

1 ROBERT A. NAEVE (CA SBN 106095)
 RNaeve@mofo.com
 2 MORRISON & FOERSTER LLP
 1990 MacArthur Blvd.
 3 Irvine, California 92612-2445
 Telephone: (949) 251-7500
 4 Facsimile: (949) 251-0900

5 DAVID F. MCDOWELL (CA SBN 125806)
 SARVENAZ BAHAR (CA SBN 171556)
 6 DMcDowell@mofo.com
 SBahar@mofo.com
 7 MORRISON & FOERSTER LLP
 555 West Fifth Street, Suite 3500
 8 Los Angeles, California 90013-1024
 Telephone: (213) 892-5200
 9 Facsimile: (213) 892-5454

10 STUART C. PLUNKETT (CA SBN 187971)
 SPlunkett@mofo.com
 11 MORRISON & FOERSTER LLP
 425 Market Street
 12 San Francisco, California 94105-2482
 Telephone: (415) 268-7000
 13 Facsimile: (415) 268-7522

14 Attorneys for Defendant
 TARGET CORPORATION

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

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

22 Plaintiffs,

23 v.

24 TARGET CORPORATION,

25 Defendant.
 26

Case No. C06-01802 MHP

**TARGET CORPORATION'S
 ANSWER TO AMENDED
 COMPLAINT**

Judge: Hon. Marilyn Hall Patel

1 Defendant Target Corporation (“Target”) answers the Amended Complaint (“Complaint”)
2 on file in this action as follows:

3 1. Target denies the averments contained in paragraph 1 of the Complaint.

4 2. The averments contained in paragraph 2 assert legal conclusions to which no
5 response is required.

6 3. The averments contained in paragraph 3 assert legal conclusions to which no
7 response is required.

8 4. The averments contained in paragraph 4 assert legal conclusions to which no
9 response is required.

10 5. The averments contained in paragraph 5 assert legal conclusions to which no
11 response is required.

12 6. Answering paragraph 6, Target admits that it conducts business, and operates retail
13 stores, in the State of California. Except as expressly admitted, Target denies the averments
14 contained in paragraph 6, and further denies the averments contained in this paragraph to the
15 extent they state legal conclusions for which no response is required.

16 7. Target is without knowledge or information sufficient to admit or deny the
17 averments relating to the residency or existence of the various plaintiffs. Except as expressly
18 admitted, Target denies the averments contained in paragraph 7.

19 8. Target is without knowledge or information sufficient to admit or deny the
20 averments of paragraph 8.

21 9. Target is without knowledge or information sufficient to admit or deny the
22 averments of paragraph 9.

23 10. Target denies that Plaintiff Sexton “has been denied the full use and enjoyment of
24 facilities, goods and services of Target.com” as averred in paragraph 10. Target is without
25 knowledge or information sufficient to admit or deny the remaining averments of paragraph 10.

26 11. Target admits that, among other things, it owns and operates retail stores in
27 California and the United States. Target further admits that, among other things, it operates a
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1 website located at www.target.com. Except as expressly admitted, Target denies the averments
2 contained in paragraph 11.

3 12. Target denies the averments contained in paragraph 12 to the extent that they state
4 legal conclusions to which no response is required. Target denies the averments contained in
5 paragraph 12 and further denies that Plaintiffs are entitled to bring this action as a class action.

6 13. Target is without information or belief sufficient to admit or deny the averments of
7 paragraph 13. Target further denies the averments contained in paragraph 13 to the extent they
8 assert legal conclusions to which no response is required.

9 14. Target denies the averments of paragraph 14, and further denies the averments
10 contained in this paragraph to the extent they assert that the website located at www.target.com is
11 inaccessible. Target further denies the averments contained in paragraph 14 to the extent they
12 assert legal conclusions to which no response is required.

13 15. Target denies the averments contained in paragraph 15, and further denies the
14 averments contained in this paragraph to the extent they assert legal conclusions to which no
15 response is required.

16 16. Target denies the averments contained in paragraph 16, and further denies the
17 averments contained in this paragraph to the extent they assert legal conclusions to which no
18 response is required.

19 17. Target denies the averments contained in paragraph 17, and further denies the
20 averments contained in this paragraph to the extent they assert legal conclusions to which no
21 response is required.

22 18. Target denies the averments contained in paragraph 18, and further denies the
23 averments contained in this paragraph to the extent they assert legal conclusions to which no
24 response is required.

25 19. Answering paragraph 19, no response is required.

26 20. Target admits that, among other things, it operates retail stores in California and
27 the United States. Except as expressly admitted, Target denies the averments contained in
28 paragraph 20.

1 21. Target admits that, among other things, it operates a website located at
2 www.target.com, and that words “Powered by Amazon.com” appear within the website. Except
3 as expressly admitted, Target denies the averments contained in paragraph 21, and further denies
4 these averments to the extent they assert legal conclusions to which no response is required.

5 22. Target admits that, among other things, it operates a website located at
6 www.target.com, and that visitors to the website may browse and purchase merchandise. Except
7 as expressly admitted, Target denies the averments contained in paragraph 22, and further denies
8 these averments to the extent they assert legal conclusions to which no response is required.

9 23. Target admits that the website located at www.target.com contains a store locator,
10 online pharmacy, online photoshop, weekly advertisements, coupons, online wedding and baby
11 registries and coupons, as well as certain information regarding its REDcardSM program, certain
12 community programs, employment opportunities, investor and company policies, and products
13 for sale on the website itself. Except as expressly admitted, Target denies the averments
14 contained in paragraph 23.

15 24. Target denies the averments contained in paragraph 24.

16 25. Target denies the averments contained in paragraph 25.

17 26. Target is without knowledge or information sufficient to admit or deny the
18 allegations of paragraph 26, which are vague and ambiguous.

19 27. Target is without knowledge or information sufficient to admit or deny the
20 allegations of paragraph 27.

21 28. Target denies that “well-established guidelines” exist or apply to the website
22 located at www.target.com. Target is without knowledge or information sufficient to admit or
23 deny the remaining allegations of paragraph 28.

24 29. Target denies the averments contained in paragraph 29.

25 30. Target lacks information or belief sufficient to admit or deny that the descriptions
26 and definitions contained within paragraph 30 are necessary, sufficient or complete, and denies
27 these averments for that reason. Target further denies the remaining averments contained in
28 paragraph 30.

1 31. Target lacks information or belief sufficient to admit or deny that the descriptions
2 and definitions contained within paragraph 31 are necessary, sufficient or complete, and denies
3 these averments for that reason. Target further denies the remaining averments contained in
4 paragraph 31.

5 32. Target lacks information or belief sufficient to admit or deny that the descriptions
6 and definitions contained within paragraph 32 are necessary, sufficient or complete, and denies
7 these averments for that reason. Target further denies the remaining averments contained in
8 paragraph 32.

9 33. Target denies the averments contained in paragraph 33.

10 34. Target denies the averments contained in paragraph 34.

11 35. Target denies the averments contained in paragraph 35, and further denies the
12 averments contained in this paragraph for lack of information or belief regarding the shopping
13 habits of plaintiffs or the class they purport to represent.

14 36. Target denies the averments contained in paragraph 36.

15 37. Target admits that it received a letter dated on or about May 5, 2005 from plaintiff
16 National Federation of the Blind (“NFB”); that Target and NFB executed a standstill / tolling
17 agreement; that plaintiffs initially filed this action in the Superior Court of California, County of
18 Alameda; and that Target removed this action to federal court on or about March 9, 2006. Except
19 as expressly admitted, Target denies the averments contained in paragraph 37, and further denies
20 the existence of any “accessibility barriers” as alleged in NFB’s May 5, 2005 letter.

21 RESPONSE TO FIRST CLAIM FOR RELIEF

22 38. Answering paragraph 38, Target incorporates by reference the foregoing answers
23 as though fully set forth herein.

24 39. Target denies the averments contained in paragraph 39, and further denies the
25 averments in this paragraph go the extent that they assert legal conclusions to which no response
26 is required.

27 40. Target admits that, among other things, it earns revenue from the sale of goods in
28 California. Target denies the remaining averments contained in paragraph 40, and further denies

1 the averments contained in this paragraph to the extent that they assert legal conclusions to which
2 no response is required.

3 41. Target denies the averments contained in paragraph 41, and further denies the
4 averments contained in this paragraph to the extent that they contain legal conclusions to which
5 no response is required.

6 42. Target denies the averments contained in paragraph 42, and further denies the
7 averments contained in this paragraph to the extent that they contain legal conclusions to which
8 no response is required.

9 43. Target denies the averments contained in paragraph 43, and further denies the
10 averments contained in this paragraph to the extent that they contain legal conclusions to which
11 no response is required.

12 44. Target denies the averments contained in paragraph 44, and further denies the
13 averments contained in this paragraph to the extent that they contain legal conclusions to which
14 no response is required.

15 45. Target denies the averments contained in paragraph 45, and further denies the
16 averments contained in this paragraph to the extent that they contain legal conclusions to which
17 no response is required.

18 RESPONSE TO SECOND CLAIM FOR RELIEF

19 46. Answering paragraph 46, Target incorporates by reference the foregoing answers
20 as if set forth fully herein.

21 47. Target denies the averments contained in paragraph 47, and further denies the
22 averments contained in this paragraph to the extent that they contain legal conclusions to which
23 no response is required.

24 48. Target denies the averments contained in paragraph 48, and further denies the
25 averments contained in this paragraph to the extent that they contain legal conclusions to which
26 no response is required.

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1 58. Target denies the averments contained in paragraph 58, and further denies the
2 averments contained in this paragraph to the extent that they contain legal conclusions to which
3 no response is required.

4 59. Target denies the averments contained in paragraph 59, and further denies the
5 averments contained in this paragraph to the extent that they contain legal conclusions to which
6 no response is required.

7 60. Target denies the averments contained in paragraph 60, and further denies the
8 averments contained in this paragraph to the extent that they contain legal conclusions to which
9 no response is required.

10 **RESPONSE TO FOURTH CLAIM FOR RELIEF**

11 61. Answering paragraph 61, Target incorporates by reference the foregoing answers
12 as if set forth fully herein.

13 62. Target denies the averments contained in paragraph 62, and further denies the
14 averments contained in this paragraph to the extent that they contain legal conclusions to which
15 no response is required.

16 63. Target denies the averments contained in paragraph 63, and further denies the
17 averments contained in this paragraph to the extent that they contain legal conclusions to which
18 no response is required.

19 **RESPONSE TO RELIEF REQUESTED**

20 Target denies that Plaintiffs are entitled to any substantive or procedural remedy or relief,
21 including the relief and certification requested in paragraphs 1 through 8 of the “Relief
22 Requested” portion of Plaintiffs’ complaint. Target further denies that Plaintiffs, or any of them,
23 have suffered or incurred any injury or damage in this matter.

24 **AFFIRMATIVE DEFENSES**

25 Without admitting or acknowledging that Target bears any burden of proof as to any of
26 them, Target asserts the following affirmative defenses. Target intends to rely upon any
27 additional defenses that become available or apparent during pretrial proceedings in this action
28 and hereby reserves the right to amend this Answer in order to assert all such further defenses.

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First Affirmative Defense
(Failure to State a Claim)

As an affirmative defense to each and every claim in the Complaint, Target alleges that Plaintiffs have failed to state a claim upon which relief can be granted.

Second Affirmative Defense
(Commerce Clause)

As an affirmative defense to the First and Second Causes of Action in the Complaint, Target alleges that any application of California law to the website located at www.target.com violates the Commerce Clause of the United States Constitution.

Third Affirmative Defense
(Good Faith Conformity with Applicable Standards)

As an affirmative defense to each and every claim in the Complaint, Target alleges that it acted in good faith and/or its conduct was in conformity with all applicable statutes, governmental regulations, and industry standards existing at the time of such conduct.

Fourth Affirmative Defense
(Due Process — Vagueness)

As an affirmative defense to each and every claim in the Complaint, Target alleges that, to the extent federal or state statutes are applied in this action to mandate the manner in which Target must program or design its website, the statutes are unconstitutionally vague and application of the statutes in this action would therefore violate the Due Process Clause of the United States Constitution.

Fifth Affirmative Defense
(Due Process — Damages)

As an affirmative defense to each and every claim in the Complaint, Target alleges that the claims for damages are so disproportionate to the injuries, if any, suffered as to violate the Due Process Clause of the United States Constitution.

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Sixth Affirmative Defense

(Rule of Lenity)

As an affirmative defense to each and every claim in the Complaint, Target alleges that Plaintiffs' claims are barred by the rule of lenity.

Seventh Affirmative Defense

(No Modification or Alteration Required)

As an affirmative defense to the First and Second Causes of Action in the Complaint, Target alleges that California law does not require Target to modify or alter its website.

Eighth Affirmative Defense

(No Intentional Discrimination)

As an affirmative defense to the First Cause of Action in the Complaint, Target alleges that it has not engaged in intentional discrimination with respect to the accessibility of its website.

Ninth Affirmative Defense

(No Denial of Physical Access)

As an affirmative defense to each and every claim in the Complaint, Target alleges that it has not denied Plaintiffs, or any blind persons, physical access to the goods and services of Target's retail stores.

Tenth Affirmative Defense

(Auxiliary Aids and Services — Effective Communication)

As an affirmative defense to each and every claim in the Complaint, Target alleges that, to the extent Target.com allegedly does not effectively communicate information regarding goods and services through its website to Plaintiffs, or to any blind persons, effective communication is provided via reasonable and appropriate alternative means.

Eleventh Affirmative Defense

(No Denial of Access to Service of Place of Public Accommodation)

As an affirmative defense to each and every claim in the Complaint, Target alleges that it has not denied access to Plaintiffs, or to any blind person, to a service offered by a place of public accommodation.

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Twelfth Affirmative Defense

(Modifications — Undue Burden/Not Readily Achievable)

As an affirmative defense to each and every claim in the Complaint, Target alleges that, insofar as Target has not made the alterations to Target.com that Plaintiffs contend should have been made, those changes were not and are not required under California or federal law, and any requirement to make those changes would impose an undue burden upon Target and would not be readily achievable.

Thirteenth Affirmative Defense

(Modifications — Fundamentally Alter Nature of Goods and Services)

As an affirmative defense to each and every claim in the Complaint, Target alleges that modifications of Target’s policies, practices, and procedures, or the provision of auxiliary aids or services, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations, and there is no duty to modify.

Fourteenth Affirmative Defense

(Statute of Limitations)

As an affirmative defense to each and every claim in the Complaint, Target alleges that the claims are barred in whole or in part by the applicable statutes of limitations.

Fifteenth Affirmative Defense

(Failure to Mitigate)

As an affirmative defense to each and every claim in the Complaint, Target alleges that Plaintiffs have failed to take reasonable steps to protect themselves from the damage alleged in the Complaint and have failed to mitigate any such alleged damage.

Sixteenth Affirmative Defense

(Waiver and Estoppel)

As an affirmative defense to each and every claim in the Complaint, Target alleges that, as a consequence of the conduct of or attributable to Plaintiffs in connection with the alleged lack of access to Target.com (which is the subject of this litigation) Plaintiffs have waived any right to secure relief from Target, and are estopped from securing any relief from Target.

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Seventeenth Affirmative Defense
(Lack of Standing)

As an affirmative defense to each and every claim in the Complaint, Target alleges that Plaintiffs lack standing to pursue the claims asserted, either individually or on behalf of a class.

Eighteenth Affirmative Defense
(Claims of Putative Class Members Barred)

As an affirmative defense to each and every claim in the Complaint, Target alleges that the claims of the putative class members are barred by some or all of the defenses that bar Plaintiffs' claims.

Nineteenth Affirmative Defense
(Modifications Not Required)

Plaintiffs claims are barred to the extent that the relief they request is not mandated by any applicable regulations adopted by the United States Department of Justice, or by the State of California, for privately-owned commercial websites.

Twentieth Affirmative Defense
(Adequate Legal Remedy)

Plaintiffs are not entitled to injunctive or equitable relief the extent they have adequate legal remedies.

Twenty-first Affirmative Defense
(No Irreparable Harm)

Plaintiffs are not entitled to injunctive or equitable relief to the extent that they have not suffered, and will not suffer, irreparable harm or injury.

WHEREFORE, Target requests that the Court:

- (1) Enter judgment in its favor and against Plaintiffs;
- (2) Award appropriate fees and expenses to Target; and
- (3) Award such other relief as the Court deems just and proper.

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Dated: September 20, 2006.

ROBERT A. NAEVE
DAVID F. MCDOWELL
STUART C. PLUNKETT
SARVENAZ BAHAR
MORRISON & FOERSTER LLP

By: /s/ Stuart C. Plunkett
Stuart C. Plunkett
Attorneys for Defendant
TARGET CORPORATION