADA makes it unlawful to “coerce, intimidate, threaten, or interfere with any
10 individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed,
11 any right granted or protected by this Act.” (42 U.S.C. § 12203.)

12 213. LSAC’s policies and patterns of requiring unreasonable types and excessive amounts
13 of documentation to support each accommodation request violate the FEHA, Unruh Act, and the
14 ADA, by unlawfully coercing, intimidating, threatening, or interfering with real parties’ exercise or
15 enjoyment of their right to reasonable accommodation on the LSAT.

16 214. As a direct result of the unlawful practices of defendants as alleged herein, real parties
17 have incurred out of pocket losses, including test registration fees and medical bills, in an amount to
18 be proven at trial.

19 215. As a further and direct result of the unlawful practices of defendants as alleged herein,
20 real parties have suffered emotional distress, anxiety, lost opportunity, frustration, humiliation, and
21 loss of dignity and self-esteem, in an amount to be proven at trial.

22 216. Defendants have engaged in, and by their refusal to comply with the law, have
23 demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination
24 described herein unless and until they are enjoined, pursuant to the police power granted by
25 Government Code sections 12920 and 12920.5, and pursuant to section 12974, from failing or
26 refusing to comply with the mandates of the FEHA, Unruh Act, and the ADA. Unless and until
27 defendants are enjoined from failing or refusing to comply with the mandates of these laws, class



1 members' right to full and equal access to places of public accommodation will continue to be
2 violated. Plaintiff lacks any plain, speedy, adequate remedy at law to prevent such harm, injury and
3 loss, which will continue until the court enjoins the complained of unlawful conduct and grants other
4 affirmative relief as prayed for herein.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the DFEH prays that the court issue a judgment in favor of the DFEH, real
7 parties in interest, and members of the class, and order defendants to provide the following relief:

8 **AS TO REAL PARTIES IN INTEREST**

9 217. Provide free and accommodated testing at the next available testing date in each real
10 party's area, with accommodations as initially requested by that real party;

11 218. Provide a letter to each real party explaining that their LSAT scores used for their law
12 school applications during the relevant period may not have provided accurate measures of their
13 acquired reading and verbal reasoning skills, because LSAC did not reasonably accommodate their
14 disabilities.

15 **AS TO ALL MEMBERS OF THE CLASS,
16 INCLUDING THE REAL PARTIES IN INTEREST**

17 219. Cease and desist from consideration of mitigation measures such as medication when
18 making a determination as to whether an applicant needs an accommodation.

19 220. Cease and desist from specially annotating LSAT scores tests scores administered
20 under extended time conditions.

21 221. Include all test scores in the percentile ranking process and provide a ranked percentile
22 to each test taker.

23 222. Immediately undertake a validation study to determine if LSAC scores under
24 accommodation of extra time for cognitive disabilities are an equal measure of aptitude or
25 achievement as compared to non-accommodated scores.

26 223. Reduce to a discrete and reasonable amount the documentation required to verify an
27 applicant's need for an accommodation, especially for so-called cognitive disabilities, consistent with



1 the ADA's requirement that such documentation be "reasonable" and Congress' mandate that "the
2 question of whether an individual's impairment is a disability under the ADA should not demand
3 extensive analysis." (28 C.F.R. § 36.309(b)(1)(iv); 42 U.S.C. § 1201 [Pub. L. No. 110-325, § 2(b)(5)
4 (Sept. 25, 2008) 122 Stat. 3553].)

5 224. Create a more streamlined and user-friendly process for considering reasonable
6 accommodation requests, that includes notice to applicants, within a reasonable period of time,
7 whether or not requested accommodations have been granted, and provides a fair process for timely
8 reconsideration of any denial of requested accommodations.

9 225. Pay actual damages according to proof for each Unruh Act violation up to a maximum
10 of three times the actual damages but in no case less than \$4,000 per violation.

11 226. Provide written proof to the Department of the nature and extent of LSAC's
12 compliance with all requirements of the court's order within 100 days of its effective date; and,

13 227. Provide such other relief as the Court deems to be just and proper.

14

15 Dated: March 15, 2012

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

16

NELSON CHAN
Chief Counsel

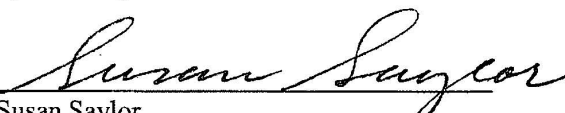
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