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12 JUNIPER NETWORKS, INC.

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 FINJAN, INC., ) Case No. 3:17-cv-05659-WHA  
17 )  
18 Plaintiff, ) **DEFENDANT JUNIPER NETWORKS,**  
19 vs. ) **INC.'S ADMINISTRATIVE MOTION TO**  
20 JUNIPER NETWORKS, INC., ) **FILE UNDER SEAL**  
21 )  
22 ) Judge: Hon. William Alsup  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Civil Local Rules 7-11 and 79-5, Defendant Juniper Networks, Inc. (“Juniper”) respectfully moves to file under seal the following:

Document	Portion to Be Sealed	Basis for Sealing	Designating Party
Exhibit 15 to Kastens Decl. (Design Spec.)	Highlighted portions at bates no. JNPR-FNJN 29018 00975675; JNPR-FNJN 29018 00975676; JNPR-FNJN 29018 00975677; JNPR-FNJN 29018 00975678; JNPR-FNJN 29018 00975679	Confidential Source Code	Juniper
Exhibit 16 to Kastens Decl. (Design Spec.)	Highlighted portions at bates no. JNPR-FNJN 29018 00962784; JNPR-FNJN 29018 00962791	Confidential Source Code	Juniper

This motion is based upon this Notice of Motion; the accompanying Memorandum of Points and Authorities; the Declaration of Ingrid Petersen (the “Sealing Declaration”); other evidence and arguments that the Court may consider; and all other matters of which the Court may take judicial notice.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to Civil Local Rules 7-11 and 79-5, Juniper hereby brings this administrative motion to file under seal Juniper’s disclosure of confidential source code in the exhibits attached to the Declaration of Ingrid Petersen on Behalf of Defendant Juniper Networks, Inc. in Support of Finjan, Inc.’s Administrative Motion to File Documents Under Seal (Dkt. No. 392).

It is well established that the right to inspect and copy judicial records is not absolute but rather is subject to a number of exceptions to guard against harmful use of sensitive materials. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006). Because the documents relate to a motion for summary judgment, the “compelling reasons” standard applies. *Id.* at 1179. “‘Compelling reasons’ sufficient to outweigh the public’s interest in disclosure exist when

1 court records might become a vehicle for improper purposes such as the use of records to gratify  
2 private spite, promote public scandal, circulate libelous statements, or release trade secrets.”  
3 *Demaree v. Pederson*, 887 F.3d 870, 884 (9th Cir. 2018) (internal quotations and alterations omitted)  
4 (quoting *Kamakana*, 447 F.3d at 1179). Under Ninth Circuit law, trade secrets are “any formula,  
5 pattern, device or compilation of information which is used in one’s business, and which gives him  
6 an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec.*  
7 *Arts, Inc.*, 298 Fed. App’x 568, 569 (9th Cir. 2008) (quoting RESTATEMENT (FIRST) OF TORTS § 757  
8 cmt. b); *see also Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972).

9 Civil Local Rule 79-5 supplements the “compelling reasons” standard. Under this rule, a  
10 party seeking to file under seal must submit “a request that establishes that the document, or portions  
11 thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the  
12 law.” *Id.* Additionally, “[t]he request must be narrowly tailored to seek sealing only of sealable  
13 material.” *Id.*

14 Courts within the Northern District of California have concluded that “[c]onfidential source  
15 code clearly meets the definition of a trade secret . . . [and therefore] meets the ‘compelling reasons’  
16 standard.” *Fed. Trade Comm’n v. DIRECTV, Inc.*, No. 15-CV-01129-HSG, 2017 WL 840379, at  
17 \*2 (N.D. Cal. Mar. 3, 2017) (second alteration in original) (quoting *Apple, Inc. v. Samsung Elecs.*  
18 *Co.*, No. 11-CV-01846-LHK, 2012 WL 6115623, at \*2 (N.D. Cal. Dec. 10, 2012), *rev’d on other*  
19 *grounds, Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013)); *see also*  
20 *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2017 WL 1036652, at \*3 (N.D. Cal. Mar. 17, 2017).

21 There are “compelling reasons” for sealing the redacted portions of the exhibits because  
22 those documents disclose Juniper’s confidential source code—the computerized instructions  
23 describing exactly how Juniper’s products work.

24 For its source code, Juniper has accumulated significant research and development costs,  
25 and this sensitive trade secret is the foundation of Juniper’s highly proprietary software. By  
26 permitting competitors to receive this information without also spending development costs, public  
27 disclosure of Juniper’s source code would materially impair Juniper’s intellectual property rights  
28 and business positioning.

