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Case No. N18C-04-006 WCC CCLD

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FINJAN, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N18C-04-006 WCC CCLD
	)	
TRUSTWAVE HOLDINGS, INC.,	)	**PUBLIC VERSION EFILED JULY 30, 2018**
	)	
Defendant.	)	

DEFENDANT TRUSTWAVE HOLDINGS, INC.'S OPENING BRIEF IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT

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Pursuant to Superior Court Civil Rule 12(b)(6), Defendant Trustwave Holdings, Inc. ("Trustwave") respectfully submits this opening brief in support of its Motion to Dismiss the Complaint ("Complaint") filed by Plaintiff Finjan, Inc. ("Finjan").

I. QUESTION PRESENTED

Whether Finjan's Complaint adequately pleads claims for breach of contract under the parties' patent license agreement when it fails to identify any Finjan patents, any Trustwave products, or any facts concerning the nature of acquisition that allegedly triggered Trustwave's royalty obligations.

II. INTRODUCTION

Finjan's case is a conditional patent infringement contest within a complex patent license dispute. Finjan's Complaint fails, however, to address any aspect of the underlying patent infringement claim necessary to demonstrate a breach of the parties' patent license and glosses over the contractual conditions and qualifications that must be met to even prompt the patent infringement questions. Instead, Finjan's Complaint attempts to essentially transform the case into collection of a "debt" founded on an independent "Inspection" (as it is actually characterized in the operative "Agreement" as defined below). As apparent from the face of the Inspection Report, the Inspection was not independent and admittedly included a revenue count that ignored the most fundamental exceptions, qualifications, and

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