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12 Attorneys for Plaintiff Finjan, Inc.

13
14 IN THE UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

16 FINJAN, INC.,

17 Plaintiffs,

18 v.

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

20 Defendants.
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Case No. 17-cv-0183 CAB (BGS)

**FINJAN, INC.’S NOTICE OF
MOTION AND MOTION TO AMEND
CAPTION**

Hearing Date: January, 6, 2021

Courtroom: 15A

Judge: Hon. Cathy Ann Bencivengo

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

1 TO ALL PARTIES, AND THEIR COUNSEL OF RECORD, please take
2 notice that Plaintiff Finjan, Inc. (“Plaintiff” or “Finjan”), hereby requests the Court
3 issue an order amending the caption in the above-titled case to reflect Plaintiff’s
4 conversion from a corporation to a limited liability company. On July 31, 2020,
5 Plaintiff Finjan was converted from a “Delaware Corporation ... to a Delaware
6 Limited Liability Company, [and] chang[ed] its name from ‘Finjan, Inc.’ to ‘Finjan
7 LLC.’” Amon Decl., Exh. A at FINJAN-ESET_690366.¹ Accordingly, Finjan
8 requests that the caption of the above-titled case be amended to reflect the conversion,
9 changing the identification of Plaintiff from “Finjan, Inc.” to “Finjan LLC.”

10 Defendants ESET, LLC and ESET SPOL. S.R.O. (collectively, “ESET”) have
11 indicated they will oppose Finjan’s motion. Finjan first contacted ESET about
12 amending the caption on November 11, 2020, asking if ESET would oppose. On
13 November 12, 2020, ESET responded asking for documents confirming the
14 conversion. Finjan produced the requested documents (attached as Exh. A to the
15 Amon Decl.) on November 16, 2020.

16 At that point, ESET changed tactics to say it would not oppose this motion to
17 amend *only* if Finjan agreed to produce documents related to the acquisition of
18 Finjan’s parent company by another non-party. See Amon Decl., Exh. B (11/16/20
19 email fr. Penner to Amon) (“If Finjan intends to refuse to produce the documents
20 relevant to the Fortress acquisition then ESET suggests filing the motion as an
21 opposed motion.”).² Finjan’s parent company, Finjan Holdings LLC, is not a party in
22 this case, and documents regarding its acquisition by yet another non-party are
23 unrelated to whether Finjan, Inc. is now Finjan LLC, and thus whether the caption
24 needs to be modified. It is unreasonable for ESET to condition its non-opposition to
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27 ¹ All exhibits are attached to the Declaration of Michael A. Amon In Support Of
28 Motion to Amend Caption (“Amon Decl.”), filed concurrently with this motion.

² ESET maintained this position when the parties met and conferred on the issue on

1 a straightforward, procedural motion to amend the caption that merely seeks to reflect
2 Plaintiff's correct corporate entity type on the production of irrelevant documents
3 related to a non-party's acquisition of Finjan's parent.

4 Accordingly, Finjan requests that the Court order the caption amended to reflect
5 that Finjan, Inc. is now Finjan LLC.

6 DATED: December 2, 2020

Respectfully Submitted,

7 By: /s/ Michael A. Amon

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 2, 2020, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

/s/ Michael A. Amon

Michael A. Amon

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