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by Superior Court of CA,
County of Santa Clara,
on 5/28/2019 9:53 AM
Reviewed By: R. Walker
Case #2010-1-CV-180413
Envelope: 2935015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

In re McAfee, INC. SHAREHOLDER
LITIGATION,

Case No. 2010-1-CV-180413

Consolidated action, including:
Greenberg v. McAfee, Inc., Santa Clara County
Superior Court, Case No. 1:10-cv-180413
Colwell v. McAfee, Inc., Santa Clara County
Superior Court, Case No. 1:10-cv-180420
Faulkner v. McAfee, Inc., Santa Clara County
Superior Court, Case No. 1:10-cv-180597
Korsinsky v. Bass, Santa Clara County Superior
Court, Case No. 1:10-cv-180928

**ORDER RE: CONTINUED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

This Document Relates To:

ALL ACTIONS.

The above-entitled matter came on for hearing on Friday, May 24, 2019, at 9:00 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding. The Court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Thursday, May 23, 2019. No party contested the tentative ruling; therefore, the Court orders the tentative ruling be adopted as the Order of the Court, as follows:

I. INTRODUCTION

This is a certified class action arising out of a merger between McAfee and Intel. The parties have reached a settlement. Plaintiff Central Laborers' Pension Fund ("Plaintiff") earlier

1 moved for preliminary approval of the settlement, but on April 5, 2019, the Court issued an order
2 continuing the motion so it could obtain additional information. Plaintiff has filed additional
3 papers and the Court will now rule on the motion.

4 II. LEGAL STANDARD

5 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
6 class was adequate, whether certification of the class was proper, and whether the attorney fee
7 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
8 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996)
9 48 Cal.App.4th 1794.)

10 In determining whether a class settlement is fair, adequate and reasonable, the
11 trial court should consider relevant factors, such as “the strength of plaintiffs’
12 case, the risk, expense, complexity and likely duration of further litigation, the
13 risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and the stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and
16 the reaction of the class members to the proposed settlement.”

17 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*,
18 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982)
19 688 F.2d 615, 624.)

20 “The list of factors is not exclusive and the court is free to engage in a balancing and
21 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple*
22 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed
23 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
24 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
25 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,
26 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n,*
27 *etc., supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

28 The burden is on the proponent of the settlement to show that it is fair and
reasonable. However “a presumption of fairness exists where: (1) the settlement
is reached through arm’s-length bargaining; (2) investigation and discovery are
sufficient to allow counsel and the court to act intelligently; (3) counsel is
experienced in similar litigation; and (4) the percentage of objectors is small.”

1 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*,
2 48 Cal.App.4th at p. 1802.)

3 **III. DISCUSSION**

4 **A. Provisions of the Settlement**

5 The case has been settled on behalf of the following class:

6 [A]ll holders of McAfee common stock who exchanged their shares for
7 consideration in the acquisition of McAfee by Intel Corporation at the price of
8 \$48.00 per share. Excluded from the Class are Defendants and any person, firm,
9 trust, corporation or other entity related to or affiliated with any Defendant. Also
excluded from the Class is any Person who validly requested exclusion from the
Class following the issuance of the Notice of Pendency.

10 (Stipulation of Settlement, ¶ 1.3.)

11 Pursuant to the settlement, defendants Intel Corporation, McAfee, Inc., and David G.
12 DeWalt (collectively, “Defendants”) will pay a total of \$11,700,000. (Stipulation of Settlement,
13 ¶ 1.22.) In the supplemental papers, Plaintiff states this amount includes \$3,510,000 for
14 attorneys’ fees, \$650,000 of expenses, and \$5,000 for an incentive award for Plaintiff.
15 Administration costs are capped at \$250,000. (Stipulation of Settlement, ¶ 2.3.) If the full
16 amounts of these items are approved, pro rata distributions to class members will be
17 approximately \$0.05 per share.

18 **B. Fairness of the Settlement**

19 Plaintiff states the settlement was fairly, honestly, and aggressively negotiated by all
20 parties, with the benefit of experienced counsel, following years of hard-fought litigation, and
21 with the assistance of a highly experienced mediator. Plaintiff believes the settlement represents
22 a very good resolution of the litigation.

23 After examination of the moving papers and the supplemental papers, the Court finds the
24 settlement is fair. It provides for a not insignificant recovery and eliminates the risk and expense
25 of further litigation.

26 **C. Incentive Award, Fees, and Costs**

27 Plaintiff requests a class representative incentive award of \$5,000.

28 The rationale for making enhancement or incentive awards to named plaintiffs is
that they should be compensated for the expense or risk they have incurred in

1 conferring a benefit on other members of the class. An incentive award is
2 appropriate if it is necessary to induce an individual to participate in the suit.
3 Criteria courts may consider in determining whether to make an incentive award
4 include: 1) the risk to the class representative in commencing suit, both financial
5 and otherwise; 2) the notoriety and personal difficulties encountered by the class
6 representative; 3) the amount of time and effort spent by the class representative;
7 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
8 enjoyed by the class representative as a result of the litigation. These “incentive
9 awards” to class representatives must not be disproportionate to the amount of
10 time and energy expended in pursuit of the lawsuit.

11 (*Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394-1395, quotation marks,
12 brackets, ellipses, and citations omitted.)

13 Prior to final approval of the settlement, Plaintiff must submit a declaration regarding its
14 participation. The Court will make a determination regarding the incentive award at that time.
15 The Court notes it is not apparent an incentive award can be granted to a named plaintiff that is
16 an organization as opposed to an individual. Plaintiff should address this issue in the final
17 approval papers.

18 The Court also has an independent right and responsibility to review the requested
19 attorneys’ fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
20 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel
21 requests attorneys’ fees in the amount of \$3,510,000 and \$650,000 in expenses. Plaintiffs’
22 counsel must submit lodestar information (including hourly rates and hours worked) prior to the
23 final approval hearing so the Court can compare the lodestar information with the requested fees.
24 Plaintiff’s counsel must also submit information regarding actual costs incurred.

25 **D. Class Notice**

26 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
27 3.769(f).) The notice generally complies with the requirements for class notice. (See [Proposed]
28 Order Granting Preliminary Approval of Class Action Settlement and Providing for Notice,
Ex. A-1.) It provides basic information about the settlement, including the settlement terms, and
procedures to object or request exclusion.

The notice will be disseminated to all persons who fall within the class definition and
whose names and addresses can be identified from McAfee’s transfer records. Additionally, the

1 claims administrator will send out letters to entities that commonly hold securities in "street
2 name" as nominees for the benefit of their customers who are the beneficial purchasers of the
3 common stock. Lastly, a summary notice will be published in the Wall Street Journal, Investor's
4 Business Daily, and Business Wire. The Court finds the notice program is sufficient.

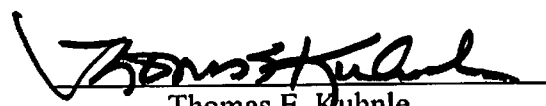
5 **E. Claim Forms**

6 The notice informs class members they must submit a claim form to recover. The Court
7 previously asked Plaintiff whether claim forms are necessary for the settlement. In the
8 supplemental papers, Plaintiff explains that claims forms are necessary to effectuate the
9 distribution of the settlement. Plaintiff also states social security numbers or tax identification
10 numbers are necessary to ensure proper identification of class members and identify potentially
11 duplicative claims. The Court finds there is a justification for the use of claims forms in
12 connection with this settlement.

13 **F. Conclusion**

14 The motion for preliminary approval of class settlement is GRANTED. The final
15 approval hearing is set for October 4, 2019, at 9:00 a.m. in Department 5.

16
17 Dated: May 24, 2019


Thomas E. Kuhnle
Judge of the Superior Court