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JUNIPER NETWORKS, INC.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 FINJAN, INC., a Delaware Corporation,) Case No. 3:17-cv-05659-WHA
16)
Plaintiff,)
17 vs.) **DEFENDANT JUNIPER NETWORKS,**
18 JUNIPER NETWORKS, INC., a Delaware) **INC.'S OBJECTION TO SPECIAL**
Corporation,) **MASTER'S REPORT AND**
19) **RECOMMENDATION RE ATTORNEY'S**
Defendant.) **FEEES AND EXPENSES (DKT. 658)**
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1 **I. INTRODUCTION**

2 Although Special Master Borden reduced some of Juniper Networks Inc's ("Juniper")
3 submitted attorneys' fees, Juniper does not object to that reduction. Juniper does object, however,
4 to the Special Master's finding that a consideration of the expert fees and travel expenses the Court
5 had ordered Juniper to provide to the Special Master was "premature" because the Court's
6 preliminary fees order "does not have an express finding of bad faith." Dkt. 658 (Fees Order) at 20.
7 Juniper believes that the Special Master should have reviewed these expenses so the Court could
8 include them as part of its final fees award, should that award include a finding of bad faith.

9 While Juniper believes the Special Master's failure to review the expenses the Court ordered
10 Juniper to provide to the Special Master is error, the impact of this error is negligible, as Finjan did
11 not specifically challenge the reasonableness of any of the particular expenses Juniper submitted; it
12 only challenged whether the Court intended to award them and broadly stated that the expenses were
13 large. As the parties agree these expenses are awardable by the Court if its final award includes a
14 finding of bad faith, Juniper urges this Court to include these expenses in its final fees order, along
15 with a clear, express, and unambiguous statement that Finjan's improper litigation conduct (which
16 it already detailed in its preliminary fees order) constitutes bad faith. The only expenses for which
17 Juniper is seeking recovery are the categories of expenses this Court previously identified in
18 Paragraph 2 of its Order Re Attorney's Fees And Costs And Appointment of Special Master (Dkt.
19 649) ("Referral Order")—specifically expert fees and travel expenses. As detailed in the March 22,
20 2021 Declaration of Jonathan Kagan (Ex. 1), the vast majority of these costs were unnecessary fees
21 that Juniper paid to experts who testified at trial in this case—a trial the Court already held would
22 not have been necessary but for Finjan's improper litigation conduct. The total amount of the costs
23 for the categories identified by the Court in its Referral Order is \$1,425,659.24.

24 **II. LEGAL STANDARD**

25 The parties do not dispute that this Court has the inherent power to permit Juniper to recover
26 costs actually incurred in defending the underlying lawsuit. Indeed, the law on this is clear: "Courts
27 of justice are universally acknowledged to be vested, by their very creation, with power to impose
28 silence, respect, and decorum, in their presence, and submission to their lawful mandates."

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