

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

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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,)

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

14 Plaintiffs,

DECLARATION OF EVAN SPIEGEL
IN SUPPORT OF PLAINTIFFS'
SUPPLEMENTAL BRIEF
IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION RE
RESPONSE TO THE REPORTERS
COMMITTEE ET. AL.'S PROPOSED
AMICI CURIAE BRIEF

15 v.

16 **WIKILEAKS, an entity of unknown**)
form, WIKILEAKS.ORG, an entity)
17 **of unknown form; DYNADOT,**)
LLC, a California Limited Liability)
18 **Corporation, and DOES 1 through**)
19 **10, inclusive,**)

20 Defendants.

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DECLARATION OF EVAN SPIEGEL

I, EVAN SPIEGEL, declare as follows:

1. I an attorney at law duly qualified to practice before the Courts of the State of California, and am an attorney with the firm of Lavelly & Singer Professional Corporation, attorneys for Plaintiffs Bank Julius Baer & Co. Ltd and Julius Baer Bank and Trust Co. Ltd. The facts stated herein are stated of my own personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto. As to those matters stated on the basis of information and belief, I am so informed and believe those matters to be true.

2. This Declaration is made in support of Plaintiffs Bank Julius Baer & Co. Ltd’s (“BJB”) and Julius Baer Bank and Trust Co. Ltd’s (“JBBT”) (collectively, “Julius Baer” and/or “Plaintiffs”) Supplemental Brief In Support of Application for Preliminary Injunction re Response to the Reporters Committee et. al.’s Proposed Amici Curiae Brief and issued raised therein, in the above captioned matter.

3. The facts of this matter are more fully set forth in the Complaint, in Plaintiffs’ Application for TRO and Preliminary Injunction, Application for Alternative Service, and Plaintiffs’ other pleadings on file in this matter, which are incorporated herein by reference. This brief does not attempt to address all of the points raised by the Amici Curiae The Reporters Committee for Freedom of the Press et. al. because of obvious time constraints. Instead, it focuses on the core issue presented to this Court. Namely, whether Wikileaks’ posting of stolen confidential bank and financial information constitutes a grave threat to the constitutional privacy rights of the JB bank customers sufficient to justify issuance of an injunction. The brief also briefly addresses the fact that Wikileaks is not protected by any immunity, and that the Amici Curiae lack standing to raise new issues or to seek to manage the case through motion practice.

1 4. Wikileaks and Wikileaks.org and Does 1-10 (collectively, the
2 “Wikileaks Defendants”) are admittedly hiding their true identities and physical
3 whereabouts, and that of their owners, operators and registrants. At the same time,
4 despite notice of the Temporary Restraining Order (the “TRO”) and their own
5 written acknowledgment of the TRO, the Wikileaks Defendants continue under their
6 veil of anonymity to operate and display, post and disseminate the JB Property.

7 5. The Complaint and Application for TRO and OSC re Preliminary
8 Injunction allege and provide supporting exhibit evidence that the Defendants did not
9 merely provide an online forum upon which, without their involvement, a third-party
10 posted harmful speech or engaged in harmful conduct. The pleadings allege and
11 evidence supports the allegations that, in this matter, a third-party did not solely
12 himself post harmful speech, nor even the stolen content, the Wikileaks Defendants
13 did so. The Wikileaks have admitted that they are actively engaged in the
14 publication of the documents at issue, and have stated that they will “keep on
15 publishing, ..., Wikileaks will step up publication of documents ...” Attached hereto
16 as Exhibit “A” is a true and correct copy of printouts from the Wikileaks Websites,
17 containing Wikileaks statement that “Wikileaks will keep on publishing” the stolen
18 property and other documents. Attached hereto as Exhibit “B” is a true and correct
19 copy of printouts from the Wikileaks Websites, an example, from many, evidencing
20 content and extensive edits provided by Wikileaks. See also, Application for TRO,
21 Documents Filed Under Seal, Exhs. “A” through “O” for further examples of
22 content provided by Wikileaks.

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EXHIBIT A

Wikileaks.org under injunction

From Wikileaks

Wikileaks Press Release

WIKILEAKS.ORG DOWN AFTER EX-PARTE LEGAL ATTACK BY CAYMAN ISLANDS BANK

http://wikileaks.be/wiki/Wikileaks.org_under_injunction

Contacts: <http://wikileaks.be/wiki/Contact>

Mon Feb 18 00:00:00 GMT 2008

The following release has not been proofed due to time constraints.

Transparency group Wikileaks forcibly censored at ex-parte Californian hearing -- ordered to print blank pages -- 'wikileaks.org' name forcibly deleted from Californian domain registrar -- the best justice Cayman Islands money launderers can buy?

When the transparency group Wikileaks was censored in China last year, no-one was too surprised. After all, the Chinese government also censors the Paris based Reporters Sans Frontiers and New York Based Human Rights Watch. And when Wikileaks published the secret censorship lists of Thailand's military Junta, no-one was too surprised when people in that country had to go to extra lengths to read the site. But on Friday the 15th, February 2008, in the home of the free and the land of the brave, and a constitution which states "Congress shall make no law... abridging the freedom of speech, or of the press", the Wikileaks.org press was shutdown:

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

ORDER GRANTING PERMANENT INJUNCTION

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

[..]

IT IS HEREBY ORDERED:

[..]

Dynadot shall immediately clear and remove all DNS hosting records for the wikileaks.org domain name and prevent the domain name from resolving to the wikileaks.org website or any other website or server other than a blank park page, until further order of this Court.

The Cayman Islands is located between Cuba and Honduras. In July 2000, the United States Department of the Treasury Financial Crimes Enforcement Network issued an advisory states stating that there were "serious deficiencies in the counter-money laundering systems of the Cayman Islands", "Cayman Islands law makes it impossible for the supervisory and regulatory authority to obtain information held by financial institutions regarding their client's identity", "Failure of financial institutions in the Cayman Islands to report suspicious transactions is not subject to penalty" and that "These deficiencies, among others, have caused the Cayman Islands to be identified by the Financial Action Task Force on Money Laundering (The 'FATF') as non-cooperative in the fight against money laundering". As of 2006 the U.S. State Department listed the Cayman Islands in its money laundering "Countries of Primary Concern".

The Cayman's case is not the first time Wikileaks has tackled bad banks. In the second half of last year Wikileaks exposed over \$4,500,000,000's worth of money laundering including by the former president of Kenya, Daniel Arap Moi (see http://wikileaks.be/wiki/The_looting_of_Kenya_under_President_Moi which became the Guardian's front page story in September 2007 and swung the Kenyan vote by 10% leading into the December 2007 election and http://wikileaks.be/wiki/A_Charter_House_of_horrors reported in the Nairobi paper The Standard and now the subject of a High Court Case in Kenya).

To find an injunction similar to the Cayman's case, we need to go back to Monday June 15, 1971 when the New York Times published excerpts of of Daniel Ellsberg's leaked "Pentagon Papers" and found itself enjoined the following day. The Wikileaks injunction is the equivalent of forcing the Times' printers to print blank pages and its power company to turn off press power. The supreme court found the Times censorship injunction unconstitutional in a 6-3 decision.

The Wikileaks.org injunction is ex-parte, engages in prior restraint and is clearly unconstitutional. It was granted on Thursday afternoon by California district court judge White, Bush appointee and former prosecutor.

The order was written by Cayman Island's Bank Julius Baer lawyers and was accepted by judge White without amendment, or representations by Wikileaks or amicus. The case is over several Wikileaks articles, public commentary and documents dating prior to 2003. The documents allegedly reveal secret Julius Baer trust structures used for asset hiding, money laundering and tax evasion. The bank alleges the documents were disclosed to Wikileaks by offshore banking whistleblower and former Vice President the Cayman Island's operation, Rudolf Elmer. Unable to lawfully attack Wikileaks servers which are based in several countries, the order was served on the intermediary Wikileaks purchased the 'Wikileaks.org' name through -- California registrar Dynadot, who then used its access to the internet website name registration system to delete the records for 'Wikileaks.org'. The order also enjoins every person who has heard about the order from from even linking to the documents.

In order to deal with Chinese censorship, Wikileaks has many backup sites such as wikileaks.be (Belgium) and wikileaks.de (Germany) which remain active. Wikileaks never expected to be using the alternative servers to deal with censorship attacks, from, of all places, the United States.

The order is clearly unconstitutional and exceeds its jurisdiction.

Wikileaks will keep on publishing, in-fact, given the level of suppression involved in this case, Wikileaks will step up publication of documents pertaining to illegal or unethical banking practices.

Wikileaks has six pro-bono attorney's in S.F on roster to deal with a legal assault, however Wikileaks was given only hours notice "by email" prior to the hearing. Wikileaks was NOT represented. Wikileaks pre-litigation California council Julie Turner attended the start of hearing in a personal capacity but was then

asked to leave the court room.

White signed the order, drafted by the Cayman Islands bank's lawyers without a single amendment.

The injunction claims to be permanent, although the case is only preliminary.

Wikileaks remains available publishing from non-US, non-Chinese jurisdictions including <http://wikileaks.cx/> and <http://wikileaks.be/>. See http://wikileaks.cx/wiki/Wikileaks:Cover_Names for more.

http://wikileaks.cx/wiki/Bank_Julius_Baer_vs_Wikileaks

<http://wikileaks.cx/wiki/images/Dynadot-injunction.pdf>

http://wikileaks.cx/wiki/Die_Akten_des_Hurricane_Man

http://wikileaks.cx/wiki/Clouds_on_the_Cayman_tax_heaven

Retrieved from "https://wikileaks.be/wiki/Wikileaks.org_under_injunction"

Categories: Analyses | United States | Grand Cayman

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EXHIBIT B

BJB - H [REDACTED], Frankfurt Steuerbetrug EUR 15 mil

From Wikileaks

File

bjb-h [REDACTED].zip (click to view full file)

Summary

Mr [REDACTED] of Frankfurt, Germany is allegedly holding up to EUR 15.000.000,00 related to Bowsprit Investments in a bank account with Bank Julius Baer in Cayman Islands, tax-evaded. The leaker encourages journalists to investigate into money laundry via the Cayman Islands.

Context

Germany

Wikileaks release date

Sunday January 13, 2008

Note

Bank Julius Baer appears to be involved in at least one acrimonious legal dispute (Bank Julius Baer vs. Rudolf Elmer) with a former employee. Stakes are high on both sides and mis-attributed messages have been posted to the the public 'Talk' pages associated with these documents. Readers are reminded that the veracity of the material and in particular its interpretation are still open questions.

File size in bytes

139355

File type information

Zip archive data, at least v2.0 to extract

Cryptographic identity

SHA256 51dbed21a2072f3e68c6093c2e08a7e506d0136fba82209eb230dabe32bc51e0

Description (as provided by the original submitter)

Herr [REDACTED] haelt in der Gesellschaft Bowsprit in den Cayman Islands EUR 15 Mio, die er am deutschen Steuerfiskus nicht offengelegt hatte. Dies ist von Wichtigkeit, den es zeigt wie eine Deutscher seine Gelder ueber die gresste Schweiz Privatbank auf der Pirateninsel Cayman versteckt. Es geht hier um die Deutschen Buerger, die sich bewusst werden muessen, dass man aus ethischen und moralischen Gruenden keinen Steuerbetrug betreibt und man auch erwischt wird. Herr [REDACTED], Freiherr von Stein 16, 6000 Frankfurt 70 wird die Richtigkeit der Daten verifizieren. Journalisten sollten offenlegen, dass die Caymans immer noch fuer aktive Steuerhinterziehung, -betrug und sogar Geldwaescherei genutzt werden. Herr [REDACTED] ist im Sinne des deutschen Gesetzes hier bereits ein Geldwaescher und muss wahrscheinlich mit einer mehrjaehrigen Haftstrafe rechnen, sollten man ihn als schuldig werten. Tatsache ist, dass er es ist, aber vielleicht kommt er mit der Verjaehrungsfrist von 5 Steuerjahre weg oder andere unsaubere Methoden.

Klar es handelt sich wieder um die Bank Julius Baer und wir denken, dass dies ein weiterer Fall ist, der die deutschen Steuerfluechtlinge verunsichern soll.

Unless otherwise specified the document described here:

- * • Was first publicly revealed by Wikileaks
- At that time was classified, confidential, censored or otherwise withheld from the public.
- Is of substantial political, diplomatic or ethical significance.
- Has been verified if the *analysis*, *summary* or *note* fields indicate, otherwise has not (yet) been verified. Most documents come in from journalists. Frauds are extremely rare, but possible.

Retrieved from "https://wikileaks.be/wiki/BJB_-_██████████%2C_Frankfurt_Steuerbetrug_EUR_15_mil"

Categories: Leaked files | Analysis requested | Germany | 2008 | 2008-01 | English | Switzerland | Grand Cayman

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BJB - Henri Steinberger, Frankfurt Steuerbetrug EUR 15 mil

From Wikileaks

Revision history

View logs for this page

(Latest | Earliest) View (previous 50) (next 50) (20 | 50 | 100 | 250 | 500).

Diff selection: mark the radio boxes of the versions to compare and hit enter or the button at the bottom.

Legend: (cur) = difference with current version, (last) = difference with preceding version, M = minor edit.

Compare selected versions

- (cur) (last) 22:51, 15 January 2008 Souls (Talk | contribs) (2,590 bytes)
- (cur) (last) 21:59, 15 January 2008 Wikileaks (Talk | contribs) (2,304 bytes)
- (cur) (last) 17:30, 14 January 2008 Souls (Talk | contribs) (1,893 bytes)
- (cur) (last) 17:24, 14 January 2008 Souls (Talk | contribs) (1,884 bytes)
- (cur) (last) 16:32, 14 January 2008 Souls (Talk | contribs) (1,661 bytes)
- (cur) (last) 22:50, 13 January 2008 Wikileaks (Talk | contribs) m (BJB - H██████████, Frankfurt Steuerbetrug EUR 15 Mil moved to BJB - H██████████, Frankfurt Steuerbetrug EUR 15 mil)
- (cur) (last) 21:44, 13 January 2008 Wikileaks (Talk | contribs) (1,534 bytes)
- (cur) (last) 21:14, 13 January 2008 Wikileaks (Talk | contribs) (228 bytes) (Importing text file)

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