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8 *Attorneys for Plaintiffs and the Class*

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

13 LARRY McINTOSH, YANGJIE CHENG,)
 PING CHEN, STEVE HAEFFELE, LEBIN)
 14 CHENG, VATSAL SONECHA, and)
 JONATHAN WONG, individually and on)
 15 behalf of all those similarly situated,)
 16 Plaintiffs,)
 17 v.)
 18 McAfee, INC. and Does 1-10,)
 19 Defendants.)

Case No. C06-07694 JW
CLASS ACTION
 STIPULATION FOR PROTECTIVE
 ORDER
AND ORDER THEREON

(MODIFIED BY THE COURT)

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it affords
8 extends only to the limited information or items that are entitled under the applicable legal
9 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
10 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
12 reflects the standards that will be applied when a party seeks permission from the court to file
13 materials under seal.

14 **2. DEFINITIONS**

15 1.1 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts and outside counsel (and their support staff).

17 1.2 Disclosure or Discovery Material: all items or information, regardless of the
18 medium or manner generated, stored, or maintained (including, among other things, testimony,
19 transcripts, or tangible things) that are produced or generated in disclosure or responses to
20 discovery in this matter.

21 1.3 “Confidential” Information or Items: information (regardless of how generated,
22 stored or maintained) or tangible things that qualify for protection under standards developed
23 under F.R. Civ.P. 26 (c).

24 1.4 “Highly Confidential-Attorneys’ Eyes Only” Information or Items: extremely
25 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party
26 would create a substantial risk of serious injury that could not be avoided by less restrictive
27 means.

28 1.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a

1 Producing Party.

2 1.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
3 Material in this action.

4 1.7 Designating Party: a Party or non-party that designates information or items that it
5 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential-
6 Attorneys’ Eyes Only.”

7 1.8 Protected Material: any Disclosure or Discovery Material that is designated as
8 “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

9 1.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
10 to represent or advise a Party in this action.

11 1.10 House Counsel: attorneys who are employees of a Party.

12 1.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
13 support staff).

14 1.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
15 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
16 consultant in this action and who is not a past or a current employee of a Party or of a competitor
17 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party
18 or a competitor of a Party’s. This definition includes a professional jury or trial consultant
19 retained in connection with this litigation.

20 1.13 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
22 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only Protected Material
25 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
26 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
27 parties or counsel to or in other settings that might reveal Protected Material.

28

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations imposed by
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs. **For a period of six months after the final termination of this action,
5 this court will retain jurisdiction to enforce the terms of this order.**

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
7 or non-party that designates information or items for protection under this Order must take care
8 to limit any such designation to specific material that qualifies under the appropriate standards.
9 A Designating Party must take care to designate for protection only those parts of material,
10 documents, items, or oral or written communications that qualify - so that other portions of the
11 material, documents, items, or communications for which protection is not warranted are not
12 swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or retard the case development process, or to impose unnecessary
16 expenses and burdens on other parties), expose the Designating Party to sanctions.

17 If it comes to a Party's or a non-party's attention that information or items that it
18 designated for protection do not qualify for protection at all, or do not qualify for the level of
19 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
20 withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
22 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of depositions or
27 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
28 or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" at top of each page that

1 contains protected material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party must clearly identify the protected portion(s) (e.g., by making
3 appropriate markings in the margins) and must specify, for each portion, the level of protection
4 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’
5 EYES ONLY”).

6 A Party or non-party that makes original documents or materials available for
7 inspection need not designate them for protection until after the inspecting Party has indicated
8 which material it would like copied and produced. During the inspection and before the
9 designation, all of the material made available for inspection shall be deemed “HIGHLY
10 CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
11 documents it wants copied and produced, the Producing Party must determine which documents,
12 or portions thereof, qualify for protection under this Order, then, before producing the specified
13 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the top of each page that
15 contains Protected Material. If only a portion or portions of the material on a page qualifies for
16 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
17 making appropriate markings in the margins) and must specify, for each portion, the level of
18 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
19 ATTORNEYS’ EYES ONLY”).

20 (b) for testimony given in deposition or in order pretrial or trial proceedings, that
21 the Party or non-party offering or sponsoring the testimony identify on the record, before the
22 close of the deposition, hearing, or other proceedings, all protected testimony, and further specify
23 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’
24 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
25 entitled to protection, and when it appears that substantial portions of testimony may qualify for
26 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
27 record (before the deposition or proceedings is concluded) a right to have up to 20 days to
28 identify the specif portions of the testimony as to which protection is sought and to specify the

1 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
2 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
3 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
4 Protective Order.

5 Transcript pages containing Protected Material must be separately bound by the
6 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
8 party offering or sponsoring the witness or presenting the testimony.

9 (c) for information produced in some form other than documentary, and for any
10 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
11 container or containers in which the information or items is stored the legend
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only
13 portions of the information or items warrant protection, the Producing Party, to the extent
14 practicable, shall identify the protected portions, specifying whether they qualify as
15 “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items as “Confidential” or “Highly Confidential - Attorneys’
18 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
19 under this Order for such material.. If material is appropriately designated as “Confidential” or
20 “Highly Confidential - Attorneys’ Eyes Only” after the material was initially produced, the
21 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
22 that the material is treated in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
25 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
26 economics burdens, or a later significant disruption or delay of the litigation, a Party does not
27 waive its right to challenge a confidentiality by electing not to mount a challenge promptly after
28 original designation is disclosed.

1 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
2 Party's confidentiality designation must do so in good faith and must begin the process by
3 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
4 with counsel for the Designating Party. In conferring, the challenging Party must explain the
5 basis for its belief that the confidentiality designation was not proper and must give the
6 Designating Party an opportunity to review the designated material, to reconsider the
7 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
8 designation. A challenging Party may proceed to the next stage of the challenge process only if it
9 has engaged in this meet and confer process first.

10 6.3 Judicial Intervention. A Party that elects to press a challenge to a
11 confidentiality designation after considering the justification offered by the Designating Party
12 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
13 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
14 challenge. Each such motion must be accompanied by a competent declaration that affirms that
15 the movant has complied with the meet and confer requirements imposed in the preceding
16 paragraph and that sets forth with specificity the justification for the confidentiality designation
17 that was given by the Designating Party in the meet and confer dialogue.

18 The burden of persuasion in any such challenge proceeding shall be on the
19 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing Party's
21 designation.

22 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a non-party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 **only to the categories of persons and under the conditions described**
27 disclosed in this Order. When the litigation has been terminated, a Receiving Party must comply
28 with the provisions of section 11, below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that access is limited to the persons authorized under this Order.

3 7.2 Disclosure of ‘CONFIDENTIAL’ Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated CONFIDENTIAL only to:

6 (a) The Receiving Party’s Outside Counsel of record in this action, as well as
7 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
8 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
9 hereto as Exhibit A;

10 (b) The officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
12 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

13 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
14 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
15 Protective Order” (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters, their staffs, and professional vendors to whom disclosure is
18 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
19 Protective Order” (Exhibit A);

20 (f) during their depositions, witnesses in this action to whom disclosure is
21 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
22 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
23 Protected Material must be separately bound by the court reporter and may not be disclosed to
24 anyone except as permitted under this Stipulated Protective Order.

25 (g) the author of the document or the original source of the information.

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
27 Information or Items. Unless otherwise ordered by the court or permitted in writing by the

1 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
2 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” only to:

3 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
4 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
5 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
6 hereto as Exhibit A;

7 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
8 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
9 Order” (Exhibit A);

10 (c) the Court and its personnel;

11 (d) court reporters, their staffs, and professional vendors to whom disclosure is
12 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
13 Protective Order” (Exhibit A);

14 (e) the author of the document or the original source of the information.

15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
16 **IN OTHER LITIGATION.**

17 If a receiving Party is served with a subpoena or an order issued in other litigation that
18 would compel disclosure of any information or items designated in this action as “HIGHLY
19 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the
20 Designating Party, in writing (by fax, if possible) immediately and in no event more than three
21 court days after receiving the subpoena or order. Such notification must include a copy of the
22 subpoena or court order.

23 The Receiving Party also must immediately inform in writing the Party who caused the
24 subpoena or order to issue in the other litigation that some or all the material covered by the
25 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
26 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
27 caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence of
2 this Protective Order and to afford the Designating Party in this case an opportunity to try to
3 protect its confidentiality interests in the court from which the subpoena or order issued. The
4 Designating Party shall bear the burdens and the expense of seeking protection in that court of its
5 confidential material - and nothing in these provisions should be construed as authorizing or
6 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

7 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstances not authorizing under this Stipulated Protective
10 Order, the Receiving party must immediately (a) notify in writing the Designating Party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,(c)
12 inform the person or persons to whom unauthorized disclosures were made of all the terms of
13 this Order, and (d) request such person or persons to execute the “Acknowledgment and
14 Agreement to Be Bound” that is attached hereto as Exhibit A.

15 **10. FILING PROTECTED MATERIAL**

16 Without written permission from the Designating Party or a court order secured after
17 appropriate notice to all interested persons, a Party may not file in he public record in this action
18 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
19 with Civil Local Rule 79-5.

20 **11. FINAL DISPOSITION**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
22 after the final termination of this action, each Receiving Party must return all Protected Material
23 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
24 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
25 Protected Material. With permission in writing from the Designating Party, the Receiving Party
26 may destroy some or all the Protected Material instead of returning it. Whether the Protected
27 Material is returned or destroyed, the Receiving Party must submit a written certification to the
28 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day

1 deadline that identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
3 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
4 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
5 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
6 work product, even if such material contain Protected Material. Any such archival copies that
7 contain or constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION), above.

9 **12. MISCELLANEOUS**

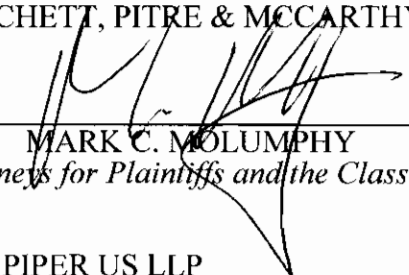
10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to disclosing or
14 producing any information or item on any ground not addressed in this Stipulated Protective
15 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
16 the material covered by this Protective Order.

17 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

18 *January 21, 2009*
19 Date: ~~February~~ _____, 2008

COTCHETT, PITRE & MCCARTHY

20 By: 
21 MARK C. MOLUMPY
22 *Attorneys for Plaintiffs and the Class*

23 Dated: February _____, 2008

DLA PIPER US LLP

24 By: _____
25 CARTER OTT
26 *Attorneys for Defendant McAfee, Inc*

(AS MODIFIED BY THE COURT),
PURSUANT TO STIPULATION, IT IS SO ORDERED.

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Dated: January 27, 2009.



HON. ~~NEWARK~~ HOWARD R. LLOYD
UNITED STATES ~~DISTRICT~~ JUDGE
MAGISTRATE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name] , of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in this case of Larry McIntosh, Yangjie Cheng, Ping Chen, Steve Haeffele, Lebin Cheng, Vatsal Sonecha, and Jonathan Wong, et al. v. McAfee, INC. and Does 1-10. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____, [print or type full name] of _____
_____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____
[printed name]

Signature: _____
[printed name]