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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

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

21 Plaintiffs,

22 v.

23 TARGET CORPORATION,

24 Defendant.

Case No.: C 06-01802 MHP

CLASS ACTION

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTIONS FOR CLASS  
CERTIFICATION AND BIFURCATION**

Date: April 12, 2007

Time: 2:30 p.m.

Judge: Honorable Marilyn H. Patel

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1 Plaintiffs' motions for Class Certification and Bifurcation came on for hearing on April  
2 12, 2007. After consideration of the papers and argument presented by Plaintiffs and  
3 Defendant, the Court makes the following FINDINGS and ORDERS:

4 1. Plaintiffs have moved for the certification of two classes as follows:

5 (a) A nationwide class of all legally blind individuals in the United States who  
6 have attempted to access target.com, for Plaintiffs' claims arising under the  
7 Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*;

8 (b) A California subclass of all legally blind individuals in California who have  
9 attempted to access target.com, for Plaintiffs' claims arising under the  
10 California Unruh Civil Rights Act (California Civil Code §§ 51, *et seq.*),  
11 and the Disabled Persons Act (California Civil Code §§ 54, *et seq.*).

12 2. Plaintiffs also seek an order bifurcating the issues of class liability and class  
13 equitable relief, on the one hand, from the determination of class member damages, on the other  
14 hand.

15 3. The Court finds that Plaintiffs have satisfied the numerosity requirement. There  
16 are numerous blind people in California, and still more blind people nationally. Many of these  
17 are people who use adaptive technology such as screen access software in order to access the  
18 internet.

19 4. The Court finds that Plaintiffs have satisfied the commonality requirement. There  
20 are numerous common questions of law or fact by virtue of the fact that there is only one  
21 website at issue. The principal barriers at issue (including lack of alt tags, reliance on a mouse,  
22 lack of prompting for online forms, and lack of navigation headings) are common and generally  
23 applicable to blind users as a class.

24 5. The Court finds that Plaintiffs have satisfied the typicality requirement. Plaintiff  
25 Sexton is a blind resident of California who has attempted to use target.com and alleges that he  
26 has been denied equal access and ease of use to target.com because of the common barriers.  
27 Plaintiff NFB is the largest and oldest national advocacy organization for the blind, and the  
28 majority of its members either are blind or have vision impairments. Plaintiff NFB of  
California is the state affiliate of Plaintiff NFB; the majority of its members either are blind or

1 have vision impairments. Plaintiffs have submitted declarations of blind individuals who are  
2 members of the organizational Plaintiffs, and who have attempted to visit target.com and who  
3 assert claims that are typical of the class. All three Plaintiffs allege the same harm as the class  
4 and complain of the same website experience, under the same legal theories, seeking the same  
5 relief as the class.

6 6. The Court finds that the named representatives are able to prosecute the action  
7 vigorously, and that there is no antagonism or conflict of interest between the named  
8 representatives and the other members of the class. In addition, Plaintiffs' attorneys are  
9 experienced class action attorneys and are adequate class counsel. Thus, Plaintiffs satisfy the  
10 adequacy prong of Fed. R. Civ. Proc. 23(a).

11 7. The Court finds that Plaintiffs have satisfied the requirements of Fed. R. Civ. Proc  
12 23(b)(2), because their case is based on Defendant's alleged actions and/or refusals to act in a  
13 manner generally applicable to the class in creating and maintaining a website that is  
14 inaccessible, making appropriate final injunctive relief or corresponding declaratory relief with  
15 respect to the class as a whole. Plaintiffs have primarily sought declaratory and injunctive  
16 relief, and their request for statutory minimum damages flows directly from the claims for  
17 injunctive relief.

18 8. The Court therefore finds that Plaintiffs have satisfied the prerequisites for class  
19 certification under Fed. R. Civ. Proc. 23(a), and that the case may be maintained as a class  
20 action under Fed. R. Civ. Proc. 23(b)(2).

21 9. In light of the foregoing, the Court hereby orders CERTIFICATION of the  
22 following classes:

- 23 (a) A nationwide class of all legally blind individuals in the United States who  
24 have attempted to access target.com, for Plaintiffs' claims arising under the  
Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*;
- 25 (b) A California subclass of all legally blind individuals in California who have  
26 attempted to access target.com, for Plaintiffs' claims arising under the  
27 California Unruh Civil Rights Act (California Civil Code §§ 51, *et seq.*),  
and the Disabled Persons Act (California Civil Code §§ 54, *et seq.*).

1 10. The Court further appoints Plaintiffs as the class representatives and Disability  
2 Rights Advocates, Schneider & Wallace, and Brown, Goldstein & Levy, LLP, and Peter Blanck,  
3 J.D., Ph.D., as class counsel.

4 11. Under Fed. R. Civ. Proc. 42(b), a court may bifurcate issues during an action  
5 when such bifurcation would be "conducive to expedition and economy." Bifurcating the issue  
6 of liability from that of individualized relief is recognized as an appropriate and efficient way to  
7 conduct litigation. (See, e.g., *Davis & Co. v. Summa Corp.*, 751 F.2d 1507, 1517 (9th Cir.  
8 1985); *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 458-59 (N.D. Cal. 1994).)  
9 Here, the issues going to class liability and equitable relief are separate and distinct from those  
10 going to damages. Moreover, bifurcation will facilitate disposition of the issues, and will not  
11 cause prejudice to the parties. Accordingly, the Court agrees that bifurcation will be conducive  
12 to expedition and economy, and hereby ORDERS bifurcation of the issues of class liability and  
13 class equitable relief, on the one hand, from the determination of class member damages, on the  
14 other hand.

15 IT IS SO ORDERED.

16 Dated: \_\_\_\_\_, 2007

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The Honorable Marilyn H. Patel  
United States District Court Judge  
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