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17
18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

20 CISCO SYSTEMS, INC.,

21 Plaintiff,

22 vs.

23 ARISTA NETWORKS, INC.,

24 Defendant.

CASE NO. 5:14-cv-5344-BLF (PSG)

**CISCO'S NOTICE OF MOTION AND
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: August 4, 2016

Time:

Judge: Hon. Beth Labson Freeman

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Statutes

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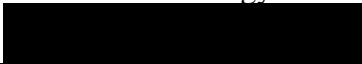
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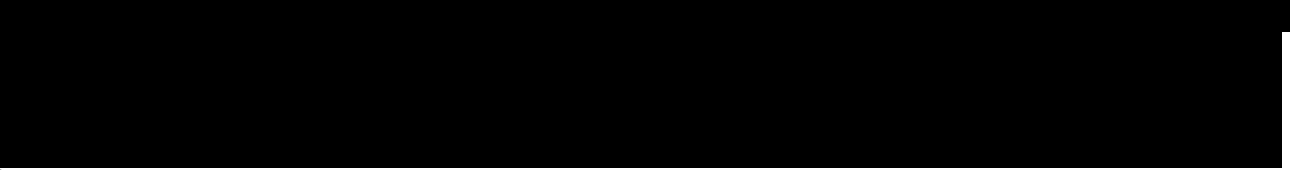



1 PLEASE TAKE NOTICE, that on August 4, 2016, at 9:00 a.m., or at such other
2 time as the Court may direct, before the Honorable Beth Labson Freeman in the United States
3 District Court for the Northern District of California, Plaintiff Cisco Systems, Inc. (“Cisco”), will,
4 and hereby does, move the Court under Fed. R. Civ. P. 56 for entry of partial summary judgment
5 on Count I (Copyright Infringement) of its Second Amended Complaint (“Complaint”). Dkt. 64.
6 This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and
7 Authorities below, the Declarations of Kevin Almeroth, Judith A. Chevalier and Amy H. Candido
8 filed herewith, and such other papers, evidence and argument as may be submitted to the Court in
9 connection with the hearing on this motion.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 This case is about the blatant and comprehensive copying by defendant Arista Networks,
13 Inc. (“Arista”) of Cisco’s copyrighted works. Cisco holds valid copyrights to a set of original
14 expressions related to its unique command-line interface, including original multi-word command-
15 line expressions; original hierarchies, modes, prompts, command responses, screen displays, and
16 help screens in its user interface; and original technical documentation like user guides and
17 manuals available to those who use its command-line interface (referred to collectively herein as
18 “Cisco CLI”).¹ Cisco’s engineers created Cisco’s unique CLI from innumerable creative
19 possibilities, as Arista’s own witnesses have admitted. And as Arista’s own witnesses have also
20 admitted, Arista blatantly copied Cisco CLI. In the words of Arista’s own Chief Technology
21 Officer and Senior Vice President of Software Engineering, Ken Duda: 

22 
23 
24 _____
25 ¹ For convenience, Cisco refers to all the asserted aspects of the copyrighted works as “Cisco
26 CLI” even though some copyrighted Cisco CLI elements (like hierarchies, modes, prompts,
27 command responses, screen displays and help screens) are not themselves command-line
28 expressions and some copyrighted CLI-related elements (like user guides and manuals) are not
29 contained in Cisco’s command-line interface.

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