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 TARGET CORPORATION

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 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

13 NATIONAL FEDERATION OF THE BLIND,  
 14 the NATIONAL FEDERATION OF THE  
 BLIND OF CALIFORNIA, on behalf of their  
 15 members, and Bruce F. Sexton, on behalf of  
 himself and all others similarly situated,

16 Plaintiffs,

17 v.

18 TARGET CORPORATION,

19 Defendant.

Case No. C 06-01802 MHP

**TARGET CORPORATION'S  
 NOTICE OF MOTION AND  
 MOTION TO SHORTEN TIME;  
 SUPPORTING MEMORANDUM OF  
 POINTS AND AUTHORITIES**

Local Rule 6-3

NO HEARING REQUESTED

Judge: Hon. Marilyn Hall Patel

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**NOTICE OF MOTION AND MOTION TO SHORTEN TIME**

TO PLAINTIFFS NATIONAL FEDERATION OF THE BLIND, NATIONAL  
FEDERATION OF THE BLIND OF CALIFORNIA, BRUCE F. SEXTON, AND THEIR  
ATTORNEYS:

Defendant Target Corporation (“Target”) hereby moves to shorten time, pursuant to Civil Local Rule 6-3, on the hearing of its concurrently-filed motion for summary judgment against Plaintiff Bruce F. Sexton. Target requests that its summary judgment motion be heard on Thursday, April 12, 2007, at 2:30 pm, the date and time already set aside for the hearing on Plaintiffs’ pending motion for class certification. This motion to shorten time is based on this Notice of Motion and Motion; the supporting Memorandum of Points and Authorities; the accompanying Declaration of Matthew I. Kreeger; and such other evidence and argument as may be presented before the Court takes this motion under submission.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Target requests that the Court hear its motion for summary judgment against Plaintiff Bruce F. Sexton on Thursday, April 12, 2007 at 2:30 pm, the date and time specially set for the hearing on Plaintiffs’ pending motion for class certification. Hearing the summary judgment motion with Plaintiffs’ class certification motion on April 12, rather than separately on April 16 (the next available law and motion calendar) would be considerably more convenient and efficient. (*See* Declaration of Matthew I. Kreeger (“Kreeger Decl.”) ¶ 4.) The issues raised by the two motions overlap considerably and a combined hearing would permit the Court to consider those intermingled issues together, rather than piecemeal. (*Id.*)

For example, in both motions, at issue is whether Plaintiff Sexton has suffered any legally cognizable injury. (*Id.* ¶ 5.) Target contends that there is no evidence to support any cognizable injury, as defined by the Court in its September 5, 2006 Order on Defendant’s Motion to Dismiss. (*Id.*) In that Order, the Court held that Plaintiffs’ claims remained in play only to the extent that they alleged a nexus between the problems encountered on Target.com and impeded access to or enjoyment of goods and services at Target’s physical stores. In its summary judgment motion, Target argues that the facts beyond genuine dispute

1 demonstrate that Mr. Sexton's access to goods and services at Target's physical stores has  
2 not been limited in any way by the alleged inaccessibility of Target.com. Plaintiffs' failure  
3 to make a showing that Mr. Sexton or any other putative class member has suffered any  
4 legally cognizable injury is also a central issue in Target's opposition to Plaintiffs' motion for  
5 class certification. (*Id.*)

6 On Friday, March 2, 2007, counsel for Target contacted counsel for Plaintiffs by  
7 telephone and proposed that the parties file a stipulated request to have Target's summary  
8 judgment motion heard concurrently with Plaintiffs' pending motion for class certification.  
9 (*Id.* ¶ 6.) On Monday, March 5, 2007, counsel for Plaintiffs emailed counsel for Target and  
10 declined to so stipulate. (*Id.* ¶ 7.) In that same email, Plaintiffs' counsel expressed their  
11 contention that Target's limited summary judgment motion is premature since merits  
12 discovery has been stayed. (*Id.*) However, additional discovery would not alter the outcome  
13 of Target's motion in that the motion turns only on facts within Plaintiffs' control, *i.e.*, the  
14 nature of Mr. Sexton's injuries.

15 The requested time modification would have no effect on the schedule for the case.  
16 (*Id.* ¶ 8.) Target's summary judgment motion, filed concurrently with the instant motion to  
17 shorten time, is being filed 35 days prior to the requested hearing date, complying with Civil  
18 Local Rule 7-2. (*Id.*) Plaintiffs would still have 14 days to file their opposition, if any, to  
19 Target's motion, and are in no way prejudiced by Target's request to have the motion heard  
20 on April 12, 2007. (*Id.*) No other time modifications have been requested or ordered in this  
21 case. (*Id.* ¶ 9.)

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**CONCLUSION**

For the foregoing reasons, Target’s motion to shorten time should be granted.

Dated: March 8, 2007

HAROLD J. MCELHINNY  
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By:           /s/ Matthew I. Kreeger            
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