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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

18 MATTHEW ELVEY, an individual, and
19 GADGETWIZ, INC., an Arizona
20 corporation, on their own behalf and on
21 behalf of all others similarly situated,

22 Plaintiffs

23 v.

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

26 Defendants.

Case No. C 07 2852 MJJ

**STIPULATED [~~PROPOSED~~] ORDER
REMOVING HEARING DATES ON
MOTIONS TO DISMISS AND FOR
PRELIMINARY INJUNCTION FROM
COURT CALENDAR**

Judge: Martin J. Jenkins

GROUND

1. Plaintiffs 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.

1 2. TD Ameritrade filed a Motion to Dismiss the Plaintiffs' First Amended
2 Complaint on July 18, 2007.

3 3. On July 20, 2007, the parties filed a stipulated proposed order, entered by the
4 Court on July 26, 2007, extending the briefing schedules and continuing the hearing date for the
5 Motions to September 18, 2007.

6 4. On September 10, 2007, the parties filed a stipulated proposed order, entered by
7 the Court on September 12, 2007, continuing the hearing date on the Motions to October 2, 2007.

8 5. The sharing of information and meetings between the Parties set forth in
9 Paragraph 8 of the September 10, 2007 request for adjournment are ongoing and lead the Parties
10 to conclude that the interests of the parties, as well as the interests of judicial efficiency would be
11 best served by removing the Motion for Preliminary Injunction hearing and Motion To Dismiss
12 hearing from the Court's calendar.

13 **STIPULATION**

14 1. IT IS HEREBY STIPULATED, pursuant to Local Rule 6-2, that Plaintiffs'
15 Motion for Preliminary Injunction and TD Ameritrade's Motion to Dismiss shall both be
16 removed from the Court's October 2, 2007 calendar.

17 2. IT IS FURTHER STIPULATED, that Plaintiffs or TD Ameritrade may re-notice
18 their respective Motions at anytime hereafter on ¹⁴~~ten~~ days notice. *mjd*

19 3. IT IS FURTHER STIPULATED that this stipulation shall not be construed to
20 reflect the position of any of the parties concerning the urgency or absence of any urgency of the
21 relief sought in the Motion for Preliminary Injunction.

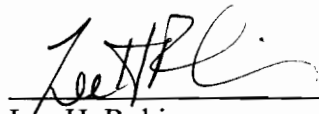
22
23 IT IS SO STIPULATED, THROUGH COUNSEL.

24
25 Date: September 24, 2007

By: *Alan Himmelfarb / LHD*
Alan Himmelfarb
Counsel for Plaintiffs Matthew Elvey and
Gadgetwiz, Inc. and the putative class

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Date: September 24, 2007

By: 


Lee H. Rubin
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Counsel for Defendant
TD AMERITRADE, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS SO ORDERED.

Date: 9/26/2007

By: 

THE HONORABLE MARTIN J. JENKINS
UNITED STATES DISTRICT COURT JUDGE