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JULIUS BAER BANK AND TRUST CO. LTD

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BANK JULIUS BAER & CO.
LTD, a Swiss entity; and JULIUS
BAER BANK AND TRUST CO.
LTD, a Cayman Islands entity,

Plaintiffs,

v.

WIKILEAKS, an entity of unknown
form, WIKILEAKS.ORG, an entity
of unknown form; DYNADOT,
LLC, a California limited liability
corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO. CV08-0824 JSW
[Hon. Jeffrey S. White; CRTM 2]

PLAINTIFFS' NOTICE OF
NON-OPPOSITION BY DEFENDANTS
WIKILEAKS AND WIKILEAKS.ORG
TO THE OSC RE PLAINTIFFS'
APPLICATION FOR PRELIMINARY
INJUNCTION

[Filed Concurrently With: Declaration of
Evan Spiegel in Support Thereof]

DATE: FEBRUARY 29, 2008
TIME: 9:00 a.m.
CTRM: 2, 17th FL

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that there has been no written opposition filed by
Defendants Wikileaks and Wikileaks.org (collectively, the "Wikileaks Defendants")
to Plaintiffs Bank Julius Baer & Co. Ltd's ("BJB") and Julius Baer Bank and Trust
Co. Ltd's ("JBBT") (collectively, "Plaintiffs") Application for TRO and Preliminary

1 Injunction (the “Application”) and the Court’s Temporary Restraining Order and
 2 Order to Show Cause (“OSC”) as to why a Preliminary Injunction should not issue
 3 against Defendants (the “TRO and OSC”), which is set for hearing on February 29,
 4 2008, at 9:00 a.m. before this Court.

5 This matter relates primarily to the protection and enforcement of privacy and
 6 property rights. The spread of stolen private bank records, account numbers and
 7 information, tax documents and other protected consumer records, significantly
 8 harms privacy rights of every single individual in the United States and world-wide,
 9 and could have a harmful impact on confidence in the banking industry as a whole.
 10 The leak of confidential bank records, including altered and semi-forged documents,
 11 by the anonymous Wikileaks Defendants, unchecked, will likely have a devastating
 12 impact on financial institutions and the authorities ability to combat credit and
 13 identity fraud.¹ See the accompanying Declaration of Evan N. Spiegel (“Spiegel
 14 Decl.”), ¶3. The Wikileaks Defendants, through various unidentified individuals,
 15 are the owners, operators and/or registrants of a world wide web website operating
 16 under a number of now “mirrored” or duplicative “wikileaks” and other domain
 17 names (the “Website”), upon which they post stolen private bank records, account
 18 numbers and information, tax documents and other protected consumer records.
 19 The Wikileaks Defendants’ actions are in violation of a number of foreign and US
 20 banking and privacy laws, and violate inalienable privacy rights established under
 21 the U.S. and California Constitutions. Accordingly, based on the facts and
 22 arguments set forth in the Plaintiffs’ Complaint and Application, on February 14,
 23 2008, the Court issued the TRO and OSC.

24 On February 14, 2008, Plaintiffs served a copy of the TRO and OSC on the
 25 Wikileaks Defendants via e-mail, per the Court’s prior order, at four separate e-mail

26
 27 ¹ Contrary to the Wikileaks Defendants various false statements in their
 28 attempts to spin the press and create a manipulated public perception, this matter
 does not relate to purported First Amendment rights but to the protection of both
 Constitutional and statutory privacy rights of the Plaintiffs, and of every person.

addresses.² A Proof of Service has been filed with the Court. (Spiegel Decl., ¶4; and see Proofs of Service filed with this Court, Docket Numbers 50).

After service of the TRO and OSC, the Wikileaks Defendants confirmed and acknowledged in writing on their back-up mirrored Websites their receipt of and knowledge of the Court's Orders. (Id., ¶5, Exhs. "A", "B" and "C"). Although their "counsel" Julie Turner represented to the Court that Wikileaks was without counsel and was seeking new counsel, Wikileaks has in fact stated on its Website that "Wikileaks has six pro-bono attorney's in S.F on roster to deal with a legal assault ..." (Id., Exh. "A"). Despite notice of the TRO and their written acknowledgment of the Court's Orders, the Wikileaks Defendants' owners and operators have continued to openly display, post and disseminate the JB Property on their Wikileaks Websites. Under their veil of anonymity, the Wikileaks Defendants continue to operate and have stated their blatant and open contempt for the Court, the U.S. legal system and privacy rights of all persons everywhere.³ (Id., ¶6).

The TRO and OSC set Wednesday, February 20, 2008 at 12:00 p.m. as the deadline for Defendants and anyone else to file and serve any opposition to the issuance of the Preliminary Injunction. As of Friday, February 22, 2008 at approximately 1:30 p.m., no opposition papers to the Application and the TRO and OSC have been filed or served by the Wikileaks Defendants, or any third-parties, to Plaintiffs (Spiegel Decl., ¶7).

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² The e-mail addresses included two of the wikileaks.org e-mail addresses (believed transmitted prior to removal of the removal of the related domain name DNS services), but regardless, also to the personal e-mail address for Julian Assange, a joint founder of Wikileaks and the person represented by Julie Turner to the Court to be the direct contact person for Wikileaks, and to the personal e-mail address for a listed officer of Wikileaks. (Spiegel Decl., ¶4).

³ Despite the TRO, Wikileaks has stated that they will "keep on publishing, in-fact, given the level of suppression involved in this case, Wikileaks will step up publication of documents ...", that "Backups are on-line" and that "Wikileaks has many backup sites ... which remain active." (Id. ¶5, Exh. "A").

1 Based on the foregoing, Plaintiffs requests that the Wikileaks Defendants and
 2 any other persons be precluded from offering oral argument at the hearing on the
 3 Application and TRO and OSC re issuance of the Preliminary Injunction, and that
 4 the Court find that the failure of the Wikileaks Defendants to file any opposition
 5 papers creates an inference that the Application is meritorious. *Gwaduri v. I.N.S.*,
 6 362 F.3d 1144, 1146 (9th Cir. 2004) (Where a party fails to file timely opposition
 7 to a motion, it is “well-within” the court’s discretion to determine that such failure
 8 is “tantamount to a concession that its position in the litigation was not substantially
 9 justified.”); *Weil v. Seltzer*, 873 F.2d 1453, 1459 (D.C. Cir. 1989) (Holding that a
 10 party who fails to file an opposition to a motion is deemed to have waived opposition
 11 and may not be heard to complain on appeal).

12 Wherefore, Plaintiffs respectfully request that the Application and TRO and
 13 OSC re issuance of the Preliminary Injunction be granted in its entirety and the
 14 Preliminary Injunction issue.

15 CONCLUSION

16 Based on the foregoing, Plaintiffs respectfully request that this Court issue a
 17 Preliminary Injunction in the form set forth in the Amended [Proposed] Preliminary
 18 Injunction submitted herewith, and for such other alternative and further relief as the
 19 Court may deem to be just and appropriate.

20
 21 DATED: February 22, 2008

Respectfully submitted,

LAVELY & SINGER
 PROFESSIONAL CORPORATION
 MARTIN D. SINGER
 WILLIAM J. BRIGGS, II
 EVAN N. SPIEGEL

24
 25 By: /s/ William J. Briggs, II

26 WILLIAM J. BRIGGS, II
 27 Attorneys for Plaintiffs BANK JULIUS
 28 BAER & CO. LTD and JULIUS BAER
 BANK AND TRUST CO. LTD