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TARGET CORPORATION

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO

9
10 TARGET CORPORATION, a Minnesota
Corporation,

11 Plaintiff,

12 v.

13 CANVASS FOR A CAUSE, a California
14 corporation; CANVASS FOR A CAUSE
INSTITUTE, a California corporation; and DOES
15 1-100,

16 Defendants.

Case No. 37-2011-00086978-CU-
OR-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
TARGET'S EX PARTE
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

Date: March 8, 2011
Time: 8:30 a.m.
Dept: 69

Complaint Filed: March 4, 2011
Trial Date: None Set

The Honorable Jeffrey B. Barton,
Judge Presiding

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants Canvass for a Cause and Canvass for a Cause Institute (collectively, “Canvass for
4 a Cause”) and their representatives are soliciting donations and petition signatures from Target’s
5 guests nearly every single day at eight or more Target stores in San Diego County. The Target stores
6 where the solicitations have been taking place are free-standing stores or are stores existing within a
7 larger commercial strip development. Canvass for a Cause solicitors typically come in pairs armed
8 with clipboards, set up just outside the main entrance or exit, for hours at a time, and ask guests
9 entering or leaving the store for donations, to sign petitions, or to promote gay marriage. Target
10 uniformly prohibits solicitors from any organization from being on store property. Although Target
11 employees have repeatedly notified Canvass for a Cause of the no-solicitation policy, it has refused to
12 cease its solicitation of Target’s guests.

13 Target receives up to twenty customer complaints per day per store about Canvass for a
14 Cause’s solicitations. Canvass for a Cause solicitors have disrupted store operations, harassed
15 Target’s guests and employees, and interfered with traffic into and out of Target’s stores. In at least
16 one situation, a Target customer felt so harassed by a Canvass for a Cause solicitor that she called
17 police to come arrest the solicitor. While Target employees have called local law enforcement
18 officers several times and asked them to remove the Canvass for a Cause Solicitors from Target
19 premises; the officers have refused to remove the Canvass for a Cause Solicitors. Target will suffer
20 irreparable harm unless Canvass for a Cause is enjoined from continuing its conduct.

21 In *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899, 910, *affd.*, *Pruneyard*
22 *Shopping Center v. Robins* (1980) 447 U.S. 74 (1980) (“*Pruneyard*”), the Supreme Court of
23 California held that the California Constitution protects expressive activity in the common areas of a
24 large, privately owned shopping center. When addressing the area outside Target stores, however,
25 the California Court of Appeal held that “[t]he *Pruneyard* holding does not apply to the area
26 immediately surrounding the entrance of an individual retail store that does not itself possess the
27 characteristics of a public forum, even when that store is part of a larger shopping center.” (*Van v.*
28 *Target Corp.* (2007) 155 Cal.App.4th 1375, 1377.) The Court went on to conclude that Target store

1 locations in California did not possess the characteristics of a public forum and were, thus, outside
2 the reach of *Pruneyard*. (*Id.* at 1388-91.)

3 Given that the *Van* court has already held that Target stores are not within the reach of
4 *Pruneyard*, Target seeks an order enjoining Canvass for a Cause from directly or indirectly using
5 property operated as a Target store for any expressive activity, including the solicitation of
6 signatures.

7 **II. FACTUAL BACKGROUND**

8 Target operates hundreds of stores within California. These stores are located in a variety of
9 retail settings, including free-standing locations and strip commercial developments. (Declaration of
10 Sarah Fercho (“Fercho Decl.”) ¶ 3.) Although the surrounding properties related to each store vary,
11 the stores themselves are quite uniform. (*Id.*) Target stores exist for customers to come and shop for
12 goods. Target’s invitation does not extend to people to meet friends, be entertained, or congregate.
13 (*Id.* at ¶ 4.) Target stores do not encourage customers to linger on the premises through amenities
14 like plazas, walkways or central courtyards containing benches and other gathering areas, or through
15 attractions like theatres or other entertainment amenities. (*Id.*) Customers do not use Target stores to
16 meet people, talk, and spend time. (*Id.*) Moreover, Target stores typically have one or two doorways
17 through which all guests must necessarily pass. (*Id.* at ¶ 5.) Restricted ingress and egress means that
18 Target’s guests do not have an opportunity to avoid contact with solicitors who might be on the
19 property. (*Id.*) Target owns or leases and has exclusive control over the structures, entrance and exit
20 ways, and the surrounding sidewalk and apron area at each of its California Target stores. (*Id.* at ¶ 8.)

21 Defendants have been soliciting from Target customers nearly every day for the past few
22 months at multiple Target stores in San Diego County. (*Id.* at ¶ 10, Ex. A; Declaration of Daniel
23 Brown (“Brown Decl.”) ¶ 7; Declaration of Diego Toledo (“Toledo Decl.”) ¶ 7.) Canvass for a
24 Cause solicitors typically come in pairs armed with clipboards, set up just outside the main entrance
25 or exit, for hours at a time, and ask guests entering or leaving the store for donations, to sign
26 petitions, while promoting controversial political causes such as gay marriage. (Fercho Decl., Ex. A;
27 Brown Decl. ¶ 9; Toledo Decl. ¶ 9.) The solicitors have been observed following guests out into
28 streets and all the way to their cars while demanding credit card numbers for donations (Brown Decl.

1 ¶¶ 8, 13, 15), even telling customers they could not pass without providing a credit card number (*id.*
2 at 15), acting extremely aggressively to those who disagree with the solicitors' messaging or who
3 refused to provide a credit card number (*id.* at ¶ 9), and telling Target's customers not to vote (*id.*).

4 Target receives many complaints daily—averaging eight-to-ten at one store with as many as
5 twenty—from customers about Canvass for a Cause, including from those who have felt harassed by
6 Canvass for a Cause, intimidated, unsafe, or who were offended by Canvass for a Cause's political
7 messaging. (Brown Decl. ¶ 13; Toledo Decl. ¶ 13.) Customers have stated that they will never shop
8 at Target again as long as Canvass for a Cause solicitors are present (Brown Decl. ¶ 14), that they
9 will ensure their friends and family do not shop at Target, that they would return everything they
10 bought at Target because of the presence of Canvass for a Cause (*id.*), and that they believe Target
11 promotes the same sensitive political message of the group (*id.*). On at least one occasion, a Target
12 customer has felt so harassed by Canvass for a Cause that she called police to demand an arrest,
13 which did result in a citation under a local ordinance requiring solicitors to have city solicitation
14 permits. (Toledo Decl. ¶ 14.)

15 On March 1, 2011, a Canvass for a Cause solicitor verbally berated a Target customer, who
16 was with a four-month old child. (Brown Decl. ¶ 15.) The solicitor followed the customer to her car
17 and told her that he would not let her pass until she gave up her credit card for a donation. (*Id.*)
18 Shortly after this, the customer's husband returned to our store furious about the incident. (*Id.*)
19 Target employees called law enforcement, who spoke with the husband about the incident and
20 informed him and Target employees that there was nothing law enforcement could do to remove the
21 solicitors. (*Id.*) While Target employees have called local law enforcement officers several times to
22 request the removal of Canvass for a Cause solicitors, the officers have never complied with this
23 request. (*Id.* at ¶ 16.)

24 Target Corporation prohibits solicitors from any organization from being on store property.
25 (Fercho Decl. at ¶ 9; Brown Decl. ¶ 6; Toledo Decl. ¶ 6.) Solicitors on Target store property
26 typically are provided a copy of Target's solicitation policy, told they are trespassing on private
27 property and politely asked to leave. (Fercho Decl. at ¶ 9; Brown Decl. ¶ 10; Toledo Decl. ¶ 10.)
28 Although Defendants have been advised of the no-solicitation policy on numerous occasions, they

1 have regularly refused to leave Target's property and have continued to solicit customers. (Brown
2 Decl. ¶ 11; Toledo Decl. ¶ 11.)

3 **III. ARGUMENT**

4 **A. The Law Establishes That *Pruneyard* Does Not Extend To Free-Standing Stores 5 Or Individual Stores In Larger Commercial Developments**

6 The California Court of Appeal in *Van v. Target Corp.* addressed the question of whether the
7 area outside a Target store location was within the reach of the *Pruneyard* decision. The Court held
8 that it was not. (*Van v. Target Corp.*, *supra*, 155 Cal.App.4th at p. 1377.)

9 In that case, plaintiffs sued Target, among others, alleging that it improperly prohibited
10 solicitation activities outside its stores across the state. The trial court granted Target summary
11 judgment, finding that its locations were not quasi-public within the reach of *Pruneyard*. The Court
12 of Appeal affirmed. In so doing, the Court held that the areas outside of Target stores lacked any
13 public forum attributes:

14 **We decline to extend the holding in *Pruneyard* to the entrance and exit
15 area of an individual retail establishment within a larger shopping center.** Appellants' evidence concerning the public nature of certain shopping centers'
16 common areas failed to raise a triable issue of fact as to whether apron and
17 perimeter areas at the entrances and exits of respondents' stores served as a
18 public forum. In view of the **undisputed evidence that those particular
19 areas lacked any public forum attributes**, the trial court properly concluded
20 that any societal interest in using respondents' stores as forums for exercising
21 expressive activities did not outweigh respondents' interest in maintaining
22 control over the use of their stores.

23 (*Id.* at 1391, emphasis added.) This Court should reach the same conclusion regarding the same
24 properties.

25 The *Target* decision follows a long line of cases granting various forms of relief, including
26 preliminary injunctions, based upon determinations that political activists and solicitors entering the
27 private premises of individual retailers are nothing more than trespassers without free speech rights
28 that may be excluded at the retailer's choosing. (See, e.g., *Trader Joe's, Inc. v. Progressive
Campaigns, Inc.* (1999) 73 Cal.App.4th 425; *Albertson's v. Young* (2003) 107 Cal.App.4th 106;
Slevin v. Home Depot (N.D. Cal. 2000) 120 F.Supp.2d 822.) This legal conclusion applies equally to
free-standing stores, as can be seen in *Costco Companies v. Gallant* (2002) 96 Cal.App.4th 740, and

1 to individual stores existing within a larger commercial shopping center, as seen in *Albertson's v.*
2 *Young, supra*, 107 Cal.App.4th 106.

3 In *Costco, supra*, the court held that a “big box” retail operation – identical to Target’s in all
4 material respects – was not constitutionally required to open its free-standing stores to expressive
5 activity. In analyzing the matter, the court balanced the public’s interest in using the property against
6 Costco’s interest in controlling the property. On the public interest side of the equation was the
7 limited scope of the invitation to use the property – shopping – and the lack of amenities that would
8 convert the property into a “miniature downtown[]” – a place to meet friends, congregate, or be
9 entertained and fed. (*Costco Companies v. Gallant, supra*, 96 Cal.App.4th at pp. 754-755.) Balanced
10 against this interest was the free-standing store’s greater interest in controlling its property, the
11 inability of customers to avoid the message and the risk of the retailer being associated with the
12 speech. *Id.* Weighing the two interests, the court found that “the balance required under [*Pruneyard*]
13 falls decidedly in favor of Costco’s right to restrict access to its property.” (*Id.* at 755; see also *Slevin*
14 *v. Home Depot, supra*, 120 F.Supp.2d at p. 834 [granting summary judgment for Home Depot and
15 holding that the area in front of the 100,000 square-foot store, including a sitting area, was not a
16 public forum because it was not “the hub of activity envisioned in *Pruneyard*, which involved a 21
17 acre shopping center housing some 65 shops, 10 restaurants, and a cinema.”])

18 In *Albertson's, supra*, the court rejected trespassing solicitors’ claims that they had a
19 constitutional right to solicit on the sidewalk area near the entrance/exit ways of a grocery store in a
20 retail strip development and enjoined further solicitation at those stores. (107 Cal.App.4th at pp. 119-
21 120.) A private retailer or grocery store is *not* subject to *Pruneyard* — and private retailers have the
22 right to eject trespassing solicitors — if the defendant fails to show that the locations are “impressed
23 with the character of a traditional public forum for purposes of free speech.” (*Id.* at p. 122 [“To
24 establish a right to solicit signatures at the entrance to a specific store, it must be shown that the
25 particular location is impressed with the character of a traditional public forum for purposes of free
26 speech. For reasons stated above, the walkway at the entrance to Albertson's grocery store in Fowler
27 Center is not such a public forum. . . . Under the circumstances presented here, we are satisfied that
28

1 its location in Fowler Center does little, if anything, to distinguish the Albertson's store from an
2 ordinary stand-alone grocery store."].)

3 Under *Albertsons* and *Target*, solicitors cannot defend their trespass under the guise of
4 constitutional protections where, as with all California Target stores, (1) the purpose of these stores is
5 to sell goods, not entertain; (2) the stores' invitations extend to shoppers, not to people seeking to
6 congregate as they would in a mall; and (3) the relationship between the expressive activity and
7 shoppers is non-existent. (*Albertson's, Inc. v. Young, supra*, 107 Cal.App.4th at pp. 119-120.)
8 "Applying these factors, courts have consistently concluded that modest and individual commercial
9 and retail establishments lack the characteristics of a public forum." (*Van v. Target Corp., supra*, 155
10 Cal.App.4th at p. 1384.) California law is completely clear that Target has an absolute right to
11 exclude solicitors from the sidewalk and apron areas adjacent to its stores.s

12 **B. The Issue In This Case Was Resolved In Target's Favor By This Same Court and**
13 **by Eight Other California Superior Courts**

14 The issue presented in *Van* and again here has been consistently adjudicated in Target's favor
15 in nine separate California courts, including the San Diego Superior Court. In December 2009,
16 Target successfully sought an order enjoining and restraining a company known as Victory
17 Consultants, Inc., from collecting petition signatures on Target Property. The San Diego County
18 Superior Court granted Target's request and issued a preliminary injunction in February, 2010
19 declaring that Victory Consultants, Inc., is restrained and enjoined from utilizing any property owned
20 or leased by Target for expressive activity, including without limitation, soliciting donations and
21 collecting petition signatures. (See Declaration of Dale K. Larson ("Larson Decl.") Ex. A.)

22 Target has also received statewide injunctions against various solicitors or petitioners in
23 Orange, Los Angeles, San Bernardino, Kern, Santa Clara, San Mateo, Sacramento, and San Joaquin
24 Counties, as recently as February 2011. (*Id.* Exs. C-M.) These routinely granted injunctions are
25 typically statewide in scope and seek to enjoin the same expressive activity on the same sidewalk and
26 apron areas at issue in this case. (*Id.* Exs. A-M.)

1 **IV. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE PROHIBITING**
2 **DEFENDANTS FROM USING TARGET STORES**

3 As the facts previously discussed demonstrate, Target meets all of the requirements for the
4 issuance of a temporary restraining order. This Court is undoubtedly fully familiar with the relevant
5 legal considerations for the issuance of such an order, and they will not be repeated here.

6 **A. Target Will Prevail On The Merits Of Its Cause**

7 Even under the standard of review imposed in free speech cases, Target will ultimately
8 prevail. Certain facts demonstrate that Target's prohibition on expressive activity meet the
9 constitutional tests. As noted above, Target's restrictions on solicitors are not based on the content of
10 the expressive activity in question and, as demonstrated above, Target's solicitation ban is
11 permissible under existing California law. Target has adequately demonstrated probability of success
12 on the merits.

13 **B. Target Will, As A Matter Of Law, Suffer Irreparable Injury Without The**
14 **Issuance Of The Relief Sought**

15 Because Target can establish that it is likely to prevail on the merits of its claim, Target will,
16 as a matter of law, suffer irreparable harm. (*Bank of Stockton v. Church of Soldiers of the Cross of*
17 *Christ* (1996) 44 Cal.App.4th 1623.) The issue presented by this action is Target's private property
18 rights versus the defendant's right to speech. In weighing these rights, whichever party establishes
19 that it will prevail on the merits of its claim is entitled to an injunction. The *Bank of Stockton*
20 decision enunciated this exact rule. There, the bank sought an injunction against individuals using its
21 property for expressive activity. After finding that the prohibition was constitutional, the court turned
22 to the irreparable injury issue. The court held:

23 In the unique setting of free speech rights versus private property rights, this
24 harm analysis is the same as the analysis concerning the likelihood of success
25 on the merits. The point of cases such as *Lloyd* and *Robins*, when free speech
26 and private property rights collide, is to determine which right, under the
27 circumstances, is more worthy of protection. . . . We must conclude, therefore,
28 that the harm to the Bank without the preliminary injunction outweighs the
harm to the church with the preliminary injunction.

(*Id.* at 1631.)

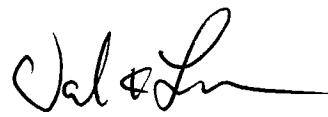
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V. CONCLUSION

For all of the reasons discussed above, Target respectfully requests an order enjoining Defendants from directly or indirectly using property operated as a Target store for any expressive activity, including the solicitation of donations.

Dated: March 7, 2011

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