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6 Counsel 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

**DECLARATION OF DAVID HALE IN  
 SUPPORT OF OPPOSITION TO  
 PLAINTIFFS’ MOTION FOR  
 PRELIMINARY INJUNCTION AND  
 MOTION FOR CLASS CERTIFICATION**

Judge Martin J. Jenkins

Date: September 18, 2007

Time: 9:30 a.m.

Location: Courtroom 11, 19th Floor

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

2 1. I am over the age of eighteen and am fully competent to make this declaration. I  
3 am Chief Privacy Counsel of TD AMERITRADE, Inc. (“TD AMERITRADE” or the  
4 “Company”), and I make this declaration based upon personal knowledge and information  
5 supplied to me by other Company employees who have personal knowledge.

6 2. Attached hereto as Exhibit 1 is a true and accurate copy of the current TD  
7 AMERITRADE’s Client Agreement. Attached hereto as Exhibit 2 is a true and accurate copy of  
8 TD AMERITRADE’s Privacy Statement.

9 3. In 2006, the Securities Exchange Commission (“SEC”) conducted an  
10 examination of TD AMERITRADE’s compliance with Regulation S-P, Privacy of Consumer  
11 Financial Information, implementing privacy rules promulgated under Section 504 of the  
12 Gramm-Leach-Bliley Act. 17 C.F.R. Part 248. The SEC has not reported any failures of TD  
13 AMERITRADE to comply with regulatory standards.

14 4. In January 2007 in connection with its examination of TD AMERITRADE, the  
15 Financial Industry Regulatory Authority (“FINRA”) reviewed TD AMERITRADE’s Privacy  
16 Statement and privacy policies and procedures and has not reported any failures to comply with  
17 regulatory standards.

18 5. TD AMERITRADE has been conducting an internal investigation of possible  
19 unauthorized acquisition of customer e-mail addresses from TD AMERITRADE’s computer  
20 systems and has notified the FINRA of its investigation. More than 12 employees have been  
21 working on the investigation.

22 6. On Sunday August 19, 2007, there was a significant development in the  
23 investigation. TD AMERITRADE is currently evaluating the newly discovered information and  
24 intends to confer with its regulators regarding the matter.

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1           7.. To date, TD AMERITRADE has found no evidence that an unauthorized person  
2 acquired information concerning customer social security numbers; drivers license numbers;  
3 California Identification Card numbers; or any required security code, access code, or password  
4 that would permit access to an individual's financial accounts.

5           8.. TD AMERITRADE periodically receives requests for special restrictions to be  
6 placed on an account for a variety of reasons, including suspicion of identity theft. Identity theft  
7 can occur in many different ways. TD AMERITRADE has no evidence linking these notices to  
8 any data disclosed by TD AMERITRADE. Furthermore, there is no pattern of increasing  
9 numbers of such requests during the period from October 2006 to the present. There have been  
10 334 such requests for calendar year 2007 to date, many of which are specifically tied to known  
11 other sources of identity theft, such as lost wallets. TD AMERITRADE currently has over 6  
12 million customer accounts.  
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14           9. The SEC has in the past directed TD AMERITRADE to stop processing orders to  
15 purchase certain stocks that the regulators believe are the subject of spam messages that may be  
16 intended to artificially inflate the price of the stock. TD AMERITRADE has promptly complied  
17 with such directions. It would be costly and extremely difficult for TD AMERITRADE to  
18 attempt to identify all stock spam events and provide timely notice to all customers interested in  
19 purchasing such stock that the stock is the subject of a spamming event. Also, not all orders  
20 placed with TD AMERITRADE are placed online. Many orders are placed over the phone  
21 through an automated telephone order entry system, and many customers also place electronic  
22 orders through third party applications which would not have the ability to process the alert  
23 information.  
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25           10. Since Plaintiffs have not specifically described the scope or level of detail they  
26 are proposing for the accounting they request or their proposal for additional security measures,  
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