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 12 **BANK JULIUS BAER & CO. LTD and**
 13 **JULIUS BAER BANK AND TRUST CO. LTD**

14 **UNITED STATES DISTRICT COURT**
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 **BANK JULIUS BAER & CO.**
 18 **LTD, a Swiss entity; and JULIUS**
 19 **BAER BANK AND TRUST CO.**
 20 **LTD, a Cayman Islands entity,**

21 Plaintiffs,

22 v.

23 **WIKILEAKS, an entity of unknown**
 24 **form, WIKILEAKS.ORG, an entity**
 25 **of unknown form; DYNADOT,**
 26 **LLC, a California limited liability**
 27 **corporation, and DOES 1 through**
 28 **10, inclusive,**

Defendants.

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

PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE PURSUANT TO
FRCP RULE 44.1 RE: (1) CAYMAN
ISLANDS' CONFIDENTIAL
RELATIONSHIPS (PRESERVATION)
LAW 16 of 1976; AND (2) SWISS
FEDERAL LAW ON BANKS AND
SAVINGS BANKS, ARTICLE 47; AND
DECLARATIONS OF MAC IMRIE
AND CHRISTOPH HIESTAND 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;
 Notice of Lodgement; [Proposed] Order to
 Seal Selected Exhibits; [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 **TO THE COURT AND TO ALL PARTIES HEREIN:**

2 Plaintiffs BANK JULIUS BAER & CO. LTD (“BJB”) and JULIUS BAER
3 BANK AND TRUST CO. LTD (“JBBT”) (collectively, “Julius Baer” and/or
4 “Plaintiffs”) hereby request that, pursuant to FRCP Rule 44.1, the Court take
5 judicial notice of both Swiss and Cayman Islands Laws concerning privacy,
6 confidentiality and protection of banking records and data and of professional
7 business information, specifically: (i) Cayman Islands’ Confidential Relationships
8 (Preservation) Law 16 of 1976, 1995 Revision (“Cayman Islands CRP Law”); and
9 (ii) Article 47 of the Swiss Federal Law on Banks and Savings Banks, of November
10 8, 1934, language of December 27, 2006, adopted by The Federal Assembly of the
11 Swiss Confederation (“Swiss FLBSB Law”).

12 Attached hereto as Exhibit “A” is a sworn declaration of Mac Imrie, an
13 attorney at law in the Cayman Islands, partner at the international law firm of
14 Maples & Calder and counsel for JBBT; and attached thereto is a true and correct
15 copy of the Cayman Islands CRP Law.

16 The Cayman Islands CRP Law protects confidentiality of all Cayman Island
17 banking records and data, and broadly provides, in *inter alia*, that it “has application
18 to all confidential information with respect to business of a professional nature which
19 arises in or is brought to the Islands and to all persons coming into possession of
20 such information at any time thereafter whether they be within the jurisdiction or
21 thereout.” Cayman Islands CRP Law ¶3(1).

22 Attached hereto as Exhibit “B” is a sworn declaration of Christoph Hiestand,
23 an attorney at law in the nation of Switzerland and the Deputy Group General
24 Counsel for Julius Baer Group, to which Plaintiffs belong; and attached thereto is
25 a true and correct copy of a certified translated copy of the Swiss FLBSB Law.

26 The Swiss FLBSB Law protects confidentiality of all Swiss banking records
27 and data, and provides, in *inter alia*, that “whoever divulges a secret entrusted to
28 him in his capacity as officer, employee, ... or has become aware thereof in this

1 capacity, whoever tries to induce others to violate professional secrecy, shall be
2 punished by imprisonment ...” and that the “violation of professional secrecy
3 remains punishable even after termination of the official or employment relationship
4 ...” Swiss FLBSB Law, Art. 47.

5 Plaintiffs contend in support of their Application for TRO and OSC re
6 Preliminary Injunction, and anticipate that they will likewise contend at trial, that the
7 solicitation of upload and posting of leaked confidential and protected consumer bank
8 files, records and account information stolen or otherwise wrongfully obtained from
9 a Cayman Islands and/or Swiss bank, and the subsequent use, posting, display
10 and/or dissemination of said documents and information contained therein, was and
11 is wrongful, tortious and illegal under applicable Cayman Islands and Swiss Laws.
12 Accordingly, in support of said allegations and such evidence, Plaintiffs request that
13 the Court take judicial notice of the relevant provisions of Cayman Islands and Swiss
14 Laws. See, *Reebok Int’l Ltd. v. McLaughlin*, 49 F.3d 1387, 1392 & n.4 (9th Cir.
15 1995).

16 FRCP Rule 44.1 provides as follows:

17 “A party who intends to raise an issue concerning the law of a
18 foreign country shall give notice by pleadings or other reasonable
19 written notice. The court, in determining foreign law, may
20 consider any relevant material or source, including testimony,
21 whether or not submitted by a party or admissible under the
22 Federal Rules of Evidence. The court’s determination shall be
23 treated as a ruling on a question of law.”

24 Although a sworn statement by an attorney (*i.e.*, a formal expert opinion) is
25 not a prerequisite to proving foreign law when an issue concerning the law in a
26 foreign country arises, Plaintiffs have nonetheless provided the Court with sworn
27 statements thereof. *U.S. v. First Nat. Bank of Chicago*, 699, F.2d 341, 343-344 (7th
28 Cir. 1983); and see *Kalmich v. Bruno*, 553 F.2d 549, 555, n. 4 (7th Cir. 1977), *cert*

1 *denied* 434 U.S. 940, 98 S.Ct. 432, 54 L.Ed.2d 300 (the court held that an unsworn
2 opinion letter as to the law of Yugoslavia, not subject to cross-examination, which
3 was prepared by plaintiff's Yugoslavian law expert and offered for the first time in
4 connection with plaintiff's motion to alter judgment, was relevant and properly
5 considered by the trial court). Accordingly, the accompanying foreign laws are
6 properly submitted and should be considered by the Court in this matter.

7 For the foregoing reasons, Plaintiffs respectfully request that the Court take
8 judicial notice of the relevant sections of both the Cayman Islands CRP Law and the
9 Swiss FLBSB Law.

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DATED: February 7th, 2008

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

By: _____ /s/
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BAER & CO. LTD and JULIUS BAER
BANK AND TRUST CO. LTD