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     Attorneys for Defendant
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   )
                    Plaintiff,   )   **DEFENDANT JUNIPER NETWORKS,**
18   )   **INC.'S ADMINISTRATIVE MOTION TO**
                    vs.   )   **FILE UNDER SEAL**
19   )
     JUNIPER NETWORKS, INC.,   )   Judge: Hon. William Alsup
20   )
                    Defendant.   )
21   _____)

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NOTICE OF MOTION AND MOTION

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

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PLEASE TAKE NOTICE THAT pursuant to Civil Local Rules 7-11 and 79-5, Defendant

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Juniper Networks, Inc. ("Juniper") respectfully moves to file under seal the following:

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Document	Portion to Be Sealed	Basis for Sealing	Designating Party
Reply Regarding Summary Judgment for Finjan's '780 Patent	Highlighted Text in Pages 8:6-13; 9:3.	Confidential Source Code	Juniper
	Highlighted Text in Pages 13:28; 14:2-4.	Nondisclosure Agreement/FRE 408	Juniper & Finjan
Declaration of Frank Jas (the "Jas Declaration")	Highlighted Portions of Paragraphs 3 and 5	Confidential Source Code	Juniper
Exhibit 1 (Excerpts of Mitzenmacher Deposition)	Page 82:20-21; 83:14-18	Confidential Source Code	Juniper
Exhibit 3 (Source Code)	Entire Exhibit	Confidential Source Code	Juniper
Exhibit 4 (Source Code)	Entire Exhibit	Confidential Source Code	Juniper
Exhibit 5 (Source Code)	Entire Exhibit	Confidential Source Code	Juniper
Exhibit 6 (Source Code)	Entire Exhibit	Confidential Source Code	Juniper
Exhibit 7 (Source Code)	Entire Exhibit	Confidential Source Code	Juniper

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This motion is based upon this Notice of Motion; the accompanying Memorandum of Points and

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Authorities; the Declaration of Ingrid Petersen (the "Sealing Declaration"); other evidence and

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arguments that the Court may consider; and all other matters of which the Court may take judicial

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notice.

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MEMORANDUM OF POINTS AND AUTHORITIES

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Pursuant to Civil Local Rules 7-11 and 79-5, Juniper hereby brings this administrative

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motion to file under seal Juniper's disclosure of confidential source code in the reply and its

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supporting documents.

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It is well established that the right to inspect and copy judicial records is not absolute but

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rather is subject to a number of exceptions to guard against harmful use of sensitive materials. *See*

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Kamakana v. City & Cty. of Honolulu, 447 F.3d 1172, 1178–79 (9th Cir. 2006).   Because the

1   documents relate to a motion for summary judgment, the "compelling reasons" standard applies. *Id.*

2   at 1179. "'Compelling reasons' sufficient to outweigh the public's interest in disclosure exist when

3   court records might become a vehicle for improper purposes such as the use of records to gratify

4   private spite, promote public scandal, circulate libelous statements, or release trade secrets."

5   *Demaree v. Pederson*, 887 F.3d 870, 884 (9th Cir. 2018) (internal quotations and alterations omitted)

6   (quoting *Kamakana*, 447 F.3d at 1179). Under Ninth Circuit law, trade secrets are "any formula,

7   pattern, device or compilation of information which is used in one's business, and which gives him

8   an opportunity to obtain an advantage over competitors who do not know or use it." *In re Elec.*

9   *Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (quoting RESTATEMENT (FIRST) OF TORTS § 757

10   cmt. b); *see also Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972).

11   Civil Local Rule 79-5 supplements the "compelling reasons" standard. Under this rule, a

12   party seeking to file under seal must submit "a request that establishes that the document, or portions

13   thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the

14   law." *Id.* Additionally, "[t]he request must be narrowly tailored to seek sealing only of sealable

15   material." *Id.*

16   Courts within the Northern District of California have concluded that "[c]onfidential source

17   code clearly meets the definition of a trade secret . . . [and therefore] meets the 'compelling reasons'

18   standard." *Fed. Trade Comm'n v. DIRECTV, Inc.*, No. 15-CV-01129-HSG, 2017 WL 840379, at

19   *2 (N.D. Cal. Mar. 3, 2017) (second alteration in original) (quoting *Apple, Inc. v. Samsung Elecs.*

20   *Co.*, No. 11-CV-01846-LHK, 2012 WL 6115623, at *2 (N.D. Cal. Dec. 10, 2012), *rev'd on other*

21   *grounds*, *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013)); *see also*

22   *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2017 WL 1036652, at *3 (N.D. Cal. Mar. 17, 2017).

23   There are "compelling reasons" for sealing Exhibits 3, 4, 5, 6, and 7 in their entirety and the

24   redacted portions of the reply, the Jas Declaration, and Exhibit 1 because those documents disclose

25   Juniper's confidential source code—the computerized instructions describing exactly how Juniper's

26   products work.

27   For its source code, Juniper has accumulated significant research and development costs,

28   and this sensitive trade secret is the foundation of Juniper's highly proprietary software. By

1   permitting competitors to receive this information without also spending development costs, public

2   disclosure of Juniper's source code would materially impair Juniper's intellectual property rights

3   and business positioning.

4   Because the disclosure of Juniper's source code would cause serious competitive

5   consequences, Juniper takes numerous measures to maintain the secrecy of this information. The

6   protective order in this action, for instance, details the significant lengths Juniper has taken to protect

7   its source code. As the protective order describes, "[t]he source code shall be made available for

8   inspection on a PC which may be a laptop PC and which may be provided without USB ports." Dkt.

9   No. 149 at 13. Additionally, "[t]he secured computer may be placed in a secured room without

10   Internet access or network access to other computers, and the Receiving Party shall not copy,

11   remove, or otherwise transfer any portion of the source code onto any recordable media or

12   recordable device." *Id.* Juniper has also implemented strict screening procedures for visitors at its

13   engineering campus.

14   Perhaps most importantly, publicly exposing the source code presents a security risk.

15   Because the source code is at the center of Juniper's network security products, permitting the

16   disclosure of the source code could significantly harm the users of Juniper's products.

17   Additionally, portions of the reply contain discussions between Finjan and Cyphort

18   regarding patent licensing/settlement negotiations. These discussions fall under the protection of

19   Federal Rule of Evidence 408 and the Nondisclosure Agreement between Finjan and Cyphort.

20   Accordingly, "compelling reasons" exist. And by seeking to seal only the portions that

21   contain the source code or confidential negotiations, Juniper's request is narrowly tailored. In light

22   of the foregoing reasons, Juniper respectfully requests that the Court issue an order sealing the

23   disclosure of Juniper's source code and confidential negotiations in the documents identified above.

24   Dated: April 5, 2019   Respectfully submitted,

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26   By: */s/ Ingrid Petersen*
                                            Ingrid Petersen
27   *Attorney for Defendant*
                                            Juniper Networks, Inc.
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