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23 **IN THE UNITED STATES DISTRICT COURT**
 24 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 25 **SAN FRANCISCO DIVISION**

16	THE DEPARTMENT OF FAIR EMPLOYMENT)	Case No. CV 12-1830-EMC
17	AND HOUSING,)	
18	Plaintiff,)	
19	v.)	
20	LAW SCHOOL ADMISSION COUNCIL, INC.,)	COMPLAINT IN INTERVENTION
21	<i>ET AL.</i> ,)	PURSUANT TO THE AMERICANS
22	Defendants.)	WITH DISABILITIES ACT,
23	JOHN DOE <i>et al.</i> , and all other similarly)	42 U.S.C. §§ 12181 <i>et seq.</i> AND 12203
24	situated individuals,)	
25	Real Parties in Interest.)	
26	THE UNITED STATES OF AMERICA,)	
27	Plaintiff-Intervenor,)	
28	v.)	
	LAW SCHOOL ADMISSION COUNCIL, INC.)	
	Defendant.)	

1 **COMPLAINT IN INTERVENTION**

2 THE UNITED STATES OF AMERICA, by its undersigned attorneys, hereby files this
3 Complaint in Intervention and alleges upon information and belief:

4 **INTRODUCTION**

5 1. This action is brought by the United States to enforce titles III and V of the
6 Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181 *et seq.* and 12203, as amended, and
7 the Department of Justice’s implementing regulation, 28 C.F.R. Part 36, against the Law School
8 Admission Council, Inc. (LSAC). LSAC has failed to administer the Law School Admission
9 Test (LSAT) in a manner accessible to prospective law students with disabilities, in violation of
10 42 U.S.C. § 12189, by: (1) failing to provide testing accommodations so as to best ensure that
11 test results reflect aptitude rather than disability, (2) “flagging” (or annotating) accommodated
12 test scores, (3) making unreasonable requests for documentation in support of requests for testing
13 accommodations, (4) failing to give considerable weight to documentation of past testing
14 accommodations received in similar testing situations, (5) failing to respond in a timely manner
15 to requests for testing accommodations, and (6) failing to provide appropriate auxiliary aids.
16 LSAC also has failed to provide prospective law students with disabilities the full and equal
17 enjoyment of its goods, services, facilities, privileges, advantages, and accommodations, in
18 violation of 42 U.S.C. § 12182, by unnecessarily flagging test scores obtained with testing
19 accommodations, and by identifying and reporting otherwise confidential disability-related
20 information. LSAC’s flagging policy also interferes with individuals’ exercise of their rights
21 under the ADA, in violation of 42 U.S.C. § 12203. As a result, LSAC has denied prospective
22 law students with disabilities a full and equal opportunity to demonstrate their knowledge and
23 aptitude and to fairly compete for educational and employment opportunities for which the
24 LSAT is a prerequisite.

25 2. The ADA rests on Congress’ determination that “the Nation’s proper goals”
26 regarding individuals with disabilities include “equality of opportunity” and “full participation”
27 for such individuals, and that “the continuing existence of unfair and unnecessary discrimination
28 and prejudice denies people with disabilities the opportunity to compete on an equal basis and to

1 pursue those opportunities for which our free society is justifiably famous.” 42 U.S.C.
2 §§ 12101(a)(7)-(8). The ADA’s mandate that testing entities, such as LSAC, offer examinations
3 in an accessible manner is pivotal to furthering the ADA’s purpose “to provide a clear and
4 comprehensive national mandate for the elimination of discrimination against individuals with
5 disabilities.” *Id.* § 12101(b)(1). As credentialing examinations, such as the LSAT, are the
6 gateway to educational and employment opportunities, the ADA demands that each individual
7 with a disability have the opportunity to fairly compete for and pursue all such opportunities.

8 3. The Attorney General has commenced this action based on reasonable cause to
9 believe that LSAC is engaged in a pattern or practice of discrimination, and that a person or
10 group of persons has been discriminated against and that such discrimination raises issues of
11 general public importance. 42 U.S.C. § 12188(b)(1)(B). The United States seeks declaratory
12 and injunctive relief, compensatory damages, and a civil penalty against LSAC.

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over this action under 42 U.S.C. § 12188(b)(1)(B) and
15 28 U.S.C. §§ 1331 and 1345. This Court has authority to grant a declaratory judgment pursuant
16 to 28 U.S.C. §§ 2201-2202 and authority to grant equitable relief, monetary damages, and civil
17 penalties under 42 U.S.C. § 12188(b)(2).

18 5. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
19 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims
20 occurred in this judicial district.

21 **PARTIES**

22 6. Plaintiff-Intervenor is the United States of America.

23 7. Plaintiff Department of Fair Employment and Housing (DFEH) is a California
24 state agency charged with enforcing the rights of all Californians under the California Unruh
25 Civil Rights Act (Unruh Act), Cal. Civ. Code, §§ 51 *et seq.*, “to the full and equal
26 accommodations, advantages, facilities, privileges, or services in all business establishments of
27 every kind whatsoever.” *Id.* at subd. (b). The Unruh Act incorporates the ADA. *Id.* at subd. (f).

1 11. LSAT scores range from 120-180, with 120 being the lowest possible score and
2 180 the highest possible score. LSAC also reports the amount of measurement error associated
3 with each test form, a concept known as the standard error of measurement (SEM). According to
4 LSAC, the SEM is usually about 2.6 points. LSAT score bands are constructed by adding and
5 subtracting the (rounded) SEM to and from an actual LSAT score (*e.g.*, the LSAT score, plus or
6 minus 3 points). According to LSAC documents, score bands constructed in this manner will
7 contain an individual's true score approximately 68 percent of the time. In addition, according to
8 LSAC, the standard error of score differences is approximately 1.4 times larger than the standard
9 error of measurement for the individual scores. According to LSAC, reliability coefficients for
10 past LSAT forms have ranged from .90 to .95, indicating how likely a student is to obtain a
11 similar score if taking the test again. Because one test may differ from another in terms of
12 difficulty, in order to report all tests on the same score scale, LSAC also applies "equating" to
13 make the scores obtained on different test forms comparable.

14 12. LSAC also offers a "Credential Assembly Service," in which applicants to law
15 school upload transcripts, letters of recommendation, evaluations, and other application
16 materials. LSAC then disseminates the application materials, along with an applicant's LSAT
17 score report, to law schools. Nearly all ABA-approved law schools and many other law schools
18 require the use of this service for law school applicants. LSAC charges each of the 84,000
19 annual applicants a base cost of approximately \$155 to participate in the Credential Assembly
20 Service. LSAC makes candidates' law school application credentials available to law schools
21 through its Candidate Referral Service. LSAC also organizes and hosts open invitation forums at
22 hotels and universities nationwide for nearly 10,000 prospective law students annually to meet
23 with representatives of over 200 LSAC-member law schools to learn about LSAC and the LSAT.
24 LSAC also organizes and hosts educational conferences for law school administrators and
25 professionals and for prelaw advisors to learn about LSAC and the law school admissions
26 process.

1 13. Applicants with disabilities may seek testing accommodations¹ on the LSAT
2 pursuant to LSAC's policies, procedures, and practices. But those policies, procedures, and
3 practices impose restrictions that are inconsistent with the requirements of the ADA and operate
4 to discriminate against and exclude persons with disabilities.

5 14. Under LSAC's policies, procedures, and practices, applicants with disabilities
6 seeking testing accommodations must complete and submit an extensive portfolio of current and
7 historical materials including medical and/or psychological documentation by a stated deadline.

8 (a) Each applicant seeking testing accommodations must submit a three-page LSAT
9 candidate application form, a score report from past standardized tests, a verification of testing
10 accommodations received on each of those tests, and a two-page LSAT evaluator form filled out
11 by a qualified/licensed professional. These are LSAC's standard documentation requirements
12 for testing accommodations.

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

15 (c) Applicants with "cognitive and psychological impairments," a category that
16 LSAC defines to include, among other things, learning disorders, processing deficiencies, and
17 Attention Deficit Hyperactivity Disorder (ADHD), are referred to a three-page, single-spaced
18 document detailing extensive additional requirements, including:

- 19 • Full psychoeducational and/or neuropsychological evaluation which addresses
20 sensory-motor, auditory, attention, and visual-spatial issues; receptive and
21 expressive language; immediate and delayed memory; achievement; and
22 intelligence; and which includes a comprehensive diagnostic interview;
- 23 • Complete aptitude assessment such as Wechsler Adult Intelligence Scale, Fourth
24 Edition (WAIS-IV);
- 25 • Comprehensive achievement battery;
- 26 • Timed reading comprehension measure;
- 27 • Timed writing measures if additional time on the nonscored writing section is

28 ¹ The Complaint in Intervention substitutes the common term "testing accommodation" for the technical phrase "modification, accommodation, or auxiliary aid or service." Both terms denote those modifications, accommodations, or auxiliary aids or services that a testing entity must provide in order to make an examination accessible to people with disabilities under the ADA. 42 U.S.C. § 12189; 28 U.S.C. § 36.309.

requested;

- Measures of spelling and grammar skills if a computer with spelling and/or grammar check is requested;
- Objective data measures (such as the CPT-II or TOVA) and tests measuring information processing (such as WAIS-IV) for applicants with information/attention processing diagnoses (including ADHD); and
- Personality tests (LSAC recommends submitting an objective test such as the MMPI-II or MCMI-III and a projective testing instrument like the Rorschach) for applicants seeking accommodations based on psychiatric disorders.

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

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

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

(f) Applicants with hearing impairments must submit, in addition to the standard documentation requirements, a comprehensive psychoeducational assessment.

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

A request for accommodations will not be reviewed until LSAC is in receipt of all of the required documentation related to the applicant’s condition.

15. After receiving a complete application for testing accommodations, LSAC nevertheless sometimes claims additional (often unspecified) documentation is required.

16. LSAC sometimes substitutes its own views for the substantiated opinions of applicants’ physicians and evaluators, and does not give considerable weight to applicants’ documentation of past testing accommodations received, without significant basis to do so. As a result, LSAC unilaterally declines, reduces or changes the testing accommodations requested and justified by the applicants’ submissions.

1 17. When LSAC permits an applicant the accommodation of extended time on the
2 LSAT, it “flags” (or annotates) the score reports of those test takers as having been taken under
3 non-standard conditions when it submits them to law schools and does not report a percentile
4 ranking for those test takers.

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

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

18 20. LSAC’s procedures for receiving, evaluating, and reconsidering requests for
19 testing accommodations are vague, ambiguous, and arbitrary.

20 (a) LSAC publications state that requests for testing accommodations must be made
21 by the general registration deadline. Applicants are urged to submit requests for testing
22 accommodations “well in advance” of the deadlines or “there will be little or no opportunity to
23 rectify deficiencies in documentation or seek reconsideration.” No definition is provided for
24 “well in advance.” LSAC states that it will generally respond to testing accommodation requests
25 within 14 days. The deadline for “reconsideration,” which is LSAC’s label for its appeals
26 process, is the same deadline as for registering for the LSAT and for submitting an original
27 request for testing accommodations. Therefore, unless an applicant requests testing
28 accommodations in advance of the general registration deadline, there will be no opportunity for

1 reconsideration.

2 (b) The standards by which applications are evaluated initially and upon
3 reconsideration are unclear. Denial letters are frequently cursory (*e.g.*, “The documentation you
4 provided does not demonstrate that you have a limitation of a major life activity which affects
5 your ability to take the LSAT under standard conditions.”).

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

9 21. Those applicants who receive the testing accommodation of extended time for any
10 portion of the examination do not receive an LSAT score in the same format as their peers
11 without disabilities. Under this policy and practice, known as “flagging,” LSAC reports these
12 scores to law schools with a statement advising that the scores “should be interpreted with great
13 sensitivity and flexibility.” Additionally, LSAC does not average such scores with other scores
14 and does not provide a percentile rank for such scores – unlike all other test scores.

15 22. According to LSAC’s published “fairness procedures,” LSAC advises law schools
16 to “[c]arefully evaluate LSAT scores earned under accommodated or nonstandard
17 conditions.” (Emphasis in original.)

18 23. As described in more detail below, since January 1, 2009, LSAC:

19 (a) instituted a policy or practice of discriminating against individuals with
20 disabilities on the basis of disability by failing to administer the LSAT in an accessible manner,
21 in violation of 42 U.S.C. § 12189 and 28 C.F.R. § 36.309.

22 (b) through its flagging policy, discriminated against individuals with disabilities by
23 denying them full and equal enjoyment of its goods, services, facilities, privileges, advantages, or
24 accommodations, in violation of 42 U.S.C. § 12182 and 28 C.F.R. §§ 36.201-202, 204.

25 (c) through its flagging policy, instituted a policy or practice of discriminating against
26 individuals with disabilities on the basis of disability by interfering with their exercise or
27 enjoyment of rights guaranteed to them under 42 U.S.C. §§ 12182 and 12189, in violation of 42
28 U.S.C. § 12203 and 28 C.F.R. § 36.206.

Rachel Mech

1
2 24. Rachel Mech is a resident of Cockeysville, Maryland. Ms. Mech graduated from
3 Georgetown University's McDonough School of Business in May 2007 with a major in
4 Management and Marketing (receiving high honors), a minor in Government, and a cumulative
5 Grade Point Average (GPA) of 3.70 on a 4.00 scale. In May 2009, she earned a Masters of
6 Professional Studies in Corporate Communications and Public Relations from Georgetown
7 University with a GPA of 3.96 on a 4.00 scale. She has worked in sports marketing, served as an
8 adjunct professor at Georgetown University, and run a sports internship program through
9 Georgetown University. She is twenty-seven years old.

10 25. Ms. Mech has Anxiety Disorder (with obsessive-compulsive features), ADHD,
11 Spoken Language Disorder, and Adjustment Disorder (with depressed mood). In addition to
12 these cognitive and psychiatric disabilities, she also has Scoliosis (diagnosed in 2000) with
13 chronic back pain that has worsened through the years because of complications from spinal
14 fusion surgery in 2004 and 2007, as well as physical trauma from a car accident in 2010. As a
15 result of her Scoliosis, Ms. Mech is in a significant amount of pain most of the time and she was
16 diagnosed with a chronic Pain Disorder in April 2011. These impairments substantially limit the
17 major life activities of, *inter alia*, reading, writing, learning, concentrating, communicating,
18 sitting, bending, and walking, and the operation of the major bodily functions of the brain,
19 neurological system, and musculoskeletal system. She is an individual with a disability within
20 the meaning of 42 U.S.C. § 12102.

21 26. Ms. Mech was evaluated on two different occasions by qualified professionals,
22 first in 2004 and most recently in 2011, and she has received extended time on tests since the
23 results of her first evaluation were reported. When she was first diagnosed with a learning
24 disorder as a freshman at Georgetown, the qualified professional who evaluated her concluded
25 that Ms. Mech was "cognitively gifted with a learning disability." Her evaluator recommended
26 that she receive "extended time for tests, including any standardized testing," and specifically
27 recommended that "[t]ime and a half the regular testing time should provide [Ms. Mech] equal
28 opportunity without giving her an unfair advantage." Beginning in February 2004, Ms. Mech

1 was granted testing accommodations at Georgetown that included time and a half on tests and
2 testing in a distraction-free environment.

3 27. In April 2011, she was evaluated by another qualified professional, a board
4 certified neuropsychologist, who again recommended extended time on standardized tests,
5 including the LSAT, as well as a distraction-free environment, additional breaks every 30
6 minutes, use of a computer for writing, and extra scrap paper. In her 2011 evaluation, her
7 evaluator noted that “[h]er pain and not being on medication made it even more difficult to
8 complete tests within the allotted time.” Accordingly, the amount of extended time she received
9 on examinations at Georgetown was increased to double time. Her deteriorating physical
10 condition also made it difficult to sit for extended periods of time, and thus she received
11 additional breaks during examinations as needed. Ms. Mech reports that she continued to receive
12 double time on examinations through graduate school. Together, these evaluations establish that
13 Ms. Mech is an individual with a disability who needs testing accommodations, including
14 extended time, for standardized tests like the LSAT.

15 28. Consistent with her long history of testing accommodations, and the
16 recommendations of the qualified professionals who evaluated her, Ms. Mech requested testing
17 accommodations for the October and December 2011 administrations of the LSAT. Specifically,
18 Ms. Mech requested the following testing accommodations for each administration of the LSAT:
19 time and a half for each section, extra breaks, extra scrap paper, use of a computer, and testing in
20 a distraction-free setting. These testing accommodations were also recommended by Ms.
21 Mech’s board certified neuropsychologist who evaluated her in 2011.

22 29. Ms. Mech’s first request for testing accommodations on the October 2011 LSAT
23 is dated June 8, 2011. In support of her request, she submitted a full neuropsychological
24 evaluation from a qualified professional completed in April 2011, verified that she received time
25 and a half for the Graduate Record Examination (GRE), and confirmed that she received formal
26 accommodations in college, including double time for examinations and a distraction-free testing
27 environment. Though not requested by LSAC, Ms. Mech also noted on her request form for the
28

1 October 2011 LSAT that she received informal accommodations in high school and worked with
2 a speech/language pathologist in elementary school.

3 30. LSAC denied her request for testing accommodations by letter dated July 11,
4 2011. The letter acknowledged that Ms. Mech was diagnosed by her evaluator with a
5 “psychological disorder” but stated that the documentation provided did not demonstrate that her
6 disorder substantially limits a major life activity that affects her ability to take the LSAT.

7 31. In response, Ms. Mech requested that LSAC reconsider her request for testing
8 accommodations on the October 2011 LSAT and submitted additional information, including a
9 letter dated August 22, 2011, from her neuropsychological evaluator and a letter dated August
10 25, 2011, from her primary care physician, that responded to LSAC’s denial of testing
11 accommodations and further explained her disabilities, her need for the testing accommodations
12 requested, and her long history of testing accommodations – both formal and informal. She also
13 submitted a statement explaining that she had been able to self-accommodate until high school,
14 where she received informal accommodations. She was not formally diagnosed with Attention
15 Deficit Disorder (ADD)-Inattentive Type until her freshman year in college, in part because Ms.
16 Mech’s predominant health issue was Scoliosis and it had incorrectly been blamed for her
17 inattentiveness. After being diagnosed with ADD, she began receiving testing accommodations
18 of time and a half and a distraction-free testing environment. Following surgery during Ms.
19 Mech’s sophomore year, Georgetown increased her testing accommodation to double time.

20 32. On September 20, 2011, LSAC again denied her request, and again
21 mischaracterized her neuropsychological evaluation results by selectively relying on test scores
22 that were outliers and ignoring her long history of testing accommodations, both formal and
23 informal. The denial letter concludes by simply stating that “there has been no change in our
24 decision.”

25 33. On October 28, 2011, Ms. Mech, through private legal counsel, again requested
26 the same testing accommodations for the December 2011 LSAT and again submitted additional
27 documentation demonstrating the nature and extent of her disabilities and her need for the testing
28 accommodations requested. Ms. Mech’s additional documentation included letters from two

1 additional qualified professionals – her physical therapist and her orthopedic surgeon of 11 years,
2 who requested that LSAC reconsider its denial of Ms. Mech’s request for testing
3 accommodations.

4 34. On November 9, 2011, LSAC granted Ms. Mech the limited testing
5 accommodations of extra breaks (5 minutes between each section of the test), one 15-minute
6 break (which is provided to all test takers regardless of disability), and a separate testing room.
7 LSAC did not explain why it decided to provide these testing accommodations but not the others
8 Ms. Mech requested. LSAC also stated that its policies allow a candidate to seek reconsideration
9 of its decision but that LSAC’s self-imposed deadline for reconsideration for the December 2011
10 LSAT had already passed.

11 35. By letter dated November 10, 2011, Ms. Mech again appealed LSAC’s denial and
12 requested reconsideration for the December 2011 LSAT, enclosing a recent photo of Ms. Mech’s
13 spine and the screws that hold it together. Despite being informed that taking the LSAT with the
14 limited testing accommodation of extra breaks offered by LSAC would not accommodate Ms.
15 Mech’s disabilities and would cause her physical and emotional harm, she never received a
16 response to this letter.

17 36. Ms. Mech took the December 2011 LSAT with the limited testing
18 accommodations offered by LSAC, because she planned to enter law school in fall 2012 and the
19 December LSAT was the last test date accepted by many law schools. The 5-minute breaks
20 provided were inadequate to make the LSAT accessible to Ms. Mech and subjected Ms. Mech to
21 unnecessary pain and suffering. She was only able to complete approximately 60 percent of the
22 exam because, in addition to her word-retrieval and attention deficits, she also experienced
23 severe pain and anxiety. This is evidenced by a review of her Item Response Form as, when she
24 ran out of time on a section, she marked the same letter for each remaining answer choice.

25 37. Normally, test takers who receive the testing accommodation of extended time are
26 not required to take the extra “experimental,” unscored multiple choice section of the exam,
27 referred to by LSAC as the “non-operational section of the LSAT.” However, Ms. Mech was
28

1 required to take this experimental section on the December 2011 LSAT, lengthening her painful
2 experience. Ms. Mech believes that this further reduced her score on the final section.

3 38. Through counsel, by letter dated January 10, 2012, Ms. Mech again requested that
4 LSAC reconsider her previous request for testing accommodations, including extended time, for
5 the February 2012 LSAT, based on the supporting documentation previously submitted, as well
6 as a written account submitted by Ms. Mech of her December test-taking experience. In
7 addition, she specifically requested, as a testing accommodation, that she not be required to take
8 the experimental section. In this letter, she informed LSAC that, without the testing
9 accommodations recommended by her neuropsychologists, surgeons, and therapists, she would
10 have to delay her admission into law school for another year, as the February 2012 LSAT was
11 the last test administration that any law school would consider for admission in the fall of 2012.

12 39. On January 12, 2012, LSAC granted only the limited testing accommodations of
13 extra breaks (5 minutes between each section of the test, as well as one 5-minute break during
14 each section if needed for pain), one 15-minute break (which is provided to all test takers
15 regardless of disability), and a separate testing room. LSAC denied all other testing
16 accommodations requested, including extended time and her request to be exempted from taking
17 the experimental section. Again, LSAC did not explain why it decided to provide these testing
18 accommodations but not the others Ms. Mech requested. And again, LSAC stated that its
19 policies allow a candidate to seek reconsideration of its decision but that LSAC's self-imposed
20 deadline for reconsideration for the February 2012 LSAT had already passed.

21 40. Through counsel, by letter dated January 16, 2012, Ms. Mech appealed LSAC's
22 decision with respect to the requirement that she take the experimental section of the exam.
23 LSAC again denied this requested testing accommodation by letter dated January 20, 2012.

24 41. Ms. Mech took the LSAT in February 2012 without her requested testing
25 accommodations other than extra five-minute breaks. Her non-accommodated scores on both the
26 December 2011 and February 2012 LSATs did not accurately reflect her aptitude or achievement
27 level. She believes her scores were negatively impacted by the lack of testing accommodations
28 and by the requirement to take the experimental, unscored test section, as she had to spend time

1 taking a section that was not scored at the expense of her physical well-being. Being forced to
2 take this additional and unnecessary 35-minute section of the exam caused Ms. Mech significant
3 physical pain and suffering, of which LSAC was aware after Ms. Mech took the December 2011
4 administration of the exam.

5 42. Ms. Mech applied to several law schools and was wait-listed at many of them.
6 Ms. Mech has been admitted to Boston College Law School, where she is scheduled to begin in
7 the fall. Ms. Mech believes that her non-accommodated LSAT scores hindered her admission to
8 a higher ranked law school, as well as the availability of financial aid.

9 Lauren Wiehle

10 43. Lauren Wiehle has a 2008 Bachelor's degree in Social Work from the University
11 of Oklahoma and a 2009 Master's degree in Social Work from the University of Kansas. She
12 resides in Tulsa, Oklahoma. She is twenty-six years old.

13 44. Ms. Wiehle has visual impairments – aphakia, pseudophakia, and a nystagmus.
14 These impairments substantially limit the major life activities of, *inter alia*, seeing and reading,
15 and the operation of the major bodily function of the eyes. She is an individual with a disability
16 within the meaning of 42 U.S.C. § 12102.

17 45. Consistent with the testing accommodations she had received and relied upon
18 since kindergarten, Ms. Wiehle requested the following testing accommodations, including
19 auxiliary aids, for the February, June, and October 2011 administrations of the LSAT: a large
20 print test book, 20 additional minutes for each section, an alternate non-Scantron answer sheet,
21 an additional 5 minutes for the standard break, an additional 10 minute break between sections,
22 the use of colored transparencies, extra scratch paper, and the ability to answer in the test
23 booklet.

24 46. Ms. Wiehle's first application for testing accommodations was dated November 8,
25 2010. In support of her request, she submitted LSAC's "Candidate Form," which she completed.
26 She also submitted LSAC's "Evaluator Form" and "Vision Evaluation Report," which were
27 completed by her board certified ophthalmologist. She stated that she had received testing
28 accommodations in elementary school, high school, and college, and that she had an

1 Individualized Education Program (IEP).² She also stated that she had received special
2 education services in the form of annual assessments at the Oklahoma School for the Blind. In
3 addition, Ms. Wiehle submitted proof that she had received testing accommodations for the GRE
4 (large print, paper based test, time and a half, breaks as needed, use of a computer for essays,
5 permission to bring colored overlays, and ability to write answers in test book). She also
6 submitted copies of her IEPs.

7 47. Despite her consistent history of receiving testing accommodations, including
8 auxiliary aids, in similar testing situations and the recommendations of her qualified
9 professionals, LSAC refused Ms. Wiehle's request for: a large print test book, 20 extra minutes
10 per section, alternate non-Scantron answer sheet, additional rest time, breaks between sections,
11 and that she be allowed to mark her answers on the test book. LSAC granted Ms. Wiehle only
12 the use of colored overlays ("as a courtesy") and extra scratch paper.

13 48. Ms. Wiehle appealed LSAC's decision by e-mail on January 19, 2011. By letter
14 dated January 24, 2011, LSAC informed Ms. Wiehle that she had missed the January 11, 2011
15 deadline for reconsideration.

16 49. Not wanting to delay her law school applications, Ms. Wiehle took the February
17 2011 LSAT without her requested testing accommodations. Ms. Wiehle's non-accommodated
18 score did not accurately reflect her aptitude or achievement level.

19 50. In April 2011, Ms. Wiehle requested the same testing accommodations for the
20 June 2011 administration of the LSAT that she had previously sought. In support, she re-
21 submitted all the information she had previously submitted. She also submitted a letter dated
22 April 15, 2011, from her ophthalmologist explaining her condition and endorsing her request for
23 testing accommodations. Records from an eye exam of Ms. Wiehle conducted on December 13,
24 2010, were attached to the letter. By letter dated May 2, 2011, LSAC again refused to give
25 Ms. Wiehle her requested testing accommodations.

26
27
28 ² An IEP is an agreement describing the special education and related aids and services provided under
the Individuals with Disabilities Education Act (IDEA).

1 56. Ms. Tucker was evaluated on four different occasions by qualified professionals,
2 first in 2004, and most recently in 2011, and has received testing accommodations in high school
3 and college since the results of her first evaluation were reported. The results of a Language-
4 Learning Evaluation conducted in September 2011 by a licensed speech-pathologist and
5 educational diagnostician showed that Ms. Tucker's impairments were "consistent with post-
6 concussive attention deficit frequently associated with a brain injury, an invisible but very real
7 and debilitating problem" and that "[e]ven on medication, Miss Tucker has to attend to tasks
8 which, in combination with the cognitive fatigue she has suffered as a result of her multiple head
9 injuries, further fatigues her brain." In line with previously recommended testing
10 accommodations, the qualified professionals who conducted the evaluation recommended that
11 Ms. Tucker receive time and a half, testing in a separate room, extra breaks, and the ability to
12 mark her answers in the test booklet. Ms. Tucker's most recent evaluation was conducted in
13 December 2011 by a board certified neuropsychologist who addressed the relationship between
14 Ms. Tucker's repeated head injuries and her permanent working memory and attention
15 weaknesses. He wrote that Ms. Tucker's "performances on tests of motor dexterity and speed
16 and higher order sensory discrimination were lower than expected and consistent with known
17 sequelae resulting from diffuse brain injury." He also recommended that for standardized tests,
18 such as the LSAT, Ms. Tucker should receive time and a half, a distraction reduced testing room,
19 non-Scantron answer sheet, and the ability to take breaks as needed.

20 57. Consistent with the testing accommodations she had received since her first brain
21 injury, and the recommendations of the qualified professionals who evaluated her, Ms. Tucker
22 requested testing accommodations for the February 2012 administration of the LSAT.
23 Specifically, she requested the following testing accommodations: 15 minutes extended time for
24 each multiple choice section, non-Scantron answer sheet, 15 minutes additional break time for
25 the standard break between the third and fourth sections, and five-minute breaks between the
26 other sections.

27 58. Ms. Tucker's application for testing accommodations for the February 2012
28 LSAT is dated October 16, 2011. In support of her request, she submitted extensive

1 documentation that established her disabilities and confirmed prior testing accommodations
2 received. She submitted LSAC's Evaluator Form that was completed by her licensed speech
3 pathologist. She also submitted a neuropsychological evaluation dated October 2004 that was
4 conducted by a qualified professional; a January 2008 letter from a licensed speech-pathologist
5 and educational diagnostician to Ms. Tucker's high school explaining Ms. Tucker's impairments
6 and recommending testing accommodations; and from the same licensed speech-pathologist and
7 educational diagnostician, a Language-Learning Evaluation conducted in September 2011 that
8 recommended time and a half, a separate testing room, frequent short breaks during long tests,
9 and allowing Ms. Tucker to mark test answers directly in the test booklet. In addition, Ms.
10 Tucker submitted proof that she had received testing accommodations of time and a half, a small
11 group setting, and large block answer sheet for the SAT (a college admission test), and proof that
12 she receives testing accommodations for her classes at Baylor University (alternate test site,
13 breaks as needed, double time, and the option to not use Scantron answer sheets). She also
14 submitted a personal statement describing her impairments and how testing accommodations
15 have helped her demonstrate her knowledge on tests.

16 59. Despite her history of receiving testing accommodations in similar testing
17 situations and the recommendations of her qualified medical professionals, LSAC refused Ms.
18 Tucker's request for testing accommodations by letter dated October 31, 2011. LSAC
19 acknowledged that Ms. Tucker had been diagnosed with a learning disorder but questioned the
20 diagnosis and stated that the documentation she provided did not demonstrate that her disorder
21 substantially limits a major life activity that affects her ability to take the LSAT. LSAC
22 disregarded the observations, diagnoses, and recommendations of Ms. Tucker's qualified
23 professionals, and instead based its conclusion on Ms. Tucker's performance on various subtest
24 scores included in the reports from Ms. Tucker's qualified professionals.

25 60. By letter dated January 9, 2012 from private counsel, Ms. Tucker renewed her
26 request for testing accommodations for the February 2012 LSAT but this time asked for time and
27 a half (17.5 extra minutes) instead of 15 extra minutes for each multiple choice section. To this
28 request, she attached a full neuropsychological evaluation that was conducted in December 2011

1 by a board certified neuropsychologist and that recommended the same testing accommodations
2 Ms. Tucker requested. She also attached the results of a neurology physical exam dated
3 December 2007, and a letter from an orthopedic specialist explaining that Ms. Tucker's attention
4 deficits were caused by long term post concussive syndrome. This qualified professional also
5 recommended that Ms. Tucker receive her requested testing accommodations for the LSAT.
6 Finally, Ms. Tucker also submitted a personal statement explaining how testing accommodations
7 have helped her since her ATV accident and a declaration from her mother describing the
8 changes she saw in her daughter after the ATV accident and each subsequent head injury.

9 61. LSAC refused Ms. Tucker's renewed request for testing accommodations. Rather
10 than delay the law school application process any longer, Ms. Tucker took the June 2012 LSAT
11 without any testing accommodations. Her non-accommodated score did not accurately reflect
12 her aptitude or achievement level.

13 62. Ms. Tucker intends to register to take the LSAT again at some point over the next
14 several years. She intends to again request testing accommodations.

15 Matthew Kaplan

16 63. Matthew Kaplan resides in Kensington, Maryland. He graduated from Oberlin
17 College in 2005 with a degree in politics and a GPA of 3.48 on a 4.00 scale. He currently works
18 as an aide on Capitol Hill in Washington, DC. He is twenty-nine years old.

19 64. Mr. Kaplan has Dyslexia (diagnosed at age 7), Handwriting Disorder -
20 Dysgraphia,³ and Spoken Language Disorder. These impairments substantially limit the major
21 life activities of, *inter alia*, reading, writing, communicating, and learning, and the operation of
22 the major bodily functions of the brain and neurological system. He is an individual with a
23 disability within the meaning of 42 U.S.C. § 12102.

24 65. Mr. Kaplan was evaluated on four different occasions by qualified professionals,
25 first in 1990 and most recently in 2011, and has received extended time on tests since the results
26

27 ³ Dysgraphia is a learning disability that affects the motor and information processing skills associated
28 with writing, and can result in spelling errors, "bad" handwriting, difficulty expressing thoughts in
writing, and/or difficulty organizing letters, numbers, and words on a line or page.

1 of his first evaluation were reported. Mr. Kaplan's most recent evaluation in April 2011 was
2 conducted by a board certified neuropsychologist who concluded, in part, that Mr. Kaplan "has
3 the double deficit that is typical of individuals with more severe dyslexia," and noted that
4 Mr. Kaplan's disabilities are lifelong. His evaluator further noted that his "profile is typical of
5 individuals with dyslexia" and his profile is "remarkably consistent with his history." Indeed,
6 Mr. Kaplan was first identified as having a learning disability in the second grade at age 7 and
7 was given an IEP that included the testing accommodation of extended time. From that time, he
8 has been given testing accommodations including: extended time for all tests, working with a
9 speech/language pathologist in school, and additional informal accommodations. These
10 evaluations establish that Mr. Kaplan is an individual with disabilities who needs testing
11 accommodations for standardized tests, like the LSAT, including extended time.

12 66. Consistent with his long history of testing accommodations, and the
13 recommendations of the qualified professionals who evaluated him, Mr. Kaplan requested testing
14 accommodations for the June and October 2011 administrations of the LSAT. Specifically, he
15 requested the following testing accommodations for each administration of the LSAT: double
16 time (35 extra minutes) for each multiple choice section, approximately time and a half (18 extra
17 minutes) for the writing section, and the use of a computer and printer for the writing section.
18 These testing accommodations were also recommended by Mr. Kaplan's board certified
19 neuropsychologist who evaluated him in 2011.

20 67. Mr. Kaplan's first request for testing accommodations for the June 2011 LSAT is
21 dated April 25, 2011. In support of his request, he submitted a full neuropsychological
22 evaluation from a qualified professional completed in April 2011, proof that he received testing
23 accommodations on at least three Advanced Placement (AP) exams in 2000, and proof that he
24 received time and a half for three administrations of the SAT in June 1999, April 2000, and June
25 2000. He also provided proof that he received time and a half in college, as well as note takers
26 and the use of a computer on written assignments, tests, and exams. In addition, he verified that
27 he had an IEP and received testing accommodations in elementary and high school.
28

1 68. By letter dated May 4, 2011, LSAC acknowledged that Mr. Kaplan has a learning
2 disorder and granted Mr. Kaplan use of a computer and printer on the writing section for the June
3 2011 LSAT, but denied his request for extended time in full without any explanation. On May 5,
4 2011, Mr. Kaplan wrote LSAC and requested an explanation of the limited testing
5 accommodations granted for the June 2011 LSAT and the basis for LSAC's denial of the rest of
6 his request. In a letter dated May 11, 2011, LSAC again acknowledged that Mr. Kaplan was
7 diagnosed by his evaluator with a learning disorder, but disputed the diagnosis and his history of
8 testing accommodations and used this as the basis for denying his request for extended time.
9 LSAC inaccurately analyzed Mr. Kaplan's documentation, by selectively relying on test scores
10 that were outliers and ignoring Mr. Kaplan's long history of testing accommodations, to
11 conclude that "there has been no change in our decision."

12 69. On May 11, 2011, Mr. Kaplan requested to move his test date to the October 2011
13 administration of the LSAT. By letter dated May 12, 2011, LSAC granted Mr. Kaplan use of a
14 computer and printer for the writing section for the October 2011 LSAT, but again denied his
15 request for extended time in full without any explanation of its decision.

16 70. On August 29, 2011, Mr. Kaplan, through private legal counsel, requested
17 reconsideration of LSAC's decision with regard to the October 2011 LSAT and submitted
18 additional supporting documentation further demonstrating Mr. Kaplan's long history of
19 disabilities and his need for the requested testing accommodations, including a description and
20 further documentation of his long history of testing accommodations – both formal and informal
21 – and a letter from the qualified professional who evaluated him in 2011 (a board certified
22 neuropsychologist) explaining why LSAC's interpretation of his evaluation was incorrect. In
23 this letter, his evaluator further explained the results of Mr. Kaplan's 2011 neuropsychological
24 evaluation, stating unequivocally that "[t]hese results leave no doubt in my mind that Mr. Kaplan
25 has dyslexia."

26 71. Despite this clear and comprehensive documentation of Mr. Kaplan's disabilities
27 and need for the testing accommodations requested, on September 13, 2011, LSAC again refused
28 to provide Mr. Kaplan the needed accommodation of extended time, simply stating: "For the

1 reasons previously provided, LSAC's decision remains unchanged." LSAC provided no further
2 explanation or legal justification for its decision.

3 72. Mr. Kaplan intends to register to take the LSAT again at some point over the next
4 several years. He intends to again request testing accommodations.

5 Charles Whitman

6 73. Charles Whitman attends California Western School of Law in San Diego,
7 California. He graduated from Westmont College in Santa Barbara, California, in May 2010
8 with a Bachelor of Arts degree in History. When not in school, he resides in Baltimore,
9 Maryland. He is twenty-six years old.

10 74. Mr. Whitman has ADHD (Predominately Inattentive Type) and Graphomotor
11 Output disorder. These impairments substantially limit the major life activities of, *inter alia*,
12 learning, concentrating, and writing, and the operation of the major bodily functions of the brain
13 and neurological system. Mr. Whitman is an individual with a disability within the meaning of
14 42 U.S.C. § 12102.

15 75. Mr. Whitman's impairment was observed at an early age. Throughout elementary
16 school, he relied on informal accommodations such as supplemental instruction from tutors and
17 additional time from teachers to learn material, complete timed assignments, and meet academic
18 requirements. By the time he reached the fifth grade, these informal accommodations were no
19 longer sufficient, and Mr. Whitman was evaluated by a neurologist in 1997 at age eleven. He
20 was diagnosed with ADHD and testing accommodations were recommended and received from
21 that time forward.

22 76. Mr. Whitman was evaluated on two additional occasions, most recently in
23 September 2010. Mr. Whitman's evaluation in September 2010 was conducted by a licensed
24 psychologist and educational specialist who confirmed Mr. Whitman's ADHD diagnosis and
25 also diagnosed him with Graphomotor Output disorder. The evaluators recommended several
26 testing accommodations, including double time, testing in a quiet environment, additional rest
27 time and breaks between sections, additional time on the writing section and use of a computer
28 for the writing section, and use of scratch paper.

1 77. Consistent with the testing accommodations he had received throughout his
2 educational career, and the recommendations of the qualified professionals who evaluated him,
3 Mr. Whitman requested testing accommodations for the December 2010, February 2011, and
4 December 2011 administrations of the LSAT. For each administration, he requested the
5 following testing accommodations: double time on the multiple choice sections, 20 extra minutes
6 for the writing section, use of a computer, and testing in a distraction reduced setting.

7 78. In support of his requests, he submitted LSAC's "Evaluator Form," which had
8 been completed by his licensed psychologist and educational specialist. He also submitted a
9 psychoeducational evaluation report that had been conducted by his licensed psychologist and
10 educational specialist in September 2010. That report recommended that Mr. Whitman receive
11 his requested testing accommodations. He also submitted a previous psychoeducational
12 evaluation report conducted by qualified professionals in December 2007. That report also
13 recommended that Mr. Whitman receive double time, testing in a quiet environment, test breaks
14 as needed, and use of a computer for essay examinations, among other recommendations. In
15 addition, Mr. Whitman submitted proof of testing accommodations for the SAT (double time)
16 and stated that he received testing accommodations in high school and in college (double time).

17 79. By letter dated November 16, 2010, LSAC refused Mr. Whitman's request for
18 testing accommodations and stated that it needed several pieces of additional information,
19 including: all scores for the Nelson-Denny Reading Test (NDRT), all past psychoeducational/
20 neuropsychological reports, a full printout from the Conner's Continuous Performance Test-II,
21 all scores for the Wide Range Assessment of Memory and Learning-Second Edition, and testing
22 results from the Beck Depression Inventory. LSAC also informed Mr. Whitman that it was too
23 late to submit the requested information in time to be considered for the December 2010 LSAT.

24 80. As a result, Mr. Whitman took the LSAT in December 2010 without testing
25 accommodations. His non-accommodated score did not accurately reflect his aptitude or
26 achievement level.

27 81. Mr. Whitman renewed his application for testing accommodations for the
28 February 2011 administration of the LSAT. In support of his request, he submitted the items

1 LSAC had requested by letter dated November 16, 2010, as well the materials he had submitted
2 in support of his previous request.

3 82. Despite Mr. Whitman's well documented history of receiving testing
4 accommodations in similar testing situations and the recommendation of his qualified
5 professionals, LSAC again refused his request by letter dated January 18, 2011. LSAC
6 acknowledged that he had been diagnosed by his evaluator with ADHD but still refused to
7 provide any testing accommodations, stating that Mr. Whitman's score on the December 2010
8 LSAT was commensurate with his full scale IQ, which was only three percentile points higher.

9 83. By letter from private counsel dated October 28, 2011, Mr. Whitman appealed
10 LSAC's decision. Mr. Whitman attached a letter dated August 26, 2011, from his psychologist
11 and educational specialist explaining that LSAC's comparison of Mr. Whitman's LSAT score to
12 his full scale IQ is a poor reference point because both scores are based on language-based
13 reading tasks. Instead, they suggested that Mr. Whitman's LSAT score should be compared to
14 his WAIS-IV (Wechsler Adult Intelligence Scale-Fourth Edition) Verbal Comprehension score,
15 which was 30 percentile points higher. Mr. Whitman also submitted a personal statement
16 describing his lifelong attention impairment and how testing accommodations enabled him to
17 compete on a level playing field with students without disabilities. In addition, he submitted a
18 declaration from his father explaining Mr. Whitman's childhood difficulties and how his initial
19 diagnosis and subsequent testing accommodations allowed him to complete more of his school
20 work.

21 84. Nevertheless, by letter dated November 10, 2011, LSAC again refused to give Mr.
22 Whitman any testing accommodations.

23 85. Rather than delay his application to law school, Mr. Whitman took the December
24 2011 LSAT without testing accommodations. His non-accommodated score did not accurately
25 reflect his aptitude or achievement level.

26 86. Mr. Whitman applied to approximately nine law schools. He now attends
27 California Western School of Law in San Diego, California. He believes his LSAT score kept
28 him from being admitted to a higher ranked law school.

Elizabeth Hennessey- Severson

(Also Named in DFEH Complaint⁴ and Quan *et al.* Complaint in Intervention⁵)

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

88. Ms. Hennessey-Severson has a Reading Disorder, Disorder of Written Expression, Mathematics Disorder, and ADHD-I (Attention Deficit-Hyperactive Disorder-Inattentive). These impairments substantially limit the major life activities of, *inter alia*, reading, concentrating, and the operation of the major bodily function of the brain. Her combined learning disabilities cause Ms. Hennessey-Severson to have impaired reading, writing, and math abilities. Her ADHD-I results in (1) difficulty with sustained concentration and processing speed, (2) distractibility, and (3) difficulties with planning and organization. She is an individual with a disability within the meaning of 42 U.S.C. § 12102.

89. Ms. Hennessey-Severson was first diagnosed with her disabilities in 2002, while she was in high school, although she began manifesting symptoms years earlier, while in grade school. Ms. Hennessey-Severson received the testing accommodation of extended time as needed through a Section 504 Plan⁶ in high school. She also received testing accommodations of double time on the quantitative portions and time-and-a-half on the verbal and written portions on all tests as an undergraduate at Dartmouth College, as well as on the SAT. According to her 2009 neuropsychological report, Ms. Hennessey-Severson often had trouble finishing tests in college even with the extended time periods.

90. Ms. Hennessey-Severson graduated from Dartmouth College in 2009 with a double major in Government and Spanish and a GPA of 3.4 on a 4.0 scale. She wants to be a

⁴ “DFEH Complaint” refers to the complaint filed in the main action. It is attached as Exhibit A to LSAC’s Notice of Removal of Action Under 28 U.S.C. § 1441, April 12, 2012, ECF No. 1.

⁵ “Quan *et al.* Complaint in Intervention” refers to the proposed complaint in intervention filed by three of the individuals named in the DFEH Complaint. ECF No. 42-3.

⁶ A Section 504 Plan is an agreement describing special or regular education and related aids and services provided pursuant to section 504 of the Rehabilitation Act of 1973.

1 civil rights attorney working on behalf of individuals in the criminal justice system. She worked
2 for two years as a paralegal in San Francisco.

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

17 92. LSAC denied Ms. Hennessey-Severson's request by letter dated April 29, 2011.
18 In the letter, LSAC "acknowledged" that Ms. Hennessey-Severson had a learning disorder, but
19 stated that her documentation did not demonstrate a "limitation of a major life activity" that
20 affected her ability to take the test under standard (non-accommodated) conditions. To support
21 its decision, LSAC cited Ms. Hennessey-Severson's high IQ (intelligence quotient) score and her
22 "very superior" and "high average" scores on portions of her psychoeducational assessment. The
23 letter stated that Ms. Hennessey-Severson had until May 3, 2011, to seek reconsideration.

24 93. By May 3, 2011, Ms. Hennessey-Severson requested reconsideration of the
25 denial, and submitted a five-page letter from her psychologist in support of her request. The
26 psychologist explained that the "very superior" and "high average" scores that LSAC cited to
27 support its denial were achieved by Ms. Hennessey-Severson on untimed measures of reading,
28 whereas on other, timed, measures, the results were "poor." The psychologist inserted three

1 tables comparing Hennessey-Severson's performance as measured by various timed versus
2 untimed scores.

3 94. On May 10, 2011, LSAC sent a letter to Ms. Hennessey-Severson stating: "After
4 full consideration of all of the documentation submitted on your behalf, there has been no change
5 in our decision."

6 95. Ms. Hennessey-Severson did not take the June 2011 LSAT as planned because
7 her testing accommodations were denied.

8 96. Thereafter, Ms. Hennessey-Severson sought legal counsel to obtain testing
9 accommodations on the LSAT. LSAC later granted Ms. Hennessey-Severson some testing
10 accommodations, but not all those she requested, for the June 2012 LSAT.

11 97. Ms. Hennessey-Severson took the June 2012 LSAT with the limited testing
12 accommodations that had been granted. Her score is subject to LSAC's "flagging" policy.

13 98. Ms. Hennessey-Severson intends to register to take the LSAT again at some point
14 over the next several years. She intends to again request testing accommodations.

15 Nicholas Jones

16 (Also Named in DFEH Complaint and Quan *et al.* Complaint in Intervention)

17 99. Nicholas Jones, a resident of Palm Desert (Riverside County), California,
18 registered and requested that LSAC provide him with testing accommodations for the December
19 2009 LSAT offered at the University of Laverne (Ontario, California).

20 100. Mr. Jones has two eye conditions, amblyopia and posterior vitreous detachment,
21 which result in compromised vision. Amblyopia causes Mr. Jones to have impaired visual
22 processing. Posterior vitreous detachment causes persistent "floaters" to appear in Mr. Jones's
23 field of vision. These impairments substantially limit the major life activities of, *inter alia*,
24 seeing, reading, and the operation of the major bodily function of the eyes. Mr. Jones must
25 constantly move his eyes from side to side to remove the "floaters" that appear in his field of
26 vision, but as soon as he refocuses, the spots re-appear. Because his reading is interrupted each
27 time he must clear his vision, Mr. Jones often must go back to re-read text in order to orient
28 himself. Mr. Jones's reading speed, comprehension, and concentration are thus all substantially

1 limited by his disability. Mr. Jones also experiences migraines and fatigue as a result of his
2 visual impairments. Mr. Jones is an individual with a disability within the meaning of 42 U.S.C.
3 § 12102.

4 101. Mr. Jones graduated Salutatorian from high school. He graduated from college
5 with a cumulative GPA of 3.98 on a 4.00 scale.

6 102. Mr. Jones took the September 2009 LSAT without testing accommodations. His
7 non-accommodated score did not accurately reflect his aptitude or achievement level.

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

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

25 105. Mr. Jones appealed this decision prior to the November 3 deadline. On short
26 notice, he obtained and provided a supplemental, two-page letter from his treating
27 ophthalmologist and retinal surgeon which detailed the link between Mr. Jones's conditions and
28 his reading speed and reading ability, as well as the fatigue and headaches that accompany Mr.

1 Jones's disability. The ophthalmologist stressed Mr. Jones's need for accommodations on the
2 LSAT.

3 106. On November 9, 2009, LSAC again denied Mr. Jones's appeal in a four-sentence
4 letter. The letter stated that a "Vision Rehabilitation Specialist" had reviewed his file and that
5 Mr. Jones had not demonstrated that he had a "significant visual condition."

6 107. Mr. Jones contacted private counsel. On November 24, 2009, private counsel
7 notified LSAC that Mr. Jones's visual conditions constitute disabilities affecting his reading
8 speed and stamina, thereby impairing his ability to take the LSAT without testing
9 accommodations. Private counsel explained that Mr. Jones had not previously requested or
10 received testing accommodations, but had obtained such modifications informally by working
11 with flexible instructors and accessing on-line courses. Private counsel requested that testing
12 accommodations be put in place for the December 5, 2009 LSAT.

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

20 109. On December 3, 2009, private counsel sent a further letter to LSAC requesting
21 reconsideration of LSAC's denial and stating that Mr. Jones had met LSAC's requirements for
22 testing accommodation requests. LSAC did not change its position and Mr. Jones was not
23 granted testing accommodations.

24 110. Mr. Jones again took the LSAT without testing accommodations on December 5,
25 2009. His score, again, did not accurately reflect his aptitude or achievement level.

26 111. Mr. Jones took the test again in February 2010 without testing accommodations;
27 his score did not significantly change, and it, again, did not accurately reflect his aptitude or
28 achievement level.

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

17 119. In a letter dated September 7, 2011, LSAC requested additional documentation,
18 including "testing results and a full diagnostic report from a comprehensive up-to-date
19 psychoeducational/neuropsychological assessment" in compliance with LSAC's requirement that
20 reports be no more than three years old for people under age 21 (Mr. Quan's evaluation had been
21 completed three and a half years earlier). Mr. Quan provided additional documentation; he also
22 researched and wrote a letter to LSAC, arguing that under the 2010 ADA regulations, his
23 documentation was sufficient. He noted that obtaining and providing the required testing and
24 report would cost thousands of dollars, and would not be covered by his insurance.

25 120. On September 13, 2011, LSAC denied Mr. Quan's request for testing
26 accommodations. The denial letter reiterated the need to provide "testing results and a full
27 diagnostic report from a comprehensive **up-to-date** psychoeducational/neuropsychological
28 assessment," emphasis in original, in compliance with LSAC's guidelines. The letter further

1 stated that any such report would not be considered for the October 2011 LSAT: “Since the
2 receipt deadline for this administration of the LSAT has passed, no further consideration will be
3 given to your request for accommodations until all of the aforementioned documentation is
4 received for a **future** LSAT only.” LSAC never responded to Mr. Quan’s concurrent request for
5 testing accommodations related to his physical disabilities.

6 121. Mr. Quan took the October 2011 LSAT without testing accommodations.

7 122. Mr. Quan next registered for the December 2011 LSAT. He again applied for
8 testing accommodations and provided documentation to LSAC by the stated deadline. By
9 October 31, 2011, Mr. Quan was again denied testing accommodations.

10 123. On November 11, 2011, private counsel notified LSAC that its handling of Mr.
11 Quan’s request for testing accommodations violated Department of Justice 2010 ADA
12 regulations addressing the “inappropriate or burdensome” standards used by testing agencies,
13 such as LSAC, when evaluating requests for testing accommodations.

14 124. On November 28, 2011, LSAC responded to private counsel as follows: “This
15 will acknowledge receipt of your email and attachment. Your request for reconsideration was
16 not timely and therefore cannot be considered.” LSAC sent a similar letter to Mr. Quan. On
17 November 28, 2011, private counsel reiterated to LSAC that it had been required to comply with
18 the DOJ regulations as of March 15, 2011. On November 28, 2011, LSAC responded with an
19 email stating in its entirety: “LSAC was fully aware of the legal authorities you cited when it
20 reviewed Mr. Quan’s file. Mr. Quan’s file remains incomplete.”

21 125. In an effort to compensate for the denial of needed testing accommodations,
22 Mr. Quan hired an LSAT tutor. Mr. Quan took the December 2011 LSAT without testing
23 accommodations.

24 126. Mr. Quan applied to dozens of law schools, including the public law schools in
25 California. He expended time and resources crafting a personal statement to explain the stark
26 disconnect between his excellent academic record and his poor performance on the LSAT.
27 Initially, Mr. Quan was not accepted to any “top tier” law schools. After months on the waiting
28 list, he was accepted to UC Hastings College of the Law in the Legal Education Opportunity

1 Program (LEOP) program, which is a program that recognizes “that the traditional academic
 2 criteria used to determine admissions might not be the best indicators of academic potential for
 3 students from nontraditional backgrounds.” Mr. Quan is scheduled to start at UC Hastings
 4 College of the Law in the fall.

5 Other Applicants

6 127. Plaintiff DFEH, on behalf of seventeen named individuals,⁷ and a proposed state-
 7 wide class of individuals with disabilities who sought to take the LSAT with testing
 8 accommodations, has asserted claims under the ADA – as incorporated into the California Fair
 9 Employment & Housing Act (“FEHA”), Cal. Gov’t Code § 12948, via the Unruh Civil Rights
 10 Act (“Unruh Act”), Cal. Civ. Code § 51(f) – relying on the same bases for which the United
 11 States can initiate an action under 42 U.S.C. §§ 12181 *et seq.* and 12203. The DFEH Complaint
 12 alleges, *inter alia*, that LSAC has violated the ADA by failing to offer the LSAT in a manner
 13 accessible to individuals with disabilities, in violation of 42 U.S.C. § 12189 and 28 C.F.R. §
 14 36.309, because of LSAC’s policies and patterns of (1) flagging, (2) requiring excessive amounts
 15 of documentation from individuals named in the complaint to support their requests for testing
 16 accommodations, and (3) denying testing accommodations for individuals named in the
 17 complaint. The DFEH Complaint further alleges that LSAC has violated the ADA by interfering
 18 (1) with class members’ exercise or enjoyment of rights guaranteed by the ADA as a result of
 19 LSAC’s flagging policy, and (2) with the named individuals’ exercise or enjoyment of rights
 20 under the ADA as a result of LSAC’s policy of requiring unreasonable types and excessive
 21 amounts of documentation to support testing accommodation requests, in violation of 42 U.S.C.
 22 § 12203.

23 128. Upon information and belief, LSAC has (1) failed to offer the LSAT to other
 24 individuals with disabilities in an accessible manner, in violation of 42 U.S.C. § 12189 and 28
 25 C.F.R. § 36.309, (2) denied other individuals with disabilities the full and equal enjoyment of its
 26

27 ⁷ John Doe, Jane Doe, Peter Roe, Raymond Banks, Kevin Collins, Rodney DeComo-Schmitt, Andrew
 28 Grossman, Elizabeth Hennessey-Severson, Otilia Ioan, Alex Johnson, Nicholas Jones, Caroline Lee,
 Andrew Quan, Stephen Semos, Gazelle Taleshpour, Kevin Vielbaum, and Austin Whitney.

1 goods, services, facilities, privileges, advantages, or accommodations, in violation of 42 U.S.C. §
2 12182 and 28 C.F.R. §§ 36.201-202, 204, because of LSAC's flagging policy, and/or (3)
3 interfered with other individuals' exercise or enjoyment of rights granted or protected under the
4 ADA as a result of LSAC's flagging policy, in violation of 42 U.S.C. § 12203 and 28 C.F.R.
5 § 36.206. These other applicants with disabilities who have been the victims of LSAC's
6 discriminatory policies or practices are aggrieved persons within the meaning of 42 U.S.C.
7 § 12188(b)(2)(B).

8 **FIRST CAUSE OF ACTION**

9 **Section 309 of the ADA**

10 **42 U.S.C. § 12189 and 28 C.F.R. § 36.309**

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12 129. The United States incorporates by reference the allegations set forth in Paragraphs
13 1 through 128, as if fully set forth herein.

14 130. LSAC discriminated against individuals with disabilities on the basis of disability
15 by failing to administer the LSAT "in a place and manner accessible to persons with disabilities"
16 in violation of 42 U.S.C. § 12189 and its implementing regulation, 28 C.F.R. § 36.309.
17 Specifically, LSAC violated 42 U.S.C. § 12189 and 28 C.F.R. § 36.309 by:

18 a. Failing to best ensure that when the LSAT is administered to an individual
19 with a disability, the examination results accurately reflect the individual's aptitude or
20 achievement level or whatever other factor the examination purports to measure, rather than
21 reflecting the individual's disability, in violation of 42 U.S.C. § 12189 and 28 C.F.R.
22 § 36.309(b)(1)(i);

23 b. Making unreasonable requests for documentation to support applicants'
24 requests for testing accommodations or auxiliary aids or services, in violation of 42 U.S.C.
25 § 12189 and 28 C.F.R. § 36.309(b)(1)(iv);

26 c. Failing to give considerable weight to applicants' documentation of past
27 testing accommodations received in similar testing situations, as well as testing accommodations
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1 provided in response to an IEP or Section 504 Plan, when considering applicants' requests for
2 testing accommodations, in violation of 42 U.S.C. § 12189 and 28 C.F.R. § 36.309(b)(1)(v);

3 d. Failing to respond in a timely manner to requests for testing
4 accommodations so as to ensure equal opportunity for individuals with disabilities, in violation
5 of 42 U.S.C. § 12189 and 28 C.F.R. § 36.309(b)(1)(vi);

6 e. Failing to provide required modifications or appropriate auxiliary aids and
7 services, in violation of 42 U.S.C. § 12189 and 28 C.F.R. §§ 36.309(b)(2)-(3);

8 f. Maintaining a discriminatory policy of flagging test scores of individuals
9 with disabilities who need the testing accommodation of extended time to make the LSAT
10 accessible to them, and reporting such individuals' test results in a manner that reflects the test
11 taker's disability rather than aptitude or achievement level, in violation of 42 U.S.C. § 12189 and
12 28 C.F.R. §§ 36.309(a), (b)(1)(i).

13 131. As a result of LSAC's unlawful policies or practices, applicants with disabilities
14 have incurred out of pocket losses, including unnecessary LSAT registration fees, preparation
15 courses and study materials, and medical bills.

16 132. Also as a result of LSAC's unlawful policies or practices, applicants with
17 disabilities have experienced pain and suffering, including: emotional distress, anxiety,
18 frustration, humiliation, stigmatization, loss of dignity and self-esteem, and lost opportunity.
19 Such lost opportunity includes, but is not limited to, chances for scholarship money/financial aid,
20 career opportunities that are available via admission to and graduation from higher-ranking law
21 schools, and delayed entry into a legal career.

SECOND CAUSE OF ACTION

Section 302 of the ADA

42 U.S.C. § 12182 and 28 C.F.R. §§ 36.201-202, 204

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4 133. The United States incorporates by reference the allegations set forth in Paragraphs
5 1 through 132, as if fully set forth herein.

6 134. LSAC, a public accommodation, discriminates against individuals with
7 disabilities by denying full and equal enjoyment of its goods, services, facilities, privileges,
8 advantages, or accommodations in its operation of places of public accommodation, in violation
9 of 42 U.S.C. § 12182 and 28 C.F.R. §§ 36.201-202, 204, by, among other things:

10 a. Affording individuals with disabilities unequal, separate, or different
11 opportunities to participate in or benefit from LSAC's goods, services, facilities, privileges,
12 advantages, or accommodations by flagging test scores obtained with certain testing
13 accommodations, and by reporting and identifying the otherwise confidential information of
14 examinees with disabilities that utilize certain testing accommodations to law schools as a
15 requirement to use LSAC's services, including the Credential Assembly Service, in violation of
16 42 U.S.C. §§ 12182(b)(1)(A)(ii)-(iii) and 28 C.F.R. §§ 36.202(b)-(c).

17 b. Utilizing standards or criteria or methods of administration, directly or
18 through contractual or other arrangements, that have the effect of discriminating on the basis of
19 disability, by flagging test scores obtained with certain testing accommodations, and by reporting
20 and identifying to law schools the otherwise confidential information of examinees with
21 disabilities who utilize certain testing accommodations, in violation of 42 U.S.C.
22 § 12182(b)(1)(D) and 28 C.F.R. § 36.204.

23 135. As a result of LSAC's unlawful policies or practices, applicants with disabilities
24 have experienced pain and suffering, including: emotional distress, anxiety, frustration,
25 humiliation, stigmatization, loss of dignity and self-esteem, and lost opportunity. Such lost
26 opportunity includes, but is not limited to, chances for scholarship money/financial aid, career
27 opportunities that are available via admission to and graduation from higher-ranking law schools,
28 and delayed entry into a legal career.

THIRD CAUSE OF ACTION

Section 503 of the ADA

42 U.S.C. § 12203 and 28 C.F.R. § 36.206

136. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 135, as if fully set forth herein.

137. LSAC's flagging policy interferes with the right of applicants with disabilities to have the LSAT administered in a manner accessible to them pursuant to 42 U.S.C. §§ 12182, 12189 and 28 C.F.R. §§ 36.201-202, 204, 309, in violation of 42 U.S.C. § 12203 and 28 C.F.R. § 36.206.

138. LSAC's flagging policy discourages people with disabilities from taking the LSAT or from requesting needed testing accommodations as protected under 42 U.S.C. §§ 12182, 12189 and 28 C.F.R. §§ 36.201-202, 204, 309, in violation of 42 U.S.C. § 12203 and 28 C.F.R. § 36.206.

139. As a result of LSAC's unlawful policies or practices, applicants with disabilities have experienced pain and suffering, including emotional distress, anxiety, frustration, humiliation, stigmatization, loss of dignity and self-esteem, and lost opportunity. Such lost opportunity includes, but is not limited to, chances for scholarship money/financial aid, career opportunities that are available via admission to and graduation from higher-ranking law schools, and delayed entry into a legal career.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor United States prays that the Court:

A. Grant judgment in favor of the United States and declare that LSAC's discriminatory policies and practices as set forth in this Complaint violate sections 302, 309, and 503 of the ADA, 42 U.S.C. §§ 12181 *et seq.*, 12203, and the Department of Justice's implementing regulation, 28 C.F.R. Part 36;

B. Enjoin LSAC, along with its officers, agents, and employees, and all others in concert or participation with them, from engaging in discriminatory policies and practices against individuals with disabilities, and specifically from failing or refusing to ensure that the

1 LSAT is administered in a manner accessible to persons with disabilities within the meaning of
2 title III of the ADA, 42 U.S.C. §§ 12181 *et seq.*, and the Department of Justice's implementing
3 regulation, 28 C.F.R. Part 36;

4 C. Order LSAC to comply with the requirements of title III of the ADA, 42 U.S.C.
5 §§ 12181 *et seq.*, and the Department of Justice's implementing regulations, 28 C.F.R. Part 36;

6 D. Order LSAC to approve appropriate testing accommodations pursuant to
7 42 U.S.C. § 12189 for aggrieved persons for the administration of the LSAT of the applicant's
8 choice;

9 E. Order LSAC to stop the policy and practice of flagging test scores for individuals
10 with disabilities who receive extended time as a testing accommodation;

11 F. Award compensatory damages, including damages for pain and suffering, to
12 aggrieved persons, in an appropriate amount for injuries suffered as the result of LSAC's failure
13 to comply with the requirements of title III and title V of the ADA, 42 U.S.C. §§ 12181 *et seq.*,
14 12203;

15 G. Assess a civil penalty against LSAC in an amount authorized by 42 U.S.C.
16 § 12188(b)(2)(C) to vindicate the public interest; and

17 H. Order such other appropriate relief as the interests of justice may require.
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Respectfully submitted,

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