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E-Filed 9/14/10

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE MCAFEE, INC. DERIVATIVE
LITIGATION

Case No. 5:06-cv-03484 JF/PVT

ORDER¹ (1) DENYING MOTION TO
INTERVENE AND (2)
TERMINATING MOTION FOR
RECUSAL OF COUNSEL

[Docket No. 153]

Movants seek to intervene in the instant action pursuant to Federal Rule of Civil Procedure 24(a) and (b). Because of an alleged conflict of interest with one of the movants, they also request that attorney Michael K. Yarnoff recuse himself from the litigation. Federal Rule of Civil Procedure 24(d) requires that a motion to intervene “state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Movants provide only conclusory statements that they possess “newly discovered evidence,” consisting of “[d]ocuments, [e]xhibits, [b]anking records, and [p]hotographs,” and they do not attach a pleading. Further, a motion under Rule 24(a) or (b) must be “timely.” The

¹ This disposition is not designated for publication in the official reports.

1 instant action was terminated on February 2, 2009, subsequent to entry of final judgment and
2 dismissal of the action with prejudice. Accordingly, the motion to intervene will be denied. The
3 motion to recuse Michael K. Yarnoff from the litigation will be terminated as moot both because
4 the motion to intervene is without merit and because there is no record of an attorney named
5 Michael K. Yarnoff having appeared as counsel in this action.

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7 IT IS SO ORDERED.

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9 DATED: 9/13/10

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JEREMY FOGEL
United States District Judge

1 Copies of Order served on:
2 Aelish Marie Baig AelishB@rgrdlaw.com, khuang@rgrdlaw.com
3 Avin P. Sharma asharma@vblaw.com
4 Benjamin B. Au bau@kvn.com, alm@kvn.com, efilings@kvn.com
5 Brandon Kimura bkimura@cooley.com, tcarney@cooley.com
6 Clara Shin cshin@hrice.com, ccamp@howardrice.com
7 Clay Basser-Wall cbasserwall@wsgr.com
8 DeMaurice Fitzgerald Smith DeMaurice.Smith@lw.com
9 Elliot Remsen Peters epeters@kvn.com, aap@kvn.com, efilings@kvn.com
10 Eric L. Zagar ezagar@btkmc.com, dalbert@btkmc.com, der_filings@btkmc.com,
11 jyemm@btkmc.com, lmoya@btkmc.com, lwilliams@btkmc.com, rwinchester@btkmc.com,
tkao@btkmc.com
12 Gregory Lewis Watts gwatts@wsgr.com, lbeltran@wsgr.com
13 Jeffrey David Light jeffl@rgrdlaw.com, e_file_sd@rgrdlaw.com, e_file_sf@rgrdlaw.com
14 Jo W. Golub jgolub@kvn.com, efilings@kvn.com, gpeterston@kvn.com, jah@kvn.com
15 John Mark Potter johnpotter@quinnemanuel.com, amberburns@quinnemanuel.com,
westonreid@quinnemanuel.com
16 John P. Stigi , III jstigi@sheppardmullin.com, mvanterpool@sheppardmullin.com
17 Joshua A. Reiten jreiten@howardrice.com, jcaruso@howardrice.com
18 N Scott Fletcher sfletcher@velaw.com, eklager@velaw.com, epannill@velaw.com
19 Robert James Slaughter rslaughter@kvn.com, alauridsen@kvn.com, efilings@kvn.com,
20 mls@kvn.com
21 Robert S. Green CAND.USCOURTS@CLASSCOUNSEL.COM
22 Rodney Grant Strickland , Jr lkoontz@wsgr.com, rstrickland@wsgr.com
23 Sarah A. Good sgood@howardrice.com, bhastings@howardrice.com
24 Shawn A. Williams shawnw@rgrdlaw.com, cwood@rgrdlaw.com, e_file_sd@rgrdlaw.com,
25 e_file_sf@rgrdlaw.com, jdecena@rgrdlaw.com, khuang@rgrdlaw.com, travisd@rgrdlaw.com
26 Travis E. Downs , III travisd@rgrdlaw.com, e_file_sd@rgrdlaw.com, e_file_sf@rgrdlaw.com
27 William M. Goodman wgoodman@kasowitz.com, aajmani@kasowitz.com,
anathan@kasowitz.com
28

1 William S. Freeman freemanws@cooley.com, galancr@cooley.com

2 Heather M. McPhee
Patton Boggs, LLP
3 2550 M Street, N.W.
Washington, DC 20037

4 James H Miller
5 Barroway Topaz Kessler Meltzer & Check LLP
280 King of Prussia Road
6 Radnor, PA 19087

7 Michael C. Holmes
Vinson & Elkins, L.L.P.
8 1001 Fannin Street
2500 First City Tower
9 Houston, TX 77002

10 Sandra G. Smith
Barroway Topaz Kessler Meltzer & Check, LLP
11 280 King of Prussia Road
Radnor, PA 19087

12 Richard Galietti
13 #15814014
P.O. Box 14500
14 Lexington, KY 40512

15 Daniel Giannini
#75206053
16 P.O. Box 14500
Lexington, KY 40512

17 George BarBour
18 #11321084
P.O. Box 14500
19 Lexington, KY 40512

20 Mingo Reed
P.O. Box 14500
21 Lexington, KY 40512

22 Daniel Anthony Weymouth
#55153083
23 P.O. Box 14500
Lexington, KY 40512

24 Mario Alvarado
25 #50333179
P.O. Box 14500
26 Lexington, KY 40512

27

28

1 Ralph Rogers
#85033071
2 P.O. Box 14500
Lexington, KY 40512
3

4 Jimmy O'Neal Brown
P.O. Box 14500
Lexington, KY 40512
5

6 Patrick J. Simpson
#05095036
P.O. Box 14500
7 Lexington, KY 40512

8 Jonathan Lee Riches
#40948018
9 P.O. Box 14500
Lexington, KY 40512
10

11 Maurice Shelly
#06909089
P.O. Box 14500
12 Lexington, KY 40512

13 Larry Norris
#08284028
14 P.O. Box 14500
Lexington, KY 40512
15

16 Oscar Nunez
P.O. Box 14500
Lexington, KY 40512
17

18 Andre Cowley
#09591067
P.O. Box 14500
19 Lexington, KY 40512
20

21

22

23

24

25

26

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28