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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

FINJAN, INC.,

Plaintiff,

v.

ESET, LLC and ESET SPOL. S.R.O.,

Defendants.

Case No. 3:17-cv-0183-CAB-BGS

**ORDER GRANTING JOINT  
MOTION FOR ENTRY OF  
STIPULATED PROTECTIVE  
ORDER**

The parties Joint Motion for Entry of Stipulated Protective Order is **GRANTED**  
as follows:

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter  
6 the following Stipulated Protective Order. The parties acknowledge that this Order does  
7 not confer blanket protections on all disclosures or responses to discovery and that the  
8 protection it affords from public disclosure and use extends only to the limited  
9 information or items that are entitled to confidential treatment under the applicable legal  
10 principles. The parties further acknowledge, as set forth in Section 14.4, below, that this  
11 Stipulated Protective Order does not entitle them to file confidential information under  
12 seal; Federal Rule of Civil Procedure 26(c), Civil Local Rule 79.2, Patent Local Rule  
13 2.2 and Electronic Case Filing Administrative Policies and Procedures Section 2.j set  
14 forth the procedures that must be followed and the standards that will be applied when a  
15 party seeks permission from the court to file material under seal. The parties further  
16 acknowledge that without separate court order, this Stipulated Protective Order does not  
17 change, amend, or circumvent any court rule or local rule.

18 2. DEFINITIONS

19 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
20 information or items under this Order.

21 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how  
22 it is generated, stored or maintained) or tangible things that qualify for protection under  
23 Federal Rule of Civil Procedure 26(c).

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
25 (as well as their support staff).

26 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

1           2.5 Designating Party: a Party or Non-Party that designates information or  
2 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”  
3 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
4 CONFIDENTIAL – SOURCE CODE”.

5           2.6 Disclosure or Discovery Material: all items or information, regardless of  
6 the medium or manner in which it is generated, stored, or maintained (including, among  
7 other things, testimony, transcripts, and tangible things), that are produced or generated  
8 in disclosures or responses to discovery in this matter.

9           2.7 Expert: a person with specialized knowledge or experience in a matter  
10 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as  
11 an expert witness or as a consultant in this action, (2) is not a past or current employee  
12 of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated  
13 to become an employee of a Party or of a Party’s competitor.

14           2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
15 Information or Items: extremely sensitive “Confidential Information or Items,”  
16 disclosure of which to another Party or Non-Party would create a substantial risk of  
17 serious harm that could not be avoided by less restrictive means.

18           2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
19 extremely sensitive “Confidential Information or Items” representing computer code  
20 and associated comments and revision histories, formulas, engineering specifications, or  
21 schematics that define or otherwise describe in detail the algorithms or structure of  
22 software or hardware designs, disclosure of which to another Party or Non-Party would  
23 create a substantial risk of serious harm that could not be avoided by less restrictive  
24 means.

25           2.10 House Counsel: attorneys who are employees of a party to this action.  
26 House Counsel does not include Outside Counsel of Record or any other outside  
27 counsel.

1           2.11 Non-Party: any natural person, partnership, corporation, association, or  
2 other legal entity not named as a Party to this action.

3           2.12 Outside Counsel of Record: attorneys who are not employees of a party to  
4 this action but are retained to represent or advise a party to this action and have  
5 appeared in this action on behalf of that party or are affiliated with a law firm which has  
6 appeared on behalf of that party.

7           2.13 Party: any party to this action, including all of its officers, directors,  
8 employees, consultants, retained experts, House Counsel and Outside Counsel of  
9 Record (and their support staffs).

10          2.14 Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this action.

12          2.15 Professional Vendors: persons or entities that provide litigation support  
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
15 their employees and subcontractors.

16          2.16 Protected Material: any Disclosure or Discovery Material that is designated  
17 as “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

19          2.17 Receiving Party: a Party that receives Disclosure or Discovery Material  
20 from a Producing Party.

21 3.    SCOPE

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

9 4. DURATION

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

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
27 are shown to be clearly unjustified or that have been made for an improper purpose  
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