

EXHIBIT C

Appeal No. 07-80179

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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

Respondents/Plaintiffs,

v.

TARGET CORPORATION,

Petitioner/Defendant.

On Appeal from the United States District Court for the
Northern District of California Civil Action No. C 06-1802 MHP

**MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF
TARGET CORPORATION'S PETITION FOR PERMISSION TO APPEAL
FROM ORDER GRANTING CLASS CERTIFICATION**

*Rules 5 & 27, Federal Rules of Appellate Procedure
Rule 23(f), Federal Rules of Civil Procedure*

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Pursuant to Federal Rule of Appellate Procedure 27, Target Corporation hereby moves for leave to file the attached reply brief in support of its petition for permission to appeal from order granting class certification. The reply brief, which is limited to two pages, corrects an erroneous statement by plaintiffs regarding the record. The reply brief concerns an issue central to Target's petition under Federal Rule of Civil Procedure 23(f), clarifying that the district court never found NFB and NFB-CA to be adequate class representatives, and confirming that it did in fact certify a nationwide class without a class representative. Target believes that the reply brief will assist the Court in ruling on the petition.

For the foregoing reasons, Target respectfully requests leave to file the attached reply brief.

Dated: November 5, 2007

Respectfully Submitted,

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TARGET CORPORATION

Exhibit A

Appeal No. 07-80179

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FOR THE NINTH CIRCUIT**

**NATIONAL FEDERATION OF THE BLIND, the NATIONAL
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members, and BRUCE F. SEXTON, on behalf of himself and all others
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Respondents/Plaintiffs,

v.

TARGET CORPORATION,

Petitioner/Defendant.

On Appeal from the United States District Court for the
Northern District of California Civil Action No. C 06-1802 MHP

**REPLY IN SUPPORT OF TARGET CORPORATION'S PETITION
FOR PERMISSION TO APPEAL FROM ORDER
GRANTING CLASS CERTIFICATION**

*Rules 5 & 27, Federal Rules of Appellate Procedure
Rule 23(f), Federal Rules of Civil Procedure*

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Target Corporation submits this reply brief in order to correct an erroneous statement by plaintiffs regarding the record. In response to Target's argument that the district court improperly certified a nationwide class without a class representative, Plaintiffs state that "the District Court found NFB and NFB-CA to be adequate representatives of the nationwide class." (Opposition at 5 (citing district court's Order filed October 2, 2007, attached as Exhibit A to Target Corporation's Petition (hereafter "Order") at 8).) That is not so.

The section of the class certification order cited by plaintiffs only addresses the issue of standing. It does not address any of the requirements for class certification set forth by Federal Rule of Civil Procedure 23.

In the sections of the class certification order titled "Rule 23(a) Requirements" and "Rule 23(b)(2) Requirements," by contrast, the district court did not make any findings as to NFB or NFB-CA. (Order at 17-23.) The district court granted summary judgment for Target with respect to plaintiff Sexton's claim under the Americans with Disabilities Act (ADA). (Order at 25.) In its discussion of whether the typicality requirement of Rule 23(a) had been satisfied, the district court held that despite the inadequacy of Sexton's claim, it could "certify the class conditioned upon the substitution of another named plaintiff." (Order at 20.) On this basis, the district court granted plaintiffs' class certification motion and simultaneously ordered substitution of a new class representative for the ADA

claims. (Order at 32.) Far from appointing the NFB or NFB-CA as class representatives, the district court expressly certified the class without appointing *anyone* as a class representative.

In sum, NFB and NFB-CA were never found to be adequate class representatives. The district court's certification of a nationwide class without a class representative was manifest error and should not stand. *Lierboe v. State Farm Mut. Auto. Ins. Co.*, 350 F.3d 1018 (9th Cir. 2003).

Dated: November 5, 2007

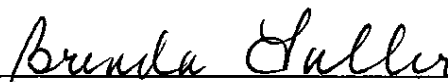
Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that the above document was served by U.P.S. Next Day Air Service and by Electronic Service on November 5, 2007 on counsel at the mailing addresses indicated below.



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