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Attorneys for Defendant and Counterclaim  
 Plaintiff SOPHOS INC., and Counterclaim  
 Plaintiff SOPHOS LTD.

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN FRANCISCO DIVISION**

17 FORTINET, INC., a corporation

18 Plaintiff,

19 vs.

20 SOPHOS, INC., a corporation, MICHAEL  
 VALENTINE, an individual, and JASON  
 21 CLARK, an individual.

22 Defendants.

23 SOPHOS INC. and SOPHOS LTD.,  
 24 corporations,

25 Counterclaim Plaintiffs,

26 vs.

27 FORTINET, INC., a corporation,

28 Counterclaim Defendant.

Case No. 3:13-cv-05831-EMC

**STIPULATED ORDER RE: DISCOVERY  
 OF ELECTRONICALLY STORED  
 INFORMATION**

Judge: Honorable Edward M. Chen

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines  
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and  
4 inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.”

5 2. This Order may be modified in the Court’s discretion or by stipulation. The parties  
6 shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil  
7 Procedure 16 Conference.

8 3. As in all cases, costs may be shifted for disproportionate ESI production requests  
9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory  
10 discovery tactics are cost-shifting considerations.

11 4. A party’s meaningful compliance with this Order and efforts to promote efficiency and  
12 reduce costs will be considered in cost-shifting determinations.

13 5. The parties are expected to comply with the District’s E-Discovery Guidelines  
14 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the  
15 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer  
16 regarding Electronically Stored Information.

17 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45  
18 shall not include email or other forms of electronic correspondence (collectively “email”). To  
19 obtain email parties must propound specific email production requests.

20 7. Email production requests shall only be propounded for specific issues, rather than  
21 general discovery of a product or business.

22 8. Email production requests shall be phased to occur after the parties have exchanged  
23 initial disclosures and basic documentation about the patents, the prior art, the accused  
24 instrumentalities, and the relevant finances. While this provision does not require the production  
25 of such information, the Court encourages prompt and early production of this information to  
26 promote efficient and economical streamlining of the case.

1           9. Email production requests shall identify the custodian, search terms, and time frame.  
2 The parties shall cooperate to identify the proper custodians, proper search terms and proper  
3 timeframe as set forth in the Guidelines.

4           10. The parties can request email production from a total of fifteen custodians per  
5 producing party. The parties may jointly agree to modify this limit without the Court's leave.  
6 The Court shall consider contested requests for additional custodians, upon showing a distinct  
7 need based on the size, complexity, and issues of this specific case. Cost-shifting may be  
8 considered as part of any such request.

9           11. For each custodian, the parties may request eleven search terms comprising (i) the  
10 opposing party's name (e.g., Fortinet, Sophos) plus, (ii) ten additional search terms. The parties  
11 may jointly agree to modify this limit without the Court's leave. The Court shall consider  
12 contested requests for additional search terms per custodian, upon showing a distinct need based  
13 on the size, complexity, and issues of this specific case. The Court encourages the parties to  
14 confer on a process to test the efficacy of the search terms. The search terms shall be narrowly  
15 tailored to particular issues. Indiscriminate terms, such as the producing company's name or its  
16 product name, are inappropriate unless combined with narrowing search criteria that sufficiently  
17 reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g.,  
18 "computer" and "system") narrows the search and shall count as a single search term. A  
19 disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens  
20 the search, and thus each word or phrase shall count as a separate search term unless they are  
21 variants of the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is  
22 encouraged to limit the production and shall be considered when determining whether to shift  
23 costs for disproportionate discovery. Should a party serve email production requests with search  
24 terms beyond the limits agreed to by the parties or granted by the Court pursuant to this  
25 paragraph, this shall be considered in determining whether any party shall bear all reasonable  
26 costs caused by such additional discovery.

1 12. Nothing in this Order prevents the parties from agreeing to use technology assisted  
2 review and other techniques insofar as their use improves the efficacy of discovery. Such topics  
3 should be discussed pursuant to the District's E-Discovery Guidelines.  
4

5 DATED: May 15, 2014

QUINN EMANUEL URQUHART &  
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Attorneys for Plaintiff FORTINET, INC.

13 DATED: May 15, 2014

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Attorneys for Defendant and Counterclaim  
Plaintiff SOPHOS INC. and Counterclaim  
Plaintiff SOPHOS LTD.

22 **SIGNATURE ATTESTATION**

23 Pursuant to Local Rule 5.1(i)(3), I attest under penalty of perjury that concurrence in the  
24 filing of this document has been obtained from Sean C. Cunningham.

25 /s/ John M. Neukom

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27 John M. Neukom  
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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

5/16/14

DATED: \_\_\_\_\_

