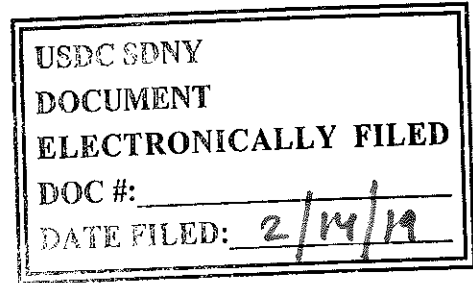


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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SECURITIES AND EXCHANGE COMMISSION, :  
: Plaintiff, :  
- against - :  
: AMIR WALDMAN, et al., :  
: Defendants. :  
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**DECISION & ORDER**

17 Cv. 2088 (RMB)

Based upon the record herein, including without limitation (i) the transcript of the hearing held on January 7, 2019; (ii) Defendants’ motion for summary judgment and request to be filed under seal, dated December 11, 2018; (iii) Plaintiff’s opposition to Defendants’ motion for summary judgment, dated January 14, 2019; (iv) Defendants’ reply, dated January 24, 2019; and (v) Mobileye (a corporate non-party) and the Mobileye Founders’ (two unnamed individual nonparties) letter, dated February 6, 2019, the Court finds and directs as follows:<sup>1</sup>

1 – At the January 7, 2019 hearing, the Court made it clear – and it was also clear to the Court that the parties and non-parties understood and agreed – that the parties’ summary judgment motion materials should not and would not be sealed. “We’re not having a sealed set of summary judgment motions.” Transcript, dated Jan. 7, 2019 at 11. The Court also agreed with the parties that the summary judgment materials may include limited redactions, as follows: (i) financial account numbers, (ii) personal e-mail addresses, (iii) physical home addresses, (iv) the names minor children, and (v) Defendant Waldman’s total net worth. See Transcript, dated Jan. 7, 2019 at 4-5, 6-7, 15-18, 22-23; see also id. at 6-7 (Counsel for Defendant Waldman: “The

<sup>1</sup> Any arguments raised by the parties and non-parties but not specifically addressed herein have been considered by the Court and rejected.

account numbers, the email address, the physical address, the names of [Defendant Waldman's] children, and the numbers associated with [Defendant Waldman's] overall net worth. . . . [T]hat, Judge, is all we're seeking [to redact].").<sup>2</sup>

2 – Counsel for non-parties Mobileye and the two unnamed Mobileye founders participated in the January 7, 2019 hearing. They expressed their concern over potential “publicity blowback” against their clients. Transcript, dated Jan. 7, 2019 at 17; *id.* at 15-16 (Counsel for Mobileye's founders: “Well, part of the reason, your Honor [for sealing and/or redactions] is the media interest in these two individuals and their families. . . . We think that particularly since the Founders are non-parties and their children are even further removed from this, this kind of information . . . really should not be subject to public scrutiny, particularly when it could have these publicity blowback effects on these children.”).

The Court was unpersuaded at the hearing, in part because of the generality of counsels' arguments. It allowed the non-parties to submit specific written objections to specifically identified material included in the summary judgment briefing, and to make particular reference to relevant lines in the deposition transcripts to which they object, along with supporting case citations. *Id.* at 20-21 (Court: “If there's some reason that some conversation between [a Mobileye Founder] and his [minor] child specifically shouldn't be included, that's what I'm hoping to get from you; a list, so to speak, of the particular line[s] that you think should be excluded and the reason why you think it should be excluded with a citation.”). Counsels' February 6, 2019 letter to the Court requests that the “transcript excerpts of the depositions of the

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<sup>2</sup> Court: “Does the SEC go along with those limited redactions?” Counsel for SEC: “Your Honor, we don't oppose it. [We] take no position.” Transcript, dated Jan. 7, 2019 at 5.

Founders . . . be [entirely] kept under seal” or, alternatively, that the Court “accept substitute exhibits of the Founders’ deposition transcripts containing only the pages cited by the parties in their memoranda of law and statements of material fact, and containing limited redactions of personal information.” Mobileye Letter, dated Feb. 6, 2019 at 1, 4.

3 - The Court recognizes that the privacy interests of third parties should be weighed in its balancing equation when determining whether to deny public access to documents filed with the Court. United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). **The Court also recognizes that the presumption of openness and the appropriateness of making court files accessible is accentuated in cases, such as this one, where the government is a party.** See F.T.C. v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 410 (1st Cir. 1987); see also Fournier v. Erickson, 242 F. Supp. 2d 318, 341 (S.D.N.Y. 2003) (“When a district court initially considers a request to seal a file or to approve or take other protective measures, it enjoys considerable discretion in determining whether good cause exists to overcome the presumption of open access to documents filed in our courts.”) (quoting Geller v. Branich Int’l Realty Corp., 212 F.3d 734, 738 (2nd Cir. 2000)).

4 - The Court directs counsel for the SEC and Defendant Waldman jointly to make the following limited redactions sought by the non-parties in their February 6, 2019 letter<sup>3</sup>: (i) **Exhibit A**, Tr. at 67:7-68:25, 120:6, 120: 9, 121:7, 121:9, 126:14-15; **Exhibit B**, Tr. at 93:5; **Exhibit C**, Tr. at 11:1; **Exhibit D**, Tr. at 70:6, 70: 9, 70:17, 126:14-15, and (ii) “extraneous” portions of the deposition transcripts included in the parties’ summary judgment briefs, namely,

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<sup>3</sup> These redactions are in addition to the redactions set forth in subsections (i) – (v) of paragraph 1 above.

those portions which are not being relied upon by the parties in litigating summary judgment.

See Amodeo, 71 F.3d at 1051.

Conclusion & Order

The summary judgment briefs and related materials including redactions should be filed on the S.D.N.Y. public docket on or before Tuesday, February 19, 2019 at 2:00 p.m. Counsel should deliver courtesy copies to the Court, along with a copy that contains no redactions.

Dated: New York, New York  
February 14, 2019

Handwritten signature of Richard M. Berman in black ink, consisting of the letters 'RMB' in a stylized, cursive font.

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**RICHARD M. BERMAN, U.S.D.J.**