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 TREND MICRO INCORPORATED

10  
 11 UNITED STATES DISTRICT COURT  
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN FRANCISCO DIVISION

14 FORTINET, INC., a Delaware corporation,  
 15  
 Plaintiff,  
 16  
 v.  
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 TREND MICRO INCORPORATED, a  
 18 California corporation,  
 19 Defendant.

Civil Case No.: CV 08-05371 MMC

20  
 21 **~~[PROPOSED]~~ ORDER GRANTING**  
**DEFENDANT TREND MICRO**  
**INCORPORATED'S**  
**ADMINISTRATIVE MOTION FOR**  
**LEAVE TO FILE UNDER SEAL**  
**PORTIONS OF MEMORANDUM**  
**OF POINTS AND AUTHORITIES**  
**AND DECLARATION OF**  
**MICHAEL M. MARKMAN IN**  
**SUPPORT OF MOTION TO**  
**DISMISS**

22  
 23 ~~DATE: April 3, 2009~~  
~~TIME: 9:00 am~~  
 24 COURTROOM: 7, 19th Floor  
 JUDGE: Hon. Maxine M. Chesney

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 28 ~~[PROPOSED]~~ ORDER GRANTING DEFENDANT TREND  
 MICRO INCORPORATED'S ADMINISTRATIVE MOTION  
 FOR LEAVE TO FILE UNDER SEAL PORTIONS OF  
 MEMORANDUM OF POINTS AND AUTHORITIES AND  
 DECLARATION OF MICHAEL M. MARKMAN IN  
 SUPPORT OF MOTION TO DISMISS  
 Civil Case No.: CV 08-05371 MMC

1           Upon consideration of Defendant Trend Micro Incorporated’s Administrative Motion for  
2 Leave to File Under Seal Portions of its Memorandum of Points and Authorities in support of its  
3 Motion to Dismiss the First Amended Complaint (“Memorandum of Points and Authorities”) and  
4 the Declaration of Michael M. Markman in support thereof (“Markman Declaration”) and  
5 exhibits thereto, and good cause appearing as described in the accompanying declaration of  
6 Derek Knerr, Defendant’s Administrative Motion IS GRANTED.

7           The following portions of the documents and exhibits submitted by Trend Micro in  
8 connection with its Motion to Dismiss, which quote or otherwise discuss the substantive terms  
9 of a confidential settlement agreement between Trend Micro and Plaintiff Fortinet, Inc. shall be  
10 filed under seal:

11 **Memorandum of Points and Authorities:**

- 12           (a). 2:27-3:3 (from “The Settlement Agreement . . .” through end of paragraph);  
13           (b). 3:4-3:5 (from “All . . .” through “. . . Patents.”);  
14           (c). 3:10-11 (from “They were . . .” through end of sentence);  
15           (d). 3:17-19 (from “in an . . .” through end of sentence);  
16           (e). 4:6-7 (from “to avoid . . .” through end of sentence);  
17           (f). 4: 9 (last three words of sentence beginning “No case or controversy...”);  
18           (g). 5:20-21 (from “and related . . .” through end of sentence);  
19           (h). 5:22-6:10 (from “(describing...” through citation ending “at § 6.4”,  
20 including footnotes embedded within section);  
21           (i). 6:12 (from “for a” through “period”);  
22           (j). 6:12-15 (from “Under the . . .” through citation ending “at ¶ 36”, including  
23 footnote embedded within section);  
24           (k). 8:2-23 (from “On November . . .” through citation ending “Markman Decl.  
25 Ex. 8”);  
26           (l). 8:26-9:2 (section heading, and text from “The broad . . .” through end of  
27 paragraph);

- 1 (m). 9:9-19 (from “Not only . . .” through end of paragraph);  
2 (n). 9:20-22 (from “As explained . . .” through end of sentence);  
3 (o). 10:10-15 (section headings, and text from “Fortinet’s first . . .” through  
4 citation ending “at ¶ 6.2”);  
5 (p). 10:16-18 (from “so that Fortinet...” through citation ending at “at ¶¶46-  
6 55”);  
7 (q). 10:20-21 (from “These are...” through end of sentence);  
8 (r). 11:6-11 (from “Nothing in . . .” “...that ground here.”);  
9 (s). 11: 13-15 (from “Broad...” through end of sentence);  
10 (t). 12:25-27 (from “Again, Fortinet . . .” through end of sentence);  
11 (u). 13:9-10 (from “The claim . . .” through end of sentence);  
12 (v). 14:1-2 (from “That claim . . .” through end of paragraph);  
13 (w). 14:4, 14:6-7, 14:9-24 (section headings, and text from “in an effort” through  
14 end of sentence and subsections 3.a and 3.b, to citation ending at “Exs. 6, 9”);  
15 (x). 14:26-15:24 (from “The agreement...” through “...future claims” including  
16 embedded footnote);  
17 (y). 16:1-2 (from “This policy...” through end of sentence);  
18 (z). 20:13 (the two words between “binding” and “covenant”);  
19 (aa). 20:20-28 (from “Specifically . . .” through end of paragraph, including  
20 embedded footnote);

21 **Markman Declaration:**

22 **Exhibit 1:** (bb). Confidential Settlement Agreement;

23 **Exhibit 6:** (cc). December 9, 2008 letter of Todd Nelson;

24 (dd). ¶ 7;

25 (ee). 2:18-24 (first three sentences of ¶ 8, from “On January 27...” through  
26 “...that Agreement.”);

27 **Exhibit 7:** (ff). January 27, 2009 letter of Robert Fram;

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(gg). 3:1-4 (first sentence of ¶ 9, from “On February 3...” through “...unenforceable.”)

**Exhibit 8:** (hh). February 3, 2009 email of Robert Lerner;

**Exhibit 9:** (ii). February 3, 2009 letter of Stefani Shanberg.

IT IS SO ORDERED.

DATED: February 27, 2009

  
The Hon. Maxine M. Chesney  
United States District Judge  
Northern District of California