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Attorneys for Defendant
SONICWALL, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 FINJAN LLC, a Delaware Limited Liability
Company,
14 Plaintiff,
15 v.
16 SONICWALL, INC., a Delaware Corporation,
17 Defendant.

Case No.: 5:17-cv-04467-BLF (VKD)

**[PROPOSED] JOINT PRETRIAL
STATEMENT AND ORDER**

Date: March 18, 2021
Time: 1:30 PM
Place: Courtroom 3, 5th Floor
Judge: Hon. Beth Labson Freeman

1 Pursuant to Judge Freeman’s Standing Order regarding Civil Jury Trials, Plaintiff Finjan
2 LLC (“Finjan”) and Defendant SonicWall, Inc. (“SonicWall”) (collectively, “Parties”) hereby
3 submit the Joint Pretrial Statement and Order.

4 **I. THE ACTION**

5 **A. The Parties**

6 The Parties to this action are Finjan, a Delaware Limited Liability Company with its
7 principal place of business at 2000 University Ave., Ste. 600, East Palo Alto, California 94303, and
8 SonicWall, a Delaware Corporation with its headquarters and principal place of business at 1033
9 McCarthy Blvd., Milpitas, California 95035.

10 **B. Substance of the Action**

11 This is an action for patent infringement, and the jurisdiction of the court arises under the
12 Patent Act, 35 U.S.C. § 271 et seq.

13 Finjan alleges that SonicWall directly infringes pursuant to 35 U.S.C. § 271(a) the following
14 U.S. patents:

- 15 1. U.S. Patent No. 6,965,968 (“the ’968 Patent”)
- 16 2. U.S. Patent No. 7,975,305 (“the ’305 Patent”)
- 17 3. U.S. Patent No. 8,225,408 (“the ’408 Patent”)
- 18 4. U.S. Patent No. 6,154,844 (“the ’844 Patent”)
- 19 5. U.S. Patent No. 8,677,494 (“the ’494 Patent”)
- 20 6. U.S. Patent No. 8,141,154 (“the ’154 Patent”)
- 21 7. U.S. Patent No. 6,804,780 (“the ’780 Patent”)
- 22 8. U.S. Patent No. 7,613,926 (“the ’926 Patent”)
- 23
- 24

1 Collectively, these patents are referred to as the “Asserted Patents.” Finjan alleges infringement of
 2 the following claims (collectively referred to as the “Asserted Claims”):

Patent	Asserted Claims
'968 Patent	1
'305 Patent	11, 12
'408 Patent	1, 22
'844 Patent	15, 16, 41, 43
'494 Patent	10, 14
'154 Patent	1
'780 Patent	9
'926 Patent	22, 25

13 To the extent SonicWall claims it does not practice any specific element literally, Finjan
 14 has asserted that SonicWall directly infringes certain elements of the Asserted Claims of each of
 15 the Asserted Patents under the doctrine of equivalents.

16 Finjan also alleges that SonicWall infringes the Asserted Claims pursuant to 35 U.S.C.
 17 § 271(b) by inducing its contractual partners (including its customers) and agents to practice the
 18 Asserted Claims using the Accused Products listed below.

19 Finjan alleges that SonicWall has made, used, sold and offered to sell the following
 20 products, methods and/or services (referred to collectively as “Accused Products”), which infringe,
 21 literally or under the doctrine of equivalents, one or more of the Asserted Claims of one or more of
 22 the Asserted Patents, as shown in the chart below:

Accused Products	'968	'305	'408	'844	'494	'154	'780	'926
Gateway				X	X	X	X	
Gateway + Capture ATP		X	X	X	X	X	X	X
Capture ATP		X	X	X	X	X	X	X
Email Security + Capture ATP		X		X	X	X	X	X
Email Security						X		
Capture Client						X		
Capture Client + Capture ATP						X		
Gateway + WXA	X							

SonicWall disagrees with Finjan's statement of the accused products it accuses of infringing the '154 Patent in view of the Court's orders and Finjan's operative infringement contentions. SonicWall's position is that Finjan does not have a '154 infringement theory as to SonicWall's gateways, Capture ATP, Email Security, and Capture Client by themselves. Likewise, SonicWall's position is that Finjan's '154 infringement theories for the gateways, Email Security, and Capture Client all require these components combined with Capture ATP. SonicWall's disagreement regarding the '154 Patent will be resolved upon resolution of SonicWall's Motion to Strike (Dkt. Nos. 299-3).

SonicWall also (i) denies that it has in the past infringed any Asserted Claim of the Asserted Patents, either literally or through the doctrine of equivalents, (ii) denies that it literally or through the doctrine of equivalents infringes the three Asserted Patent that have not yet expired (the '154 Patent, the '408 Patent, and the '968 Patent), and (iii) denies that Finjan is entitled to any damages or an injunction. SonicWall also contends that Finjan's claims of infringement as to the '844, '780,

1 '968, and '494 Patent are barred, in whole or in part, by the doctrine of prosecution history estoppel.
2 Finally, SonicWall contends that the Asserted Claims of the Asserted Patents are invalid based
3 upon one or more of the following: lack of patentable subject matter, anticipation, obviousness, and
4 written description. Specifically, SonicWall alleges that:

- 5 • the Asserted Claims of the Asserted Patents are invalid for lack of a written
6 description;
- 7 • the asserted claims of the '780 and '494 Patents are invalid for lack of patentable
8 subject matter;
- 9 • the asserted claims of the '154 Patent are invalid based upon obviousness in view of
10 view of Sweep/InterCheck¹ and in view of Ross²;
- 11 • the asserted claims of the '780 Patent are invalid as obvious from Atkinson³ and
12 obvious from Dongarra⁴;

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14
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18 _____
19 ¹ The Sweep/InterCheck system consists of Sophos' SWEEP anti-virus detection utility, which
20 can run on a server, and Sophos' InterCheck software, which runs on a workstation/client device
21 ("Sweep/InterCheck").

22 ² U.S. Patent Application Publication No. 2007/0113282 to Ross ("Ross").

23 ³ U.S. Patent No. 5,892,904 ("Atkinson").

24 ⁴ Dongarra, "Management of the NHSE – A Virtual Distributed Library" ("Dongarra").

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