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15  
16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN FRANCISCO DIVISION**

19 FINJAN, INC.,

20 Plaintiff,

21 v.

22 JUNIPER NETWORKS, INC.,

23 Defendant.

Case No.: 3:17-cv-05659-WHA

**STIPULATED [PROPOSED]**  
**PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public disclosure and from use for  
4 any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket  
5 protections on all disclosures or responses to discovery and the protection it affords from public  
6 disclosure and use extends only to the limited information or items that are entitled to confidential  
7 treatment under the applicable legal principles. As set forth in Section 14.4 below, this Protective Order  
8 does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth  
9 the procedures that must be followed and the standards that will be applied when a party seeks  
10 permission from the court to file material under seal.

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or  
13 items under this Order.

14 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,  
15 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure  
16 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
18 their support staff).

19 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

21 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
24 CODE.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or  
26 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
27 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery  
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1 in this matter.

2           2.7    Expert: a person with specialized knowledge or experience in a matter pertinent to the  
3 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
4 consultant in this action, (2) is not a past or current employee of a Party and (3) at the time of retention,  
5 is not anticipated to become an employee of a Party or of a Party's competitor. These limitations do not  
6 prevent Dr. Eric Cole from serving as an expert in this case based on the declaration he filed with the  
7 Court on April 30, 2018 (Dkt. No. 76).

8           2.8    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:  
9 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-  
10 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.  
11 If a Producing Party designates non-technical, purely financial or license information as "HIGHLY  
12 CONFIDENTIAL – ATTORNEYS' EYES ONLY" the Receiving Party may challenge the non-  
13 technical portions of that Information or Items as "CONFIDENTIAL" (defined in Section 2.2) under  
14 Section 6 below.

15           2.9    "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely  
16 sensitive "Confidential Information or Items" representing computer code (code that is compiled or  
17 interpreted) and associated comments and revision histories, disclosure of which to another Party or  
18 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive  
19 means.

20           2.10   House Counsel: attorneys who are employees of a party to this action. House Counsel  
21 does not include Outside Counsel of Record or any other outside counsel.

22           2.11   Non-Party: any natural person, partnership, corporation, association, or other legal entity  
23 not named as a Party to this action.

24           2.12   Outside Counsel of Record: attorneys who are not employees of a party to this action but  
25 are retained to represent or advise a party to this action and have appeared in this action on behalf of that  
26 party or are affiliated with a law firm which has appeared on behalf of that party.

27           2.13   Party: any party to this action, including all of its officers, directors, employees,  
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1 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
3 this action.

4 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
5 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or  
6 retrieving data in any form or medium) and their employees and subcontractors.

7 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY  
9 CONFIDENTIAL – SOURCE CODE.”

10 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
11 Party.

12 3. SCOPE

13 The protections conferred by this Order cover not only Protected Material (as defined above), but  
14 also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,  
15 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations  
16 by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by  
17 this Order do not cover the following information: (a) any information that is in the public domain at the  
18 time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a  
19 Receiving Party as a result of publication not involving a violation of this Order, including becoming  
20 part of the public record through trial or otherwise; and (b) any information known to the Receiving  
21 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
22 obtained the information lawfully and under no obligation of confidentiality to the Designating Party.  
23 Any use of Protected Material at trial shall be governed by a separate agreement or order.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
27 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
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1 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and  
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits  
3 for filing any motions or applications for extension of time pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
6 Party that designates information or items for protection under this Order must take care to limit any  
7 such designation to specific material that qualifies under the appropriate standards. To the extent it is  
8 practical to do so, the Designating Party must designate for protection only those parts of material,  
9 documents, items, or oral or written communications that qualify – so that other portions of the material,  
10 documents, items, or communications for which protection is not warranted are not swept unjustifiably  
11 within the ambit of this Order.

12 If it comes to a Designating Party's attention that information or items that it designated for  
13 protection do not qualify for protection at all or do not qualify for the level of protection initially  
14 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the  
15 mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
17 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
19 the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
22 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
23 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY  
24 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or  
25 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify  
26 the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
27 each portion, the level of protection being asserted.

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