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16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
19

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

24 Plaintiffs,

25 v.

26 TARGET CORPORATION,

27 Defendant.
28

Case No.: C-06-01802 MHP

CLASS ACTION

**DECLARATION OF LAURENCE
PARADIS IN SUPPORT OF PLAINTIFFS'
MOTION FOR ADMINISTRATIVE
RELIEF FROM GENERAL ORDER NO.
56**

Judge: The Honorable Marilyn Hall Patel

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1 I, Laurence Paradis, hereby declare:

2 1. I am an attorney at law licensed to practice in the State of California and one of the
3 counsel for plaintiffs in this action; I have personal knowledge of the matter set forth below and,
4 if called to testify, could and would competently testify thereto.

5 2. This case began over a year ago, when Plaintiffs wrote Target Corporation on May 5,
6 2005, to notify the company that its website, target.com was inaccessible to blind persons using
7 screen access software, in violation of both California and federal law. At that time, Plaintiffs
8 offered and Target agreed to enter into structured negotiations pursuant to a litigation standstill
9 and tolling agreement executed on September 1, 2005. The parties then engaged in negotiations
10 for several months, but were not able to reach an agreement resolving the website access dispute.
11 Plaintiffs brought this case to remedy the ongoing discrimination only after these pre-litigation
12 settlement efforts failed. The case was originally filed as a class action in California Superior
13 Court on February 7, 2006. Defendant then removed the case to Federal Court.

14 3. As part of the pre-litigation structured negotiations, the parties and their counsel met in
15 person at the headquarters of the National Federation of the Blind in Baltimore, Maryland. This
16 meeting was attended by plaintiffs' expert, Dr. James Thatcher. During the structured
17 negotiations, the parties discussed all of the items that are required to be addressed under General
18 Order No. 56. At the end of the structured negotiations, however, the parties were unable to
19 resolve the dispute and the structured negotiation agreement was allowed to expire. This lawsuit
20 was thus filed only after extensive pre-litigation settlement attempts had failed.

21 4. Subsequent to the filing of this lawsuit, the subject of settlement has again been discussed
22 between counsel for plaintiffs and defendant without any resolution being reached. The parties
23 have exchanged settlement proposals but have not made substantial progress towards a
24 resolution. Pursuant to the General Order, the parties exchanged initial disclosures. Also, some
25 limited discovery was undertaken relative to the Motion for Preliminary Injunction. But no other
26 discovery has been allowed since the July 24th hearing and no trial date has been set because
27 portions of General Order 56 still remain in place. Essentially, the case has been on hold since
28 the hearing.

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1 5. Plaintiffs' counsel have concluded that further settlement negotiations are not likely to
2 resolve the case at this stage of the litigation. I believe settlement negotiations may be more
3 productive after the court has ruled on the pending motions, but even then, it is possible that the
4 case may have to be fully litigated. Ultimately, settlement may only be possible when the court
5 has set a trial date and that date is close at hand.

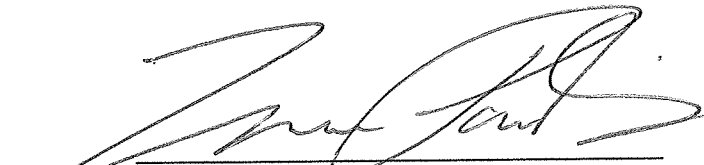
6 6. Plaintiffs brought their motion for a preliminary injunction because of the irreparable
7 injury associated with deprivations of civil rights. If the Court declines to issue preliminary
8 relief, plaintiffs will request an early trial date on order to remedy as soon as possible the
9 ongoing denial of access. Accordingly, plaintiffs believe it is important for discovery to proceed
10 so that the parties can be prepared for such an early trial date.

11 7. Plaintiffs' counsel thus requested that defendant stipulate to administrative relief from the
12 remaining requirements under General Order No. 56 so that the court can set a case management
13 conference and so that discovery may ensue and a trial date be set. Defendant has declined to
14 stipulate to this.

15 8. I also proposed to defendant a two-track process wherein the litigation proceeds to case
16 management and discovery while the parties continue to explore settlement. Defendant has
17 declined this proposal as well.

18 9. Attached hereto as Ex. A is a true and correct copy of a letter dated Aug. 30, 2006 from
19 counsel for defendant which sets forth defendant's reasons for declining to stipulate to relief
20 from General Order No. 56.

21 I declare under penalty of perjury that the forgoing is true and correct and that this
22 declaration was executed in Berkeley, California on September 1, 2006.

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25 
26 LAURENCE PARADIS

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EXHIBIT A

MORRISON | FOERSTER

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To:

NAME:	FACSIMILE:	TELEPHONE:
Laurence W. Paradis Disability Rights Advocates	(510) 665-8511	(510) 451-8644

FROM: Robert A. Naeve DATE: August 30, 2006

Number of pages with cover page:	3	
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August 30, 2006

Laurence W. Paradis, Esq.
Disability Rights Advocates
449 16th Street
Suite 303
Oakland, California 94612-2821

Re: *NFB v Target*

Dear Mr. Paradis:

This will confirm that we spoke again today regarding your August 17, 2006 request, and our August 24, 2006 conversation, regarding compliance with General Order 56. I again summarize Target's position in the paragraphs that follow.

First, it is clear that the parties have *not* yet complied with paragraph 6 of General Order 56, which requires the parties to participate in mediation in the event they "cannot reach an agreement on remediation, or cannot settle the damages and fees claims" asserted in an ADA Title III action.

In this regard, I've confirmed that Judge Patel has not assigned this case to a Magistrate Judge as of yet. Hence, Target remains willing to meet with former Magistrate Judge Infante, whom you suggested might be an appropriate mediator for a case of this type. Indeed, it may be best for the parties to proceed before Judge Infante or a similar JAMS-type mediator regardless of whether this matter ultimately is assigned to a sitting Northern District Magistrate Judge.

Second, I've informed you that Target is ready, willing and able to enter into good faith negotiations in an attempt to resolve this matter. In this regard, we have already made one settlement proposal to NFB in early June 2006. And in response to the follow-up inquiries in your June 9, 2006 letter and last week's telephone call, I've confirmed that Target places no pre-conditions or limitations upon the mediation process or the topics to be discussed.

Finally, Target is willing to forego discovery at least until it becomes clear that early settlement is not possible. Under these circumstances, your client's demand that we devote considerable time, effort and attorneys' fees engaging in a "dual track" litigation strategy is simply unjustified.

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Laurence W. Paradis, Esq.
August 30, 2006
Page Two

If NFB chooses to seek administrative relief from Judge Patel, we ask that you inform her as follows:

1. For the reasons stated in this letter and in my August 25, 2006 letter, Target objects to any request for administrative relief from General Order 56 unless and until the parties comply with the General Order's mediation requirement;
2. We respectfully request that the Court order the parties to comply with paragraph 6 of General Order 56 within a reasonable period of time;
3. We suggest that the Court consider asking Magistrate Infante, or such other mediator as the parties may designate, to report to the Court regarding the need for discovery; and
4. The Court schedule a post-mediation status conference to discuss NFB's request for relief from the General Order.

We also request that you include in any submission you make to Judge Patel a copy of this letter, as well as my August 25, 2006 letter.

Thanks.

Very truly yours,



Robert A. Naeve