

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the Defense Criminal Investigative Service, U.S. General Services Administration Office of Inspector General, Air Force Office of Special Investigations, U.S. Army Criminal Investigations Command, U.S. Department of Homeland Security Office of Inspector General, the Coast Guard Investigative Service and the United States Department of Navy (collectively, the “United States”), Fortinet, Inc. (“Fortinet”), and an individual relator, Yuxin “Jay” Fang (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. Fortinet is a publicly-held network security company headquartered in Sunnyvale, California, and, at all relevant times, sold network security products to distributors, which in turn sold these products to resellers.
- B. The resellers of Fortinet’s products sold a small percentage of Fortinet’s overall products to government end users.
- C. On January 20, 2016, Relator filed a *qui tam* action in the United States District Court for the Northern District of California captioned *United States ex rel. Yuxin “Jay” Fang v. Fortinet, Inc., et al.*, Case No. 16-314, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“FCA”) (the “Civil Action”). Relator alleges that Fortinet labeled products or omitted labels of certain limited products in a way that falsely represented that the products were compliant with the federal Trade Agreements Act (“TAA”), 19 U.S.C. § 2501 *et seq.* The products at issue were sold to distributors, and eventually to various United States government agencies. Relator alleges, that, as a result of mislabeling certain products, Fortinet caused false claims to be made to the

government and knowingly made, or caused to be made, materially false statements to obtain payment for false or fraudulent claims, in violation of the FCA.

- D. While Defendant Fortinet disputes liability and many of the allegations in the Civil Action, Defendant Fortinet acknowledges the following: During the period between January 1, 2009 and the fall of 2016, a Fortinet employee who was responsible for supply chain management (the “Responsible Employee”), who has since been terminated, directed that the labels be changed on certain products to make the products appear compliant with the TAA. Specifically, the Responsible Employee directed certain employees and contractors to change the labels such that there was no country of origin listed or to include the phrases “Designed in the United States and Canada,” or “Assembled in the United States.” The Responsible Employee’s actions involved products sold to certain distributors that subsequently sold them to resellers, which in turn sold a portion of them to U.S. government end users. While Fortinet believes that some of the products at issue may have been compliant with the TAA, the Responsible Employee’s actions were in clear violation of well-established company policy. Upon learning of the Responsible Employee’s unauthorized actions, Fortinet promptly placed him on a leave of absence while the company conducted an internal investigation with the assistance of outside counsel. Subsequent to the conclusion of this investigation, the company terminated the employment of the Responsible Employee.
- E. The United States contends that it has certain civil claims against Fortinet for engaging in the conduct described in paragraph D (hereinafter the “Covered Conduct”).

- F. Relator also claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorneys' fees and costs; the issue of these fees and costs will be addressed outside of this Agreement.
- G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Fortinet shall pay to the United States four hundred thousand dollars (\$400,000) ("Settlement Amount"), as well as the in-kind payment identified below which Fortinet is providing at a discount representing one hundred forty-five thousand dollars (\$145,000) in value, for a total payment value of five hundred forty-five thousand dollars (\$545,000), of which the total amount is restitution. Payment of the \$400,000 shall be made no later than ten (10) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of California. In addition, within sixty (60) days of the Order (as defined below) being submitted by the United States Marine Corps according to Fortinet's order submission processes, Fortinet, through its channel partners or directly, shall provide to the United States Marine Corps at no cost the FG-3700D-BDL-USG package, which includes the Fortigate-3700D-USG hardware plus one year of 8x5 FortiCare and FortiGuard Unified (UTM) Protection (the FG-3700D-BDL-USG package is referred to as the "Order"). Fortinet, through its channel partners or directly, shall bear the cost of shipment and shall comply with reasonable additional requirements identified by the United States Marine Corps.

2. Conditioned upon the United States receiving the Settlement Amount from Fortinet and as soon as feasible after receipt, the United States shall pay one hundred and three

thousand five hundred and fifty dollars (\$103,550) to Relator by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel to the Office of the United States Attorney for the Northern District of California.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Fortinet's full payment of the Settlement Amount, and subject to Paragraphs 14 and 15 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases Fortinet, predecessors, successors, assigns, acquirers of Fortinet or any of its businesses, subsidiaries, divisions, unincorporated business units, and entities that are holders of preferred shares or warrants from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 5 below, and conditioned upon Fortinet's full payment of the Settlement Amount, and subject to Paragraphs 14 and 15 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relator, for himself and his heirs, successors, attorneys, agents, and assigns, releases Fortinet, its executives, board members, employees, agents, representatives, affiliates, predecessors, successors, assigns, acquirers of Fortinet or any of its businesses, subsidiaries, holding companies, divisions, unincorporated business units, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates and trustees from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, except that Relator does not release Fortinet from any liability it may have for

payment of Relator's claimed expenses, attorneys' fees, and costs, if any, under 31 U.S.C. § 3730(d)(1) ("Relator's Claimed Fees"). No agreements concerning Relator's Claimed Fees have been reached to date. Fortinet and the Relator will seek to resolve the issue of Relator's Claimed Fees separately from this Agreement. Fortinet and the Relator each retain and reserve all of their rights and remedies regarding Relator's Claimed Fees.

5. Notwithstanding the release given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for failure to deliver goods or services due, except as encompassed by the Covered Conduct;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- g. Any liability of individuals.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies,

officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action under 31 U.S.C. § 3730 *et seq.*, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Fortinet, its executives, board members, representatives affiliates, predecessors, successors, assigns, acquirers of Fortinet or any of its businesses, subsidiaries, holding companies, divisions, unincorporated business units, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates and trustees, from any liability to Relator arising from the filing of the Civil Action under 31 U.S.C. § 3730 *et seq.*

8. Fortinet waives and shall not assert any defenses Fortinet may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. Fortinet fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Fortinet has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. Fortinet fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Fortinet has

asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof, except, subject to Section 8 above, any claims that Fortinet asserts in any actions brought in the future against Fortinet related to this Agreement and/or the claims released herein.

11. Fortinet agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Fortinet, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Fortinet's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Fortinet makes to the United States pursuant to this Agreement and any payments that Fortinet may make to Relator, including costs and attorneys' fees

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Fortinet, and Fortinet shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Fortinet further agrees that within 90 days of the Effective Date of this Agreement it shall identify any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Fortinet or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Fortinet agrees that the United States, at a minimum, shall be entitled to recoup from Fortinet any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Fortinet or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Fortinet or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Fortinet's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. Fortinet agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice,

Fortinet shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Fortinet further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged and non-attorney work product documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

13. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraphs 3, 4, 6, 7, 9, and 10.

14. Fortinet warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Fortinet within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Fortinet was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Fortinet commences, or a third party commences, any case, proceeding, or

other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Fortinet's debts, or seeking to adjudicate Fortinet as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Fortinet or for all or any substantial part of Fortinet's assets, Fortinet agrees as follows:

a. Fortinet's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Fortinet shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Fortinet's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Fortinet was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Fortinet.

b. If Fortinet's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Fortinet for the claims that would otherwise be covered by the release provided in Paragraph 3, above. Fortinet agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Fortinet shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Fortinet shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 180

calendar days of written notification to Fortinet that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on September 13, 2016; and (iii) the United States has a valid claim against Fortinet in the amount of \$1.92 million plus penalties, less any payments made under this Agreement, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Fortinet acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. In the event that Fortinet fails to pay the full Settlement Amount as provided in Paragraph 1, Fortinet shall be in default of its payment obligations (“Default”). The United States will provide written notice of the Default to Fortinet and Fortinet shall have the opportunity to cure such Default within ten (10) business days from the date of receipt of the notice. Notice of Default will be delivered to Jay Pomerantz, Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, CA 94041, or to such other representative as Fortinet shall designate in advance in writing. If Fortinet fails to cure such Default within ten (10) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Fortinet shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (i) offset the remaining unpaid balance from any amounts due and owing to Fortinet by any department, agency, or agent of the United States at the time of Default; (ii) collect the entire unpaid balance of the Settlement Amount, plus interest, including 12 % interest from the date of Default, and all other amounts due upon the event of Default as specified in this Paragraph; (iii) file a civil action for the

Covered Conduct; or (iv) exercise any other rights granted by law or in equity, including referral of this matter for private collection. In the event a complaint is filed pursuant to subsection (iii) of this Paragraph, Fortinet agrees not to plead, argue or otherwise raise any defenses under the theories of the statute of limitations, laches, estoppel or similar theories to the allegations in the complaint, except to the extent such defenses were available to Fortinet on the Effective Date of this Agreement. Fortinet agrees not to contest any consent judgment, offset, or any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. Fortinet shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

17. Upon receipt of the payment described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). Furthermore, the Stipulation of Dismissal shall be:

- a. with prejudice to the United States as to the Covered Conduct, pursuant to and consistent with the terms and conditions of this Agreement;
- b. without prejudice to the United States as to all other claims; and
- c. with prejudice to the Relator as to all claims in the Civil Action.

18. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of California. For purposes of construing this Agreement, this

Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

22. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

24. This Agreement is binding on Fortinet's successors, transferees, heirs, and assigns.


25. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

26. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

27. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 4/5/19

BY: 
Ellen London
Assistant United States Attorney
Northern District of California

DATED: : _____

BY: _____
Brian Judge
Office of Claims and Litigation
United States Department of Homeland Security and Coast
Guard Investigative Service

DATED: : 04/05/2019

BY: _____
FERNANDEZ.ROGELIO Digitally signed by
FERNANDEZ.ROGELIO.ADRIA.14038007
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Date: 2019.04.05 06:45:55 -04'00'
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Rogelio A. Fernández
Associate General Counsel
Contractor Responsibility and Conflict Resolution
Department of the Air Force

FORTINET

DATED: : _____

BY: _____
Ken Xie
President and Chief Executive Officer
Fortinet, Inc.

DATED: : _____

BY: _____
Jay Pomerantz
Fenwick & West LLP
Counsel for Fortinet, Inc.

RELATOR

DATED: : _____

BY: _____
Yuxin "Jay" Fang

DATED: : _____

BY: _____
Vincent McKnight
John McKnight
Sanford Heisler Sharp LLP
Counsel for Yuxin "Jay" Fang

THE UNITED STATES OF AMERICA

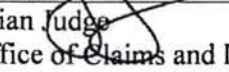
DATED: _____

BY: _____

Ellen London
Assistant United States Attorney
Northern District of California

DATED: : 4 APR 2019

BY: _____


Brian Judge
Office of Claims and Litigation
United States Department of Homeland Security and Coast
Guard Investigative Service

DATED: : _____

BY: _____

Rogelio A. Fernández
Associate General Counsel
Contractor Responsibility and Conflict Resolution
Department of the Air Force

FORTINET

DATED: : _____

BY: _____

Ken Xie
President and Chief Executive Officer
Fortinet, Inc.

DATED: _____

BY: _____

Jay Pomerantz
Fenwick & West LLP
Counsel for Fortinet, Inc.

RELATOR

DATED: _____

BY: _____

Yuxin "Jay" Fang

DATED: _____

BY: _____

Vincent McKnight
John McKnight
Sanford Heisler Sharp LLP
Counsel for Yuxin "Jay" Fang

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
Ellen London
Assistant United States Attorney
Northern District of California

DATED: : _____


BY: _____
Brian Judge
Office of Claims and Litigation
United States Department of Homeland Security and Coast
Guard Investigative Service

DATED: : _____

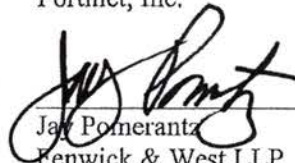
BY: _____
Rogelio A. Fernández
Associate General Counsel
Contractor Responsibility and Conflict Resolution
Department of the Air Force

FORTINET

DATED: : 4-4-19

BY: 
Ken Xie
President and Chief Executive Officer
Fortinet, Inc.

DATED: : 4-4-19

BY: 
Jay Pomerantz
Fenwick & West LLP
Counsel for Fortinet, Inc.

RELATOR

DATED: _____

BY: _____
Yuxin "Jay" Fang

DATED: _____

BY: _____
Vincent McKnight
John McKnight
Sanford Heisler Sharp LLP
Counsel for Yuxin "Jay" Fang

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____
Ellen London
Assistant United States Attorney
Northern District of California

DATED: : _____ BY: _____
Brian Judge
Office of Claims and Litigation
United States Department of Homeland Security and Coast
Guard Investigative Service

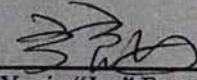
DATED: : _____ BY: _____
Rogelio A. Fernández
Associate General Counsel
Contractor Responsibility and Conflict Resolution
Department of the Air Force

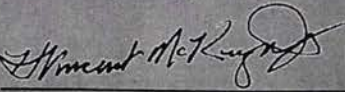
FORTINET

DATED: : _____ BY: _____
Ken Xie
President and Chief Executive Officer
Fortinet, Inc.

DATED: _____ BY: _____
Jay Pomerantz
Fenwick & West LLP
Counsel for Fortinet, Inc.

RELATOR

DATED: Apr 7th, 2019 BY: 
Yuxin "Jay" Fang

DATED: April 7, 2019 BY: 
Vincent McKnight
John McKnight
Sanford Heisler Sharp LLP
Counsel for Yuxin "Jay" Fang