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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; CRTM 2]

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

[Filed Concurrently With: Declaration of
Evan Spiegel in Support Thereof]

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1 Plaintiffs BANK JULIUS BAER & CO. LTD (?BJB?) and JULIUS BAER
 2 BANK AND TRUST CO. LTD (?JBBT?) (collectively, ?JB? and/or ?Plaintiffs?)
 3 hereby respectfully submit this Supplemental Brief in Support of Plaintiffs?
 4 Application for Preliminary Injunction re Response to Issues Raised in the Reporters
 5 Committee for Freedom of the Press, et. al.'s, proposed Amici Curiae Brief, filed
 6 February 26, 2008.

7 I.

8 INTRODUCTION

9 Plaintiffs want to set the record straight. This action has been brought
 10 solely to prevent the unlawful dissemination of stolen bank records and personal
 11 account information of its customers. Many of those documents have also been
 12 altered and forged. This matter has nothing to do with censorship or prior restraint
 13 of First Amendment rights. It has everything to do with the protection of the
 14 privacy rights of bank customers.

15 The key issue is whether a court may enjoin the public dissemination
 16 of bank customers' stolen confidential financial information. The answer is yes.
 17 Contrary to the position of *Amici*, the issue in this case is not whether the court's
 18 TRO is a prior restraint in violation of the First Amendment. The plain and simple
 19 truth is that the private bank records at issue in this case enjoy both federal and state
 20 constitutional rights of privacy. That constitutional interest - - the right to privacy
 21 in financial records - - is in present danger of being lost due to the widespread public
 22 dissemination of it. And, the imminent threat to each individual whose bank account
 23 information is displayed is real, not speculative, as reported by one of the Amici,
 24 The Los Angeles Times. (See accompanying declaration of Evan Spiegel (?Spiegel
 25 Decl.), ¶6, Exh. ?C? - sample copies of a few of the numerous articles published
 26 by the Amici parties with regard to data security and identity theft).

27 The *Amici* further glosses over the fact that Wikileaks, Wikileaks.org
 28 and the Does (collectively referred to as, ?Wikileaks?) posted stolen confidential

1 bank records of individuals. These friends of the court should be the first to
 2 recognize that the First Amendment extends the right of privacy to an individual's
 3 confidential financial affairs. *Valley Bank of Nevada v. Sup. Ct.*, 15 Cal.3d 652,
 4 656, 125 Cal. Rptr. 553 (1975) (California constitutional right to privacy extends to
 5 financial information); *Burrows v. Sup. Ct.*, 13 Cal.3d 238, 243, 118 Cal. Rptr. 166
 6 (1974); *see also Whalen v. Roe*, 429 U.S. 589, 599, 97 S.Ct. 869 (1977) (the
 7 constitutional right to privacy includes the individual interest in avoiding disclosure
 8 of personal matters?); *Doe v. Attorney General*, 941 F.2d 780, 795 (9th Cir. 1991)
 9 (recognizing that the right to privacy encompasses medical information).

10 Quite obviously there will be harm from the widespread dissemination
 11 of private and confidential banking information, including account numbers,
 12 personal identification numbers, account transactions and history, and account
 13 balances. Wikileaks has laid bare a road map for the unsavory to engage in identity
 14 theft and electronic theft of account balances. The legitimate business interest of JB
 15 has been placed in jeopardy because its bank customers are now insecure about the
 16 confidentiality of their finances given the widespread disclosure of sensitive bank
 17 customer information. *Cf. Charles O. Bradley Trust v. Zenith Capital LLC.*, No.
 18 C-04-2239 JSW, 2006 U.S. Dist. LEXIS 21671 (N.D. Cal. March 24, 2006).
 19 Because a grave threat to the constitutional right to privacy is posed by Wikileaks
 20 dissemination of confidential private banking information, this court was justified in
 21 its issuance of a TRO against Wikileaks. *Compare Procter & Gamble Co. v.*
 22 *Bankers Trust Co.*, 78 F.3d 219 (6th Cir. 1996) (publication of documents which
 23 contain trade secrets or other confidential research, development or commercial
 24 information did not pose a grave threat to a constitutional right sufficient to justify
 25 the district court's injunctive orders) and *Ford Motor Company v. Lane*, 67
 26 F.Supp.2d 745 (E.D. Mich. 1999) (trade secrets are not a constitutionally protected
 27 right sufficient to justify an injunction restraining publication of those trade secrets).

28 / / /

1 The *Amici* simply miss the point of this court's temporary restraining
 2 order. It is narrowly designed to protect the privacy interest of JB bank customers.
 3 That type of order does not violate the First Amendment; rather, it embraces and
 4 upholds the First Amendment right to privacy in this type of financial information.
 5 Indeed, it is Wikileaks and by extension *Amici* who threaten to violate the First
 6 Amendment rights of the JB bank customers. *Amici* appear to argue that First
 7 Amendment privacy rights somehow take a backseat to those rights of the press.
 8 There is no support for the notion that privacy rights are subordinate to those of the
 9 press. However, there is support for the notion that when privacy rights are
 10 threatened, the rights of the press may be subordinated to the privacy interest. *See*,
 11 *e.g.*, *Shulman v. Group W Productions, Inc.*, 18 Cal.4th 200, 74 Cal.Rptr.2d 843
 12 (1998) (disclosure of private and confidential information such as this cannot be of
 13 any legitimate public concern and the disclosure of which would be highly offensive
 14 to a reasonable person and would thereby violate a person's right of privacy); *Virgil*
 15 *v. Time, Inc.*, 527 F.2d 1122, 1128 (9th Cir. 1975) (If the public has no right to
 16 know, can it yet be said that the press has a constitutional right to inquire and to
 17 inform? In our view it cannot); *In re McClatchy Newspapers, Inc.*, 288 F.3d 369,
 18 374 (9th Cir. 2002) (the need to protect individual privacy rights may rise to the
 19 level of a substantial governmental interest and defeats right of access claims).

20 In sum, this court's order was specifically drawn to prevent further
 21 harm to the constitutional rights of the JB bank customers. This court's order is not
 22 an attack on a free press. Instead, it is a shield against an assault of the First
 23 Amendment rights of the JB bank customers.¹

24
 25 ¹ This brief does *not* attempt to address all of the points raised by the *Amici*
 26 *Curiae* The Reporters Committee for Freedom of the Press et. al. because of time
 27 constraints. Instead, it focuses on the core issue presented to this Court.
 28 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. (Spiegel Decl., ¶2-
 3). This 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

1 **II.**

2 **ARGUMENT**

3 **A. THE COURT'S INJUNCTION PROTECTS THE FIRST AMENDMENT**
 4 **PRIVACY RIGHTS OF THE JB BANK CUSTOMERS.**

5 *Valley Bank of Nevada v. Superior Court*, 15 Cal.3d 652, 658, 125 Cal.
 6 Rptr. 553 (1975), explains that the right of privacy is an "inalienable right"
 7 expressly protected by force of constitutional mandate. (Cal. Const., Art. I, § 1).
 8 "[T]he right of privacy extends to one's confidential financial affairs as well as to
 9 the details of one's personal life." *Valley Bank of Nevada*, 15 Cal.3d at 658.

10 The California Supreme Court has further explained that there is a
 11 "reasonable expectation of privacy" which a bank customer entertains with respect
 12 to financial information disclosed to his bank. *Burrows v. Sup. Ct.*, 13 Cal.3d 238,
 13 118 Cal.Rptr. 166 (1974). The court noted that it is the general rule in other
 14 jurisdictions that a bank impliedly agrees not to divulge confidential information
 15 without the customer's consent unless compelled by court order. *Valley Bank of*
 16 *Nevada*, 15 Cal.3d at 657 citing, *First National Bank in Lenox v. Brown*, 181
 17 N.W.2d 178, 183 (Iowa 1970); *Milohnich v. First National Bank of Miami Springs*,
 18 224 So.2d 759, 761 (Fla.App. 1969).

19 The Ninth Circuit has explained that the First Amendment encompass
 20 a right of privacy, whose contours include within it a right to make personal
 21 decisions and a right to keep personal matters private. *In re Crawford*, 194 F.3d
 22 954, 958 (9th Cir. 1999). It is also a generally accepted notion that the
 23 constitutional right to privacy includes the "individual interest in avoiding disclosure
 24 of personal matters." *Whalen v. Roe*, 429 U.S. 589, 599, 97 S. Ct. 869 (1977); *see*
 25 *also Doe v. Attorney General*, 941 F.2d 780, 795 (9th Cir. 1991) (recognizing that

26
 27
 28 to manage the case through motion practice, as set forth herein.

1 the right to privacy encompasses medical information).²

2 It is beyond dispute that the pilfered and altered documents which have
3 been disseminated on the Wikileaks website contain private personal financial
4 information. That type of financial information is protected by the First Amendment
5 right of privacy. Publication of this financial information threatens core interest
6 protected by the First Amendment. JB has therefore presented this court with a
7 critical constitutional right sufficient to justify the issuance of an injunction.

8 *Amici* argue that JB must establish that (1) the activity restrained poses
9 either a clear and present danger or a serious and imminent threat to a protected
10 competing interest, (2) the order is narrowly drawn, and (3) less restrictive
11 alternatives are not available.? (*Amici* brief, page 13, lines 4 to 8.) Yet, *Amici*
12 conveniently ignores the very first element of their own test. Application of this test
13 to these facts reveal that JB exceeds the required threshold.

14 There is a First Amendment right to privacy at stake in this case. The
15 privacy rights of individual bank customers are clearly in danger because of the
16 unabated widespread disclosure of these personal matters. That disclosure of
17 confidential banking affairs is a serious threat to the bank customers reasonable
18 expectation of privacy as well as the real danger attributable to identity theft and
19

20 ² Indeed, California recognizes a tort cause of action for violation of the
21 right to privacy. *See Diaz v. Oakland Tribune, Inc.*, 139 Cal. App. 3d 118, 188
22 Cal. Rptr. 762 (1983). One of the distinct torts included under the rubric of right
23 to privacy is public disclosure of private facts. *Diaz*, 139 Cal.App. 3d at 126,
24 188 Cal. Rptr. at 767. Elements of the tort of public disclosure of private facts
25 are (1) public disclosure (2) of a private fact (3) which would be offensive and
26 objectionable to the reasonable person and (4) which is not of legitimate public
27 concern. *Diaz*, 139 Cal.App.3d at 126, 188 Cal.Rptr. at 768. *See Aisenson v.*
28 *American Broadcasting Co., Inc.*, 220 Cal. App. 3d 146, 269 Cal. Rptr. 379,
387 (Ct. App. 1990). Here, JB meets all of the requisite elements of this
cognizable tort. There has been a public disclosure of private and confidential
financial bank information, which is offensive and objectionable to a reasonable
person, and which is not of legitimate public concern. As set forth in JB's
moving papers, no legitimate member of the media published the personal data
and detailed bank account information. Yet, Wikileaks brazenly published this
type of private information regardless of the harm that would befall the account
holders.

1 electronic theft of their assets.

2 Second, the court's TRO was narrowly drawn against Wikileaks. That
3 order merely prohibits Wikileaks from further dissemination of this private and
4 confidential financial information. Third, there simply is no less restrictive
5 alternative available. *Amici* argues that simple redaction of the offending
6 information would suffice. Yet, Wikileaks hides behind anonymity to escape the
7 orders of this court. Absent compliance with the current order there is no guarantee
8 that Wikileaks would even comply with an order to redact the offending information.
9 Thus, there is no realistic less restrictive alternative available to JB. All of these
10 factors therefore support the court's issuance of the injunction.

11 It is therefore appropriate for the court to preliminary enjoin Wikileaks.

12
13 **B. THE COMMUNICATIONS DECENCY ACT DOES NOT PROVIDE**
14 **WIKILEAKS IMMUNITY.**

15 An "interactive computer service" is not entitled to Section 230
16 immunity when the person or entity in question is also an "information content
17 provider" with respect to any portion of the information or conduct at issue. Section
18 230 of the Communications Decency Act (the "CDA") provides protection for
19 "online service providers" from action against them for the speech actions solely of
20 others. It does not, however, provide immunity for one's own actions and conduct
21 if that defendant is involved in the process of creation, development or publication
22 of any of the harmful or illegal content (*i.e.*, an "information content provider"),
23 regardless of whether or not the defendant could also be considered an online service
24 provider.³ 47 U.S.C. § 230(f)(3).

25
26 ³ The immunity created by § 230(c)(1) is not absolute and is limited, including
27 by § 230(f)(3), which provides that "content providers" are not immune, and by
28 § 230(e)(2), which requires the court to construe Section 230(c)(1) in a manner
that would neither limit or expand any law pertaining to intellectual property.
Thus, the Ninth Circuit has held that the CDA does not clothe service providers
in immunity if they provide content at issue nor does it provide immunity from

1 In *MCW v. badbusinessbureau.com*, 2004 WL 833595, *2 (N.D.Tex.
 2 2004) (*unpublished*) the court rejected a defendant's motion to dismiss on grounds
 3 of Section 230 immunity. The court determined that plaintiff's allegations that the
 4 defendants wrote disparaging report titles and heading, and that the defendants wrote
 5 disparaging editorial messages about plaintiff, rendered the defendants information
 6 content providers.

7 *Hy Cite Corp. v. badbusinessbureau.com*, 418 F.Supp.2d 1142, 1149
 8 (D. Ariz. 2005) is also instructive. In *Hy Cite Corp.*, the Plaintiff stated, among
 9 other claims, a claim for common law unfair competition. It was alleged that
 10 Defendants are "responsible... for the creation or development of information
 11 provided by individuals ... in response to Defendants' solicitation" and could be
 12 considered an "information content provider" under Section 230, and thus, not
 13 immune for its conduct. Based on those allegations the court determined that
 14 Defendants are not entitled to immunity under the CDA at this stage of the case.

15 *Carafano v. Metrosplash.com*, 339 F.3d 1119, 1123 (9th Cir. 2003)
 16 holds that "an "interactive computer service" qualifies for immunity so long as it
 17 does not also function as an "information content provider" for the portion of the
 18 statement or publication at issue." *Anthony v. Yahoo Inc.*, 421 F.Supp.2d 1257,
 19 1262-63 (N.D.Cal. 2006) found that unfair trade practice claims were not barred by
 20 CDA's publisher immunity provision where it was alleged that the defendant created
 21 the tortious content. See also, Federal Rules of Appellate Procedure, Rule 32.1(a);
 22 *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 489 F.3d
 23 921, 35 Media L. Rep. 1801 (9th Cir. 2007) (*depublished* and *reh'g granted en*
 24 *banc October 2007*) (Ninth Circuit reasoned that, to the extent that an operator was
 25 responsible, in whole or in part, for creating or developing information, it is an
 26 "information content provider" and not entitled to CDA immunity).

27 _____
 28 laws pertaining to intellectual property. See, *Perfect 10, Inc. v. CCBill LLC*, 488
 F.3d 1102, 1118 (9th Cir. 2007) (citations omitted).

1 A content provider is "any person or entity that is responsible, in whole
 2 or in part, for the creation or development of information provided through the
 3 Internet." 47 U.S.C. § 230(f)(3). In other words, if the defendants only passively
 4 publish information provided by others, the CDA may protect it from liability that
 5 would otherwise attach under state or federal law as a result of such publication.
 6 But, if they are responsible, in whole or in part, for soliciting, creating or
 7 developing or publishing the specific information, it becomes a content provider and
 8 is not entitled to CDA immunity. As the Ninth Circuit explained in *Carafano*, "an
 9 "interactive computer service" qualifies for immunity so long as it does not also
 10 function as an "information content provider" for the portion of the statement or
 11 publication at issue." 339 F.3d at 1123. "The distinction between merely publishing
 12 information provided by a third-party as an interactive computer service and actually
 13 creating or developing any of the information posted as an information content
 14 provider is critical." *MCW, Inc. v. Badbusinessbureau.com LLC*, 2004 WL 833595,
 15 *8 (N.D.Tex.2004), citing *Carafano v. Metrosplash.com, Inc.*, 207 F.Supp.2d
 16 1055, 1067 (C.D.Cal 2002), *aff'd on other grounds*, 339 F.3d 1119 (9th Cir.2003).

17 *Carafano* differs from this case in at least one significant respect: The
 18 malicious prankster in *Carafano* provided information that was not specifically
 19 solicited by the operator of the website. The website sought information about the
 20 individual posting the information, not about unwitting third parties. Nothing in the
 21 questions the dating service in *Carafano* asked, suggested, encouraged or solicited
 22 posting the profile of another person, and the website's policies prohibited altogether
 23 the posting of last names and contact information. *Id.* at 1121. While *Carafano* is
 24 written in broad terms, the Ninth Circuit has itself acknowledged that it should be
 25 read in light of its facts. *Carafano* provided CDA immunity for information posted
 26 by a third party that was not, in any sense, created or developed by the website
 27 operator-indeed, that was provided despite the website's rules and policies. *Id.*
 28 *Carafano* and like cases do not control in a situation where defamatory, private or

1 otherwise tortious or unlawful information was provided by users in direct response
2 to questions and prompts from the operator of the website.⁴

3 The Complaint and Application for TRO and OSC re Preliminary
4 Injunction very clearly allege and provide ample supporting exhibit evidence that the
5 Defendants did not merely provide an online forum upon which, without their
6 involvement, a third-party posted harmful speech or engaged in harmful conduct.
7 In this matter, a third-party did not solely himself post harmful speech, nor even the
8 stolen content, the Wikileaks Defendants did so. (Spiegel Decl., ¶5, Exh. ?A? -
9 Wikileaks website statement admission that it is actively engaged in the publication,
10 stating that ?Wikileaks will keep on publishing? the stolen property and other
11 documents; Exh. ?B? - an example, from many, of content and extensive edits
12 provided by Wikileaks; See also, Application for TRO, Documents Filed Under
13 Seal, Exhs. ?A? through ?O? - further examples of content provided by Wikileaks).
14 A third-party, upon solicitation and direct request from the Wikileaks Defendants for

15
16 ⁴ For example of an applicable hypothetical (but not cited as precedent), in the
17 *depublished* opinion of the Ninth Circuit in *Fair Housing Council of San*
18 *Fernando Valley v. Roommates.com, LLC*, 489 F.3d 921, 928 (9th Cir. 2007),
the Court provided the following analogous hypothetical and evaluation, under
which it reasoned that CDA immunity might not apply:

19 ?Imagine, for example, www.harrasstem.com with the slogan ?Don't
20 Get Mad, Get Even.? A visitor to this website would be encouraged to
21 provide private, sensitive and/or defamatory information about others-all to
22 be posted online for a fee. To post the information, the individual would be
23 invited to answer questions about the target's name, addresses, phone
24 numbers, social security number, credit cards, bank accounts, mother's
25 maiden name, sexual orientation, drinking habits and the like. In addition,
26 the website would encourage the poster to provide dirt on the victim, with
27 instructions that the information need not be confirmed, but could be based
28 on rumor, conjecture or fabrication. ... It is not clear to us that the
operator of this hypothetical website would be protected by the logic of
Carafano. The date match website in *Carafano* had no involvement in the
creation and development of the defamatory and private information; the
hypothetical operator of harrasstem.com would. By providing a forum
designed to publish sensitive and defamatory information, and suggesting
the type of information that might be disclosed to best harass and endanger
the targets, this website operator might well be held responsible for
creating and developing the tortious information. *Carafano* did not consider
whether the CDA protected such websites, and we do not read that opinion
as granting CDA immunity to those who actively encourage, solicit and
profit from the tortious and unlawful communications of others.?

1 ?leaked? confidential documents, provided ?leaked? stolen confidential documents.
 2 The Wikileaks Defendants received the stolen confidential bank records and data.
 3 Wikileaks than posted these legally protected stolen materials on their own website,
 4 and themselves wrote and published countless articles, summaries and other
 5 information which included and repeated and summarized the various stolen
 6 protected consumer records. This is a far cry from the case of a third-party writing
 7 original harmful speech on an open message or forum board made available by an
 8 online service provider for third-party use. The Wikileaks Defendants are
 9 ?information content providers,? or at least co-providers, under Section 230, and
 10 thus, not immune for its own tortious and unlawful conduct.

11 Plaintiffs have alleged more than sufficient facts and provided ample evidence
 12 in this matter that they have a strong likelihood of success on the merits of their
 13 various claims for relief, including with regard to any potential defenses by the
 14 Defendants of which they have not themselves advanced or asserted.

15
 16 **C. AMICI LACK STANDING TO ASK THE COURT TO MODIFY OR**
 17 **SET ASIDE THE STIPULATION AND PERMANENT INJUNCTION.**

18 ?Lacking party status, an amicus has no right to review by appeal of any
 19 decision affecting its identified substantive interests,? including review of
 20 constitutional issues. *Newark Branch, N.A.A.C.P. v. Town of Harrison*, 940 F.2d
 21 792, 808 (3d Cir. 1991) (brackets omitted) (quoting *Newport News Shipbuilding and*
 22 *Drydock Co. v. Peninsula Shipbuilders Ass'n*, 646 F.2d 117, 122 (4th Cir. 1981)).
 23 An amicus curiae ?lacks standing to prosecute independently any rehearing or
 24 appeal.? *United States v. Louisiana*, 718 F. Supp. 525, 528 (E.D. La. 1989). State
 25 courts are in agreement that ?relief beyond that which is sought by the parties cannot
 26 be requested by amicus curiae.? *Vermillion Parish Police Jury v. Williams*, 824 So.
 27 2d 466, 470 (La. App. 2002). An amicus has ?no control over the litigation and no
 28 right to institute any proceedings therein; *he must accept the case before the court*

with the issues made by the parties.? *Pennsylvania v. Cotto*, 708 A.2d 806, 808 (Pa. 1998) (emphasis original). Decisions have held that “[m]otion practice by *amici* is not permitted,” and that a “trial court was not authorized . . . to permit amici curiae to file a motion to dismiss as would a litigant before the court.” *In re Petition to Call Election*, 517 N.E.2d 1188, 1190 (Ill. App. 1987); see *Mid-Atlantic Power Supply Ass’n v. Pa. Public Utilities Comm’n*, 746 A.2d 1196, 1200 n.8 (Pa. 2000) (holding that amici have no right to institute proceedings in the court.). An amicus has no standing in court, and allowing an amicus to “seek to widen the issues raised by the parties” is inappropriate. *Lyons v. Lederle Labs.*, 440 N.W.2d 769, 770 & n.2 (N.D. 1989). The amicus must “take the case as he finds it.” *Briggs v. United States*, 597 A.2d 370, 373 (D.C. Ct. App. 1991). In fact, courts have long held:

An amicus curiae can neither take upon himself the management of the cause as counsel; nor file a demurrer; nor take exceptions to the ruling of the court; . . . nor file a petition for a rehearing.

Oregon v. McDonald, 128 P. 835, 837 (Or. 1912).

In this matter the *Amici*, as well as other third-parties who have sought leave to intervene and/or file amici curiae briefs,⁵ improperly seek to initiate legal proceedings, request additional relief, set-aside stipulated injunctive orders between the parties, assert affirmative defenses and raise issues not raised by the parties, and engage in motion practice. The amicus curiae lack standing other than to, at most, and only if granted leave of the Court (but which Plaintiffs? oppose), to provide briefing on the legal issues raised by the parties. The amicus curiae cannot attack, nor appeal, nor ask the court to modify or set aside the stipulation and permanent injunction. The Court should therefore deny amicus curiae?s requests and disregard any pleadings and issues other than the legal issues specifically raised by the parties.

⁵ Which, due to time constraints, the proposed other third-party briefs and motions are not specifically addressed in this Supplemental Brief.

III.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court issue a Preliminary Injunction in the form set forth in the Amended [Proposed] Preliminary Injunction, and for such other alternative and further relief as the Court may deem to be just and appropriate.

Respectfully submitted,

DATED: February 27, 2008

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

/s/ William J. Briggs, II
By: _____

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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; CTRM 2]

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

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1 DECLARATION OF EVAN SPIEGEL

3 I, EVAN SPIEGEL, declare as follows:

1. I am 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.

23 / / /

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28 / / /

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

Get press releases:

Apply to volunteer:

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 Bowspirit 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 lease 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 groesste 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_-_H[REDACTED]_2C_Frankfurt_Steuerbetrug_EUR_15_mil"

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

Get press releases:

Apply to volunteer:

BJB - Heinri 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[REDACTED], Frankfurt Steuerbetrug EUR 15 Mil moved to BJB - H[REDACTED], 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)

Compare selected versions

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

Retrieved from

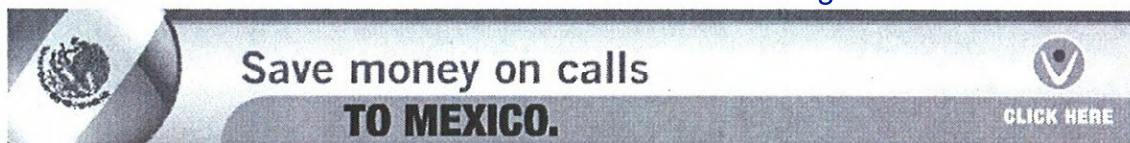
"https://wikileaks.be/wiki/BJB - H[REDACTED]%2C Frankfurt Steuerbetrug EUR 15 mil"

Get press releases:

Apply to volunteer:

EXHIBIT C

Los Angeles Times



<http://www.latimes.com/technology/la-me-dwp16feb16,0,1281904.story>
From the Los Angeles Times

Stolen hardware held DWP employees' personal information

Officials say there's no evidence of identity theft so far, but many workers and retirees are angry that the utility outsourced sensitive data to a contractor.

By David Zahniser

Los Angeles Times Staff Writer

February 16, 2008

Computer equipment containing the private financial data of every employee of the Los Angeles Department of Water and Power was stolen earlier this week, prompting the utility to pay for a credit monitoring service for each of its 8,275 workers.

DWP General Manager H. David Nahai sent employees an e-mail and an interoffice memo Wednesday informing them that computer equipment containing each worker's name, date of birth, Social Security number, employee identification number and deferred compensation balance was stolen from a private DWP contractor.

The letter, which contained an apology from Nahai, advised DWP employees to watch their credit reports and look for accounts that they did not open themselves. Still, DWP spokesman Joe Ramallo said the utility had no evidence that the missing information had been misused.

"We're required by law to notify our employees that this theft occurred," he said. "But we don't have any knowledge at this point that the data was the target, and law enforcement said they don't believe that it is."

Mayor Antonio Villaraigosa's appointees on the five-member DWP commission on Tuesday plan to discuss the burglary, which occurred Monday in the Fullerton office of the data-processing company Systematic Automation Inc.

A company representative did not return a call. But a spokesman for the International Brotherhood of Electrical Workers Local 18, the union that represents DWP employees, said Friday that his workers were "shocked and upset" by the loss of the data.

"They believe this is a direct result of the mania for outsourcing that the DWP has had," said Bob Cherry, a communications consultant for the union. "The DWP should have been paying more attention to the potential impact of sensitive data like this getting sent to outside vendors."

The issue of employee privacy at the DWP has been a sensitive one since September, when the Los Angeles Daily News published on its website the names and salaries of each utility worker.

Vince Foley, who serves on the board of the DWP Retired Employees Assn., said he has received anxious calls from retirees. The stolen computer equipment also contained financial data on employees who retired between July 1, 2006, and June 30, 2007.

"It's the first time I've ever heard of anything like this because, typically, people outside of the DWP don't have that information available," Foley said. "DWP's computers are, of course, encrypted and protected. But this is a situation where they had . . . a consultant who's given all this data so they can prepare the [benefits] statements."

david.zahniser@latimes.com

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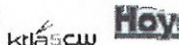


EXHIBIT C PAGE 11

Los Angeles Times | Travel

You are here: LAT Home > Travel > Articles > On holiday? Be wary -- identity thieves could be lurking

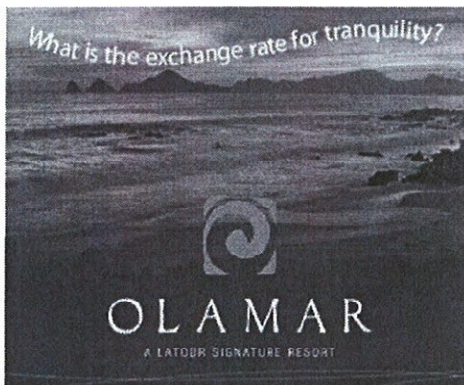
TRAVEL INSIDER

On holiday? Be wary -- identity thieves could be lurking

Two recent incidents involving sensitive customer data drive home the need for caution while traveling.

By James Gilden, Special to The Times

June 18, 2008



EXPERIENCED travelers know it's critical to keep important documents, cash and credit cards close at hand to keep them out of unscrupulous hands. Nothing can spoil a vacation faster than the theft of your passport or money.

Nothing, that is, except the theft of your personal information.

More than a third of the 686,000 complaints that the Federal Trade Commission received in 2005 were about identity theft, making it the No. 1 reported problem. Although many of us have heeded the warnings to guard our Social Security numbers and shred documents that contain sensitive information, two recent incidents have given travelers pause.

Last month, Hotels.com notified 243,000 customers that their names, addresses and credit card information had been compromised when a laptop with that data, belonging to an employee of the accounting firm Ernst & Young, was stolen from a parked car in Texas. (Ernst & Young was performing a routine audit of online travel agency Expedia, the parent company of Hotels.com.) Most of the customer information was from transactions in 2004, although a few were from 2002 and 2003.

Although the theft occurred in February, Ernst & Young did not notify Hotels.com until May 3. Notices to affected customers were mailed May 26.

In explaining the delay, Ernst & Young spokesman Charles Perkins said, "There was a great deal of data on the computer, and it took an extensive analysis to identify it." No other sensitive customer data were lost, Perkins said.

In a letter sent to affected customers, Ernst & Young said it believed that the theft was random and that the specific information was not targeted. Law enforcement personnel were notified, and no illegal activity has been associated with the theft, Ernst & Young said.

The computer was password-protected, but the information was not encrypted — that is, it was accessible to anybody who could get past the password. The data on all 30,000 Ernst & Young computers have since been encrypted, Perkins said.

Why the data were on a laptop outside the office is another question.

"We have a large mobile workforce that often works with their laptops in our client offices and other locations," Perkins said.

That answer doesn't satisfy at least one consumer advocate.

"The 'why' question is never addressed," said Beth Givens, director of the San Diego-based Privacy Rights Clearinghouse, a nonprofit consumer information and advocacy organization.

"Why was this sensitive data in the car in the first place? It makes them look more negligent than they are already perceived as being."

Givens was one of the affected customers and received a letter from Hotels.com.

"It didn't really explain much," she said. "None of those letters give much information to the affected individual."

Ernst & Young is providing affected customers with a toll-free hotline to answer any questions as well as free credit monitoring for a year.

Although the data did not include Social Security numbers, which is the key to successful identity theft, customers should still take advantage of the free credit-monitoring offer, Givens said.

"I don't think [identity theft is] a potential risk unless there is something they're not telling us," she said. "Usually, people want to monitor their credit when there is potential for fraudulent new accounts."

Travelers should also be careful where they discard boarding passes, because some contain information.

This spring, data security expert Adam Laurie performed an experiment for the Guardian newspaper in London. Using only the information on a British Airways boarding pass found in the trash at a London train station, he bought a ticket in the passenger's name and accessed his information using the frequent-flier number on the boarding pass. Never asked for a password, Laurie was able to access the passenger's passport number, issue date, issuing office, nationality, country of residence and date of birth.

"The security flaw was due to an interaction between B.A.'s collection of data for both their loyalty program and advance passenger information," Laurie, technical director of the Bunker, a hardware and software security firm based in Kent, England, said in an e-mail interview. (Advance passenger information is a program of the U.S. government that gathers data on foreigners traveling to the U.S.)

Laurie said he had not tried to reproduce these results on other airline websites, and British Airways said it corrected the security flaws on its site. Still, Laurie urged caution when discarding documents that contain identifying information.

"Any channel by which personal information can leak and/or be exploited should be taken very seriously," he said.

Here are some tips offered by the Privacy Rights Clearinghouse:

- Clean out your wallet before a trip. Remove unnecessary credit cards, your Social Security card and other unneeded documents that could compromise your identity if they are lost or stolen.

EXHIBIT C PAGE 12

Los Angeles Times



<http://www.latimes.com/news/printedition/california/la-me-briefs13feb13,0,1938813.story?page=2>
From the Los Angeles Times

BRIEFS

February 13, 2008

LOS ANGELES

Council passes spay, neuter law

The City Council voted 14 to 1 Tuesday to pass an ordinance mandating that most pet dogs and cats in the city be sterilized at as early as 4 months.

The dissenter was Councilman Bill Rosendahl, who commented a week and a half ago that he had problems with requiring that dogs be altered so young and that he believed the city should focus first on licensing more dogs.

Exemptions will be available for animals of licensed breeders, show animals, service animals and those pets whose veterinarians believe the procedure too risky.

The bill goes into effect 45 days after Mayor Antonio Villaraigosa signs it, which he is expected to do. The city shelter system offers discount vouchers for spay-neuter services. In addition, pet owners can make an appointment for free spaying and neutering procedures at various locations throughout the city on Spay Day LA, Feb. 24. For information or to make appointments: www.spaydayla.com or (877) 893-4547.

--

LOS ANGELES

Man is burned in refinery fire

A man was injured Tuesday in an electrical flash fire at a Wilmington oil refinery, authorities said.

A contractor suffered first- and second-degree burns in a flash fire at Ultramar Refinery, possibly caused by a short-circuit in an electrical panel, said Ron Myers, a spokesman for the Los Angeles Fire Department.

Fire officials responded shortly after noon in the 2400 block of Anaheim Street but found the fire extinguished, Myers said.

"Whenever you have, for some reason, a short, it flashes and gives off heat momentarily. It's like lightning," Myers said. "Fortunately, he did not suffer any life-threatening injuries."

The injured man was taken to St. Mary Medical Center in Long Beach.

--

LOS ANGELES COUNTY

Deal cuts cost of green vehicles

Supervisors approved a discount program for county employees Tuesday that shaves the price off fuel-efficient vehicles.

Officials say the move is an effort to encourage the nearly 100,000 county workers and their immediate families to buy more environmentally friendly forms of transportation.

The program, which so far is valid only at El Monte-based Longo Toyota, will place a price cap on all hybrid vehicles sold at the dealership. The base price for a Toyota Prius, which the dealership sells for \$23,184, would be lowered to \$21,746, for example.

Supervisor Yvonne B. Burke also asked county staff to study the possibility of extending discounts to retired employees, as well as those who contract with the county.

--

LOS ANGELES COUNTY

Count ballots, supervisors say

County elections officials should devise a way to count as many of the estimated 50,000 disqualified ballots as possible from last week's primary election as soon as possible, supervisors told Interim Registrar-Recorder Dean Logan on Tuesday.

The votes were disqualified when independent voters who wanted to vote in the Democratic primary failed to mark a bubble that indicated they were voting as a Democrat.

EXHIBIT C PAGE 13

Logan told the board that the practice, which was used only in Los Angeles County, would be discontinued. Most of the disqualified ballots, about 57%, originated in the 37th Congressional District, which includes Long Beach, Compton and Signal Hill, Logan said.

Supervisors also approved a \$1.7-million online system to better train poll workers.

--

FULLERTON

Modesto school IDs are stolen

A computer drive holding names, addresses, birth dates and Social Security numbers of all 3,500 Modesto city schools employees has been stolen from a local data processing firm, authorities said Tuesday.

Sgt. Linda King of the Fullerton Police Department said a hard drive and three monitors were stolen in a burglary at Systematic Automation Inc.

No cases of identity theft connected with the data breach have been reported.

-- From the Associated Press

LAKE MEAD

Reservoirs may dry up, study says

The West's great reservoirs, Lake Mead and Lake Powell, could run dry by 2021 without a drastic change in water consumption, according to an analysis released Tuesday.

The two reservoirs, which now contain 25 million acre-feet of water, are losing about 1 million acre-feet a year as a result of rising demand and persistent drought.

The study, to be published in the journal Water Resources Research, analyzed how global warming is likely to increase the strain on the Colorado River. Climate models predict that precipitation will decline and evaporation will increase across much of the western United States.

The reservoirs serve as protection against drought for the 27 million people who rely on water from the Colorado.

"The only option is to not take as much water out," said Tim Barnett, a marine geophysicist at Scripps Institution of Oceanography in La Jolla and lead author of the study.

The U.S. Bureau of Reclamation, which manages the Colorado River, has a plan to reduce allocations if the reservoirs drop below certain levels.

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SACRAMENTO

CHP leader quits; successor named

California Highway Patrol Commissioner Mike Brown is resigning after three years heading the department.

Gov. Arnold Schwarzenegger appointed Deputy Commissioner Joseph Farrow to replace Brown as head of the agency and its more than 10,000 employees. Farrow, 52, takes over March 1.

Brown has been criticized repeatedly by some state lawmakers. The state auditor recently found that the CHP wasted money in buying new guns, motorcycles, patrol car equipment and in using an executive aircraft.

Farrow became a Highway Patrol officer in 1979 and has been deputy commissioner since November 2004. He will earn \$169,500.

-- From the Associated Press

MALIBU

Barron Hilton is arrested

Barron Hilton, younger brother of socialite Paris Hilton, was arrested and booked on suspicion of drunken driving Tuesday morning.

Shortly before 8 a.m., a driver reported Hilton, 18, of Beverly Hills, driving erratically and on the wrong side of the road, on Pacific Coast Highway near Latigo Canyon Road, according to a sheriff's report.

Hilton, driving a black Mercedes-Benz, eventually pulled over and the witness told him to sit on a bus bench until sheriff's deputies arrived, according to the report.

It said Hilton's blood-alcohol level registered 0.14%.

He was booked into jail and posted a \$20,000 bond. He also was charged with possession of a counterfeit driver's license, according to the report.

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