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6	Attorneys for the DFEH	
7	[Filing fee exempt, Gov. Code, § 6103]	BY FAX
8	IN THE SUPERIOR COURT OF	
9	IN AND FOR THE COL	
. 10	IN AND FOR THE CO	CITT OF ALAMEDA
11	THE DEPARTMENT OF FAIR EMPLOYMENT)	
	AND HOUSING, an agency of the State of ()	Case NHG 12621479
12	California,)	GROUP AND CLASS ACTION
13	Plaintiff,)	COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
14	vs.)	
15	LAW SCHOOL ADMISSION COUNCIL, INC.,	[FEHA, Gov. Code, § 12900 et seq. and
. 16	a Delaware tax exempt corporation, and DOES) ONE through TEN, inclusive,)	Unruh Civil Rights Act, Civ. Code, § 51 et seq.]
17) Defendants.)	
18)	Jury Trial Demanded
19	JOHN DOE, JANE DOE, PETER ROE,) RAYMOND BANKS, KEVIN COLLINS,)	
20	RODNEY DECOMO-SCHMITT, ANDREW	
21	SEVERSON, OTILIA IOAN, ALEX JOHNSON,) NICHOLAS JONES, CAROLINE LEE,	
22	ANDREW QUAN, STEPHEN SEMOS, GAZELLE TALESHPOUR, KEVIN	
23	VIELBAUM, AUSTIN WHITNEY, and all other	
24	similarly situated individuals,	
25	Real Parties in Interest.)	
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FE&H Automated	Dept. Fair Empl. & Hous. v. Law School Group and Class Action Complaint	Admission Council, Inc. (Whitney et al.) for Damages and Injunctive Relief

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

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PARTIES

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

Each real party in interest, 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, and Austin Whitney, applied to LSAC for reasonable accommodations on the Law
 School Admissions Test (LSAT) between January 19, 2009 and February 6, 2012. Each real party
 was denied a reasonable accommodation, either in whole or in part, within this same time frame. At
 the time of applying for reasonable accommodations, each real party resided in California.

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

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

5. DOES ONE through TEN, inclusive, are sued pursuant to Code of Civil Procedure
section 474. The DFEH is ignorant of the true names or capacities of the defendants sued herein
under fictifious names DOES ONE through TEN, inclusive, and will amend this complaint to allege
their true names and capacities when the information is ascertained.

8 6. The DFEH is informed and believes and thereon alleges that, at all times mentioned
9 herein, each and every defendant is and was, in doing the things complained of herein, the agent or
10 employee of their co-defendants herein and was acting within the scope of said agency, service,
11 employment, or representation, and that each and every defendant herein is jointly and severally
12 responsible and liable to the real party for the damages hereinafter alleged.

GROUP ACTION ALLEGATIONS

7. The DFEH brings this case on behalf of a group of 17 named individuals.

CLASS ACTION ALLEGATIONS

Class Definition: The DFEH also brings this case as a class action, on behalf of: all 16 8. 17 disabled individuals in the State of California who requested a reasonable accommodation for the 18 Law School Admission Test (LSAT) from January 19, 2009 to February 6, 2012. The DFEH alleges that everyone within this class was subjected to LSAC's unlawful policies of discouraging requests 19 for accommodation, requiring excessive documentation, and requesting unlawful information about 20 mitigation measures. Within this class is a subclass of people who took the LSAT with the condition 21 of extended time and were thereafter subjected to discriminatory treatment and retaliation because of 22 this accommodation. These two classes are defined as follows: 23

a. <u>Unlawful Discouragement and Consideration of Mitigation Measures</u>: All
disabled individuals in the State of California who requested a reasonable accommodation for the
LSAT from January 19, 2009 to February 6, 2012.

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b. <u>Differential Treatment and Retaliation Against Examinees Granted Extended</u> <u>Time</u>: 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.

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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.

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

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

21 12. Commonality: There exists for the class a well-defined community of interest such
22 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.

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

JURISDICTION AND VENUE

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

This action arises under the FEHA, specifically Government Code section 12948, 7 16. 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 et seq.) also constitutes a violation of the Unruh Act. (Civ. Code, § 51, subd. (f).) 11

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At all times relevant to this complaint, LSAC was a business establishment as defined 17. 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.

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

19. On May 9, 2010, Jane Doe filed a verified complaint of discrimination in writing with 21 the Department pursuant to Government Code section 12960, alleging that LSAC unlawfully denied 22 her full and equal access to the LSAT within the preceding one year, in violation of the FEHA and 23 24 Unruh Act. A redacted copy of this complaint is attached hereto as Exhibit 1.

On January 12, 2010, Nicholas Jones filed a verified complaint of discrimination in 25 20. 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 27

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

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

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

30. On October 7, 2011, Gazelle Taleshpour filed a verified complaint of discrimination in
writing with the Department pursuant to Government Code section 12960, alleging that LSAC
unlawfully denied her full and equal access to the LSAT within the preceding one year, in violation
of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
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31. On October 11, 2011, Peter Roe filed a verified complaint of discrimination in writing
 with the Department pursuant to section Government Code section 12960, alleging that LSAC
 unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
 of the FEHA and Unruh Act. A redacted copy of this complaint is attached hereto as Exhibit 10.

32. On October 11, 2011, Stephen Semos filed a verified complaint of discrimination in
writing with the Department pursuant to section Government Code section12960, alleging that LSAC
unlawfully denied him full and equal access to the LSAT within the preceding one year, in violation
of the FEHA and Unruh Act. A true and correct copy of this complaint is attached hereto as Exhibit
11.

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

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

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

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

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

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

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

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

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

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43. The Department has withdrawn its accusation and has timely filed this complaint pursuant to Government Code section 12965, subdivision (c)(2).

The harm that is the subject of this complaint occurred throughout the State of 3 44. California. Three of the real parties in interest lived in the County of Alameda at the time that they were denied full and equal accommodations in the testing process.

45. The amount of damages sought by this complaint exceeds the minimum jurisdictional 6 7 limits of this court.

FACTUAL ALLEGATIONS

The Law School Admissions Test (LSAT)

The LSAT is a half-day, standardized test administered four times each year at 46. 10 designated testing centers throughout the State of California. It purports to provide a standard 11 measure of acquired reading and verbal reasoning skills that law schools use to assess applicants. 12

13 47. The test consists of five 35-minute sections of multiple-choice questions. A 35-minute writing sample is administered at the end of the test. Defendant does not score the writing sample, but 14 15 sends it on to the law schools with the scores.

The LSAT is designed to measure reading and comprehension skills, the ability to 16 48. 17 organize and manage information, and analytical skills such as evaluation and criticism.

49. The three multiple-choice question types in the LSAT are labeled reading 18 comprehension, analytical reasoning, and logical reasoning. All candidates take one additional 19 20 multiple-choice section, which is experimental.

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LSAC Business within the State

LSAC offers and administers its LSAT at multiple locations in the State of California 50. four times a year, typically at law schools and universities. Applicants pay a test registration fee of \$139 after creating an online account and filling out the online application form. Additional fees charged by LSAC include \$68 for late registration, \$35 to change the test date, and so on. 51. LSAC pays local proctors to administer the exam on site. LSAC also pays for

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accommodations at the site, such as readers or scribes.

LSAC offers a Credential Assembly Service to law schools and law school applicants, 1 52. which streamlines the law school admission process by allowing transcripts, recommendations and 2 evaluations to be sent one time to LSAC. LSAC, in turn, summarizes and combines a law school 3 applicant's LSAT score, writing samples, transcripts, recommendations, and evaluations into a report 4 5 to an applicant's prospective law schools. The Credential Assembly Service also includes access through an applicant's LSAC account to electronic applications for all ABA-approved law schools. 6 Applicants are charged \$124 to register for the Credential Assembly Service and \$16 for law school 7 8 reports.

9 53. LSAC provides a series of LSAT preparatory guides, manuals and compilations of
 10 sample LSATs for purchase via its Web site, which materials range in price from \$8 to \$39.96. LSAC
 11 also sells a guide to ABA-approved law schools for \$26 and a skill readiness inventory for \$29.95.
 12 The LSAC Accommodation Request Process

13 54. LSAC requires candidates requesting a reasonable accommodation to utilize its
14 standard forms and procedures. Applicants making an accommodation request for a so-called
15 cognitive or psychological impairment are required to provide psychoeducational/

16 neuropsychological testing and a full diagnostic report, including comprehensive aptitude and17 achievement testing.

18 55. LSAC requires each applicant to disclose whether he or she took prescribed
19 medication during the evaluation process and to provide an explanation for any failure or refusal to
20 take the medication.

56. LSAC has a policy whereby examinees who complete the LSAT under a disabilityrelated accommodation involving additional test time receive a notation on their score report
indicating that their exam scores were earned under non-standard time conditions. When reporting
these LSAT scores to the law schools, defendant advises the schools that these examinees' scores
"should be interpreted with great sensitivity and flexibility."

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1	57. In addition, scores from tests taken under extended time conditions are not averaged
2	with other scores to produce a percentile ranking as are other test scores. Instead, extended time
3	scores are reported individually.
4	John Doe
5	58. John Doe, a resident of Rancho Santa Fe (San Diego County), requested that
6	defendant make accommodations for the December 2010 LSAT at Saddleback College.
7	59. Mr. Doe was diagnosed with attention deficit disorder (ADD) at age 13. In addition, in
8	2010 he became extremely ill with a bacterial infection and was hospitalized for approximately two
9	months, spending several weeks in the Intensive Care Unit in a medically-induced coma. During this
10	illness he suffered a severe brain edema, which left him with residual neurological impairments.
11	60. Mr. Doe requested time and a half (150 percent) on the multiple choice and writing
12	sections for the December 2010 LSAT.
13	61. In support of his request, Mr. Doe submitted medical documentation verifying his
14	hospitalization, and a complete psychoeducational assessment, which reported multiple diagnoses:
15	ADD, a learning disability (spelling), and a "[r]ecent bacterial infection with sustained induced coma
16	and residual impairments."
17	62. LSAC refused to grant Mr. Doe's requested accommodation and instead asked for "a
18	detailed explanation regarding the nature, severity, treatment, and extent of [his] disorder at the
19	present time and it [sic] impact on your ability to take the LSAT."
20	63. Mr. Doe then submitted additional medical documentation indicating that he had
21	"suffered a serious illness and developed marked weaknesses and encephalopathy. He continues to
22	have fatigability and impaired concentration." His doctor recommended that Mr. Doe be granted
23	increased time to complete the LSAT.
24	64. LSAC then demanded that Mr. Doe's psychologist provide "a current update of [his]
25	cognitive status" before making a decision on his accommodation request.
26	65. Mr. Doe and his doctor disputed the need for an updated psychoeducational
27	assessment just three months after the first report was completed. His doctor responded, "I would
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reiterate that Mr. Doe's intelligence is much as it was when he was originally seen (10/26/10) and with IQ scores as noted in that report, all within the average range with the exception of Processing 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.

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.

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

69. Ms. Doe requested that LSAC accommodate her with time and a half (150 percent) on
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.

72. Ms. Doe reapplied for accommodations on the June 2010 LSAT, requesting the same
accommodation of time and a half (150 percent) on the multiple choice and writing sample sections.
73. LSAC also denied this request. When Ms. Doe asked for an explanation for the denial,
defendant replied in writing that it was "not obligated to provide accommodations that are not
warranted or supported by the documentation."

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Peter Roe

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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.

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

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

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

12 78. LSAC denied Mr. Roe any accommodation, noting that he had neglected to submit a
13 "timed reading comprehension measure" in conformance with LSAC's guidelines, he had no history
14 of educational accommodation, and his test results demonstrated an "average range of functioning."
15 79. Mr. Roe requested reconsideration of LSAC's denial, submitting the results of an
16 additional reading comprehension test that documented Mr. Roe's reading problems and

17 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.

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1	84. Real party Banks submitted medical documentation in support of his request, as well
. 2	as proof that he had received accommodation as a student at the University of California, Berkeley
3	for time and a half (150 percent) on all exams and quizzes.
4	85. LSAC denied all of Mr. Banks' requests, other than permitting him to wear a hand
5	splint "as a courtesy." When Mr. Banks asked LSAC for an explanation of the denial, LSAC
6	responded in writing that "[t]he documentation provided did not support your request for the
7	additional accommodations you requested."
8	Kevin Collins
- 9	86. Kevin Collins, a resident of Woodland Hills (Los Angeles County), requested that
10	defendant make accommodations for the February 2011 LSAT at California State University,
11	Northridge.
12	87. Mr. Collins suffers from two learning disorders: disorder of written expression and a
13	reading disorder. He has perceptual-organizational impairments, making it significantly more
14	difficult for him to process simple or routine visual material without making errors, as compared to
15	his peers.
16	88. Collins requested the accommodations of double time on multiple choice and writing
17	sample sections of the LSAT, permission to use a computer and printer for the writing sample, and an
18	alternative, non-Scantron answer sheet.
19	89. In support of his request, Collins submitted proof that he had received time and a half
20	(150 percent) on the GRE and for exams at Claremont Graduate University. He also submitted a full
21	psychoeducational assessment report as requested by LSAC's guidelines.
22	90. Defendant's first response was to ask for additional information and inform Collins
23	that the deadline had passed for the February 2011 LSAT. Later, after Collins had submitted the
24	requested information and requested consideration for the June exam, defendant granted him the
25	accommodations of time and a half (150 percent) for the multiple choice and writing sample sections,
26	rather than the double time that he had requested. The rest of his requested accommodations was
27	granted.
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91. Collins asked LSAC to reconsider its decision to deny him double time. LSAC stood 1 by its previous decision that time and a half was appropriate. 2 3 **Rodney DeComo-Schmitt** Rodney DeComo-Schmitt, a resident of Marin County, requested that defendant make 92. 4 5 accommodations for the October 2010 LSAT offered at Sonoma State University. Mr. DeComo-Schmitt suffers from a reading disorder, causing a significant 93. 6 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 sections of the exam, extra rest and break time, and permission to use a computer for the writing 10 sample. 11 In support of his request, Mr. DeComo-Schmitt submitted a thorough 95. 12 psychoeducational assessment and proof that he had received time and a half (150 percent) on his 13 SAT exam. 14 LSAC at first refused to consider Mr. DeComo-Schmitt's request for reconsideration, 96. 15 asserting that it had been submitted past the deadline for the October 2010 exam. Later, LSAC denied 16 any accommodation to Mr. DeComo-Schmitt for the December 2010 exam, asserting that the 17 18 documentation he had submitted did not demonstrate a limitation of a major life activity which affected his ability to take the LSAT. 19 Mr. DeComo-Schmitt requested reconsideration of LSAC's decision, submitting a 20 97. letter from his psychologist contending that LSAC had misinterpreted the psychological testing. 21 22 98. LSAC stood by its denial of accommodation, informing Mr. DeComo-Schmitt that he was registered for the December 2010 LSAT as a standard test taker. 23 Andrew redacted 24 99. Andrew redacted, a Saratoga resident (Santa Clara County), requested that defendant 25 make accommodations for the December 2010 LSAT offered at Santa Clara University. 26 27 -16-Dept. Fair Empl. & Hous. v. Law School Admission Council, Inc. (Whitney et al.) Group and Class Action Complaint for Damages and Injunctive Relief

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

5 101. Andrew reclacted 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.

103. On October 18, 2012, LSAC notified Andrew redected that it would provide him
with time and a half (150 percent) for the multiple choice and writing sample sections of the LSAT,
instead of the double time that he had requested. LSAC did approve the extra rest and break time,
explaining that it had fully considered the materials that Andrew redacted had submitted, but "it is
our judgment that the alternative accommodations you have been granted are appropriate and
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.

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Elizabeth Hennessey-Severson

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

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

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107. Ms. Hennessey-Severson requested that LSAC accommodate her on the LSAT with a minimum of time and a half (150 percent) extra testing time, and by allowing her short breaks of 10 to 15 minutes between sections of the exam.

4 108. In support of her request, Ms. Hennessey-Severson submitted psychoeducational
5 assessment reports from 2002 and 2009. She also submitted proof that she had been accommodated
6 with time and a half (150 percent) on the SAT, and while she was a student at Dartmouth College.

7 109. Defendant denied all of Ms. Hennessey-Severson's requests for accommodation,
8 contending that she scored in the "very superior" and "high average" range in her psychoeducational
9 testing, and that her 2002 evaluation noted that she demonstrated a remarkable ability to compensate
10 for her learning disabilities, such that she was able to take honors courses and play high school sports.

11 110. Ms. Hennessey-Severson and her psychologist requested that LSAC reconsider its
12 decision to deny accommodation. Her psychologist wrote: "It is my professional opinion based on all
13 available evidence including comprehensive history, diagnostic interview, well established history of
14 early diagnosis, remediation, and later accommodations throughout high school and college, that Ms.
15 Hennessey has a standard learning disability that has a substantial impact on a major life function,
16 namely, her ability to read, write, and calculate efficiently, and that extended time for formal testing
17 is a reasonable accommodation for her disability."

111. After reconsideration, LSAC stood by its prior decision to deny Ms. Hennessey-Severson any accommodation.

Otilia Ioan

21 112. Otilia Ioan, a resident of San Jose (Santa Clara County), requested accommodation for
22 the December 2010 LSAT offered at Santa Clara University.

113. Ms. Ioan is quadriplegic. She is paralyzed in all four limbs and is unable to physically write without using a brace.

114. Ms. Ioan requested that LSAC provide her with double time on all sections of the test, an alternate answer sheet, the use of a scribe, and an additional break of 30 minutes between sections 3 and 4 of the test.

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115. In support of her request, Ms. Ioan submitted verification that she had received the accommodation of double time on tests while a student at De Anza College, and double time when taking the GRE.

4 116. LSAC asked Ms. Ioan to submit additional information from her doctor before it could
5 consider her request for accommodation. LSAC wrote: "Your evaluator needs to provide detailed
6 information regarding the nature, extent, severity, and treatment of your disorder and its functional
7 limitation on your ability to take the LSAT," defendant wrote.

117. Ms. Ioan's doctor supplied the additional information that LSAC requested.

9 118. Ms. Ioan wrote to LSAC requesting reconsideration of its decision to deny her double
10 testing time. LSAC stood by its previous decision.

Alex Johnson

12 119. Alex Johnson, a resident of Lake San Marcos (San Diego County), requested
 13 accommodations for the October 2010 LSAT offered at the University of Southern California.

14 120. Mr. Johnson is quadriplegic. He is unable to write or turn pages because his fingers are
15 paralyzed. He is unable to draw diagrams, underline text, or use a standard Scantron answer sheet.
16 121. Mr. Johnson requested 15 minutes of extra break time between each section of the

17 LSAT, and 120 additional minutes (more than triple time) on the multiple choice and writing sample18 sections.

19 122. In support of his request, Mr. Johnson submitted medical documentation of his
20 condition and need for accommodation, as well as verification from the University of Southern
21 California that he had received double time on his exams while a student there.

123. At first, LSAC refused to consider Mr. Johnson's accommodation request, because he was not registered to take the LSAT. Later, it granted Mr. Johnson time and a half (150 percent) on the multiple choice and writing sample sections, and 10 minutes of break time between each section. It agreed to provide Mr. Johnson with a scribe, and permitted him to use a computer for the writing sample.

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1	124. Mr. Johnson requested that LSAC reconsider his request for double time. His doctor
2.	wrote, "Double time is the least amount of time I should be allocated. It is also very hard to use a
3	scribe because of time limitations."
. 4	125. LSAC responded that it did not offer an untimed test, and that the documentation
5	submitted did not support Johnson's request.
6	Nicholas Jones
7	126. Nicholas Jones, a resident of Palm Desert (Riverside County), requested that
8	defendant provide him with an accommodation for the December 2009 LSAT offered at the
. 9	University of Laverne (Ontario).
10	127. Mr. Jones suffers from two distinct eye conditions. First, he has amblyopia or "lazy
11	eye" in his left eye, which impairs his visual processing. Second, he has posterior vitreous
12	detachments in his right eye, meaning that he has persistent floaters or spots, which obstruct his field
13	of vision. These conditions together impair Mr. Jones' reading speed and ability.
14	128. Mr. Jones requested time and a half (150 percent) on the multiple choice and writing
15	sample sections of the exam and five-minute breaks between each section.
16	129. In support of his request, Mr. Jones submitted medical forms filled out by his doctor,
- 17	an eye specialist.
18	130. LSAC refused to provide any accommodation to Mr. Jones, informing him that "[t]he
19	documentation provided did not reflect an impairment related to taking the Law School Admission
20	Test."
21	131. Mr. Jones requested that LSAC reconsider its decision denying him accommodations,
22	and asked it to provide further explanation. Mr. Jones' doctor wrote a letter supporting his request for
23	reconsideration, asserting that Jones' eye condition "substantially limits him in at least one major life
24	activity, reading."
25	132. After reconsideration, defendant stood by its prior decision to deny accommodation.
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Caroline Lee

133. Caroline Lee, a resident of Oakland (Alameda County), requested that defendant make 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.

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

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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
10	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,
20	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
23	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
20	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).

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

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

9 153. 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.

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

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

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

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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."



LSAC responded that the letter from Mr. Semos' neuropsychologist had arrived too 158. late to be considered for the February 2011 LSAT. LSAC wrote: "You remain registered to test as a standard test taker. No accommodations have been granted."

Gazelle Taleshpour

Gazelle Taleshpour, a resident of San Diego (San Diego County), requested that 159. 5 defendant make accommodations for the October 2010 LSAT offered at the University of San Diego. 6 Ms. Taleshpour has ADHD. She also suffers from osteopenia (bone loss) and chronic 7 160. pain in her neck and back as a result of treatment she had received for leukemia, a bone marrow 8 9 transplant, radiation, and chemotherapy.

Ms. Taleshpour requested that LSAC accommodate her with 30 extra minutes on the 10 161. multiple choice and writing sample portions of the exam, breaks of two to five minutes every half 11 hour so that she could stretch and alleviate pain, a high table, and a comfortable chair. 12

In support of her request, Ms. Taleshpour submitted documentation from her treating 13 162. medical doctor, her chiropractor, and her psychologist. She also provided LSAC with verification that 14 she had received time and a half (150 percent) on all tests and exams while a student at the University 15 16 of San Diego.

163. LSAC requested that Ms. Taleshpour provide additional documentation in support of 17 her accommodation request, including "[t]esting results and a full diagnostic report from a 18

psychoeducational/neuropsychological assessment that comply with Guidelines for Documentation of 19 20 Cognitive Impairments."

21 164. Ms. Taleshpour obtained and submitted the additional documentation that LSAC 22 requested. Her psychiatrist performed a full psychoeducational assessment, which diagnosed her with 23 ADHD, a reading disorder, and a learning disability (dyslexia). Her psychiatrist supported Ms. Taleshpour's request for double time and other accommodations. 24

25 165. LSAC only partially granted Ms. Taleshpour's request for accommodation, allowing her to sit or stand at a podium while taking the exam, and to bring a seat cushion or an adjustable 26 chair.

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	1	166. Ms. Taleshpour then resubmitted a request for accommodation for the December 2010
	2	LSAT: double time on multiple choice and writing sample; an alternate, non-Scantron answer sheet;
	3	use of a reader; an additional 15 minutes of rest time; and 15-minute breaks between sections.
	4	167. LSAC denied the request for additional accommodations beyond the two it had
	5	already granted, explaining to Ms. Taleshpour that her intelligence test scores were average and
	6	commensurate with her ability, meaning that no cognitive disability was apparent.
	7	168. Ms. Taleshpour requested that LSAC reconsider its denial of accommodation for extra
	8	time. Her psychologist supported the reconsideration request, contending that LSAC failed to
	9	recognize significant discrepancies in her reading speed and comprehension. "These significant
ž	10	difficulties provide psychometric evidence of the presence of a Learning Disability as described by
	11	the ADA," he wrote.
	12	169. LSAC stood by its prior decision to limit the accommodations made for Ms.
	13	Taleshpour: permission to sit or stand with a podium and to bring a seat cushion or an adjustable
	14	chair.
	15	Kevin Vielbaum
2	16	170. Kevin Vielbaum, a resident of San Mateo (San Mateo County), requested that
	17	defendant make accommodations for him in taking the June 2011 LSAT at the University of
	18	California, Hastings College of the Law.
	19	171. Mr. Vielbaum has a reading disorder (dyslexia), characterized by a significant
	20	difficulties with perceptual reasoning, working memory, and cognitive processing speed.
	21	172. Mr. Vielbaum requested that defendant accommodate him with time and a half (150
	22	percent) on the multiple choice section of the LSAT, double time on the writing sample, and
	23	permission to use a computer for the writing sample.
	24	173. In support of his request, Mr. Vielbaum submitted extensive records from his primary
	25	education at a special school for students with dyslexia, where he was granted accommodations of
	26	extended time and the use of a laptop and calculator.
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1	174. LSAC granted Mr. Vielbaum only the accommodation of using a computer, printer
2	and spell check for the writing sample. LSAC denied the accommodation of extra time, noting that
3	Mr. Vielbaum had not requested accommodation on the SAT, and that he had scored well on the tests
4	involved in his psychoeducational assessment. Defendant went on to explain that: "[y]our evaluator
5	notes you have difficulties with logical reasoning. Inasmuch as the Law School Admission Test is
6	designed to measure these skills, the accommodations requested (extended time on all examinations
7	that involve the solving of logic problems), would not be appropriate."
8	Austin Whitney
9	175. Austin Whitney, a resident of Contra Costa County, first requested accommodations
10	for the September 2009 LSAT offered at San Diego State University.
11	176. Mr. Whitney is paraplegic due to a spinal cord injury in 2007.
12	177. Mr. Whitney requested that defendant accommodate his disability with time and a half
13	(150 percent) on the multiple choice and writing sample sections of the LSAT, and a wheelchair
14	accessible testing location.
15	178. In support of his request, Mr. Whitney submitted medical records pertaining to his
16	2007 injury, verification from the University of California at Berkeley that he had received time and a
17	half (150 percent) for all exams and quizzes during his undergraduate studies, and a form filled out
18	by his doctor indicating that, because of his injury and surgeries, he suffered from "severe chronic
19	pain and radiating radicular nerve pain" for which Whitney took prescription medication that caused
20	drowsiness.
21	179. LSAC responded that Mr. Whitney's request for accommodation had been submitted
22	too late for the September 2009 test, and therefore he was registered as a standard test taker.
23	180. Mr. Whitney next requested accommodations for the June 2010 LSAT offered in
24	Berkeley at the California Ballroom. This time he requested that LSAC accommodate him with five-
25	minute breaks between sections, in addition to providing time and a half (150 percent) on the multiple
26	choice and writing sample sections and a wheelchair accessible testing site.
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In support of this request, Mr. Whitney submitted medical forms from four different 181. 1 doctors, each of whom supported his need for extra testing time. Dr. Larry Snyder explained: 2 3 "Patient has significant fatigue due to medications taken for previous spinal injury - this will affect his performance in TIMED conditions." Dr. Carol Jessop wrote that, due to Mr. Whitney's spinal 4 cord injury with chronic, nueropathic pain, he needed extra time to compensate for the effects of the 5 pain medication which cause fatigue. Dr. Jessop explained: "This is a significant problem for Austin 6 Whitney as he is taking medications . . . that cause him to be sleepy and fatigued. This drowsiness 7 makes him slower in his response to test questions. If an exam has a time limit, he will definitely 8 need extra time to complete it." 9

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.

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

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

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Dr. Hedelman wrote, "Patient's significant impacts on concentration, reading, 1 c. writing, ability to attend class is secondary to his unpredictable, severe neuropathic pain and the 2 associated pain management medications. Patient does not have an underlying cognitive impairment 3 requiring neuropsych[ological] testing." 4 5 184. LSAC refused to reconsider its decision, responding: "We have no objective evidence to support Dr. Carol Jessop, MD's conclusion that your thought processes are not as fast as they 6 could be without medication." 7 185. In 2011, at LSAC's behest, Mr. Whitney was evaluated by a psychologist, who 8 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 each section of the exam. LSAC provided no rationale for denying his request for double time. 13 FIRST CLASS CAUSE OF ACTION 14 15 **Unlawful Consideration of Mitigation Measures** (42 U.S.C. § 12102(4)(E)(1)(i)(I)) 16 The DFEH realleges and incorporates by reference each and every allegation 17 187. 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 whether an impairment substantially limits a major life activity shall be made without regard to the 20 ameliorative effects of mitigating measures such as medication." The ADA is incorporated into the 21 22 Unruh Act by Civil Code section 51, subdivision (f). 23 189. By requiring applicants to take the medication prescribed for their disabilities while being evaluated for accommodations or explain their failure or refusal to do so, LSAC violates the 24 25 rights of class members under the FEHA, Unruh Act, and ADA, 26 27 -28-Dept. Fair Empl. & Hous. v. Law School Admission Council, Inc. (Whitney et al.)

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190. 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.

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

7 192. Defendants have engaged in, and by their refusal to comply with the law, have 8 demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination 9 described herein unless and until they are enjoined, pursuant to the police power granted by 10 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 11 defendants are enjoined from failing or refusing to comply with the mandates of these laws, class 12 members' right to full and equal access to places of public accommodation will continue to be 13 14 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 15 affirmative relief as prayed for herein. 16

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SECOND CLASS CAUSE OF ACTION

Failure to Ensure that Exam Measures Ability Rather than Disability

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

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

194. 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.) Regulations interpreting this section impose an obligation on the entity offering such an examination that " [t]he examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect



the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills." (28 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.

Defendants have engaged in, and by their refusal to comply with the law, have 15 198. demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination 16 described herein unless and until they are enjoined, pursuant to the police power granted by 17 18 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 19 defendants are enjoined from failing or refusing to comply with the mandates of these laws, class 20 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 loss, which will continue until the court enjoins the complained of unlawful conduct and grants other 23 affirmative relief as prayed for herein. 24

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1	THIRD CLASS CAUSE OF ACTION
2	Coercion, Intimidation, Threats, or Interference with ADA Rights - Flagging
3	(42 U.S.C. § 12203)
4	199. The DFEH realleges and incorporates by reference each and every allegation
5	contained in paragraphs 1 through 186, inclusive, as if fully set forth herein.
6	200. The ADA makes it unlawful to "coerce, intimidate, threaten, or interfere with any
7	individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed,
8	any right granted or protected by this Act." (42 U.S.C. § 12203.)
9	201. LSAC's policy of annotating tests scores administered under extended time condition
10	discourages applicants from seeking such an accommodation, and punishes those who receive it, in
11	violation of the FEHA, Unruh Act, and ADA.
12	202. As a direct result of the unlawful practices of defendants as alleged herein, class
13	members have incurred out of pocket losses, including test registration fees and medical bills, in an
14	amount to be proven at trial.
15	203. As a further and direct result of the unlawful practices of defendants as alleged herein
16	class members have suffered emotional distress, anxiety, lost opportunity, frustration, humiliation,
17	and loss of dignity and self-esteem, in an amount to be proven at trial.
18	204. Defendants have engaged in, and by their refusal to comply with the law, have
19	demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination
20	described herein unless and until they are enjoined, pursuant to the police power granted by
21	Government Code sections 12920 and 12920.5, and pursuant to section 12974, from failing or
22	refusing to comply with the mandates of the FEHA, Unruh Act, and the ADA. Unless and until
23	defendants are enjoined from failing or refusing to comply with the mandates of these laws, class
24	members' right to full and equal access to places of public accommodation will continue to be
25	violated. Plaintiff lacks any plain, speedy, adequate remedy at law to prevent such harm, injury and
26	loss, which will continue until the court enjoins the complained of unlawful conduct and grants other
27	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.

6 206. The ADA requires that any person offering examinations related to post-secondary
7 education or profession "shall offer such examinations or courses in a place and manner accessible to
8 persons with disabilities." (42 U.S.C. § 12189.) As part of this duty to make an examination
9 accessible, the regulations require that any documentation requested be "reasonable and limited to the
10 need for the modification, accommodation, or auxiliary aid or service requested." (28 C.F.R. §
11 36.309(b)(1)(iv).)

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

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

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

21 210. Defendants have engaged in, and by their refusal to comply with the law, have
22 demonstrated that they will continue to engage in, the pattern and practice of unlawful discrimination
23 described herein unless and until they are enjoined, pursuant to the police power granted by sections
24 12920 and 12920.5, and pursuant to section 12974, from failing or refusing to comply with the
25 mandates of the FEHA, Unruh Act, and the ADA. Unless and until defendants are enjoined from
26 failing or refusing to comply with the mandates of these laws, class members' right to full and equal
27 access to places of public accommodation will continue to be violated. Plaintiff lacks any plain,

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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
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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
	WHEREFORE, the DFEH prays that the court issue a judgment in favor of the DFEH, real
6	
.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
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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.

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

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

15 Dated: March 15, 2012

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DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

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Bν Susan Saylor

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