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12	JUNIPĖR 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	Plaintiff,)) DEFENDANT JUNIPER NETWORKS,				
18	VS.	INC.'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL				
19	JUNIPER NETWORKS, INC.,	Judge: Hon. William Alsup				
20	Defendant.)				
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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:

5	Document	Portion to Be Sealed	Basis for Sealing	Designating Party
	Exhibit 15 to Kastens	Highlighted portions at	Confidential	Juniper
6	Decl. (Design Spec.)	bates no. JNPR-FNJN	Source Code	
7		29018 00975675;		
′		JNPR-FNJN 29018		
8		00975676; JNPR-		
		FNJN 29018		
9		00975677; JNPR-		
1.0		FNJN 29018		
10		00975678; JNPR-		
11		FNJN 29018 00975679		
11	Exhibit 16 to Kastens	Highlighted portions at	Confidential	Juniper
12	Decl. (Design Spec.)	bates no. JNPR-FNJN	Source Code	
		29018 00962784;		
13		JNPR-FNJN 29018		
1.4		00962791		
14	_		-	

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



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

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

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

There are "compelling reasons" for sealing the redacted portions of the exhibits because those documents disclose Juniper's confidential source code—the computerized instructions describing exactly how Juniper's products work.

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



Because the disclosure of Juniper's source code would cause serious competitive consequences, Juniper takes numerous measures to maintain the secrecy of this information. The protective order in this action, for instance, details the significant lengths Juniper has taken to protect its source code. As the protective order describes, "[t]he source code shall be made available for inspection on a PC which may be a laptop PC and which may be provided without USB ports." Dkt. No. 149 at 13. Additionally, "[t]he secured computer may be placed in a secured room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device." *Id.* Juniper has also implemented strict screening procedures for visitors at its engineering campus.

Perhaps most importantly, publicly exposing the source code presents a security risk. Because the source code is at the center of Juniper's network security products, permitting the disclosure of the source code could significantly harm the users of Juniper's products.

Accordingly, "compelling reasons" exist for sealing the disclosure of Juniper's highly confidential source code, and by seeking to seal only the portions that contain the source code,

Accordingly, "compelling reasons" exist for sealing the disclosure of Juniper's highly confidential source code, and by seeking to seal only the portions that contain the source code, Juniper's request is narrowly tailored. In light of the foregoing reasons, Juniper respectfully requests that the Court issue an order sealing the disclosure of Juniper's source code in the documents identified above.

Dated: March 18, 2019 Respectfully submitted,

21 By: /s/Ingrid Petersen

Ingrid Petersen

Attorney for Defendant

Juniper Networks, Inc.

