

EXHIBIT 1.5

1 being used, correct?

2 MR. PLUNKETT: Objection. Vague.

3 THE WITNESS: Could you read that back,
4 please?

5 (Record read.)

6 THE WITNESS: Not design only -- yes, I
7 think that characterizes my --

8 MR. PARADIS: Q. Okay. Do you recall
9 doing a declaration in this case?

10 A. I am sorry?

11 Q. Do you recall signing a declaration in this
12 case?

13 A. Yes.

14 Q. And do you recall in paragraph 10 of your
15 declaration referring to both the WCAG and the
16 Section 508 standards?

17 A. Yes.

18 Q. Let me -- it's not a trick. Let me give
19 you a copy of your declaration. I am showing you
20 Exhibit A, Plaintiff's Exhibit A, which is a copy of
21 your declaration.

22 So, in paragraph 10, would you please turn
23 to that? Do you see where you mention both WCAG and
24 Section 508 standards?

25 A. Yes.

1 result of an accessible website, yes.

2 Q. At the bottom of this page, it says, "How
3 can we help?" And the very -- the first item talks
4 about helping customers in designing accessible
5 websites; is that correct?

6 A. Yes.

7 Q. You have -- you have done so as a
8 consultant; is that correct?

9 A. Yes.

10 Q. The second part -- second paragraph talks
11 about assisting a client who already has an existing
12 website in making -- in increasing its accessibility;
13 is that right?

14 A. Yes.

15 Q. Do you have a methodology that you follow
16 when you are asked to assess a website in terms of its
17 accessibility?

18 A. Yes.

19 Q. What is your methodology?

20 A. My methodology is essentially the
21 methodology that you can read on the World Wide Web
22 Consortium's Web Accessibility Initiative site on
23 methodology for evaluating websites.

24 I don't recall the actual URL at the
25 moment.

1 Q. Is part of your methodology determining the
2 extent to which the website complies with WCAG 1.0?

3 A. If that's what the client has asked.

4 Q. What methodology -- well, what guidelines
5 have you followed in assisting clients in improving
6 accessibility of their websites?

7 A. I have used WCAG 1.0, I have used
8 Section 508.

9 Q. Would it be fair to say that WCAG and
10 Section 508 are two sets of guidelines that are being
11 developed in concert with each other?

12 MR. PLUNKETT: Objection. Vague.

13 THE WITNESS: Could you rephrase that or
14 ask it again or be more specific?

15 MR. PARADIS: Q. I will try. The drafters
16 of Section 508 actually looked at WCAG 1.0 as part of
17 their process in developing the web access provisions
18 of Section 508, correct?

19 A. Yes.

20 Q. And in the published 508 standards, there
21 is actually an advisory note explaining how certain
22 components of Section 508 meet certain standards within
23 WCAG 1.0, correct?

24 A. Yes.

25 Q. And WCAG is now being updated, correct?

1 THE WITNESS: It was believed that it is
2 important that guidance be available.

3 MR. PARADIS: Q. Is one reason for that so
4 that designers would know what features are important
5 to include in their website so that the site is
6 accessible?

7 A. That's one reason, yes.

8 Q. Is another reason so that software
9 developers, such as the makers of JAWS, would be able
10 to interact with website designers in a common frame of
11 reference?

12 MR. PLUNKETT: Objection. Vague. Calls
13 for speculation.

14 THE WITNESS: It was hoped that it would be
15 used that way.

16 MR. PARADIS: Q. So when you do assist a
17 client in helping to make its website more accessible,
18 if a client's website has many images that lack alt
19 text, what do you advise the client to do?

20 A. I recommend that they add appropriate alt
21 text.

22 Q. And if a client's website has lots of forms
23 that contain no labels or other mechanism to facilitate
24 a blind user's interaction with the form, what do you
25 advise the client to do?

1 MR. PLUNKETT: Objection. Vague.

2 Incomplete hypothetical. Calls for speculation.

3 MR. PARADIS: Q. Can you answer that?

4 A. I recommend --

5 MR. PLUNKETT: Same objections.

6 MR. PARADIS: Q. Go ahead.

7 A. I recommend that they follow the

8 guidelines.

9 Q. Which calls for providing labeling on the
10 forms, correct?

11 A. Yes.

12 MR. PLUNKETT: Objection. Asked and

13 answered.

14 MR. PARADIS: Q. And if a client has web
15 pages on its website that have lots of different
16 activities going on in the page but no headings to
17 facilitate a blind user skipping from one part of the
18 page to another, what do you advise the client to do?

19 MR. PLUNKETT: Objection. Vague.

20 Incomplete hypothetical. Calls for speculation.

21 THE WITNESS: That one depends entirely on
22 the content and the design of a page.

23 MR. PARADIS: Q. Have you ever advised a
24 client to provide headings on different parts of its
25 home page to facilitate a blind user navigating from

1 read. He identified four types of barriers.

2 And in terms of those four types of
3 barriers, do any of the differences between WCAG and
4 Section 508 matter?

5 MR. PLUNKETT: Objection. Vague. Calls
6 for speculation. Lacks foundation. Calls for legal
7 conclusion.

8 THE WITNESS: Yes. It's not obvious to me.

9 MR. PARADIS: Q. Let me go through the
10 four types of barriers.

11 The first type of barrier Dr. Thatcher
12 discussed concerned lack of alt text on image links,
13 image button and image map areas.

14 Do you recall that?

15 A. Yes.

16 Q. Do any of these three differences that you
17 cite between WCAG and Section 508 affect whether the
18 lack of alt text is a barrier or is not a barrier to
19 blind users?

20 MR. PLUNKETT: Objection. Vague.

21 THE WITNESS: No.

22 MR. PARADIS: Q. It remains a barrier
23 under both standards or guidelines, correct?

24 A. That is -- I don't say what is or isn't
25 covered in these statements.

1 Q. I take it you advise your clients, if they
2 are a government agency, for example, in the United
3 States, to follow, if they are a federal government
4 agency, to follow Section 508; is that right?

5 A. Yes, in their procurement or redevelopment
6 of a website, certainly.

7 Q. I take it that you find there is sufficient
8 guidance in Section 508 to set forth the elements
9 needed to make a website accessible to disabled users?

10 A. No. What I said was that I recommend to
11 federal U.S. organizations to use it because it's the
12 law.

13 Q. So, but do you also believe it provides
14 many of the important elements needed for actual
15 usability by disabled people?

16 A. It provides --

17 MR. PLUNKETT: Objection. Vague. Calls
18 for speculation.

19 THE WITNESS: I believe that it is not as
20 wide ranging as WCAG is in providing service to people
21 with different disabilities.

22 MR. PARADIS: Q. Is there anything in
23 Section 508 that provides a lesser level of
24 accessibility for blind users than WCAG?

25 MR. PLUNKETT: Objection. Vague. The

1 documents would speak for themselves.

2 MR. PARADIS: Q. Let me withdraw that,
3 then.

4 You say you advise clients, federal
5 government agencies, to follow 508 because it's the
6 law.

7 Is there any other reason you would advise
8 such agencies to follow 508?

9 A. If -- simply if they are not going to use
10 anything else, then 508 is the best chance they have
11 got.

12 Q. If it's an entity that is not required to
13 follow 508, do you recommend that it follow WCAG?

14 A. I recommend -- in the United States, I
15 recommend that they follow WCAG or 508 depending on
16 their -- again, it depends on a lot of factors around
17 what they are doing.

18 Q. Now, would it be fair to say that when you
19 are advising or assisting a client on making its
20 website more accessible, part of the process is
21 bringing the website into compliance with WCAG or 508,
22 and part of the process is making sure that it is fully
23 usable?

24 A. If that has been contracted, yes.

25 Q. And I take it that meeting the guidelines

1 is part of the process for making your website fully
2 usable and accessible; is that correct?

3 MR. PLUNKETT: Please read that back.

4 (Record read.)

5 MR. PLUNKETT: Objection. Vague.

6 MR. PARADIS: It is vague. Let me restate
7 it.

8 Q. When advising a client to follow 508 or
9 what WCAG 1.0, I take it that the reason for that is
10 because meeting one of those standards will go a long
11 way towards making the client's website both accessible
12 and usable; is that correct?

13 MR. PLUNKETT: Objection. Vague.

14 THE WITNESS: Yes, it's vague. But, I
15 mean, it gives the client something to test against.

16 MR. PARADIS: Q. I take it some of the
17 elements are just very clear and obvious access
18 requirements, like providing alt text on image map
19 areas?

20 MR. PLUNKETT: Objection. Vague.

21 THE WITNESS: It's clear and obvious to me.

22 MR. PARADIS: Q. In addition -- so one of
23 the benefits of following the guidelines is that it
24 gives an objective measurable test for whether the
25 website has at least minimum elements for access; is

1 that correct?

2 MR. PLUNKETT: Objection. Vague.

3 THE WITNESS: It's a reference to give
4 people some guidance on how to make their websites more
5 accessible. I use it as a tool for evaluating
6 websites.

7 MR. PARADIS: Q. Would you agree that one
8 of the reasons to measure your website against these
9 guidelines is so that there are certain minimum
10 objective standards that you can follow as a website
11 designer?

12 MR. PLUNKETT: Objection. Vague.

13 THE WITNESS: In many cases, yes, that is
14 probably true.

15 MR. PARADIS: Q. Then in terms of
16 usability, would it be fair to say that what you mean
17 by this is that, in an ideal world, you would want a
18 website designer to not only follow the guidelines, but
19 to also go one step further and check on actual
20 usability to make sure that they are meeting both the
21 letter of these guidelines and the ultimate goal of
22 usability?

23 A. In an ideal world, yes.

24 Q. I take it that, although there are some
25 differences between 508 and WCAG, the end goal of both

1 MR. PARADIS: Q. I am not asking -- I
2 don't want that. I am just wondering if you had any
3 sense. I take it you don't have any sense as you sit
4 here of how much they overlap.

5 A. There is overlap between --

6 MR. PLUNKETT: Objection. Asked and
7 answered.

8 THE WITNESS: -- between the standards and
9 the guidelines.

10 MR. PARADIS: Q. Would you say that the
11 Priority One elements in WCAG are very similar to the
12 Section 508 standards concerning website access?

13 MR. PLUNKETT: Objection. Vague. The
14 documents speak for themselves.

15 THE WITNESS: Could you repeat that,
16 please?

17 MR. PARADIS: Read that back, please.

18 (Record read.)

19 THE WITNESS: There are many similarities,
20 yes.

21 MR. PARADIS: Q. I take it that a website
22 can be brought into compliance with both sets of
23 standards; there is not a conflict between the two,
24 correct?

25 A. That's correct.

1 Q. In fact, you may advise a client to meet
2 both sets of standards in some situations; is that
3 correct?

4 A. That's correct.

5 Q. In fact, Section 508 advisory notes tell
6 readers what components of WCAG 1.0 are met and what
7 components are additional requirements, correct?

8 A. That's correct.

9 Q. So what was your point in identifying the
10 few differences between WCAG 1.0 and Section 508 in
11 your declaration?

12 MR. PLUNKETT: Objection. Vague.

13 THE WITNESS: Yeah. You are asking for my
14 opinion on my opinion?

15 MR. PARADIS: Q. Why did you say this in
16 your declaration? What is the point you were trying to
17 make other than that there are some differences?

18 A. I was asked if there were differences
19 between the two standards.

20 Q. Do you find those differences significant
21 to you in any way in terms of evaluating whether
22 target.com is accessible or not?

23 A. I am not evaluating target.com.

24 MR. PLUNKETT: Objection. Assumes facts.
25 Lacks foundation. Argumentative.

1 MR. PARADIS: Q. The court is being asked
2 to evaluate this. And do you find those differences
3 between -- that you identified between 508 and WCAG to
4 be significant in terms of an evaluation of whether
5 target.com is accessible to blind users?

6 A. I don't know. I have not looked at --

7 MR. PLUNKETT: Objection. Foundation.
8 Calls for speculation.

9 THE WITNESS: I have not looked at it.

10 MR. PARADIS: Q. Did you ever ask Target
11 or its lawyers why they cared if there were some
12 differences between 508 and WCAG?

13 MR. PLUNKETT: Counsel, objection. Asked
14 and answered. Argumentative.

15 THE WITNESS: I didn't ask.

16 MR. PLUNKETT: Did you promise to finish by
17 1:00?

18 MR. PARADIS: 1:30.

19 Q. How difficult would you say it is to make a
20 website compliant with 508 or WCAG 1.0?

21 MR. PLUNKETT: Objection. Calls for
22 speculation. Incomplete hypothetical. Lacks
23 foundation.

24 THE WITNESS: There is no way to answer
25 that question.

1 MR. PARADIS: Q. In your website, you
2 say -- you describe it as a relatively simple task.
3 What did you mean by that?

4 MR. PLUNKETT: Asked and answered. Same
5 objection.

6 THE WITNESS: For an expert to make a
7 website more accessible is a relatively simple task.

8 MR. PARADIS: Q. And an expert -- who
9 would you consider sufficiently qualified? What are
10 the qualification requirements to be an expert?

11 MR. PLUNKETT: Objection. Vague. Calls
12 for speculation.

13 THE WITNESS: Exactly. A wide, thorough
14 and deep knowledge of all of the issues.

15 MR. PARADIS: Q. Are there -- I want to
16 get a sense from you of how many people would meet that
17 standard. Would you say it's at least in the hundreds?

18 A. I couldn't begin to guess that any more.

19 Q. It's a lawyer's way of asking questions.

20 Would you say it's at least in the dozens?
21 Trying to get a bottom level here.

22 A. I think I know a dozen people at least that
23 would qualify for that.

24 Q. Did anyone at Target or anyone at its
25 attorneys who hired you suggest to you that they did

1 different?

2 A. Yes.

3 Q. And how did differences between users
4 affect their interaction with a website, that was
5 another question, right?

6 A. Approximately, yes.

7 Q. And now, in terms of whether you
8 characterize a website as accessible or not, you look
9 at the actual content and structure of the website,
10 correct?

11 A. Yes.

12 Q. You don't look at how one user with less
13 experience might have more difficulty than another user
14 with more experience; you look at, does the website
15 have the structural components needed to make it easily
16 usable by a wide variety of users, correct?

17 MR. PLUNKETT: Objection. Vague.
18 Incomplete hypothetical.

19 THE WITNESS: Yeah. It depends on what I
20 have been contracted to do with that evaluation or that
21 design.

22 MR. PARADIS: Q. Well, you mentioned in
23 your declaration that one of the blind people who
24 submitted a declaration used an older version of JAWS.
25 Do you remember that?

1 A. That's what I was told, yes.

2 Q. Were you told about the experiences of
3 other blind users who still had difficulty even with
4 newer versions of JAWS?

5 MR. PLUNKETT: Objection. Assumes facts.

6 THE WITNESS: I don't recall.

7 MR. PARADIS: Q. Did you ask anyone
8 whether there were other blind users who had submitted
9 declarations?

10 A. I didn't ask about other people's
11 declarations.

12 Q. So you just took the information you were
13 given by Target's lawyers and addressed only those
14 issues in your declaration; is that right?

15 A. That's correct.

16 MR. PLUNKETT: Objection. Misstates the
17 testimony. Argumentative.

18 MR. PARADIS: Q. And you didn't ask
19 Target's lawyers to tell you what the overall range of
20 experience of the blind users was, correct?

21 A. I did not ask, that is correct.

22 Q. You did not seek to elicit any information
23 from Target's lawyers that was not specifically given
24 to you; is that correct?

25 A. That's correct.

1 guidelines, 508 or WCAG?

2 MR. PLUNKETT: Objection. Asked and
3 answered. Calls for speculation. Vague.

4 THE WITNESS: I generally ask if there are
5 any standards or guidelines to which they legally must
6 apply. And if not, then I use whatever is in my range
7 of experience to help them make their website more
8 accessible.

9 MR. PARADIS: Q. Part of that is, I think
10 you have -- let me ask you.

11 In your website you reference WCAG, and I
12 think you said you primarily look to WCAG if it's not
13 an entity governed by 508; is that correct?

14 A. As the basis, yes.

15 Q. Then you say there are some techniques that
16 have changed and that you use your experience.

17 Would you say that these are methods that
18 you use that build upon compliance with WCAG?

19 A. That seems fair to say, yes.

20 Q. Now, in terms of whatever changes you are
21 referring to in paragraph 12, whatever they are, do any
22 of them affect -- in your understanding, do they --
23 start again.

24 Do any of the changes that you referred to
25 in paragraph 12 affect the requirements under 508 and

1 WCAG that images have alt text?

2 MR. PLUNKETT: Objection. Vague. Lacks
3 foundation. Mischaracterizes the document.

4 THE WITNESS: I can't think of any.

5 MR. PARADIS: Q. Would it be fair to say
6 that for image maps, image buttons -- I don't want
7 to -- let me start again.

8 Is it okay with you if I use the word
9 active images to refer to image links, image buttons
10 and image map areas?

11 A. It is now, yes.

12 Q. Would it be fair to say that for active
13 images, the alt text requirement is in both sets of
14 guidelines, and as far as you know, will continue to be
15 a requirement in any revised guidelines?

16 MR. PLUNKETT: Objection. Calls for
17 speculation.

18 THE WITNESS: For a requirement to
19 compliance.

20 MR. PARADIS: Q. That's what I mean. Is
21 it fair to say it will continue to be a requirement for
22 compliance?

23 A. I can only assume so. I don't know. I am
24 not involved with either of the processes.

25 Q. In terms of how you advise your own clients

1 a problem on target.com. Do you recall seeing his
2 opinion?

3 A. I recall seeing his opinion, yes.

4 Q. Is it fair to say that the ability to use
5 the keyboard to complete -- to interact with the
6 website and not have to use a visual mouse, has been,
7 is and will continue to be an access requirement or as
8 part of the standards will be an access -- I will ask
9 it again.

10 In terms of the keyboard as a way to
11 interact with the website, is it fair to say that that
12 is an access feature needed for compliance with 508 and
13 WCAG and will continue to be, as far as you know?

14 MR. PLUNKETT: Objection. Calls for
15 speculation.

16 THE WITNESS: The first part -- you
17 actually asked three different things in that sentence.

18 MR. PARADIS: Q. I can break it down.

19 So in terms of the interaction, being able
20 to interact using a keyboard, is it fair to say that is
21 an access feature that has been required for compliance
22 with Section 508 and WCAG 1.0?

23 A. Yes.

24 Q. Is it fair to say that that remains a
25 requirement for compliance with 508 and WCAG 1.0?

1 A. I can only speculate. I don't know. I am
2 assuming it will, but I don't know for sure.

3 Q. That is going to be my third question, will
4 it continue to be, but currently, as it stands now, is
5 it fair to say it is still a requirement for compliance
6 with 508 and WCAG?

7 A. I thought that was the first question.

8 Q. First one was, has it been? You said yes.
9 And the current question is, is it still a requirement
10 currently?

11 A. Since neither of those standards have
12 changed, then it must be.

13 Q. And then my third question was, do you have
14 any reason to think it will not continue to be a
15 requirement? Do you have any reason to think the
16 requirements will change when it comes to the keyboard
17 requirement?

18 A. I could only speculate, but I don't imagine
19 them changing it, but anything is possible.

20 Q. In terms of the navigation issue, do you
21 recall seeing Dr. Thatcher's assessment that there were
22 problems on target.com with lack of mechanisms to
23 enable easy navigation within a page?

24 A. I recall seeing his -- yes.

25 Q. And is it fair to say that both WCAG and