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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

18 NATIONAL FEDERATION OF THE
19 BLIND, the NATIONAL FEDERATION OF
20 THE BLIND OF CALIFORNIA, on behalf of
21 their members, and Bruce F. Sexton, on behalf
22 of himself and all others similarly situated,

Plaintiffs,

v.

23 TARGET CORPORATION,

24 Defendant.

Case No. C06-01802 MHP

**PLAINTIFFS' CASE MANAGEMENT
STATEMENT**

Date: TBD

Time: TBD

Judge: Hon. Marilyn Hall Patel

1 Pursuant to the Court’s request, Plaintiffs hereby submit this case management statement
2 and revised discovery plan pursuant to Fed.R.Civ.P. 26(f). Plaintiffs respectfully request that the
3 Court set a case management conference at the Court’s earliest convenience.

4 **DESCRIPTION OF THE CASE**

5 **(1.) Brief Description of the Events Underlying the Action:**

6 Plaintiffs allege that Defendant Target Corporation (“Target”) has violated, and continues
7 to violate, Title III of the Americans with Disabilities Act (“ADA”), the California Unruh Act,
8 and the California Disabled Persons Act because it does not provide full and equal access to and
9 enjoyment of its website, Target.com, or the goods and services of its retail stores to people who
10 are blind or visually impaired. Plaintiffs allege that Target.com lacks certain programming
11 features that make it difficult or impossible for people that are blind or visually impaired and
12 who use screen readers (which can vocalize web content) to access the goods and services
13 available to sighted visitors to Target.com.

14 With respect to the ADA claim, Plaintiffs allege that the nexus between Target’s retail
15 stores and Target.com is sufficient so that in order for persons with disabilities to have “full and
16 equal enjoyment” of Target’s retail stores they must also have full and equal access to and
17 enjoyment of Target.com. Additionally, Plaintiffs allege that Target.com is required to be
18 accessible under the Unruh Act regardless of whether or not there is a connection to the physical
19 stores because the Unruh Act applies to all services of a business enterprise (Target, Inc.) which
20 operates in the state. Additionally, Plaintiffs allege that Target.com is a “place to which the
21 public is invited” and thus is required to be accessible under the California Disabled Persons Act
22 regardless of the connection between Target.com and Target’s retail stores.

23 Target denies that it has violated, or is violating, any law with respect to the design and
24 programming of its website, and Target continues to believe that Plaintiffs have failed to state a
25 cognizable claim under the ADA or under California law.

26 Plaintiffs filed their original complaint in California Superior Court in January 2006.
27 Target removed the action to this Court, and Plaintiffs filed their Amended Complaint on March
28 30, 2006. After obtaining limited relief from General Order 56, Target brought a motion to

1 dismiss the Amended Complaint and Plaintiffs brought a motion for a preliminary injunction.
2 On September 6, 2006, the Court issued a written order denying the motion for preliminary
3 injunction and granting in part and denying in part the motion to dismiss.

4 On September 8, 2006, the Court granted Plaintiffs' request for administrative relief from
5 the General Order 56 and scheduled a Case Management Conference, resulting in its scheduling
6 order of October 23, 2006. The Court limited discovery to class certification until that issue was
7 resolved. Pursuant to a meet and confer, the parties agreed on the specific discovery requests
8 and Rule 30(b)(6) deposition topics, already served by Plaintiffs, that would be deferred until
9 after class certification. Thereafter, class certification issues were briefed and, on October 2,
10 2007, the Court certified a nationwide ADA class and statewide class for claims under the Unruh
11 and Disabled Person Acts. Pursuant to the Court's direction, Plaintiffs filed a Second Amended
12 Complaint naming new individual class representatives for the ADA claim. The next step is for
13 Target to produce the discovery documents, answers and deponents responsive to the outstanding
14 discovery requests and deposition notices that Plaintiffs had served in the Fall of 2006. This
15 Case Management Statement incorporates the one submitted on October 13, 2006, but takes into
16 account the Court's subsequent orders.

17 **(2.) The Principal Factual Issues Which the Parties Dispute:**

18 A. Whether, and to what extent, the programming and design of Target.com make it
19 inaccessible to people who are blind or visually impaired.

20 B. Whether, and to what extent, the programming and design of Target.com impede
21 the full and equal enjoyment of Target.com by people who are blind or visually impaired.

22 C. Whether, and to what extent, the programming and design of Target.com impede
23 the full and equal enjoyment of the goods and services offered at Target's retail stores for people
24 who are blind or visually impaired.

25 D. Whether, and to what extent, Target's 1-800 number provides an alternative
26 means for people who are blind or visually impaired to access the goods and services that are
27 determined to be "inaccessible" on Target.com.

28 **(3.) The Principal Legal Issues Which the Parties Dispute:**

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1 A. Whether, to the extent Target has not effectively communicated to the blind via
2 Target.com, Target has provided effective communication via reasonable and appropriate
3 alternative means.

4 B. What constitutes "full and equal enjoyment" of the website if the Court
5 determines that Target is required to modify its website to make it "accessible"?

6 C. Whether Plaintiffs are entitled to any damages under the Unruh Act or the
7 Disabled Persons Act, and if so, the amount of damages.

8 **(4.) Other Issues Which Remain Unresolved:**

9 Plaintiffs are not aware of any additional factual issues that remain unresolved at this
10 time. However, two issues stemming from the Court's class certification Order which remain
11 unresolved are: (i) the form of notice to the class in this case; and (ii) the appropriate
12 commencement date for the class in this case. The parties each submitted their own proposed
13 notice to the class, as well as proposals for the commencement date for the class in this case, on
14 November 1, 2007. Plaintiffs propose that these issues be addressed as part of the upcoming
15 case management conference.

16 **(5.) The Parties Which Have Not Been Served and the Reasons:**

17 All parties have been served.

18 **(6.) Additional Parties To Be Joined:**

19 Plaintiffs do not at present intend to join any other parties.

20 **(7.) Consent To Assignment to United States Magistrate Judge for Trial:**

21 The parties did not consent to the assignment of this case to a United States Magistrate
22 Judge for trial.

23 **ALTERNATIVE DISPUTE RESOLUTION**

24 Before the class certification decision, the parties attempted a private mediation before
25 the Honorable Edward A. Infante.

26 **DISCLOSURES**

27 The parties certify that they have made the required Rule 26 initial disclosures.
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DISCOVERY

Limitations on Discovery

Plaintiffs are treated as a single party for purposes of these limitations.

(1.) Document Requests: In accordance with the Court’s Order of October 23, 2006, 60 document requests per party.

(2.) Interrogatories: In accordance with the Court’s Order of October 23, 2006, 60 interrogatories per party.

(3.) Requests for Admissions: In accordance with the Court’s Order of October 23, 2006, 60 requests for admissions per party.

(4.) In accordance with the Court’s Order of October 23, 2006, a limit of 20 depositions per party, not including experts. Depositions that have already been taken in this action do not count toward the limit of 20.

Discovery Schedule

The parties have met and conferred regarding a discovery schedule, and have reached agreement on the durations of the relevant discovery periods. The parties’ primary dispute regarding scheduling is whether Defendant should be allowed to delay merits discovery based on its petition for appellate review of the Court’s class certification order. The parties also disagree about whether a trial date should be set at this time. The following is Plaintiffs’ proposed schedule.

- A. Non expert discovery is open and shall close on July 28, 2008.
- B. Expert disclosure (simultaneous): August 25, 2008.
- C. Rebuttal expert disclosure (simultaneous): September 22, 2008.
- D. Expert discovery shall close on October 20, 2008.
- E. Law and Motion Cut-off (i.e. last day to file motions): December 1, 2008.
- F. Trial shall be scheduled to begin on February 4, 2009, or the soonest date

thereafter that is convenient for the Court.

Service of Discovery

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1 The parties agree that discovery can be served via email to the attorneys of record for the
2 opposing party and that such service shall constitute service by hand under the Federal Rules.

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4 Dated: November 28, 2007.

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8 By: 
9 Roger Heller
Attorneys for Plaintiffs

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