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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ESTY COHEN, an individual,
Plaintiff,
v.

AAA LOCKSMITH, INC., a
California corporation; **YUVAL
HARPAZ**, an individual; and DOES 1
through 10, inclusive,
Defendants.

Case No. 8:17-cv-01383 CJC (JDEx)
DISCOVERY MATTER

PROTECTIVE ORDER

Honorable John D. Early
Ronald Reagan Federal Building and United
States Courthouse
411 W. Fourth St.
Courtroom 6B, 6th Floor
Santa Ana, CA, 92701

AAA LOCKSMITH, INC., a
California corporation; **YUVAL
HARPAZ**, an individual; and DOES 1
through 10, inclusive
Counterclaimants,
v.

ESTY COHEN, an individual; and
ROES 1 through 25, inclusive,
Counterclaim Defendants.

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to

1 enter the following Stipulated Protective Order. The parties acknowledge that this
2 Order does not confer blanket protections on all disclosures or responses to
3 discovery and that the protection it affords from public disclosure and use extends
4 only to the limited information or items that are entitled to confidential treatment
5 under the applicable legal principles.

6 2. GOOD CAUSE STATEMENT

7 This action is likely to involve trade secrets, customer and pricing lists and
8 other valuable research, development, commercial, financial, technical and/or
9 proprietary information for which special protection from public disclosure and
10 from use for any purpose other than prosecution of this action is warranted. Such
11 confidential and proprietary materials and information consist of, among other
12 things, confidential website programming and design information, business or
13 financial information, information regarding confidential business practices, or
14 other confidential research, development, or commercial information (including
15 information implicating privacy rights of third parties), information otherwise
16 generally unavailable to the public, or which may be privileged or otherwise
17 protected from disclosure under state or federal statutes, court rules, case decisions,
18 or common law. Accordingly, to expedite the flow of information, to facilitate the
19 prompt resolution of disputes over confidentiality of discovery materials, to
20 adequately protect information the parties are entitled to keep confidential, to
21 ensure that the parties are permitted reasonable necessary uses of such material in
22 preparation for and in the conduct of trial, to address their handling at the end of
23 the litigation, and serve the ends of justice, a protective order for such information
24 is justified in this matter. It is the intent of the parties that information will not be
25 designated as confidential for tactical reasons and that nothing be so designated
26 without a good faith belief that it has been maintained in a confidential, non-public
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1 manner, and there is good cause why it should not be part of the public record of
2 this case.

3 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

4 The parties further acknowledge, as set forth in Section 12.3, below, that
5 this Stipulated Protective Order does not entitle them to file confidential
6 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
7 be followed and the standards that will be applied when a party seeks permission
8 from the court to file material under seal. There is a strong presumption that the
9 public has a right of access to judicial proceedings and records in civil cases. In
10 connection with non-dispositive motions, good cause must be shown to support a
11 filing under seal. See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172,
12 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th
13 Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis.
14 1999) (even stipulated protective orders require good cause showing), and a
15 specific showing of good cause or compelling reasons with proper evidentiary
16 support and legal justification, must be made with respect to Protected Material
17 that a party seeks to file under seal. The parties' mere designation of Disclosure or
18 Discovery Material as CONFIDENTIAL does not— without the submission of
19 competent evidence by declaration, establishing that the material sought to be filed
20 under seal qualifies as confidential, privileged, or otherwise protectable—
21 constitute good cause.

22 Further, if a party requests sealing related to a dispositive motion or trial,
23 then compelling reasons, not only good cause, for the sealing must be shown, and
24 the relief sought shall be narrowly tailored to serve the specific interest to be
25 protected. See *Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
26 2010). For each item or type of information, document, or thing sought to be filed
27 or introduced under seal, the party seeking protection must articulate compelling
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1 reasons, supported by specific facts and legal justification, for the requested sealing
2 order. Again, competent evidence supporting the application to file documents
3 under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise protectable
5 in its entirety will not be filed under seal if the confidential portions can be
6 redacted. If documents can be redacted, then a redacted version for public viewing,
7 omitting only the confidential, privileged, or otherwise protectable portions of the
8 document, shall be filed. Any application that seeks to file documents under seal in
9 their entirety should include an explanation of why redaction is not feasible.

10 4. DEFINITIONS

11 4.1. Action: This pending federal lawsuit.

12 4.2. Challenging Party: A Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 4.3. “CONFIDENTIAL” Information or Items: information
15 (regardless of how it is generated, stored or maintained) or tangible things that
16 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
17 above in the Good Cause Statement.

18 4.4. Counsel: Outside Counsel of Record and House Counsel (as
19 well as their support staff).

20 4.5. Designating Party: A Party or Non-Party that designates
21 information or items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 4.6. Disclosure or Discovery Material: All items or information,
24 regardless of the medium or manner in which it is generated, stored, or maintained
25 (including, among other things, testimony, transcripts, and tangible things), that are
26 produced or generated in disclosures or responses to discovery in this matter.
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1 4.7. Expert: A person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this Action.

4 4.8. House Counsel: Attorneys who are employees of a party to this
5 Action. House Counsel does not include Outside Counsel of Record or any other
6 outside counsel.

7 4.9. Non-Party: Any natural person, partnership, corporation,
8 association or other legal entity not named as a Party to this action.

9 4.10. Outside Counsel of Record: Attorneys who are not employees
10 of a party to this Action but are retained to represent or advise a party to this
11 Action and have appeared in this Action on behalf of that party or are affiliated
12 with a law firm that has appeared on behalf of that party, and includes support
13 staff.

14 4.11. Party: any party to this Action, including all of its officers,
15 directors, employees, consultants, retained experts, and Outside Counsel of Record
16 (and their support staffs).

17 4.12. Producing Party: A Party or Non-Party that produces
18 Disclosure or Discovery Material in this Action.

19 4.13. Professional Vendors: persons or entities that provide litigation
20 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
22 and their employees and subcontractors.

23 4.14. Protected Material: Any Disclosure or Discovery Material that
24 is designated as “CONFIDENTIAL.”

25 4.15. Receiving Party: A Party that receives Disclosure or Discovery
26 Material from a Producing Party.

1 5. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 6. DURATION

10 Once a case proceeds to trial, information that was designated as
11 CONFIDENTIAL or maintained pursuant to this protective order used or
12 introduced as an exhibit at trial becomes public and will be presumptively
13 available to all members of the public, including the press, unless compelling
14 reasons supported by specific factual findings to proceed otherwise are made to the
15 trial judge in advance of the trial. See *Kamakana*, 447 F.3d at 1180-81
16 (distinguishing “good cause” showing for sealing documents produced in
17 discovery from “compelling reasons” standard when merits-related documents are
18 part of court record). Accordingly, the terms of this protective order do not extend
19 beyond the commencement of the trial.

20 7. DESIGNATING PROTECTED MATERIAL

21 7.1. Exercise of Restraint and Care in Designating Material for
22 Protection. Each Party or Non-Party that designates information or items for
23 protection under this Order must take care to limit any such designation to specific
24 material that qualifies under the appropriate standards. The Designating Party must
25 designate for protection only those parts of material, documents, items or oral or
26 written communications that qualify so that other portions of the material,
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1 documents, items or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to
6 impose unnecessary expenses and burdens on other parties) may expose the
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 7.2. Manner and Timing of Designations. Except as otherwise
12 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
13 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
14 protection under this Order must be clearly so designated before the material is
15 disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix at a minimum, the legend
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
21 contains protected material. If only a portion of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s)
23 (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents available for inspection
25 need not designate them for protection until after the inspecting Party has indicated
26 which documents it would like copied and produced. During the inspection and
27 before the designation, all of the material made available for inspection shall be
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1 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
2 documents it wants copied and produced, the Producing Party must determine
3 which documents, or portions thereof, qualify for protection under this Order.
4 Then, before producing the specified documents, the Producing Party must affix
5 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
6 only a portion of the material on a page qualifies for protection, the Producing
7 Party also must clearly identify the protected portion(s) (e.g., by making
8 appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party
10 identifies the Disclosure or Discovery Material on the record, before the close of
11 the deposition all protected testimony.

12 (c) for information produced in some form other than documentary
13 and for any other tangible items, that the Producing Party affix in a prominent
14 place on the exterior of the container or containers in which the information is
15 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
16 information warrants protection, the Producing Party, to the extent practicable,
17 shall identify the protected portion(s).

18 7.3. Inadvertent Failures to Designate. If timely corrected, an
19 inadvertent failure to designate qualified information or items does not, standing
20 alone, waive the Designating Party’s right to secure protection under this Order for
21 such material. Upon timely correction of a designation, the Receiving Party must
22 make reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.

24 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.
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1 8.2. Meet and Confer. The Challenging Party shall initiate the
2 dispute resolution process under Local Rule 37-1 et seq.

3 8.3. Joint Stipulation. Any challenge submitted to the Court shall be
4 via a joint stipulation pursuant to Local Rule 37-2.

5 8.4. The burden of persuasion in any such challenge proceeding
6 shall be on the Designating Party. Frivolous challenges, and those made for an
7 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
8 other parties) may expose the Challenging Party to sanctions. Unless the
9 Designating Party has waived or withdrawn the confidentiality designation, all
10 parties shall continue to afford the material in question the level of protection to
11 which it is entitled under the Producing Party's designation until the Court rules on
12 the challenge.

13 9. ACCESS TO AND USE OF PROTECTED MATERIAL

14 9.1. Basic Principles. A Receiving Party may use Protected Material
15 that is disclosed or produced by another Party or by a Non-Party in connection
16 with this Action only for prosecuting, defending or attempting to settle this Action.
17 Such Protected Material may be disclosed only to the categories of persons and
18 under the conditions described in this Order. When the Action has been terminated,
19 a Receiving Party must comply with the provisions of section 15 below (FINAL
20 DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
22 location and in a secure manner that ensures that access is limited to the persons
23 authorized under this Order.

24 9.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
25 otherwise ordered by the court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated
27 "CONFIDENTIAL" only to:
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1 (a) the Receiving Party's Outside Counsel of Record in this
2 Action, as well as employees of said Outside Counsel of Record to whom it is
3 reasonably necessary to disclose the information for this Action;

4 (b) the officers, directors, and employees (including House
5 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
6 this Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to
8 whom disclosure is reasonably necessary for this Action and who have signed the
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably necessary for this Action
14 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
15 A);

16 (g) the author or recipient of a document containing the
17 information or a custodian or other person who otherwise possessed or knew the
18 information;

19 (h) during their depositions, witnesses, and attorneys for
20 witnesses, in the Action to whom disclosure is reasonably necessary provided: (1)
21 the deposing party requests that the witness sign the form attached as Exhibit 1
22 hereto; and (2) they will not be permitted to keep any confidential information
23 unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
24 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal Protected
26 Material may be separately bound by the court reporter and may not be disclosed
27 to anyone except as permitted under this Stipulated Protective Order; and
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1 (i) any mediators or settlement officers and their supporting
2 personnel, mutually agreed upon by any of the parties engaged in settlement
3 discussions.

4 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
5 PRODUCED IN OTHER LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this Action as
8 “CONFIDENTIAL,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such
10 notification shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the
12 subpoena or order to issue in the other litigation that some or all of the material
13 covered by the subpoena or order is subject to this Protective Order. Such
14 notification shall include a copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought
16 to be pursued by the Designating Party whose Protected Material may be affected.
17 If the Designating Party timely seeks a protective order, the Party served with the
18 subpoena or court order shall not produce any information designated in this action
19 as “CONFIDENTIAL” before a determination by the court from which the
20 subpoena or order issued, unless the Party has obtained the Designating Party’s
21 permission. The Designating Party shall bear the burden and expense of seeking
22 protection in that court of its confidential material and nothing in these provisions
23 should be construed as authorizing or encouraging a Receiving Party in this Action
24 to disobey a lawful directive from another court.

25 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information
28 produced by a Non-Party in this Action and designated as “CONFIDENTIAL.”

1 Such information produced by Non-Parties in connection with this litigation is
2 protected by the remedies and relief provided by this Order. Nothing in these
3 provisions should be construed as prohibiting a Non-Party from seeking additional
4 protections.

5 (b) In the event that a Party is required, by a valid discovery
6 request, to produce a Non-Party's confidential information in its possession, and
7 the Party is subject to an agreement with the Non-Party not to produce the Non-
8 Party's confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and
10 the Non-Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
13 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
14 reasonably specific description of the information requested; and

15 (3) make the information requested available for
16 inspection by the Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this
18 court within 14 days of receiving the notice and accompanying information, the
19 Receiving Party may produce the Non-Party's confidential information responsive
20 to the discovery request. If the Non-Party timely seeks a protective order, the
21 Receiving Party shall not produce any information in its possession or control that
22 is subject to the confidentiality agreement with the Non-Party before a
23 determination by the court. Absent a court order to the contrary, the Non-Party
24 shall bear the burden and expense of seeking protection in this court of its
25 Protected Material.
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1 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Protected Material to any person or in any circumstance not authorized
4 under this Stipulated Protective Order, the Receiving Party must immediately (a)
5 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
6 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
7 the person or persons to whom unauthorized disclosures were made of all the terms
8 of this Order, and (d) request such person or persons to execute the
9 “Acknowledgment an Agreement to Be Bound” attached hereto as Exhibit A.

10 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
11 OTHERWISE PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other
14 protection, the obligations of the Receiving Parties are those set forth in Federal
15 Rule of Civil\ Procedure 26(b)(5)(B). This provision is not intended to modify
16 whatever procedure may be established in an e-discovery order that provides for
17 production without prior privilege review. Pursuant to Federal Rule of Evidence
18 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
19 of a communication or information covered by the attorney-client privilege or
20 work product protection, the parties may incorporate their agreement in the
21 stipulated protective order submitted to the court.

22 14. MISCELLANEOUS

23 14.1. Right to Further Relief. Nothing in this Order abridges the right
24 of any person to seek its modification by the Court in the future.

25 14.2. Right to Assert Other Objections. By stipulating to the entry of
26 this Protective Order, no Party waives any right it otherwise would have to object
27 to disclosing or producing any information or item on any ground not addressed in
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1 this Stipulated Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the material covered by this Order.

3 14.3. Filing Protected Material. A Party that seeks to file under seal
4 any Protected Material must comply with Local Civil Rule 79-5. Protected
5 Material may only be filed under seal pursuant to a court order authorizing the
6 sealing of the specific Protected Material at issue. If a Party's request to file
7 Protected Material under seal is denied by the court, then the Receiving Party may
8 file the information in the public record unless otherwise instructed by the court.

9 15. FINAL DISPOSITION

10 After the final disposition of this Action, as defined in paragraph 6, within
11 60 days of a written request by the Designating Party, each Receiving Party must
12 return all Protected Material to the Producing Party or destroy such material. As
13 used in this subdivision, "all Protected Material" includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of the
15 Protected Material. Whether the Protected Material is returned or destroyed, the
16 Receiving Party must submit a written certification to the Producing Party (and, if
17 not the same person or entity, to the Designating Party) by the 60-day deadline that
18 (1) identifies (by category, where appropriate) all the Protected Material that was
19 returned or destroyed and (2) affirms that the Receiving Party has not retained any
20 copies, abstracts, compilations, summaries or any other format reproducing or
21 capturing any of the Protected Material. Notwithstanding this provision, Counsel
22 are entitled to retain an archival copy of all pleadings, motion papers, trial,
23 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
24 and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this
27 Protective Order as set forth in Section 6 (DURATION).
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16. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: December 4, 2017



JOHN D. EARLY
United States Magistrate Judge