



1 McAfee Inc. ("McAfee" or "the Company"), Lead Plaintiffs, and certain of the Individual  
2 Defendants -- George Samenuk ("Samenuk"), Kevin Weiss ("Weiss"), and Kent Roberts  
3 ("Roberts"); collectively, the "Non-Settling Defendants" -- hereby submit this Stipulation and  
4 agreement concerning the claims against Samenuk, Weiss and Roberts in the above-captioned  
5 matter.

6 WHEREAS, on October 1, 2008, Lead Plaintiffs, McAfee and all of the individual  
7 defendants except the Non-Settling Defendants filed a Stipulation of Settlement with the Court  
8 memorializing their agreement resolving all claims in the above-captioned matter except those  
9 against the Non-Settling Defendants (Dkt. No. 12);

10 WHEREAS, the Stipulation of Settlement provides that following final approval of the  
11 settlement, McAfee shall, in the first instance, have the right to pursue directly its claims against  
12 the Non-Settling Defendants, *see* Stipulation of Settlement, Sections 3.1(d), 5.1; and, in fact,  
13 McAfee has already advanced claims and counterclaims against Samenuk and Weiss;

14 WHEREAS, on October 16, 2008, the Court granted preliminary approval of the  
15 proposed settlement (Dkt. No. 130);

16 WHEREAS, subsequent to October 16, 2008, McAfee, through the Mediator who had  
17 supervised the prior settlement discussions (former U.S. District Court Judge Layn Phillips),  
18 asked that Lead Plaintiffs agree to a plan for adjudication of the remaining claims against the  
19 Non-Settling Defendants; specifically, upon final approval of the settlement, the remaining  
20 claims against the Non-Settling Defendants would be dismissed without prejudice to any claims  
21 that McAfee has against any of the Non-Settling Defendants and without prejudice to any claims  
22 that the Non-Settling Defendants may have against McAfee (the "Adjudication Plan");

23 WHEREAS, McAfee believes that the proposed Adjudication Plan is in the best interests  
24 of McAfee and its shareholders because (i) dismissal of the derivative action would reduce  
25 McAfee's exposure for the Non-Settling Defendants' defense and related attorneys' fees and  
26 costs under those defendants' indemnification agreements with McAfee; (ii) McAfee has  
27 pursued claims against two of the Non-Settling Defendants that subsume the claims that would

1 survive the proposed settlement and there is no need for the burden and expense of duplicative  
2 litigation; and (iii) dismissal of the remaining claims in this lawsuit would enable McAfee to  
3 freely and fully assert counterclaims against the Non-Settling Defendants in arbitrations;

4 WHEREAS, during late October 2008 and early November 2008, counsel for McAfee,  
5 Lead Plaintiffs and the Non-Settling Defendants each conferred separately with Judge Phillips  
6 and negotiated with one another regarding the proposed Adjudication Plan;

7 WHEREAS, after negotiations and deliberations aided by Judge Phillips, McAfee, Lead  
8 Plaintiffs, and the Non-Settling Defendants are now satisfied that the proposed Adjudication Plan  
9 does not compromise the Company's ability to pursue any claims against the Non-Settling  
10 Defendants and would not compromise any claims that the Non-Settling Defendants may have  
11 against McAfee;

12 WHEREAS, because the Adjudication Plan (i) would not compromise McAfee's ability  
13 to pursue any claims against the Non-Settling Defendants; and based on McAfee's  
14 representations, (ii) will directly benefit McAfee in the manner set forth above, Lead Plaintiffs  
15 have agreed to accede to McAfee's request that, upon final approval of the Settlement, Lead  
16 Plaintiffs will dismiss the remaining claims against the Non-Settling Defendants, without  
17 prejudice to any claims and/or counterclaims that McAfee has pursued or may pursue against  
18 them;

19 WHEREAS, because the proposed Adjudication Plan would not compromise the Non-  
20 Settling Defendants' ability to pursue any claims that they may have against McAfee while  
21 eliminating the burden of duplicative litigation, the Non-Settling Defendants have agreed to the  
22 Adjudication Plan as well; and

23 WHEREAS, all parties agree that this development does not alter any other terms of the  
24 Stipulation of Settlement; and, therefore, believe that the schedule previously entered by the  
25 Court for final approval need not be altered.

26 IT IS THEREFORE STIPULATED AND AGREED by McAfee, Lead Plaintiffs and the  
27 Non-Settling Defendants, through their respective counsel of record, that, upon final approval of  
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1 the settlement, Lead Plaintiffs will dismiss the remaining derivative claims against Non-Settling  
2 Defendants Roberts, Samenuk, and Weiss. This dismissal shall not prejudice any claims that  
3 McAfee has against any of the Non-Settling Defendants and shall not prejudice any claims that  
4 any Non-Settling Defendant may have against McAfee.

5  
6 Dated: December 30, 2008

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\* \* \*

## ORDER

PURSUANT TO THE FOREGOING STIPULATION, and for good cause, upon final approval of the settlement, Lead Plaintiffs shall dismiss the remaining derivative claims against Non-Settling Defendants Roberts, Samenuk, and Weiss. Lead Plaintiffs' dismissal of the claims

1 against the Non-Settling Defendants shall not prejudice any claims that McAfee has against any  
2 of the Non-Settling Defendants and shall not prejudice any claims that any Non-Settling  
3 Defendant may have against McAfee.

4 IT IS SO ORDERED.

5 DATED: 1/5/09  
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7 THE HONORABLE JEREMY FOGEL  
8 UNITED STATES DISTRICT JUDGE  
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