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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

NETSKOPE, INC., Plaintiff, v. FORTINET, INC., Defendant.	Case No. 4:25-cv-02360-HSG **NETSKOPE, INC.'S PRELIMINARY DISCLOSURE OF DAMAGES CONTENTIONS PURSUANT TO PATENT LOCAL RULE 3-8**

Pursuant to Patent Local Rule 3-8, Netskope, Inc. ("Netskope") hereby submits this preliminary disclosure of Damages Contentions relating to the infringement by Defendant Fortinet, Inc. ("Fortinet") of United States Patent Nos. 8,356,336 (the "'336 Patent"); 8,543,710 (the "'710 Patent"); 8,117,639 (the "'639 Patent"); 8,224,983 (the "'983 Patent"); 8,327,426 (the "'426 Patent"); 7,593,936 (the "'936 Patent"); 8,397,282 (the "'282 Patent"); 8,661,153 (the "'153 Patent"); and United States Patent No. 8,635,697 (the "'697 Patent") (each individually an "Asserted Patent" and together the "Asserted Patents").

Netskope's Damages Contentions are based on information Netskope has been able to obtain through public sources and through the limited information produced by Fortinet to date. The damages theories contained herein are preliminary only and are not necessarily binding, exclusive, or exhaustive. Netskope's investigation is ongoing. Netskope reserves the right to supplement, amend, or modify these disclosures based on its continuing review of additional pertinent information obtained through formal discovery or otherwise, including, but not limited to, additional documents and information produced by Fortinet, and/or for any other permissible reasons under the Local Rules and Patent Local Rules of this Court or the Federal Rules of Civil Procedure and as the Court may permit.

I. OVERVIEW

1. Presented below is a preliminary analysis of Netskope's damages resulting from Fortinet's infringement of the following claims (collectively, the "Asserted Claims"):

- Claims 1–3, 5–6, and 9–20 of the '336 Patent
- Claims 1, 2, 6, 7, and 13–20 of the '710 Patent
- Claims 1–27 of the '639 Patent
- Claims 1–9 of the '983 Patent
- Claims 1–7 of the '426 Patent
- Claims 1–22 of the '936 Patent
- Claims 1–35 of the '282 Patent
- Claims 1–20, 22, and 24 of the '153 Patent

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- Claims 1–25 of the ’697 Patent

2. Netskope contends that Fortinet infringes under 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, the Asserted Claims, vis-à-vis certain Accused Products. Those Accused Products are identified in Netskope’s infringement contentions and include at least Fortinet’s FortiGate, FortiAP, FortiOS, FortiGate NGFW, FortiAuthenticator, FortiEDR, FortiWeb Cloud, FortiNAC, similar products and services with similar capabilities, and all SKUs that provide access to or are bundled with such functionalities. *See* July 1, 2025 Netskope Disclosures pursuant to Patent Local Rules 3-1, 3-2. Netskope further contends that Fortinet has indirectly infringed, and continues to indirectly infringe, by inducement and contributory infringement, the Asserted Claims under 35 U.S.C. §§ 271(b) and (c).

3. As described further in Section III, in order to provide a more detailed and accurate computation of damages, Netskope requires, at least: additional technical, economic, and business discovery into each of the Accused Products, including the features, functionality, and value thereof; the sales, revenue, cost, and profits associated with each of the Accused Products; responses to written discovery; and information regarding market competition and the competitive forces attributable to Fortinet’s introduction of the Accused Products. Netskope has requested and diligently pursued this discovery from Fortinet, but Fortinet has yet to produce relevant discovery, including the required production of documents sufficient to show Fortinet’s sales, revenues, cost, and profits pursuant to Patent Local Rule 3-4. Accordingly, Netskope reserves all rights to amend, modify, or supplement this preliminary analysis as discovery progresses. Netskope will also present expert opinions relating to damages and remedy in accordance with the Court’s scheduling order in this case.

II. FORMS AND MEASURE OF DAMAGES

4. Regarding forms and measure of patent infringement damages, 35 U.S.C. § 284 states: “Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.”

5. Accordingly, Netskope will seek patent infringement damages based on a reasonable royalty, including, to the extent Fortinet is not enjoined, ongoing future royalties for any future infringement. Netskope may also seek enhanced damages on grounds that Fortinet's infringement is willful. Netskope further reserves the right to contend that the harm from Fortinet's infringement is irreparable.

A. Reasonable Royalty

6. At a minimum, Netskope seeks patent infringement damages no less than a reasonable royalty, including, to the extent Fortinet is not enjoined, ongoing future royalties for any future infringement.

7. In patent cases, the prevailing mechanism to determine the reasonable royalty is to reconstruct a hypothetical negotiation involving the plaintiff/patent holder and defendant/infringer, as described in *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970), *modified sub nom. Georgia-Pacific Corp. v. U.S. Plywood-Champion Papers, Inc.*, 446 F.2d 295 (2d Cir. 1971). The *Georgia-Pacific* factors aim to ascertain the royalty upon which the parties would have agreed had they successfully negotiated an agreement on the eve of infringement. *See, e.g.*, *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1324 (Fed. Cir. 2009). Under this approach, the amount of royalty payments is determined by assuming that the parties would have negotiated a license to the patent or patents at issue. The hypothetical negotiation framework assumes that the Asserted Patents are valid, enforceable, and infringed, and that Netskope and Fortinet would have negotiated for a license to the Asserted Patents as a willing licensor and willing licensee, respectively, with each having reasonable knowledge and reasonable expectations concerning the relevant facts, including facts that post-date the hypothetical negotiation (referred to as the "Book of Wisdom").

When the hypothetical negotiation is used to arrive at a reasonable royalty, the negotiation is hypothesized as of the time infringement began. *See Georgia-Pacific*, 318 F. Supp. at 1123. Based on currently-available information, Netskope contends that Fortinet's infringement of the Asserted Patents began as follows:

- For the ’336 Patent: January 15, 2013, or the first sale of FortiGate/FortiAP, whichever is later
- For the ’710 Patent: September 24, 2013, or the first sale of FortiGate/FortiAP, whichever is later
- For the ’639 Patent: February 14, 2012, or the first sale of FortiOS, whichever is later
- For the ’983 Patent: July 17, 2012, or the first sale of FortiGate, whichever is later
- For the ’426 Patent: December 4, 2012, or the first sale of FortiAuthenticator, whichever is later
- For the ’936 Patent: September 22, 2009, or the first sale of FortiEDR/FortiWeb Cloud, whichever is later
- For the ’282 Patent: March 12, 2013, or the first sale of FortiGate NGFW, whichever is later
- For the ’153 Patent: February 25, 2014, or the first sale of FortiGate, whichever is later
- For the ’697 Patent: January 21, 2014, or the first sale of FortiOS, whichever is later

8. For the royalty to be reasonable—and agreeable to Netskope—in a hypothetical counterfactual scenario where Fortinet negotiated for use of the patents instead of infringing them, the royalty must be sufficient to put Netskope in at least as good an economic position as it would have been without licensing its Asserted Patents to Fortinet.

9. Netskope’s reasonable royalty analysis may identify initial royalty rates contemplated at the hypothetical negotiation. In identifying the initial royalty rates, Netskope may rely upon one or more of the three widely accepted valuation approaches for intangible assets and intellectual property: the Income Approach, Cost Approach, and/or Market Approach. These approaches are not exclusive of, and indeed have substantial overlap with, many of the *Georgia-Pacific* Factors.

10. Income Approach: Netskope may utilize the Income Approach, which considers the expected and/or actual financial benefit to the licensee from the exploitation of the intellectual property. Netskope’s damages expert may analyze the economic benefits of the patented invention under the Income Approach, which may begin with identification of the incremental benefits of the

patented inventions relative to non-infringing alternatives and/or prior art. The economic benefit analysis in the Income Approach translates the incremental technical benefits of the allegedly infringing patented features into an observable financial metric. The Income Approach may yield a royalty in a number of different forms, such as a lump sum, a running royalty, or a hybrid blend of the two.

11. Netskope's technical experts may provide opinions regarding the technical benefits of the Asserted Patents and quantify such benefits using metrics that are well known in the industry and/or to consumers. Netskope's damages expert may then translate these benefits into economic values based on, *e.g.*, the increased profitability, efficiencies, and/or cost savings they provide.

12. Cost Approach: Netskope may also utilize the Cost Approach, which is a method of valuing an intangible asset through the measurement of replacement costs. Specifically, in determining the value of the features of the Asserted Patents, the Cost Approach considers the licensee's costs to implement a commercially acceptable non-infringing alternative, commonly referred to as "design-around costs." This valuation method may rely upon inputs from technical experts that opine on the technical nature and commercial acceptability of any possible non-infringing alternatives, along with information from company business personnel and/or industry experts. As discussed above, Netskope is not aware of any available, acceptable non-infringing alternatives, and Fortinet has not identified any. *See* Fortinet's September 10, 2025 Response to Netskope Interrogatory No. 6. However, Netskope reserves all rights to amend, modify, or supplement its damages theories in light of ongoing discovery, including any supplemental interrogatory responses provided by Fortinet on the issue of non-infringing alternatives.

13. Market Approach: Netskope may also utilize the Market Approach, which involves evaluating market transactions for comparable technology to the Asserted Patents, including comparable license agreements. Netskope's technical experts may perform an analysis of licenses produced in this matter to opine on their technical comparability and technical value of the patent(s) licensed. Netskope's damages expert may analyze the conditions underlying the license agreements to opine on their economic comparability to the hypothetical negotiation and the reasonable royalty. These license agreements may also include settlement agreements, covenants not to sue, and other

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similar agreements. Both Netskope and Fortinet have identified licenses that they may contend are comparable to the license in the hypothetical negotiation or on which they may otherwise rely for their damages theories. *See* Netskope's July 1, 2025 Preliminary Infringement Contentions at 9; Fortinet's August 15, 2025 Invalidity Contentions at NETSKOPE-II_0432019 - NETSKOPE-II_0432229. However, discovery is still in its earliest stages, and Netskope reserves all rights to amend, modify, or supplement its theories as to relevant and comparable licenses and agreements in light of ongoing discovery and/or disclosures by Fortinet.

14. *Georgia-Pacific* Factors. *Georgia-Pacific* lists fifteen non-exclusive factors that may assist in determining the royalty amount and structure, such as by exerting either upward or downward pressure on the royalty payment that the parties would have agreed to in the hypothetical negotiation. Facts from this case relating to these *Georgia-Pacific* factors are discussed below in a preliminary, non-exhaustive manner, and subject to revision in light of additional discovery and analysis, including expert analysis.

- Factor 1. The royalties received by the patentee for the licensing of the patents-in-suit.

15. Netskope has not licensed the Asserted Patents.

- Factor 2. The royalty rates paid by the licensee for the use of other patents comparable to the patents-in-suit.

16. Fortinet has not identified which licenses it contends are comparable or provided documentation sufficient to show any royalty rates paid with respect to licenses it contends are comparable to the patents-in-suit. Netskope therefore does not have sufficient information related to this factor at this time and reserves all rights to amend or supplement this Factor in light of ongoing discovery, including in connection with expert discovery.

- Factor 3. The nature and scope of the license (*e.g.*, exclusive vs. non-exclusive or restricted vs. non-restricted).

17. Netskope contends that the license contemplated in the hypothetical negotiation would be a non-exclusive license for the Asserted Patents and would not include any transfer of additional technology, know-how, or other intellectual property rights. The territory of the license would include all Accused Products made, used, sold or offered for sale in the United States.

- Factor 4. The licensor's established policy regarding the licensing (or non-licensing of its patents).

18. Netskope does not have an established formal policy regarding licensing the Asserted Patents to third parties. However, given Fortinet's improper and unfair efforts to compete with Netskope and elbow its way into the industry, *see* Second Amended Complaint (Dkt. 29), at ¶¶ 1–9, 21–260, this Factor would have an upward influence on any licensing negotiation between them.

- Factor 5. The commercial relationship between the licensor and licensee.

19. As noted above, Fortinet's improper and unfair efforts to compete with Netskope, *see id.*, would have an upward influence on any licensing negotiation between them.

- Factor 6. The extent of derivative or convoyed sales.

20. Netskope is not asserting that any of its products practice the Asserted Patents. Accordingly, it has not enjoyed any convoyed sales. Fortinet's production of sales and other financial information is incomplete, but Netskope understands that Fortinet may have experienced convoyed and derivative sales of products and services, including but not limited to FortiCare technical support services.

- Factor 7. The duration of the patent and the term of the license.

21. The term of the hypothetical license would be through the latest expiration date of the Asserted Patents, November 3, 2031. *See* NetskopeNDJ_007873 at -7980.

- Factor 8. The established profitability of the patented product and its commercial success.

22. Netskope is not asserting that any of its products practice the Asserted Patents. Although Fortinet's production of sales and other financial information is incomplete, Netskope understands that Fortinet has experienced commercial success through its accused products. For example, Fortinet earned nearly $4.8 billion in gross profit in 2024 alone, much of it from the accused products. *See, e.g.*, https://app.quotemedia.com/data/downloadFiling?webmasterId=90423&ref=318941783&type=HTML&symbol=FTNT&cdn=e7c7065ebfc19f809bce3f3d7a114edd&companyName=Fortinet+Inc.&formType=10-

K&formDescription=Annual+report+pursuant+to+Section+13+or+15%28d%29&dateFiled=2025-02-21 at 56. And Fortinet consistently has a gross profit margin in the range of 75% to 80%. *See id*. at 65.

- Factor 9. The utility and advantages of the patented product over other modes or devices.
- Factor 10. The nature of the patented invention and the benefits to those who have used the invention.

23. Factors 9 and 10 are often considered together. The utility and advantages of the Asserted Patents, as compared to non-infringing or prior art alternatives, are myriad and create economic value.

24. For example, the '336 Patent offers an improved method and system to enhance network access control for a shared network. The patent improves upon earlier methods of the prior art by allowing unauthenticated users to access certain network resources within the walled garden without authentication. This, in turn, allows a public or private network service provider to automatically redirect anonymous clients to a pre-defined destination within a limited set of network destinations. The redirection occurs automatically if the anonymous client attempts to access a resource outside the allowed set.

25. The '710 Patent confines a network client's network access to a specific region of the network. Specifically, a client device will only be allowed to access a limited number of network resources after the network service provider has constrained the user for various reasons (apply security patches, requiring additional payment or authorization, etc.). This allows a public or private network service provider to make use of network firewall rule technology, configured to recognize clients by identity or membership in a group. It also reduces and isolates virus and worm infections at remote venues, helping to preserve service integrity and maintain control of the network.

26. The '639 Patent provisions a network access control system that authenticates users and dynamically provisions network access based on individual user profiles—offering more flexibility and security than traditional port-based or location-based methods. Instead of relying on static configurations, the system uses a control device to authenticate users through standard web interfaces and then applies individualized access policies, such as bandwidth limits, allowed

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services, and firewall settings, based on user profile settings. It also supports user roaming by managing and monitoring ongoing sessions across subnets, allowing users to roam freely across network zones without re-authenticating.

27. The ’983 Patent describes a control device that dynamically allocates and regulates network bandwidth on a per-user basis. Namely, when a user connects to a network, the device retrieves that user’s profile and enforces the bandwidth limits prescribed in the user’s profile. The system then monitors bandwidth consumption and automatically adjusts allocations among users based on real-time factors. By allocating and regulating bandwidth strategically, the patent allows the network to operate more efficiently, increasing productivity and enhancing each user’s overall experience.

28. The ’426 Patent creates a single sign-on system that facilitates seamless authentication across multiple services by using proxying techniques. A user signs in to a primary identity service, which then generates an authentication token that is trusted by a second identity service. Based on that, the second identity service may either accept the principal’s authentication or require independent reauthentication. This process enables the user to access multiple services without re-entering credentials, resulting in a seamless user experience.

29. The ’936 Patent creates an adaptive reference model of a network based on snapshots from a plurality of computers on that network. It learns what a “normal” state looks like across many systems, detects when individual machines diverge from that baseline, and then diagnoses issues by using pattern-matching methodologies. Agents may also monitor or block dangerous activity (*e.g.*, malware) in real time, enhancing the system’s agility to continuously improve network security and health.

30. The ’282 Patent describes a dynamically adaptive firewall that models network traffic through a configurable structure using nodes and rule chains. The system uses dynamic, hierarchical rule chains for real time rule updates without manual intervention. Upon entry into the network, packets are marked for tracking and behavior routing. This enables adaptive responses across the network without system downtime, along with scalability to be deployed on commercial hardware.

31. The ’153 Patent relates to a control device that allocates network bandwidth on a per-user basis. Specifically, the device creates user profiles that allocate network bandwidth and then control and update bandwidth limitations for multiple users. The patent also discloses using modules that map user identities to traffic control rules enabling real-time shaping of network traffic in accordance with personalized bandwidth settings. By allocating and regulating bandwidth strategically, this patent allows the network to operate more efficiently, increasing productivity and enhancing each user’s overall experience.

32. The ’697 Patent generates an alert if malware is present in transmission control protocol (TCP) packets originating from a network device. In particular, the patented invention identifies the OS ID and malware ID of the TCP session that generated the malware alert. Clients are then directed to a remediation portal, where they are instructed to access the portal using the infected device to ensure proper remediation. This process helps streamline remediation for multiple devices sharing a single WAN IP, which improves network efficiency and user experience.

33. Non-infringing alternatives may also be relevant to an analysis of *Georgia-Pacific* factors 9 and 10. As noted above, Fortinet has not disclosed any acceptable, non-infringing alternatives to the Asserted Patents, and Netskope is not aware of any.

34. Netskope reserves all rights to further explain the benefits of the asserted patents as discovery progresses, including to the extent Fortinet identifies any purported non-infringing alternatives to the asserted patents and in connection with expert discovery.

- Factor 11. The extent to which the infringer has made use of the invention and evidence of the value of that use.

35. Netskope’s patented technology is valuable and Fortinet’s infringement in the Accused Products has allowed it to accumulate massive amounts of money. In 2024 alone, Fortinet generated total revenue of $5.96 billion and net income of $1.75 billion. Netskope anticipates that Fortinet’s forthcoming document productions related to the Accused Products and its sales and financial information will further establish that it has made significant use of the patented technologies.

- Factor 12. The portion of the profit or selling price of the invention that may be customary to allow for the use of the invention or analogous inventions.

36. Based on information presently available, Netskope is not aware of any customary portion of the profit or selling price relating to the Asserted Patents.

- Factor 13. The portion of the realizable profit credited to the invention as distinguished from non-patented elements.

37. After Fortinet begins producing documents and information requested by Netskope and other discovery in this case, Netskope may analyze the relative contributions of the patented and non-patented elements and contributions to the Accused Products, and the portion of the profit credited to the invention as distinguished from non-patented elements and/or contributions by Fortinet. The incremental benefits the Asserted Patents provide over the prior art generally, or to the Accused Products specifically, as part of an Income Approach analysis may be applicable to Factor 13, and vice versa.

- Factor 14. The opinion of qualified experts.

38. Netskope intends to rely upon the testimony of its retained technical and damages experts in determining a reasonable royalty.

- Factor 15. The amount a willing licensor and a willing licensee would have agreed upon at the time of the infringement if both had reasonably and voluntarily attempted to reach an agreement.

39. As noted previously, this case is in an early stage of discovery, and Fortinet has not yet produced documents and information that would be necessary, such as technical and financial information related to Accused Products, to complete a reasonable royalty analysis. Nevertheless, Netskope's damages expert will consider each of the 15 *Georgia-Pacific* factors to determine a reasonable royalty.

40. Royalty Structure: Netskope lacks information sufficient to determine the structure of a royalty at this time.

41. Netskope reserves the right to supplement or amend its contentions regarding a reasonable royalty as discovery progresses.

B. Irreparable Harm

42. "Where the injury cannot be quantified, no amount of money damages is calculable, and therefore the harm cannot be adequately compensated and is irreparable." *Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1368 (Fed. Cir. 2017) (upholding grant of preliminary injunction). At this time, Netskope reserves all rights to pursue injunctive relief on the theory that the damage caused to Netskope by Fortinet's infringement is not sufficiently susceptible to calculation, or not adequately compensable by monetary damages, and is irreparable.

C. Willfulness

43. "Under 35 U.S.C. § 284, 'the court may increase the damages up to three times the amount found or assessed.'" *See Halo Elecs., Inc. v. Pulse Elecs., Inc.*, No. 2023-1772, 2025 WL 649737, at *3 (Fed. Cir. Feb. 28, 2025). If the jury determines that Fortinet's infringement is willful, the Court will determine whether the circumstances of Fortinet's willfulness warrant enhanced damages. *Id*.

44. Netskope reserves all rights to pursue enhanced damages based on Fortinet's willfulness in light of ongoing discovery.

III. FULSOME DISCOVERY IS REQUIRED TO PROVIDE A MORE DETAILED DAMAGES DISCLOSURE

45. Netskope currently is not able to provide a more fulsome disclosure of its damages theories, or computation of damages, pursuant to Patent Local Rule 3-8 because Fortinet has not yet produced all the information and documents responsive to Netskope's discovery requests. Netskope has diligently pursued such discovery, but Fortinet has continued to withhold it.

46. Once produced, the following categories of discovery, among others, will allow Netskope to refine and provide additional specificity regarding its damages contentions:

- Discovery as to each of the Accused Products, including the features, functionality, and value of the same;
- Fortinet's knowledge of infringement and the Asserted Patents;

- Sales/transactions, revenue, cost, and profits associated with each of the Accused Products; Anticipated or forecasted revenue and profitability for Fortinet's Accused Products and related products and services;
- Fortinet's licenses to technologies that are comparable to the patented technologies;
- Fortinet's financial statements;
- Discovery relating to Fortinet's customer/user feedback;
- Depositions of Fortinet's employees knowledgeable about the financial, marketing, and technical information related to the Accused Products, and current and anticipated infringing activities;
- Reports and analysis from Fortinet's expert(s) per the expert deadlines established in this case;
- Reports and analysis from Netskope's expert(s) per the expert deadlines established in the case;
- Information, documents, and testimony demonstrating Fortinet's market share and market presence in the U.S. and worldwide;
- Competitive and market studies or analysis identifying the markets in which Fortinet generates revenue and/user engagement relating to the Accused Products, including identification of major customer segments, competitive products, and respective market shares;
- Information or testimony describing the advantages and disadvantages of various aspects of Fortinet's Accused Products, including marketing materials and customer surveys and complaints;
- Accused Products, including any alternative designs and technology considered during the development process;
- Documents demonstrating or formalizing Fortinet's licensing practices and policies; and
- Documents related to royalty rates paid by Fortinet or other companies in the U.S. firewall market.

47. Netskope anticipates that additional discovery, including from third parties, may further inform Netskope's damages contentions in ways that are unknown to Netskope at this time.

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DATED: October 6, 2025

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CERTIFICATE OF SERVICE

I, Michelle L. Yocum, declare:

I am a citizen of the United States and employed by the firm of Perkins Coie LLP in Washington, D.C. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 700 Thirteenth Street, N.W., Suite 800, Washington, D.C. 20005. On October 6, 2025, I served a copy of the within document:

NETSKOPE, INC.'S PRELIMINARY DISCLOSURE OF DAMAGES CONTENTIONS PURSUANT TO PATENT LOCAL RULE 3-8

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 6, 2025 at San Jose, California.

/s/ Michelle L. Yocum
Michelle L. Yocum