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FILED
ALAMEDA COUNTY

OCT 31 2006

CLERK OF THE SUPERIOR COURT
By E. Opelski-Erickson, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

4
5 ANDRES TURNER, et al.

No. RG04-166148

6 Plaintiffs,

FINAL STATEMENT OF DECISION.

7
8 v.

9 ASSOCIATION OF AMERICAN MEDICAL
10 COLLEGES,

11 Defendant.

12
13 This action was tried before the Court on June 15 and June 19-22, 2006. Joshua Konecky
14 and Roger Heller appeared on behalf of Plaintiffs. Robert Burgoyne, Robert Darby, and Caroline
15 Mew appeared on behalf of Defendant Association of American Medical Colleges ("AAMC").
16 The parties filed their respective proposed statements of decision on August 1, 2006 and the
17 matter was submitted to the Court for decision.

18 The Court filed its Tentative Statement of Decision on September 20, 2006 and the
19 parties filed their respective objections to the Court's Tentative Statement of Decision on
20 October 17, 2006. A hearing was held to consider the objections of the parties on October 26,
21 2006 at 9:00 a. m. in Department 22 of the Alameda County Superior Court. Joshua Konecky and
22 Roger Heller appeared on behalf of Plaintiffs and Robert Burgoyne and Robert Darby appeared
23 on behalf of Defendant AAMC.

24 Having considered the applicable pre-trial record, the arguments of counsel, and the
25 evidence submitted at trial, and the objections of the parties to the Court's Tentative Statement of
26

1 Decision, the Court enters the following Findings of Fact and Conclusions of Law as its Final
2 Statement of Decision in accordance with Cal. Code of Civil. Proc. § 632.

4 PLAINTIFFS CLAIMS

5 1. Plaintiffs claim that they are entitled to extra testing time and other accommodations
6 on the Medical College Admission Test ("MCAT") because they have learning disabilities and/or
7 an Attention Deficit Hyperactivity Disorder ("ADHD"). Plaintiffs bring this action under
8 California's Unruh Civil Rights Act ("Unruh Act"), Blind and Otherwise Physically Disabled
9 Persons Act ("DPA"), and Unfair Competition Law ("UCL"). Their complaint challenges
10 AAMC's policies and procedures for evaluating requests for testing accommodations on the
11 MCAT, and they are seeking declaratory and injunctive relief. *See* Complaint at 22.

12 2. Plaintiffs do not seek entitlement to accommodations under the Americans with
13 Disabilities Act ("ADA"), which expressly addresses accommodations on standardized tests. 42
14 U.S.C. § 12189.

16 PRIOR DECISIONS

17 3. In an Order dated September 27, 2005, the Court ruled that the Unruh Act and DPA
18 apply to AAMC with respect to its administration of the MCAT, and that "the requirement of
19 'full and equal access under California law' requires AAMC to provide 'reasonable
20 accommodations' in appropriate cases to disabled individuals. Order of September 2005. at 10-
21 16.

22 4. The September 2005 Order also certified a plaintiff class "for the limited purpose of
23 determining whether the AAMC must apply California law to the members of the defined class."
24 *Id.* at 8. The class was defined as all residents of California who apply or have applied to take
25 the MCAT in California with testing accommodations, from July 19, 2004. through the duration
26 of any injunctive relief ordered by the Court (assuming any such relief is entered). *Id.* at 9-10.

1 The Court held that it will not "resolve on a classwide basis whether the AAMC must provide
2 specific accommodations to individual applicants," that it "will not address the individualized
3 issues of... any given class member ... under the Unruh Act and the DPA," and that it "will not
4 retain jurisdiction to act as a centralized administrative body for reviewing how the AAMC
5 handles individual applications" in the future. *Id.* at 8-9. 20. The September 2005 Order did not
6 address liability. *See id.* at 3.

8 PARTIES' POSITIONS ON RELIEF

9 5. Plaintiffs seek both declaratory and injunctive relief. Plaintiffs have requested an
10 injunction that would impose specific requirements on AAMC with respect to how it handles
11 future MCAT accommodation requests. *See* Tr. 10-11, 537-44, 551, 555-56. In particular,
12 Plaintiffs have requested an injunction that:

13 Prohibits AAMC from disqualifying individuals for accommodations on
14 the basis of above-average intelligence or academic achievement;

15 Requires AAMC to give some unspecified amount of weight ("due
16 consideration") to the clinical observations provided in support of an accommodation request;

17 Requires AAMC to have all applicable accommodation requests reviewed
18 by individuals who have "significant training and experience in the diagnosis and evaluation of
19 adults with learning disabilities and ADHD.";

20 Requires AAMC to use at least two reviewers for every request, to provide
21 "meaningful explanations" when requests are denied, and to implement a "genuine appeal
22 process.;"

23 Provides for ongoing monitoring of AAMC's handling of accommodation
24 requests by Plaintiffs' counsel, with an opportunity to bring concerns of noncompliance to the
25 Court.

1 6. AAMC argues that injunctive relief is unwarranted and that the Court should instead
2 enter a declaratory judgment that expands upon its prior ruling that the Unruh Act and DPA are
3 applicable in the context of MCAT accommodation requests. AAMC contends that such a
4 declaratory judgment would give prospective MCAT examinees, AAMC, and other interested
5 parties sufficient guidance regarding the applicability and scope of these California statutes.
6 AAMC suggests that (after the conclusion of any appellate proceedings) it will voluntarily
7 implement appropriate changes to its current policies and practices.

8 9 FINDINGS OF FACT

10 NATURE OF LEARNING DISABILITIES AND ADHD.

11 7. A learning disability in reading is a condition that interrupts one's cognitive
12 processes and mechanics of reading, forcing the individual to rely on alternate processes. There
13 are different types of learning disabilities. Tr. 154:17-29 (Gregg). Not all **learning disabilities**
14 affect reading skills. For example, some learning disabilities affect skills in math or the ability to
15 learn foreign language. Tr. 154:14-156:21 (Gregg). A learning disability is an impairment that
16 may make one or more life activities, such as reading or learning, slow, labored and difficult. Tr.
17 at 143:26-144:25.

18 8. ADHD is a condition that affects one's ability to process certain types of information.
19 ADHD can make the mechanics of reading difficult and can cause one's reading to be slow, Tr.
20 at 144:26-145:9. 208:14-21, 255:23-256:13. ADHD is typically associated with impairment and
21 can be pervasive across many activities of an individual's life. Tr. at 376:12-24 (Ranseen).
22 ADHD is not a learning disability. Tr. 207:2-3 (Gregg). It is a disorder that affects one's ability
23 to attend and deal with different types of information. Tr. 144:26-28 (Gregg). Some people
24 with ADHD tend to have difficulty reading and taking standardized tests as a result of the
25 impairment. Tr. at 377:3-10 (Ranseen). An individual can have above-average or superior
26 intelligence, reading comprehension skills (when provided with additional time), and be capable

1 of academic and professional success, and still have difficulty with the mechanics of reading as a
2 result of a learning disability or ADHD. Tr. at 145:10-17, 146:8-147:12, 167:12-25, 168:22-
3 169:2, 169:9-13, 254:13-16; 401:4-20. Not all individuals with learning disabilities or ADHD,
4 however, have difficulty reading. Tr. 152, 182 (Gregg); Tr. 376-77 (Ranseen).

5 9. There are different degrees of severity for learning disabilities and ADHD. Tr. at
6 181:6-8. The disability need not be "severe" for it to result in difficulty reading and the need for
7 accommodations on exams. Someone with a mild learning disability can have difficulty with the
8 mechanics of reading and may need accommodations, including extra time on timed tests. Tr. at
9 181:6-15; 393:17-20.

10 CLINICAL DIAGNOSIS OF LEARNING DISABILITIES AND ADHD.

11 10. There are no completely agreed upon formal diagnostic criteria for ADHD, nor are
12 there well-accepted procedures to document adult ADHD problems. Tr. Ex. 57 at 453; Tr. 353
13 (Ranseen), 207-08 (Gregg). Likewise, there are no national standards for diagnosing learning
14 disabilities. To the contrary, there is significant disagreement regarding the diagnostic criteria for
15 learning disorders, and professionals are still struggling to agree on an appropriate conceptual
16 definition. Tr. 109, 195, 250 (Gregg); Tr. Ex. 41 at 3-5. Not every reading or learning problem
17 is the result of a learning disability or ADHD. An individual can have difficulty reading and not
18 have a learning disability, and not all individuals with learning disabilities or ADHD have
19 difficulty reading. RT 152, 182 (Gregg); RT 376-77 (Ranseen). Thus, not every person with a
20 diagnosis of learning disability or ADHD is necessarily entitled to accommodations on
21 standardized tests. A clinical diagnosis of a learning disability or ADHD requires the clinician
22 to rule out other possible causes of the reading or learning problem. Tr. at 153:1-13. All
23 diagnoses should include a process by which the clinician rules out other causes of the reading or
24 learning difficulty. Tr. at 152:26-153:13.

25 11. Persons with high levels of intelligence and academic achievement can have learning
26 disabilities or ADHD. These individuals are often able to compensate for the limitations they

1 experience by using "superior intellect" or "superior problem solving skills," or simply by
2 working harder. RT 145-47 (Gregg). There are legitimate questions whether such individuals
3 are appropriately identified as disabled given their ability to achieve success. Tr. 365-66, 393-94,
4 397 (Ranseen); Tr. Ex. 124 at 487-89 ("The LD Label for Relatively Well-Functioning Students:
5 A Critical Analysis," 32 J. of Learning Disabilities 485 (1999)). Notwithstanding these debates
6 among professionals in the field, California law provides protection under the Unruh Act and the
7 DPA to disabled persons who achieve success in spite of their disabilities.

8 12. Persons can be diagnosed with learning disabilities or ADHD later in life. Tr. at
9 145:10-17, 146:8-28, 167:12-25, 168:22-171:8, 253:6-28, 254:6-16, 400:9-28, 401:4-20, 402:10-
10 403:23. There are adults with learning disabilities and ADHD who are not diagnosed with these
11 impairments until later in life. There are a number of reasons why individuals with varying
12 degrees of learning disabilities and/or ADHD might not be diagnosed until (hey are adults. Tr. at
13 169:24-171:8, 254:6-12 (Gregg). For example, there can be a reluctance by the individual or his
14 or her parents to carry the disability label. Tr. at 402:10-403:23 (Ranseen). Persons who are
15 diagnosed with learning disabilities and ADHD later in life may need accommodations, including
16 extra time on standardized tests, even if they have not sought or received academic or testing
17 accommodations previously. Tr. at 243:13-18 (Gregg).

18 ¹³ There is the possibility that individuals might "malingering" in order to achieve a
19 diagnosis of ADHD that might be used to obtain an "edge on a difficult exam." The record,
20 however, contains no research or facts to support this concern. Tr. at 380:25-28, 402:4-9
21 (Ranseen).

22 ¹⁴ Because of the many variables involved in the diagnosis, in-person clinical
23 observations about the way the individual reads or performs other relevant activities are vital to
24 making a proper diagnosis of learning disabilities or ADHD.

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26 ///

1 AAMC AND MCAT.

2 15. AAMC is a non-profit membership organization whose members include medical
3 schools and teaching hospitals across the country. Tr. 441 (Julian). In California, AAMC's
4 members include, for example, all of the medical schools in the University of California system,
5 Stanford, and Loma Linda. *Id.* AAMC's mission is to improve the nation's health care system
6 by enhancing the effectiveness of academic medicine. *Id.* Dr. Ellen Julian is the Director of the
7 MCAT and has been employed by AAMC in that position since approximately 1997. Tr. al
8 434:5-9. Dr. Julian regularly interacts with medical school admissions committees and
9 admissions personnel. Tr. at 445:20-446:1, 500:15-501:2 (Julian).

10 16. The MCAT is a timed, multiple choice exam that is used by all medical schools in
11 the United States as one variable, among many, in their admissions decisions. Tr. at 441:28-
12 442:8 (Julian). The purpose of the MCAT is to help admission committees predict which
13 applicants will perform successfully in the medical school curriculum. Tr. at 445:10-12 (Julian);
14 Ex. 16, at AAMC01347. The MCAT has significant value to medical schools because it
15 provides a tool for comparing how applicants performed on a uniform test taken under
16 standardized conditions. Order (May 11, 2005), at 2; Tr. 445-46; Tr. Exhs. 117 at 13, 137 5-6.
17 The MCAT is not intended or designed to assess an individual's ability to perform any particular
18 medical task or to predict how test takers will perform as doctors. Tr. at 285:19-286:2. 492:17-
19 493:24 (Julian); Ex. 16, at AAMC01347. AAMC01358. AAMC's materials, including its
20 website, describe the MCAT as a test "designed to assess problem solving, critical thinking, and
21 writing skills in addition to the examinee's knowledge of science concepts and principles
22 prerequisite to the study of medicine." Ex. 14-17; *see also* Tr. at 274:12-26, 275:13-276:19.
23 279:6-282:4; 443:7-9, 444:21-445:12, AAMC Response to Interrogatory No. 16.

24 17. AAMC's policy states that it provides reasonable and appropriate accommodations
25 on the MCAT, including extra time, when appropriate, to individuals with documented
26 disabilities who demonstrate a need for accommodations. Tr. at 454:15-21; Ex. 33. Dr. Julian

1 testified that AAMC will provide accommodations because it is both a legal obligation and "the
2 right thing to do." Tr. at 509:2-7, AAMC's written policy states: "The purpose of
3 accommodations is to provide equal access to the MCAT program. Accommodations 'match up'
4 with the identified functional limitations so that the area of impairment is alleviated by an
5 auxiliary aid or adjustment to the testing procedure." Ex. 33, at p 1.

6 IMPACT OF LEARNING DISABILITIES AND ADHD ON THE MCAT.

7 18. Timed, standardized tests that are designed to measure knowledge or problem
8 solving skills sometimes, but not always, do not reflect accurately the abilities of individuals with
9 learning disabilities and/or ADHD who have difficulty reading. This is because timed,
10 standardized tests require a demonstration of both reading mechanics and decoding abilities and
11 knowledge or problem solving skills. The purpose of providing accommodations to persons with
12 learning disabilities or ADHD in timed, standardized tests is to provide those persons an equal
13 opportunity to demonstrate they have the relevant knowledge or problem solving skills that the
14 tests are designed to measure. Tr. at 147:13-148:5, 148:23-149:4, 154:3-12,204:14-25,205:2-15
15 (Gregg); Ex. 33, at p.1; Tr. at 387:18-24 (Ranseen); Ex. 58, at AAMC01807.

16 DENIAL OF ACCOMODATIONS.

17 19. Each of the named plaintiffs has documented learning disabilities and/or ADHD and
18 a history of receiving accommodations for them in school and on standardized tests. On its
19 initial review, AAMC did not provide accommodations on the MCAT to any of the named
20 plaintiffs on the basis that they did not provide documentation that demonstrated that they met
21 the standard AAMC used at the time to determine whether someone had a "disability." Ex. 2, 3,
22 5,8, 10, 11.

23 20. Andres Turner is described as the "classic example" of an extremely bright person
24 with superior intellectual ability and very superior verbal skills, but who has difficulties with the
25 mechanics of reading as a result of a learning impairment. Tr. at 41:11-20. Mr. Turner received
26 accommodations for his disability, including extra time on exams, throughout his educational

1 career. Tr. at 41:21 -42:10. AAMC denied Mr. Turner's request for accommodations on the
2 MCAT on the basis that "your documentation does not demonstrate the existence of a disability
3 that would support your request for accommodations." Ex. 2.¹

4 21. Brendan Pierce was diagnosed with dyslexia and ADHD in the second grade. Tr. at
5 72:19-73:1. His diagnosis was confirmed in 2004. Tr. at 73:18-25. Mr. Pierce received
6 accommodations, including extra time on exams, throughout his educational career. Tr. at 74:26-
7 75:9, 75:14-20, 75:28-76:2, 76:22-24, 77:20-24. AAMC denied Mr. Piercers request for
8 accommodations on the MCAT on the basis that "your documentation does not demonstrate the
9 existence of a disability that would support your request for testing accommodations."" Ex. 5.²

10 21.1 AAMC does not dispute the standing of Plaintiffs Cashmore and Lebowitz to
11 challenge the denial of their requests for accommodations. Tr. at 433:1 -9.

12 AAMC'S DEFINITION OF DISABILITY AND REASONABLE ACCOMODATION.

13 22. AAMC's accommodation policies are set forth in a set of written guidelines. *See* Tr.
14 Exs. 104, 105. These policies are consistent with the policies of other national testing
15 organizations, including policies that the Plaintiffs' own expert, Dr. Noel Gregg, conceded to be
16 reasonable. *See* Tr. 223-24; Tr. Exs. 154 and 155 (ETS policies for documenting learning
17 disabilities and ADHD), 184 (USMLE policies). AAMC's written policies appear to be largely
18 consistent with policies that Dr. Gregg helped prepare for use within the State of Georgia
19 university system. *See* Tr. Exs. 183, 185; RT212. AAMC's policies were adapted from and
20

21
22 ¹ On April 9, 2004, AAMC rejected Mr. Turner's internal appeal on the basis that "we did not find the
23 degree of any impairment described in the documentation you provided constituted a disability as defined
24 by the Americans with Disabilities Act." Ex. 3. Mr. Turner, along with the other Plaintiffs, filed this
25 case on July 19, 2004. Tr. at 45:6-22; Ex. 4. Shortly thereafter, AAMC provided Mr. Turner with the
26 accommodations he had sought. Tr. at 45:21 -25. Mr. Turner took the August 2004 MCAT and has
completed his first year of medical school. Tr. at 45:21-46:9.

² Mr. Pierce filed this case on July 19, 2004, and AAMC thereafter provided Mr. Pierce with
accommodations. Tr. at 83:7-16. Mr. Pierce is currently enrolled at the University of Minnesota
Medical School, where he recently finished his first year. Mr. Pierce receives accommodations,
including extra time on tests, in medical school. Tr. at 72:11-15, 85:16-20.

1 largely "mirror" the USMLE policies. *See* Stientjes Dep. 62:3-62:5, RT 373 (Ranseen); *compare*
2 Tr. Ex. 104 *with* Tr. Ex. 184.

3 23. AAMC's accommodation policies are, however, based on the ADA's "substantially
4 limited" standard of disability. When AAMC evaluates requests for accommodations on the
5 MCAT from California residents, it does so "without regard to whether any individual might be
6 entitled to accommodations under California law." AAMC Response to Request for Admissions
7 Nos. 30, 31; Tr. at 502:4-9; *see also* AAMC Response to Interrogatory No. 6; AAMC Responses
8 to Request for Admissions Nos. 24-29, 32, 33, 36.

9 24. AAMC admits that there are individuals in California who might be given testing
10 accommodations if the Unruh Act or Disabled Persons Act standards governed their requests for
11 testing accommodations, but who would be denied such accommodations if the ADA standards
12 governed. AAMC Response to Interrogatory No. 6.

13 25. There are three principal models for diagnosing learning disabilities. They are the
14 discrepancy model (which looks at the difference between someone's IQ and achievement), the
15 cut-off model (which looks at whether certain academic achievement scores are below a standard
16 score of 85), and the clinical model. Tr. 191 (Gregg). The discrepancy model has been
17 extensively used since the 1980's. Tr. 192, 198-99 (Gregg). Dr. Gregg favors a clinical model,
18 which considers discrepancies between intellect and achievement but also relies heavily on the
19 clinical observations of the evaluator. Tr. 191-92 (Gregg). The head of the Psychology
20 Department at the University of Georgia, where Dr. Gregg works, favors a cut-off model. Tr.
21 194-96 (Gregg); Ex. 41 at 4, 9-11.

22 26. AAMC's policy is to determine the existence of a disability by comparing the
23 individual applicant to the "average person" in the general population. This is the "cut off
24 model. AAMC does not have any criteria or standard definition for what constitutes an "average
25 person" or what the reading rate is for an "average person." Stientjes Designation at 70:25-
26 72:20; Newton Designation at 23:21-24:17. AAMC denies requests for accommodation based

1 on learning disability and/or ADHD when, in the minds of its reviewers, an applicant does not
2 have a limitation when compared to some "average person" in the general population. Tr. at
3 166:9-18, 181:1-5; Designation of Harlan Stientjes at 66:12-67:3; Designation of Thomas
4 Newton at 23:7-12; AAMC Response to Request for Admission No. 36. People who are not
5 limited in comparison to this "average person," might nonetheless have difficulty reading as a
6 result of a learning impairment. Tr. at 392:15-19 (Ranseen).

7 27. AAMC derived its "average person" standard from certain federal decisions
8 interpreting the ADA "substantially limited" definition to require a comparison to the general
9 population, rather than to the individual's peers with similar levels of education. Tr. at 491:16-
10 27. (*See Wong v. Regents of Univ. of Calif. (9th Cir. 2005) 410 F. 3d 1052, 1065*) However,
11 there is no similar authority interpreting the Unruh Act and the DPA.

12 28. AAMC has not conducted any research to address whether or the extent to which
13 validity of the MCAT would be impacted by defining disability in relation to one's peers with
14 similar levels of training and experience, rather than the so called "average person" in the general
15 population. Tr. at 491:28-492:6.

16 29. AAMC's reliance on the "average person" standard, combined with the explanations
17 provided in the AAMC denial letters, the experiences of the named Plaintiffs, and the designated
18 deposition testimony of Dr. Stientjes and Dr. Newton, taken together, suggest that persons with
19 clinically diagnosed or diagnosable learning disabilities or ADHD and who also have intelligence
20 and academic achievement are not deemed "disabled" by the AAMC because their intelligence
21 compensates for their disabilities. Tr. at 79:13-80:11. 81:11-22. 167:8-168:18; Ex. 2, 3, 5, 8, 10.
22 11; Stientjes Designation at 66:12-67:3, 77:11-18, 78:2-17, 79:7-80:2, 191:14-192:3; Newton
23 Designation at 23:7-12. For example, the denial letter sent to Mr. Pierce justified the denial on
24 the fact that his "scores... and history both indicate significant strength in academic
25 performance." Ex. 5. Mr. Pierce testified that when he received word that his request for
26 accommodations had been denied, he contacted Dr. Stientjes directly, and Dr. Stientjes explained

1 that his request was denied because he was too smart and had achieved too much academic
2 success to need accommodations. Tr. at 81:11-22. The Court finds that it would not be
3 appropriate under the Unruh Act or the DPA to conclude that someone is not disabled based
4 solely on a history of high academic success. Such an approach is not in compliance with the
5 Unruh Act and the DPA.

6 30. There is a genuine dispute in the medical community about whether the appropriate
7 comparison group for determining the actual existence of disability and accommodation needs is
8 the "average person" or the applicant's "peers". Dr. Gregg testified that professionals in the
9 assessment of learning disabilities and ADHD generally agree that the appropriate comparison
10 group for determining the actual existence of disability and accommodation needs is the
11 applicant's "peers" (e.g., college graduates for the MCAT). Tr. at 166:21-167:6, 202:9-27,
12 240:1-7, 256:23-257:18. Dr. Ranseen also acknowledged that there might be people who do not
13 fall below the "average person" standard, and are thus not disabled under the ADA standard, who
14 might still have difficulties reading. Tr. at 392: 14-20. The Court finds that in the instance
15 where a person is diagnosed with a learning disability or ADHD that limits such person in a
16 major life activity, such a person is entitled to reasonable accommodations related to said
17 limitation under the Unruh Act and the DPA in California.

18 AAMC'S ACCOMMODATION PROCESS AND PROCEDURES.

19 31. Dr. Stientjes was responsible for developing and implementing the specific day-to-
20 day criteria and standards used to review requests for accommodations on the MCAT. Tr. at
21 511:2-15. At the time this lawsuit was filed, Dr. Harlan Stientjes performed the initial review for
22 all accommodation requests based on learning disability and/or ADHD. Tr. at 509:13-18,
23 510:21-511:15; Stientjes Designation at 23:1-8, 155:20-156:4, 157:21-158:3. Dr. Stientjes does
24 not have an extensive background concerning the diagnosis of adults with learning disabilities or
25 ADHD. Stientjes Designation at 7:1 8-9:18; Ex. 48.

1 32. Dr. Gregg testified that minimum qualifications for reviewing a request for
2 accommodations based on a claimed learning disability and/or ADHD would include: (a) degrees
3 specific to the areas of learning disorders; (b) supervised clinical work and internships; and (c)
4 personal experience testing adults with the impairment at issue. Tr. at 173:27-174:7.

5 Defendant's expert, Dr. Ranseen, testified that "it is important for the reviewers of
6 accommodation requests to have significant training and experience in the diagnosis and
7 assessment of adults with learning disabilities and ADHD." Tr. at 399:12-16.

8 33. Dr. Stientjes arguable lack of experience with diagnosing learning disabilities and
9 ADHD may not be particularly significant because the stated purpose of AAMC's review is not
10 to diagnose whether an individual does or does not have a given impairment, but to determine
11 whether the individual's clinician has adequately documented his or her diagnosis, and whether
12 the documentation demonstrates a need for accommodations. Tr. 501-02 (Julian); Newton Dep.
13 36:23-37:12; Stientjes Dep. 139:16-140:20. When evaluating accommodation requests, AAMC
14 considers the observations of the supporting clinicians. Tr. 112. AAMC specifically requests
15 clinician reports. See Tr. Exs. 104 at 7, 9; 105 at 9, 13; RT 194 (Gregg). AAMC's approach is
16 identical to the approach Dr. Gregg took when reviewing accommodation requests for ETS. Tr.
17 222-23. Although individuals performing such a *review* function can perform better if they have
18 experience or expertise in the diagnosing function, it is unclear whether individuals performing
19 the *review* function necessarily need significant training and experience in *diagnosing* adults with
20 learning disabilities or ADHD. The Court makes no findings regarding whether Dr. Stientjes
21 was an adequate reviewer.

22 34. AAMC has both a reconsideration process and an appeal process. See Newton Dep.
23 16:2-16:17, 44:13-45:8, 47:8-48:7; Stientjes Dep. 34:14-35:3, 89:2-89:24. AAMC's practice is
24 to have the reviewer who initially recommended the denial (e.g. Dr. Stientjes) present the case to
25 the people deciding the appeal. Newton Designation at 13:24-14:4. Dr. Newton is part of the
26 appeals process, admitted that none of the people who review the internal appeals have the

1 professional qualifications or experience to diagnose and evaluate learning disorders or ADHD.
2 Newton Designation at 11:7-12:13; *see also* Tr. at 178:7-24, Denials of accommodation requests
3 have been reversed in 10-15% of cases (often following the provision of additional information).
4 Stientjes Dep. 87:22-88:1; Tr. 113. For example, Mr. Pierce acknowledged that he was granted
5 accommodations after supplying additional documentation in support of his request. Tr. 1 83-84.

6 35. The experts on both sides testified that where a testing entity denies a request for
7 accommodation based on learning disability and/or ADHD, it is important to provide the
8 applicant with an explanation as to the basis for the denial which is tailored to the particular
9 individual. It is not sufficient to simply provide a brief statement that the person does not show
10 the existence of a disability. Tr. at 175:10-1 76:6., 399:1 7-400:8. When AAMC decides to deny a
11 request for accommodation, including the requests of the named Plaintiffs in this case, if has sent
12 a form letter to the applicant that does not specifically identify the reason for the denial or the
13 specific criteria that the applicant did not meet. Tr. at 79:13-28, 176:24-1 77:17, 177:24-1 78:2;
14 Ex. 2, 3, 5, 8, 10, 11.

15 AAMC'S FUNDAMENTAL ALTERATION DEFENSE.

16 36. The Director of the MCAT. Dr. Julian, testified that the basis for the AAMC's
17 refusal to provide accommodations to individuals who meet the definition of "disability" under
18 California law is her concern that moving on the continuum towards recognizing people with less
19 severe impairments as "disabled" and entitled to accommodations, will bring AAMC "closer...
20 to giving an arbitrary group of people extra time." TV. at 457:4-6. Dr. Julian testified that she is
21 "more comfortable" providing additional time only to people who are "truly disabled." a term
22 which she uses to describe those who "really would not have the opportunity to show their
23 mastery of the content without extra time. They just could not even really take the test. You
24 could not get a good measure for them under standard conditions". Tr. at 456:27-458:2. Dr.
25 Julian's concerns are based on policy considerations about maintaining the standardized nature of
26 the test, based on input from professionals in the disabilities field and legal counsel. Tr. at

1 489:2-6. Dr. Julian is an expert in the fields of psychometrics and measurement, particularly as
2 they relate to the operation of a national standardized testing program. Tr. 434:11-440:7. Dr.
3 Julian is not an expert in the clinical assessment of learning disabilities or ADHD. Tr. at 490:10-
4 25. Dr. Julian does not know, and the AAMC has not done any research or analysis about,
5 whether providing accommodations under the California definition of disability would bring
6 AAMC to a point of "arbitrariness" on the continuum. Tr. at 457:11-13, 488:9-489:11; Tr. at
7 297:16-26; AAMC Responses to Requests for Admissions Nos. 39, 40, 44-49.

8 37. The focus at trial was on the accommodation of providing more time to take the
9 MCAT. There was no evidence concerning other accommodations - large print tests for persons
10 with visual impairments, the use of prosthetics for persons with missing hands or digits, isolated
11 test taking conditions for persons with clinical fear of crowds, etc. The fundamental alteration
12 defense concerned whether providing persons with learning disabilities or ADHD with more time
13 to take the MCAT would fundamentally alter a construct measured on the exam; namely, the
14 facility to process written information within a reasonable time period. A second defense offered
15 by AAMC was that the testing accommodation of extra time affects score comparability. The
16 Court also considered whether providing the accommodation of extra time on the MCAT
17 otherwise impairs a legitimate interests of the AAMC.

18 38. Constructs measured on the MCAT. MCAT was not specifically designed to
19 measure reading speed. Tr. at 494:18-25; *see also id.* at 274:27-275:9, 275:13-276:19. 279:6-
20 282:4, 289:15-22; Ex. 14-17. The fact that the MCAT has time limits does not necessarily mean
21 that the exam is designed to test reading or problem solving speed. Tr. at 278:14-279:5, 289:21 -
22 22 (Dr. Geisinger). The MCAT is neither designed nor validated to measure the speed with
23 which somebody can process information provided in an oral format (such as the electronic text
24 that some medical students with disabilities use). Tr. at 504:16-22. Although Dr. Julian suggests
25 that facility with problem solving (one of the skills that AAMC's materials indicate is tested by
26

1 the MCAT) implies some level of reading speed, none of AAMC's materials regarding the
2 MCAT draw this connection. Tr. at 283:1-14; Ex. 14-17.

3 39. There is no evidence that AAMC or anyone else has attempted to correlate the time
4 limits on the MCAT with the reading or problem-solving speed, if any, necessary for success in
5 medical school or in the medical profession (or the reading speed of the "average person"). Tr. at
6 519:18-520:15, 520:27-521:2; *see also* Tr. at 286:10-288:19; 330:20-26. AAMC did send a
7 survey question to medical school admissions officers in 2003. Tr. at 481:1-482:21, 501:3-6.
8 The survey question asked: "Do you consider it important that applicants be able to process
9 written material quickly?" Ex. 18. Eighty-six percent of respondents answered "yes." Tr. at
10 481:19-23. The survey did not define how fast "quickly" might be or provide any context for
11 the meaning of "important," as it might relate to other skills that are either useful or necessary in
12 medical school. The vagueness of the question suggests that the responses did not provide
13 meaningful information. Tr. at 286:13-288:19 (Geisinger). There is no evidence in the record
14 demonstrating that that medical students or physicians need to read at any particular pace to be
15 competent. Tr. at 377:17-378:9 (Ranseen).

16 40. Comparability of MCAT scores. Persons who take standardized tests with
17 accommodations tend to slightly over-predict success at the next level (i.e. college for the SAT;
18 graduate school for the GRE).³ AAMC has published a research article that acknowledges that
19 when test takers with learning disabilities are given extra time then their scores might be a more
20 accurate reflection of the person's actual knowledge and skills. Tr. at 513:26-514:3, 291:14-26;
21 Ex. 20. at AAMC00270. No research studies have been completed that addresses what impact
22 providing extra time on the MCAT to test takers with learning disabilities that make reading
23 difficult would have on the validity, predictive or otherwise, of MCAT scores. Tr. at 289:28-

24
25 ³ Though the subject matter is different, the MCAT is similar to the GRE and SAT in terms of the skills
26 and knowledge the tests are designed to assess. Tr. at 294:4-25. The MCAT also is similar to the GRE
and SAT in that all three tests are intended to predict grades and test scores at the next academic level.
Tr. at 294:26-295:17.

1 291:22, 297:11-15; Ex. 20, at AAMC00267 ("The validity of the flagged MCAT in predicting
2 success in medical school is not known"). On a related but slightly different point,
3 approximately one-half of the general test-taking population does not benefit at all from
4 additional time on the MCAT, and some even decrease their scores. Tr. at 494:2-9.

5 41. Although this case concerns the MCAT, Plaintiffs argue that to the extent that
6 providing extra time on the MCAT might lead to distortions in predicting success at medical
7 school or in the medial profession, the distortions are substantially eliminated when the MCAT
8 scores are interpreted in combination with undergraduate GPA and the other factors considered
9 in school admissions processes. Tr. at 292:25-293:25, 324:27-325:26, 326:8-18. The AAMC
10 directs and expects that medical school admissions officers will use the MCAT in conjunction
11 with undergraduate GPA and a wide array of other variables, as that will increase the predictive
12 value of the exam. Tr. at 506:12-507:20; Ex. 16, at AAMC01359 ("[S]tandardized test scores
13 should never be the sole basis for student selection."); AAMC Response to Request for
14 Admission No. 20; *see also* Tr. at 292:25-293:25, 324:27-325:26. 326:8-18. This is an
15 interesting argument because it appears to cut both ways - if unwarranted accommodations that
16 might lead to a potentially unjustified increase of a few points on the MCAT will not have a
17 material effect on admission to medical school, then the decrease of a few points on the MCAT
18 due to a disability that affects reading speed likewise should not have a material effect on
19 admission to medical school.

20 42. Dr. Julian has begun a study to look at the impact which extra time on the MCAT
21 may have on the predictive validity of MCAT scores with respect to scores on the first step of the
22 USMLE. The study is not completed or published, and has not been submitted for peer review
23 and Dr. Julian describes parts of the study as "rudimentary," incomplete and performed in a
24 "decision-oriented" manner. Tr. at 468:17-20, 471:20-21. Given the preliminary stage of the
25 study, the Court does not give it any weight.

1 43. Other legitimate interests of the AAMC. AAMC puts a notation ("flag") on the score
2 reports of individuals who meet its ADA definition of disability and receive accommodations on
3 the MCAT. The flag does not indicate the type of accommodation or distinguish between
4 disabilities. Tr. at 507:17-508:13. AAMC advises medical schools that scores flagged under the
5 ADA standard should carry less weight in the admissions process than the other scores. Tr. at
6 508:23-509:7.

7 44. The Director of the MCAT, Dr. Julian, testified that there is no economic reason for
8 AAMC to rely solely on its interpretation of the ADA definition rather than to incorporate stale
9 law. Tr. at 504:4-11.

10 45. Findings regarding Fundamental Alteration Defense. The Court makes no finding
11 that any accommodation for any person or persons will fundamentally alter what the MCAT
12 measures or affect the comparability of MCAT scores. AAMC currently provides
13 accommodations (including more time) to some applicants who qualify for accommodations
14 under the ADA standard, so it appears that providing some accommodations to some applicants
15 will not fundamentally alter the MCAT. In the absence of facts on issues such as how many
16 California residents seek accommodations under the Unruh Act and DPA, how many of those the
17 AAMC finds to have disabilities under the Unruh Act and DPA, what accommodations are
18 provided to those persons, and what accommodations are demanded in addition to those
19 provided, the Court cannot determine whether the application of California law to California
20 residents will fundamentally alter the MCAT.

21 22 CONCLUSIONS OF LAW

23 STANDING OF ORGANIZATIONAL PLAINTIFFS.

24 46. The Organizational plaintiffs, NDSU and IDA, lack standing to assert claims based
25 on their own personal interests. Order of September 2005 at 17.

1 47. The Court previously found a triable issue of material fact whether the IDA and
2 NDSU have representational standing. Order of September 2005 at 17-18. At trial the NDSU
3 and IDA did not meet their burden of proving that they have representational standing. Neither
4 entity demonstrated at trial that a "particular member... of its organization" has been adversely
5 affected by AAMC's testing accommodations policies, *Midpeninsula Citizens for Fair Housing*
6 *v. Westwood Investors* (1990) 221 Cal. App. 3d 1377, 1387, or that they are "adequate
7 representatives for their members," Order of September 2005 at 19.

8 48. NDSU is a national organization and IDA is an international organization, both with
9 wide-ranging activities. Complaint 19-20. Neither was formed specifically to respond to the
10 issue of disability accommodations on the MCAT in California, and neither organization's
11 membership has been shown to be comprised primarily of California residents. They are not,
12 therefore, the type of organizations that should be accorded representational standing to seek
13 injunctive relief. *See Midpeninsula*, 221 Cal. App. 3d at 1 387; *Environmental Protection Info.*
14 *Cir. v. Dept. of Forestry & Fire Protection* (1996) 43 Cal. App. 4th 1011, 1019.

15 49. The claims of organizational plaintiffs NDSU and IDA are dismissed.

16 STANDING OF INDIVIDUAL PLAINTIFFS.

17 50. Plaintiffs Turner, Pierce and Lebovitz have standing to pursue this action on the
18 limited class issue certified by the Court. Order of September 2005 at 20. AAMC has stipulated
19 that it does not challenge the standing of plaintiffs Cashmore and Lebovitz. IV. 433.

20 UNRUH ACT, DPA, AND THE MEANING OF DISABILITY.

21 51. The Unruh Act provides that "[a]ll persons no matter what their ... disability,
22 ... are entitled to ... full and equal ... services in all business establishments...." Cal. Civ. Code
23 § 51(b). The DPA provides that individuals with disabilities are "entitled to full and free access
24 ... to places of public accommodation" *Id.* § 54.1(a)(1). The AAMC is a "business
25 establishment" within the meaning of the Unruh Act. and a "public accommodation" within the
26 meaning of the DPA. Order of September 2005 at 10-13.

1 52. The Unruh Act and DPA both define "disability" to mean "any mental or physical
2 disability" as set forth in Section 12926 of the Government Code. Cal. Civ. Code §§ 51(e)(1),
3 54(b)(1). Under Section 12926, "mental disability" is defined as "any mental or psychological
4 disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental
5 illness, or specific learning disabilities, that limits a major life activity." Cal. Gov't Code §
6 12926(i)(1). "Physical disability" is defined as "any physiological disease, disorder, condition,
7 cosmetic disfigurement, or anatomical loss" that affects a specified body system and "[l]imits a
8 major life activity." *Id.* § 12926(k)(I). Each person seeking an accommodation on the MCAT
9 must, therefore, present a diagnosis of a disability.

10 53. The issue then turns to whether the diagnosed impairment limits a major life
11 activity. As the U.S. Supreme Court noted in *Toyota Motor Mfg., Ky., Inc. v. Williams* (2002)
12 534 U.S. 184, with respect to the ADA, "[i]t is insufficient for individuals attempting to prove
13 disability status ... to merely submit evidence of a medical diagnosis of an impairment." *Id.* at
14 198. "Claimants also need to demonstrate that the impairment limits a major life activity." *Id.* at
15 195.

16 54. A physical or mental disability "limits" a "major life activity" if it "makes the
17 achievement of the major life activity difficult." *Id.* §§ 12926(i)(1)(B), 12926(k)(1)(B)(ii).
18 *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1027. "Major life activities"
19 are "broadly construed and shall include physical, mental, and social activities and working." *Id.*
20 §§ 12926(i)(1)(C). 12926(k)(1)(B)(iii).

21 55. Plaintiffs allege that they are limited in the major life activities of learning and
22 reading. The term "major life activities" should not be "construed as embracing every possible
23 activity in modern life." *Schultz v. Spraylat Corp.* (CD. Cal. 1994) 866 F. Supp. 1535. 1538
24 (interpreting Cal. Gov't Code § 12926(k)(1)(B)). See also *Toyota, supra*, 534 U.S. at 197
25 (interpreting phrase "major life activities" in the ADA). The Court considers reading and
26 learning separately. Although the ability to learn affects a person's ability to master the

1 substantive material tested in the MCAT, this case is concerned primarily with a person's ability
2 to read quickly during the administration of the MCAT so that they can demonstrate that they
3 have mastered the substantive material. Case law holds that learning is a major life activity.
4 *Wong v. Regents of Univ. of California* (9th Cir. 2005) 410 F.3d 1052, 1063 & n.5 (citing cases).
5 Although there was no evidence presented at trial, the Court can take judicial notice that the
6 ability to read is "of central importance to daily life." *Toyota, supra*, 534 U.S. at 197. Therefore
7 the Court holds that reading is a major life activity.

8 56. Although the "degree of limitation" that must be shown to establish a disability
9 under California law is less than under the ADA, functional limitations must still be shown.
10 *Colmenares v. Braemar Country Club* (2003) 29 Cal. 4th 1019, 1027-28, 1031 -32. *See also*
11 *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal. App. 4th 34, 47 ("It is insufficient for Gelfo
12 simply to allege a disability or to identify an injury or physical condition Gelfo must
13 demonstrate his injury or physical condition (in this instance, a lower back injury whose
14 existence is undisputed) makes 'difficult' the achievement of work or some other major life
15 activity.").

16 57. Prospective MCAT examinees who request accommodations must show that their
17 diagnosed impairment "limits" a major life activity (learning or reading) because it "makes the
18 achievement of the major life activity difficult." The California Legislature has not provided any
19 guidance on how much difficulty one must experience in order for an activity to be "difficult."
20 *See Diaz v. Fed'l Express Corp.* (CD. Cal. 2005) 373 F. Supp. 2d 1034, 1052 n.11. The case
21 law is equally sparse. *See id.* at 1049-50. The history of the statute suggests that the California
22 Legislature intends to protect persons who have impairments that make major life activities
23 "difficult" and that a major life activity can be "difficult" even if it is not "substantially limited."

24 58. In determining whether achievement of a major life activity is "difficult" for a
25 particular person. AAMC suggests that the proper analysis is whether achievement is difficult as
26 compared to the *average person's* ability to perform the activity in question. This is consistent

1 with federal law. *EEOC v. UPS, Inc.* (9th Cir. 2005) 424 F.3d 1060, 1071 (holding that "the
2 proper comparative baseline [under the FEHA] is either the individual without the impairment in
3 question" -- for example, when comparing an individual's physical capacities before and after an
4 injury — "or the average unimpaired person"); *Wong v. Regents of Univ. of Calif.* (9th Cir. 2005)
5 410 F.3d 1052, 1065 ("The relevant question for determining whether *Wong* is 'disabled' is ...
6 whether his impairment substantially limited his ability to learn as a whole, for purposes of daily
7 living, as compared to most people"). The AAMC's proposed use of an "average person"
8 comparator would not eliminate the distinction between California and federal law. According to
9 the AAMC, under California law the "major life activity" must be "limited" and thus, more
10 "difficult" compared to what is experienced by an average person whereas under federal law the
11 activity must be "substantially limited" compared to what is experienced by an average person.

12 59. The Plaintiffs suggest the use of a "peer group" comparator in determining
13 whether a major life activity is made "difficult". The Court notes that the use of a "peer group"
14 comparator is problematic for practical reasons in addition to the fact that there is no legal
15 authority for applying such a test in the context of assessing disability under the Unruh Act or the
16 DPA. The practical problems concern the difficulty in defining ones "peer group" and the fact
17 that peer groups change over time and in different settings. As individuals move into more
18 competitive educational or professional environments, they could presumably "become" disabled
19 not because of any change in their individual capacity, but because they have changed peer
20 groups. *See* Tr. 257 (Gregg); Tr. 370-71 (Ranseen).

21 60. The parties did not cite, nor could the Court find, any authorities interpreting the
22 Unruh Act or the DPA wherein the "average person", or for that matter a "peer group", was used
23 as a comparator in order to make a finding of "disability" or a disability that "limits a major life
24 activity", thus entitling one to reasonable accommodations under California law. Thus, the
25 Court addresses the "difficult" standard only in general terms and makes two obvious points.
26 First, setting a floor, the California Legislature could not have intended that the concept of

1 "difficult" include minor variations from the statistical mean of difficulty for average persons. If
2 any limitation that caused any difficulty whatsoever met the statutory standard, then the word
3 "difficult" would effectively be read out of the statute. Second, setting a ceiling, the California
4 Legislature plainly intended that the "difficult" standard to be lower than the "substantially
5 limited" standard. By way of a hypothetical in mathematical terms, the trier of fact is implicitly
6 called on to determine the mean (average) difficulty of a major life activity and then instructed
7 that under California law protection is triggered at one standard deviation from the mean and
8 under Federal law protection is triggered at two standard deviations from the mean. The location
9 of the mean and the standard deviations probably cannot be quantified or determined with
10 surveys and statistics and will need to be resolved in each case. Decisions will necessarily be
11 made under a variant of the uncertain "I know it when I see it" criteria that judges and jurors use
12 on a regular basis to determine matters such as good faith, reasonableness, and due care.

13 61. For the foregoing reasons, the Court will not adopt a specific standard, guideline
14 or test for determining who is, and who is not, disabled under the Unruh Act and the DPA. There
15 may be circumstances where it might be appropriate to use a comparator, whether it be the
16 "average person" or a "peer group". In other circumstances, no comparator analysis will be
17 required and the determination of disability may simply involve consideration of a particular
18 individuals physical or mental limitations in achieving the relevant major life activity. Each of
19 these approaches may be indulged and still be in compliance with the Unruh Act and the DPA.

20 REASONABLE ACCOMMODATIONS UNDER CALIFORNIA LAW.

21 62. The Unruh Act and DPA require AAMC to provide "reasonable
22 accommodations" to examinees in appropriate circumstances. Order of September 2005 at 14-
23 16. Neither the Unruh Act nor the DPA provides guidance regarding "reasonable
24 accommodations". The term 'reasonable' does provide for significant flexibility in taking into
25 account the needs of a disabled person and the burden on the business establishment. For
26 example, a restaurant might have an obligation to give a dyslexic patron more time to review a

1 menu but a movie theater might not be required to slow down a screening so that the same
2 dyslexic patron could read subtitles." Order of September 2005 at 16.

3 63. With specific regard to the scope of accommodations required in the context of a
4 national standardized testing program, the Court finds guidance in a California statute that
5 addresses California's high school exit examination (the "CAHSEE"). *See Griswold v. See*
6 (2001) 25 Cal. 4th 904, 914 (construing a statute by looking to cases interpreting another statute
7 that "dealt with an analogous subject"); *Quarterman v. Kefauver* (1997) 55 Cal. App. 4th 1366.
8 1371 ("we may attempt to gain insight ... by examining use of the same or similar language in
9 other statutes").

10 64. The CAHSEE statute expressly requires that "appropriate accommodations" be
11 provided to disabled examinees, and it includes a legislative definition of the word
12 "accommodations" in the specific context of standardized tests: "Accommodations" means any
13 variation in the assessment environment or process that does not fundamentally alter what the
14 test measures or affect the comparability of scores."... "Accommodation" may include
15 variations in scheduling, setting, aids, equipment, and presentation format." Cal. Educ. Code §§
16 60850(g) and 60850(0(1) (emphasis added).

17 THE COURT DOES NOT REACH WHETHER THE AAMC HAS VIOLATED THE
18 UNRUH ACT OR THE DPA WITH RESPECT TO ANY INDIVIDUAL.

19 65. The Order of September 2005, states, "The Court will not resolve on a classwide
20 basis whether the AAMC must provide specific accommodations to individual applicants."
21 Because of how the Court certified the class and defined the issues for trial, the trial did not
22 concern the AAMC's evaluation of any individual. The Court will issue declaratory and
23 injunctive relief concerning AAMC's policies and procedures and then dismiss the remaining
24 claims concerning individual issues without prejudice. *Walters v. Reno* (9th Cir. 1998) 145 F.3d
25 1032, 1037. If individual applicants contend that they have been denied specific
26 accommodations contrary to any declaratory or injunctive relief then they will need to initiate

1 appropriate proceedings and/or file separate lawsuits. In those proceedings and/or lawsuits, the
2 individual applicants and the AAMC may rely on the judgment of this Court as having
3 established certain common issues. The Court will not retain jurisdiction to act as a centralized
4 administrative body for reviewing how the AAMC handles individual applications.

5 NO VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

6 66. In November 2004, after this case was filed, the voters of California approved
7 Proposition 64, which limits the right to pursue actions under the UCL to persons who have "lost
8 money or property as a result of unfair competition". Bus. & Prof. Code §17204. The California
9 Supreme Court recently ruled that Proposition 64 applies to pending cases. *Californians for*
10 *Disability Rights v. Mervyn's LLC* (July 24, 2006) 39 Cal. 4th 223. The individual Plaintiffs in
11 this case have not lost money or property as a result of AAMC's actions and therefore said
12 Plaintiffs lack standing to pursue their UCL claim, and therefore the UCL claims in this case are
13 dismissed with prejudice

14 NOW, THEREFORE, THE COURT MAKES THE FOLLOWING ORDERS:

15 A. The Court provides the following DECLARATORY RELIEF:

16 1. The AAMC must apply the Unruh Act and the DPA to members of the
17 class (all residents of California who apply or who have applied for testing
18 accommodations to take the Medical School Admissions Test (MCAT) in California at
19 any time from July 19, 2004, through the duration of any injunctive relief ordered by the
20 Court);

21 2. Under the Unruh Act and the DPA, the AAMC must provide reasonable
22 and appropriate accommodations that do not otherwise fundamentally alter the MCAT to
23 all persons with established disabilities as the term "disability" is defined by the Unruh
24 Act and the DPA. Reasonable and appropriate accommodations may include, but are not
25 limited to, the following:

26 a. Providing additional test time;

- b. Providing different settings or rooms to take the MCAT;
- c. Providing special devices, aids or equipment during the MCAT;

B. The Court provides the following INJUNCTIVE RELIEF:

1. Within 60 days of the date this Judgment becomes final, AAMC must submit and file with the Court a written report reflecting AAMC's development of internal written procedures for accepting, considering and deciding requests by California residents for accommodations under the Unruh Act and the DPA in taking the MCAT in California. The Court will thereupon conduct a hearing on the report submitted by AAMC and hear the concerns of the parties with reference the proposed internal procedures thus proposed and compliance of the AAMC with the Judgment entered in this matter. The written procedures must describe, at a minimum, the following:

- a. The request for accommodation process, including deadlines for submission and determination of such requests, including any appeal process;
- b. how MCAT applicants will receive notice of their right to seek accommodations for the test and advising those seeking accommodations of the following:
 - i. Applicants seeking accommodation have the burden of establishing a physical or mental disability as defined under the Unruh Act or DPA;
 - ii. Applicants must show that the disability limits a major life activity by making it difficult,;
 - iii. Applicants must propose reasonable and appropriate accommodations;
 - iv. Applicants must provide adequate supporting documentation of a disability limiting a major life

1 activity, which documentation includes qualified
2 professional evaluations;

- 3 a. What documentation should be submitted in support of a request for
4 accommodation, including establishing minimum professional
5 credentials required of the diagnosticians on whose reports the person
6 seeking accommodation relies. Further, providing for notice of denial
7 of the accommodation request and the basis for the denial of all or a
8 portion of the request;
- 9 b. Establishing the qualifications and background for persons reviewing
10 the requests for accommodation, including holding degrees specific to
11 the areas of learning disorders and having training and experience in
12 the diagnosis and assessment of adults with learning disabilities and
13 ADHD;
- 14
15 c. Establishing the qualifications, background and standards of review for
16 persons considering the appeal of any denial of a request for
17 accommodation;

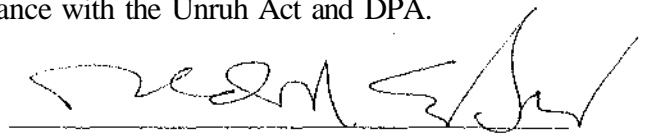
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19 C. Prevailing party: The Court finds that Plaintiffs are the prevailing party in this
20 litigation, both under Civil Code Section 55 and Code of Civil Procedure Section 1021.5. and are
21 thus entitled to seek an order for attorneys fees and costs. Counsel are directed to meet and
22 confer to develop a briefing schedule and hearing date for plaintiffs' motion for attorneys fees
23 and costs.

24 D. Preparation of judgment: Plaintiffs' counsel are directed to prepare for filing a final
25 judgment in this matter consistent with the Court's Final Statement of Decision. Plaintiffs"

1 counsel must prepare a proposed form of judgment and submit the same to Defense counsel for
2 approval as to form and content.

3 The Court expressly reserves jurisdiction to enforce this order and, if necessary, to
4 modify, delete, or amend this order to effect compliance with the Unruh Act and DPA.

5 Dated: October 31, 2006



6 Judge Ronald M. Sabraw

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