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 (Fee Exempt, Gov. Code, § 6103)

11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 DEPARTMENT OF FAIR EMPLOYMENT)
 AND HOUSING, an agency of the State of)
 15 California,)
)
 16)
 Plaintiff,)

17 vs.)

18)
 19 LAW SCHOOL ADMISSION COUNCIL, INC.,)
)
 20 Defendant.)

21)
 22 UNITED STATES OF AMERICA,)
)
 Plaintiff-Intervenor,)

23 vs.)

24)
 25 LAW SCHOOL ADMISSION COUNCIL, INC.,)
)
 26 Defendant.)

Case No. CV 12-1830-JCS

**PLAINTIFF DFEH'S
 ADMINISTRATIVE MOTION TO
 STRIKE OR, IN THE ALTERNATIVE,
 MOTION FOR LEAVE TO FILE A
 RESPONSE TO DEFENDANT'S POST-
 HEARING BRIEF**

Date: February 23, 2018
 Time: 9:00 a.m.
 Location: Courtroom G (15th Floor)
 Judge: Hon. Joseph C. Spero



1 Pursuant to the Northern District of California's Civil Local Rule 7-11, Plaintiff Department
2 of Fair Employment and Housing (DFEH) respectfully submits this administrative motion to strike
3 Defendant Law School Admission Council's (LSAC) post-hearing brief (Dkt. 275).

4 On February 23, 2018, having been fully briefed on the DFEH's motion for an order holding
5 LSAC in civil contempt, the Court heard oral argument and accepted the matter under submission.
6 (Dkt. 273, 274). During the hearing, the Court announced its tentative ruling to hold LSAC in civil
7 contempt. The parties did not request nor did this Court order supplemental briefing.

8 On March 1, 2018, LSAC filed a supplemental brief entitled "LSAC'S POST-HEARING
9 BRIEF REGARDING THE COURT'S TENTATIVE RULING ON DFEH'S MOTION FOR CIVIL
10 CONTEMPT OR, IN THE ALTERNATIVE, MODIFICATION UNDER RULE 60(B)(5)." (Dkt.
11 275). The brief was not accompanied by a motion for modification of this Court's orders or any other
12 type of request asking for this Court's permission to file supplemental briefing or by a motion to file
13 a supplemental pleading or amend a pleading under Rule 15. The DFEH was not on notice that
14 LSAC planned to file these papers.

15 Pursuant to the Northern District of California's Civil Local Rule 7-11, the DFEH hereby
16 submits this administrative motion to strike LSAC's unauthorized post-hearing brief in which LSAC
17 "requests that the Court reconsider its tentative ruling and deny DFEH's Motion." Dkt. 274 at 7:18.
18 As this Court has not authorized any supplemental briefing, and LSAC's brief largely repeats
19 arguments made in its reply filed on February 2, 2018 and during the February 23, 2018 hearing,
20 DFEH hereby moves to strike the brief in its entirety.¹ *See* Fed. R. Civ. P. 12(f) ("The court may
21 strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or
22 scandalous matter.").

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25 ¹ LSAC's recitation that it performed some of the Decree obligations (Dkt. 275 at 2:10-15) was addressed extensively in
26 LSAC's opposition brief, and is not a defense to the Department of Fair Employment and Housing's (DFEH) motion, as
27 DFEH explained, *inter alia*, at Dkt. 271 at 14:20-16:9. LSAC's purported good faith implementation of the Court's orders
28 is also irrelevant and LSAC's operationalization of the orders (Dkt. 275, at 2:10-24) does not defeat the motion, which
DFEH explained, *inter alia*, at Dkt. 271 at 14:3-17; 16:11-17. LSAC's claim of voluntary cessation of the 50% email
(Dkt. 275 at 2) was addressed in LSAC's opposition brief, and DFEH responded that LSAC's last minute efforts on the
eve of contempt did not defeat the motion (Dkt. 271 at 4:2-6:6). Tellingly, LSAC argues that the number of testing
accommodation requests has increased, but concedes in its Post Hearing Brief that LSAC "noted [this] in its prior brief
(filed in early January)" Dkt. 275 at 3:12.



1 In the alternative, and pursuant to the Northern District of California's Civil Local Rules 7-
2 3(d) and 7-11, the DFEH respectfully moves for leave to file a response to LSAC's post-hearing
3 brief. The DFEH attempted to obtain a stipulation on DFEH's motion to strike but the parties were
4 unable to reach agreement. *See* Ex. A (Mayeda Decl.) at ¶3. Because DFEH is prepared to
5 immediately file a response upon the Court's order, there will be no undue delay and the DFEH
6 should be granted leave to file a response if this Court does not strike LSAC's unauthorized brief
7 altogether.

8
9 Dated: March 2, 2018

Respectfully submitted,

10 DEPARTMENT OF FAIR EMPLOYMENT
11 AND HOUSING

12 By: _____ /s/
13 Mari Mayeda
14 Associate Chief Counsel
15 Attorneys for the Department
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