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

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

23 Plaintiffs,

24 v.

25 TARGET CORPORATION,

26 Defendant.

Case No.: C 06-01802 MHP

CLASS ACTION

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR LEAVE
TO FILE SURREPLY**

Hearing Date: July 24, 2006

Time: 2:00 p.m.

Judge: The Honorable Marilyn Hall
Patel

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1 Plaintiffs National Federation of the Blind (“NFB”), NFB of California and Bruce
2 Sexton move the Court to deny defendant Target’s motion for leave to file a surreply.
3 Civ. L.R. 7-3(d), states: “Before the noticed hearing date, counsel may bring to the
4 Court’s attention a relevant judicial opinion published after the date the opposition or
5 reply was filed by serving and filing a Statement of Recent Decision, containing a
6 citation to and providing a copy of the new opinion - without argument. Otherwise, once
7 a reply is filed, no additional memoranda, papers or letters may be filed without prior
8 Court approval.”

9 Filing of surreply may be “arguably justified by plaintiffs' mention of a new
10 [argument]... in their Reply.” *Religious Tech. Ctr. v. Netcom On-Line Communication*
11 *Servs., Inc.*, 923 F. Supp. 1231, 1241-42 (N.D. Cal. 1995). However, a surreply is
12 unwarranted in this case. There has been no new development in the law. The arguments
13 presented in Defendant’s surreply are merely repetitive and are unnecessary to the extent
14 that the briefs add nothing new. The Court has already requested copies of all
15 depositions, so all of Target’s cavils are extraneous. Defendant’s arguments should have
16 been made in the original opposition to the motion, or alternatively, be brought up during
17 oral arguments.

18 If parties continually reply to the assertions by the opposing party, the result
19 would be endless applications to the court. As noted by a court in this very district, “[t]he
20 proper response to such new arguments, however, would be to object to the new
21 arguments, not to endlessly continue the arguments back and forth.” *Religious Tech.* at
22 1265 n. 41. Defendant’s surreply serves no purpose other than acting as an avenue for
23 Target to further argue the merits of its opposition.

24 In the alternative, Plaintiff moves the Court, to grant Plaintiff’s motion for leave
25 to file a surrebuttal, which is attached as Exhibit A to this motion. Plaintiff is conscious
26 of the fact that these briefs are burdensome on the court and thus offers a abridged
27

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

Case No.: C 06-01802 MHP

Plaintiff’s Response to Defendant’s Motion for Leave to File Surreply

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rebuttle consisting mostly of a chart to aid the court which contains the citations for the relevant testimony.

Plaintiff has attempted to procure a conditional stipulation from Defendant; however Target has refused to stipulate to a surrebuttal if the court grants its motion for leave to submit its surreply.

Respectfully submitted,

Dated: July 20, 2006

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By: /s/ Laurence W. Paradis
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