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10 *Counsel for Plaintiffs*

11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

14 MATTHEW ELVEY, an individual, and  
 GADGETWIZ, INC., an Arizona corporation,  
 15 on their own behalf and on behalf of all  
 others similarly situated,

16 Plaintiffs

17 v.

18 TD AMERITRADE, INC., a New York  
 corporation, and DOES 1 to 100,

19 Defendants.

No. C 07 2852 MJJ

Judge Martin J. Jenkins

**DECLARATION OF MATTHEW  
 ELVEY IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 PRELIMINARY INJUNCTION AND  
 CLASS CERTIFICATION**

1 Pursuant to 28 U.S.C. § 1746, I, Matthew Elvey, hereby declare and state as follows:

- 2 1. I am over the age of eighteen and am fully competent to make this declaration.  
3 I make this declaration based upon personal knowledge. I was an accountholder  
4 at TD Waterhouse when TD Waterhouse and Ameritrade merged into TD  
5 AMERITRADE, Inc. on April 24, 2006. I have been an accountholder at TD  
6 AMERITRADE, Inc. since that merger.
- 7 2. I have provided TD AMERITRADE, Inc. certain email addresses which I never  
8 disclosed to any other person (except my counsel). I am not aware of any way  
9 that any third party could have obtained these email addresses except from TD  
10 AMERITRADE, Inc.
- 11 3. I have received spam at these email addresses. Exhibit A to the Motion for  
12 Preliminary Injunction and Class Certification is a true and correct copy of a  
13 sample of the spam I received at these email addresses, except that my counsel  
14 has altered the spam source code to redact the email addresses I provided to TD  
15 AMERITRADE, Inc. This was done to preserve the confidentiality and  
16 uniqueness of these email addresses.
- 17 4. An unknown individual used my name and Social Security number to open a  
18 wireless account with T-Mobile and incurred \$517.45 in charges in December  
19 2005. An unknown individual also used my name and Social Security number  
20 to open a wireless account with Sprint PCS and incurred \$2,409 in charges in  
21 January 2006. (These accounts were opened with the same mailing address.) I  
22 discovered the Sprint charge and reported it to the police in January 2007. I  
23 discovered the T-Mobile charge in March 2007. I caused the entry for the  
24 Sprint PCS account to be removed from my credit report; the T-Mobile account  
25 was never entered on my credit report. I spent approximately 50 hours  
26 remedying these events.
- 27 5. I could not afford to post a bond of more than a \$1,000 for the injunction  
28 sought in the Motion.

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6. I am an IT consultant. I set up networks, design and maintain network infrastructure, and manage IT security and databases.

7. I declare under penalty of perjury, that the foregoing is true and correct.

Pursuant to Section X of the Northern District of California's General Order No. 45 on electronic case filing and 28 U.S.C. § 1746, in lieu of Matthew Elvey's signature on this declaration, Alan Himmelfarb attests that Matthew Elvey is the signatory of this declaration, and that Matthew Elvey concurred to this declaration on July 10, 2007.

DATE: July 10, 2007

/s/Alan Himmelfarb  
ALAN HIMMELFARB