PAUL ANDRE (State Bar No. 196585)
pandre@kramerlevin.com
LISA KOBIALKA (State Bar No. 191404)
lkobialka@kramerlevin.com
JAMES HANNAH (State Bar No. 237978)
jhannah@kramerlevin.com
KRISTOPHER KASTENS (State Bar No. 254797)
kkastens@kramerlevin.com
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 752-1700
Facsimile: (650) 752-1800

*Attorneys for Plaintiff*
FINJAN, INC.

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

FINJAN, INC., a Delaware Corporation,

Plaintiff,

v.

JUNIPER NETWORKS, INC., a Delaware Corporation,

Defendant.

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

**PLAINTIFF FINJAN, INC.'S REPLY IN SUPPORT OF ITS RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO FED. R. CIV. P. 50(B); MOTION FOR NEW TRIAL UNDER FED. R. CIV. P. 59; AND MOTION FOR CERTIFICATION FOR IMMEDIATE APPEAL IN THE ALTERNATIVE**

Date: February 14, 2019
Time: 8:00 am
Courtroom: 12, 19th Floor
Before: Hon. William Alsup

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## I. ARGUMENT

### A. Judgment As A Matter of Law ("JMOL") of Infringement is Appropriate.

#### 1. Juniper Did Not Refute its Documents Showing it Infringes.

Finjan presented unrefuted evidence that Juniper's accused products ("Juniper's Products") include a "database" under the agreed construction of the Court, and, as such, no reasonable jury could have found that those products do not infringe. *See* Dkt. 353 ("Mtn.") at 5-7. Juniper's documents explicitly say that the ResultsDB is a database and that it has a schema. *See id.* at 6-7. That Dr. Rubin, Juniper's non-infringement expert, makes bald assertions without relevant evidentiary support that the ResultsDB does not contain a schema, does not create a material dispute of fact. *Core Wireless Licensing S.A.R.L. v. Apple Inc.*, No. 15-cv-05008 NC, 2016 WL 6427850, at *1 (N.D. Cal. Oct. 31, 2016)(citing *Galen v. Cnty. of L.A.*, 477 F.3d 652, 658 (9th Cir. 2007))("Bald assertions that genuine issues of material fact exist are insufficient."); *see also Union Carbide Corp. v. Am. Can Co.*, 724 F.2d 1567, 1572 (Fed. Cir. 1984)(no issue of material fact where expert's affidavit "expressed no more than an unsupported conclusory opinion which ignored, rather than conflicted with, the evidence of record.").

Juniper cites the few documents Dr. Rubin used for his opinion. But these third party documents are tangential to Juniper's internal documents which actually describe how Juniper's Products work. First, Juniper claims that Amazon's "Frequently Asked Questions" for the DynamoDB was evidence that the ResultsDB database was "schema-less." Dkt. 360 ("Opp.") at 5. However, this third party document does not describe the ResultsDB that Juniper implemented that was presented at trial as having a schema. It only describes the DynamoDB, a single isolated component of ResultsDB, which Amazon permits users like Juniper to modify. In fact, Juniper did modify it for its own purposes to have a schema, as stated in Juniper's documents. Motion, Ex. 3,[1] Trial Ex. 94 at JNPR-FNJN_29018_00963213 ("It is difficult to find one database that could satisfy many different storage needs in one shot, especially if needs are very different … So we built a hybrid solution on top of

[1] All citations herein to "Motion, Ex. __" are to exhibits to the Declaration of Kristopher Kastens in Support of Finjan's Motion, Docket No. 353-1. All citations herein to "Reply, Ex. __" are to exhibits

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