

APPENDIX A

Finjan's Witness List

PLAINTIFF FINJAN LLC'S LIST OF FACT AND EXPERT WITNESSES

United States District Court
For the Northern District of California (San Jose Division)

Finjan LLC v. SonicWall, Inc.

Case No. 5:17-cv-04467-BLF

Trial Date: May 3, 2021

Plaintiff Finjan LLC (“Finjan”) identifies the following witnesses whom it may call live or by deposition at trial. This list is not a commitment that Finjan will call any particular witness at trial, or a representation that any of the witnesses listed are available or will appear for trial. If any third-party witness is unavailable, Finjan reserves the right to use his or her deposition testimony. With respect to Defendant SonicWall, Inc.’s (“SonicWall”) witnesses, Finjan reserves the right to introduce testimony through deposition or live examination, as appropriate. Finjan also reserves the right to call any witnesses listed or called by SonicWall, and to revise this list in light of further rulings by the Court, including any rulings regarding the amount of time allotted for the parties to present their case at trial, or any other changed circumstances.

Defendant SonicWall’s Objections to Finjan’s May Call Witness List

SonicWall objects to Finjan presenting live testimony from Daniel Chinn. Finjan failed to disclose Mr. Chinn in its Initial Disclosures dated March 27, 2018 (“Initial Disclosures”) and thus Mr. Chinn was not deposed in the *Finjan v. SonicWall* case. Under Federal Rules of Civil Procedure 26(a) and 37(c), Finjan is precluded from presenting live testimony from Mr. Chinn at trial. To the extent Finjan intends to call Mr. Chinn by deposition, Finjan is limited to Mr. Chinn’s deposition testimony in the *Finjan v. Cisco* case pursuant to the parties’ Stipulation Regarding Prior Depositions (Dkt. 235).

SonicWall objects to Finjan presenting any testimony from Michael Kim, be it live or by deposition. Finjan failed to disclose Mr. Kim in its Initial Disclosures and thus Mr. Kim was not

deposed in the *Finjan v. SonicWall* case. Further, Mr. Kim was not identified in the parties' Stipulation Regarding Prior Depositions (Dkt. 235). Under Federal Rules of Civil Procedure 26(a) and 37(c), Finjan is precluded from presenting Mr. Kim's testimony at trial.

SonicWall objects to Finjan presenting testimony from Philip Hartstein regarding facts that occurred at a point in time when he was not employed by Finjan and facts for which he lacks personal knowledge pursuant to Fed. R. Evid. 602, including but not limited to facts related to the subject matter disclosed below. SonicWall further objects to Finjan presenting testimony from Mr. Hartstein related to Finjan's interactions and/or communications with Dell and/or SonicWall. Mr. Hartstein did not participate in such interactions and/or communications and thus lacks personal knowledge pursuant to Fed. R. Evid. 602. Further, Finjan failed to identify Mr. Hartstein as an individual with knowledge related to Finjan's interactions and/or communications with SonicWall and/or Dell in response to SonicWall's Interrogatory Nos. 6 and 16.

SonicWall objects to Finjan presenting testimony from John Garland regarding facts that occurred at a point in time when he was not employed by Finjan and facts for which he lacks personal knowledge pursuant to Fed. R. Evid. 602, including but not limited to Finjan's communications with Dell and/or SonicWall that predate Mr. Garland's employment with Finjan.

SonicWall objects to Finjan presenting testimony from Julie Mar-Spinola regarding facts that occurred at a point in time when she was not employed by Finjan and facts for which she lacks personal knowledge pursuant to Fed. R. Evid. 602, including but not limited to facts related to the subject matter disclosed below. SonicWall further objects to Finjan presenting testimony from Ms. Mar-Spinola related to Finjan's interactions and/or communications with Dell and/or SonicWall to the extent that Ms. Mar-Spinola did not participate in such interactions and/or communications and thus lacks personal knowledge pursuant to Fed. R. Evid. 602. Further, Finjan

failed to identify Ms. Mar-Spinola as an individual with knowledge related to Finjan’s interactions and/or communications with SonicWall and/or Dell in response to SonicWall’s Interrogatory No. 6.

Finjan’s Response to SonicWall’s Objections to Finjan’s “May Call” list

SonicWall’s objection to “Finjan presenting live testimony from Daniel Chinn” is irrelevant because Finjan only plans to present deposition testimony from Mr. Chinn.

As to SonicWall’s assertion that Finjan is limited to Mr. Chinn’s deposition testimony in the *Finjan v. Cisco* case, as well as to its objection to Finjan’s use of deposition testimony from Michael Kim taken in other matters, Finjan notes that SonicWall is likewise proposing to introduce testimony, such as from Mr. Noonan, that was not given in the present litigation and is not covered by the parties’ Stipulation Regarding Prior Depositions (Dkt. 235). To the extent SonicWall seeks to introduce such testimony, it cannot simultaneously maintain an objection to Finjan doing the same.

SonicWall’s objection to John Garland testifying about unspecified facts from before his tenure at Finjan is vague and incorrect. SonicWall does not specify what “facts” it objects to except to cite “Finjan’s communications with Dell and/or SonicWall that predate Mr. Garland’s employment with Finjan.” This appears to be the gravamen of SonicWall’s objection, and its objection is misplaced. Mr. Garland was and is a Finjan corporate witness on this topic and is entitled to testify to Finjan’s knowledge of communications it had with SonicWall or Dell based on corporate records. Mr. Garland was designated as Finjan’s corporate 30(b)(6) witness on Finjan’s communications with SonicWall or Dell, was specifically identified as being knowledgeable about this topic in Finjan’s interrogatory responses, and testified to Finjan’s corporate knowledge of such communications at deposition. SonicWall’s attempt to bar his testimony on this topic is meritless.

Also without merit are SonicWall's blanket objections to Philip Hartstein and Julie Mar-Spinola testifying regarding unspecified facts from before their tenure at SonicWall. Again, SonicWall's objection appears to relate to testimony about Finjan's communications with SonicWall or Dell. Mr. Hartstein is a corporate representative of Finjan and has knowledge of facts relating to the communications with Dell/SonicWall on behalf of the corporation based on the corporate records. Ms. Mar-Spinola is likewise knowledgeable about Finjan's corporate knowledge of such communications based on her role at Finjan. Furthermore, Mr. Hartstein was disclosed in Finjan's initial disclosures as knowledgeable about "Finjan's business" and SonicWall itself stated in its initial disclosures that it understood Mr. Hartstein to be knowledgeable about "all aspects of Finjan's business," including specifically including all its "licensing activities." SonicWall likewise acknowledged in its initial disclosures that it understood Ms. Mar-Spinola to be "knowledgeable about Finjan's litigation and licensing activities" including issues of "notice under 35 U.S.C. §287." Further, SonicWall's interrogatories nos. 6 and 16 do not request information regarding those in possession of Finjan corporation's knowledge of discussions with SonicWall, and in any case (as Finjan objected at the time) were overbroad and unduly burdensome, and thus not proportional to the needs of the case, in asking for an identification of all persons with personal knowledge of such communications.

I. FACT AND EXPERT WITNESSES

A. Witnesses That Will Be Called in Connection with Finjan:

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