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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

**DECLARATION OF LEE H. RUBIN IN  
 SUPPORT OF DEFENDANT TD  
 AMERITRADE INC.’S MOTION FOR  
 EXTENSION OF TIME TO FILE  
 OPPOSITION TO PLAINTIFFS’  
 MOTION FOR PRELIMINARY  
 INJUNCTION AND MOTION FOR  
 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           1.       I am an attorney admitted to practice in the state of California and before this  
2 Court. I am a partner with the law firm of Mayer, Brown, Rowe & Maw LLP, counsel for  
3 Defendant TD Ameritrade, Inc. (“TD AMERITRADE”) in the above-titled action. I make this  
4 declaration, as required by Civ. L.R. 6-3(a), in support of Defendant TD Ameritrade, Inc.’s  
5 Motion For Extension Of Time To File Opposition To Plaintiffs’ Motion For Preliminary  
6 Injunction And Motion For Class Certification, filed herewith. I make this declaration based on  
7 my own personal knowledge, and could and would testify competently hereto.

8           2.       Plaintiffs’ filed a motion for preliminary injunction and motion for class  
9 certification on July 10, 2007.

10          3.       Soon thereafter, the Court approved a stipulated extension of the briefing schedule  
11 to give TD AMERITRADE time to consider and respond to the motion. TD AMERITRADE’s  
12 opposition is currently due on Thursday, August 23, 2007.

13          4.       This past Sunday, August 19, 2007, there was a significant development in TD  
14 AMERITRADE’s ongoing internal investigation of possible unauthorized acquisition of  
15 customer e-mail addresses from TD Ameritrade’s computer systems.

16          5.       TD AMERITRADE is currently in the midst of evaluating the newly discovered  
17 information and intends to confer with its regulators regarding the matter. The results of these  
18 efforts may significantly affect the company’s arguments in response to Plaintiffs’ pending  
19 motion.

20          6.       Based on the available information, I believe that 14 additional days will allow  
21 TD AMERITRADE sufficient time to evaluate its recent discoveries, confer with its regulators,  
22 and revise its opposition accordingly.

23          7.       TD AMERITRADE’s request will require that the remainder of the briefing and  
24 hearing schedule be continued for a two-week period. This extension, however, will not affect  
25 the schedule of the initial Case Management Conference, which is currently set for October 16,  
26 2007.

27          8.       According to the First Amended Complaint, Plaintiffs became aware of  
28 spamming events in October 2006, but did not file the original Complaint until May 2007.

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9. On the morning of Wednesday, August 22, 2007, I spoke with Ethan Preston, counsel of record for Plaintiffs. I explained the recent developments and asked if Plaintiffs would stipulate to the extension. In the afternoon of the 22nd, Mr. Preston informed me that Plaintiffs would not consent to the requested extension.

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

Executed this 22nd day of August, 2007, in Palo Alto, California.

/s/ Lee H. Rubin  
Lee H. Rubin