

# **EXHIBIT 4**

**REDACTED VERSION OF  
DOCUMENT SOUGHT TO BE  
SEALED**

# Kramer Levin



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Re: Discovery Items - Case No. 17-cv-05659-WHA

Counsel,

Finjan has identified the below issues with respect to the discovery that Juniper has provided to date, which include Juniper's improper withholding of material under a non-existent joint defense agreement and Juniper's failure to produce certain Joe Security documents.

**I. Juniper's Invocation of the Joint Defense Group Exception to Waiver of Privilege**

Juniper has identified in its privilege log several communications with third-parties as privileged under a joint defense / common interest exception. In particular, Juniper claims protection under the joint defense/common interest exception for documents and communications that have been exchanged between Juniper and multiple third parties, including competitors like Sophos, Cisco, Palo Alto Networks, FireEye, Symantec, and Proofpoint. See Juniper Privilege Log Nos. 0162, 0163, 0164, 0165, 0166, 0167, 0170, 0171, 0172, 0173, 0174, and 0175. According to Juniper's privilege log, these communications all involve its in-house attorney, Scott Coonan, and all pertain to the subject of "Finjan in-house JDG" (joint-defense group). However, for the privilege to possibly apply, these communications must have been made "in pursuit of a joint strategy in accordance with some form of agreement – whether written or unwritten." *In re Pac. Pictures Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012) (declining to extend attorney client privilege over third party communications absent an agreement because "a

Johnathon Kagan  
December 17, 2018



shared desire to see the same outcome in a legal matter is insufficient to bring a communication between two parties within the exception.").

Mr. Coonan, who was the Juniper representative on these communications and is in charge of managing all of Juniper's intellectual property litigations, stated that he was unaware of Juniper being any part of a joint defense agreement with these parties. In particular, Mr. Coonan denied that Juniper joined this particular joint defense group.

Coonan Tr. at 174:8-24 [REDACTED]

[REDACTED] Additionally, Mr. Coonan's supervisor, Meredith McKenzie, confirmed that she did not know if Juniper was part of a joint defense group, further showing there was no valid agreement. McKenzie Tr. at 50:23-51:8 [REDACTED]

[REDACTED] Juniper cannot now claim joint defense group protection over any of this material.

Further confirming that this material is not protected under any joint defense exception, on October 23, 2018, Finjan served its fourth set of RFPs, all of which request some form of documents or things pertaining to any joint defense group against Finjan that Juniper may have joined. Juniper served its response to this set of RFPs on November 23, 2018, all of which appear to be claiming that anything responsive is either privileged or doesn't exist. See Juniper's Responses to RFP Nos. 98-106 (claiming no documents responsive to Finjan's request for documentation for any joint defense agreement).

Confirm that Juniper will produce any document being held based on a claim of a joint defense group by January 28<sup>th</sup>, 2018, or provide times that Juniper is available to meet and confer on this issue.

## II. Joe Security Documents

Finjan's RFP Nos. 87-91 ask for documents/communications regarding Joe Security, Joe Sandbox, and Joe Static, including use (RFP. No. 87), products exchanged or service provided by (No. 88), **manuals, guides (No. 89)**, contacts (No. 90), contracts (No. 91).

Johnathon Kagan  
December 17, 2018



After a review of Juniper's current production, it appears that it has not produced material that is provided by Joe Security describing how to integrate its software into other systems. In particular, the Joe Security Installation guide that Juniper produced at JNPR-FNJJN\_29040\_01462115, references several other highly relevant guides that have not been produced. These include:

- Page 4 references the "**cookbook guide**"
- Page 7 references "**corresponding guides**" for non-remote virtualization setup installation
- Page 28 references Joe Sandbox "**interface guide**," Joe Sandbox "**user guide**," "**Malware Analysis Cookbook**" (Wiley – 2010)

Confirm that Juniper will produce these documents by January 28<sup>th</sup>, 2018, or provide times that Juniper is available to meet and confer on this issue.

Respectfully submitted,

Kris Kastens

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