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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]**

***EX PARTE APPLICATION FOR:***  
***ORDER DEEMING SERVICE***  
***EFFECTED, OR IN THE***  
***ALTERNATIVE, PERMITTING***  
***ALTERNATIVE METHODS OF***  
***SERVICE OF SUMMONS AND***  
***COMPLAINT, OR ADDITIONAL***  
***TIME; AND MEMORANDUM OF***  
***POINTS AND AUTHORITIES***

[Filed Concurrently With:  
 Declaration Evan N. Spiegel In Support of  
 Thereof; and [Proposed] Order]

Date: [Submission]  
 Time: [Submission]  
 CTRM: 2, 17<sup>th</sup> FL

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

**2 PLEASE TAKE NOTICE THAT** on submission of this application, or as  
**3** soon thereafter as this matter may be heard in Courtroom 2 of the above entitled  
**4** Court located at 450 Golden Gate Avenue, San Francisco, California 94102,  
**5** Plaintiffs BANK JULIUS BAER & CO. LTD (“BJB”) and JULIUS BAER BANK  
**6** AND TRUST CO. LTD (“JBBT”) (collectively, “Julius Baer” and/or “Plaintiffs”) will and hereby do move the Court, on ex parte application, for an order: (i)  
**7** deeming Plaintiffs’ service of the Summons and Complaint on Defendants  
**8** WIKILEAKS and WIKILEAKS.ORG (the “Wikileaks Defendants”) valid and  
**9** effective; and (ii) deeming Plaintiffs’ service on the Wikileaks Defendants of the  
**10** Application for TRO and OSC Preliminary Injunction and OSC re TRO, and  
**11** supporting papers thereon (collectively, the “Application for OSC”), valid and  
**12** effective; *or in the alternative*, (iii) permitting alternative methods of service of  
**13** process on the anonymous hidden foreign Defendants, pursuant to Fed.R.Civ.Proc.,  
**14** Rule 4(f)(3), by means of e-mail to the Defendants’ last known valid e-mail  
**15** addresses without requirement of return receipt; *or* (iv) for additional time in which  
**16** to effect service on the foreign Defendants, pursuant to Fed.R.Civ.Proc., Rule 4(m);  
**17** and (v) for leave to conduct limited pre-service discovery on third-parties and  
**18** defendant Dynadot related to the issue of locating the Wikileaks Defendants’  
**19** physical local, and their owners and operators, in order to effect service of process.  
**20**

**21** Good cause exists for the relief requested in that Plaintiffs will suffer extreme  
**22** prejudice should the orders not issue, and due to the fact that Defendants are  
**23** avoiding service and are, apparently, located in a foreign country. This motion is  
**24** made pursuant to the express provisions of the Fed.R.Civ.Proc., Rule 4(f)(3) and  
**25** (m); and pursuant to the Ninth Circuit’s holding in *Rio Properties, Inc. v. Rio*  
**26** *Intern. Interlink*, 284 F.3d 1007, 1013-1017 (9th Cir. 2002) (upon emergency  
**27** motion and order, “service of process by email was proper”; and “service of process  
**28** under Rule 4(f)(3) is neither a ‘last resort’ nor ‘extraordinary relief.’”).

1 This application is based on this notice of ex parte application, the attached  
2 Memorandum of Points and Authorities, the records and pleadings on file in this  
3 action, matters of which this Court may take judicial notice, and upon such other  
4 oral and/or documentary evidence, if any, that may be presented at the time of the  
5 hearing on this matter.

6  
7 DATED: February 13, 2008

Respectfully submitted,

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

10 /s/ William J. Briggs, II  
11 By: \_\_\_\_\_  
12 WILLIAM J. BRIGGS, II  
13 Attorneys for Plaintiffs BANK JULIUS  
14 BAER & CO. LTD and JULIUS BAER  
15 BANK AND TRUST CO. LTD  
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# **MEMORANDUM OF POINTS AND AUTHORITIES**

## **I.**

### **INTRODUCTION AND SUMMARY**

This Ex Parte Application is made for an order (i) deeming prior service valid on WIKILEAKS and WIKILEAKS.ORG (the “Wikileaks” and/or the “Wikileaks Defendants”), or, in the alternative, (ii) permitting alternative methods of service of the Summons and Complaint and of the Application for TRO and Preliminary Injunction and supporting papers and OSC (the “Application re TRO”), pursuant to Fed.R.Civ.Proc., Rule 4(f)(3) and (h)(2); or (iii) for additional time to serve the hidden foreign defendants, pursuant to Rule 4(m); and (iv) for leave to conduct limited pre-service discovery to locate the Wikileaks Defendants. Good cause exists for this application in that the Wikileaks Defendants have received copies of the Summons and Complaint and the Application re TRO, are aware of and acknowledged the existence of the action, but have intentionally attempted to avoid service of process and are threatening further harm against Plaintiffs.

Plaintiffs BANK JULIUS BAER & CO. LTD’s (“BJB”) and JULIUS BAER BANK AND TRUST CO. LTD’s (“JBBT”) (collectively, “Julius Baer” and/or “Plaintiffs”) have attempted to effect service of the Summons and Complaint on the anonymous hidden Wikileaks Defendants. The Wikileaks Defendants, through one or more yet unidentified individuals or agents, are the owners, operators and/or registrants of the world wide web website operating under and at the domain name wikileaks.org (the “Website”). Wikileaks attempts to operate under a veil of anonymity, or as they term it “transparency,” to avoid service and imposition of liability for their admittedly wrongful and tortious conduct. See accompanying Declaration of Evan N. Spiegel (“Spiegel Decl.”), ¶¶3-5.

Despite the Wikileaks Defendants efforts to hide their identities and locations, Plaintiffs initiated service on February 11, 2008, by: (i) Priority Mail Return Receipt, on the Wikileaks Defendants’ only available and self-listed address, a post

1 office box for contact through its private anonymous domain “who-is” registration  
2 service provide and agent for contact; and by; (ii) fax notice and personal service to  
3 the Wikileaks Defendants’ self-acknowledged “Californian counsel Julie Turner”  
4 who has “agreed to represent Wikileaks in this matter” and has long been listed on  
5 the website as the designated legal representative for submission of legal notices  
6 (“Initial Service Efforts”). (Spiegel Decl., ¶¶7-10).

7       However, the Wikileaks Defendants are admittedly avoiding service of the  
8 Summons and Complaint and the Application re TRO and have refused to  
9 acknowledge service or make their true identities and physical whereabouts known.  
10 Despite both the Wikileaks Defendants’ and Ms. Turner’s acknowledgment of notice  
11 of this matter and that Ms. Turner is their “Californian counsel”, Ms. Turner now  
12 suddenly, and disingenuously, claims that she no longer represents the Wikileaks  
13 Defendants. (Spiegel Decl., ¶¶11-14). Only after Plaintiffs’ notice of and service  
14 of the Summons and Complaint and the Application re TRO to the Wikileaks  
15 Defendants’ designated contacts (*i.e.*, Ms. Turner and Dynadot), Wikileaks changed  
16 their domain registration records, revealed that they are purportedly located in the  
17 nation of Kenya, and have sought to have the Domain immediately transferred to  
18 another registrar outside this jurisdiction in advance of the OSC re Issuance of TRO.  
19 (Id). Accordingly, Defendants have confirmed their receipt of the Summons and  
20 Complaint and the Application re TRO and/or have demonstrated that they have  
21 actual notice of the action and proceedings.

22       Therefore, as provided for under Rule 4(f)(3), Plaintiffs respectfully request  
23 an order deeming Plaintiffs’ prior service of the Summons and Complaint and the  
24 Application re TRO on the Wikileaks Defendants valid, or, in the alternative,  
25 permitting alternative methods of service on the foreign Defendants by means of e-  
26 mail delivery to the Defendants’ last known valid e-mail addresses without  
27 requirement of return receipt. In addition, and/or in the alternative, if needed,  
28 Plaintiffs request additional time in which to effect service on the hidden foreign



Defendants pursuant to Rule 4(m).

Should the Court deny Plaintiffs' request for an order permitting alternative methods of service of process, Plaintiffs request leave to conduct limited pre-service discovery in an effort to locate and identify the Wikileaks Defendants.

## II.

### STATEMENT OF FACTS

The Wikileaks Defendants, through one or more yet unidentified individuals or agents, are the owners, operators and/or registrants of the world wide web website operating under and at the domain name wikileaks.org (the "Website").<sup>1</sup> Wikileaks attempts to operate under a veil of anonymity, or as they term it "transparency," to hide their true identities and locations. (Spiegel Decl., ¶4, Exh. "A"). The domain name wikileaks.org (the "Domain Name"), at which the Wikileaks Defendants operate their website (the "Website"), was registered through and is currently administered through an account with Dynadot, LLC ("Dynadot").

In order to hide their location, the Wikileaks Defendants use non-traceable "anonymous" e-mail addresses and operate a Website for the express stated purpose of providing "uncensorable," "simple and straightforward means for anonymous" and "untraceable mass document leaking," regardless of legality or authenticity. (Id., ¶5). In fact, in self-response to a question they posted on their own Website, "Is Wikileaks concerned about any legal consequences?", they state that "... we are prepared, structurally and technically, to deal with all legal attacks..."

In furtherance of their efforts to shield themselves from legal recourse, the Domain Name, until February 12, 2008 (as discussed below), was registered under a private anonymous domain "who-is" registration service which has allowed the Wikileaks Defendants to operate anonymously and hidden. By virtue of the terms of the private who-is registration service, Dynadot acts as the agent and

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<sup>1</sup> The facts of this matter are more fully set forth in the Complaint and in Plaintiffs' Application for TRO and Preliminary Injunction, which are incorporated herein by reference.



1 administrative contact for the registrant of the Domain Name through the listed “c/o  
2 Dynadot Privacy” contact information. (Spiegel Decl., ¶6, Exh. “B”).

3 The Wikileaks Defendants, although hiding their true names and locations,  
4 have provided various contact information on their Website.<sup>2</sup> (Id., ¶7).  
5 Commencing on or about January 15, 2008, Plaintiffs began sending legal notices  
6 to Wikileaks via its listed legal e-mail address, including stating that:

7 “Legal proceedings will be commenced... should the stolen documents  
8 at issue not be removed. Please provide contact information for your  
9 legal representatives in each of the three locations in order that we may  
10 transmit formal legal demands and notices with detailed information  
11 with regard to the claims and identifying the documents at issue” and  
12 that “we have been instructed to proceed with an action against you in  
13 federal court in California. This is your final warning -- if you desire  
14 to resolve this matter without the necessity of litigation, your counsel  
15 may contact the undersigned ...”

16 (Spiegel Decl., ¶7).

17 After a number of further e-mails, Plaintiffs’ counsel was provided with a  
18 name and e-mail address for Wikileaks’ California counsel, Julie Turner. Ms.  
19 Turner confirmed in writing, by e-mail letter dated January 21, 2008, sent from her  
20 wikileaks.org e-mail address of < juliewl@wikileaks.org> , in which she stated “My  
21 name is Julie Turner and I have agreed to represent WikiLeaks in connection with  
22 this matter.”<sup>3</sup> (Id., ¶8, Exh. “D”). Search of the Website revealed Ms. Turner’s  
23 address on the Website on the page listing addresses and contacts for submissions  
24 of “leaked” and “legal” documents. Julie Turner’s name and/or address and listing  
25

26 <sup>2</sup> The Wikileaks Defendants’ last known valid e-mail addresses, including as  
27 listed in their Domain registration listing, listed on their Website and from which  
28 Defendants and/or their agents have corresponded with Plaintiffs’ counsel, are:  
legal@wikileaks.org; wikileaks@wikileaks.org; and juliewl@wikileaks.org.

<sup>3</sup> Ms. Turner’s email included an in-line copy (below Ms. Turner’s e-mail) of  
the above referenced e-mail sent by Plaintiffs’ counsel to Wikileaks. (Id., ¶8).

1 as the authorized agent for service of legal submissions has been posted on the  
2 Wikileaks Website, in one form or another, since the Website was first created over  
3 a year ago. (Spiegel Decl., ¶¶4, 9, Exh. "A"). Wikileaks thereafter refused to  
4 resolve the matter without litigation. The Wikileaks did, however, post an article  
5 on their website on January 23, 2008, in which they confirmed that Ms. Turner is  
6 their legal counsel in this matter and they were informed that legal action was being  
7 initiated by Plaintiffs. (Id., ¶9, Exh. "E").

8 Plaintiffs initiated service on February 11, 2008, by: (i) Priority Mail Return  
9 Receipt, on the Wikileaks Defendants' only available and self-listed address, a post  
10 office box for contact through its private anonymous domain "who-is" registration  
11 service provide and agent for contact;<sup>4</sup> and by; (ii) fax notice and personal service  
12 to the Wikileaks Defendants' self-acknowledged "Californian counsel Julie Turner"  
13 who has "agreed to represent Wikileaks in this matter" and has long been listed on  
14 the website as the designated legal representative for submission of legal notices  
15 ("Initial Service Efforts"). (Id., ¶¶6, 8-10; See also, Proofs of Service filed with this  
16 Court, Docket Numbers 15-17 and 20-25).

17 Despite both the Wikileaks Defendants' and Ms. Turner's acknowledgment  
18 that Ms. Turner is their Californian counsel, Ms. Turner now suddenly for the first  
19 time, and disingenuously (on February 11, 2008), claims that she no longer  
20 represents the Wikileaks Defendants. (Id., ¶¶8, 9, 11). In one of Ms. Turner's own  
21 e-mail responses after receipt of notice of this matter and the Application for TRO,  
22 she has been so bold as to taunt Plaintiffs' counsel with regard to the service efforts,  
23 falsely attributing statements to opposing counsel, stating that "I suggest that you  
24 serve WikiLeaks directly. Mr. Spiegel assured me that he knew exactly who to serve  
25 there [*sic*]." (Id., ¶11, Exhs. "F"). Plaintiffs' counsel responded to Ms. Turner's  
26 numerous communications and disingenuous post-notice attempts to disassociate

27  
28 <sup>4</sup> Wikileaks was served through and one of two listed contacts for legal and  
other communications at: Wikileaks.org, John Shipton c/o Dynadot Privacy,  
Dynadot, LLC, P.O. Box 701, San Mateo, CA 94401.

1 herself from her long-time client Wikileaks by letters from William Briggs and Evan  
2 Spiegel, dated February 11, 2008 and February 12, 2008, respectively. (Id., ¶12,  
3 Exhs. "G" and "I").

4 Ms. Turner has acknowledged notice of this matter, and that notice has since  
5 been relayed by her to the Wikileaks Defendants. For example, on February 12,  
6 2008, the day after notice and service of the Application for TRO and pleadings in  
7 this matter on the Wikileaks' Defendants through their designated contacts/agents  
8 (*i.e.*, to Ms. Turner and Dynadot), the Wikileaks Defendants altered their domain  
9 who-is registration records. They removed the private anonymous domain "who-is"  
10 registration service. The registration records now reveal that the Wikileaks  
11 Defendants, are or include foreign defendants purportedly located in "Nairobi,  
12 Kenya". (Spiegel Decl., ¶13, Exh. "C" - a domain who-is registration print-out  
13 dated February 12, 2008). Further, on February 12th, in advance of the OSC re  
14 Issuance of TRO hearing, Wikileaks initiated a transfer order request to seek to  
15 immediately transfer the Domain Name to away from Dynadot to another registrar  
16 outside this jurisdiction. (Id., ¶13).

17 The Wikileaks Defendants refuse to provide any means of contacting them in  
18 person, other than by means of anonymous e-mail addresses, a non-residential postal  
19 box mailing address and an acknowledged legal counsel who suddenly, and  
20 curiously, claims to no longer represent them but is in active on-going  
21 communications with them and assisting them in this matter.

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1 III.

2 **DEFENDANTS SHOULD BE DEEMED SERVED OR, IN THE**  
 3 **ALTERNATIVE, PLAINTIFFS ARE ENTITLED TO AN ORDER**  
 4 **PERMITTING ALTERNATIVE SERVICE METHODS AND AN**  
 5 **ORDER EXTENDING TIME TO SERVE DEFENDANTS**  
 6

7 A. **Defendants Should Be Deemed Served by Receipt of the Priority Mail**  
 8 **Delivery and Copies to their Counsel of the Summons & Complaint and**  
 9 **the Application for TRO and Preliminary Injunction**

10 The Due Process Clause of the Fourteenth Amendment requires only that the  
 11 method of service be *reasonably calculated, under all circumstances, to apprise*  
 12 *interested parties of the pendency of the action* and afford them an opportunity to  
 13 present their objections. See, *Mullane v. Central Hanover Bank & Trust Co.*, 339  
 14 U.S. 306, 314 (1950). Paragraph (3) of subdivision (f) of Rule 4 provides for  
 15 “Service Upon Individuals in a Foreign Country ... by other means not prohibited  
 16 by international agreement as may be directed by the court.” Fed.R.Civ.Proc., Rule  
 17 4(f)(3) and (h)(2). See also, *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 108  
 18 S.Ct. 2104, 486 U.S. 694 (1988) (Hague Convention does not itself describe  
 19 standard for determining legal sufficiency of delivery of service of process).

20 Among the wide variety of alternative methods of service that courts have  
 21 approved are: service by mail to the defendant's last known address, publication,  
 22 delivery to the defendant's attorney-agent, telex, ordinary mail and e-mail to a  
 23 consistently used address. *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d  
 24 1007 (9<sup>th</sup> Cir. 2002) (approving service by e-mail upon emergency motion); *Int'l*  
 25 *Controls Corp. v. Vesco*, 593 F.2d 166, 176-78 (2d Cir.1979) (approving service  
 26 by mail to last known address).

27 Plaintiffs have engaged in diligent efforts to serve the hidden Wikileaks  
 28 Defendants and obtain valid personal service. Plaintiffs made several Initial Service

1 Efforts, including the actual delivery of a copy of the Summons and Complaint and  
 2 Application for TRO to Defendants via Priority Mail. Plaintiffs also provided notice  
 3 to and personally served the hidden foreign Wikileaks Defendants' California  
 4 counsel, Ms. Turner, who had acknowledged representation in this matter. (Spiegel  
 5 Decl, ¶¶7-10). In response to the notice to and service on the Wikileaks'  
 6 Defendants' counsel, Ms. Turner acknowledged notice of the pending action and  
 7 receipt of the service, but suddenly, claimed to no longer represent the Wikileaks'  
 8 Defendants'. This despite Ms. Turner's use of a private wikileaks email address and  
 9 her long-time listing on the Wikileaks Website as its legal counsel and address for  
 10 service of legal submissions.<sup>5</sup> (Id., ¶4, 8-9, 11, Exhs. "A", "D" and "F").  
 11 Defendants have thumbed their nose at the judicial system and any efforts by  
 12 aggrieved parties for redress of the Wikileaks Defendants' wrongful conduct. As  
 13 a result, Defendants should be deemed to have received sufficient constitutional  
 14 knowledge under the Due Process Clause of the pendency of the action and been  
 15 afforded an opportunity to present their objections or otherwise respond to the  
 16 Complaint and Application for TRO.

17 Accordingly, Plaintiffs request that, based on the service of the Summons and  
 18 complaint by Priority Mail to the Wikileaks Defendants' only listed address and to  
 19 its acknowledged legal counsel, the Court hold that service of process was completed  
 20 and that Wikileaks Defendants each be deemed validly served.

21 **Rule 4(f)(3) and (h)(2), Entitles Plaintiffs to an Ex Parte Order Permitting**  
 22 **Alternative Methods of Service, Including by E-Mail**

23 Paragraphs (f)(3) and (h)(2) of the Fed.R.Civ.Proc., Rule 4, which provides  
 24 for "Service" "Upon Corporations" and "Upon Individuals in a Foreign Country ...  
 25 by other means not prohibited by international agreement as may be directed by the  
 26

27 <sup>5</sup> Plaintiffs have engaged in a variety of further investigative efforts to locate  
 28 Defendants, but have been unable to locate any additional addresses. The efforts  
 include, among other efforts, public record database searches and online  
 searches. (Spiegel Decl., ¶9).

1 court,” enables the court on *ex parte* motion to devise a method of service  
 2 responsive to the unique facts of the particular case, including service by mail to the  
 3 defendant's last known address, by ordinary mail and by e-mail. Fed.R.Civ.Proc.,  
 4 Rule 4, Notes. See, *Rio Properties, Inc. supra*, 284 F.3d 1007 (9<sup>th</sup> Cir. 2002)  
 5 (courts have authorized a wide variety of alternative methods of service, including  
 6 by e-mail, upon emergency motion); *New England Merchants Nat’l Bank v. Iran*  
 7 *Power Generation and Transmission Co.*, 508 F.Supp. 49 (SD N.Y. 1980)  
 8 (permitting use of Telex to serve defendant); *Broadfoot v. Diaz (In re Int’l*  
 9 *Telemedia Assoc.)*, 245 B.R. 713, 719-20 (Bankr.N.D.Ga.2000) (authorizing service  
 10 via e-mail); *Williams v. Advertising Sex LLC.*, 231 F.R.D. 483 (N.D. W.Va. 2005)  
 11 (e-mail authorized, under F.R.C.P. 4(f)(3) and (h)(2), as an alternative method of  
 12 service of process when such service upon foreign defendants would comport with  
 13 due process).

14 The Ninth Circuit, after “examining the language and structure of Rule 4(f)  
 15 and the accompanying advisory committee notes,” were “left with the inevitable  
 16 conclusion that service of process under Rule 4(f)(3) is neither a ‘last resort’ nor  
 17 ‘extraordinary relief.’ ... (citation). It is merely one means among several which  
 18 enables service of process on an international defendant.” *Rio Properties, Inc.*,  
 19 *supra*, 284 F.3d at 1015, 1017. See also, *Viz Communications, Inc. v. Redsun*,  
 20 2003 WL 23901766 (N.D. Cal. 2003) (district court has discretion to allow service  
 21 by e-mail; e-mail was the sole means of contact on defendants’ web site, defendants  
 22 were playing hide-and-seek with the federal court and e-mail may be the only means  
 23 of effecting service of process, and the court found that the defendants were  
 24 informed sufficiently of the pendency of the lawsuit, and the Constitution required  
 25 nothing more); *Popular Enterprises, LLC v. Webcom Media Group, Inc.*, 225  
 26 F.R.D. 560 (E.D. Tenn. 2004) (service of process upon a trademark infringement  
 27 foreign defendant by e-mail was warranted and sufficiently apprised the interested  
 28 parties of the pendency of an action).



1 In *Rio Properties, Inc.*, Rio Properties attempted to serve defendant Rio Intern  
2 by conventional means in the United States. Although Rio Intern claimed an address  
3 in Florida, that address housed only Rio Intern's courier, which refused to accept  
4 service of process on Rio Intern's behalf. Rio Properties's private investigator  
5 subsequently failed to discover Rio Intern's whereabouts in Costa Rica. Thus unable  
6 to serve Rio Intern, Rio Properties brought an emergency motion to effectuate  
7 alternative service of process. The Court held that, contrary to Rio Intern's  
8 assertions, Rio Properties need not have attempted every permissible means of  
9 service of process before petitioning the court for alternative relief. Instead, Rio  
10 Properties needed only to demonstrate that the facts and circumstances of the present  
11 case necessitated the district court's intervention. Thus, the Ninth Circuit held that  
12 when Rio Properties presented the District Court, upon emergency motion, with its  
13 inability to serve an elusive international defendant with a known e-mail address,  
14 striving to evade service of process, the District Court properly exercised its  
15 discretionary powers to craft alternate means of service, which included service by  
16 e-mail. The Court reasoned that the District Court's handling of the case and its use  
17 of Rule 4(f)(3) ensured the smooth functioning of our courts of law. *Id.*, at 1016.

18 The facts in the instant action are similar to that in *Rio Properties, Inc.*, in  
19 which the alternative method of service by e-mail was permitted. As in *Rio*  
20 *Properties, Inc.*, the Wikileaks Defendants in the instant action (although operating  
21 domestically) claim to be located in and based in various foreign locations, *e.g.*,  
22 Kenya, Australia and Africa, none of which are valid locations for the owners and  
23 operators of Wikileaks, but merely anonymous post office boxes or addresses of  
24 contacts who claim not to be authorized to accept service on behalf of the hidden  
25 defendants. (Spiegel Decl., ¶¶4, 13, Exhs. "A" and "C").

26 In fact, more egregious than the circumstances of defendant's avoidance of  
27 service in *Rio Properties, Inc.*, in the instant matter Defendants have gone so far as  
28 to confirm their knowledge of the pending legal action, attempt to undermine the



1 Court's ability to provide relief by seeking to transfer the Domain Name away from  
 2 its current registrar prior to the OSC re Issuance of TRO, and even state that they  
 3 operate under a veil of anonymity, or as they term it "transparency," to avoid  
 4 service and imposition of liability for their admittedly wrongful and tortious conduct.  
 5 (Id., ¶¶4-6, Exhs. "A" and "B"). So convinced are the Wikileaks Defendants that  
 6 they can hide their true physical location and identities, Defendants have sought to  
 7 capitalize on their already wrongful and tortious conduct. (Id., ¶¶9, Exh. "E"; and  
 8 see the Application for TRO). Defendants have thus thumbed their noses at this  
 9 Court and the judicial system as a whole, stating that they "are prepared, structurally  
 10 and technically, to deal with all legal attacks" and that, "[i]n the very unlikely event  
 11 that we were to face coercion to make the software censorship friendly, there are  
 12 many others who will continue the work in other jurisdictions." (Id.; Application for  
 13 TRO, Exh. "A").

14 Plaintiffs have engaged in reasonable efforts to serve the Wikileaks  
 15 Defendants. Plaintiffs' counsel has been unable to physically locate the Wikileaks  
 16 Defendants and or their true identities, other than by means of electronic mail  
 17 addresses and non-residential postal box mailing address listed in connection with  
 18 their Website Domain registration. (Spiegel Decl., ¶14). Thus, Plaintiffs are unable  
 19 to obtain traditional proof of service on Defendants.

20 Accordingly, Plaintiffs request issuance of an order permitting alternative  
 21 methods of service of the Summons and Complaint and Application for TRO  
 22 pursuant to Fed.R.Civ.Proc., Rule 4(f)(3) and (h)(2), by e-mail to the Wikileaks  
 23 Defendants' last known valid e-mail addresses without requirement of return receipt.

24 **C. This Case Requires Service on Foreign Defendants, and Is, Therefore,**  
 25 **Expressly Exempt from the Service Time Requirements under Rule 4(m)**

26 Pursuant to subdivision (m) of the Fed.R.Civ.Proc., Rule 4, the "Time Limit  
 27 for Service" after the filing of the complaint expressly "does not apply to service in  
 28 a foreign country." In the Rule 4 Notes, "Subdivision (f) - C4-24. Service on

1 Individuals in Foreign Country”, the legislature has stated that the variety of  
 2 problems that can be met in attempting service in a foreign nation make it  
 3 inappropriate to impose an arbitrary time limit on service. Hence the 120-day period  
 4 following the filing of the complaint, within which service is required by subdivision  
 5 (m) in domestic cases, does not apply when service has to be made abroad under  
 6 subdivision (f). Subdivision (m) explicitly exempts subdivision (f) from its time  
 7 demands. Fed.R.Civ.Proc., Rule 4, Notes.

8 The Wikileaks Defendants, although operating in California through the  
 9 registration of their Domain Name, are comprised of anonymous individuals  
 10 spanning the globe. (Spiegel Decl., ¶13, Exh. “C”; Application for TRO, Exh.  
 11 “A”). On February 12, 2008, the day after notice and service of the Application for  
 12 TRO and pleadings in this matter on the Wikileaks’ Defendants through their  
 13 counsel, the Wikileaks Defendants altered their domain who-is registration and  
 14 removed the private anonymous domain “who-is” registration service. The official  
 15 who-is registration records, as entered by the Wikileaks Defendants themselves, list  
 16 that the anonymous Wikileaks Defendants are or include foreign defendants located  
 17 in “Nairobi, Kenya.” (Id., ¶¶6, 13, Exhs. “B” and “C”).

18 Accordingly, should the court deny Plaintiffs’ request for an order permitting  
 19 alternative methods of service of process, Plaintiffs respectfully informs the Court  
 20 of the Defendants’ status as foreign defendants and seek additional time to serve the  
 21 Defendants under the exemption from the time requirements of subdivision (m); and  
 22 request that the issue of service on the foreign Defendants should be subject to a  
 23 non-appearance case review in six months’ time.

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**D. In the Alternative, Plaintiffs Should Be Granted Leave to Conduct Pre-Service Discovery to Locate and Identify the Wikileaks Defendants**

Although generally, discovery proceedings take place only after defendant has been served, courts may allow limited discovery after filing of complaint to permit plaintiff to learn identifying facts necessary to permit service on defendant. *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D.Cal. 1999); Fed.R.Civil.Proc., Rule 26(d).

The Wikileaks Defendants have sought to avoid service and refuse to reveal their true identities and/or locations. Plaintiffs, however, have information with regard to e-mail addresses, non-residential postal mail addresses, and the Wikileaks Defendants' Website registrar which is privy to the Wikileaks Defendants', or some of their, true names, addresses, agents and/or payment processing information evidencing their identities. Upon limited and directed discovery to the Wikileaks Defendants' various service providers and/or carriers, and their counsel, Ms. Turner, and defendant Dynadot, Plaintiffs might be able to obtain additional contact information on the Wikileaks Defendants to effect service. (Spiegel Decl, ¶15).

Accordingly, should the court deny Plaintiffs' request for an order permitting alternative methods of service of process, Plaintiffs request leave to conduct limited pre-service discovery on defendant Dynadot and third-parties, including, but not limited to, the Wikileaks Defendants' counsel and ISP's, related to the issue of locating the Wikileaks Defendants' physical local and identities in order to effect personal service of process on the Wikileaks Defendants.

**IV.**

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Ex Parte Application for an Order holding that the Wikileaks Defendants have been validly served, or, in the alternative, permitting alternative methods of service of process by means of e-mail delivery to the Wikileaks Defendants' last known

1 valid e-mail addresses without requirement of return receipt, and for an order  
2 extending time to serve the potentially international Wikileaks Defendants with the  
3 Summons & Complaint and Application for TRO, or, in the alternative, for leave  
4 to conduct pre-service discovery.

5  
6 DATED: February 12, 2008

LAVELY & SINGER  
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9 /s/

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