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11 FINJAN, INC.

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

17 FINJAN, INC., a Delaware Corporation,

18 Plaintiff,

19 v.

20 JUNIPER NETWORKS, INC., a Delaware
21 Corporation,

22 Defendant.
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Case No.: 3:17-cv-05659-WHA-TSH

**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 Documents Under Seal for the
4 documents identified below, which contain information identified by Finjan as “Highly Confidential –
5 Attorneys’ Eyes Only” under the protective order in this action (Dkt. No. 149). These documents were
6 inadvertently filed publicly, but they contain Finjan’s confidential business information and third party
7 Mr. Shlomo Touboul’s (Finjan’s founder and consultant) confidential personal information. Finjan acted
8 promptly upon discovery of its error to remedy it and file this Motion.

9 Since these documents were attached to and quoted within a non-dispositive discovery motion,
10 they are not subject to the strong presumption of access for the public that is otherwise generally
11 accorded to documents filed with dispositive motions. *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214,
12 1222 (Fed. Cir. 2013) (noting that Ninth Circuit requires only good cause for sealing documents attached
13 to non-dispositive motions and finding it was legal error to apply more stringent “compelling reasons”
14 standard). Thus, Finjan must demonstrate good cause under Federal Rule of Civil Procedure 26(c) as to
15 the following documents. *Id.*

Identification of Documents	Specific Page and Paragraph Numbers to Seal	Entity that Designated the Information to be Confidential	Reason to Keep Sealed
Portions of the Parties’ Joint Statement Regarding Defendant Juniper Networks, Inc.’s Motion to Quash Deposition of Shlomo Touboul (Dkt. No. 504)	p. 3, ¶ 1	Finjan	The limited proposed sealed portions of the joint statement reflect confidential terms from Mr. Touboul’s consulting agreements with Finjan.

<p>1 Exhibit 4 to the Parties' Joint 2 Statement Regarding 3 Defendant Juniper Networks, 4 Inc.'s Motion to Quash 5 Deposition of Shlomo Touboul 6 (Dkt. No. 504-4)</p>	Entirety	Finjan	<p>This exhibit is an amendment to the confidential consulting agreement between Mr. Touboul and Finjan. The agreement contains confidential business information regarding details of Mr. Touboul's consultancy and income, and it contains Mr. Touboul's personal information, such as his contact information. The agreement is also subject to a confidentiality clause.</p>
<p>11 Exhibit 5 to the Parties' Joint 12 Statement Regarding 13 Defendant Juniper Networks, 14 Inc.'s Motion to Quash 15 Deposition of Shlomo Touboul 16 (Dkt. No. 504-5)</p>	Entirety	Finjan	<p>This exhibit is a confidential consulting agreement between Mr. Touboul and Finjan. The agreement contains confidential business information regarding details of Mr. Touboul's consultancy and income, and it contains Mr. Touboul's personal information, such as his contact information. The agreement is also subject to a confidentiality clause.</p>

20 II. ARGUMENT

21 This Administrative Motion to File Documents Under Seal should be granted because good
22 cause exists to seal the above-identified documents, which were inadvertently filed publicly on June 3,
23 2019.

24 Specifically, good cause exists to seal the portions of the Parties' Joint Statement Regarding
25 Defendant Juniper Networks, Inc.'s Motion to Quash Deposition of Shlomo Touboul at page 3,
26 paragraph 1, and Exhibits 4 and 5 thereto. These documents contain confidential business information
27 which Finjan has designated "Highly Confidential – Attorneys' Eyes Only" under the Protective Order

1 in this action. Specifically, the designated documents contain Finjan’s confidential business information
2 regarding its relationship with Mr. Touboul. Such information, if made public, would result in specific
3 harm to Finjan. First, Mr. Touboul is not Finjan’s only consultant and Finjan maintains as highly
4 confidential its specific agreements with consultants. Were such agreements made public, it would
5 disadvantage Finjan in other consulting negotiations. Second, the agreement reflects confidential
6 personal information of Mr. Touboul, such as his address and incomes from work for Finjan. The
7 publicity of such information impinges on Mr. Touboul’s privacy, and it also harms Finjan by depleting
8 its consultants’ trust in Finjan’s ability to protect their sensitive personal information.

9 Other courts in this district have found that agreements with third parties, including consulting
10 agreements, should be sealed because disclosure of such information would invade a third party’s
11 privacy and harm a business in similar future negotiations. *Icon-IP Pty Ltd. v. Specialized Bicycle*
12 *Components, Inc.*, No. 12-CV-03844-JST, 2015 WL 984121, at *3 (N.D. Cal. Mar. 4, 2015) (sealing
13 exhibit containing, *inter alia*, information regarding consulting agreements between a party and its third
14 party consultant). Similarly, information about payments to consultants should similarly be sealed; here,
15 the documents that Finjan requests to seal reveal the substance of the terms of Mr. Touboul’s payment as
16 a consultant. *See id.* (sealing exhibits reflecting invoices and payments to third party consultants). This
17 information was appropriate to seal even under the more stringent “compelling reasons” standard, such
18 that there is ample good cause to seal these documents under the lesser Rule 26(c) sealing standard used
19 for documents filed in connection with a non-dispositive motion.

20 Pursuant to Civil Local Rule 79-5, Finjan has filed publicly the relevant excerpts of information
21 that are not confidential. Attached hereto are redacted and unredacted versions of the document set forth
22 above.

23 **III. CONCLUSION**

24 For the foregoing reasons, Finjan respectfully requests that the Court grant this Administrative
25 Motion to File Documents Under Seal.

Respectfully submitted,

Dated: June 4, 2019

By: /s/ Paul Andre

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