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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

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

23 Plaintiffs,

24 v.

25 TARGET CORPORATION,
26 Defendant.

Case No.: C 06-01802 MHP

CLASS ACTION

**PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE IN CONNECTION WITH
PLAINTIFFS' OPPOSITION TO
DEFENDANT TARGET
CORPORATION'S MOTION TO
DISMISS**

Hearing Date: July 24, 2006
Time: 2:00 p.m.
Judge: The Honorable Marilyn Hall
Patel

27
28 *National Federation of the Blind, et al v. Target Corporation*

Case. No.: C 06-01802 MHP

Plaintiffs' Request For Judicial Notice In Connection With Plaintiffs' Opposition To Defendant Target Corporation's Motion To Dismiss

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1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Evidence 201, Plaintiffs request that this Court take judicial
3 notice of three records.

4 The first record is the transcript of the Congressional oversight hearing entitled
5 *Applicability of the Americans With Disabilities Act (ADA) to Private Internet Sites: Hearing*
6 *Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong. 65-
7 010 (2000), attached as Exhibit A to the Declaration of Camilla L. Roberson (“Roberson
8 Decl.”), submitted herewith. Defendant Target.com specifically referred to these hearing in its
9 Motion to Dismiss and plaintiffs have cited the hearing transcripts in their Opposition.

10 The second record is a Brief of the United States as Amicus Curiae in Support of
11 Appellant, filed by the U.S. Department of Justice in the case *Hooks v. OKBridge, Inc.*, 232
12 F.3d 208 (5th Cir. 2000) (No. 99-50891), Exhibit B to Roberson Decl. The third record is a
13 Letter from the Assistant Attorney-General for Civil Rights to Senator Tom Harkin, (September
14 9, 1996), 10 NDLR 240 (currently available at <http://www.usdoj.gov/crt/foia/cltr204.txt>),
15 Exhibit C to Roberson Decl. Both of these documents are cited in Plaintiffs’ Opposition to
16 Defendant’s Motion to Dismiss and discuss the opinion of the DOJ regarding the applicability
17 of the ADA to private internet sites.

18 Government records and court records have long been found to be judicially noticeable
19 by federal courts. In conformity with the requirements of the Rule, these records are official,
20 publicly available documents that are “capable of accurate and ready determination by resort to
21 sources whose accuracy cannot reasonably be questioned.” F.R.E. 201(b)(2). Plaintiffs and/or
22 defendants refer to each of these records in their briefs. They are therefore amenable to judicial
23 notice.

24 **II. ARGUMENT**

25 All of the documents of which plaintiffs seek judicial notice are court records or
26 government records which are “capable of accurate and ready determination by resort to sources
27 whose accuracy cannot reasonably be questioned.” FRE 201(b)(2).
28

1 The Congressional hearing transcripts are public records easily accessible online through
 2 the official website of Congress, in this case of the House of Representatives. *See* Roberson
 3 Decl. ¶2. These are the official transcripts of hearings open to the public. As both defendant
 4 Target and plaintiffs have specifically referred to these hearings as an indication of
 5 Congressional intent regarding the ADA and its applicability to the Internet, the transcripts of
 6 the hearings themselves are clearly relevant to the case.

7 Additionally the technical letter of the U.S. Department of Justice to Senator Tom Harkin
 8 regarding the applicability of the ADA to the Internet is also appropriate for judicial notice and
 9 relevant to the case. Public filings of government agencies or entities are appropriate for
 10 judicial notice under Rule 201(b)(2). Numerous courts have found government publications to
 11 be appropriate for judicial notice. *See Clappier v. Flynn*, 605 F.2d 519, 535 (10th Cir. 1979);
 12 *Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York*, 278 F. Supp. 2d 313
 13 (N.D.N.Y. 2003) (judicial notice may be taken of the Federal Register); *U.S. ex rel. Dingle v.*
 14 *BioPort Corp.*, 270 F. Supp. 2d 968 (W.D. Mich. 2003), *affirmed* 388 F.3d 209 (in qui tam
 15 action under False Claims Act (FCA) against anthrax vaccine manufacturer, District Court
 16 would take judicial notice of congressional documents); *Austracan (U.S.A.) Inc. v. Neptune*
 17 *Orient Lines, Ltd.*, 612 F. Supp. 578 (S.D.N.Y. 1985) (under Federal Evidence Rule 201(b)(2),
 18 court would take judicial notice of contents of government publication, a shipper's guide, which
 19 defined "pier-to-house" shipment as being shipment loaded into container at pier or terminal
 20 then exported directly to consignee's designated area for unloading); *Nehus v. Alaska Marine*
 21 *Towing, Inc.*, 519 F. Supp. 328 (W.D. Wash. 1981) (court considering case involving collision
 22 of vessels would take judicial notice of the publication, United States Coast Pilot).

23 The Amicus Brief filed by the Department of Justice in *Hooks v. OKBridge* is a court
 24 record, also "capable of accurate and ready determination by resort to sources whose accuracy
 25 cannot reasonably be questioned." FRE 201(b)(2). This document is contained in court files,
 26 on the official website of the DOJ and in legal databases and can be readily verified if
 27 necessary. *See* Roberson Decl. ¶3. Furthermore this document has been cited by plaintiffs and
 28

National Federation of the Blind, et al v. Target Corporation

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1 is being offered to establish the opinion of the Department of Justice regarding the applicability
2 of the ADA to the Internet. Finally, courts routinely take judicial notice of court filings and
3 records. See, e.g., *Sosuther Cross Overseas Agencies, Inc. v. Kah Kwong Shipping Group, Ltd.*,
4 181 F.3d 410, 426-27 (3rd Cir.); *United States v. Jones*, 29 F.3d 1549, 1553. (11th Cir. 1994).

5 In short, the documents that plaintiffs request this Court take judicial notice are public
6 records whose accuracy can be readily determined. Public records are self-authenticating under
7 the Federal Rules of Evidence, F.R.E. 901(a) and (b)(7), and are considered an exception to the
8 hearsay rule. F.R.E. 803(8). The documents do not contain facts that are in dispute or
9 reasonably subject to dispute, and derive from trustworthy sources.

10 **I. CONCLUSION**

11 For the foregoing reasons, plaintiffs respectfully request that this Court take judicial
12 notice of the transcript of the Congressional hearing entitled *Applicability of the Americans With*
13 *Disabilities Act (ADA) to Private Internet Sites*, and the letter to Senator Harkin and Amicus
14 Brief issued by the Department of Justice, submitted herewith.

15
16 Respectfully submitted,

17 DATED: June 12, 2006

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