

1 LAURENCE W. PARADIS (California Bar No. 122336)
2 ROGER N. HELLER (California Bar No. 215348)
3 DISABILITY RIGHTS ADVOCATES
4 2001 Center Street, Third Floor
5 Berkeley, California 94704
6 Telephone: (510) 665-8644
7 Facsimile: (510) 665-8511
8 TTY: (510) 665-8716

9 JOSHUA KONECKY (California Bar No. 182897)
10 RACHEL BRILL (California Bar No. 233294)
11 SCHNEIDER & WALLACE
12 180 Montgomery Street, Suite 2000
13 San Francisco, CA 94104
14 Telephone: (415) 421-7100
15 Fax: (415) 421-7105
16 TTY: (415) 421-1655

17 DANIEL F. GOLDSTEIN (*pro hac vice*)
18 BROWN, GOLDSTEIN & LEVY, LLP
19 120 E. Baltimore St., Suite 1700
20 Baltimore, MD 21202
21 Telephone: (410) 962-1030
22 Fax: (410) 385-0869

PETER BLANCK (*pro hac vice*)
900 S. Crouse Ave.
Crouse-Hinds Hall, Suite 300
Syracuse, NY 13244-2130
Telephone: (315) 443-9703
Fax: (315) 443-9725

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25 NATIONAL FEDERATION OF THE
26 BLIND, the NATIONAL FEDERATION OF
27 THE BLIND OF CALIFORNIA, on behalf of
28 their members and all others similarly situated,
and BRUCE F. SEXTON, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

TARGET CORPORATION

Defendant.

Case No.: C 06-01802 MHP

CLASS ACTION

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO STRIKE**

Hearing Date: April 12, 2007

Time: 2:00 PM

Judge: The Hon. Marilyn Hall Patel

DISABILITY RIGHTS ADVOCATES
2001 Center Street, Third Floor
Berkeley, CA 94704-1204
(510) 665-8644

1 **I. INTRODUCTION**

2 Substantial evidence in this case—including declarations, deposition testimony and
 3 publicly-available data—demonstrates that numerous blind and visually-impaired individuals
 4 have been impacted by the pervasive accessibility barriers on target.com. The interpretation of
 5 that evidence does not require expert analysis. Plaintiffs have nevertheless offered the testimony
 6 of Anne Taylor, who has many years of experience in the field of access to technology by the
 7 blind, and has extensive knowledge regarding internet use by the blind and visually-impaired
 8 community. Ms. Taylor’s testimony, including her conservative estimates of the number of
 9 individuals who have been impacted by the pervasive accessibility barriers on target.com, is
 10 firmly grounded in her knowledge and experience in the area as well as the undisputed, relevant
 11 data. While her testimony is not necessary for Plaintiffs to establish numerosity for purposes of
 12 class certification, it is both helpful and admissible, and Defendant’s motion to strike portions of
 13 her declaration should be denied.

14 **II. ARGUMENT**

15 **A. Ms. Taylor Has Extensive Expertise Regarding Internet Use by the Blind and**
 16 **Visually-Impaired Community.**

17 Ms. Taylor has many years of experience in the field of access to technology by the blind.
 18 Ms. Taylor, herself, is legally blind. *See* Declaration of Anne Taylor in Support of Plaintiffs’
 19 Motion for Preliminary Injunction (“Taylor PI Decl.”) at ¶ 2. After graduating with a degree in
 20 Computer Information Systems, Ms. Taylor worked at Career Vision, Inc., providing training
 21 and technical support to blind clients. *Id.* at ¶¶ 3-4. Since 2000, Ms. Taylor has worked at the
 22 National Center for the Blind (“NCB”) as an Access Technology Specialist for the International
 23 Braille and Technology Center for the Blind. *Id.* at ¶ 5. She is also currently the Director of
 24 Access Technology for the National Federation for the Blind (“NFB”). *See* Declaration of Anne
 25 Taylor in Support of Plaintiffs’ Motion for Class Certification (“Taylor Class Cert Decl.”) at ¶ 2.

26 Through her work for NCB and NFB, Ms. Taylor has extensive knowledge regarding
 27 internet use by the blind and visually-impaired community. *Id.* at ¶¶ 2-3. Among other things,
 28 Ms. Taylor trains blind consumers regarding the use of screen access software and other

1 technologies, provides technical assistance to blind consumers using screen access software and
2 other computer technologies via NFB’s Technology Answer Line, and directs the progress of the
3 Accessible Home Initiative Consumer Electronics Accessibility Project. *Id.* at ¶ 2; *see also*
4 Taylor PI Decl. at ¶¶ 5, 8.

5 Given her extensive experience in the field of access to technology by the blind, and her
6 regular exposure to blind and visually-impaired people using the internet, Ms Taylor is qualified
7 to testify regarding the matters covered in her declaration, and her testimony is useful and
8 admissible.¹

9 **B. Undisputed Data.**

10 Publicly-available information demonstrates that there are at least hundreds of thousands
11 blind and visually-impaired people in the United States, and at least tens of thousands of blind
12 and visually-impaired people in California, who use screen access software to access the internet.
13 *See* Taylor Class Cert. Decl. at ¶¶ 3-4. Publicly-available information also demonstrates that
14 target.com receives tens of millions of visitors each month. *Id.* at ¶ 5; *see also* Declaration of
15 Roger Heller in Support of Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment
16 at ¶ 8, Ex. F. Defendant does not appear to challenge these numbers.

17 **C. The Challenged Testimony of Ms. Taylor is Firmly Grounded in Her**
18 **Expertise and the Relevant Data.**

19 Defendant’s attempt to portray portions of Ms. Taylor’s testimony as “speculative” is
20 misguided. On the contrary, all of Ms. Taylor’s testimony, including those portions which
21 Defendant has moved to strike, is firmly grounded in Ms. Taylor’s extensive knowledge and
22 expertise in this area and undisputed data with which Ms. Taylor is familiar.

23 Ms. Taylor’s estimates regarding the number of blind and visually-impaired people in
24 the United States and California who use screen access software to access the internet are based

25 _____
26 ¹ A less stringent standard is applied to the use of expert testimony at the class certification stage.
27 *See Dukes v. Wal-Mart, Inc.*, 222 F.R.D. 189, 191 (N.D. Cal. 2004), *aff’d* by 474 F.3d 1214 (9th
28 Cir. 2007) (citations omitted). At the class certification stage, the Court need only evaluate
whether the testimony is “useful in evaluating whether class certification requirements have been
met.” *Id.* (citations omitted).

DISABILITY RIGHTS ADVOCATES
2001 Center Street, Third Floor
Berkeley, CA 94704-1204
(510) 665-8644

1 on undisputed data and Ms. Taylor’s own knowledge regarding internet use by the community.
2 See Taylor Class Cert Decl. at ¶¶ 3-4; see also Declaration of Daniel Brome in Support of
3 Plaintiffs’ Motion for Class Certification at ¶¶ 2-4 (estimated number of blind and visually-
4 impaired people in the United States and California). Those estimates are conservative by any
5 measure, and Defendant does not appear to challenge them.

6 Similarly, Ms. Taylor’s testimony regarding the number of visitors to target.com is based
7 on publicly-available data collected and maintained by www.comscore.com. See Taylor Class
8 Cert Decl. at ¶ 5. Defendant does not appear to challenge the accuracy of that data.

9 Defendant takes issue with only two parts of Ms. Taylor’s testimony. First, Defendant
10 questions Ms. Taylor’s statement that blind and visually-impaired internet users would be at least
11 as likely as sighted internet users to visit target.com if the website were fully and equally
12 accessible. Ms. Taylor’s testimony on that issue is based on her extensive knowledge and
13 expertise regarding internet use by blind and visually-impaired people, and is consistent with the
14 testimony of numerous class members who have filed declarations in this case. *Id.* at ¶ 5.²
15 Second, Defendant characterizes Ms. Taylor’s estimates regarding the number of blind and
16 visually people who have been impacted by the pervasive accessibility barriers on target.com as
17 “speculative.” However, those estimates are based on the undisputed data discussed above and
18 Ms. Taylor’s extensive knowledge regarding internet use by the blind and visually-impaired
19 community. Plaintiffs note that Ms. Taylor did not attempt to come up with precise numbers of
20 people affected. Rather, she provided rough estimates that are conservative by any measure. See
21 Taylor Class Cert Decl. at ¶ 6. Given Ms. Taylor’s expertise and the undisputed data, her
22 estimates that at least thousands of people in the Unites States, and at least hundreds of people in
23 California, have been impacted by accessibility barriers on target.com are far from speculative.

24
25 ² See, e.g., Declaration of Michelle Bruns in Support of Plaintiffs’ Motion for Class Certification,
26 at ¶¶ 12, 21; Declaration of Eric Clegg in Support of Plaintiffs’ Motion for Class Certification, at
27 ¶¶ 12, 21; Declaration of Robert Crowley in Support of Plaintiffs’ Motion for Class Certification,
28 at ¶¶ 12, 22; Declaration of Charlotte Czarnecki in Support of Plaintiffs’ Motion for Class
Certification, at ¶¶ 13, 21; Declaration of Shannon Dillon in Support of Plaintiffs’ Motion for
Class Certification, at ¶ 23.

DISABILITY RIGHTS ADVOCATES
2001 Center Street, Third Floor
Berkeley, CA 94704-1204
(510) 665-8644


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. CONCLUSION

For the foregoing reasons, the Court should deny Defendant's motion to strike.

DATED: April 9, 2007

Respectfully submitted,
DISABILITY RIGHTS ADVOCATES
SCHNEIDER & WALLACE
BROWN, GOLDSTEIN & LEVY, LLP
PETER BLANCK, J.D., Ph.D.

By: 

Roger Heller
Attorney for Plaintiff

DISABILITY RIGHTS ADVOCATES
2001 Center Street, Third Floor
Berkeley, CA 94704-1204
(510) 665-8644