

1 PAUL J. ANDRE (State Bar No. 196585)  
pandre@kramerlevin.com  
2 LISA KOBIALKA (State Bar No. 191404)  
lkobialka@kramerlevin.com  
3 JAMES HANNAH (State Bar No. 237978)  
jhannah@kramerlevin.com  
4 KRISTOPHER KASTENS (State Bar No. 254797)  
kkastens@kramerlevin.com  
5 KRAMER LEVIN NAFTALIS & FRANKEL LLP  
6 990 Marsh Road  
7 Menlo Park, CA 94025  
8 Telephone: (650) 752-1700  
9 Facsimile: (650) 752-1800  
10 *Attorneys for Plaintiff*  
11 FINJAN, INC.

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**  
14

15 FINJAN, INC., a Delaware Corporation,

16 Plaintiff,

17 v.

18 JUNIPER NETWORKS, INC., a Delaware  
19 Corporation,

20 Defendant.  
21

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

**PLAINTIFF FINJAN, INC.'S  
ADMINISTRATIVE MOTION TO FILE  
DOCUMENTS UNDER SEAL**

1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 26(c), Civil Local Rules 7-11 and 79-5, Plaintiff,  
 3 Finjan, Inc. (“Finjan”), brings this Administrative Motion to File Under Seal. There are compelling  
 4 reasons to file the following documents identified below under seal, because they contain (1)  
 5 confidential information of Juniper Networks, Inc. (“Juniper”), (2) the parties’ licensing/settlement  
 6 negotiations that are within the ambit of Rule 408 of the Federal Rules of Evidence; and (3) confidential  
 7 terms in license/settlement agreements between Finjan and Finjan’s licensees. *See* Declaration of A.  
 8 Manes in support of Finjan’s Administrative Motion (“Manes Decl.”).

9 **II. ARGUMENT**

10 Finjan’s Administrative Motion to File Documents Under Seal should be granted because there  
 11 are compelling reasons as identified below to seal the portions of the documents identified below:

Documents sought to be sealed	Portions sought to be sealed	Designating party	Reasons for sealing
Plaintiff Finjan Inc.’s Opposition to Juniper’s Motion for Summary Judgment (“Opposition”)	Highlighted portions at p. 1, lines 10-11; p. 4, lines 7-8; p. 11, lines 6-26; p. 13, lines 3-6, 20, 22-26; p. 15, lines 10-17, 25-26; p. 16, lines 25-27; p. 17, lines 1, 5-6; p. 19, lines 7-28; p. 32, lines 12-24; p. 33, line 1; p. 36, lines 10-12	Juniper and/or Finjan	The highlighted portions contain (1) Juniper’s confidential information; (2) the parties’ licensing/settlement negotiations that are within the ambit of Rule 408 of the Federal Rules of Evidence; (3) confidential terms in license/settlement agreements between Finjan and Finjan’s licensees. <i>See</i> Manes Decl. at ¶ 3; <i>see also</i> below.
Declaration of Dr. Michael Mitzenmacher in Support of Finjan’s Opposition (“Mitz Decl.”)	Highlighted portions at p. 14, lines 7-17; p. 15, lines 7-9, 17-18, 28; p. 16, lines 1-19; p. 17, line 18 to p. 18, line 6; p. 18, line 13 to p. 19, line 26; and p. 20, lines 9-22	Juniper	The highlighted portions contain Juniper’s confidential information. <i>See</i> Manes Decl. at ¶ 4; <i>see also</i> below.

1 2	Exs. 1, 14-18, 26, 28 to Kastens Decl.	Entirety	Juniper	Identified exhibits contain Juniper's confidential information. <i>See</i> Manes Decl. at ¶ 5; <i>see also</i> below.
3 4 5 6 7 8 9	Exs. 21, 23-24 to Kastens Decl.	Entirety	Finjan	Identified exhibits contain (1) the parties' licensing/settlement negotiations that are within the ambit of Rule 408 of the Federal Rules of Evidence; (2) confidential terms in license/settlement agreements between Finjan and Finjan's licensees. <i>See</i> Manes Decl. at ¶ 6; <i>see also</i> below.
10 11 12	Exs. 2, 4-11 to Kastens Decl.	Entirety	Juniper and/or Finjan	Identified exhibits contain Juniper's and Finjan's confidential information. <i>See</i> Manes Decl. at ¶ 7; <i>see also</i> below.

13 As set forth in the accompanying Declaration of Austin Manes in support of Finjan's  
 14 Administrative Motion to File under Seal, the above identified documents contain confidential  
 15 information of Juniper, Finjan and/or third parties and should be sealed. Such confidential information  
 16 includes: (1) Juniper's confidential information; (2) Finjan's information concerning confidential  
 17 settlement negotiation subject to the Rule 408; (3) terms in confidential settlement agreements with  
 18 Finjan's licensees.

19 Portions of documents containing information that Juniper has designated as "Confidential,"  
 20 "Highly Confidential – Attorneys' Eyes Only," or "Highly Confidential – Source Code" should be  
 21 sealed because the prejudice to Juniper from the disclosure of this information to its competitors would  
 22 likely outweigh any benefit of disclosing the information to the public. *See Apple Inc. v. Samsung Elecs.*  
 23 *Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) ("We conclude that Apple and Samsung have such an interest  
 24 because they could suffer competitive harm if this information is made public, and the district court erred  
 25 by concluding otherwise. In particular, it seems clear that if Apple's and Samsung's suppliers have access  
 26 to their profit, cost, and margin data, it could give the suppliers an advantage in contract negotiations,  
 27 which they could use to extract price increases for components.").

1 Similarly, highly confidential information related to the parties' patent licensing/settlement  
2 negotiations as well as Finjan and its third party licensees' confidential terms of license/settlement  
3 agreements should also be sealed because such information is within the ambit of Federal Rules of  
4 Evidence Rule 408. Such licensing/settlement negotiations and confidential terms of license/settlement  
5 agreements are specific to the unique financial and business circumstances of the negotiating parties at  
6 that specific timeframe. Thus, there will be substantial prejudice to the parties and third parties'  
7 respective business interests if the confidential license/settlement negotiations and/or confidential terms  
8 of license/settlement agreements are disclosed publicly. Third parties may wrongfully attempt to utilize  
9 the information disclosed in these negotiations or agreements for their advantage in other negotiations  
10 with these parties, which can have an inappropriate and disproportionate impact on discussions around  
11 future licensing matters for the parties. *See Thomas v. Magnachip Semiconductor Corp.*, No. 14-CV-  
12 01160-JST, 2016 WL 3879193, at \*7 (N.D. Cal. July 18, 2016) (finding compelling reason to seal  
13 settlement agreement to avoid third parties from leveraging the information to negotiate special treatment  
14 by the litigating parties).

15 Finally, the portions sought to be sealed here are narrowly tailored to include only "sealable  
16 material," as set forth in the accompanying Declaration of Austin Manes. To comply with Civil Local  
17 Rule 79-5, Finjan has filed publicly the non-confidential portions of above identified documents.  
18 Attached hereto are redacted and unredacted versions of the same documents.

### 19 **III. CONCLUSION**

20 For the foregoing reasons, Finjan respectfully requests that the Court grant its Administrative  
21 Motion to File Documents Under Seal.

Respectfully submitted,

Dated: March 14, 2019

By: /s/ Kristopher Kastens  
Paul J. Andre (State Bar No. 196585)  
Lisa Kobialka (State Bar No. 191404)  
James Hannah (State Bar No. 237978)  
Kristopher Kastens (State Bar No. 254797)  
KRAMER LEVIN NAFTALIS  
& FRANKEL LLP  
990 Marsh Road  
Menlo Park, CA 94025  
Telephone: (650) 752-1700  
Facsimile: (650) 752-1800  
pandre@kramerlevin.com  
lkobialka@kramerlevin.com  
jhannah@kramerlevin.com  
kkastens@kramerlevin.com

*Attorneys for Plaintiff*  
FINJAN, INC.