

1 Kathleen Sullivan (SBN 242261)
kathleensullivan@quinnemanuel.com
2 Todd Anten (pro hac vice)
toddanten@quinnemanuel.com
3 QUINN EMANUEL URQUHART &
SULLIVAN LLP
4 51 Madison Avenue, 22nd Floor
New York, NY 10010
5 Telephone: (212) 849-7000
Facsimile: (212) 849-7100

6 Sean S. Pak (SBN 219032)
seanpak@quinnemanuel.com
7 Amy H. Candido (SBN 237829)
amycandido@quinnemanuel.com
8 QUINN EMANUEL URQUHART &
SULLIVAN LLP
9 50 California Street, 22nd Floor
10 San Francisco, CA 94111
Telephone: (415) 875-6600
11 Facsimile: (415) 875-6700

12 David Nelson (pro hac vice)
davidnelson@quinnemanuel.com
13 QUINN EMANUEL URQUHART &
SULLIVAN LLP
14 500 W. Madison St., Suite 2450
Chicago, IL 60661
15 Telephone: (312) 705-7465
Facsimile: (312) 705-7401

16 *Attorneys for Plaintiff Cisco Systems, Inc.*

KEKER & VAN NEST LLP
ROBERT A. VAN NEST- # 84065
rvannest@kvn.com
BRIAN L. FERRALL - # 160847
bferrall@kvn.com
DAVID SILBERT - # 173128
dsilbert@kvn.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

WILSON SONSINI GOODRICH & ROSATI
Professional corporation
JONATHAN M. JACOBSON, NY # 1350495
jjacobson@wsgr.com
CHUL PACK (pro hac vice)
cpak@wsgr.com
DAVID H. REICHENBERG (pro hac vice)
dreichenberg@wsgr.com
1301 Avenue of the Americas, 40th Floor
New York, NY 10019-6022
Telephone: (212) 999-5800

Attorneys for Defendant Arista Networks, Inc.

17 **UNITED STATES DISTRICT COURT**

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

19
20 CISCO SYSTEMS, INC.,

21 Plaintiff,

22 vs.

23 ARISTA NETWORKS, INC.,

24 Defendant.

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

**JOINT MOTION TO VACATE
JUDGMENT PURSUANT TO FED. R.
CIV. P. 60(b)**

Dept: Courtroom 3 - 5th Floor
Judge: Hon. Beth Labson Freeman

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that plaintiff Cisco Systems, Inc. (“Cisco”) and defendant Arista
3 Networks, Inc. (“Arista”) shall and hereby do jointly move the Court pursuant to Fed. R. Civ. P.
4 60(b) to vacate the judgment entered in this action on December 19, 2016 (ECF 750) (the
5 “Judgment”). This joint motion is based on this notice of motion and memorandum, the record of
6 this action, and such other argument as was presented and may be presented before this motion is
7 taken under submission by the Court.

8 **RELIEF REQUESTED**

9 The parties jointly and respectfully request, pursuant to Rule 60(b), that the Court vacate the
10 Judgment entered in this action on December 19, 2016.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 Jurisdiction over this case has returned to this Court on limited remand from the Federal
13 Circuit under Fed. R. App. P. 12.1(b). That Rule provides a court of appeals may remand “for further
14 proceedings” while an appeal remains pending if the district court states that it would grant a motion
15 to vacate a judgment pursuant to Fed. R. Civ. P. 60(b). On September 5, 2018, this Court so stated,
16 issuing an order granting the parties’ joint motion for an indicative ruling pursuant to Fed. R. Civ.
17 P. 62.1 and “expressly stat[ing] that it would grant a motion under Fed. R. Civ. P. 60(b) to vacate
18 the Judgment if the Court of Appeals for the Federal Circuit remands the action back to the Court
19 for that purpose.” Dkt. 796. On September 10, 2018, the Federal Circuit granted the parties’ joint
20 motion pursuant to Fed. R. App. P. 12.1 based on this Court’s Rule 62.1 order, returning the case to
21 this Court for the purpose of considering a joint motion to vacate the Judgment under Fed. R. Civ.
22 P. 60(b). *See* No. 17-2145, Dkt. 109 (Fed. Cir. Sept. 10, 2018). The parties now jointly so move,
23 and respectfully request that the Court enter an order vacating the Judgment in this case under Rule
24 60(b), which authorizes the court to “relieve a party ... from a final judgment, order, or proceeding”
25 in a number of enumerated circumstances and for “any other reason that justifies relief.”

26 **I. PROCEDURAL BACKGROUND**

27 On December 19, 2016, following a jury verdict finding copyright infringement but finding
28 that it was excused under the scènes à faire doctrine, this Court entered judgment in this case. Dkt.

1 750 (“Judgment”). On June 6, 2017, following denial of its post-trial motions, Cisco filed a timely
2 notice of appeal. After completion of appellate briefing, oral argument was held before the Federal
3 Circuit on June 6, 2018 before a panel (Prost, C.J., Dyk and Taranto, JJ.), after which the case was
4 submitted. No. 17-2145 (Fed. Cir.), Dkt. 106. The Federal Circuit has not yet issued a decision.

5 On August 6, 2018, the parties entered into a settlement agreement that resolved pending
6 litigation between them in several fora, including this litigation. That agreement is evidenced by the
7 binding term sheet the parties executed. *See* Term Sheet attached hereto as Exhibit A (“Term
8 Sheet”).¹ As part of that binding agreement, the parties agreed to jointly approach this Court with
9 legal grounds for vacatur to attempt to persuade the Court to vacate the Judgment in this action.
10 Term Sheet at 11-12.

11 On September 4, 2018, pursuant to the settlement agreement, the parties jointly moved this
12 Court to issue an indicative ruling pursuant to Fed. R. Civ. P. 62.1 stating that the Court would grant
13 a motion to vacate the Judgment if the Federal Circuit remanded the action back to it for that limited
14 purpose. Dkt. 795. This Court granted the motion. Dkt. 796 (“Having considered the arguments of
15 the parties and the papers submitted, and finding good cause therefor, the Court hereby GRANTS
16 the parties’ joint motion for an indicative ruling pursuant to Fed. R. Civ. P. 62.1 and expressly states
17 that it would grant a motion under Fed. R. Civ. P. 60(b) to vacate the Judgment if the Court of
18 Appeals for the Federal Circuit remands the action back to the Court for that purpose.”).

19 The parties then filed a joint motion in the Federal Circuit pursuant to Fed. R. App. P. 12.1,
20 seeking remand for the limited purpose of allowing this Court to grant a joint motion to vacate the
21 Judgment in light of the parties’ settlement of the pending litigation between them. Fed. R. App. P.
22 12.1(a) provides that, where a timely motion is made in the district court that cannot be granted
23 because an appeal has been docketed and is pending, “the movant must promptly notify the circuit
24 clerk if the district court states ... that it would grant the motion.” On September 10, 2018, the

25 _____
26 ¹ The parties agree that the Term Sheet attached hereto as Exhibit A to this Joint Motion is a true
27 and accurate redacted copy of the Term Sheet executed by the parties. Arista has requested the
28 redactions presented in Exhibit A; Cisco does not agree that any redactions are necessary, but for
the purpose of expediting consideration of the instant motion, Cisco does not challenge the
redactions requested by Arista for the purpose of this joint motion only, and reserves all rights to
challenge any redactions to the Term Sheet in any future submissions.

1 Federal Circuit granted that motion. *See* No. 17-2145, Dkt. 109 (Fed. Cir. Sept. 10, 2018).
2 Jurisdiction has thus returned to this Court for the limited purpose of granting the parties' present
3 joint motion for vacatur of the Judgment pursuant to Rule 60(b).

4 **II. ARGUMENT**

5 Rule 60(b) "provides the basis for a district court[']s vacation of judgments when the equities
6 so demand, but it does not establish what substantive standards should be employed." *Am. Games,*
7 *Inc. v. Trade Prods., Inc.*, 142 F.3d 1164, 1168 (9th Cir. 1998). District courts in this Circuit apply
8 an "equitable balancing test" to determine whether a judgment should be vacated under Rule 60(b).
9 *Id.* "Under that equitable balancing test, the district court should consider 'the consequences and
10 attendant hardships of dismissal or refusal to dismiss' and 'the competing values of finality of
11 judgment and right to relitigation of unreviewed disputes.'" *In re: TFT-LCD (Flat Panel) Antitrust*
12 *Litig.*, 2012 WL 12369590, at *4 (N.D. Cal. Oct. 15, 2012) (quoting *Am. Games*, 142 F.3d at 1168)
13 (quoting in turn *Ringsby Truck Lines, Inc. v. W. Conf. of Teamsters*, 686 F.2d 720, 722 (9th Cir.
14 1982)). This standard applies to Rule 60(b) motions for vacatur whether a judgment is mooted "by
15 happenstance" or "by settlement," *Am. Games*, 142 F.3d at 1169, including when the judgment at
16 issue was the result of a jury verdict after trial, *see, e.g., In re Apollo Grp. Inc. Secs. Litig.*, 2012 WL
17 1378677, at *10 (D. Ariz. Apr. 20, 2012) (applying *American Games* and vacating judgment after
18 jury verdict); *In re TFT-LCD*, 2012 WL 12369590, at *4 (same).

19 Applying these standards to the facts of this case, the balance of equities supports vacatur of
20 the Judgment. *First*, the "consequences and attendant hardships of dismissal or refusal to dismiss"
21 favor vacatur. The parties have been engaged in a lengthy set of disputes conducted in multiple
22 tribunals on a number of intellectual property and related issues. The settlement agreement envisions
23 resolution of all of these cases, which spares the parties and the judicial system the burden of any
24 further litigation of these matters, including resolution of the pending appeal in the instant action
25 and any remand proceedings that may result therefrom. *See* Term Sheet at 2 (dismissals), *id.* at 2-3
26 (mutual releases), *id.* at 11-12 (instant action). This settlement thus promotes the public interest in
27 judicial economy and in the negotiated resolution of pending disputes. Accordingly, vacatur of the
28 Judgment here would have only beneficial consequences, would alleviate hardships by resolving the

1 parties' disputes, and would create no countervailing burdens on any party, favoring relief. In
2 contrast, refusal to dismiss would create the hardship of limiting the effect of the parties' settlement
3 agreement, and leaving in place a judgment that the parties agree is no longer warranted.

4 *Second*, vacatur of the Judgment would serve the "value of finality" in this litigation. Cisco's
5 and Arista's settlement agreement provides detailed mechanisms to address the CLI copyright
6 claims. *See* Term Sheet at 9-11. Nor would leaving the Judgment in place serve any interest in
7 reducing future litigation, as the highly fact-specific nature of the dispute over the particular CLI
8 asserted here means it would make it difficult for other parties to use the Judgment preclusively.
9 *See, e.g., Syverson v. Int'l Bus. Machs. Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (nonmutual issue
10 preclusion applies only where, *inter alia*, "the identical issue ... was actually litigated ... [and] was
11 decided in a final judgment"). Moreover, the parties here do not seek to vacate a judgment for their
12 own benefit and to third parties' detriment. *Contra Protegrity USA, Inc. v. Netskope, Inc.*, 2016 WL
13 4761093, at *2 (N.D. Cal. Sept. 13, 2016) (denying request to vacate a determination that asserted
14 patent claims were invalid where "plaintiffs [sought] vacatur so that they may assert the 707 Patent
15 again against others"). Rather, vacatur of the Judgment would equitably assist Cisco and Arista
16 only.

17 *Third*, it is in the overall public interest for the Court to support parties in negotiating and
18 reaching settlement, including where vacatur is contemplated as part of a settlement, and especially
19 where such vacatur is part of a settlement that will resolve multiple pending disputes. *See In re*
20 *Apollo Grp.*, 2012 WL 1378677, at *10 (quoting *Click Entm't, Inc. v. JYP Entm't Co.*, 2009 WL
21 3030212, at *2 (D. Haw. Sept. 22, 2009) (discussing public interest in supporting settlement)).
22 Indeed, the public interest in encouraging settlement is so strong that courts of appeals have found
23 district courts to have abused their discretion in declining to vacate a judgment where vacatur is
24 contemplated as part of a settlement. *See, e.g., Mattel, Inc. v. Goldberger Doll Mfg. Co.*, No. 04-
25 6432 (2d Cir. Nov. 20, 2006) (reversing denial of vacatur of judgment that had been sought in order
26 to facilitate a settlement entered into during the pendency of an appeal where "no significant public
27 interests are affected by the proposed vacatur").

28

1 In sum, as part of a settlement of myriad pending legal claims in this Court and others, Cisco
2 and Arista seek to vacate a judgment that will alleviate litigation burdens on the parties without
3 prejudicing any other member of the public. The equities favor vacatur.

4 **CONCLUSION**

5 For the foregoing reasons, the Court should grant the instant joint motion to vacate the
6 Judgment pursuant to Rule 60(b).

7 Dated: September 26, 2018

Respectfully submitted,

8 /s/ Kathleen Sullivan
Kathleen Sullivan (SBN 242261)
9 kathleensullivan@quinnemanuel.com
Todd Anten (pro hac vice)
10 toddanten@quinnemanuel.com
QUINN EMANUEL URQUHART &
11 SULLIVAN LLP
51 Madison Avenue, 22nd Floor
12 New York, NY 10010
Telephone: (212) 849-7000
13 Facsimile: (212) 849-7100

/s/ Robert A. Van Nest
KEKER & VAN NEST LLP
ROBERT A. VAN NEST- # 84065
rvannest@kvn.com
14 BRIAN L. FERRALL - # 160847
bferrall@kvn.com
15 DAVID SILBERT - # 173128
dsilbert@kvn.com
633 Battery Street
16 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
17 Facsimile: (415) 397-7188

14 Sean S. Pak (SBN 219032)
seanpak@quinnemanuel.com
15 Amy H. Candido (SBN 237829)
amycandido@quinnemanuel.com
16 QUINN EMANUEL URQUHART &
SULLIVAN LLP
17 50 California Street, 22nd Floor
San Francisco, CA 94111
18 Telephone: (415) 875-6600
19 Facsimile: (415) 875-6700

WILSON SONSINI GOODRICH & ROSATI
Professional corporation
JONATHAN M. JACOBSON, NY # 1350495
jjacobson@wsgr.com
20 CHUL PACK (pro hac vice)
cpak@wsgr.com
21 DAVID H. REICHENBERG (pro hac vice)
dreichenberg@wsgr.com
1301 Avenue of the Americas, 40th Floor
22 New York, NY 10019-6022
Telephone: (212) 999-5800

20 David Nelson (pro hac vice)
davidnelson@quinnemanuel.com
21 QUINN EMANUEL URQUHART &
SULLIVAN LLP
22 500 W. Madison St., Suite 2450
Chicago, IL 60661
23 Telephone: (312) 705-7465
Facsimile: (312) 705-7401

Attorneys for Defendant Arista Networks, Inc.

24 *Attorneys for Plaintiff Cisco Systems, Inc.*

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ATTORNEY ATTESTATION

I hereby attest, pursuant to Local Rule 5-1(i)(3), that the concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of Robert A. Van Nest within this e-filed document.

/s/ Kathleen Sullivan _____