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NORTHERN DISTRICT OF CALIFORNIA

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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

MHP

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 v.

20 ERIC G. BORRMANN,

21 Defendant.

Case No.

C 06 67227

COMPLAINT

22 Plaintiff Securities and Exchange Commission ("Commission") alleges:

23 **SUMMARY**

24 1. From 1998 through 2000, McAfee, Inc., formerly known as Network Associates,
25 Inc., (hereinafter referred to as "McAfee"), a publicly traded manufacturer and supplier of
26 computer programs and hardware based in Santa Clara, California, carried out a multimillion
27 dollar financial fraud. Defendant Eric G. Borrmann, who held various senior finance and
28 investor relations positions at McAfee, provided substantial assistance to McAfee, and its
executives and senior managers, in the dissemination of false and misleading information to the
public about McAfee's financial condition. Borrmann also engaged in insider trading in

1 violation of the federal securities laws when, during July through September 2000, he sold
2 McAfee securities while in possession of material inside information concerning McAfee's
3 deteriorating financial condition.

4 2. Between 1998 and 2000, McAfee overstated its revenues by \$622 million in order
5 to meet revenue and earnings targets. At the same time, it understated its cumulative net losses
6 by \$353 million. McAfee improperly recorded hundreds of millions of dollars of revenue on
7 sales transactions with distributors in violation of the antifraud and other provisions of the
8 federal securities laws. In a fraudulent scheme to oversell its products to distributors and
9 immediately record the revenue from those transactions, McAfee secretly gave distributors
10 substantial cash payments, price discounts, rebates, and other concessions as inducements to
11 continue buying, as well as to not return, McAfee products that the distributors had no
12 reasonable expectation of selling to customers. McAfee concealed the revenue inflation fraud
13 by, among other things, falsely recording in its books and records and on its financial statements
14 certain of the payments and concessions to distributors as expenses rather than as reductions in
15 revenue and impermissibly using tax reserve accounts to offset the undisclosed payments and
16 concessions.

17 3. Through regular meetings with McAfee's senior executives and managers during
18 1999 and 2000, Borrmann learned of these and other improper and undisclosed accounting ploys
19 that McAfee had used to publicly overstate its revenues and understate its losses. Borrmann was
20 aware also of McAfee's efforts to disguise the fraud. Rather than properly reduce revenue by the
21 cost of the distributor discounts and payments, Borrmann knew that McAfee fraudulently
22 mischaracterized these items in its books and records as "marketing expenses," which did not
23 impact reported revenues. Borrmann also knew that McAfee was improperly inflating sales
24 returns reserves accounts by drawing down unrelated tax reserve accounts in order to cover the
25 costs of the undisclosed distributor payments and discounts, and was falsely underreporting its
26 returns reserves on its financial statements.

27 4. On July 18, 2000, McAfee issued a press release that Borrmann helped to prepare
28 and disseminate, in which McAfee announced to investors "strong financial results for the

1 second quarter ended June 30, 2000.” Among other things, McAfee reported in the press release
2 revenue of \$233.7 million, net income of \$11.4 million, and earnings of \$0.08 per share.

3 Borrmann, however, knew that the revenues and earnings reported in the press release had been
4 materially inflated by the fraudulent schemes of the company. Nevertheless, Borrmann, as the
5 individual responsible for McAfee’s investor relations, disseminated the press release to
6 investors without correcting the false and misleading financial information.

7 5. On July 20, 2000, two days after McAfee’s second quarter 2000 press release and
8 conference call with analysts, Borrmann resigned from McAfee. The next day, on July 21, 2000,
9 Borrmann exercised options in McAfee stock and immediately sold 5,000 shares while in
10 possession of material, nonpublic information concerning the fraud and McAfee’s deteriorating
11 financial condition. Throughout August and September 2000, Borrmann continued to exercise
12 additional stock options and sell shares of McAfee stock based on inside information.

13 6. Shortly after Borrmann’s stock sales, McAfee’s accounting scheme began to
14 unravel. As a result of McAfee’s distribution channel stuffing, by the fourth quarter of 2000,
15 McAfee’s distributors held such huge inventories of McAfee products that they refused to buy
16 additional product. Consequently, on December 26, 2000, after the markets had closed, McAfee
17 announced in a press release that its sales for that quarter would be only \$55 million, seventy-
18 eight percent less than the \$245 million in sales that McAfee had projected publicly only two
19 months earlier, on October 14, 2000.

20 7. This news sent McAfee’s stock price down sharply, slashing more than \$1 billion
21 from the company’s market capitalization. After the December 26, 2000 press release, McAfee’s
22 share price dropped from its closing price of \$11.75 to \$4.50, the closing price on the next day.
23 By selling his shares prior to the December 26, 2000 announcement, Borrmann made illegal
24 profits in the amount of approximately \$314,517.

25 8. By engaging in the acts alleged in this complaint, Borrmann violated the antifraud
26 provisions of the federal securities laws and aided and abetted McAfee’s violations of the
27 antifraud provisions. Unless enjoined by this Court, Borrmann may violate, or aid and abet
28 violations of, these laws in the future. The Commission requests that the Court permanently

1 enjoin Borrmann from engaging in further violations, order an accounting, order disgorgement
2 plus prejudgment interest, impose civil penalties based upon his conduct described above, and
3 bar Borrmann from acting as an officer or director of any public company.

4 JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

5 9. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and
6 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)]
7 and Sections 21(d) and (e), 21A, and 27 of the Securities Exchange Act of 1934 ("Exchange
8 Act") [15 U.S.C. §§ 78u(d) and (e), 78u-1, and 78aa].

9 10. Venue properly lies in this Court pursuant to Section 22 of the Securities Act [15
10 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Borrmann
11 transacted business in this judicial district, because offers and sales of the securities at issue in
12 this case took place in this judicial district, and because certain of the acts and transactions
13 constituting the violations in this case occurred within this judicial district.

14 11. Borrmann made use of the means and instrumentalities of interstate commerce in
15 connection with the acts alleged in this complaint.

16 12. A substantial part of the events that gave rise to the claims occurred in Santa
17 Clara County, California. However, related criminal and civil cases concerning the same or
18 substantially similar conduct as alleged herein have been filed in this Division. *United States of*
19 *America v. Terry W. Davis, CR-03-0172-MJJ; Securities and Exchange Commission v. Terry W.*
20 *Davis, C-03-2729-MJJ; United States of America v. Prabhat Goyal, CR-04-0201-MJJ;*
21 *Securities and Exchange Commission v. Prabhat K. Goyal, C-04-2372-MJJ; United States of*
22 *America v. Evan Collins, CR-04-0392-MJJ; and Securities and Exchange Commission v. Evan S.*
23 *Collins, C-04-5030-MJJ; Securities and Exchange Commission v. McAfee, Inc., C-06-009 PJH.*

24 THE DEFENDANT

25 13. Borrmann joined Network General Corporation in September 1995 and worked in
26 the United Kingdom as Director of Finance, and, later, Vice President of Finance and Operations
27 for Europe, the Middle East, and Africa. In December 1997, Network General Corporation and
28 McAfee Associates, Inc. combined to form Network Associates, Inc. In about June 1999,

1 Borrmann returned to the United States and was assigned to investor relations for Network
2 Associates, which is now known as McAfee, Inc. In January 2000, Borrmann became Vice
3 President and Corporate Treasurer and was responsible for all financial planning and investor
4 relations at McAfee. On July 20, 2000, Borrmann resigned from the company.

5 THE ISSUER

6 14. McAfee, Inc., a Delaware corporation with its principal office in Santa Clara,
7 California, is a manufacturer and worldwide supplier of computer programs and hardware
8 focusing on network security, anti-virus, and network management products. McAfee's common
9 stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is
10 listed on the New York Stock Exchange under the symbol "MFE." Prior to June 30, 2004,
11 McAfee was known as Network Associates, Inc. From 1997 through early 2002, Network
12 Associates's shares traded on the Nasdaq National Market under the symbol "NETA." On
13 February 12, 2002, Network Associates stock became listed on the New York Stock Exchange
14 and began trading under the symbol "NET."

15 BORRMANN WAS AWARE OF FRAUDULENT CONDUCT AT McAFEE

16 15. From 1998 through 2000, McAfee publicly announced its quarterly and yearly
17 financial results in press releases to investors and in conference calls with stock market analysts.
18 During the period from about June 1999 through July 2000, Borrmann assisted in compiling the
19 information that was included in McAfee's press releases and earnings conference calls,
20 including financial information. Borrmann also communicated directly with analysts by
21 telephone or email concerning McAfee's financial performance.

22 16. Borrmann monitored the status of McAfee's true financial performance through
23 the use of a document that was referred to within McAfee as the "Four-Corner Model." The
24 Four-Corner Model was a one page document that summarized McAfee's current and projected
25 sales figures, distributor inventory levels, reserve estimates, product returns activity, accounts
26 receivable collections, and other important financial information. Borrmann and a closely
27 limited number of others continually updated the Four-Corner Model. Certain information in the
28 Four-Corner Model was used by Borrmann and others in manipulating the company's earnings

1 in order to meet analysts' expectations. The existence of the Four-Corner Model, however, was
2 kept a secret among Borrmann and a few other senior McAfee executives, and those with
3 knowledge of the Four-Corner Model understood that the document was never to be shown to
4 McAfee's board of directors or its independent auditors.

5 17. In the second quarter of 1999, McAfee caused inventory levels in its distribution
6 channel to increase dramatically as it improperly oversold its products to distributors in an effort
7 to increase reported revenues, a practice that is known as "channel stuffing." McAfee boosted
8 reported sales revenue by inducing distributors to buy substantially more inventory than the
9 distributor might reasonably expect to sell to customers during a given period. Detailed sales
10 and inventory reports received by Borrmann revealed the elevated levels of inventory in the U.S.,
11 with some quarters showing U.S. distributors holding over one year's worth of inventory in
12 McAfee products. During the second quarter of 2000, Borrmann's last quarter with McAfee,
13 Borrmann himself prepared a Four-Corner Model that showed McAfee's U.S. distribution
14 channel was stuffed with approximately thirty-nine weeks, or three fiscal quarters, of unsold
15 inventory, a material fact that Borrmann knew was not disclosed to McAfee's investors.

16 18. In early 2000, a McAfee senior sales manager met with Borrmann and McAfee's
17 Controller, and presented a plan to clear out the excessive amount of inventory in McAfee's
18 distribution channel. The plan called for McAfee to take back most or all of inventory that had
19 been oversold to its distributors. The senior sales manager told Borrmann and the Controller that
20 such a return would result in a "\$90 million restatement" to McAfee's financial statements. The
21 plan was never implemented.

22
23 **BORRMANN KNEW THAT McAFEE WAS MAKING EXTRAORDINARY**
24 **PAYMENTS AND GRANTING DISCOUNTS AND OTHER CONCESSIONS TO**
25 **DISTRIBUTORS TO REDUCE RETURNS AND INDUCE PRODUCT PURCHASES**

26 19. From the third quarter of 1999, until his departure from the company at the end of
27 the second quarter of 2000, Borrmann had frequent discussions with McAfee's Controller,
28 McAfee's CFO, and others concerning, among other things, the inflated inventory levels at
McAfee's U.S. distributors, and the risk this posed to McAfee's ability to make additional sales

1 to these distributors, and, in turn, meet quarterly and yearly revenue goals. By the end of the
2 third quarter of 1999, McAfee had stuffed its U.S. inventory channel in order to achieve its
3 revenue targets, and distributors were refusing to make additional product purchases.

4 20. As a result, throughout 1999 and 2000, McAfee resorted to paying its distributors,
5 or granting large discounts and other concessions, to encourage the distributors to purchase more
6 McAfee's products or not return their overloaded inventories. During the period, McAfee made
7 extraordinary undisclosed cash payments totaling approximately \$121 million to its largest U.S.
8 distributor (the "Distributor") for holding excess inventory in McAfee products, and as
9 reimbursement for the discounts and rebates. The Distributor accounted for approximately
10 twenty percent of McAfee's total revenues in each quarter during the period.

11 21. Borrmann was aware of the payments and discounts that McAfee was making to
12 the distributors by McAfee. He had regular meetings and discussions with McAfee's vice
13 president of channel sales, as well as with McAfee's CFO, Controller, and others, in which the
14 particulars of the negotiations with distributors were discussed, including, in particular, the
15 Distributor's escalating demands for discounts, payments, and other concessions. Borrmann was
16 present at meetings when McAfee's Controller and others spoke to McAfee's CFO about the
17 millions of dollars in payments to the Distributor that were necessary in order to induce the
18 Distributor to hold excess inventory, or to compensate the Distributor for the large reductions
19 that the Distributor sought on the purchase price of the products. Borrmann understood that the
20 deals with distributors were growing increasingly expensive for McAfee, and the huge payments,
21 discounts, rebates, and other concessions being granted to distributors were a risk to the
22 company's revenues each quarter.

23 22. Borrmann had regular meetings with McAfee's CFO and Controller, and others
24 during which they discussed the company's negotiation efforts with its distributors, including the
25 extraordinary efforts utilized at the end of each quarter by McAfee to get the Distributor to
26 continue to buy product, pay on outstanding accounts receivables, and to not return product.
27 Typically, near the end of each quarter, there was a shortfall between McAfee's internally
28 projected world-wide sales and its publicly announced sales and revenue expectations.

1 Borrmann knew that McAfee's solution was to grant payments, discounts, and other concessions
2 to induce the Distributor to purchase enough products to fill McAfee's deficit in expected sales
3 and thereby allow McAfee to meet or beat its expected revenue goals.

4 **BORRMANN WAS AWARE OF McAFEE'S**
5 **ACTIONS TO DISGUISE THE FRAUD**

6 23. From 1998 through 2000, McAfee did not properly account for the distributor
7 payments, discounts, and concessions in conformance with Generally Accepted Accounting
8 Principles ("GAAP"). Specifically, under GAAP, McAfee should have increased its sales
9 returns reserves to cover the costs of the concessions, which, correspondingly, would have
10 reduced revenues. However, such reductions to revenues would have caused McAfee to miss its
11 quarterly revenue targets by significant amounts. To avoid this result, McAfee frequently
12 mischaracterized the distributor payments and discounts within its books and records as
13 something other than contra-revenue items; for example, McAfee sometimes labeled them as
14 marketing expenses that had no impact on reported revenues. McAfee also wrongly inflated
15 sales returns reserves to cover the cost of the undisclosed distributor payments and concessions
16 by raiding unrelated tax reserve accounts. Borrmann was aware of each of these schemes to
17 disguise the fraud.

18 **A. Borrmann Knew that McAfee was Mischaracterizing**
19 **the Payments and Discounts to Distributors in Order to**
20 **Fraudulently Avoid Reducing Revenues**

21 24. Borrmann was aware of McAfee's efforts to disguise from investors the fact that
22 McAfee was paying the Distributor enormous sums of cash. Borrmann knew of a scheme
23 whereby certain distributor discounts were wrongly treated as marketing expenses on McAfee's
24 books and records. Rather than properly account, under GAAP, for the cost of the distributor
25 discounts through a reduction to revenues and a corresponding increase to a sales reserve, the
26 payments were mischaracterized as marketing expenses and the necessary reduction in reported
27 revenue was avoided.

28 25. In one instance, in November 1999, eight misleading letters were drafted to
accompany \$21 million in wire transfers to the Distributor purporting to explain the payments as

1 reimbursement for expenses such as “marketing fund rebates and other promotional programs.”
2 McAfee’s Controller showed the letters to Borrmann, who suggested that the Controller make
3 McAfee’s vice president of channel sales, who was responsible for the Distributor’s account,
4 sign the letters. The sales vice president however refused to sign the letters because he knew that
5 marketing and promotional costs for the Distributor were substantially less than \$21 million for
6 the period. To protect himself, the sales vice president prepared a memorandum to McAfee’s
7 CFO noting his concerns that the payments were evidence of “non-standard accounting
8 practices” and “channel stuffing,” and requested that the CFO sign the letters. The CFO was
9 livid that the sales vice president had sent him the memo and told Borrmann and the Controller
10 that this individual was “a traitor to the company [who] should be fired” for not signing the
11 letters.

12 **B. Borrmann Knew that McAfee Fraudulently Manipulated**
13 **its Tax Accounts in Order to Increase Inadequate Sales**
14 **Reserves and Avoid Reducing Revenues**

15 26. Another scheme employed by McAfee to inflate reported revenue was to
16 improperly transfer amounts from tax reserve accounts to increase inadequate sales returns
17 reserve accounts and cover the costs of the distributor discounts, payments, and other
18 concessions. Such transfers were not in conformity with GAAP, which require sales returns
19 reserve accounts to be increased through a reduction in revenues, not from unrelated tax reserve
20 accounts.

21 27. Borrmann was present during a November 1999 meeting in which McAfee’s CFO
22 directed McAfee’s Controller to make certain accounting entries that improperly transferred
23 amounts from tax reserve accounts to increase sales return reserve accounts by \$15 million.
24 During the meeting, Borrmann specifically asked the CFO “if he [the CFO] was sure” that he
25 wanted the Controller to make these improper transfers. Accounting for these distributor
26 concessions in accordance with GAAP would have required McAfee to increase its reserves for
27 returns, and, correspondingly, reduce reported revenues. Had the \$15 million increase to the
28 sales reserve account been properly accounted for as a reduction in revenue, McAfee would have
missed its revenue goal in the fourth quarter 1999. Later, in the first or second quarter of 2000,

1 Borrmann learned from the Controller that the CFO had again directed the Controller to make
2 additional transfers from the company's tax reserve accounts to bolster the company's
3 inadequate sales returns reserves.

4 **BORRMANN ASSISTED McAFEE IN DISSEMINATING**
5 **THE FALSE AND MISLEADING INFORMATION**
6 **TO ANALYSTS AND INVESTORS**

7 28. In his capacity as McAfee's Treasurer and investment relations officer, Borrmann
8 was one of a small number of senior officials with access to nonpublic financial information
9 about the company. Borrmann participated in compiling the information that was relayed to
10 investors and analysts on July 18, 2000, in an earnings press release and during a subsequent
11 conference call. This information included McAfee's reported revenues of \$233.7 million, net
12 income of \$11.4 million, and earnings of \$0.08 per share.

13 29. McAfee's statements in the press release concerning its revenues and financial
14 condition were materially false and misleading and omitted material facts. Borrmann was aware
15 of the fraudulent accounting schemes that McAfee utilized to inflate its revenue in the second
16 quarter of 2000, as well as the company's efforts to disguise the fraud. Borrmann therefore knew
17 or was reckless in not knowing that the information provided to investors in the July 18, 2000
18 press release and subsequent conference call concerning McAfee's revenues and earnings was
19 false and misleading. Nevertheless, at the time McAfee publicly disseminated the press release
20 through the media and otherwise, Borrmann emailed the press release, along with an unaudited
21 statement of operations, to all McAfee employees worldwide.

22 30. After the July 18, 2000 earnings conference call, Borrmann, along with McAfee's
23 CEO and CFO, conducted follow-up calls with analysts that were issuing research on McAfee
24 for investors. Borrmann never informed the analysts that the revenue and earnings results
25 reported by the company had been fraudulently inflated because McAfee's U.S. distribution
26 channel was stuffed with over three quarters of inventory. Nor did Borrmann disclose to the
27 analysts that McAfee had made extraordinary payments of millions of dollars to its largest
28 Distributor and had granted deep purchase discounts to induce this and other distributors to

1 purchase additional McAfee product and not return the excess inventory. Further, Borrmann
2 never revealed to the analysts that McAfee's sales returns reserves and reported revenues had
3 been wrongly inflated through the improper use of the company's tax reserve accounts.

4 McAFEE'S FRAUD CAUSED SUBSTANTIAL LOSSES TO INVESTORS

5 31. McAfee's accounting scheme unraveled in the fourth quarter of 2000 when, after
6 eleven quarters of stuffing products into the distribution channel, McAfee's distributors held
7 such large inventories of McAfee's products that were less willing to purchase into inventory
8 additional products. Consequently, on December 26, 2000, McAfee announced in a press release
9 that its sales for that quarter would be only \$55 million, dramatically less than the \$245 million
10 in sales that McAfee had projected publicly on October 14, 2000. Also on December 26,
11 McAfee announced without explanation the departures of its chief executive officer, chief
12 financial officer, and its president. The news sent McAfee's stock price down sharply and
13 slashed more than \$1 billion from the company's market capitalization. On December 26, 2000,
14 prior to the issuance of the press release, McAfee's stock price had closed at \$11.75. After the
15 press release, in after hours trading, McAfee's share price dropped sixty-six percent to open on
16 December 27, 2000, at \$3.97. On December 27, 2000, McAfee's share price reached a low of
17 \$3.25, and closed at \$4.50.

18 32. On October 31, 2003, McAfee restated its financial results to correct, among other
19 things, the fraudulent channel stuffing that wrongly inflated McAfee's revenue and earnings
20 during 1998 through 2000. The company recalculated all revenue previously recognized at the
21 time of sale to a distributor during the period to reflect a postponement of the revenue
22 recognition until the time the distributor actually sold the products. As result of the October
23 2003 restatement, and a prior partial restatement made in June 2002, McAfee's cumulative net
24 revenues for the period 1998 through 2000 decreased by \$622 million and cumulative net losses
25 increased by \$353 million from what had been previously publicly reported.

26 33. Focusing on the second quarter of 2000 alone, the period during which Borrmann
27 assisted in compiling the financial information that was relayed to investors and analysts in
28 McAfee's July 18, 2000 earnings press release and subsequent conference calls, the effect of

1 October 2003 restatement on McAfee's financial statements was dramatic. Revenues of \$233.7
2 million as reported to investors by McAfee and Borrmann were reduced to \$158.6 million, a
3 forty-seven percent overstatement. Similarly, reported net income of \$11.4 million was restated
4 as a net loss of \$101.3 million, or a decrease of nine hundred and eighty-nine percent.

5 **BORRMANN SOLD STOCK WHILE IN POSSESSION OF MATERIAL,**
6 **NONPUBLIC INFORMATION CONCERNING THE FRAUD**

7 34. On July 21, 2000, the day after he resigned from McAfee, Borrmann exercised
8 stock options on 5,000 shares of McAfee stock at \$11.06 a share and immediately sold the shares
9 in the market for \$21.44 a share, for net proceeds of \$10.38 a share. On August 7, 2000,
10 Borrmann exercised additional stock options on 5,000 shares of McAfee stock at \$11.06 a share
11 and immediately sold the shares in the market for \$20.44 a share, for net proceeds of \$9.38 a
12 share. Also on August 7, 2000, Borrmann sold for \$20.50 an additional 1,389 McAfee shares
13 that he had purchased through an employee stock purchase plan, avoiding losses totaling
14 \$17,816. On August 29, 2000, Borrmann again exercised stock options on 5,000 shares of
15 McAfee stock at \$11.06 a share and immediately sold the shares in the market for \$24.56 a share,
16 for net proceeds of \$13.50 a share. On September 20, 2000, he exercised stock options on
17 12,648 shares of McAfee stock at \$11.06 a share and immediately sold the shares in the market
18 for \$21.37 a share, for net proceeds of \$10.31 a share. In total, Borrmann made illegal profits of
19 \$314,517 by selling McAfee securities while in possession of material, nonpublic information
20 about McAfee that he obtained in his capacity as Treasurer and investor relations officer of
21 McAfee.

22 **FIRST CLAIM**

23 **Borrmann Aided and Abetted McAfee's Violations of**
24 **Exchange Act Section 10(b) and Exchange Act Rule 10b-5**
25 **[Financial Fraud]**

26 35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

27 36. Borrmann knowingly and substantially participated and assisted McAfee, in
28 connection with the offer, purchase, or sale of securities, with McAfee's scheme to knowingly or
recklessly make material misrepresentations and omissions of fact concerning its financial

1 condition and operating 15results for the period from 1999 through 2000 in financial statements,
2 periodic reports, and press releases.

3 37. By reason of the foregoing, Borrmann aided and abetted McAfee's violations of
4 Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. §
5 240.10b-5].

6 **SECOND CLAIM**

7 **Borrmann Violated Securities Act Section 17(a), Exchange Act Section 10(b)**
8 **and Exchange Act Rule 10b-5**
9 **[Insider Trading]**

10 38. Paragraphs 1 through 37 are realleged and incorporated herein by reference.

11 39. Borrmann sold McAfee stock while in possession of material nonpublic
12 information concerning McAfee's true financial condition, in breach of his fiduciary duties to
13 McAfee and its shareholders.

14 40. By reason of the foregoing, Borrmann violated Securities Act Section 17(a) [15
15 U.S.C. § 77q(a)], Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-
16 5 [17 C.F.R. § 240.10b-5].

17 **RELIEF REQUESTED**

18 WHEREFORE, Plaintiff Securities and Exchange Commission respectfully
19 requests that this Court:

20 **I.**

21 Issue an order of permanent injunction restraining and enjoining Borrmann, and
22 his agents, servants, employees, attorneys, and assigns, and those persons in active concert or
23 participation with him, and each of them, from violating, directly or indirectly, Securities Act
24 Section 17(a) [15 U.S.C. § 77q(a)] and Exchange Act Sections 10(b) [15 U.S.C. §§ 78j(b)], and
25 Exchange Act Rule 10b-5 [17 C.F.R. §§ 240.10b-5].

26 **II.**

27 Order an accounting by Borrmann of all money, property, and other assets
28 directly or indirectly derived from the conduct alleged herein.

1 **III.**

2 Issue an order directing Borrmann to disgorge, with prejudgment interest, all ill-
3 gotten gains resulting from his conduct alleged herein.

4 **IV.**

5 Issue an order directing Borrmann to pay civil monetary penalties under Section
6 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Sections 21(d)(3) and 21A of the Exchange
7 Act [15 U.S.C. §§ 78u(d)(3) and 78u-1].

8 **V.**

9 Enter an order under Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and
10 Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] prohibiting Borrmann from acting
11 as an officer or a director of any issuer that has a class of securities registered pursuant to Section
12 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section
13 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

14 **VI.**

15 Grant such other and further relief as this Court may deem just and proper.

16
17 Dated: OCTOBER 24, 2006

18 Paul G. Lane
19 Paul G. Lane (Lead Counsel)
20 Attorney for Plaintiff
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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

<p>I.(a) PLAINTIFFS United States Securities and Exchange Commission</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>DEFENDANTS Eric G. Borrmann</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Alameda County</p>
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<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Paul G. Lane, Esq. U.S. Securities and Exchange Commission 100 F Street, N.E., Washington, DC, 20549-7553 (202) 551-4768</p>	<p>ATTORNEYS (IF KNOWN) Anthony Pacheco, Esq. Proskauer Rose, LLP (310) 284-5647 2049 Century Park East, #3200, Los Angeles, CA, 90067-3206</p>
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<p>II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For diversity cases only)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

Original Proceeding Removed from State Court Remanded from Appellate Court Reinstated or Reopened Transferred from Another district (specify) Multidistrict Litigation Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td style="width:50%; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability					
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)
 15 U.S.C. Sec. 78j(b), 15 U.S.C. Sec. 77q(a), 17 C.F.R. Sec. 240.10b-5: Financial fraud and insider trading

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____ CHECK YES only if demanded in complaint:
 UNDER F.R.C.P. 23 JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
 (PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE: 10/24/06 SIGNATURE OF ATTORNEY OF RECORD: Paul G. Lane