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15 Attorneys for Defendant
TARGET CORPORATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

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

24 Plaintiffs,

25 v.

26 TARGET CORPORATION,

27 Defendant.

Case No. C06-01802 MHP

**DECLARATION OF CHARLES
LETOURNEAU IN SUPPORT OF
TARGET CORPORATION'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date: July 24, 2006

Time: 2:00 p.m.

Judge: The Honorable Marilyn Hall Patel

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DECLARATION OF CHARLES LETOURNEAU

I, Charles (Chuck) Letourneau, have personal knowledge of the facts set forth below, and if called as a witness, I could and would testify under oath to the following:

Background

1. For the past ten years, I have been the president of and principal consultant for Starling Access Services, a company that specializes in accessible Web site design, site evaluations, and training.

2. From its establishment, I have been involved in the World Wide Web Consortium’s (W3C) Web Accessibility Initiative. From 1997 to 1999, I co-chaired the Initiative’s Web Content Accessibility Guidelines Working Group. I also served as the W3C’s alternate representative to the Section 508 Advisory Committee¹, a committee that was organized pursuant to a congressional directive to recommend accessibility standards for the purchase, development, and maintenance of electronic and information technology, which includes web content (the “Section 508 Standards”).

3. I also spent two years leading a Website accessibility testing service for the Canadian Treasury Board Secretariat, and six years working for the Canadian federal government training employees with disabilities on how to use assistive technology in conjunction with standard office software.

4. Further details of my 11 years of experience with Web accessibility, 16 years of experience working with individuals with disabilities in connection with the use of assistive technology, and my combined 24 years of experience with computers and technology, are provided in my curriculum vitae, which is attached hereto as Exhibit A.

Accessing The Web Using Screen Readers

5. The blind community most commonly accesses Internet webpages using screen readers. A screen reader is a software product that audibly reads the content of a computer

¹ The advisory committee’s full name was The Electronic and Information Technology Access Advisory Committee (“EITAAC”).

1 screen using a speech synthesizer. Most screen readers are also capable of interpreting the
2 underlying code and structure of webpages, although some are better at it than others.

3 6. There are various screen reader programs used by the blind community. These
4 include Freedom Scientific's JAWS program, GWMicro's WindowEyes program, Dolphin's
5 Hal Screen Reader, Choice Technology's LookOUT program, ALVA Access Group, Inc.'s
6 Outspoken program, Apple's VoiceOver, and The Speakup Project, a free Linux based
7 program. The most commonly used screen readers for the Windows Operating System are
8 JAWS and WindowEyes.

9 7. Like most technology, screen readers have evolved rapidly over the past five
10 years. For example, the current version of JAWS, which is 7.0,² is noticeably superior to
11 JAWS 4.01, which came on the market in late 2001, early 2002. To illustrate:

- 12 • JAWS 7.0 also allows for improved access to non-HTML content, such as
13 content provided in Adobe PDF format, content displayed in scripts, and
14 content displayed using flash technology.
- 15 • JAWS 7.0 is much better at navigating a complex table of information, such as
16 a table that lists the prices and functionality of various laptop computers sold on
17 a retailer's webpage.
- 18 • JAWS 7.0 also generally allows for easier navigation of websites.

19 Successive version of screen readers, including the successive versions of JAWS, have
20 continually allowed users greater access to websites. I am informed that Plaintiffs have
21 offered the declaration of one computer user who relies on JAWS 4.51 to access websites.
22 I believe that user would have an easier time accessing and navigating websites using the
23 current version of JAWS.

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27 ² There is also a Beta version of JAWS, which is version 7.1, that is available for
28 download on the Internet. Version 7.1, however, is not yet available in stores.

1 **Guidelines on Accessibility**

2 8. Web designers have a variety of accessibility guidelines to choose from when
3 creating new websites, or modifying existing websites to make them more accessible.³ These
4 include the Section 508 Standards, the Web Content Accessibility Guidelines (“WCAG”)
5 written by the W3C, Microsoft’s Accessibility Design Guidelines For the Web, IBM’s Web
6 Accessibility Guidelines, Canada’s Common Look and Feel Policy, the United Kingdom’s
7 Guidelines for Government Websites, Australia’s Guide to Minimum Website Standards
8 Accessibility, the State of Illinois’ Accessibility Guidelines, and the State of Connecticut’s
9 Accessibility Guidelines. Many other countries and states have also published accessibility
10 guidelines.

11 9. Strict adherence to any given set of guidelines, however, will not necessarily
12 render a website useable by a blind person. Web designers will often pull from more than one
13 set of guidelines, and draw from their own experience when designing new sites or modifying
14 existing sites to make them more accessible.

15 10. In North America, web designers often rely on the WCAG and the Section 508
16 Standards. These two sets of guidelines, however, are different from each other in a number of
17 respects. As I understand Plaintiffs’ expert, Dr. Thatcher, acknowledged at his deposition,
18 WCAG and the Section 508 Standards are different in wording, different in organization,
19 different in intention, and contain substantive differences. To cite a couple of examples:

- 20 • WCAG and The Section 508 Standards have different rules for dynamic
21 scripting content.⁴ The Section 508 Standards provide that the scripting
22 function must be accessible. WCAG provides that the information
23 conveyed through the scripting function must be made accessible even
24 when the user turns off the browser’s script reading function. There are

25 _____
26 ³ Of course, if a client requests that a web designer use a specific set of guidelines when
creating a new site or modifying an existing cite, the web designer will do so.

27 ⁴ Dynamic scripting content includes such things as menus that pop up when the mouse
28 passes over an image on the screen.

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occasions where any user might turn off a browser’s scripting ability. Some blind computer users might find scripted functions distracting or difficult to use. Users who turn off their browser’s scripting function should be able to access the scripted information in a WCAG compliant website, but would not necessarily be able to access the same information in a Section 508 compliant site.

- WCAG provides that web designers should “mark up documents with the proper structural elements.” In essence, this means the web designer should use appropriate headings and other content mark up to assist the user in navigating the various information contained in the site. The Section 508 Standards do not contain this requirement.
- The Section 508 Standards require websites to notify users if a web session is to be timed out, and to allow the user sufficient time to complete the Web transaction (*i.e.*, a stock order, money transfer, or merchandise purchase). This is an important requirement because, even with the most accessible websites, it may take blind users longer than sighted users to complete a Web transaction. WCAG, however, does not include this requirement.

11. Even when a web designer relies upon accessibility guidelines, he or she must nonetheless exercise a great deal of discretion. Indeed, a designer must exercise discretion in organizing the content layout, choosing the most desirable headings, and implementing the appropriate content mark ups.

12. The exercise of discretion is also required because the WCAG guidelines, written between 1997 and 1999, and the Section 508 Standards, written between 1998 and 2000, do not reflect recent technological changes in how websites are programmed. The W3C is in the process of revising WCAG, and The Section 508 Standards are slated for review this coming September.

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Accessibility Depends On More Than Website Design

13. In my experience, a blind person’s ability to access any given website depends on more than just the website’s design. It will depend on a host of additional factors including the screen reader used, the browser used, the user’s technical abilities, the user’s familiarity with the Internet in general (and his or her screen reader and browser in particular), and how much time the user is willing to spend exploring the cite.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 12th day of June 2006, at Ottawa, Ontario, Canada.

Charles Letourneau