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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
19 corporation, and DOES 1 to 100,

20 Defendants.

No. C 07 2852 MJJ

Judge Martin J. Jenkins

**NOTICE OF LODGING PROPOSED
ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION AND
CLASS CERTIFICATION**

Date: August 14, 2007

Time: 9:30 a.m.

Location: Courtroom 11, 19th Floor

450 Golden Gate Ave.

San Francisco, CA 94102

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NOTICE OF LODGING

Pursuant to General Order No. 45(VIII), Plaintiffs lodged with the Court the order below by emailing a plain text /ACSII (.txt) version of the order below to “MJJpo@cand.uscourts.gov.” *See also* U.S. District Court for the Northern District of California, How do I...? / Where do I...?, at https://ecf.cand.uscourts.gov/cand/faq/how_do_i/how_do_i.htm (last updated Jun. 6, 2007).
Dated: July 11, 2007

By: /s/Alan Himmelfarb

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs

v.

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

Defendants.

No. C 07 2852 MJJ

Judge Martin J. Jenkins

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
INJUNCTION AND CLASS
CERTIFICATION**

Plaintiffs’ Motion for Preliminary Injunction and Class Certification came on for hearing before this Court on August 14, 2007 before the Honorable Martin Jenkins, United States District Court, San Francisco, California, with all parties having appeared through counsel.

The Court having reviewed the Motion, and after consideration of the opposition and reply papers, arguments of counsel, and all other matters presented to the Court, the Court finds that it should grant the Order for Plaintiffs and against Defendant TD AMERITRADE, Inc. that:

1. This action is certified as a class action under Rule 23(b)(2) and Rule 23(c)(4) to the extent necessary for the preliminary injunction sought herein, and Plaintiffs are designated as representatives of a Class of persons or entities that 1) own or contract domain names, 2) provide email services to those domain names, and 3) received spam sent to TD AMERITRADE, Inc.’s accountholders (“CAN SPAM Class”), and Kamber & Associates, LLC are designated as the counsel for the CAN SPAM Class.
2. TD AMERITRADE, Inc. shall immediately cease and desist communications that instruct, direct, or suggest to any accountholder that such accountholder destroy copies of spam which promotes stocks (and shall prevent any employee or agent from doing the same).
3. This action is certified as a class action under Rule 23(b)(2) and Rule 23(c)(4) to the extent necessary for the preliminary injunction sought herein, and Plaintiff Matthew Elvey is designated as a representative of a Class of those TD AMERITRADE, Inc. accountholders whose mailing address is in California (“California Resident Class”), and Kamber & Associates, LLC as designated as counsel for the California Resident Class.
4. TD AMERITRADE, Inc. shall immediately cease and desist disclosing the personal information (including email addresses) of California Resident Class members to third parties in a manner inconsistent with its February 2007 Privacy Statement (and shall prevent any employee or agent from doing the same).

- 1 5. TD AMERITRADE, Inc. shall take reasonable measures to detect spam sent to
- 2 its California Resident Class members and to identify stocks touted by such
- 3 spam, and to report to the Court and to Plaintiffs' counsel on the implementation
- 4 of such measures within 14 days of the date of this Order. The Court retains
- 5 jurisdiction over this matter and may revisit such measures for time to time, as it
- 6 deems appropriate.
- 7 6. TD AMERITRADE, Inc. shall, within 7 days of the date of this Order, display
- 8 the following disclosure to California Resident Class members who attempt to
- 9 purchase a stock which has been touted by spam:

10 **ALERT: THIS STOCK SHOULD BE PURCHASED ONLY**

11 **WITH EXTREME CAUTION. THIS STOCK HAS**

12 **RECENTLY BEEN TOUTED IN UNSOLICITED**

13 **COMMERCIAL EMAIL. IT IS LIKELY THAT THE PERSONS**

14 **SENDING THESE EMAILS ARE MANIPULATING THE**

15 **VALUE OF THIS STOCK AS PART OF A FRAUDULENT**

16 **INVESTMENT SCHEME. THIS SCHEME MAY CAUSE ANY**

17 **INVESTMENT IN THIS STOCK TO LOSE ITS VALUE,**

18 **NOTWITHSTANDING THE COMPANY'S FINANCIAL**

19 **PERFORMANCE.**

20 TD AMERITRADE, Inc. shall prohibit the purchase of such a stock by

21 California Resident Class members unless and until the purchaser affirmatively

22 indicates that the purchaser has read this warning.

- 23 7. TD AMERITRADE, Inc. shall provide Plaintiff Matthew Elvey and his counsel
- 24 with an accounting of each of its records systems which store personal
- 25 information of any members of the California Resident Class. The accounting
- 26 shall begin within 7 days of the date of this Order. The Court retains jurisdiction
- 27 over this matter and may revisit such measures for time to time, as it deems
- 28 appropriate.

TD AMERITRADE, Inc. shall take those measures to protect the security of

California Resident Class members' personal information which are identified

and proposed by Plaintiffs' counsel, and approved by the Court upon completion

of the accounting. Alternatively, TD AMERITRADE, Inc. may opt to destroy

California Resident Class members' personal information and refrain from

collecting any more personal information from California residents.

- 8. TD AMERITRADE, Inc. shall, within 7 days of the date of this Order,
- prominently disclose in its Privacy Statement and in an email or individual
- mailing to the California Resident Class members the following statement:

ALERT: AMERITRADE'S INFORMATION SYSTEMS ARE

NOT NECESSARILY SECURE AND WE CANNOT ASSURE

THE SECURITY OF YOUR PERSONAL INFORMATION.

THERE IS EVIDENCE THAT ACCOUNTHOLDERS' EMAIL

ADDRESSES HAVE BEEN EXPOSED TO UNAUTHORIZED

THIRD PARTIES. AMERITRADE HAS AN ONGOING

INVESTIGATION INTO THIS SITUATION. **YOUR NAME,**

SOCIAL SECURITY NUMBER, AND YOUR EMAIL

ADDRESS MAY HAVE BEEN EXPOSED AS WELL.

We recommend that you place a fraud alert on your credit file. A

1 fraud alert tells creditors to contact you before they open any new
2 accounts or change your existing accounts. Call any one of the
3 three major credit bureaus. As soon as one credit bureau confirms
4 your fraud alert, the others are notified to place fraud alerts. All
5 three credit reports will be sent to you, free of charge, for your
6 review. You can contact Equifax (800-685-1111), Experian (888-
7 397-3742), or TransUnionCorp (800-680-7289).

8 Even if you do not find any suspicious activity on your initial
9 credit reports, the Federal Trade Commission (FTC) recommends
10 that you check your credit reports periodically. Victim information
11 sometimes is held for use or shared among a group of thieves at
12 different times. Checking your credit reports periodically can help
13 you spot problems and address them quickly.

14 If you find suspicious activity on your credit reports or have
15 reason to believe your information is being misused, call [insert
16 contact information for law enforcement] and file a police report.
17 Get a copy of the report; many creditors want the information it
18 contains to absolve you of the fraudulent debts. You also should
19 file a complaint with the FTC at www.consumer.gov/idtheft or at
20 1-877-ID-THEFT (877-438-4338). Your complaint will be added
21 to the FTC's Identity Theft Data Clearinghouse, where it will be
22 accessible to law enforcers for their investigations.

23 You can obtain a copy of Take Charge: Fighting Back Against
24 Identity Theft, a comprehensive guide from the FTC to help you
25 guard against and deal with identity theft at:
26 <http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idtheft04.htm>

27 and to further publish to current and former accountholders a report to be drafted
28 by Plaintiffs' counsel and approved by the Court upon completion of the
accounting in Paragraph 7.

- 9. Pursuant to Fed. R. Civ. P. 65(c), Plaintiff Matthew Elvey shall post no bond for this Order.

Dated:

Hon. Martin Jenkins
United States District Judge