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1 **MARTIN D. SINGER, ESQ. (BAR NO. 78166)**
WILLIAM J. BRIGGS, II, ESQ. (BAR NO. 144717)
2 **EVAN N. SPIEGEL, ESQ. (BAR NO. 198071)**
LAVELY & SINGER PROFESSIONAL CORPORATION
3 2049 Century Park East, Suite 2400
Los Angeles, California 90067-2906
4 Telephone: (310) 556-3501
Facsimile: (310) 556-3615
5 E-mail: wbriggs@lavelysinger.com
E-mail: espiegel@lavelysinger.com

6 Attorneys for Plaintiffs
7 **BANK JULIUS BAER & CO. LTD and**
JULIUS BAER BANK AND TRUST CO. LTD

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

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

14 Plaintiffs,

15 v.

16 **WIKILEAKS, an entity of unknown**
17 **form, WIKILEAKS.ORG, an entity**
of unknown form; DYNADOT,
18 **LLC, a California limited liability**
corporation, and DOES 1 through
19 **10, inclusive,**

20 Defendants.

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

PLAINTIFFS' MEMORANDUM OF
POINTS & AUTHORITIES IN
SUPPORT OF APPLICATION FOR
TRO AND OSC RE PRELIMINARY
INJUNCTION; DECLARATIONS OF
CHRISTOPH HIESTAND AND EVAN
SPIEGEL IN SUPPORT THEREOF

[Filed Concurrently With: Ex Parte
Application for TRO and OSC re
Preliminary Injunction; Memorandum of
Points & Authorities in Support of
Application for TRO and OSC re
Preliminary Injunction; Ex Parte
Administrative Motion to File Under Seal
Selected Evidence Exhibits; Notice of
Lodgement; [Proposed] Order to Seal
Selected Exhibits; Request for Judicial
Notice; [Proposed] TRO and OSC Re
Preliminary Injunction]; and [Proposed]
Order Granting Preliminary Injunction]

DATE: Submission
TIME: Submission
CTRM: 2, 17th FL

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1 below). (Hiestand Decl., ¶¶14-15). A Swiss newspaper called *Die Weltwoche*
2 published an article on June 23, 2005, in which the initials of the person who had
3 leaked the confidential information were described as being "RE"; and who was also
4 described as having formerly worked for JBBT. (Id.).

5 Investigations by the Authorities

6 Only a very limited number of people, of which Elmer was one, would have
7 had access to the data and documents. Once this and other information came to
8 light, BJB filed a criminal complaint against Elmer with the public prosecutor in
9 Zurich, Switzerland. (Id., ¶16). A subsequent police search of Elmer's properties
10 unequivocally uncovered further confidential bank-client data and documents in
11 Elmer's possession. Investigations have implicated Elmer as responsible for the
12 leaked confidential bank-client data. (Id.). Elmer was arrested and detained for
13 approximately one month by the Swiss authorities before he was released pending
14 an on-going criminal investigation and proceedings. (Id., ¶16-17).

15 Elmer is the subject of multi-national criminal investigations related to not
16 only the above referenced theft of confidential records, but also related to his
17 attempted extortion and a campaign of threats and terrorist threats against Plaintiffs
18 and certain of its employees (e.g., death and bomb threats, including reference to
19 "9/11", and threatening letters containing "white powder" sent to the premises of
20 the Plaintiffs in New York and Zurich). (Id., ¶¶17-19).

21 As one of many such possible examples, BJB's Deputy Group General
22 Counsel received an e-mail, on August 7, 2007, stating, in part: "*it is about time to*
23 *let you know my hunter is after you. You are number one on my list ... It is not the*
24 *first job the hunter did and execution is his strength. ... Thank you for being so kind*
25 *to me but now we need to get rid of you. Regards the Hunter*". (Hiestand Decl., ¶18,
26 Exh. "E").

27 As an example of the multiple terrorist threats, a letter sent September 7, 2007
28 to BJB's Zurich bank branch, stated:

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“There will be an explosion the Bank today, Friday, at 11.00PM which will remind everyone on [sic] the September 11th!”

(Hiestand Decl., ¶19, Exh. “F”).

In or about November 2006, Elmer filed a criminal complaint against BJB and several employees on the basis that it/they had allegedly been stalking him (by use of a security expert who traced the various tortious and illegal conduct to Elmer). Elmer’s claim was entirely without merit, and subsequently dismissed as such by the relevant authorities on December 11, 2007. (Id., ¶20). The respective decision, which according to its distribution list was sent by the authorities only to Elmer, was subsequently published on Wikileaks.org (in a folder “Bank Julius Baer v. Rudolf Elmer”) as well. (Id.).

Publication of Documents on Wikileaks

Between November and December 2007, Elmer provided several documents relating to BJB and JBBT to the Wikileaks Website. These contained various untrue allegations about the Plaintiffs but did not contain any of Plaintiffs’ confidential information. (Hiestand Decl., ¶21). In or about mid-December 2007, Elmer provided a letter to Wikileaks, which they posted onto the Wikileaks.org Website and commented on and summarized, containing the judicial denial notice issued to Elmer from Swiss authorities. Plaintiffs do not contend that the posting of the document was wrongful or that said document should be removed. However, the posts made it apparent that Elmer was a former employee of Plaintiffs, was bound by a confidentiality agreement and various banking privacy laws of Switzerland and the Cayman Islands, and was the person responsible for providing information about the Julius Baer bank to the owners/operators of the Wikileaks Website. (Id., ¶22).

Subsequently, commencing on or about January 13, 2008, Elmer began posting hundreds of documents containing stolen or wrongfully obtained and disclosed confidential banking records belonging to Plaintiffs, including altered

204

1 Based on the above, including that injunctive relief will not cause any
2 economic or other harm to Defendants, it is respectfully requested that the Court
3 require that Plaintiffs post no bond, or, at most, only a nominal bond in connection
4 with the requested injunctive relief.

5 IV.

6 CONCLUSION

7 Based on the foregoing, Plaintiffs respectfully request that this Court issue a
8 Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction
9 in the form set forth in the [Proposed] Temporary Restraining Order and Order to
10 Show Cause re Preliminary Injunction submitted herewith, and for such other
11 alternative and further relief as the Court may deem to be just and appropriate.

12 Respectfully submitted,

13 DATED: February 7, 2008

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

16 /s/ William J. Briggs, II

17 By: _____
WILLIAM J. BRIGGS, II
Attorneys for Plaintiffs BANK JULIUS
18 BAER & CO. LTD and JULIUS BAER
19 BANK AND TRUST CO. LTD
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