

# **EXHIBIT A**

## **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

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15 FINJAN, INC.

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

14 FINJAN, INC., a Delaware Corporation,

15 Plaintiff,

16 v.

17 QUALYS, INC., a Delaware Corporation,

18 Defendant.

Case No.: 4:18-cv-07229-YGR

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**PLAINTIFF FINJAN, INC.’S  
DISCLOSURE OF DAMAGES  
CONTENTIONS PURSUANT TO  
PATENT LOCAL RULE 3-8**

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1 Pursuant to Patent Local Rule 3-8 of the United States District Court for the Northern District  
2 of California, Plaintiff Finjan, Inc. (“Finjan”) makes the following Disclosure of Damages Contentions  
3 (“Disclosure”) to Qualys, Inc., (“Qualys” or “Defendant”).

4 Finjan makes this Disclosure based upon information presently known and reasonably available  
5 to it as of this date, as Finjan’s investigations are ongoing and discovery is ongoing. *See Twilio Inc. v.*  
6 *Telesign Corp.*, Case No. 16-cv-06925-LHK, 2017 WL 5525929, at \*3-4 (N.D. Cal. Nov. 17, 2017)  
7 (noting that damages contentions occur early in the discovery period, and while a computation may not  
8 yet be possible, plaintiffs must make a good faith disclosure and identify with specificity what more is  
9 needed to make a computation). Accordingly, Finjan reserves the right to amend, modify, supplement,  
10 or narrow any portion of this Disclosure, including, but not limited to, the identification of each  
11 category of damages Finjan seeks for the asserted infringement, Finjan’s damages approaches and  
12 underlying factual support, and Finjan’s computation of damages. Finjan refers to and incorporates by  
13 reference herein its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1), responses to  
14 interrogatories, and requests for productions, any forthcoming supplements thereto, and responses and  
15 supplements to any forthcoming requests for admission, which provide information regarding Finjan’s  
16 allegations of damages, and any supplements to such disclosures and discovery. Finjan notes that  
17 much of the information necessary to provide an accurate estimation has not yet been produced. *See,*  
18 *e.g.*, Qualys’ Response to Interrogatories Nos. 2, 3, 5, 6 and 11. Finjan further incorporates by  
19 reference herein its non-binding good faith damages estimate and explanation set forth in the Joint  
20 Case Management Statement. Finjan further incorporates by reference herein its Initial Disclosure of  
21 Asserted Claims and Infringement Contentions and Accompanying Document Production Pursuant to  
22 Patent L.R. 3-1 and 3-2, and any supplements thereto, which identify the infringed claims, the  
23 instrumentalities accused of infringement, the bases and manner of the alleged infringement, dates  
24 related to the start of infringement, the basis for Qualys’ willful infringement and the start and end of  
25 the damages period, and documents concerning practice of the invention, marking and relevant  
26 agreements.

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1 Finjan reserves the right to supplement this Disclosure as necessary and as appropriate in  
2 accordance with the Federal Rules of Civil Procedure and this Court’s Local Rules in light of future  
3 document productions, interrogatory responses, admissions, disclosures, contentions, fact witness  
4 testimony, expert discovery, any other discovery, future rulings from the Court, any amendments to the  
5 pleadings, any additional items of evidence, and/or for any other reason authorized by statute, rule, or  
6 applicable case law. Finjan further reserves the right to rely upon the opinions of one or more experts  
7 in support of its damages contentions in accordance with the Court’s scheduling order. To the  
8 maximum degree allowed by the Federal Rules of Civil Procedure and the Court’s Local Rules, Finjan  
9 reserves its right to supplement, amend, modify and/or narrow this Disclosure, as appropriate, as the  
10 extent of infringement and/or damages becomes more fully known, the Court makes any relevant  
11 rulings, and the case develops over the course of discovery.

12 **I. PATENT L.R. 3-8: DISCLOSURE OF DAMAGES CONTENTIONS.**

13 **A. Patent Local Rule 3-8(a)**

14 Finjan provides the following contentions pursuant to Patent Local Rule 3-8(a):

15 **1. Identification of Categories of Damages Sought for the Asserted**  
16 **Infringement.**

17 Finjan seeks all damages to which it is entitled under U.S. patent laws, arising from Qualys’s  
18 infringement including 35 U.S.C. § 284. Qualys obtains significant value and benefit from its  
19 infringement through the use, making, offering for sale and sales of the Accused Instrumentalities.  
20 Thus, Finjan seeks damages in an amount adequate to compensate for Qualys’s infringement, which  
21 includes, but is not limited to, no less than a reasonable royalty for the manufacture, use, offer for sale,  
22 sale, and/or importation of the invention.

23 Finjan also seeks interest and costs fixed by the Court, as well as an accounting of all of  
24 Qualys’s infringing sales and revenues. Finjan also seeks an award of attorneys’ fees, expenses, and  
25 costs associated with the present action under 35 U.S.C. § 285 as well as enhanced damages under 35  
26 U.S.C. § 284. Such fees, costs, and expenses of damages cannot be computed at the present time and  
27  
28

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1 depend on a variety of factors, such as the length and intensity of the litigation, the positions that  
2 Qualys takes, and the amount of damages awarded to Finjan.

3 **2. Finjan’s Presentations Related to Recovery, Factual Support, and**  
4 **Computation of Damages.**

5 Finjan seeks damages in an amount no less than a reasonable royalty for Qualys’s infringing  
6 use of the patents asserted against Qualys in this action. A reasonable royalty is the expected outcome  
7 of a licensing negotiation between the infringer and the patent owner, had the two parties negotiated a  
8 license for the infringer’s right to practice the patent prior to the first act of infringement. The  
9 negotiation is hypothesized to take place on the eve of first infringement and both parties are assumed  
10 to believe that the patent is valid and would be infringed. Thus, Finjan’s contentions herein assume  
11 that the patents that Finjan asserts against Qualys in this action are valid and infringed, specifically,  
12 U.S. Patent No. 6,154,844 (“the ‘844 Patent”), U.S. Patent No. 6,965,968 (“the ‘968 Patent”), U.S.  
13 Patent No. 7,418,731 (“the ‘731 Patent”), U.S. Patent No. 7,975,305 (“the ‘305 Patent”), U.S. Patent  
14 No. 8,141,154 (“the ‘154 Patent”), U.S. Patent No. 8,225,408 (“the ‘408 Patent”); and U.S. Patent No.  
15 8,677,494 (“the ‘494 Patent”) (collectively, the “Patents-in-Suit” or “Asserted Patents”).

16 The hypothetical negotiation framework is embodied in the landmark case *Georgia-Pacific*  
17 *Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970). The hypothetical  
18 negotiation reflects the relevant expectations and market factors that would have affected a real world  
19 licensing negotiation at the time of first infringement, such as, for example, the expectations of the  
20 negotiating parties regarding the technical advantages provided by the Patents-In-Suit; the extent to  
21 which Qualys uses the invention and the value of the invention to Qualys and its use of the invention;  
22 future sales of, and profits from, the infringing products (and any related or bundled products, products  
23 offered with the Accused Instrumentalities, including customer support offerings, known as conveyed,  
24 collateral or derivative sales); and the cost-savings that would be realized by Qualys through its  
25 infringement of the Patents-in-Suit, as well as the costs avoided due to its infringement.

26 Beyond the *Georgia Pacific* factors, which are often primarily used to determine a royalty rate,  
27 determining an overall reasonable royalty also involves an assessment of the benefits and costs to each  
28

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