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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

16 FINJAN, INC.,
17
18 Plaintiff,
19 v.
20 QUALYS INC.,
21 Defendant.

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

STIPULATED ORDER REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive
4 determination of this action, as required by Federal Rule of Civil Procedure 1.”

5 2. This Order may be modified in the Court’s discretion or by stipulation. The parties shall
6 jointly submit any proposed modifications within 30 days after the Federal Rule of Civil Procedure 16
7 Conference.

8 3. As in all cases, costs may be shifted for disproportionate ESI production requests
9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory
10 discovery tactics are cost-shifting considerations.

11 4. A party’s meaningful compliance with this Order and efforts to promote efficiency and
12 reduce costs will be considered in cost-shifting determinations.

13 5. The parties are expected to comply with the District’s E-Discovery Guidelines
14 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the Discovery
15 of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer regarding
16 Electronically Stored Information.

17 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall
18 not include email or other forms of electronic correspondence (collectively “email”). To obtain email
19 parties must propound specific email production requests.

20 7. Email production requests shall only be propounded for specific issues, rather than
21 general discovery of a product or business.

22 8. Email production requests shall be phased to occur after the parties have exchanged
23 initial disclosures and basic documentation about the patents, the prior art, the accused
24 instrumentalities, and the relevant finances. While this provision does not require the production of
25 such information, the Court encourages prompt and early production of this information to promote
26 efficient and economical streamlining of the case.

1 9. Email production requests shall identify the custodian, search terms, and time frame.

2 The parties shall cooperate to identify the proper custodians, proper search terms and proper timeframe
3 as set forth in the Guidelines.

4 10. Each requesting party shall limit its email production requests to a total of five
5 custodians per producing party for all such requests. The parties may jointly agree to modify this limit
6 without the Court's leave. The Court shall consider contested requests for additional custodians, upon
7 showing a distinct need based on the size, complexity, and issues of this specific case. Cost-shifting
8 may be considered as part of any such request.

9 11. Each requesting party shall limit its email production requests to a total of five search
10 terms per custodian per party. The parties may jointly agree to modify this limit without the Court's
11 leave. The Court shall consider contested requests for additional search terms per custodian, upon
12 showing a distinct need based on the size, complexity, and issues of this specific case. The Court
13 encourages the parties to confer on a process to test the efficacy of the search terms. The search terms
14 shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's
15 name or its product name, are inappropriate unless combined with narrowing search criteria that
16 sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases
17 (*e.g.*, "computer" and "system") narrows the search and shall count as a single search term. A
18 disjunctive combination of multiple words or phrases (*e.g.*, "computer" or "system") broadens the
19 search, and thus each word or phrase shall count as a separate search term unless they are variants of
20 the same word. Use of narrowing search criteria (*e.g.*, "and," "but not," "w/x") is encouraged to limit
21 the production and shall be considered when determining whether to shift costs for disproportionate
22 discovery. Should a party serve email production requests with search terms beyond the limits agreed
23 to by the parties or granted by the Court pursuant to this paragraph, this shall be considered in
24 determining whether any party shall bear all reasonable costs caused by such additional discovery.

25 12. Nothing in this Order prevents the parties from agreeing to use technology assisted
26 review and other techniques insofar as their use improves the efficacy of discovery. Such topics should
27 be discussed pursuant to the District's E-Discovery Guidelines.

Attestation

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from any other signatory to this document.

By: /s/ Paul Andre
Paul Andre

IT IS ORDERED that the forgoing Agreement is approved.

Dated: _____

UNITED STATES DISTRICT JUDGE
YVONNE GONZALEZ ROGERS