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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FINJAN, INC., a Delaware Corporation,)	Case No. 17-cv-05659-WHA
)	
Plaintiff,)	San Francisco, California
)	Courtroom A, 15th Floor
)	Wednesday, May 29, 2019
v.)	
)	
JUNIPER NETWORKS, INC., a Delaware Corporation,)	
)	
Defendant.)	

TRANSCRIPT OF TELEPHONIC DISCOVERY HEARING
BEFORE THE HONORABLE THOMAS S. HIXSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	JAMES R. HANNAH, ESQ. LISA KOBIALKA, ESQ. Kramer Levin Naftalis & Frankel, LLP 990 Marsh Road Menlo Park, California 94025 (650) 752-1700
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For Defendant:	HARRY A. MITTLEMAN, ESQ. Irell & Manella, LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067-4276 (310) 277-1010
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1 SAN FRANCISCO, CALIFORNIA WEDNESDAY, MAY 29, 2019 2:03 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Okay, everyone. The Judge has taken the
5 bench. We are here in Civil Action 17-5659, Finjan, Inc. v.
6 Juniper Networks, Inc. Counsel, please state your appearances.
7 Let's start with the Plaintiffs.

8 MR. HANNAH: Good afternoon, Your Honor. This is James
9 Hannah on behalf of Finjan. And with me on the call is Lisa
10 Kobialka.

11 THE COURT: Good afternoon.

12 MS. KOBIALKA: Good afternoon.

13 MR. MITTLEMAN: Good afternoon, Your Honor. My name is
14 Harry Mittleman. I'm with the Irell firm. I'm here for Juniper.
15 I'm present on the call.

16 THE COURT: Good afternoon. So what would you like to
17 discuss?

18 MR. MITTLEMAN: Thank you, Your Honor. This is
19 Defendant -- this is Harry Mittleman and I'm the party that
20 requested this teleconference. I'm hoping it will be brief.

21 So the call concerns the setting for Mrs. Bey's -- Ms. Bey's
22 deposition. I -- as you may remember, I argued last week on the
23 motion to compel, and the Court issued an order that counsel for
24 Bey, or they needed to produce all of her documents by Monday, May
25 27th. Obviously, Monday was a holiday weekend day, but that was

1 the order. And the order said that it was "to give Juniper a
2 fighting chance to review materials to prepare for the
3 deposition."

4 And what happened is that we did not get the full production
5 on Monday as delivered. We got a production at 7:00 p.m. that
6 night which we thought would be well after the hours when
7 (indiscernible). And then we got a second production the day
8 after the first deadline. At a quarter to 5:00 p.m., another
9 production came in which was both untimely in terms of the order
10 as well as something that we could not practically begin to go
11 through and review and make copies and then sit down for a
12 deposition in Richmond.

13 Now, that deposition was scheduled in Richmond for tomorrow.
14 But we don't have the materials and didn't have the materials
15 necessary for that.

16 And, in addition, Your Honor, there's one other issue, which
17 is that I spoke with one of the partners at the Kramer Levin firm
18 yesterday and explained that for the first time in I think about
19 24 years where I've practiced law, I have a medical condition that
20 has come up that makes it so I couldn't get on the plane today.
21 I went to -- without getting into the details (indiscernible), I
22 spent hours at the emergency room urgent care yesterday. I'm
23 going back on Friday to see a cardiologist. And he prescribed a
24 bunch of medications that are soporific in nature. And for all of
25 these reasons -- because we didn't get the documents on the Court-

1 ordered deadline, and I'm not in a position to be in Richmond
2 tomorrow because of my medical issue, we thought could we set the
3 date for a different date. We offered I believe 21 different
4 dates in June and July. None of the dates apparently have been
5 acceptable to counsel for Ms. Bey, although it appears that she is
6 available on a number of those dates.

7 And as a result, they are requesting that the deposition
8 proceed without me and taking it tomorrow in Richmond. And it's
9 for that reason, because that's (indiscernible), given the
10 circumstances, and not consistent with the Court's order, I
11 reluctantly sought the Court's intervention.

12 I just wanted to take one of the 21 other dates that we've
13 chosen and just move on and get this done.

14 THE COURT: Okay. Thank you for that explanation. Mr.
15 Hannah, can I hear from your point of view?

16 MR. HANNAH: Your Honor, frankly, I'd like us to move
17 on and go forward. So what we said was do the deposition by video
18 conference or telephone.

19 So we were not notified for this change in the deposition due
20 to this medical emergency until we were already on the plane. I'm
21 sitting here in Richmond, Virginia right now.

22 And what happened was he called a partner -- he did call my
23 partner and he said that he had, you know, this medical issue and
24 that he didn't want to have to travel because he wanted to move up
25 a doctor's appointment. My partner asked him, "Is it life-

1 threatening? Is there anything you'd like ..."

2 From what I understand, he said to my partner, he said, "No,
3 it's not life-threatening." He said, "You know what? I can
4 probably just tough it out."

5 So we get to -- we thought that issue was resolved. So we
6 get to Richmond and then we get a lengthy email from one of the
7 associates that, given to this medical condition and there's some
8 -- at some point, there's something about three entries of the
9 privileged log had cut-off words, which we promptly told them was
10 the words "with client" in those three entries, so I'm not sure we
11 talked about any documents produced late.

12 There was nothing that was produced late. There was
13 something that -- I had a reformatting error that just had to work
14 with -- with clients on there, and then there were four email
15 chains that were not on the privileged log, and all of those were
16 given to them today.

17 And so we're sitting here in Virginia and we said, Okay,
18 we'll let's just move -- let's just move on with the deposition
19 and do it by video conference or phone, and he just never
20 responded to that. That's his typical practice.

21 They can -- you know, they can email the documents to a court
22 reporting service here. The court reporter takes the exhibits.
23 They hand them to the witness as the deposition -- as I'm sure
24 Your Honor has done depositions this way before -- and we move on
25 with the deposition.

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