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UNITED STATES DISTRICT COURT
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.

Case No. C-07-2852 MJJ

**DEFENDANT TD AMERITRADE, INC.’S
 MOTION FOR EXTENSION OF TIME
 TO FILE OPPOSITION TO PLAINTIFFS’
 MOTION FOR PRELIMINARY
 INJUNCTION AND CLASS
 CERTIFICATION**

Hon. Martin J. Jenkins

Date: September 18, 2007
 Time: 9:30 a.m.
 Location: Courtroom 11, 19th Floor
 450 Golden Gate Ave.
 San Francisco, CA 94102

1 Pursuant to Civil L.R. 6-3(a), Defendant TD AMERITRADE, Inc. (“TD
2 AMERITRADE”) hereby moves for a 14-day extension of time to file its opposition to
3 Plaintiff’s Motion for Preliminary Injunction and Class Certification. Currently, TD
4 AMERITRADE’s opposition is due on Thursday, August 23, 2007. With the extension, TD
5 AMERITRADE’s opposition will be due on Thursday, September 6, 2007.

6 For some time now, TD AMERITRADE has been undertaking an internal investigation
7 of possible unauthorized acquisition of customer e-mail addresses from TD Ameritrade’s
8 computer systems. On Sunday, August 19, 2007, there was a significant development in the
9 investigation.

10 TD AMERITRADE is currently in the midst of evaluating the newly discovered
11 information and intends to confer with its regulators regarding the matter. The results of these
12 efforts may significantly affect the company’s arguments in response to Plaintiffs’ pending
13 motion. Prior to filing this motion, TD AMERITRADE contacted Plaintiffs’ counsel to notify
14 them of these developments and see if they would stipulate to this extension, but they refused.
15 See Declaration of Lee H. Rubin ¶ 9. TD AMERITRADE believes that 14 additional days will
16 allow it sufficient time to evaluate its recent discoveries, confer with its regulators, and revise its
17 opposition accordingly.

18 In order to give Plaintiffs adequate opportunity to brief the issues and in light of the
19 current briefing and hearing schedule for Plaintiffs’ Motion for Preliminary Injunction and Class
20 Certification and Defendant’s Motion to Dismiss, TD AMERITRADE further requests that all
21 dates be continued for two weeks. Given that, according to the First Amended Complaint,
22 Plaintiffs became aware of spamming events in October 2006, but did not file the original
23 Complaint until May 2007, Plaintiffs will not be unfairly prejudiced as a result of a two-week
24 continuance in the hearing.

25 Pursuant to this request, Plaintiffs’ Opposition to the Motion to Dismiss would be due no
26 later than September 11, 2007 and the respective reply briefs would be due no later than
27 September 18, 2007. The court would set both motions for hearing on Tuesday,
28 October 2, 2007.

1 The initial Case Management Conference currently scheduled for October 16, 2007
2 would not be affected by this revised schedule.

3 Dated: August 22, 2007

MAYER, BROWN, ROWE & MAW LLP

4 By: /s/ Lee H. Rubin
5 Lee H. Rubin
6 Counsel for Defendant TD AMERITRADE,
Inc.

7 Of Counsel
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