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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

**PLAINTIFF'S RESPONSE TO
 DEFENDANT'S OBJECTIONS TO
 EVIDENCE IN SUPPORT OF
 PRELIMINARY INJUNCTION**

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

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1 To the extent that the Court considers Target Corporation's Objections to, and Motion to
2 Strike, Evidence, Plaintiffs offer the following general comments:

3 1. Dr. James W. Thatcher

4 It is undisputed that Plaintiffs' expert, Dr. James W. Thatcher, has extensive experience
5 testing and evaluating websites to determine the extent to which they are accessible to blind
6 users. *See* Thatcher Dep. at 32:15-35:8; 47:3-49:6; 83:4-85:19 and Thatcher Decl. at ¶4. His
7 experience also includes developing accessibility guidelines and actually working with blind
8 internet users to develop assistive technology. *See* Thatcher Dep. at 22:8-24:24; 27:5-28:22 and
9 Thatcher Decl. at ¶¶7-10. Moreover, unlike Target's expert, Dr. Thatcher spent extensive time
10 and effort specifically evaluating the extent to which target.com is accessible to blind users. *See*
11 Thatcher Dep at 101:9-104:25; 106:13-109:11; 117:23-119:25; 126:1-128:16; 129:2-134:19;
12 136:12-26; Thatcher Decl. at ¶¶20-61 and Thatcher Decl. Ex. A. Thus, there is more than
13 sufficient foundation for his opinions and conclusions in this matter. Additionally, as is evident
14 from the issues and testimony discussed in the briefs, Dr. Thatcher's opinions are specific
15 and directly relevant to this matter.

16 Target continues to mischaracterize Dr. Thatcher's testimony by incorrectly claiming that
17 he made no analysis of the actual usability of the website. Target's contention is directly
18 contrary to what Dr. Thatcher states in his report, declarations and deposition. *See* Pl's. Reply
19 Br. at 3-4. In fact, Dr. Thatcher specifically evaluated which types of non-compliance issues
20 pose difficulty for blind users and which do not. *See* Thatcher Decl. Ex. A ¶ 6.1. As an extra
21 level of usability testing, Dr. Thatcher even tested Target.com with JAWS to simulate what the
22 experience of a blind user would be. *See* Thatcher Dep. at 62:11-64:2; 66:3-68:5.

23 Target simply refuses to acknowledge the content of Dr. Thatcher's assessment report.
24 Instead, Defendant attempts to take one quote from his deposition out of context, while refusing
25 to acknowledge Dr. Thatcher's remaining deposition testimony, which specifically discusses the
26 impact of various types of barriers on the usability of target.com. Finally, Target's contention
27 that the assessment does not apply to the website in its current state is belied by Dr. Thatcher's
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1 testimony explaining that he checked target.com the day before his deposition and found that it
2 was still inaccessible. *See* Thatcher Dep. at 62:11-64:2; 64:25-65:11; 66:3-68:5; 95:3-97:21.

3 2. Dr. Charles Letourneau

4 Defendant's objections to the foundation for the opinion testimony of its own expert
5 witness, Dr. Charles Letourneau, only serve to underscore the fact that Target has failed to rebut
6 Plaintiffs' showing that target.com is generally inaccessible to the blind. Given Dr. Letourneau's
7 experience as the co-chair of the World Wide Web's Web Accessibility Initiative (the committee
8 that developed the WCAG 1.0 Standards) he is certainly qualified to render the opinions he
9 testified to in his deposition. Those opinions concerned which features are required for
10 compliance with web accessibility standards and which are required for websites to be readily
11 usable by the blind. These opinions are relevant in that, among other things, they confirm most
12 of the opinions rendered by Dr. Thatcher concerning the features needed for a website to be
13 accessible to and usable by the blind.

14 3. Defendant's Declarants

15 With respect to Defendant's objections to the testimony of their own declarants, the
16 attempts by these individuals to use target.com provide the foundation for their admission that
17 the site lacks alternative text and other access features. In fact, there is no real dispute that
18 target.com generally lacks alt tags and other basic access features. Whether this absence of
19 access features results in the denial of "full and equal" access is one of the issues in this case.

20 Should the Court have any further questions or concerns regarding the admissibility of
21 evidence, Plaintiffs' counsel will be prepared to address them during the hearing on July 24,
22 2006.

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24 Respectfully submitted,

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DATED: July 20, 2006

By: /s/ Laurence W. Paradis
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Attorneys for Plaintiffs

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