1 2 3 4 5 6 7	HAROLD J. McELHINNY (CA SBN 66781) MATTHEW I. KREEGER (CA SBN 153793) KRISTINA PASZEK (CA SBN 226351) HMcElhinny@mofo.com MKreeger@mofo.com MORRISON & FOERSTER LLP 425 Market Street San Francisco, California 94105-2482 Telephone: (415) 268-7000 Facsimile: (415) 268-7522 Attorneys for Defendant TARGET CORPORATION	
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9	UNITED STATES DI	STRICT COURT
10	NORTHERN DISTRICT	OF CALIFORNIA
11	SAN FRANCISC	O DIVISION
12		
13	NATIONAL FEDERATION OF THE BLIND, the NATIONAL FEDERATION OF THE	Case No. C06-01802 MHP
14 15	BLIND OF CALIFORNIA, on behalf of their members and all others similarly situated, BRUCE F. SEXTON, on behalf of himself and all	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT
16	others similarly situated, MELISSA WILLIAMSON, on behalf of herself and all others similarly situated, and JAMES P. MARKS,	Judge: Hon. Marilyn Hall Patel
17	on behalf of himself and all others similarly situated,	Judge. Tion. Marinyn Tian I alei
18	Plaintiffs,	
19	v.	
20	TARGET CORPORATION,	
21	Defendant.	
22	Derendant.	
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	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMP CASE NO. C 06-01802 MHP sf-2448336	LAINT C 06-01802 MHP

1	Defendant Target Corporation ("Target") answers the Second Amended Complaint	
2	("Complaint") on file in this action as follows:	
3	1. Target denies the averments contained in paragraph 1 of the Complaint.	
4	2. The averments contained in paragraph 2 assert legal conclusions to which no	
5	response is required.	
6	3. The averments contained in paragraph 3 assert legal conclusions to which no	
7	response is required.	
8	4. The averments contained in paragraph 4 assert legal conclusions to which no	
9	response is required.	
10	5. The averments contained in paragraph 5 assert legal conclusions to which no	
11	response is required.	
12	6. Answering paragraph 6, Target admits that it conducts business, and operates retail	
13	stores, in the State of California. Except as expressly admitted, Target denies the averments	
14	contained in paragraph 6, and further denies the averments contained in this paragraph to the	
15	extent they state legal conclusions for which no response is required.	
16	7. Target is without knowledge or information sufficient to admit or deny the	
17	averments relating to the residency or existence of the various plaintiffs. Except as expressly	
18	admitted, Target denies the averments contained in paragraph 7.	
19	8. Target is without knowledge or information sufficient to admit or deny the	
20	averments of paragraph 8.	
21	9. Target is without knowledge or information sufficient to admit or deny the	
22	averments of paragraph 9.	
23	10. Target denies that Plaintiff Sexton "has been denied the full use and enjoyment of	
24	facilities, goods and services of Target.com" as averred in paragraph 10. Target is without	
25	knowledge or information sufficient to admit or deny the remaining averments of paragraph 10.	
26	11. Target denies that Plaintiff Williamson "has been denied the full enjoyment of the	
27	facilities, goods and services of Target.com, as well as to the facilities, goods and services of	
28	Target's retail stores, as a result of accessibility barriers on Target.com" as averred in paragraph	
	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP CASE NO. C 06-01802 MHP sf-2448336	

1 11. Target denies that "the inaccessibility of Target.com has deterred her from shopping at Target
 stores" as averred in paragraph 11. Target denies the averments contained in this paragraph to the
 extent they state legal conclusions for which no response is required. Target is without
 knowledge or information sufficient to admit or deny the remaining averments of paragraph 11.

5 12. Target denies that Plaintiff Marks "has been denied the full enjoyment of the 6 facilities, goods and services of Target.com, as well as to the facilities, goods and services of 7 Target's retail stores, as a result of accessibility barriers on Target.com" as averred in paragraph 8 12. Target denies that "the inaccessibility of Target.com has deterred him from shopping at 9 Target stores, and has forced him to have to pay an aide to accompany him when he does shop at 10 Target stores" as averred in paragraph 12. Target denies the averments contained in this 11 paragraph to the extent they state legal conclusions for which no response is required. Target is 12 without knowledge or information sufficient to admit or deny the remaining averments of 13 paragraph 12.

14 13. Target admits that, among other things, it owns and operates retail stores in
15 California and the United States. Target further admits that, among other things, it operates a
16 website located at www.target.com. Except as expressly admitted, Target denies the averments
17 contained in paragraph 13.

18 14. Target is without information or belief sufficient to admit or deny the averments of
19 paragraph 14. Target denies the averments contained in paragraph 14 to the extent they assert
20 legal conclusions to which no response is required.

15. Target is without information or belief sufficient to admit or deny the averments of
paragraph 15. Target denies the averments contained in paragraph 15 to the extent they assert
legal conclusions to which no response is required.

16. Target is without information or belief sufficient to admit or deny the averments of
paragraph 16. Target further denies the averments contained in paragraph 16 to the extent they
assert legal conclusions to which no response is required.

2717.Target denies the averments of paragraph 17, and further denies the averments

28 contained in this paragraph to the extent they assert that the website located at www.target.com is

inaccessible. Target denies the averments contained in paragraph 17 to the extent they assert
 legal conclusions to which no response is required.

3 18. Target denies the averments contained in paragraph 18, and further denies the
4 averments contained in this paragraph to the extent they assert legal conclusions to which no
5 response is required.

6 19. Target denies the averments contained in paragraph 19, and further denies the
7 averments contained in this paragraph to the extent they assert legal conclusions to which no
8 response is required.

9 20. Target denies the averments contained in paragraph 20, and further denies the
10 averments contained in this paragraph to the extent they assert legal conclusions to which no
11 response is required.

12 21. Target denies the averments contained in paragraph 21, and further denies the
13 averments contained in this paragraph to the extent they assert legal conclusions to which no
14 response is required.

15 22.

2. Answering paragraph 22, no response is required.

16 23. Target admits that, among other things, it operates retail stores in California and
17 the Untied States. Except as expressly admitted, Target denies the averments contained in
18 paragraph 23.

19 24. Target admits that, among other things, it operates a website located at
20 www.target.com, and that words "Powered by Amazon.com" appear within the website. Except
21 as expressly admitted, Target denies the averments contained in paragraph 24, and further denies
22 these averments to the extent they assert legal conclusions to which no response is required.

23 25. Target admits that, among other things, it operates a website located at
24 www.target.com, and that visitors to the website may browse and purchase merchandise. Except
25 as expressly admitted, Target denies the averments contained in paragraph 25, and further denies
26 these averments to the extent they assert legal conclusions to which no response is required.

27 26. Target admits that the website located at www.target.com contains a store locator,

28 online pharmacy, online photoshop, weekly advertisements, coupons, online wedding and baby

1	registries and	d coupons, as well as certain information regarding its REDcard SM program, certain
2	community programs, employment opportunities, investor and company policies, and products	
3	for sale on the website itself. Except as expressly admitted, Target denies the averments	
4	contained in	paragraph 26.
5	27.	Target denies the averments contained in paragraph 27.
6	28.	Target denies the averments contained in paragraph 28.
7	29.	Target is without knowledge or information sufficient to admit or deny the
8	allegations o	f paragraph 29, which are vague and ambiguous.
9	30.	Target is without knowledge or information sufficient to admit or deny the
10	allegations o	f paragraph 30.
11	31.	Target denies that "well-established guidelines" exist or apply to the website
12	located at wy	ww.target.com. Target is without knowledge or information sufficient to admit or
13	deny the rem	aining allegations of paragraph 31.
14	32.	Target denies the averments contained in paragraph 32.
15	33.	Target lacks information or belief sufficient to admit or deny that the descriptions
16	and definitio	ns contained within paragraph 33 are necessary, sufficient or complete, and denies
17	these averme	ents for that reason. Target further denies the remaining averments contained in
18	paragraph 33	3.
19	34.	Target lacks information or belief sufficient to admit or deny that the descriptions
20	and definitio	ns contained within paragraph 34 are necessary, sufficient or complete, and denies
21	these averme	ents for that reason. Target further denies the remaining averments contained in
22	paragraph 34	l.
23	35.	Target lacks information or belief sufficient to admit or deny that the descriptions
24	and definitio	ns contained within paragraph 35 are necessary, sufficient or complete, and denies
25	these averments for that reason. Target further denies the remaining averments contained in	
26	paragraph 35	j.
27	36.	Target denies the averments contained in paragraph 36.
28	37.	Target denies the averments contained in paragraph 37.
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27	
26	no response is required.
25	averments contained in this paragraph to the extent that they contain legal conclusions to which
24	45. Target denies the averments contained in paragraph 45, and further denies the
23	no response is required.
22	averments contained in this paragraph to the extent that they contain legal conclusions to which
21	44. Target denies the averments contained in paragraph 44, and further denies the
20	no response is required.
19	the averments contained in this paragraph to the extent that they assert legal conclusions to which
18	California. Target denies the remaining averments contained in paragraph 43, and further denies
17	43. Target admits that, among other things, it earns revenue from the sale of goods in
16	is required.
15	averments in this paragraph to the extent that they assert legal conclusions to which no response
14	42. Target denies the averments contained in paragraph 42, and further denies the
13	as though fully set forth herein.
12	41. Answering paragraph 41, Target incorporates by reference the foregoing answers
11	RESPONSE TO FIRST CLAIM FOR RELIEF
10	the existence of any "accessibility barriers" as alleged in NFB's May 5, 2005 letter.
9	as expressly admitted, Target denies the averments contained in paragraph 40, and further denies
8	Alameda; and that Target removed this action to federal court on or about March 9, 2006. Except
7	agreement; that plaintiffs initially filed this action in the Superior Court of California, County of
6	National Federation of the Blind ("NFB"); that Target and NFB executed a standstill / tolling
5	40. Target admits that it received a letter dated on or about May 5, 2005 from plaintiff
4	39. Target denies the averments contained in paragraph 39.
3	habits of plaintiffs or the class they purport to represent.
2	averments contained in this paragraph for lack of information or belief regarding the shopping
1	38. Target denies the averments contained in paragraph 38, and further denies the

1	46. Target denies the averments contained in paragraph 46, and further denies the	
2	averments contained in this paragraph to the extent that they contain legal conclusions to which	
3	no response is required.	
4	47. Target denies the averments contained in paragraph 47, and further denies the	
5	averments contained in this paragraph to the extent that they contain legal conclusions to which	
6	no response is required.	
7	48. Target denies the averments contained in paragraph 48, and further denies the	
8	averments contained in this paragraph to the extent that they contain legal conclusions to which	
9	no response is required.	
10	RESPONSE TO SECOND CLAIM FOR RELIEF	
11	49. Answering paragraph 49, Target incorporates by reference the foregoing answer	
12	as if set forth fully herein.	
13	50. Target denies the averments contained in paragraph 50, and further denies the	
14	averments contained in this paragraph to the extent that they contain legal conclusions to which	
15	no response is required.	
16	51. Target denies the averments contained in paragraph 51, and further denies the	
17	averments contained in this paragraph to the extent that they contain legal conclusions to which	
18	no response is required.	
19	52. Target denies the averments contained in paragraph 52, and further denies the	
20	averments contained in this paragraph to the extent that they contain legal conclusions to which	
21	no response is required.	
22	53. Target denies the averments contained in paragraph 53, and further denies the	
23	averments contained in this paragraph to the extent that they contain legal conclusions to which	
24	no response is required.	
25	54. Target denies the averments contained in paragraph 54, and further denies the	
26	averments contained in this paragraph to the extent that they contain legal conclusions to which	
27	no response is required.	
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	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP CASE NO. C 06-01802 MHP sf-2448336	

1	55. Target denies the averments contained in paragraph 55, and further denies the	
2	averments contained in this paragraph to the extent that they contain legal conclusions to which	h
3	no response is required.	
4	56. Target denies the averments contained in paragraph 56, and further denies the	
5	averments contained in this paragraph to the extent that they contain legal conclusions to whic	h
6	no response is required.	
7	RESPONSE TO THIRD CLAIM FOR RELIEF	
8	57. Answering paragraph 57, Target incorporates by reference the foregoing answe	rs
9	as if set forth fully herein.	
10	58. Target denies the averments contained in paragraph 58, and further denies the	
11	averments contained in this paragraph to the extent that they contain legal conclusions to whic	h
12	no response is required.	
13	59. Target denies the averments contained in paragraph 59, and further denies the	
14	averments contained in this paragraph to the extent that they contain legal conclusions to whic	h
15	no response is required.	
16	60. Target denies the averments contained in paragraph 60, and further denies the	
17	averments contained in this paragraph to the extent that they contain legal conclusions to which	h
18	no response is required.	
19	61. Target denies the averments contained in paragraph 61, and further denies the	
20	averments contained in this paragraph to the extent that they contain legal conclusions to which	h
21	no response is required.	
22	62. Target denies the averments contained in paragraph 62, and further denies the	
23	averments contained in this paragraph to the extent that they contain legal conclusions to which	h
24	no response is required.	
25	63. Target denies the averments contained in paragraph 63, and further denies the	
26	averments contained in this paragraph to the extent that they contain legal conclusions to which	h
27	no response is required.	
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	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP	

1	RESPONSE TO FOURTH CLAIM FOR RELIEF
2	64. Answering paragraph 64, Target incorporates by reference the foregoing answers
3	as if set forth fully herein.
4	65. Target denies the averments contained in paragraph 65, and further denies the
5	averments contained in this paragraph to the extent that they contain legal conclusions to which
6	no response is required.
7	66. Target denies the averments contained in paragraph 66, and further denies the
8	averments contained in this paragraph to the extent that they contain legal conclusions to which
9	no response is required.
10	RESPONSE TO RELIEF REQUESTED
11	Target denies that Plaintiffs are entitled to any substantive or procedural remedy or relief,
12	including the relief and certification requested in paragraphs 1 through 8 of the "Relief
13	Requested" portion of Plaintiffs' complaint. Target further denies that Plaintiffs, or any of them,
14	have suffered or incurred any injury or damage in this matter.
15	AFFIRMATIVE DEFENSES
16	Without admitting or acknowledging that Target bears any burden of proof as to any of
17	them, Target asserts the following affirmative defenses. Target intends to rely upon any
18	additional defenses that become available or apparent during pretrial proceedings in this action
19	and hereby reserves the right to amend this Answer in order to assert all such further defenses.
20	First Affirmative Defense
21	(Failure to State a Claim)
22	As an affirmative defense to each and every claim in the Complaint, Target alleges that
23	Plaintiffs have failed to state a claim upon which relief can be granted.
24	Second Affirmative Defense
25	(Commerce Clause)
26	As an affirmative defense to the First and Second Causes of Action in the Complaint,
27	Target alleges that any application of California law to the website located at www.target.com
28	violates the Commerce Clause of the United States Constitution.
	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP CASE NO. C 06-01802 MHP sf-2448336

1	Third Affirmative Defense
2	(Good Faith Conformity with Applicable Standards)
3	As an affirmative defense to each and every claim in the Complaint, Target alleges that it
4	acted in good faith and/or its conduct was in conformity with all applicable statutes, governmental
5	regulations, and industry standards existing at the time of such conduct.
6	Fourth Affirmative Defense
7	(Due Process — Vagueness)
8	As an affirmative defense to each and every claim in the Complaint, Target alleges that, to
9	the extent federal or state statutes are applied in this action to mandate the manner in which
10	Target must program or design its website, the statutes are unconstitutionally vague and
11	application of the statutes in this action would therefore violate the Due Process Clause of the
12	United States Constitution.
13	Fifth Affirmative Defense
14	(Due Process — Damages)
15	As an affirmative defense to each and every claim in the Complaint, Target alleges that
16	the claims for damages are so disproportionate to the injuries, if any, suffered as to violate the
17	Due Process Clause of the United States Constitution.
18	Sixth Affirmative Defense
19	(Rule of Lenity)
20	As an affirmative defense to each and every claim in the Complaint, Target alleges that
21	Plaintiffs' claims are barred by the rule of lenity.
22	Seventh Affirmative Defense
23	(No Modification or Alteration Required)
24	As an affirmative defense to the First and Second Causes of Action in the Complaint,
25	Target alleges that California law does not require Target to modify or alter its website.
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	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP 9 CASE NO. C 06-01802 MHP sf-2448336

1	Eighth Affirmative Defense
2	(No Intentional Discrimination)
3	As an affirmative defense to the First Cause of Action in the Complaint, Target alleges
4	that it has not engaged in intentional discrimination with respect to the accessibility of its website.
5	Ninth Affirmative Defense
6	(No Denial of Physical Access)
7	As an affirmative defense to each and every claim in the Complaint, Target alleges that it
8	has not denied Plaintiffs, or any blind persons, physical access to the goods and services of
9	Target's retail stores.
10	Tenth Affirmative Defense
11	(Auxiliary Aids and Services — Effective Communication)
12	As an affirmative defense to each and every claim in the Complaint, Target alleges that, to
13	the extent Target.com allegedly does not effectively communicate information regarding goods
14	and services through its website to Plaintiffs, or to any blind persons, effective communication is
15	provided via reasonable and appropriate alternative means.
16	Eleventh Affirmative Defense
17	(No Denial of Access to Service of Place of Public Accommodation)
18	As an affirmative defense to each and every claim in the Complaint, Target alleges that it
19	has not denied access to Plaintiffs, or to any blind person, to a service offered by a place of public
20	accommodation.
21	Twelfth Affirmative Defense
22	(Modifications — Undue Burden/Not Readily Achievable)
23	As an affirmative defense to each and every claim in the Complaint, Target alleges that,
24	insofar as Target has not made the alterations to Target.com that Plaintiffs contend should have
25	been made, those changes were not and are not required under California or federal law, and any
26	requirement to make those changes would impose an undue burden upon Target and would not be
27	readily achievable.
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	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP 10 CASE NO. C 06-01802 MHP sf-2448336

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1	Thirteenth Affirmative Defense (Modifications — Fundamentally Alter Nature of Goods and Services)
2	As an affirmative defense to each and every claim in the Complaint, Target alleges that
3	modifications of Target's policies, practices, and procedures, or the provision of auxiliary aids or
4	
5	services, would fundamentally alter the nature of the goods, services, facilities, privileges,
6	advantages, or accommodations, and there is no duty to modify.
7	Fourteenth Affirmative Defense
8	(Statute of Limitations)
9	As an affirmative defense to each and every claim in the Complaint, Target alleges that
10	the claims are barred in whole or in part by the applicable statutes of limitations.
11	Fifteenth Affirmative Defense
12	(Failure to Mitigate)
13	As an affirmative defense to each and every claim in the Complaint, Target alleges that
14	Plaintiffs have failed to take reasonable steps to protect themselves from the damage alleged in
15	the Complaint and have failed to mitigate any such alleged damage.
16	Sixteenth Affirmative Defense
17	(Waiver and Estoppel)
18	As an affirmative defense to each and every claim in the Complaint, Target alleges that, as
19	a consequence of the conduct of or attributable to Plaintiffs in connection with the alleged lack of
20	access to Target.com (which is the subject of this litigation) Plaintiffs have waived any right to
21	secure relief from Target, and are estopped from securing any relief from Target.
22	Seventeenth Affirmative Defense
23	(Lack of Standing)
24	As an affirmative defense to each and every claim in the Complaint, Target alleges that
25	Plaintiffs lack standing to pursue the claims asserted, either individually or on behalf of a class.
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-	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP 11 CASE NO. C 06-01802 MHP 11 sf-2448336 11

1	Eighteenth Affirmative Defense
2	(Claims of Putative Class Members Barred)
3	As an affirmative defense to each and every claim in the Complaint, Target alleges that
4	the claims of the putative class members are barred by some or all of the defenses that bar
5	Plaintiffs' claims.
6	Nineteenth Affirmative Defense
7	(Modifications Not Required)
8	Plaintiffs claims are barred to the extent that the relief they request is not mandated by any
9	applicable regulations adopted by the United States Department of Justice, or by the State of
10	California, for privately-owned commercial websites.
11	Twentieth Affirmative Defense
12	(Adequate Legal Remedy)
13	Plaintiffs are not entitled to injunctive or equitable relief the extent they have adequate
14	legal remedies.
15	Twenty-first Affirmative Defense
16	(No Irreparable Harm)
17	Plaintiffs are not entitled to injunctive or equitable relief to the extent that they have not
18	suffered, and will not suffer, irreparable harm or injury.
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	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP CASE NO. C 06-01802 MHP
	sf-2448336

1	WHEREFORE, Target requests that the Court:
2	(1) Enter judgment in its favor and against Plaintiffs;
3	(2) Award appropriate fees and expenses to Target; and
4	(3) Award such other relief as the Court deems just and proper.
5	
6	Dated: January 17, 2008. HAROLD J. McELHINNY (CA SBN 66781)
7	MATTHEW I. KREEGER (CA SBN 153793) KRISTINA PASZEK (CA SBN 226351)
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15	Attorneys for Defendant TARGET CORPORATION
16	TARGET CORFORATION
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	TARGET CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT C 06-01802 MHP CASE NO. C 06-01802 MHP 13
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