

1 MAYER, BROWN, ROWE & MAW LLP
 LEE H. RUBIN (SBN 141331)
 2 SHIRISH GUPTA (SBN 205584)
 Two Palo Alto Square, Suite 300
 3 Palo Alto, CA 94306
 Telephone: (650) 331-2000
 4 Facsimile: (650) 331-2060
 lrubin@mayerbrownrowe.com
 5 sgupta@mayerbrownrowe.com

6 Counsel for Defendant TD AMERITRADE,
 Inc.

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

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

15

Plaintiffs

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v.

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

18

Defendants.

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20

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Case No. C-07-2852 MJJ

**DEFENDANT TD AMERITRADE, INC.’S
 REPLY TO ITS 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

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1 Defendant TD AMERITRADE, Inc. (“TD AMERITRADE”) does not intend to offer a
2 point-by-point rebuttal to Plaintiffs’ opposition to TD AMERITRADE’s motion to extend the
3 time for filing its opposition to Plaintiff’s Motion for a Preliminary Injunction. However, a few
4 particularly misleading suggestions contained in Plaintiffs’ submission warrant a brief response.
5 First, in footnote 1, Plaintiffs contend that TD AMERITRADE’s motion is deficient because it
6 fails to mention a prior extension of the briefing schedule. However, paragraph 3 of the
7 previously submitted Declaration of Lee H. Rubin, explicitly states that “Soon thereafter, the
8 Court approved a stipulated extension of the briefing schedule to give TD AMERITRADE time
9 to consider and respond to the motion.” For the Court’s convenience, TD AMERITRADE
10 attaches hereto the June 25, 2007 Stipulation and Order Resetting Motion to Dismiss and Motion
11 for Preliminary Injunction.

12 More importantly, Plaintiffs’ Opposition wrongly implies that the stipulated extension
13 was *only* to accommodate TD AMERITRADE’s counsel’s scheduling conflict. See Plaintiff’s
14 Opposition at 1. That is not true. In fact, through the stipulation, Plaintiffs requested and
15 received an extension of time for their opposition to TD AMERITRADE’s Motion to Dismiss
16 based upon Plaintiffs’ counsel’s “scheduling conflict with the current hearing date of August 28,
17 2007 for the Motion to Dismiss.” See June 25 Order at 1. Thus, contrary to Plaintiffs’
18 submission, the previous extension was requested in part to accommodate the scheduling
19 conflicts of *both* parties’ counsel.

20 Plaintiffs are also incorrect in representing that the parties have reached agreement on the
21 terms of a stipulated protective order. The negotiations over the stipulated protective order,
22 which have taken place almost entirely between undersigned counsel and Mr. Preston’s
23 colleague, Scott Kamber, are ongoing. Although substantial progress has been made, no final
24 agreement has been reached. Undersigned counsel intends to continue to attempt to finalize the
25 stipulated protective order with Mr. Kamber, who is currently in Southeast Asia. Supplemental
26 Declaration of Lee H. Rubin ¶¶ 2-3.

27 Finally, Plaintiffs’ submission fails to establish that they will be unduly prejudiced by the
28 modest two-week extension of time, which will afford TD AMERITRADE an adequate

1 opportunity to evaluate the newly discovered information, further confer with regulators and
2 revise its opposition accordingly, if necessary.

3
4 Dated: August 23, 2007

MAYER, BROWN, ROWE & MAW LLP

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

9 Of Counsel
10 MAYER, BROWN, ROWE & MAW LLP
11 Robert J. Kriss
12 71 South Wacker Drive
13 Chicago, Illinois 60606-4637
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1 MAYER, BROWN, ROWE & MAW LLP
2 LEE H. RUBIN (SBN 141331)
3 SHIRISH GUPTA (SBN 205584)
4 Two Palo Alto Square, Suite 300
5 Palo Alto, CA 94306
6 Telephone: (650) 331-2000
7 Facsimile: (650) 331-2060
8 lrubin@mayerbrownrowe.com
9 sgupta@mayerbrownrowe.com

10 Attorneys for Defendant TD Ameritrade, Inc.

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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

STIPULATION AND ~~PROPOSED~~ ORDER
RESETTING MOTION TO DISMISS AND
MOTION FOR PRELIMINARY INJUNCTION

Judge: Martin J. Jenkins

WHEREAS, Plaintiff Matthew Elvey and Gadgetwiz.com filed a First Amended
Complaint against Defendant TD Ameritrade, Inc. (“TD AMERITRADE”), on June 28, 2007,
and Motion For Preliminary Injunction on July 10, 2007;

WHEREAS, TD AMERITRADE field a Motion to Dismiss the First Amended Complaint
on July 18, 2007;

1 WHEREAS, pursuant to Civil Local Rule 7-2, the hearing for Plaintiffs' Motion for
2 Preliminary Injunction is currently set for August 14, 2007, and the hearing for TD
3 AMERITRADE's Motion to Dismiss is currently set for August 28, 2007;

4 WHEREAS, on June 29, 2007, the Court ordered a case management conference to be
5 held at 2:00 p.m. on September 18, 2007;

6 WHEREAS, TD AMERITRADE's counsel has a scheduling conflict with the current
7 hearing date of August 14, 2007 for the Motion for Preliminary Injunction and Plaintiffs' counsel
8 has a scheduling conflict with the current hearing date of August 28, 2007 for the Motion to
9 Dismiss;

10 WHEREAS, the Motion to Dismiss and Motion for Preliminary Injunction raise common
11 issues of law such that it will likely be more efficient for the Court to consolidate the hearing
12 dates for the two motions;

13 WHEREAS, it would be efficient for the parties, and may be more efficient for the Court,
14 to align the hearing dates for the pending motions with the current date for the case management
15 conference, September 18, 2007;

16 WHEREAS, the proposed schedule set forth in this stipulation will not postpone any
17 deadline set by the Court and serves judicial economy;

18 IT IS HEREBY STIPULATED, by and between the parties, that pursuant to Civil Local
19 Rule 6-2, Plaintiffs' Motion for Preliminary Injunction and TD AMERITRADE'S Motion to
20 Dismiss shall both be set for September 18, 2007;

21 IT IS FURTHER STIPULATED that TD AMERITRADE will file its Opposition to the
22 Motion for Preliminary Injunction no later than August 23, 2007, and that Plaintiffs will file their
23 Opposition to the Motion to Dismiss no later than August 27, 2007. The parties shall file their
24 respective reply briefs no later than September 4, 2007.

25 IT IS FURTHER STIPULATED that this stipulation shall not be construed to reflect the
26 position of any of the parties concerning the urgency or absence of any urgency of the relief
27 sought in the Motion for Preliminary Injunction.
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1 Dated: July 20, 2007

2 By: /s/ Alan Himmelfarb
3 LAW OFFICES OF ALAN HIMMELFARB
4 Alan Himmelfarb
5 2757 Leonis Blvd.
6 Los Angeles, CA 90058
7 Telephone: (323) 585-8696
8 Fax: (323) 585-8198
9 Consumerlaw1@earthlink.net

10 Attorneys for Plaintiffs

11 Dated: July 20, 2007

12 By: /s/ Lee H. Rubin
13 MAYER, BROWN, ROWE & MAW LLP
14 Lee H. Rubin


15 Attorneys for Defendant TD AMERITRADE

16 *E-Filer's Attestation: Pursuant to General Order No. 45, Section X (B), Lee H. Rubin hereby
17 attests that the signatory's concurrence in the filing of this document has been obtained.*

18 ~~[Proposed]~~ Order

19 Pursuant to Stipulation, and for good cause shown, IT IS SO ORDERED.

20 DATED: 7/25/2007

21 
22 Martin J. Jenkins
23 UNITED STATES DISTRICT JUDGE