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10 FINJAN, INC.

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

14 FINJAN, INC.,

15 Plaintiff,

16 v.

17 JUNIPER NETWORKS, INC.,

18 Defendant.

19 Case No.: 3:17-cv-05659-WHA

20 **FINJAN, INC.'S REPLY IN SUPPORT OF**
21 **ITS MOTION TO DISMISS DEFENDANT**
22 **JUNIPER NETWORKS, INC.'S THIRD,**
23 **FOURTH, FIFTH, AND SIXTH**
24 **COUNTERCLAIMS AND TO STRIKE**
25 **JUNIPER'S TENTH, ELEVENTH,**
26 **TWELFTH, AND FOURTEENTH**
27 **AFFIRMATIVE DEFENSES**

28 Date: July 26, 2018
29 Time: 8:00 a.m.
30 Courtroom: Courtroom 12, 19th Floor
31 Before: Hon. William Alsup

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|----|---|-------|
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