

1 LAURENCE W. PARADIS (California Bar No. 122336)  
 MAZEN M. BASRAWI (California Bar No. 235475)  
 2 DISABILITY RIGHTS ADVOCATES  
 2001 Center Street, Third Floor  
 3 Berkeley, California 94704  
 Telephone: (510) 665-8644  
 4 Facsimile: (510) 665-8511  
 TTY: (510) 665-8716

5  
 TODD M. SCHNEIDER (California Bar No. 158253)  
 6 JOSHUA KONECKY (California Bar No. 182897)  
 SCHNEIDER & WALLACE  
 7 180 Montgomery Street, Suite 2000  
 San Francisco, CA 94104  
 8 Telephone: (415) 421-7100  
 Fax: (415) 421-7105  
 9 TTY: (415) 421-1655

10 DANIEL F. GOLDSTEIN (*pro hac vice*)  
 BROWN, GOLDSTEIN & LEVY, LLP  
 11 120 E. Baltimore St., Suite 1700  
 Baltimore, MD 21202  
 12 Telephone: (410) 962-1030  
 Fax: (410) 385-0869

DISABILITY RIGHTS ADVOCATES  
 2001 Center Street, Third Floor  
 Berkeley, CA 94704-1204  
 510.665.8644

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 15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **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 all others similarly situated,  
 and BRUCE F. SEXTON, on behalf of himself  
 and all others similarly situated,

22 Plaintiffs,

23 v.

24 TARGET CORPORATION

25 Defendant.  
 26  
 27  
 28

Case No.: C 06-01802 MHP

**CLASS ACTION**

**[proposed] ORDER GRANTING  
 PLAINTFFS' MOTION FOR  
 PRELIMINARY INJUNCTION**

Judge: The Honorable Marilyn Hall Patel

1 Plaintiffs' Motion for a Preliminary Injunction came on for hearing before the Court on  
2 June 12, 2006. All parties were represented by their counsel of record at the hearing. This  
3 Court having reviewed all of the papers and documents filed in support of, and in opposition to  
4 said motion, and having considered the argument of counsel, and good cause appearing, hereby  
5 makes the following FINDINGS and ORDERS:

6 1. For this Court to issue a preliminary injunction plaintiffs must show "either: (1) a  
7 likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious  
8 questions going to the merits were raised and the balance of hardships tips sharply in [plaintiffs']  
9 favor." *Halo Management, LLC v. Interland, Inc.*, 308 F. Supp. 2d 1019, 1026 (N.D. Cal. 2003)  
10 (citing *Southwest Voter Registration Education Project v. Shelley*, 344 F.3d 914, 917 (9th Cir.  
11 2003) (en banc; per curiam) (internal citations omitted)).

12 2. Plaintiffs have demonstrated a strong likelihood of success on the merits:

13 a. The record demonstrates that plaintiffs are a blind individual and an  
14 organization which is suing on behalf of its approximately 50,000  
15 members most of whom are legally blind. Such persons qualify as  
16 individuals with disabilities under the California Unruh Act, the California  
17 Disabled Persons Act (DPA) and the Americans with Disabilities Act of  
18 1990 (ADA). *See* Declarations of Bruce F. Sexton, Jr., Marc Maurer, Bob  
19 Ayala, Tim Elder, Tina Thomas, Ken Volonte, Terri Uttermohlen, Steve  
20 Jacobson and Robert Stigile.

21 b. The record further demonstrates that many blind persons are able to  
22 receive and benefit from the information, goods and services contained on  
23 websites using screen access software where such websites contain certain  
24 access features. *Id.*; *see also* Declaration of Anne Taylor, at ¶10; Expert  
25 Declaration of Dr. James W. Thatcher, at ¶¶11-13.

26 c. Defendant Target Corporation is a business establishment under the Unruh  
27 Act, Cal. Civ. Code § 51 and its stores are places of public  
28 accommodation under the DPA and Title III of the ADA. *See O'Connor v.*

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*Village Green Owners Association*, 33 Cal. 3d 790, 795 (1983), *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1050 (9th Cir.2000); Cal. Civ. Code §54.1(a)(1); 42 U.S.C. §12182(7)(e); Thatcher Decl. at ¶20.

- d. The website target.com is an accommodation, advantage, privilege and/or service of Defendant Target Corporation (hereafter “Target”) and its brick and mortar stores. Target therefore has a legal obligation to make target.com accessible on equal terms to blind individuals as to nondisabled individuals. *See* Cal. Civ. Code §51(b); Cal. Civ. Code §54.1(a)(1); 42 U.S.C. §12181(a) & (b); *see also Presta v. Peninsula Corridor Joint Powers Board*, 16 F.Supp.2d 1134 (N.D. Cal. 1998); *Rendon v. Valleycrest Prods.*, 294 F.3d 1279 (11th Cir. 2002).
- e. The factual record before the court, including the declarations of Dr. James W. Thatcher, Anne Taylor, Bruce Sexton, Jr., Bob Ayala, Tim Elder, Tina Thomas, Ken Volonte, Terri Uttermohlen, Steve Jacobson, and Robert Stigile, demonstrate that there are barriers on target.com which deny blind persons full and equal access to target.com.
- f. Accordingly, Defendant Target is denying full and equal access to blind individuals in violation of the Unruh Act, DPA and ADA. Cal. Civ. Code § 51(b); Cal. Civ. Code § 54.1(a)(1); 42 U.S.C. § 12181(a) & (b).

3. For the reasons discussed in the foregoing paragraph, plaintiffs have raised serious questions going to the merits of the case.

4. Plaintiffs also have demonstrated irreparable injury in that:

- a. Unlawful discrimination constitutes irreparable harm; Target’s denial of full and equal access to blind individuals with respect to the benefits and privileges of its public website causes blind persons to suffer the irreparable harm of unlawful discrimination and the deprivation of their statutorily protected civil rights. *See, e.g., Cupolo v. Bay Area Rapid Transit*, 5 F. Supp.

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1 2d 1078, 1084 (N.D. Cal. 1997). Damages alone cannot compensate for the  
 2 lose of individual dignity resulting from such unlawful discrimination. *See*  
 3 *Rotary Club of Duarte v. Board of Directors*, 178 Cal. App. 3d 1035 (1986).  
 4 b. Furthermore, irreparable harm is presumed where a defendant engages in acts  
 5 or practices prohibited by a statute that provides for injunctive relief.  
 6 *Smallwood v. National Can Co.*, 583 F.2d 419, 420 (9th Cir. 1978);  
 7 *Burlington Northern R. Co. v. Department of Revenue of State of Wash.*, 934  
 8 F.2d 1064, 1074 (9th Cir. 1991). The Unruh Act, DPA and ADA all have  
 9 provisions explicitly providing for injunctive relief in civil actions brought by  
 10 aggrieved or potentially aggrieved persons. *See* Cal. Civ. Code § 52.1(b)  
 11 (Unruh Act); Cal. Civ. Code § 55 (DPA); 42 U.S.C. § 12188(a)(ADA).  
 12 Violations of these disability access laws constitute irreparable injury, per se.  
 13 *See Cupolo*, 5 F. Supp. 2d at 1084. Injunctive relief is thus authorized and  
 14 necessary to curtail and remedy Target’s continuing violation of these statutes.

15 5. The Court finds that blind persons including the individual named Plaintiff and  
 16 members of the organizational Plaintiff have suffered and will continue to suffer significant  
 17 irreparable harm throughout this litigation, absent a preliminary injunction.

18 6. Furthermore, the Court finds that the balance of hardships and public interest tip  
 19 sharply in plaintiffs’ favor:

20 a. Plaintiffs have presented substantial evidence showing that meaningful  
 21 access to the Web is an indispensable component of independent living for  
 22 blind individuals in today’s technology-dependent world. *See generally*  
 23 Declaration of Anne Taylor at ¶¶6-10; Declaration of Marc Mauer at ¶6;  
 24 *see also* Declarations of Bruce F. Sexton, Jr., Bob Ayala, Tim Elder, Tina  
 25 Thomas, Ken Volonte, Terri Uttermohlen, Steve Jacobson and Robert  
 26 Stigile.

27 b. The civil rights and disability access laws at issue call for broad  
 28 enforcement through injunctive relief in order to effectively eradicate

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1 discrimination and guarantee full inclusion of people with disabilities in  
2 the mainstream of the economic and commercial spheres of our society.  
3 *See, e.g., Hankins v. El Torito Restaurants, Inc.*, 63 Cal.App.4<sup>th</sup> 510, 523  
4 (1998); *PGA Tour, Inc. v. Casey Martin*, 532 U.S. 661, 675, 121 S.Ct.  
5 1879 (2001).

6 c. The record shows that Target has substantial resources at its disposal. *See*  
7 Press Release, Target Corporation, “Target Corporation Fourth Quarter  
8 Earnings Per Share From Continuing Operations \$1.06.” at  
9 <http://investors.target.com>. Target has not demonstrated any financial or  
10 other obstacle to making target.com accessible to the blind; and

11 d. The record shows that there are established guidelines and readily  
12 available protocols for making websites accessible. *See* Expert  
13 Declaration of Dr. James W. Thatcher; *see also* WAI website at  
14 [www.w3.org/WAI](http://www.w3.org/WAI).

15 7. Given the circumstances of this case, including the considerations discussed  
16 above, the Court finds that the issuance of a preliminary injunction is in the public interest and  
17 that the posting of a nominal bond is appropriate for the issuance of this preliminary injunction.  
18 *See, e.g., Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d at 1078, 1086 (N.D. Cal. 1997).

19 In light of the findings stated above, the Court makes the following ORDERS:

20 8. Defendant Target shall make the website, [www.target.com](http://www.target.com), readily accessible to  
21 and usable by blind persons who use screen access software within ninety (90) days from the  
22 effective date of this order, and shall maintain the website in such accessible condition thereafter.  
23 For purposes of this order, screen access software means software that reads the code behind the  
24 computer screen and text-to-speech software that vocalizes that information.

25 9. Should Target encounter any particular difficulties making target.com fully  
26 accessible to blind individuals, it shall bring those difficulties to the attention of plaintiffs’  
27 counsel no later than five (5) days after discovering them. The parties shall then meet and confer  
28 in a good faith attempt to resolve the difficulty or dispute. If the parties cannot agree upon a

1 resolution, counsel shall arrange for a phone conference through the Courtroom deputy to raise  
2 the issue with the Court and determine the best mechanism for resolving it.

3 10. No later than one hundred (100) days from the effective date of this Order, Target  
4 shall file an affidavit from a person of responsibility within the corporation who is familiar with  
5 the status and operation of target.com, detailing and verifying the accessibility of target.com for  
6 blind individuals who use screen access software.

7 11. Plaintiffs are ORDERED to post a bond of one hundred dollars (\$100) no later  
8 than seven (7) days from the effective date of this Order.

9  
10 IT IS SO ORDERED.

11  
12 Dated: \_\_\_\_\_, 2006

\_\_\_\_\_  
13 HONORABLE MARILYN H. PATEL  
14 United States District Court Judge

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