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15 Attorneys for Defendant
 TARGET CORPORATION

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

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

24 Plaintiffs,

25 v.

26 TARGET CORPORATION,
 27 Defendant.

Case No. C06-01802 MHP

**TARGET CORPORATION'S
 OBJECTIONS TO, AND MOTION
 TO STRIKE, EVIDENCE OFFERED
 IN SUPPORT OF PLAINTIFFS'
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: July 24, 2006
 Time: 2:00 p.m.
 Jude: Hon. Marilyn Hall Patel

1 Target Corporation (“Target”) asserts the following objections to, and moves to strike, (1)
 2 portions of the Expert Declaration of Dr. James W. Thatcher in Support of Plaintiff’s Motion for
 3 Preliminary Injunction (the “Opening Thatcher Declaration”); (2) portions of the Reply
 4 Declaration of Dr. James W. Thatcher In Support of Plaintiffs’ Motion for Preliminary Injunction
 5 (the “Reply Thatcher Declaration”); (3) portions of the Reply Declaration of Bruce F. Sexton In
 6 Support of Plaintiffs’ Motion for Preliminary Injunction (the “Sexton Declaration”); (4) portions
 7 of the Declaration of Yelena Trepetin (the “Trepetin Declaration”); and (5) selected deposition
 8 testimony cited in plaintiffs’ reply brief.

9 Objections to Opening Thatcher Declaration

10 1. In paragraphs 41 through 46 of the Opening Thatcher Declaration, Dr. Thatcher
 11 testifies that in 2005, it was impossible for blind Internet users to complete a transaction on
 12 Target.com using only a keyboard. Target objects to and moves to strike this testimony because
 13 (1) Dr. Thatcher lacks personal knowledge as to whether it was possible for blind Internet users to
 14 complete a transaction on Target’s website using only a keyboard in July of 2005 (Fed. R. Evid.
 15 602),¹ (2) Dr. Thatcher’s opinion is not based upon “sufficient facts or data” (Fed. R. Evid. 702)
 16 and (3) this testimony, which pertains only to the alleged condition of Target’s website in July of
 17 2005, is not relevant to whether an injunction should issue with respect to the condition of
 18 Target’s website now in 2006 (Fed. R. Evid. 401).

19 2. In paragraph 55 of the Opening Thatcher Declaration, Dr. Thatcher opines that a
 20 blind user cannot “complete a purchase conveniently and confidently” on Target.com. Target
 21 objects to and moves to strike this testimony because (1) Dr. Thatcher lacks personal knowledge
 22 of whether it is possible for blind Internet users to “complete a purchase conveniently and
 23 confidently” on Target.com (Fed. R. Evid. 602); (2) Dr. Thatcher’s opinion is not based upon

24 _____
 25 ¹ As explained in Target’s opposition to the motion for preliminary injunction, Dr.
 26 Thatcher admitted at his deposition that he only evaluated whether Target.com complied with his
 27 own chosen “combination” of website accessibility guidelines, and that he *did not evaluate*
 28 *whether non-compliance with his chosen guidelines rendered the website inaccessible.* (Thatcher
 Depo. at 100:21-101:7.) Dr. Thatcher therefore has no basis to opine on how difficult it might be
 for a blind person to access the goods and services on Target.com.

1 “sufficient facts or data” (Fed. R. Evid. 702) and (3) the terms “convenient” and “confident” are
2 vague and ambiguous and therefore will not assist the trier of fact (Fed. R. Evid. 702).

3 3. In paragraph 60 of the Opening Thatcher Declaration, Dr. Thatcher testifies that
4 “[it] is impossible before April 6, 2006 to complete a transaction relying on keyboard
5 interaction.” Target objects to and moves to strike this testimony because Dr. Thatcher lacks
6 personal knowledge of (a) whether it was ever impossible for blind Internet users to complete a
7 transaction on Target.com, and (b) when it allegedly became possible for blind Internet users to
8 complete a transaction on Target.com. (Fed. R. Evid. 602.) Target also objects to and moves to
9 strike this testimony because Dr. Thatcher’s opinion is not based upon “sufficient facts or data”
10 (Fed. R. Evid. 702). Finally, Target objects to and moves to strike this testimony because the
11 alleged past condition of Target.com is not relevant to whether an injunction should issue with
12 respect to the condition of Target’s website now in 2006 (Fed. R. Evid. 401).

13 4. In paragraph 60 of the Opening Thatcher Declaration, Dr. Thatcher testifies that
14 “[a]s of April 12, 2006 the website of the Target Corporation is virtually unusable by a visitor
15 who is blind.” In paragraph 61, Thatcher testifies that if his website programming suggestions are
16 implemented, “the site will be accessible by people with visual impairments.” Target objects to
17 and moves to strike this testimony because it is beyond Thatcher’s personal knowledge. (Fed. R.
18 Evid. 602.) Target also objects to and moves to strike because Dr. Thatcher’s opinion is not
19 based upon “sufficient facts or data” (Fed. R. Evid. 702).

20 Objections to Reply Thatcher Declaration

21 1. In paragraph 3 of the Reply Thatcher Declaration, Thatcher testifies that “[i]n July
22 of 2005 it was impossible to complete a transaction using only the keyboard.” Dr. Thatcher says
23 the same thing in paragraph 4. Target objects to and moves to strike this testimony because (1)
24 Dr. Thatcher lacks personal knowledge as to whether it was possible for blind Internet users to
25 complete a transaction on Target’s website using only a keyboard in July of 2005 (Fed. R. Evid.
26 602); (2) Dr. Thatcher’s opinion is not based upon “sufficient facts or data” (Fed. R. Evid. 702);
27 and (3) this testimony, which pertains only to the alleged condition of Target’s website in July of
28 2005, is not relevant to whether an injunction should issue with respect to the condition of

1 Target's website now in 2006 (Fed. R. Evid. 401).

2 2. In paragraph 3, Dr. Thatcher testifies:

3 As I stated in my declaration, there was a change in the Target.com web
4 site that I detected on April 6, 2006. After that change it seem to be
5 *possible* that a blind person could complete a transaction although it is still
6 highly unlikely. There have been more changes since April 6 and I think
7 it is more likely that a blind user could complete a transaction. But I am
8 comfortable in saying that it is highly unlikely that a blind customer could
9 complete a transaction on Target.com in any reasonably amount of time
10 and for any reason other than to prove it is possible.

11 In paragraph 5, Dr. Thatcher testifies that it is "hardly practical" for blind customers to
12 complete a transaction on Target.com.

13 In paragraph 6, Dr. Thatcher testifies that "[i]t may be possible to ignore hundreds of
14 characters of meaningless jumble and with carefully planned searches and orchestrated JAWS
15 'find' commands a blind person can find something to purchase and even complete that purchase
16 — but it isn't easy and it is not accessible."

17 In paragraph 7, Dr. Thatcher testifies it is "possible but very difficult" for blind customers
18 to complete a transaction on Target.com.

19 Target objects to and moves to strike all of this testimony because (1) Dr. Thatcher lacks
20 personal knowledge as to whether it is possible for blind Internet users to complete transactions
21 on Target.com, how long it would take blind Internet users to complete transactions on
22 Target.com, how difficult it is for blind Internet users to complete transaction on Target.com, and
23 the reasons blind Internet users complete transactions on Target.com (Fed. R. Evid. 602); (2)
24 these opinions are not based upon "sufficient facts or data" (Fed. R. Evid. 702); and (3) the
25 testimony is vague and ambiguous with respect to the terms "reasonable amount of time,"
26 "hardly practical," "easy," and "very difficult" and therefore will not assist the trier of fact (Fed.
27 R. Evid. 702).

28 3. In paragraph 5 of the Reply Thatcher Declaration, Dr. Thatcher suggests that it
takes blind Internet users "one to two hours" to complete a transaction on Target.com, and the
reason it takes one to two hours is that "Target.com is fundamentally inaccessible." Target
objects to and moves to strike this testimony because Dr. Thatcher provides no foundation for his

1 testimony that it would take “one to two hours” for blind Internet users to complete transactions
2 on Target.com and this opinion is thus not based upon “sufficient facts or data” or upon personal
3 knowledge (Fed. R. Evid. 602 & 702).²

4 4. In paragraph 5 of the Reply Thatcher Declaration, Dr. Thatcher testifies that “[i]f
5 shopping on the Web routinely took ‘one to two hours’ internet retail stores would be out of
6 business.” Target objects to and moves to strike this testimony because (1) it is speculation (Fed.
7 R. Evid. 602); (2) it is irrelevant because there is no evidence that it take “one to two hours” to
8 complete a transaction on Target.com (Fed. R. Evid. 401); and (3) it is beyond the expertise of the
9 witness (Fed. R. Evid. 702).

10 5. In paragraph 5 of the Reply Thatcher Declaration, Dr. Thatcher testifies it “is
11 extremely difficult to navigate any page because Target has done nothing to facilitate that
12 navigation.” Target objects to and moves to strike this testimony because Dr. Thatcher lacks
13 personal knowledge as to whether it is difficult for blind Internet users to “navigate” Target’s
14 webpage (Fed. R. Evid. 602), and (2) the testimony is vague and ambiguous with respect to the
15 terms “difficult” and “navigate” and therefore will not assist the trier of fact (Fed. R. Evid. 702).

16 6. In paragraph 11 of the Reply Thatcher Declaration, Dr. Thatcher testifies that if
17 Target’s website can be used by a blind customer “it is only possible” if the customer “has
18 remarkable persistence in trying to get from one page to another on the page.” Target objects to
19 and moves to strike this testimony because Dr. Thatcher lacks personal knowledge of how
20 difficult it is for blind customers to use Target’s website. (Fed. R. Evid. 602.) In addition, this
21 opinion is not based upon “sufficient facts or data” (Fed. R. Evid. 702).

22 7. In paragraphs 1, 2, 7, 8, and 10 of the Reply Thatcher Declaration, Dr. Thatcher
23 repeats the same testimony offered in his Opening Declaration. Target thus objects to and moves
24 to strike this redundant testimony as cumulative. (Fed. R. Evid. 403.)

25
26 ² To the extent Dr. Thatcher is referring to Suzanne Tritten’s experience using
27 Target.com, he is mischaracterizing Ms. Tritten’s testimony. Ms. Tritten testified that she spent
28 several hours exploring the various features on Target.com, not that she took hours to complete a
transaction on Target.com. [27:13-28:10]

1 Objections to Sexton Declaration

2 1. In paragraph 1 of the Sexton Declaration, Sexton testifies that “Target.com’s 1-800
3 number is not an adequate substitute for the independence offered by shopping on an internet site
4 which is fully and equally accessible.” In paragraph 8, Sexton testifies that “I believe that
5 Target.com’s 1-800 number is a vastly inferior substitute for full and equal access to Target.com.”
6 Target objects to and moves to strike this testimony because it constitutes a legal conclusion and
7 is therefore improper opinion testimony offered by a lay witness (Fed. R. Evid. 701).

8 2. In paragraph 6 of the Sexton Declaration, Sexton testifies that “I couldn’t use
9 Target.com like most other people would.” Target objects to and moves to strike this testimony
10 because Sexton lacks personal knowledge as to how “most other people” would use Target.com
11 (Fed. R. Evid. 602). It is also improper opinion testimony offered by a lay witness (Fed. R. Evid.
12 701).

13 Objections to Trepetin Declaration

14 1. In paragraph 13, Trepetin testifies that “coupons only seem to be available online.”
15 Target objects to and moves to strike this testimony because Trepetin lacks personal knowledge
16 as to how and where Target Corporation makes coupons available for in-store redemption. (Fed.
17 R. Evid. 602.)

18 Objections to Selected Deposition Testimony Cited In Reply Brief

19 1. Deposition of Charles Letourneau: 124:12-14, 128:19-129:19 (Reply Br. at 5:5),
20 on the grounds that Mr. Letourneau lacks personal knowledge (Fed. R. Evid. 602) and the opinion
21 testimony is not based on “sufficient facts or data” (Fed. R. Evid. 602).

22 2. Deposition of Charles Letourneau: 112:19-113:7 (Reply Br. at 4:22), on the
23 grounds that Mr. Letourneau lacks personal knowledge (Fed. R. Evid. 602) and the opinion
24 testimony is not based on “sufficient facts or data” (Fed. R. Evid. 602).

25 3. Deposition of Charles Letourneau: 20:11-17, 53:22-54:3 (Reply Br. at 4:23), on
26 the grounds that Mr. Letourneau lacks personal knowledge (Fed. R. Evid. 602) and the opinion
27 testimony is not based on “sufficient facts or data” (Fed. R. Evid. 602).

28 4. Deposition of Charles Letourneau: 33:4-19, 57:2-58:5 (Reply Br. at 5:2) on the

1 grounds that Mr. Letourneau lacks personal knowledge (Fed. R. Evid. 602) and the opinion
2 testimony is not based on “sufficient facts or data” (Fed. R. Evid. 602).

3 5. Deposition of Charles Letourneau: 58:16-22 (Reply Br. at 5:3) on the grounds that
4 Mr. Letourneau lacks personal knowledge (Fed. R. Evid. 602) and the opinion testimony is not
5 based on “sufficient facts or data” (Fed. R. Evid. 602).

6 6. Deposition of Suzanne Tritten: 46:18-25 (Reply Br. at 7:15) on the ground that
7 Ms. Tritten lacks personal knowledge (Fed. R. Evid. 602).

8 7. Deposition of Chris Polk: 94:1-10 (Reply Br. at 6:23 (per later-filed errata)) on the
9 ground that Mr. Polk lacks personal knowledge and is offering improper opinion testimony (Fed.
10 R. Evid. 602 & 701).

11 8. Deposition of Gregg Bodnar: 95:16-23, 96:8-99:4, 106:15-107:23 (Reply Br. at
12 10:2-8) on the ground that Mr. Bodnar lacks personal knowledge (Fed. R. Evid. 602).

13 Dated: July 18, 2006

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