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12 Attorneys for *Amici Curiae* The Reporters Committee for Freedom of the Press; the American
13 Society of Newspaper Editors; the Associated Press; Citizen Media Law Project; The E.W.
14 Scripps Co.; Gannett Co., Inc.; The Hearst Corporation; the *Los Angeles Times*; National
15 Newspaper Association; Newspaper Association of America; Radio-Television News Directors
16 Association; and the Society of Professional Journalists

16 IN THE UNITED STATES DISTRICT COURT

17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 SAN FRANCISCO DIVISION

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

21 Plaintiffs,)

22 v.)

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

26 Defendants.)

Case No. CV08-0824 JSW

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE BRIEF OF *AMICI
CURIAE*; MEMORANDUM OF POINTS
& AUTHORITIES IN SUPPORT
THEREOF**

Date: February 29, 2008

Time: 9:00 a.m.

Courtroom: 2, 17th Floor

Oral Argument Requested

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DAVIS WRIGHT TREMAINE LLP

1 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 NOTICE IS HEREBY GIVEN that The Reporters Committee for Freedom of the Press;
3 the American Society of Newspaper Editors; the Associated Press; Citizen Media Law Project;
4 The E.W. Scripps Co.; Gannett Co., Inc.; The Hearst Corporation; the *Los Angeles Times*;
5 National Newspaper Association; Newspaper Association of America; the Radio-Television News
6 Directors Association; and the Society of Professional Journalists (collectively "*Amici*") hereby
7 move for leave to file a Brief *Amici Curiae*, a copy of which has been filed concurrently with this
8 Motion. This Motion is based upon this Notice of Motion, Memorandum of Points and
9 Authorities in Support of Motion, and upon the Brief of *Amici Curiae*. Counsel for *Amici* has
10 conferred with Plaintiffs' counsel concerning this Motion, and Plaintiffs' counsel opposes *Amici's*
11 filings.

12 DATED this 26th day of February, 2008.

13 Respectfully submitted,

14 DAVIS WRIGHT TREMAINE LLP

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27 Attorneys for *Amici Curiae*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

3 *Amici Curiae* respectfully request that this Court grant them leave to file their Brief, filed
4 herewith, opposing continuation of the Amended Temporary Restraining Order of February 15,
5 2008 and advising reconsideration of the Permanent Injunction. *Amici* consist of news
6 organizations and members of the press who gather and disseminate news and information of
7 public interest in the Ninth Circuit and throughout the nation, and organizations dedicated to
8 preserving rights of free speech on the Internet guaranteed by the First Amendment. *Amici* have a
9 significant interest in this case because its outcome will undoubtedly affect their free-speech
10 rights.

11 This case involves critical First Amendment concerns that have not been briefed for the
12 Court regarding prior restraints on publication. Because Defendant Wikileaks has not appeared in
13 this case, the issue of the Court's Permanent Injunction and Amended Temporary Restraining
14 Order of February 15, 2008 as prior restraints on Defendant's First Amendment rights of speech
15 have not yet been addressed in any briefing before the Court. Instead, because Plaintiffs Bank
16 Julius Baer & Co. and Julius Baer Bank and Trust Co. have been the only parties before the Court,
17 the only interests addressed have been those involved with a standard request for injunctive relief.
18 However, the material at issue is constitutionally protected speech; the restraint enjoining the
19 speech was ordered without addressing the First Amendment considerations required by the U.S.
20 Constitution. Briefing on the First Amendment issues involving prior restraints will aid the court
21 in resolving this case. *Miller-Wohl Co. v. Comm'r of Labor & Industry*, 694 F.2d 203, 204 (9th
22 Cir. 1982) ("classic role of amicus curiae" is to "draw[] the court's attention to law that escaped
23 consideration"); *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir.
24 1997) ("An amicus brief should normally be allowed when a party is not represented competently
25 or *is not represented at all ...*") (emphasis added). Particularly when constitutional interests of the
26 press and public are at stake, the court must act as guardian of those interests and avoid an
27 unconstitutional result, even in the absence of adverse parties before the court. *Pacific Gas and*
28 *Elec. Co. v. Public Utilities Comm'n of Cal.*, 475 U.S. 1, 8 (1986) (plurality opinion) (First

1 Amendment “protects the public’s interest in receiving information”); *United States v. Leon*, 468
2 U.S. 897, 938 (1984) (“the judiciary’s role [is] as the guardian of the people’s constitutional
3 liberties”).

4 As explained in the accompanying brief of *Amici Curiae*, prior restraints are fundamentally
5 at odds with the First Amendment and presumptively unconstitutional. *Nebraska Press Ass’n v.*
6 *Stuart*, 427 U.S. 539 (1976). The U.S. Supreme Court, which has maintained a longstanding
7 hostility toward prior restraints on speech and publication, categorized them as “the most serious
8 and the least tolerable infringement on First Amendment rights.” *Id.* at 559.

9 Any prior restraint against expression requires the party seeking the prior restraint to
10 overcome a heavy burden. *Org. for a Better Austin v. Keefe*, 402 U.S. 415 (1971). This Circuit
11 has held that “[i]t is the duty of those who attempt to enjoin speech to show that the situation falls
12 within the exceptions to normal first amendment protection.” *Johansen v. San Diego County Dist.*
13 *Council of Carpenters*, 745 F.2d 1289, 1294 (9th Cir. 1984) (citing *Keefe*, 402 U.S. at 419).
14 “Prior restraints may only be upheld if the government establishes that (1) the activity restrained
15 poses either a clear and present danger or a serious and imminent threat to a protected competing
16 interest; (2) the order is narrowly drawn; and (3) less restrictive alternatives are not available.”
17 *Levine v. United States Dist. Court*, 764 F.2d 590, 595 (9th Cir. 1985) (internal citations omitted).
18 These standards were not considered by the Court when it granted Plaintiffs’ request for injunctive
19 relief. It is the hope that *Amici* may provide the Court with the information needed to aid it in
20 evaluating the constitutionally required protection for the speech at issue here.

21 *Amici* respectfully request this Court allow them to provide the Court with information on
22 First Amendment concerns involved in this case that will have longstanding implications to the
23 members of the press and free speech organizations by granting its Motion for Leave to File Brief
24 of *Amici Curiae*. Granting this Motion will not delay the proceedings since the proposed *Amicus*
25 Brief accompanies this Motion. *Amici* respectfully request an opportunity to be heard at the
26 hearing on the preliminary injunction, currently scheduled for February 29, 2008.

27 DATED this 26th day of February, 2008.

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Respectfully submitted,

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Attorneys for *Amici Curiae*

APPENDIX A

CORPORATE DISCLOSURE STATEMENTS AND DESCRIPTIONS OF *AMICI***The Reporters Committee for Freedom of the Press**

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

American Society of Newspaper Editors

The American Society of Newspaper Editors is a professional organization of approximately 750 persons who hold positions as directing editors of daily newspapers in the United States and Canada. The purposes of the Society include assisting journalists and providing unfettered and effective press in the service of the American people. The American Society of Newspaper Editors has no parent corporation and no stock. ASNE is a "trade association" because it is a continuing association of numerous individuals operated for the purpose of promoting the general professional, legislative and other interests of the news media.

The Associated Press

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-for-Profit Corporation Law. AP's members include approximately 1,500 daily newspapers and 5,000 broadcast news outlets throughout the United States. AP has its headquarters and main news operations in New York City and maintains bureaus in 240 cities worldwide. AP news reports in print and electronic formats of every kind reach a subscriber base that includes newspapers, broadcast stations, news networks and online information distributors in 121 countries. The Associated Press is not a publicly held corporation and does not have a parent corporation.

1 **Citizen Media Law Project**

2 The Citizen Media Law Project (CMLP) provides education, research, and advocacy on free
3 speech, newsgathering, intellectual property, and other legal issues related to citizen media and
4 online speech generally. The CMLP is jointly affiliated with Harvard Law School's Berkman
5 Center for Internet & Society, a research center founded to explore cyberspace, share in its study,
6 and help pioneer its development, and the Center for Citizen Media, an initiative to enhance and
7 expand grassroots media. The CMLP is an unincorporated association hosted at Harvard Law
8 School, a non-profit educational institution, and has no parent corporation and no stock.

9 **The E.W. Scripps Co.**

10 The E.W. Scripps Company is a diverse media enterprise with 18 daily newspapers and numerous
11 weekly publications reaching approximately 1 million readers, nine broadcast television stations,
12 five national cable networks that reach more than 90 million households, an electronic commerce
13 and interactive media division and licensing and syndication division. The E.W. Scripps
14 Company, a publicly traded company, has no parent corporations and no publicly held corporation
15 owns 10 percent or more of its stock.

16 **Gannett Co., Inc.**

17 Gannett Co., Inc., an international news and information company, is the largest newspaper
18 publisher in the U.S. Gannett publishes 85 daily newspapers in the U.S., with a combined daily
19 paid circulation of approximately 7.2 million, including USA TODAY, with a circulation of
20 approximately 2.3 million. Gannett owns nearly 1,000 non-daily publications, including USA
21 Weekend, a weekly newspaper magazine, and the company's 23 television stations reach over 20
22 million households. As well, the company operates web sites integrated with its publishing and
23 broadcasting operations, with USATODAY.com being one of the most popular news sites on the
24 Web. Gannett Co., Inc. is publicly traded, has no parent corporation, and no publicly held
25 company owns 10% or more of its stock.

26 **The Hearst Corporation**

27 The Hearst Corporation is a diversified, privately held media company that publishes newspapers,
28 consumer magazines, and business publications. Hearst also owns a leading features syndicate, has

1 interests in several cable television networks, produces programming for television, and is the
2 majority owner of Hearst-Argyle Television, Inc., a publicly traded company that owns and
3 operates numerous television broadcast stations. The Hearst Corporation is privately owned, has
4 no parent corporations, and no publicly held corporation owns 10 percent or more of its stock.

5 **Los Angeles Times**

6 The *Los Angeles Times* is the largest daily metropolitan newspaper in the country, with a daily
7 readership of nearly 2.2 million and about 3.3 million on Sunday. It is published by Los Angeles
8 Times Communications LLC, a wholly owned subsidiary of Tribune Company, a publicly traded
9 company. Its Times Community News division publishes the Daily Pilot, Glendale News-Press,
10 Burbank Leader, Foothill Leader, the Huntington Beach Independent, Laguna Beach Coastline
11 Pilot, La Cañada Valley Sun, and Crescenta Valley Sun. The Times also maintains a number of
12 websites including www.latimes.com, a leading source of national and international news.
13 Tribune Company has no parent corporations, and no publicly held corporation owns 10% or more
14 of its stock.

15 **National Newspaper Association**

16 Established in 1885, the National Newspaper Association (NNA) is the national voice of
17 community newspapers. NNA represents owners, publishers, and editors of America's
18 community newspapers and with over 2,500 newspaper members, is currently the largest
19 newspaper association in the United States. The mission of the National Newspaper Association is
20 to protect, promote and enhance America's community newspapers. NNA is a 501(c)(6) non-profit
21 trade association with no subsidiaries.

22 **Newspaper Association of America**

23 The Newspaper Association of America is a nonprofit organization representing the interests of
24 more than 2,000 newspapers in the United States and Canada. Its members account for nearly 90
25 percent of the daily newspaper circulation in the United States and a wide range of non-daily
26 newspapers. One of NAA's key strategic priorities is to advance newspapers' First Amendment
27 interests, including the ability to gather and report the news. NAA is a non-stock corporation with
28 no parent company.

1 **The Radio-Television News Directors Association**

2 The Radio-Television News Directors Association is the world's largest and only professional
3 organization devoted exclusively to electronic journalism. RTNDA is made up of news directors,
4 news directors, news associates, educators and students in radio, television, cable and other
5 electronic media in more than 30 countries. RTNDA is committed to encouraging excellence in
6 the electronic journalism industry and upholding First Amendment freedoms. The Radio-
7 Television News Directors Association is a nonprofit organization with no parent company and
8 does not issue stock.

9 **The Society of Professional Journalists**

10 The Society of Professional Journalists is dedicated to improving and protecting journalism. It is
11 the nation's largest and most broad-based journalism organization, dedicated to encouraging the
12 free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as
13 Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry;
14 works to inspire and educate the next generation of journalists; and protects First Amendment
15 guarantees of freedom of speech and press. The Society of Professional Journalists is a non-stock
16 corporation with no parent company.

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