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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 FINJAN, INC.,  
8 Plaintiff,  
9 v.  
10 PROOFPOINT, INC., et al.,  
11 Defendants.

Case No. 13-cv-05808-HSG

**ORDER GRANTING IN PART AND  
DENYING IN PART  
ADMINISTRATIVE MOTIONS TO  
FILE UNDER SEAL**

Re: Dkt. Nos. 208, 244, 260

12 The parties filed three administrative motions to file under seal in conjunction with  
13 Defendants' motion to strike portions of Finjan's expert reports. Dkt. Nos. 208, 244, 260. No  
14 oppositions to the motions to seal were filed, and the time to do so has passed.

15 **I. LEGAL STANDARD**

16 Courts apply a "compelling reasons" standard when considering motions to seal documents  
17 like the ones at issue here. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010).  
18 "This standard derives from the common law right 'to inspect and copy public records and  
19 documents, including judicial records and documents.'" *Id.* "[A] 'strong presumption in favor of  
20 access' is the starting point." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th  
21 Cir. 2006). To overcome this strong presumption, the moving party must "articulate compelling  
22 reasons supported by specific factual findings that outweigh the general history of access and the  
23 public policies favoring disclosure, such as the public interest in understanding the judicial  
24 process." *Id.* at 1178-79 (citations, internal quotation marks, and alterations omitted). The Court  
25 must "balance the competing interests of the public and the party who seeks to keep certain  
26 judicial records secret. After considering these interests, if the court decides to seal certain  
27 judicial records, it must base its decision on a compelling reason and articulate the factual basis for  
28 its ruling, without relying on hypothesis or conjecture." *Id.* at 1179 (internal quotation marks

1 omitted).

2 Records attached to motions that are only “tangentially related to the merits of a case” are  
3 not subject to the strong presumption of access. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809  
4 F.3d 1092, 1101 (9th Cir. 2016). Accordingly, parties moving to seal such records must meet the  
5 lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure. *Id.* at 8-9.  
6 The “good cause” standard requires a “particularized showing” that “specific prejudice or harm  
7 will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*,  
8 307 F.3d 1206, 1210–11 (9th Cir. 2002) (internal quotation marks omitted); see Fed. R. Civ. P.  
9 26(c). “Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning”  
10 will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

11 Civil Local Rule 79-5 further supplements the compelling reasons standard. The party  
12 seeking to file a document or portions of it under seal must “establish[ ] that the document, or  
13 portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection  
14 under the law. . . .The request must be narrowly tailored to seek sealing only of sealable material.”  
15 Civil L.R. 79-5(b).

## 16 **II. DISCUSSION**

17 Because the motion to strike infringement theories from the expert reports is more than  
18 tangentially related to the merits of the underlying action, the Court applies the “compelling  
19 reasons” standard in evaluating the following motions to seal.

### 20 **A. Defendants’ Administrative Motions to Seal its Motion to Strike Portions of** 21 **Expert Reports and Exhibits in Support Thereof**

22 On November 11, 2015, Defendants filed an administrative motion to file under seal  
23 portions of its motion to strike the expert reports, the entirety of attached Exhibits D, F, G, H, K,  
24 L, M, N, O, P, Q, R, S, T, U, and V, as well as portions of attached Exhibits I and J. Dkt. No. 208.  
25 The administrative motion covers information that both Plaintiff and Defendants have designated  
26 as sealable information and includes supplemental infringement contentions and expert reports,  
27 which refer to technical and proprietary information.

28 The Court **GRANTS** Defendants’ request to file under seal portions of its motion to strike

1 as well as Exhibits F, G, H, S, T, U, and V. The Court finds that the request is narrowly tailored  
2 and that there are compelling reasons to seal confidential, sealable information, including source  
3 code directories, information about the technical operation of the products, financial revenue data,  
4 and excerpts from expert depositions, expert report, and related correspondence. Dkt. No. 208 at  
5 3-4; Dkt. No. 208-1 at 1-2; see *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012  
6 WL 6115623, at \*2 (N.D. Cal. Dec. 10, 2012) (“Confidential source code clearly meets the  
7 definition of a trade secret.”); *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (holding  
8 access to court records has been denied when it includes “sources of business information that  
9 might harm a litigant’s competitive standing.”); *Transperfect Global, Inc. v. MotionPoint Corp.*,  
10 2013 WL 706975, at \*1 (N.D. Cal. Feb. 26, 2013) (sealing portions of brief and exhibits  
11 containing “proprietary information concerning Defendant’s technology and internal business  
12 operations” and “descriptions of Defendant’s proprietary technology”).

13 The Court **DENIES** Defendants’ motion as to Exhibits K, L, M, N, O, P, Q, and R., for  
14 failure to narrowly tailor the request to only sealable information. Although certain parts of the  
15 infringement contentions may be sealable, the contentions also contain publicly-available  
16 information, such as descriptions from the company website. If Defendants wish to file an  
17 amended motion that identifies specific portions of these exhibits containing sealable information,  
18 and the specific reasons why such portions should be sealed, they must do so within two days of  
19 this order.

20 The Court **DENIES** Defendants’ motion to seal information that Plaintiff designated as  
21 confidential. Defendants highlighted portions of page 7 of Exhibit I, portions of page 7 of Exhibit  
22 J, and the entirety of Exhibit D as containing information Plaintiff designated as “Highly  
23 Confidential - Attorneys’ Eyes Only.” Plaintiff has failed to file a declaration within four days of  
24 the filing of the motion seal, as required by Civil Local Rule 79-5(e)(1). Pursuant to Civil Local  
25 Rule 79-5(e)(2), Defendants may file an unredacted version of the document in the public record  
26 no earlier than four days and no later than ten days after the date of this Order. The Court will be  
27 unable to consider the highlighted portions on page 7 of Exhibit I and page 7 of Exhibit J, as well  
28 as the entirety of Exhibit D, unless Defendants timely file an unredacted version.

**B. Plaintiff's Administrative Motion to File Under Seal**

1 On November 25, 2015, Plaintiff filed a motion to file under seal portions of its opposition  
2 to the motion to strike, a redacted portion on page 7 of Exhibit 1 to the Declaration of James  
3 Hannah, as well as several attached exhibits to the Hannah Declaration. Dkt. No. 244. Plaintiff  
4 has identified these documents as containing information that Defendants designated as "Highly  
5 Confidential - Attorneys' Eyes Only" or "Highly Confidential - Attorneys' Eyes Only - Source  
6 Code." Id. at 1. In accordance with the local rules, Defendants filed a declaration in support of  
7 Plaintiff's motion to seal on November 30, 2015. Dkt. No. 256.

8 In that declaration, Defendants confirm that nearly all of the documents Plaintiff identified  
9 contain highly confidential information. The Court finds that Defendants have presented  
10 compelling reasons to grant Plaintiff's motion. Defendants agree that the excerpted depositions in  
11 Exhibits 4, 7, 12, 13, 16, 22, and 29 of the Hannah Declaration reference confidential Proofpoint  
12 business and technical information, including the technical operation of Defendants' products,  
13 confidential considerations in the decision to acquire Armorize and Armorize technology,  
14 Proofpoint's confidential financial information, and confidential contracts and agreements. See  
15 Digital Reg of Texas, LLC v. Adobe Sys., Inc., No. C 12-1971 CW, 2014 WL 6986068, at \*1 (N.D.  
16 Cal. Dec. 10, 2014) (holding that discussions of Adobe's proprietary technological information,  
17 licensing agreements, and trade secrets were sealable information).

18 Defendants' declaration also confirms the following. The highlighted portions of  
19 Plaintiff's opposition to the motion to strike, as well as Exhibits 5, 6, 8, and 9, refer to Defendants'  
20 strategic business considerations and confidential business information regarding sales, the  
21 company's confidential financial information, information regarding licensing, and potential  
22 acquisition of businesses and technologies. See id. at \*1-2. Exhibits 10, 11, 12, and 14 are  
23 confidential agreements entered into by Proofpoint which disclose confidential contractual terms,  
24 fee structures, and agreements. See id. The remaining highlighted portions of Plaintiff's  
25 opposition motion, as well as attached Exhibits 1, 12, 15, 17, 18, 21, 23, 24, 26, 27, and 28,  
26 contain information regarding the operation of the products, source code, and internal engineering  
27 wiki documents. Apple, Inc. v. Samsung Elecs. Co., No. 11-CV-01846-LHK, 2012 WL 6115623,  
28

1 at \*2 (N.D. Cal. Dec. 10, 2012) (“Confidential source code clearly meets the definition of a trade  
2 secret.”); Network Appliance, Inc. v. Sun Microsystems Inc., No. C-07-06053 EDL, 2010 WL  
3 841274, at \*3 (N.D. Cal. Mar. 10, 2010) (granting the motion to seal where documents contained  
4 “highly technical portions of Mr. Brandt’s report that would do little to aid the public’s  
5 understanding of the judicial process, but have the potential to cause significant harm to NetApp’s  
6 competitive and financial position within its industry”).

7 In its declaration in support, Defendants do not seek to seal Exhibit 30 and the highlighted  
8 portion at page 23, line 16 of Plaintiff’s opposition. Furthermore, the Court finds that the request  
9 to seal Exhibit 26 is not narrowly tailored as it includes information from publicly available  
10 sources.

11 Accordingly, the Court **GRANTS** Plaintiff’s motion to seal its opposition to Defendants’  
12 motion to strike and attached exhibits, except that the Court **DENIES** the motion to file under seal  
13 Exhibit 30; line 16, page 23 of Plaintiff’s opposition; and Exhibit 26. Within two days of this  
14 order, Plaintiff should file an unredacted Exhibit 30 as well as a version of its opposition that does  
15 not redact line 16 on page 23. If Plaintiff wishes to file an amended motion to seal Exhibit 26, it  
16 must identify specific portions of the exhibit containing sealable information, and the specific  
17 reasons why such portions should be sealed, and it must do so within two days of this order.

18 **C. Defendants’ Administrative Motion to File Under Seal Defendants’ Reply in**  
19 **Support of Motion to Strike Plaintiff’s Expert Reports and Exhibits Thereto**

20 On December 2, 2015, Defendants filed an administrative motion to file under seal the  
21 entirety of its reply to the motion to strike the expert reports, as well as attached Exhibits W, X,  
22 and Y. Dkt. No. 260.

23 The Court **DENIES** Defendants’ request to seal the entirety of its reply. Although the  
24 Court agrees that the reply incorporates and discusses sealed exhibits, Defendants must satisfy the  
25 local rules’ requirement that a request to seal be narrowly tailored to only the confidential  
26 information. If Defendants wish to file an amended reply that identifies specific portions  
27 containing sealable information, and the specific reasons why such portions should be sealed, they  
28 must do so by within two days of this order.

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The Court **GRANTS** Defendants’ request to file under seal portions of expert reports, Exhibits W and X, and a deposition excerpt, Exhibit Y. The Court is persuaded by Defendants’ assertion that the documents include sealable information (such as confidential information about product operation and source code), and that disclosure of such information could cause Defendants significant competitive harm. There is a compelling reason to seal such information and the request is narrowly tailored to sealable information.

**III. CONCLUSION**

For the foregoing reasons, Defendants’ administrative motion to file under seal the motion to strike portions of expert reports and attached exhibits is **GRANTED IN PART AND DENIED IN PART**, Dkt. No. 208. Plaintiff’s administrative motion to file under seal its opposition and attached exhibits is **GRANTED IN PART AND DENIED IN PART**, Dkt. No. 244. And Defendants’ administrative motion to file the reply and attached exhibits under seal is **GRANTED IN PART AND DENIED IN PART**, Dkt. No. 260.

**IT IS SO ORDERED.**

Dated: 2/9/2016

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge