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11	IN THE UNITED STATES DISTRICT COURT				
12	FOR THE NORTHERN DISTRICT OF CALIFORNIA				
13	OAKLAND DIVISION				
14					
15	)	CASE NO.: 4:18-cv-07229-YGR (TSH)			
16		DEFENDANT QUALYS INC.'S MOTION TO STRIKE PORTIONS			
17	v. ) (	OF PLAINTIFF FINJAN LLC'S			
18		NFRINGEMENT AND DAMAGES EXPERT REPORTS			
19		Judge: Hon. Yvonne Gonzalez			
20		Rogers			
21		Date: March 2, 2021 Time: 2:00pm			
22		Location: Zoom Teleconference <sup>1</sup>			
23					
24	HIGHLY CONFIDENTIAL – ATTO				
25	<b>REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED</b>				
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	<sup>1</sup> Per the Court's Notice regarding Civil Law and Mor	tion Calendars and its Order at D.1.48			

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#### NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on Tuesday, March 2, 2021 at 2:00pm or as soon thereafter
as this matter may be heard before Judge Gonzalez Rogers of the United States District Court for
the Northern District of California via Zoom video conference and/or in Courtroom 1, 4th Floor,
of 1301 Clay Street in Oakland, California (per the Court's March 12, 2020 Order (D.I. 48) and its
Notice regarding Civil Law and Motion Calendars), defendant Qualys Inc. ("Qualys") will and
hereby does move to strike portions of plaintiff Finjan LLC's ("Finjan") expert reports

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#### STATEMENT OF ISSUES AND RELIEF REQUESTED

9 Qualys seeks an order striking portions of the "Expert Report of Nenad Medvidovic, Ph.D.," "Opening Expert Report of Eric Cold, Ph.D.," and "Expert Report of DeForest McDuff, 10 11 Ph.D." Medvidovic's, Cole's and McDuff's expert reports all proffer infringement theories that 12 exceed the scope of Finjan's Local Patent Rule Contentions. Dr. Medvidovic introduces new 13 theories of infringement not previously disclosed in Finjan's Infringement Contentions. Drs. Cole 14 and McDuff offer speculative theories on worldwide infringement and damages even though such 15 theories were never disclosed in Finjan's Infringement Contentions or Damages Contentions and 16 have been held as outside the scope of the operative Infringement Contentions. See D.I. 105 at 4; 17 D.I. 152. Qualys therefore requests that the Court strike the portions of those expert reports 18 containing these improper theories, identified by the highlighted portions of Exhibits 1, 2, and 13 to the Declaration of Christopher D. Mays in support of this Motion.<sup>2</sup> 19

28 <sup>2</sup> Citations to "Ex. XX" or "Exhibit XX" refer to the exhibits to the Declaration of Christopher D. Mays\_filed concurrently with this Motion

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#### MEMORANDUM OF POINTS AND AUTHORITIES

#### I. INTRODUCTION

Finjan has been repeatedly chastised by courts in this District for failing to properly disclose its infringement theories. It has made a pattern out of using expert reports to inject new theories into the litigation:
After discovering its infringement theory covered only a minute portion of Juniper's revenue base, on the eve of [trial] Finjan flip flopped and came up with a new infringement theory, one which would capture more of Juniper's products and inflate the target revenue base. *Finjan tried to sneak this theory in with its expert-damages report, but we caught it*, and the Daubert order excluded that trick.

*Finjan, Inc. v. Juniper Network, Inc., et al.*, Case No. 3:17-cv-05659, 2021 WL 75735, at \*2 (N.D. Cal. Jan. 9, 2021) (emphasis added); *see also Finjan, Inc. v. Symantec Corp.*, Case No. 4:14-cv-02998-HSG(JSC), 2018 WL 620169 (N.D. Cal. Jan. 30, 2018) (striking portions of Finjan's expert reports for including theories outside the scope of its contentions); *Finjan, Inc. v. Blue Coat Sys., Inc.*, Case No. 5:13-cv-03999-BLF, 2015 WL 3640694 (N.D. Cal. June 11, 2015) (same); *Finjan, Inc. v. Cisco Sys., Inc.,* Case No. 5:17-cv-00072-BLF(SVK), 2020 WL 2322923 (N.D. Cal. May 11, 2020) (same); and *Finjan, Inc. v. Cisco Sys., Inc.,* Case No. 5:17-cv-00072-BLF, 2019 WL 6174936 (N.D. Cal. Nov. 20, 2019) (same).

Now Finjan is at it again. Finjan pervasively offered infringement theories for the '408 Patent that were extremely narrow and failed to address every claim limitation. Qualys raised these issues with Finjan months before the close of fact discovery, but Finjan consciously elected not to seek leave to amend the contentions with the Court. Instead, Finjan resorted to its same old playbook by relying on its expert, Dr. Nenad Medvidovic, to slip in a host of new infringement theories. Dr. Medvidovic himself has a rocky past with this problem, and has had his reports stricken for engaging in the same practices present here. Given this, particular scrutiny of his expert report is warranted. As detailed below, Medvidovic frequently exceeds the scope of Finjan's infringement contentions by accusing different devices, different functionality, and simply filling in new theories for limitations that Finjan skipped in its contentions. The Court should strike these new theories and opinions.

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