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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 FINJAN, INC.,

14 Plaintiff,

15 v.

16 ESET, LLC, et al.,

17 Defendants.

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

**SECOND DECLARATION OF SCOTT
A. PENNER IN SUPPORT OF
UPDATED JOINT DISCOVERY PLAN**

Judge: Hon. Cathy Ann Bencivengo

18
19 AND RELATED COUNTERCLAIMS.

PER CHAMBERS RULES, NO ORAL
ARGUMENT UNLESS SEPARATELY
ORDERED BY THE COURT

1 I, Scott A. Penner, declare and state as follows:

2 1. I am an attorney at law duly licensed in the State of California and before
3 this Court. I am a partner at the law firm of Eversheds Sutherland (US) LLP, counsel of
4 record for Defendants and Counter-Plaintiffs ESET, LLC and ESET, spol. s.r.o.
5 (“ESET”). I make this declaration based upon my personal knowledge and am willing
6 to testify to the truth of the matter asserted herein if called to do so.

7 2. I provide this update pursuant to the Updated Joint Discovery Plan filed
8 Friday, October 9, 2020 (D.I. 820).

9 3. ESET personnel in Slovakia have confirmed that they can access ESET’s
10 historical source code to collect source code related to the accused functionality of the
11 Accused Instrumentalities identified by Finjan as relevant to the ’305 patent, and such
12 collection efforts have begun. Due to the large amount of source code being collected,
13 approximately 35GB of data, ESET anticipates that the collection will take several
14 weeks. ESET is cognizant that the Court has ordered production of all source code by
15 November 9, 2020 (D.I. 819) and is working to complete collection and transmission of
16 that data to undersigned counsel prior to that deadline.

17 4. In light of the amount of the source code being collected by ESET, and
18 based on counsel’s prior experience with loading and indexing such source code, it is
19 expected that loading the source code to the source code computer will take between 3
20 and 10 days, depending on the number of files to be decrypted. Once the code is
21 received, decrypted, verified, and copied to the source code computer, ESET’s counsel
22 will notify Finjan that the code is available for review.

23 5. Counsel respectfully notes that indexing the newly produced code likely
24 will not be completed prior to the first week of December 2020, if previous indexing
25 speeds remain a reliable indicator of how quickly the new code can be indexed. Based
26 on counsel’s experience indexing ESET’s previously produced code, counsel anticipates
27 that indexing the newly collected code once it is loaded onto the source code computer
28

1 may take approximately 2-3 weeks.

2 I declare under penalty of perjury under the laws of the United States of America
3 that the foregoing is true and correct.

4 Dated: October 16, 2020

Respectfully submitted,

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EVERSHEDS SUTHERLAND (US) LLP

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/s/ Scott A. Penner

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Scott A. Penner

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