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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 FINJAN, INC.,
15 Plaintiff,
16 v.
17 QUALYS INC.,
18 Defendant.

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

**~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER**

as modified by the Court

DEMAND FOR JURY TRIAL

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21 1. PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action are likely to involve production of
23 confidential, proprietary, or private information for which special protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
25 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
26 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
27 protections on all disclosures or responses to discovery and that the protection it affords from
28 public disclosure and use extends only to the limited information or items that are entitled to

1 confidential treatment under the applicable legal principles. The parties further acknowledge, as
2 set forth below, that this Stipulated Protective Order does not entitle them to file confidential
3 information under seal. Civil Local Rule 79-5 sets forth the procedures that must be followed and
4 the standards that will be applied when a party seeks permission from the Court to file material
5 under seal.

6 DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
11 of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
13 well as their support staff).

14 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

16 2.5 Designating Party: a Party or Non-Party that designates information or items that it
17 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
19 ATTORNEY’S EYES ONLY – SOURCE CODE.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among other things,
22 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
23 responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
25 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
26 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
27 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
28

1 or of a Party's competitor.

2 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
3 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
4 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
5 less restrictive means.

6 2.9 "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY – SOURCE
7 CODE" Information or Items: extremely sensitive "Confidential Information or Items"
8 representing computer code and associated comments and revision histories, formulas,
9 engineering specifications, or schematics that define or otherwise describe in detail the algorithms
10 or structure of software or hardware designs, disclosure of which to another Party or Non-Party
11 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

12 2.10 House Counsel: attorneys who are employees of a party to this action. House
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
17 action but are retained to represent or advise a party to this action and have appeared in this action
18 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

19 2.13 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this action.

23 2.15 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
25 organizing, storing, or retrieving data in any form or medium) and their employees and
26 subcontractors.

27 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
28

1 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
2 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY – SOURCE CODE.”

3 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
4 Producing Party.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only Protected Material
7 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
8 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
10 However, the protections conferred by this Stipulation and Order do not cover the following
11 information: (a) any information that is in the public domain at the time of disclosure to a
12 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
13 a result of publication not involving a violation of this Order, including
14 becoming part of the public record through trial or otherwise; and (b) any information known to
15 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure
16 from a source who obtained the information lawfully and under no obligation of confidentiality to
17 the Designating Party. Any use of Protected Material at trial shall be governed by a separate
18 agreement or order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations imposed by
21 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
22 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
23 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
24 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
25 including the time limits for filing any motions or applications for extension of time pursuant to
26 applicable law.

27 5. DESIGNATING PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party

1 or Non-Party that designates information or items for protection under this Order must take care
2 to limit any such designation to specific material that qualifies under the appropriate standards.
3 To the extent it is practical to do so, the Designating Party must designate for protection only
4 those parts of material, documents, items, or oral or written communications that qualify – so that
5 other portions of the material, documents, items, or communications for which protection is not
6 warranted are not swept unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
8 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
9 unnecessarily encumber or retard the case development process or to impose unnecessary
10 expenses and burdens on other parties) expose the Designating Party to sanctions.

11 If it comes to a Designating Party’s attention that information or items that it designated
12 for protection do not qualify for protection at all or do not qualify for the level of protection
13 initially asserted, that Designating Party must promptly notify all other parties that it is
14 withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
16 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
17 Disclosure or Discovery

18 Material that qualifies for protection under this Order must be clearly so designated before
19 the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but
22 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
23 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
24 EYES ONLY,” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY SOURCE
25 CODE” to each page that contains protected material.

26 A Party or Non-Party that makes original documents or materials available for inspection
27 need not designate them for protection until after the inspecting Party has indicated which
28 material it would like copied and produced. During the inspection and before the designation, all

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