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Attorneys for Defendant and Counterclaim
 Plaintiff SOPHOS INC., Counterclaim
 Plaintiff SOPHOS LTD. and Defendants
 MICHAEL VALENTINE and JASON
 CLARK (limited appearance)

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**

13 FORTINET, INC., a corporation,
 14 Plaintiff,

15 v.

16 SOPHOS INC., a corporation, MICHAEL
 VALENTINE, an individual, and JASON
 17 CLARK, an individual,
 Defendants.

CASE NO. 3:13-cv-05831-EMC

UNOPPOSED MOTION AND
~~**[PROPOSED]**~~ **ORDER FOR LEAVE TO**
FILE SECOND AMENDED ANSWER
AND COUNTERCLAIMS BY SOPHOS
INC. AND SOPHOS LTD;

JOINT STIPULATION AND
~~**[PROPOSED]**~~ **ORDER TO**
WITHDRAW SOPHOS' EIGHTH
AFFIRMATIVE DEFENSE AND
EIGHTH AND NINTH
COUNTERCLAIMS OF
INEQUITABLE CONDUCT

21 SOPHOS INC. and SOPHOS LTD.,
 corporations,

22 Counterclaim Plaintiffs,

23 v.

24 FORTINET, INC., a corporation,
 Counterclaim Defendant.

1 Defendant and Counterclaim Plaintiff Sophos Inc. and Counterclaim Plaintiff Sophos
2 Ltd. (“collectively “Sophos”) and Plaintiff and Counterclaim Defendant Fortinet, Inc.
3 (“Fortinet”) hereby submit this Unopposed Motion for Leave to File Second Amended Answer
4 And Counterclaims by Sophos. Counsel for Sophos and Fortinet have conferred and Fortinet has
5 agreed not to oppose this Motion for Leave. Sophos’ proposed Second Amended Answer seeks
6 to withdraw the Eighth Defense of unenforceability of U.S. Patent Nos. 8,069,487 (“the ’487
7 patent”) and 8,195,938 (“the ’938 patent”) due to inequitable conduct and the Eighth and Ninth
8 Counterclaims of unenforceability of the ’487 and ’938 patents due to inequitable conduct. A
9 copy of Sophos’s proposed Second Amended Answer is attached hereto as Exhibit 1. A mark-up
10 version, showing the changes between Sophos’s First Amended Answer and Counterclaims and
11 Sophos’s proposed Second Amended Answer and Counterclaims is attached hereto as Exhibit 2.

12 Pursuant to ¶ 5 of the Amended Joint Case Management Statement (Doc. No. 59), good
13 cause for amendment exists because withdrawal of these inequitable conduct allegations will
14 conserve the time and resources of this Court and of the Parties.

15 Additionally, by and through their respective undersigned counsel, Sophos and Fortinet
16 hereby agree and stipulate as follows:

17 IT IS HEREBY STIPULATED AND AGREED that Sophos withdraws its Eighth
18 Defense of unenforceability of the ’487 and ’938 patents due to inequitable conduct and the
19 Eighth and Ninth Counterclaims of unenforceability of the ’487 and ’938 patents due to
20 inequitable conduct, and Sophos is barred from pursuing inequitable conduct theories against the
21 ’487 and ’938 patents to the same extent Sophos would be barred if this Court granted the
22 proposed order (Doc. No. 72-1) submitted by Fortinet in the pending Motion to Dismiss and
23 Strike Sophos’ Counterclaims and Affirmative Defense (Doc. No. 72). Accordingly, the parties
24 also submit an additional proposed Order denying Fortinet’s pending Motion to Dismiss as moot.

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Dated: October 3, 2014

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

By: /s/ John M. Neukom

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Attorneys for Plaintiff FORTINET, INC.

Dated: October 3, 2014

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By: /s/ Sean C. Cunningham

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SIGNATURE ATTESTATION

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

/s/ Sean C. Cunningham
Sean C. Cunningham

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PROPOSED ORDER

Before the Court is the Parties' Unopposed Motion For Leave To File Second Amended Answer And Counterclaims By Sophos Inc. And Sophos Ltd.

Accordingly, having reviewed the documents submitted, the record and applicable law, and good cause appearing, IT IS HEREBY ORDERED that the Unopposed Motion For Leave is GRANTED.

IT IS SO ORDERED

Dated: 10/10/14



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~~**PROPOSED ORDER**~~

Pursuant to the above Stipulation and Agreement concerning Sophos's Eighth Affirmative Defense and Eighth and Ninth Counterclaims of Inequitable Conduct the Motion to Dismiss and Strike Sophos' Counterclaims and Affirmative Defense filed by Fortinet (Doc. No. 72) is hereby DENIED AS MOOT.

IT IS SO ORDERED.

Dated: 10/10/14

