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FINJAN, INC.

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 FINJAN, INC., a Delaware Corporation,

14 Plaintiff,

15 v.

16 JUNIPER NETWORKS, INC., a Delaware
17 Corporation,

18 Defendant.

Case No.: 17-cv-05659-WHA

**PLAINTIFF FINJAN, INC.'S MOTION TO
SEAL COURTROOM**

1 **I. INTRODUCTION**

2 Plaintiff Finjan, Inc. (“Finjan”) respectfully requests to seal the courtroom during trial when
3 certain confidential third party licensing and technical information is discussed.

4 **II. LEGAL STANDARD**

5 The public interest in having access to the judicial record is outweighed when public disclosure
6 of a party’s confidential information would result in competitive harm or the disclosure of trade
7 secrets. See *Kamakana v. City & Cnty. Of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir. 2006); *In re*
8 *Electronic Arts, Inc.*, No. 08-74426, 2008 WL 4726222, at **2 (9th Cir. Oct. 28, 2008) (citing
9 Restatement on Torts definition of “trade secret” and further noting that “compelling reasons” may
10 exist if sealing is required to prevent judicial documents from being used “as sources of business
11 information that might harm a litigant's competitive standing.”) (citation omitted); *Apple Inc. v.*
12 *Samsung Elecs. Co.*, 727 F.3d 1214, 1223, 1225-26 (Fed. Cir. 2013) (applying “compelling
13 reasons” standard and holding that trial court abused its discretion by unsealing trade secret
14 information regarding “profit, cost, and margin data”).

15 **III. ARGUMENT**

16 Finjan and Juniper intend to introduce testimony, exhibits, and demonstratives related to certain
17 confidential license agreements during the testimony of Finjan’s Director of Business Development,
18 Mr. John Garland, and Juniper’s damages expert, Dr. Keith Ugone.¹ These agreements and related
19 negotiation documents contain confidential business, licensing, and technical information of Finjan
20 and its licensees including F5 Networks, Inc. (“F5”) and additional third parties.² The named third
21 parties treat this information as highly confidential within their own businesses, and Finjan and such
22 third parties have taken measures to apply an extremely high level of protection to this information to
23 avoid public disclosure. Accordingly, Finjan seeks to seal the courtroom during any testimony

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25 ¹ As done in a previous litigation, *Finjan v. Blue Coat*, Case No. 13-3999-BLF, Finjan requests sealing
of the courtroom the day before the testimony sought to be sealed.

26 ² Pursuant to confidentiality agreements with two licensees, their identity may not be revealed publicly.
27 The license agreements and confidential licensing discussions are: Trial Exhibits 198, 1011, 1102,
1106, 1108, 1311, 1493, 1494, 1495, 1496

1 regarding the confidential terms of their license agreements with Finjan and publication of the
2 agreements to the jury. For two licensees, pursuant to confidentiality agreements, Finjan cannot
3 mention their names publicly.

4 Disclosure of the confidential terms of Finjan's license and technology agreements including
5 payment terms would reveal what Finjan and each of the third parties agreed to keep confidential as
6 part of their negotiations. Each of the license agreements themselves contain a confidentiality
7 provision prohibiting public disclosure of their terms, and therefore Finjan requests that the Court seal
8 the courtroom during the time that the confidential terms of these agreements are discussed during
9 trial.

10 Finjan will endeavor to have the parties present evidence in such a way as to minimize the need
11 for sealing. Certain confidential documents, for instance, likely can be discussed generally on the
12 record without specific reference to the portions that may require sealing. Finjan commits to take steps
13 to minimize its sealing requests, and limit them to instances where there is no practical alternative to
14 sealing.

15 The Court previously granted motions to seal the courtroom during discussion of Finjan's
16 confidential license agreements in prior litigations. *See Finjan, Inc. v. Blue Coat Sys., Inc.*, No. 13-
17 3999, Dkt. No. 400, *Finjan, Inc., v. Blue Coat Sys. Inc.*, No. 15-3295, Dkt. No. 394. Courts have
18 preserved the confidentiality of license agreements. *See Apple, Inc. v. Samsung Electronics Co., et al.*,
19 Case No. 11-cv-01846-LHK, 2012 WL 3283478 at *7 (N.D. Cal. Aug. 9, 2012) (granting sealing of
20 license agreements as the agreements themselves contain "a whole host of terms" that would be
21 unnecessary to make public (e.g. termination conditions, side-agreements, waivers and could result in
22 "significant competitive harm" to the licensees if disclosed); *see also In re Electronic Arts, Inc.*, 2008
23 WL 4726222, at **2 (writ of mandamus directing district court to file pricing terms and royalty rates
24 of license agreement under seal); *see also Open Text S.A. v. Box, Inc.*, No. 13-cv-04910-JD, 2014 WL
25 7368594, at *3 (N.D. Cal. Dec. 26, 2014) (granting motion to seal pricing terms of license agreement);
26 *see also U.S. v. Zhang*, 590 Fed. Appx. 663, 667 (9th Cir. 2014) (district court adequately supported
27 decision to close the courtroom for one witness' testimony disclosing trade secrets in documents).

1 Accordingly, Finjan seeks to seal the courtroom only when the specific and limited portions of trial
2 testimony as it relates to the discussion of the confidential terms of the above listed exhibits.³

3 **IV. CONCLUSION**

4 The relief requested by Finjan is necessary and narrowly tailored to protect the above listed
5 third parties' confidential business, technical, and licensing information. Accordingly, Finjan
6 respectfully requests that the Court grant its Administrative Motion to Seal the Courtroom.

7
8 Respectfully submitted,

9 Dated: December 10, 2018

/s/ Lisa Kobialka

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23 FINJAN, INC.

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26 _____
27 ³ Finjan will provide the Court with redacted portions of the trial testimony that require to be sealed
28 when the transcript of trial proceedings is available for review.