

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4

5 NATIONAL FEDERATION OF THE)
6 BLIND, the NATIONAL FEDERATION)
7 OF THE BLIND OF CALIFORNIA, on)
8 behalf of their members, and)
9 BRUCE F. SEXTON, on behalf of)
10 himself and all others)
11 similarly situated,)

12 Plaintiffs,)

13 vs.)

Case No. C 06-01802 MHP

14 TARGET CORPORATION,)

15 Defendant.)
16)
17)
18)
19)

20 Deposition of
21 KENNETH METZ
22 June 19, 2007

23 Reported by
24 Victoria L. Hunt
25 CSR 4181

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1 INDEX
 2 Page
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 4 EXAMINATION BY MS. PASZEK 4
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 7 EXHIBITS
 8 (None)
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Page 2

1 KENNETH METZ,
 2 having been first duly sworn, testified as follows:
 3
 4 EXAMINATION
 5 BY MS. PASZEK:
 6 Q My name is Kristina Paszek.
 7 A Hi there.
 8 Q I'm the attorney representing Target in this
 9 case.
 10 Is this the first time you've had your deposition
 11 taken?
 12 A No.
 13 Q How many times have you been deposed before?
 14 A One other time.
 15 Q And how long ago was that?
 16 A 1998.
 17 Q And was that another litigation matter?
 18 A It was a personal matter with the City of
 19 Anaheim, so nothing to do with any of this.
 20 Q So you are somewhat familiar with the procedures
 21 here, but I'll refresh them anyway.
 22 Basically, I'm just going to ask you a series of
 23 questions and you are going to answer them. And in the
 24 meantime, the court reporter here is taking it all down.
 25 So we should try to be careful not to talk at the same

Page 4

1 BE IT REMEMBERED that, pursuant to the laws
 2 governing the taking and use of depositions, and on
 3 June 19, 2007, commencing at 6:42 p.m. thereof, at the
 4 Sheraton Hotel, 900 South Disneyland Drive, Anaheim,
 5 California, before me, VICTORIA L. HUNT, a Certified
 6 Shorthand Reporter in the State of California, personally
 7 appeared
 8 KENNETH METZ,
 9 called as a witness by the defendant, who, being by me
 10 first duly sworn, was examined and testified as is
 11 hereinafter set forth.
 12 SCHNEIDER & WALLACE, 180 Montgomery Street, Suite
 13 2000, San Francisco, California 94104, represented by
 14 RACHEL BRILL, Attorney at Law, appeared as counsel on
 15 behalf of Plaintiffs.
 16 MORRISON & FOERSTER, LLP, 425 Market Street, San
 17 Francisco, California 94105-2482, represented by KRISTINA
 18 PASZEK, Attorney at Law, appeared as counsel on behalf of
 19 Defendant.
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Page 3

1 time so that the record will be clear.
 2 And if any questions I ask are unclear to you,
 3 please ask me to clarify and I will do so.
 4 And if you need to take a break ever, just, you
 5 know, let me know and we can do that. I just ask if there
 6 are any pending questions that you answer those before we
 7 take a break. And I guess that's basically how it works.
 8 So is there any reason why you would be unable to
 9 testify fully and truthfully today?
 10 A No.
 11 Q Good.
 12 Can you please state your name for the record.
 13 A Ken -- legally Kenneth -- Metz, M- as in Michael
 14 -E-T-Z as in zebra.
 15 Q Good.
 16 So about how long have you been using a personal
 17 computer, Mr. Metz?
 18 A 22 years.
 19 Q Okay. And you use screen reader software?
 20 A Yes.
 21 Q What kind of screen reader software do you use?
 22 A It's called JAWS, Job Access for Windows with
 23 Speech.
 24 Q Is there other screen reader software that you
 25 use?

Page 4

1 **A Not that I use.**
 2 Q Okay. And how long have you been using a
 3 computer to access the internet?
 4 **A About ten years.**
 5 Q About how much time would you say you spend in an
 6 average week on-line?
 7 **A Eight to ten hours.**
 8 Q What do you use the internet for?
 9 **A I use it to look at various stores that have --**
 10 **where I might be looking for items to purchase.**
 11 **I also look at certain areas for -- to get some**
 12 **information on different types of disabilities.**
 13 **I also go on websites that have various types of**
 14 **special adaptive equipment for the blind or visually**
 15 **impaired.**
 16 **And I go on other websites to take a look at some**
 17 **of the guide dog schools.**
 18 Q Okay. What about purchasing items on-line?
 19 **A I have done that.**
 20 Q Can you tell me a bit about what you do for work?
 21 **A I work as a director of a program for blind**
 22 **adults for -- I should say adults who are blind or**
 23 **visually impaired who most of the time have most recently**
 24 **lost their vision within the last one to five years. And**
 25 **it's a residential training center that we have to teach**

1 **them all the new skills, including Braille, independent**
 2 **living skills, orientation of mobility -- that's how to**
 3 **get around with a white cane -- and adaptive computers.**
 4 Q How long have you had that job?
 5 **A Six years, five-and-a-half years.**
 6 Q How long have you been at that particular
 7 organization?
 8 **A That same time.**
 9 Q The same time?
 10 **A Five-and-a-half years.**
 11 Q What did you do for work before that?
 12 **A I had three other careers sort of. The first one**
 13 **started with what used to be known as Pacific Telephone**
 14 **and Telegraph to Pacific Bell to SBC and then to AT & T,**
 15 **which is really where it was. And I worked there for 20**
 16 **years, 1971. I retired in the end of 1990 when I was**
 17 **there 20-and-a-half years.**
 18 Q What did you do for them?
 19 **A I started out working as a specialized operator.**
 20 **Then I worked on their PBX system. Then I ended up**
 21 **working as a clerk typist in their EEO, Equal Employment**
 22 **Opportunity, Affirmative Action office and ended up**
 23 **working in space planning and furniture planning for new**
 24 **employment offices for the company and finished my last 11**
 25 **years working on benefits and health plans, savings plans,**

1 **401K and life insurance.**
 2 Q Okay. That sounds like you were busy.
 3 **A Well, it worked out well.**
 4 **And after that I took an early retirement that**
 5 **they offered. And obviously, I didn't retire. I went**
 6 **back to school for a year and a half and worked as a**
 7 **travel agent in Walnut Creek, California for four years.**
 8 **Then moved back down here, worked as a rehabilitation**
 9 **counselor for the California State Department of**
 10 **Rehabilitation. And with that job I ended up finally**
 11 **coming to my current job.**
 12 Q Okay. You touched on it a bit, but can you tell
 13 me more about your educational background?
 14 **A I went to college and started out in community**
 15 **college, which we used to know as junior college in those**
 16 **days. 1964. I went to U.C.L.A. for a year and then**
 17 **finished my last year, year and a half up at San Francisco**
 18 **State.**
 19 **I had a major in speech and a minor in**
 20 **broadcasting.**
 21 Q Now with your current job do you assist blind
 22 adults with shopping or with --
 23 **A We have instructors that actually teach adaptive**
 24 **computers to the folks. Once in awhile we will get into**
 25 **discussions on it, the student and myself, but it's really**

1 **the computer instructors. Each core area, the computer,**
 2 **the Braille orientation, mobility, independent living**
 3 **skills, each has its own specialist or specialists.**
 4 Q So there's other colleagues of yours who --
 5 **A Yes.**
 6 Q And they would, for example, teach folks how to
 7 use --
 8 **A Yes. I'm the director of the program. So**
 9 **therefore, yeah, it's our whole staff.**
 10 Q And are you a member of the National Federation
 11 of the Blind?
 12 **A No, I'm not.**
 13 Q Any reason why you haven't become one?
 14 **A No. I just know a lot of people that are and so**
 15 **we, you know, we all sort of share ideas and thoughts.**
 16 Q How did you first find out about this lawsuit?
 17 **A I heard about it from some of the membership.**
 18 **And I also read about it in a couple of the magazines and**
 19 **lots of e-mails, some of the list serves that I'm on. And**
 20 **so that's how I heard about that initially.**
 21 Q What made you -- What led you to file a
 22 declaration in this litigation?
 23 **A What led me to file is that I think everyone**
 24 **deserves an equal opportunity to have access, and I**
 25 **thought this was just one more jump that we need to make**

1 one of these years to get to full access.
 2 Q I'm not sure you are aware of this but there were
 3 several rounds of people filing declarations in this. Is
 4 there a reason why you did it later rather than sooner?
 5 A No. I just heard about it later. And so I
 6 decided to -- I had made a couple of calls and talked to
 7 people. And they said, well, we would still like to have
 8 as many people as possible involved in this just because
 9 it does involve advocacy, and that's one of the things
 10 that I do a lot of.
 11 Q So about how often do you go to Target physical
 12 retail stores?
 13 A I'd say on the average of once every month to
 14 month and a half.
 15 Q And what items do you buy there?
 16 A I've bought coffee makers. I've bought stainless
 17 steel flatware. I've bought some pots and pans. I've
 18 bought a deep fryer there. And my wife and I basically go
 19 there to do shopping both for items that we may need at
 20 home as well -- As a matter of fact, we bought our vacuum
 21 there, too.
 22 Q I'm sorry?
 23 A I said we bought our vacuum cleaner there, too.
 24 But we do that as well as when we have friends that are
 25 going to be getting married or baby showers and things

Page 10

1 like that, then we look for gifts for those things as
 2 well.
 3 Q Have you ever tried to use the gift registries at
 4 Target Dot Com?
 5 A Yes, tried.
 6 Q Can you tell me about that? When was it?
 7 A I believe it was probably about eight months ago.
 8 And I know I went to look in the registry but I really had
 9 difficulty trying to figure out what the items were and to
 10 actually get into the meat of the website so that I could
 11 make some decisions on what I wanted.
 12 Q So what prompted you to try to use the gift
 13 registry? Did you know people who are registered for
 14 gifts on it?
 15 A Yes. It was for a wedding, and that's why I did
 16 that.
 17 Q Whose wedding was it?
 18 A Honestly, I'm trying to remember. I've been to
 19 about four of them and I can't recall exactly which
 20 person.
 21 Q And so did you -- Have you ever tried to buy
 22 something from the Target gift registries at a Target
 23 store?
 24 A At the store itself?
 25 Q Yeah.

Page 11

1 A Yes, I did. Going to the store was different
 2 because I had one of their sales customer service people
 3 helping.
 4 Q Was that for the same wedding?
 5 A Yes.
 6 Q And were you ultimately able to purchase an item
 7 off the registry at the store?
 8 A Yes.
 9 Q Have you had difficulty shopping at the Target
 10 retail stores themselves, the physical stores?
 11 A No.
 12 Q And you said sometimes you ask clerks to assist
 13 you there?
 14 A Yes. Customer service folks there, they are very
 15 nice.
 16 Q And they have helped you locate items?
 17 A Yes.
 18 Q So apart from the one incident where we just
 19 described where you tried to use the gift registry, I'd
 20 like to walk through and ask you about your other attempts
 21 to use the website.
 22 When was the first time you tried to access
 23 Target Dot Com?
 24 A I'm guessing about three years ago.
 25 Q And what were you trying to do?

Page 12

1 A That's a long time ago. I'm sure I was looking
 2 for some home appliance. I always like to look for
 3 kitchen gadgets. So I must have been looking for a home
 4 appliance.
 5 Q Do you remember if you were trying to -- Did you
 6 visit the site with the intention of purchasing something
 7 on-line?
 8 A Yes.
 9 Q As opposed to getting it at the store itself?
 10 A Yes.
 11 Q And tell me about your experience.
 12 A Well, the problems I have found to be consistent
 13 in that time are the fact that I could actually go and do
 14 a search and find the list of items I want but then had
 15 difficulty trying to look at each one and getting an
 16 explanation of the item.
 17 I think -- I'm trying to recall now. There might
 18 have been one that I was just going to buy but then when I
 19 went to their checkout, again it was very difficult and I
 20 really had difficulty and finally got frustrated with it
 21 and got out of it and called the store and checked with
 22 them instead, and then had to go down there.
 23 I use it because I'm trying to really avoid, you
 24 know, at times going to the store, especially around
 25 holiday times and stuff. I try to avoid that and would

Page 13

1 rather do things on-line.
 2 Q Okay. So when you say you had difficulty with
 3 checkout, can you be more specific about what your
 4 problems were?
 5 A I couldn't get to the final area of trying to
 6 input the information that it was requesting. There were
 7 too many graphics. At least my screen reader always says
 8 graphic, graphic. And I could not get to the actual area
 9 where I had to input the, like, credit card number and
 10 address and things of that sort.
 11 Q And so you said you called the store and
 12 ultimately went there and --
 13 A Yes.
 14 Q -- and got what you were looking for?
 15 A Um-hum.
 16 Q What about the -- So to back up, you called the
 17 store and you asked them whether they had the particular
 18 item you were seeking?
 19 A Yes.
 20 Q And they said yes and you went there and got it?
 21 A Yes.
 22 Q So what about your next experience using or
 23 trying to use Target Dot Com?
 24 A I mean, any time I looked for things it was a
 25 similar experience. So it wasn't really any different.

1 links to go into them, I made that attempt and could not
 2 find where the description was.
 3 Q So when you say description, were you able to
 4 find the price of the item?
 5 A I saw the price but I could not find out if it
 6 was -- if it had the window unit included with it or any
 7 of that. So it didn't give me the information about the
 8 unit itself.
 9 Q So you found the name, say the brand and price,
 10 but not a description about the features?
 11 A Correct. That way I wouldn't know if it had a
 12 humidifier or dehumidifier or anything with it, or things
 13 of that sort that were important to what we were looking
 14 for.
 15 Q And did you intend at that time to make a
 16 purchase, to purchase the air conditioner on-line, or did
 17 you still plan to go to the store?
 18 A No, I wasn't going to plan to go to the store for
 19 that. That would have been too heavy to take with us on a
 20 bus or a para-transit.
 21 Q So what did you ultimately do in terms of buying
 22 the air conditioning unit?
 23 A I went to another website.
 24 Q Which website?
 25 A Costco.

1 Even when my wife and I purchased a vacuum -- I think it
 2 was probably a year, year and a half ago -- it was the
 3 same thing. I went back into it but couldn't get
 4 descriptions, and so again had to -- actually, I contacted
 5 the store and asked them if they carried specific name
 6 brands. When they said yes, then we went down there and
 7 looked at those.
 8 Q And when you say contacted, do you mean by phone?
 9 A By phone.
 10 Q Okay. And on those occasions were you still able
 11 to get the information you wanted by phone?
 12 A Yes.
 13 Q And were you able to purchase items ultimately?
 14 A Yes.
 15 Q Okay. About how -- When was the most recent time
 16 that you tried accessing Target Dot Com?
 17 A Actually, it was either a month or two ago. Two
 18 months ago. I was looking for portable air conditioners.
 19 We had moved out here into a warmer area. Or maybe hot
 20 area sometimes out in San Gabriel Valley. And so I at
 21 least wanted -- the place we rented does not have air
 22 conditioning. And I wanted to look for the portable air
 23 conditioners.
 24 I saw the ones they had. I think they had --
 25 they had several listed. And again, although they had

1 Q And did you purchase the item on-line?
 2 A I did. Even when we moved, I purchased boxes,
 3 the moving boxes, from Costco, because I was able to get
 4 the number of boxes and their descriptions, the sizes of
 5 the boxes. It met our needs at that time.
 6 Q Did you have any problems with the Costco
 7 website?
 8 A No.
 9 Q So on this occasion when you were back on the
 10 Target site looking for the portable air conditioning
 11 unit, did you try to proceed to check out at that time?
 12 A No, because I wasn't going to even try to
 13 purchase it unless I knew what the description was.
 14 Q So in terms of the information you were
 15 seeking -- you mentioned whether the window unit was
 16 included -- were there any other specific units or
 17 features that were important to you?
 18 A Features that I was looking at included the
 19 fact -- portability I could tell because it said portable,
 20 so that part I knew, but I had to know if it had the full
 21 window attachment with the hose attached. I wanted to
 22 know the number of square feet it would cover by the
 23 number of B.T.U.'s. And I also wanted to get the
 24 dimensions. And those were the things I had difficulty
 25 obtaining, as well as what the warranty was and a few

1 other things.
 2 Q I'll let you finish.
 3 A That's all. It was just the warranty and a few
 4 other things. So that's when I finally decided no, I
 5 wanted to get more information. And that wasn't something
 6 I wanted to carry home.
 7 Q Did you try calling Target to find out that
 8 information?
 9 A No, not at that time.
 10 Q Were you able to find out all that information,
 11 either the square feet, the B.T.U.'s and whether the
 12 window unit was included, on the Costco site?
 13 A Yes.
 14 Q Was the unit you ultimately bought from the
 15 Costco site one of the units you -- was that the same
 16 brand that you were looking at at Target?
 17 A No.
 18 Q No?
 19 A On-line with Costco I was able to find a coupon
 20 that they had just for on-line and I was able to take
 21 advantage of a lower price, actually.
 22 Q Okay. How often do you use coupons, would you
 23 say?
 24 A Not very often. And I don't just because my wife
 25 and I are both blind and it's just too hard. Two reasons.

Page 18

1 It's hard to really keep the ones you get in the mail
 2 straight. And they are too tiny to have to tear off,
 3 which means that you have to pay for a reader to go
 4 through all that stuff. So it ends up costing more than
 5 what the coupon would save.
 6 And the ones that you print out on-line are very
 7 difficult to do in many instances. And it really just
 8 depends on what I'm purchasing at the time whether or not
 9 there is a coupon available.
 10 Q Right.
 11 Have you tried to access the coupons, any
 12 coupons, on Target Dot Com?
 13 A No.
 14 Q You mentioned that one time you tried to buy
 15 something off the gift registry at Target Dot Com. Were
 16 there other times you tried to use the Target gift
 17 registries?
 18 A There could have been. I've known four or five
 19 people that were registered either for, you know, for
 20 babies, for weddings. My sister-in-law was one and also
 21 my brother-in-law. So it was my wife's sister and
 22 brother. They both got married within the last couple of
 23 years. And so I tried it that time to see what I could
 24 find, and I could not get through the registry.
 25 Q Did you try to use the registries at the store on

Page 19

1 those occasions?
 2 A I did at the store.
 3 Q And were you successful in doing that?
 4 A Successful in the fact that the customer service
 5 person printed it out and then went down the list of
 6 things with me.
 7 Q And did you ultimately buy gifts there?
 8 A I did.
 9 Q Okay. So we talked about -- we talked about a
 10 few -- we went through in detail a few of the occasions
 11 when you tried to do things on Target Dot Com. About how
 12 many times in totality would you say that you tried to
 13 either purchase something or find out information or get
 14 something off the registry or anything from Target Dot
 15 Com?
 16 A I think I probably looked in there 10 to 15
 17 times.
 18 Q And that's between, I think you said --
 19 A Within the last three years.
 20 Q And most recently a month or two ago?
 21 A Um-hum.
 22 Q Were you ever able to complete an on-line
 23 purchase from Target Dot Com?
 24 A No.
 25 Q Were you ever able to use Target Dot Com to --

Page 20

1 Were you ever successful in your efforts to use Target Dot
 2 Com to find out information about items that you planned
 3 to buy at the store?
 4 A Not to date, no.
 5 Q I mean setting aside the detailed description and
 6 stuff but, for example, whether they carried an item or
 7 the price.
 8 A Yeah, I've done that, but then I had to go to the
 9 store to actually get certain items. And I had to also
 10 make sure that those items were not just specifically --
 11 They have some items that are specifically for on-line
 12 purchase. So I'd always have to call the store to make
 13 sure that that wasn't just an on-line purchase but that
 14 they actually had it in the store.
 15 Q Right.
 16 So you mentioned pots and pans, kitchen
 17 appliances, vacuum cleaner, flatware. Are there any other
 18 items that you've tried to purchase either at the store or
 19 tried to purchase off of Target Dot Com that you remember?
 20 A I really can't say because a lot of times if I
 21 think of something, I'll just look to do comparison
 22 shopping. I can't really tell you which on-line stores I
 23 looked at.
 24 Q So we've talked about using the Target Dot Com
 25 website to make purchases directly and also to find out

Page 2

1 information about items, and then the registries. Are
 2 there any other reasons why you've tried to access Target
 3 Dot Com?
 4 **A No.**
 5 **Let me take that back. I'll say yes, and that**
 6 **was just to find the location of a store.**
 7 Q And were you able to find that information?
 8 **A Yes, that I could do.**
 9 Q Do you remember when that was about?
 10 **A Probably within the last month or two when I**
 11 **looked at the air conditioner, because we had just moved**
 12 **out to the San Gabriel area, so I wanted to see what the**
 13 **closest store was.**
 14 Q Okay. So you mentioned in your declaration, you
 15 talked about how sometimes you've ordered food items
 16 on-line.
 17 **A Yes.**
 18 Q Do you buy food items at Target?
 19 **A No.**
 20 Q Have you tried to look for food items on Target
 21 Dot Com?
 22 **A No. They don't really have any. They have more**
 23 **snack stuff, which sounds good. No, I haven't done that.**
 24 MS. PASZEK: I think I want to take a break.
 25 MS. BRILL: Okay.

1 attempts to access Target Dot Com?
 2 **A Within the past year year and a half. Prior to**
 3 **that it was JAWS six point something. But, you know, they**
 4 **came out later -- they come up with different versions as**
 5 **they add new features.**
 6 Q Have you spoken to other people who use screen
 7 reader software about their experiences with Target Dot
 8 Com?
 9 **A Yes, I've talked to -- to a couple of our**
 10 **computer instructors. I've spoken to some friends of mine**
 11 **who are sort of computer -- in other words, who say they**
 12 **just leave it alone, because even with all their**
 13 **experience -- I have one friend that used to work at a**
 14 **help desk for one of the internet companies and so he**
 15 **knows the stuff and even he had trouble navigating around**
 16 **the graphics.**
 17 Q Do you know when these folks were trying to use
 18 the website?
 19 **A No. I just asked a general question.**
 20 Q What do you like about shopping at Target?
 21 **A The store I happen to like because, first of all,**
 22 **of course, we are looking for a bargain if we can do it,**
 23 **but, to be honest, when I have gone in, the sales folks**
 24 **have been very helpful.**
 25 **The phone, they have been helpful, although you**

1 THE WITNESS: Because I'm fine.
 2 (Brief recess taken)
 3 BY MS. PASZEK:
 4 Q So when was the last time you tried to use the
 5 checkout function on Target Dot Com?
 6 **A Six to eight months ago.**
 7 Q And do you remember what you were trying to buy
 8 then?
 9 **A I was looking at a coffee pot, coffee maker.**
 10 Q And can you tell me about the problems you
 11 encountered on that occasion?
 12 **A Well, first of all, I didn't get the description,**
 13 **but I always trusted Mr. Coffee so I decided to do that.**
 14 **I could at least tell the price. And then when I added**
 15 **that to the shopping cart, I had a problem. I could find**
 16 **checkout and then I got lost after that, because it**
 17 **wanted, you know -- What normally happens is you get --**
 18 **they ask for a name and address and credit card and the**
 19 **billing address and shipping address and stuff like that.**
 20 **I couldn't find all those things on this.**
 21 Q And this was using JAWS?
 22 **A Yes.**
 23 Q What version of JAWS do you use?
 24 **A Seven point one, I think it is.**
 25 Q And were you using that version for all of your

1 **are on hold for 108 years, I think. But when they do**
 2 **answer, they are really helpful.**
 3 **I'm kidding about the 108 years. It might be 108**
 4 **minutes. I'm not sure.**
 5 Q I have in your declaration that you are only 61.
 6 MS. BRILL: Unless he wanted to change that.
 7 THE WITNESS: But the folks that have helped both
 8 my wife and myself -- and both of us are totally blind.
 9 So when we have gone in there, they really have just been
 10 great.
 11 And it's sort of funny because there are times
 12 when my wife has gone in by herself and they send a guy to
 13 help her. And she'll just look at them and say, "I don't
 14 think you want to help me buy bras and stuff, so I need a
 15 female customer service person."
 16 And they are very accommodating. I'm sure the
 17 guy wants to get away, too.
 18 So there have been funny experiences there, but
 19 overall, getting back on track, they really have been very
 20 helpful as far as the personnel goes.
 21 MS. PASZEK: Okay. I think that about covers it
 22 for me. So thank you very much for coming out. We
 23 appreciate all the time you spent on para-transit to get
 24 here.
 25 (Whereupon, deposition concluded at 7:18 p.m.)

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I declare under penalty of perjury that the foregoing transcript of my deposition testimony is true and correct.

Executed at _____,
California, this _____ day of _____, 2007.

Kenneth Metz

Page 26