

LAURENCE W. PARADIS (CA Bar No. 122336)  
JULIA M. PINOVER (CA Bar No. 255088)  
DISABILITY RIGHTS ADVOCATES  
2001 Center Street, Third Floor  
Berkeley, California 94704  
Telephone: (510) 665-8644  
Facsimile: (510) 665-8511  
TTY: (510) 665-8716

PETER BLANCK (*pro hac vice*)  
900 S. Crouse Avenue  
Syracuse, NY 13244-2130  
Telephone: (315) 443-9703  
Fax: (315) 443-9725

JOSHUA KONECKY (CA Bar No. 182897)  
CAMILLA ROBERSON (CA Bar No. 248296)  
SCHNEIDER WALLACE  
COTTRELL BRAYTON KONECKY LLP  
180 Montgomery Street, Suite 2000  
San Francisco, CA 94104  
Telephone: (415) 421-7100  
TTY: (415) 421-1655

DANIEL F. GOLDSTEIN (*pro hac vice*)  
BROWN, GOLDSTEIN & LEVY, LLP  
120 E. Baltimore St., Suite 1700  
Baltimore, MD 21202  
Telephone: (410) 962-1030  
Fax: (410) 385-0869

*Class Counsel for Plaintiffs.*

MATTHEW KREEGER (CA Bar No. 153793)  
KRISTINA PASZEK (CA Bar No. 226351)  
MORRISON & FOERSTER  
425 Market Street  
San Francisco, CA 94105  
Phone: (415) 268-7000  
Fax: (415) 268-7522

*Counsel for Defendant.*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL FEDERATION OF THE  
BLIND, the NATIONAL FEDERATION OF  
THE BLIND OF CALIFORNIA, on behalf of  
their members and all others similarly situated,  
BRUCE F. SEXTON, Jr., on behalf of himself  
and all others similarly situated, MELISSA  
WILLIAMSON, on behalf of herself and all  
others similarly situated, and JAMES P.  
MARKS, on behalf of himself and all others  
similarly situated,

Plaintiffs,

v.

TARGET CORPORATION,

Defendant.

Case No.: C 06-01802 MHP

**CLASS ACTION**

**CLASS SETTLEMENT AGREEMENT  
AND RELEASE**

Hearing Date:

Time:

Judge: Hon. Marilyn Hall Patel

## CLASS SETTLEMENT AGREEMENT AND RELEASE

### 1. Introduction.

1.1 This Settlement Agreement (together with all exhibits, the “Agreement”) is entered into by and between Target Corporation (“Target”) and the National Federation of the Blind (“NFB”), the National Federation of the Blind of California, Bruce F. Sexton, Jr., Melissa Williamson, and James P. Marks (collectively the “Named Plaintiffs”), individually and on behalf of themselves and a class of persons similarly situated. Target and the Named Plaintiffs (individually and on behalf of the Nationwide Settlement Class and the California Settlement Class, defined herein) shall be referred to as a “Party” and jointly as “Parties.”

1.2 Plaintiffs the NFB, the National Federation of the Blind of California, and Bruce F. Sexton, Jr. filed a complaint against Target in the Superior Court of the State of California, County of Alameda on February 6, 2006 (the “Lawsuit”). The Lawsuit was subsequently removed to the United States District Court for the Northern District of California (the “Court”), where it was assigned the Civil Action No. 06-cv-01802, and was ultimately assigned to the Honorable Marilyn Hall Patel.

1.3 Plaintiffs the NFB, the National Federation of the Blind of California, and Bruce F. Sexton, Jr. filed an amended complaint in March 2006. The amended complaint alleged that Target was violating the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*, the Disabled Persons Act, California Civil Code §§ 54 *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*

1.4 On October 2, 2007, the Court certified a nationwide class of all legally blind individuals in the United States who have attempted to access Target.com and as a result have been denied access to the enjoyment of goods and services offered in Target stores.

1.5 On October 2, 2007, the Court certified a California subclass of all legally blind individuals in California who have attempted to access Target.com.

1.6 On November 1, 2007, the Named Plaintiffs filed a second amended complaint, which added plaintiffs Melissa Williamson and James P. Marks.

1.7 The Parties now wish to effect a complete resolution and settlement of all claims, disputes, and controversies relating to the allegations of the Named Plaintiffs, the Nationwide Settlement Class, and the California Settlement Class, and to resolve their differences and disputes by settling the Lawsuit.

1.8 The terms of all Exhibits attached hereto are fully incorporated into this Agreement and are an integral part thereof. The terms of this Agreement, where applicable, are fully incorporated into all Exhibits and are, where applicable, an integral part thereof. To the extent that there are any conflicts or inconsistencies between the terms of this Agreement and any of the Exhibits, the terms of this Agreement shall control.

2. **No Admission of Liability.** By agreeing to and voluntarily entering into this Agreement, there is no admission or concession by Target, direct or indirect, express or implied, that Target.com is in any way inaccessible or that Target has violated the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*, the Disabled Persons Act, California Civil Code §§ 54 *et seq.*, the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*, or any other federal, state, or local law, regulation, order, or rule.

3. **Definitions.** In addition to the terms defined elsewhere in the Agreement, the following terms shall have the meanings set forth below.

3.1 “ADA” means Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulations.

3.2 “Claims Administrator” means RG2 Claims Administration, LLC, which will review and process claims in accordance with Paragraph 11 herein.

3.3 “Claim Form” means the form attached as Exhibit A.

3.4 “Claims Period” means ninety days from the Notice Deadline as provided in Paragraph 16 herein.

3.5 “Class Counsel” means Daniel F. Goldstein of Brown, Goldstein & Levy LLP, Joshua Konecky of Schneider Wallace Cottrell Brayton Konecky LLP, and Laurence Paradis of Disability Rights Advocates.

3.6 “California Settlement Class” means all legally blind individuals in California who have attempted to access Target.com at any time from February 7, 2003 through the deadline for opting out.

3.7 “California Settlement Class Member” means any member of the California Settlement Class.

3.8 “Dispute Resolution” means the process described in Paragraph 13 herein.

3.9 “Final Approval” means the approval of this Agreement by a United States District Judge by signature of an order in a form attached as Exhibit B.

3.10 The “Finality Date” means (i) the date of final affirmance on an appeal, the expiration of the time for a petition of certiorari and, if certiorari is granted, the date of final affirmance following review pursuant to that grant; or (ii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the court’s judgment dismissing the action.

3.11 “Nationwide Settlement Class” means all legally blind individuals in the United States who have attempted to access Target.com at any time from February 7, 2003 through the date of Final Approval of this Agreement and as a result have been denied access to the enjoyment of goods and services offered in Target stores.

3.12 “Nationwide Settlement Class Member” means any member of the Nationwide Settlement Class.

3.13 “Notice” means notice of this Agreement as provided in Paragraph 16 herein.

3.14 “Preliminary Approval” means the initial approval by the Court of the terms of this Agreement, which shall occur prior to any Notice being provided in accordance with Paragraph 16 of this Agreement.

3.15 “Settlement Website” means the website located at [www.nfbtargetlawsuit.com](http://www.nfbtargetlawsuit.com). This website shall contain information for class members relating to the proposed settlement and

claims process as well as a mechanism for on-line submission of claim forms or requests to opt out for purposes of participation in the monetary portion of the settlement.

3.16 “TOATG” means the Target Online Assistive Technology Guidelines, the most recent version of which is attached as Exhibit C.

3.17 “Valid Claim” means that a legally blind individual in California, between February 7, 2003 and the deadline for opting out, attempted to access the goods and services offered on Target.com with screen-reader software and encountered access barriers, provided that such attempt is documented in a Claim Form that is signed and timely submitted in accordance with Paragraph 11.

4. **Conditions Precedent.** This Agreement shall be conditioned upon and shall be effective only upon the occurrence of all of the following events. Prior to the occurrence of the following events, the Parties’ only obligations pursuant to this Agreement shall be those set forth in Paragraphs 12, 13, 15-19, and 21-28.

4.1 Class Counsel and Target have jointly requested a Preliminary Approval hearing.

4.2 Class Counsel and Target have moved jointly for, and the Court has entered, an order granting Preliminary Approval of this Agreement, certifying damages claims of the California Settlement Class under Rule 23(b)(3) for settlement purposes only, and approving issuance of Notice in accordance with the procedures for providing Notice submitted by the Parties.

4.3 Upon Preliminary Approval of this Agreement and approval of the Notice and the procedures for providing Notice, Notice has been provided to the Nationwide Settlement Class and the California Settlement Class in accordance with the procedures for providing Notice approved by the Court.

4.4 A Fairness hearing has been held in accordance with Paragraph 15 below.

4.5 The Court has granted Final Approval of this Agreement, dismissed the claims of the Lawsuit in accordance with the terms set forth herein after a Fairness Hearing has been conducted (subject to the Court’s retaining jurisdiction pursuant to section 17.2 herein), the Court has appointed Magistrate Judge Howard R. Lloyd, Northern District of California, to resolve disputes pursuant to section 13.3 herein, and all such orders and approvals have become final and non-appealable.

5. **Term of Agreement.** This Agreement shall have a term (“Term”) that expires three (3) years after the date of Final Approval or three (3) years after the date that the Target.com website is certified by the NFB pursuant to Paragraphs 6 and 7 of this Agreement, whichever is later.

6. **Accessibility of Target.com.**

6.1 Target shall ensure that the Target.com website meets the Target Online Assistive Technology Guidelines, attached as Exhibit C, and that blind guests using screen-reader software may acquire the same information and engage in the same transactions as are available to sighted guests with substantially equivalent ease of use.

6.2 To achieve NFB nonvisual accessibility certification, Target shall make the changes to Target.com listed and described in Exhibit D. These changes were identified and agreed to by the NFB and Target through a series of technical personnel meetings. Target expects to implement these changes by February 2009.

6.3 Designated personnel from the NFB and Target shall confer every six months during the Term of the Agreement to discuss the NFB's recommended updates to the TOATG guidelines.

7. **NFB Nonvisual Accessibility Certification.** Upon completion of the changes to Target.com pursuant to Section 6.2 herein, the NFB shall certify the Target.com website through its NFB Nonvisual Accessibility Certification program using the standard techniques and criteria of that program. The NFB shall make its best efforts to complete such certification within thirty (30) days after completion of the changes to Target.com.

## 8. **Monitoring.**

8.1 The NFB will monitor the Target.com website as follows:

8.1.1 Quarterly testing. NFB will run an automated monitoring tool called Worldspace on Target.com every quarter and will report to Target any results that reflect a deviation from the standard set forth in Section 6.1. The parties recognize that automated monitoring tools may report "false positives" that do not establish deviation from the standard set forth in Section 6.1.

8.1.2 Annual user testing. NFB will annually report to Target the results of user testing by 5 to 15 blind persons with varying skill levels and using JAWS, each attempting to complete the same tasks on at least five, but no more than ten of the transaction paths listed in Exhibit E.

8.1.3 Annual technical assessment by consultant. Jim Thatcher, or if Mr. Thatcher is unable to continue as technical consultant, another consultant proposed by NFB and approved by Target, will annually make a technical assessment of up to 40 pages on the site selected by the consultant at his or her discretion, including but not be limited to, the home landing page, browse page of a major category, search results, product detail page, add to cart page, guest sign in, guest registration, address book, payment methods, billing address, place order, and thank you page. The consultant will issue a report that includes, for each page tested, the URL, the date reviewed, and a screen shot of the page. The report will include a table following each screen shot that lists any accessibility issues that the consultant finds on the corresponding page. These issues can be problems, i.e., violations of the guidelines, or they may be things that are especially well done and worthy of note. Each issue will be keyed to the guideline or standards involved and a severity or priority will be indicated. The last column of the table will contain any suggested changes to address the issue.

8.1.4 New templates. As Target develops additional templates, it shall notify NFB. If Target timely requests that NFB test the additional template in advance of its production on Target.com, NFB will do so and report the results. Any additional templates developed during the term of this Agreement may also be the subject of quarterly and annual testing.

8.2 NFB shall notify Target if it identifies concerns about the accessibility of the Target.com website. Communications between NFB and Target pursuant to this provision shall take place between one individual designated by NFB and one individual designated by Target for this purpose.

8.3 Periodic Payments for Monitoring

8.3.1 Target shall provide periodic payments to the NFB for monitoring. NFB may use these monitoring funds to pay consultants and counsel for work related to the monitoring of the Target.com website.

8.3.2 Target shall make a first payment of fifty thousand (50,000) dollars within one (1) month of the Finality Date. Target shall make a payment of forty thousand (40,000) dollars each year thereafter, within twelve (12) months of the previous payment, through the Term of the Agreement.

## **9. Training.**

9.1 Through the term of the Agreement, NFB shall provide at a location to be determined by Target periodic one-day training sessions regarding website accessibility to Target employees responsible for coding the Target.com website. Each such employee shall attend one such training session during his or her employment at Target.

9.2 Within sixty (60) days after each such training session, NFB shall submit to Target documentation of actual expenses incurred in the provision of this training. Target shall pay NFB the amount of documented actual expenses up to a limit of fifteen thousand (15,000) dollars per session.

## **10. Guest Feedback.**

10.1 Target shall ensure that complaints received from guests regarding the accessibility of Target.com by those using screen-reader technology are reported to a Target employee responsible for ensuring that Target.com is accessible.

10.2 Target shall provide to the NFB a quarterly summary of any complaints received from guests regarding the accessibility or usability of Target.com by those using screen-reader technology. Each summary shall identify the nature of any complaint and shall indicate whether the issue was resolved; if an issue was not resolved, Target shall consult with the NFB about possible resolution. The summaries and their contents shall be used for the sole purpose of monitoring the Target.com website. Neither the summaries themselves nor their contents shall be admissible as evidence in any judicial proceeding.

## **11. Monetary Relief and Claims Procedure.**

### **11.1 Monetary Settlement Funds**

11.1.1 To satisfy and settle all claims for damages of California Settlement Class Members, Target shall pay six million (6,000,000) dollars (the "Damages Fund"), to be allocated among the California Settlement Class in the manner set forth in Paragraph 11.6.

### **11.2 Creation of Funds**

11.2.1 Within thirty (30) days after the Finality Date, Target shall transfer to an interest-bearing trust account in the form of a Qualified Settlement Fund (the "Account") the sum of six million (6,000,000) dollars to constitute the Damages Fund. All interest earned on the Account shall be added to the Damages Fund. The Damages Fund shall not be used, either directly or indirectly, to make any payments under this settlement other than those listed in Sections 11.6 and 11.7 below.

11.2.2 Target shall retain the Claims Administrator to: (1) distribute notice and claim forms; (2) receive and track returned claim forms; (3) obtain supplemental information from claimants, as necessary; (4) receive and forward to the Parties and the Court requests to opt out; (5) verify the validity of each claim submitted and certify those who are Eligible Claimants; (6) administer and disburse awards from the Damages Fund; and (7) perform such other duties as agreed by the Parties that are necessary to carry out the provisions of the Agreement.

11.3 Additional Payment on behalf of Bruce F. Sexton, Jr. Within forty-five (45) days after the Finality Date, Target shall make a payment of twenty thousand (20,000) dollars on behalf of plaintiff Bruce F. Sexton, Jr., who was an individual plaintiff since inception of the Lawsuit, to the California Center for the Blind Inc., a 501(c)(3) non-profit organization.

11.4 Eligibility for Payments from the Damages Fund. For an individual to qualify as an “Eligible Claimant” and be eligible for an award from the Damages Fund, the Claims Administrator must determine that each and all of the following criteria are satisfied:

11.4.1 The individual must have timely submitted a completed Claim Form. Claim forms received within the Claims Period shall be deemed timely submitted. Claim forms received within thirty days after the Claims Period may be considered timely submitted, at the discretion of the Claims Administrator.

11.4.2 The individual must have not previously released his or her claim against Target; and

11.4.3 The individual must have neither previously opted out of the damages claims pursuant to the class notice previously issued in this case nor validly opted out of any claim for damages as permitted by Paragraph 12 of this Agreement.

11.4.4 The individual must have at least one Valid Claim.

#### 11.5 Claims Determination Process

11.5.1 Distribution of Claim Forms. Commencing with the Notice Deadline set by the Court and continuing through the Claims Period provided for in Paragraph 3.4 herein, claim forms shall be available on-line at the Settlement Website in a manner which shall allow visitors either to fill out and submit the form on-line or download the form for printing and submission by mail. In addition, the Claims Administrator shall email or mail a Claim Form to each potential California Settlement Class Member who makes a written, telephonic, or electronic request therefor. For any request for a Claim Form received prior to fourteen (14) days before the end of the Claims Period, the Claims Administrator shall email or mail the Claim Form within seven (7) days after receiving a written, telephonic, or electronic request. Thereafter, and until the end of the Claims Period, the Claims Administrator shall email or mail a Claim Form within three (3) business days (excluding weekends and holidays) after receiving a written, telephonic, or electronic request for a Claim Form from a potential California Settlement Class Member. Any electronic or written request for Claim Forms received by Class Counsel or Target’s counsel shall be forwarded to the Claims Administrator by electronic mail or facsimile within four (4) business days of its receipt, and within three (3) business days of receipt by the Claims Administrator, the Claims Administrator shall email or mail a Claim Form to the potential claimant. Any potential claimant who telephones Class Counsel or Target’s counsel and requests a Claim Form shall be referred to the Claims Administrator.

11.5.2 Filing of Completed Claim Forms. All claims for monetary payment from the Damages Fund shall be made electronically or in writing using the Claim Form and submitted either by mail or through an on-line procedure established by the Claims Administrator for this purpose. All Claim Forms must be submitted under penalty of perjury, either through a signature on Claim Forms submitted by mail or through a click-through agreement for Claim Forms submitted on-line. In addition, Claimants will be required, either through a signature on Claim Forms submitted by mail or through a click-through agreement for Claim Forms submitted on-line, to waive any rights or causes of action arising from the disclosure of information provided on the Claim Form. Each potential California Settlement Class Member, including minors, must submit his or her own Claim Form and may submit only

one Claim Form. A parent, legal guardian or next of kin may complete a Claim Form on behalf of a minor. A designated representative may complete a Claim Form on behalf of a claimant who, because of disability, cannot sign his or her name. Any parent, legal guardian, next of kin, or designated representative who completes a Claim form on behalf of a claimant must identify himself or herself on the Claim Form and submit the Claim Form under penalty of perjury.

11.5.3 Review of Claim Forms. The Claims Administrator shall initially review all Claim Forms to determine if the form is filled out completely, and in the case of Claim Forms submitted by mail, is signed properly. If the Claim Form is incomplete or not properly signed, the Claims Administrator shall return the Claim Form to the claimant, by mail if the claimant submitted the Claim Form by mail or by email if the claimant submitted the Claim Form electronically. The claimant shall be given a deadline of thirty (30) days from the date of that mailing or email, within which the Claims Administrator must receive a corrected Claim Form. The failure of a claimant to complete and return a corrected Claim Form such that it is received by the Claims Administrator within thirty (30) days shall result in a denial of his or her claim.

11.5.4 Approval of Claims. The Claims Administrator shall then conduct a review of all Claim Forms to determine whether they present Valid Claims submitted by Eligible Claimants in accordance with the terms and provisions of this Agreement. The Claims Administrator shall determine the number of Valid Claims made by each Eligible Claimant, with a maximum of two allowable Valid Claims per Eligible Claimant.

11.5.5 Disputed Claims. If upon initial review of the Claim Form, the Claims Administrator is unable to determine whether it describes a Valid Claim, the Claims Administrator shall so notify the claimant by email or mail and state the reasons why the information contained on the Claim Form is insufficient. The claimant shall be given thirty (30) days thereafter in which to supplement or amend the Claim Form or provide such other information he or she wishes to assist the Claims Administrator in determining the validity of the claim. Upon further review of the Claim Form, including such additional information as may be submitted by the claimant, the Administrator shall (i) approve the claim, in which case, the claimant is eligible for an award from the Damages Fund; or (ii) reject the claim.

11.5.6 Rejected Claims. If the Claims Administrator rejects a claim as not meeting the terms or provisions of this Agreement, the Administrator shall so notify the claimant by email or mail.

11.5.7 Deadline for Administrator to Review All Claims. The Claims Administrator shall complete its review and issue a determination as to claim eligibility of all Claim Forms within ninety (90) days of the end of the Claims Period.

11.5.8 Determination Final and Binding. All determinations of the Claims Administrator shall be final, binding, and non-appealable. Target shall have no responsibility for or role in the claims administration process.

## 11.6 Payment from Damages Fund to Eligible Claimants.

11.6.1 Each Eligible Claimant shall be awarded: (i) three thousand five hundred (3500) dollars per Valid Claim, as determined by the Claims Administrator, with a maximum of two allowable Valid Claims per Eligible Claimant; provided, however, that (ii) if the total dollar amount to be paid to Eligible Claimants under part (i) above exceeds six million (6,000,000) dollars plus accrued interest, then the amount paid per claim shall be reduced pro rata so that the total amount paid from the Damages Fund does not exceed six million (6,000,000) dollars plus accrued interest.

11.6.2 Not later than fourteen (14) days after the deadline for completion of the claims administration process set forth in Paragraph 11.5.7, the Claims Administrator shall provide Class Counsel and Target with a list of the names, addresses (physical and/or email), telephone numbers, a copy of the Claims Forms, and the amount of the validated award from the Damages Fund, of all persons who have submitted claims in connection with this Lawsuit. The Claims Administrator shall include its determination as to which claimants are Eligible Claimants and which claims are Valid Claims.

11.6.3 Not later than forty five (45) days after the deadline for completion of the claims administration process set forth in Paragraph 11.5.7, or forty five (45) days after the Finality Date, whichever is later, the Claims Administrator shall cause to be mailed, via certified mail, checks in the amounts specified in the claims determination process, and 1099 forms to Eligible Claimants. All checks shall be negotiable for no more than one (1) year from the date of mailing.

11.6.4 All returned checks of claimants for whom no additional address is obtained shall be held by the Claims Administrator for sixty (60) days. If no claim is made for such checks during this time period, the funds from such checks shall become part of the funds to be allocated to the Cy Pres recipients and distributed in accordance with Paragraph 11.7 of this Agreement.

## 11.7 Cy Pres

11.7.1 In the event that any portion of the Damages Fund has not been distributed as provided for in this Agreement after a period of four hundred (400) days has elapsed from the date on which settlement checks are mailed by the Claims Administrator, then such remaining amounts shall be divided equally between the Braille Institute of America and Recordings for the Blind and Dyslexic.

## 12. **Opt-Out Right.**

12.1 Any potential California Settlement Class Member (but not a Named Plaintiff) may request exclusion from the Class for purposes of monetary relief only. Potential California Settlement Class Members who wish to opt out for purposes of participation in the monetary portion of the settlement must submit request for exclusion (“Opt-Out Statement”) to the Claims Administrator using the system established by the previous Court-ordered notice to the class. Opt-Out Statements must be received by the Claims Administrator no later than sixty (60) days after the Notice Deadline set by the Court. The Opt-Out Statement shall, at minimum, contain the following language or words to the same effect:

I hereby exercise my right to Opt-Out of the damages portion of the class action lawsuit known as National Federation of the Blind, et. al., v. Target Corporation, Case No. C-06-01802 MHP. This is a civil rights class action lawsuit alleging that legally blind individuals have been denied access to Target Corporation’s website, [www.target.com](http://www.target.com). Plaintiffs in the lawsuit are seeking statutory damages under California law for a subclass of legally blind individuals in California. Target Corporation denies any and all liability. By choosing to Opt-Out, I understand that I will not be awarded any statutory damages from this lawsuit but that I am preserving any rights I would otherwise have to sue Target Corporation for damages.

The Settlement Website shall contain an on-line feature for members of the California settlement damages class to opt out, either by submitting an Opt-Out form on-line or downloading an Opt-Out form for printing and submission by mail.

12.2 To the extent a potential California Settlement Class Member submits an Opt-Out Statement with language that differs from the foregoing, either party reserves the right to seek review of the Court to have the Opt-Out statements declared valid or invalid. All potential California Settlement Class Members who do not timely opt out of the damages provisions of this Agreement shall be bound by the resolution of any and all issues arising in connection with the California Settlement Class claims for damages.

12.3 No Nationwide Settlement Class Member or California Settlement Class Member may opt out of the release of claims for injunctive relief of this Agreement. No Named Plaintiff may opt out of any of the provisions of this Agreement.

12.4 If more than three hundred (300) California Settlement Class Members opt out, Target shall have the right to terminate this Agreement. If the Agreement is terminated pursuant to this Paragraph, if the Court does not enter a Dismissal in the form of Exhibit B, or if the Court's Dismissal does not become final as a result of an appeal or subsequent proceedings upon remand, nothing in this Agreement shall be deemed to prejudice the position of any of the Parties with respect to the Lawsuit or otherwise, and neither the existence of this Agreement nor its contents shall be admissible in evidence, referred to for any purpose in the Lawsuit or in any other litigation or proceeding, or be deemed a presumption, concession, or admission by Target of any fault, liability, or wrongdoing, or of the existence of a certifiable class. Notwithstanding the foregoing, the Parties retain any and all rights to assert a breach of this Agreement and to use this Agreement in connection with such a claim. The certification of the damages claims of the California Settlement Class pursuant to Rule 23(b)(3) shall be effective only with respect to this settlement, and in the event that this Agreement is terminated, such 23(b)(3) certification shall be vacated and the Lawsuit shall proceed as though this settlement had not been reached.

12.5 The Claims Administrator shall stamp the date received on the original of any written Opt-Out Statement it receives, and keep an electronic record of the date it received any electronic Opt-Out Statement. The Claims Administrator shall provide copies of the Opt-Out Statements to Class Counsel and Target's counsel not later than three (3) business days after receipt thereof and shall file the Opt-Out Statements with the Clerk of the Court not later than ten (10) business days prior to the date set for the Final Approval hearing. The Claims Administrator shall retain copies of all Opt-Out Statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.

13. **Dispute Resolution.** Any disputes relating to this Agreement shall be resolved according to the following procedure:

13.1 Meet and Confer. If either Party believes that a dispute exists relating to this Agreement, it shall notify the other Party in accordance with Paragraph 22. The Parties shall meet and confer in an effort to reach agreement.

13.2 Mediation. If the Parties are unable to resolve the dispute through the meet-and-confer process within thirty days, the Parties shall engage in mediation in an effort to reach agreement.

13.3 Submission to U.S. Magistrate Judge. If the parties are unable to resolve the dispute through mediation within sixty days, the sole manner for resolving the dispute is for the Party to present the dispute to the United States Magistrate Judge assigned jurisdiction over the

enforcement of this Settlement pursuant to Section 17.2 below. The parties agree that the Magistrate Judge's ruling shall be final and non-appealable, and may not be objected to. Attorneys' fees and costs awards for dispute resolution shall be determined in accordance with the standards set forth in existing U.S. Supreme Court and California Supreme Court precedent as to prevailing party status.

14. **Attorneys' Fees and Costs.** The parties have engaged in mediation in an effort to reach agreement regarding the amount of attorneys' fees and costs to be paid by Target as part of the settlement, and may continue to engage in such efforts. If the parties are unable to reach agreement regarding attorneys' fees and costs through mediation, Class Counsel will file a motion for attorneys' fees and costs to be decided by the Court presiding over this Action. Target will be free to oppose the amount of fees and costs sought in any such motion but shall not dispute entitlement to reasonable fees and costs.

15. **Preliminary Approval, Objections, and Fairness Hearing.**

15.1 Promptly after execution of this Agreement, the Parties shall jointly request that the Court schedule a Preliminary Approval hearing as soon as the Court may set the hearing, and that the Court preliminarily approve the Agreement, preliminarily certify the damages claims of the California Settlement Class under Rule 23(b)(3) for settlement purposes only, and approve the proposed form of Notice and plan for providing Notice.

15.2 Target and Class Counsel shall ask the Court to schedule a Fairness and Final Approval hearing for a date set by the Court after the Notice Deadline.

15.3 Target and Class Counsel shall ask the Court to order the following procedures for objections: Any Nationwide Settlement Class Member or California Settlement Class Member may object to the proposed Agreement by filing, within sixty (60) days after the Notice Deadline set by the Court, written objections with the Clerk of the Court with copies served on Class Counsel and Target. Only such objecting Nationwide Settlement Class Members and California Settlement Class Members shall have the right, and only if they expressly seek it in their objection, to present objections orally at the Fairness Hearing. Responses by Target and Class Counsel to any timely-filed objections shall be made no less than ten (10) business days before the Fairness Hearing.

16. **Notice.** Notice of this Agreement shall be in a form agreed to by the Parties and approved by the Court. Notice shall be provided to the Nationwide Settlement Class and the California Settlement Class in the same manner as employed to provide class notice previously in this Lawsuit. In addition, Class Counsel will mail notice by first class mail to any individuals that Class Counsel know are blind individuals who have had experience in California trying to use the Target.com website. The Notice shall inform class members of at least the following: (1) a general description of the terms of the Agreement; (2) their right to object to the Agreement; (3) the right of California Class Members to opt out of the damages provisions of this Agreement; and (4) with respect to the members of the California Settlement Class, the prerequisites for recovery from the Damages Fund. In their motion seeking Preliminary Approval of the Agreement, the Parties will propose a date by which Notice shall be provided (the "Notice Deadline"). A supplemental notice of the claims procedure (the "Claims Notice") will also be distributed by Class Counsel by email and/or first class mail in a form agreed to by the Parties and approved by the Court. The Claims Notice will inform members of the California Settlement Class of the claims distribution process and refer to the Settlement Website for further information. In their motion seeking Preliminary Approval of the Agreement, the Parties will propose a date by which the Claims Notice shall be provided.

**17. Final Approval and Dismissal.**

17.1 At the time of the Fairness Hearing, Target and Class Counsel shall jointly request that the Court grant Final Approval of this Agreement and enter a dismissal in the form attached as Exhibit B.

17.2 The Parties agree that the United States District Court for the Northern District of California, shall have continuing jurisdiction throughout the Term of this Agreement to interpret and enforce this Agreement as provided in Paragraph 13 herein. The parties agree to jointly request that the Court assign this case to United States Magistrate Judge Howard Lloyd, Northern District of California, for the purpose of such ongoing enforcement jurisdiction.

**18. Confidentiality; Press Release.**

18.1 The terms of this Agreement shall remain confidential until this Agreement is submitted to the Court for Preliminary Approval.

18.2 On the date that this Agreement is submitted to the Court for Preliminary Approval, the parties shall issue the joint press release attached as Exhibit F.

**19. Payment of Claims Administrator.** Target shall be responsible for all reasonable fees, expenses, and costs incurred by the Claims Administrator. Target shall provide the Claims Administrator check-writing authority as necessary and appropriate to satisfy its responsibilities under this Agreement.

**20. Releases.**

20.1 Release of Claims for Injunctive Relief

20.1.1 Effective on the date of the Final Approval, Named Plaintiffs and all Nationwide Settlement Class Members and each of their executors, successors, heirs, assigns, administrators, agents, and representatives, and the California Settlement Class Members and each of their executors, successors, heirs, assigns, administrators, agents, and representatives (collectively, the "Injunctive Releasing Parties"), in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do fully and finally release, acquit, and discharge Target and its present and former parents, subsidiaries, and affiliates, and each of their respective present, former, or future officers, directors, employees, shareholders, administrators, executors, affiliates, successors, and assigns (collectively the "Target Parties") from the Released Injunctive Claims as defined below.

20.1.2 The "Released Injunctive Claims" are any and all claims, rights, demands, charges, complaints, actions, suits, and causes of action, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for injunctive, declaratory, or other non-monetary relief, however described, relating to the subject matter of the litigation, arising from February 7, 2003, through the date of Final Approval of this Agreement. The "Released Injunctive Claims" also include all claims, rights, demands, charges, complaints, actions, suits, causes of action or liabilities of any kind for injunctive, declaratory, or other non-monetary relief, however described, (collectively, for this subparagraph, "claims") based on conduct that occurs after Final Approval of this Agreement and during the Term of this Agreement to the extent that such claims arise out of or relate to actions, omissions, or conduct that are in compliance with the terms of this Agreement.

20.1.3 Covenant Not to Sue: Effective on the date of Final Approval, the Injunctive Releasing Parties, in consideration of the relief set forth herein, the sufficiency of

which is expressly acknowledged, covenant and agree never to file or institute against any of the Target Parties any claim, right, demand, charge, complaint, suit, cause of action, action or proceeding of any kind or nature whatsoever, whether at law, in equity or otherwise, in or before any court, administrative agency, arbitral panel, or other tribunal, wherever situated, asserting, directly or indirectly, any Released Injunctive Claim or any claim, demand, cause or right of action of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, based upon or arising out of the Released Injunctive Claims.

## 20.2 Release of Claims for Damages

20.2.1 Effective on the date of Final Approval, Named Plaintiffs and all California Settlement Class Members who have not previously opted out of the damages claims and do not opt out of this settlement pursuant to Section 12.1, and each of their executors, successors, heirs, assigns, administrators, agents, and representatives (collectively, the “Damages Releasing Parties”), in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do fully and finally release, acquit, and discharge the Target Parties from the Released Damages Claims as defined below.

20.2.2 The “Released Damages Claims” are any and all claims, rights, demands, charges, complaints, actions, suits, causes of action, and liabilities of any kind, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for California law damages relating to the subject matter of the litigation, arising from February 7, 2003, through the deadline for opting out.

20.2.3 Covenant Not to Sue: Effective on the date of Final Approval, the Damages Releasing Parties, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, covenant and agree never to file or institute against any of the Target Parties any claim, right, demand, charge, complaint, suit, cause of action, action, liability, or proceeding of any kind or nature whatsoever, whether at law, in equity or otherwise, in or before any court, administrative agency, arbitral panel, or other tribunal wherever situated, asserting, directly or indirectly, any Released Damages Claim or any claim, demand, cause or right of action of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, based upon or arising out of the Released Damages Claims.

## 20.3 Known or Unknown Claims.

20.3.1 Claims for Injunctive Relief. The Injunctive Releasing Parties understand and expressly agree that this Agreement extends to all claims for injunctive or declaratory relief of every nature and kind arising up through the duration of the Term of this Agreement, known or unknown, suspected or unsuspected, relating to the subject matter of the litigation, whether or not known by the Injunctive Releasing Parties or whether or not any Injunctive Releasing Party believes he may have any claims, and that any and all rights granted to the Injunctive Releasing Party under Section 1542 of the California Civil Code or any analogous state or federal law or regulations, are hereby expressly waived, if applicable. Said Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH

## THE DEBTOR.

20.3.2 Claims for Damages. The Damages Releasing Parties understand and expressly agree that this Agreement extends to all claims for monetary relief of every nature and kind arising up through the deadline for opting out, known or unknown, suspected or unsuspected, relating to the subject matter of the litigation, whether or not known by the Damages Releasing Parties or whether or not any Damages Releasing Party believes he may have any claims, and that any and all rights granted to the Damages Releasing Party under Section 1542 of the California Civil Code or any analogous state or federal law or regulations, are hereby expressly waived, if applicable. Said Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

### 21. No Third Party Beneficiaries.

21.1 Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity not a Party to this Agreement any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21.2 For purposes of interpreting or enforcing this Agreement, individual class members shall not be deemed to be third-party beneficiaries of this Agreement. Only the Named Plaintiffs through Class Counsel may seek to enforce the terms of this Agreement through the Dispute Resolution process provided for herein or before the Court. To the extent individual class members have complaints regarding Target's implementation of the terms of this Agreement, they should bring them to the attention of the Named Plaintiffs and/or Class Counsel.

22. **Entire Agreement.** This Agreement contains all the agreements, conditions, promises, and covenants among Target, the Named Plaintiffs, Class Counsel, the Nationwide Settlement Class, and the California Settlement Class regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

23. **Communications to Target and Class Counsel.** Unless otherwise indicated in the Agreement, all notices or communications required by this Agreement shall be in writing by facsimile and U.S. Mail or overnight delivery service addressed as follows:

23.1 To Named Plaintiffs, Class Counsel, the Nationwide Settlement Class, or the California Settlement Class: Daniel Goldstein, Brown, Goldstein & Levy, LLP, 120 E. Baltimore St., Ste. 1700, Baltimore, MD 21202.

23.2 To Target: Jason Walbourn, Senior Corporate Counsel, Target Corporation, 1000 Nicollet Mall - TPS 3155 Minneapolis, MN 55403.

24. **Modification.** Prior to Final Approval, this Agreement can only be amended by written agreement of the Parties hereto. Following Final Approval, no modification of this Agreement shall be effective unless it is pursuant to Court Order.

25. **Drafting of this Agreement.** This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

26. **Execution by Facsimile and in Counterparts.** This Agreement may be executed by the Parties hereto by facsimile and in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

27. **Duty to Support and Defend Agreement.** Named Plaintiffs, Class Counsel, and Target each agree to abide by all of the terms of this Agreement in good faith and to support it fully, and shall use their best efforts to defend this Agreement from any legal challenge, whether by appeal or collateral attack.

28. **Class Action Fairness Act.** Target will provide information concerning the Agreement in compliance with CAFA to the U.S. DOJ and the California Attorney General's office.

29. **Deadlines.** The Parties and the Court recognize that from time to time unforeseen events, such as exigent business circumstances, labor disputes, natural disasters, personnel issues, and negotiations with third parties, cause delays in the accomplishment of objectives no matter how well-intentioned and diligent the Parties may be. Accordingly, with regard to the provisions of this Agreement that require that certain acts be taken within specified periods, the Parties understand and agree that Court approval shall not be required for reasonable extensions of deadlines. In the event that any Party determines that an action required by this Agreement cannot be taken within the specified time period, that Party shall promptly notify the other Parties that it anticipates a delay, the reasons for the delay, and proposed alternative deadline. The Parties shall endeavor to cooperate in reasonably rescheduling such deadlines. However, if the other Party does not agree to the proposed delay, the Parties shall submit the matter to Dispute Resolution.

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

\_\_\_\_\_  
National Federation of the Blind  
by Marc Maurer, President

Date: \_\_\_\_\_

\_\_\_\_\_  
National Federation of the Blind of California  
by Robert Stigile, President

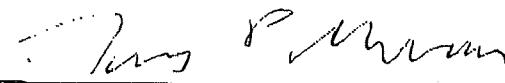
Date: \_\_\_\_\_

\_\_\_\_\_  
Bruce F. Sexton

Date: \_\_\_\_\_

\_\_\_\_\_  
Melissa Williamson

Date: \_\_\_\_\_

  
\_\_\_\_\_  
James P. Marks

Date: 8/22/08

\_\_\_\_\_  
Target Corporation  
by \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Marc Maurer  
National Federation of the Blind  
by Marc Maurer, President

Date: 8/25/08

Robert Stigile  
National Federation of the Blind of California  
by Robert Stigile, President

Date: \_\_\_\_\_

Bruce F. Sexton  
Bruce F. Sexton

Date: \_\_\_\_\_

Melissa Williamson  
Melissa Williamson

Date: \_\_\_\_\_

James P. Marks  
James P. Marks

Date: \_\_\_\_\_


Target Corporation  
by \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

\_\_\_\_\_  
National Federation of the Blind  
by Marc Maurer, President

Date: \_\_\_\_\_

  
\_\_\_\_\_  
National Federation of the Blind of California  
by Robert Stigile, President

Date: 08-23-68

\_\_\_\_\_  
Bruce F. Sexton

Date: \_\_\_\_\_

\_\_\_\_\_  
Melissa Williamson

Date: \_\_\_\_\_

\_\_\_\_\_  
James P. Marks

Date: \_\_\_\_\_

\_\_\_\_\_  
Target Corporation  
by \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

\_\_\_\_\_  
National Federation of the Blind  
by Marc Maurer, President

Date: \_\_\_\_\_

\_\_\_\_\_  
National Federation of the Blind of California  
by Robert Stigile, President

Date: \_\_\_\_\_

*Bruce F. Sexton*  
\_\_\_\_\_  
Bruce F. Sexton *[Signature]*

Date: *8/25/00*

\_\_\_\_\_  
Melissa Williamson

Date: \_\_\_\_\_

\_\_\_\_\_  
James P. Marks

Date: \_\_\_\_\_

\_\_\_\_\_  
Target Corporation  
by \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

\_\_\_\_\_  
National Federation of the Blind  
by Marc Maurer, President

Date: \_\_\_\_\_

\_\_\_\_\_  
National Federation of the Blind of California  
by Robert Stigile, President

Date: \_\_\_\_\_

\_\_\_\_\_  
Bruce F. Sexton

Date: \_\_\_\_\_

*Melissa Williamson*  
\_\_\_\_\_  
Melissa Williamson

Date: 8/25/08

\_\_\_\_\_  
James P. Marks

Date: \_\_\_\_\_

\_\_\_\_\_  
Target Corporation  
by \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

\_\_\_\_\_  
National Federation of the Blind  
by Marc Maurer, President

Date: \_\_\_\_\_

\_\_\_\_\_  
National Federation of the Blind of California  
by Robert Stigile, President

Date: \_\_\_\_\_

\_\_\_\_\_  
Bruce F. Sexton

Date: \_\_\_\_\_

\_\_\_\_\_  
Melissa Williamson

Date: \_\_\_\_\_

\_\_\_\_\_  
James P. Marks

Date: \_\_\_\_\_

\_\_\_\_\_  
Target Corporation

by

*Carter J. Leuty*  
*Carter J. Leuty*

Date: August 25, 2008