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8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

13 NATIONAL FEDERATION OF THE BLIND,  
 14 the NATIONAL FEDERATION OF THE  
 BLIND OF CALIFORNIA, on behalf of their  
 15 members, and Bruce F. Sexton, on behalf of  
 himself and all others similarly situated,

16 Plaintiffs,

17 v.

18 TARGET CORPORATION,

19 Defendant.

Case No. C 06-01802 MHP

**DEFENDANT'S PROPOSED  
 CLASS NOTICE**

Judge: Hon. Marilyn Hall Patel

1 Pursuant to the Court's order entered on October 2, 2007, Target hereby submits a  
2 proposed class notice, which is attached as Exhibit A and includes a class commencement  
3 date. Target also wishes to inform the Court that pursuant to Federal Rule of Civil Procedure  
4 23(f), it petitioned for review by the United States Court of Appeals for the Ninth Circuit of  
5 the Court's decision to grant class certification.

6 The parties have met and conferred regarding a proposed class notice and class  
7 commencement date, but they were unable to reach agreement. Accordingly, they are  
8 submitting separate proposed class notices. To assist the Court in its review of these  
9 proposed notices, Target notes the following points of disagreement.

10 First, the parties disagree as to the applicable class commencement date. Target  
11 maintains that the proper class commencement date is February 7, 2004, because a two-year  
12 statute of limitations applies for plaintiffs' claims under the Americans with Disabilities Act  
13 ("ADA"), 42 U.S.C. §§ 12181, *et seq.*, California's Unruh Civil Rights Act (the "Unruh  
14 Act"), California Civil Code §§ 51, *et seq.*, and California's Blind and Other Physically  
15 Disabled Persons Act ("Disabled Persons Act"), California Civil Code §§ 54, *et seq.* The  
16 applicable statute of limitations for an Unruh Act claim is the statute of limitations provided  
17 for injury caused by the wrongful act or neglect of another. *See Gatto v. County of Sonoma*,  
18 98 Cal. App. 4th 744, 753-60 (2002); *West Shield Investigations and Security Consultants v.*  
19 *Superior Court*, 82 Cal. App. 4th 935, 952-53 (2000). That provision, California Code of  
20 Civil Procedure § 335, provides for a two-year limitations period.<sup>1</sup> The same limitations  
21 period applies for all three claims brought by plaintiffs in this action. *See Pickern v. Best*  
22 *Western Timber Cove Lodge Marina Resort*, No. Civ. S-00-1637, 2002 U.S. Dist. LEXIS  
23 1709 (E.D. Cal. Jan. 17, 2002) (holding that the statute of limitations for claims under the  
24 ADA, the Unruh Act, and the Disabled Persons Act is the same).

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25 <sup>1</sup> When *Gatto* and *West Shield* were decided, the applicable provision was California  
26 Code of Civil Procedure § 340(3), which provided for a one-year period for "injury to ... one  
27 caused by the wrongful act or neglect of another." Section 340(3) has since been amended,  
28 and the operative language regarding damages caused by a "wrongful act or neglect" was  
moved to § 335.1 which provides for a two-year limitations period.

1 Second, the parties offer different characterizations of the claims and defenses and the  
2 parties respective positions. Target objects that plaintiffs’ characterizations are prejudicial to  
3 Target. For example, the statement that “[Target] contends that it has, subsequent to the  
4 filing of the lawsuit, made efforts to make its website accessible to the blind” suggests that  
5 Target made no such efforts prior to the filing of the lawsuit. Target’s proposed class notice  
6 describes the litigation in a fair and neutral manner that is appropriate for a class notice.

7 Third, Target proposes that inquiries regarding the class action be directed to a neutral  
8 administrator who can then forward them to counsel for both parties. It would be  
9 inappropriate to direct all inquiries regarding the matter solely to plaintiffs’ counsel.

10 Finally, Target objects to the creation of a website with the title  
11 “www.targetlawsuit.com.” The class action administrator could handle communications with  
12 putative class members. If any website is to be established to describe plaintiffs’ lawsuit,  
13 perhaps it should be called “www.nfblawsuit.com,” but in all events its name should not  
14 contain Target’s trademark.

15 Dated: November 1, 2007

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