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10 *Counsel for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

14 MATTHEW ELVEY, an individual, and  
 GADGETWIZ, INC., an Arizona  
 15 corporation, 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.

Case No. C 07 2852 MJJ

**STIPULATED [PROPOSED] ORDER  
 CONTINUING HEARING DATE ON  
 MOTIONS TO DISMISS AND FOR  
 PRELIMINARY INJUNCTION**

Judge: Martin J. Jenkins

22 **GROUND**

23 1. Plaintiffs Matthew Elvey and Gadgetwiz.com filed a First Amended Complaint  
 24 against Defendant TD Ameritrade, Inc. (“TD Ameritrade”), on June 28, 2007, and Motion for  
 25 Preliminary Injunction and Class Certification on July 10, 2007.

26 2. TD Ameritrade filed a Motion to Dismiss the Plaintiffs’ First Amended  
 27 Complaint on July 18, 2007.

1           3.       On July 20, 2007, the parties filed a stipulated proposed order extending the  
2 briefing schedules and continuing the hearing date for the Motions to September 18, 2007, and  
3 the Court approved the stipulated proposed order on July 26, 2007. The parties' respective  
4 Motions are presently scheduled to be heard by the Court at 2 p.m. on September 18, 2007.

5           4.       TD Ameritrade filed a Motion for Extension of Time to File Opposition to  
6 Plaintiffs' Motion for Preliminary Injunction and Class Certification on August 22, 2007,  
7 asserting that there was a significant development in its internal investigation of possible  
8 unauthorized acquisition of customer e-mail addresses from its computer systems, and that this  
9 development may significantly affect its arguments in opposition to Plaintiffs' Motion for  
10 Preliminary Injunction.

11          5.       Plaintiffs opposed TD Ameritrade's Motion for Extension of Time on the grounds  
12 that the Motion did not set forth with particularity the reasons for the extension, as required  
13 under Civil L.R. 6-3(a)(1). Plaintiffs filed their opposition to the Motion for Extension of Time  
14 on August 23, 2007.

15          6.       The Court denied TD Ameritrade's Motion for Extension of Time on August 23,  
16 2007.

17          7.       The parties recently completed negotiating the stipulated protective order, and the  
18 Court approved and entered the stipulated protective order on September 5, 2007.

19          8.       Pursuant to the protective order, TD Ameritrade has since provided Plaintiffs  
20 further information that clarified the basis for its prior request for an extension described in  
21 Paragraph 4. Based on this clarification, the Parties believe that the sharing of further  
22 information coupled with an in-person meeting between the parties prior to the hearing on the  
23 Motion for Preliminary Injunction regarding the subject matter of the Motion for Preliminary  
24 Injunction serves each parties' respective interests, as well as the interests of judicial economy.

25          9.       The earliest date the parties' respective counsel can schedule such a meeting is  
26 September 17, 2007, in the New York area.

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1 10. Therefore, the parties believe that all interests involved (including the Court's)  
2 would be best served by continuing the hearing date for two weeks.

3 **STIPULATION**

4 1. IT IS HEREBY STIPULATED, pursuant to Local Rule 6-2, that Plaintiffs'  
5 Motion for Preliminary Injunction and TD Ameritrade's Motion to Dismiss shall both be set for  
6 October 2, 2007 at 9:30 a.m. in Courtroom 11, 19th Floor, 450 Golden Gate Ave., San Francisco,  
7 CA 94102.

8 2. IT IS FURTHER STIPULATED that this stipulation shall not be construed to  
9 reflect the position of any of the parties concerning the urgency or absence of any urgency of the  
10 relief sought in the Motion for Preliminary Injunction.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 Date: September 10, 2007 By: /s/ Alan Himmelfarb  
14 Alan Himmelfarb  
15 Counsel for Plaintiffs Matthew Elvey and  
16 Gadgetwiz, Inc.

17 Date: September 10, 2007 By: /s/ Lee H. Rubin  
18 Lee H. Rubin  
19 Mayer Brown LLP  
20 Counsel for Defendant  
21 TD AMERITRADE, Inc.

22 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B), Shirish Gupta*  
23 *hereby attests that the signatories' concurrence in the filing of this document has been obtained.*

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 Date: \_\_\_\_\_ By: \_\_\_\_\_  
26 THE HONORABLE MARTIN J. JENKINS  
27 UNITED STATES DISTRICT COURT JUDGE