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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

<p>10 In re McAfee, Inc. Shareholder LITIGATION</p> <p>11 Consolidated action, including: <i>Greenberg v. McAfee, Inc.</i>, Santa Clara County Superior Court, Case No. 1:10-cv-180413 <i>Colwell v. McAfee, Inc.</i>, Santa Clara County Superior Court, Case No. 1:10-cv-180420 <i>Faulkner v. McAfee, Inc.</i>, Santa Clara County Superior Court, Case No. 1:10-cv-180597 <i>Korsinsky v. Bass</i>, Santa Clara County Superior Court, Case No. 1:10-cv-180928</p> <hr/> <p>18 This Document Relates To:</p> <p>19 ALL ACTIONS.</p> <hr/>	<p>) Lead Case No. 1:10-cv-180413</p> <p>) <u>CLASS ACTION</u></p> <p>) PLAINTIFF'S REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTIONS FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES</p> <p>) DATE: October 4, 2019 TIME: 9:00 a.m. DEPT: 5 DATE ACTION FILED: 08/19/2010</p> <p>) Judge: Hon. Thomas E. Kuhnle</p>
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1 Plaintiff and Class Representative Central Laborers’ Pension Fund (“Plaintiff”) respectfully
2 submits this reply memorandum in further support of the motions for: (1) final approval of class action
3 settlement and for approval of the proposed distribution of proceeds (the “Plan of Allocation”); and
4 (2) an award of attorneys’ fees and expenses.¹

5 **I. INTRODUCTION**

6 On May 28, 2019, the Court preliminarily approved the Settlement and ordered the
7 dissemination of the Notice. Thereafter, the Claims Administrator mailed **22,090** copies of the Notice
8 to potential Class Members and their representatives, which explained, *inter alia*, the terms of the
9 Settlement, the Plan of Allocation, and the requested attorneys’ fees, expenses and service award. *See*
10 previously-filed Declaration of Carole K. Sylvester Regarding Notice Dissemination and Publication,
11 ¶11. In addition, the Summary Notice was published in *The Wall Street Journal, Investor’s Business*
12 *Daily*, and over the *Business Wire*. *Id.*, ¶14. Relevant documents concerning the Settlement – including
13 the Stipulation, the Notice, and the Proof of Claim – were posted to the Settlement website,
14 www.McAfeeShareholderSettlement.com, which was identified in both the Notice and Summary
15 Notice. *Id.*, ¶13.

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17 In response, Plaintiff received just one objection (the “Objection”) made by a single Class
18 Member, which owned 45 shares out of the roughly 154 million shares of McAfee stock collectively
19 owned by the Class. *See* accompanying Supplemental Declaration of Maxwell R. Huffman in Further
20 Support of Motions for: (1) Final Approval of Class Action Settlement and Approval of Plan of
21 Allocation; and (2) an Award of Attorneys’ Fees and Expenses (“Huffman Declaration”), Ex. A.² The
22 Objection does not concern the fairness of the substantive terms of the Settlement, but rather a discrete
23 aspect of the Plan of Allocation. Specifically, the Objection questions whether the requirement that
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26 ¹ Unless indicated otherwise, all capitalized terms shall have the same meaning as set forth in the
27 Stipulation of Settlement filed on March 13, 2019 (“Stipulation”).

28 ² All references to “Ex.” herein are citations to the exhibits attached to the Huffman Declaration.

1 Class Members be entitled to a minimum payment of \$10 in order to receive a distribution from the Net
2 Settlement Fund should be included as part of the Plan of Allocation.

3 The Ninth Circuit Court of Appeals has examined this very issue and approved minimum
4 payment requirements. *In re MGM Mirage Sec. Litig.*, 708 F. App'x 894, 897 (9th Cir. 2017)
5 (affirming the trial court's approval of a \$10.00 requirement for distributions over a class member's
6 objection). The court in *MGM Mirage* concluded that such provisions prevent cost inefficiencies, as
7 "issuing very small checks to class members would cause a disproportionate administrative expense to
8 the [settlement] fund because of the costs of mailing the checks, tracking and accounting for each
9 payment, following up on uncashed checks, and reissuing checks not cashed during their valid periods."
10 *Id.* Indeed, minimum payment requirements are routinely approved by courts throughout the country,
11 including here in California for settlements of merger-related stockholder class actions. As the Claims
12 Administrator explains, the minimum payment requirement will provide the very cost benefits here that
13 were recognized by the Ninth Circuit. *See* Declaration of Michael Joaquin Regarding Proposed
14 Minimum Payment Amount ("Joaquin Declaration"), submitted herewith.

17 Accordingly, as the Settlement has received overwhelming support for the Class, Plaintiff
18 respectfully requests that: (1) the Motion for Final Approval of Class Action Settlement and Approval
19 of Plan of Allocation and the Motion for an Award of Attorneys' Fees and Expenses be granted; (2) the
20 Order and Final Judgment be entered; and (3) the Objection be overruled.

22 **II. ARGUMENT**

23 "Approval of a plan of allocation of settlement proceeds in a class action . . . is governed by the
24 same standards of review applicable to approval of the settlement as a whole: the plan must be fair,
25 reasonable and adequate." *In re Oracle Sec. Litig.*, No. C-90-0931-VRW, 1994 WL 502054, at *1
26 (N.D. Cal. June 18, 1994) (citing *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284-85 (9th Cir. 1992)).
27 To avoid cost inefficiencies, a plan of allocation may require a "minimum threshold" of payment in
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1 order for class members to receive a distribution from the settlement fund. *MGM Mirage*, 708 F. App'x
2 at 897.

3 “*[D]e minimus* thresholds for payable claims are beneficial to the class as a whole since they
4 save the settlement fund from being depleted by the administrative costs associated with claims unlikely
5 to exceed those costs.” *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 1191048, at *9
6 (E.D.N.Y. Apr. 19, 2007); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011) (holding that
7 ““administrative costs to make *de minimis* payments are too large to justify . . . small payments””) (citation omitted). “Claimants who are entitled to receive only small settlement amounts can impose
8 additional costs on the settlement fund, because such persons are less likely to cash their checks than are
9 those claimants who receive larger amounts.” *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D.
10 436, 463 (S.D.N.Y. 2004). Absent a minimum payment requirement, the settlement administrator
11 would need to “incur additional expenses in contacting claimants who have not cashed their checks and
12 urging them to do so,” and if checks remained uncashed, “the money must be reallocated to the other
13 class members through second or third distributions, which create additional costs for the settlement
14 fund.” *Id.* Accordingly, courts throughout the country regularly require minimum payment thresholds,³
15 and such provisions are routinely approved as part of the plan of allocation in merger-related
16 stockholder class action settlements here in California.⁴

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21 ³ See, e.g., *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 463 (E.D. Penn. 2008) (approving a \$50
22 minimum payment); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK),
23 2007 WL 4526593, at *12 (S.D.N.Y. Dec. 20, 2007) (approving \$50 minimum payment); *In re Sprint*
24 *Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1268 (D. Kan. 2006) (approving \$25 minimum payment);
25 *Global Crossing*, 225 F.R.D. at 463 (approving \$10 minimum payment); *MGM Mirage*, 708 F. App'x
at 897 (affirming the trial court's approval of a \$10 minimum payment requirement over a class
member's objection); *Sullivan*, 667 F.3d at 329-30 (affirming trial court's approval of a \$10 minimum
payment requirement over class member's objection).

26 ⁴ *In re Ceradyne, Inc. S'holder Litig.*, No. 30-2012-00604001-CU-BT-CXC, Notice of Pendency and
27 Proposed Settlement of Class Action (Orange Cnty. Sup. Ct.) (requiring \$10 minimum payment for
28 class members to receive distribution) (Ex. B); *Laborers' Local #231 Pension Fund v. Websense, Inc.*,
No. 37-2013-00050879-CU-BT-CTL, Notice of Proposed Settlement of Class Action (San Diego Cnty.
Sup. Ct.) (requiring \$10 minimum payment for class members to receive distribution) (Ex. C); *In re*

1 The Ninth Circuit recently followed this precedent in *MGM Mirage*. In that action, plaintiff
2 brought claims for violations of federal securities laws, and the parties agreed to a class-wide
3 settlement. 708 F. App'x at 896. As part of the settlement, the trial court approved a plan of allocation,
4 over a class member's objection that "set a minimum threshold of \$10 to receive a distribution from the
5 settlement fund." *Id.* at 897. In affirming the trial court's ruling, the Ninth Circuit explained "that
6 issuing very small checks to class members would cause a disproportionate administrative expense to
7 the fund because of the costs of mailing the checks, tracking and accounting for each payment,
8 following up on uncashed checks, and reissuing checks not cashed during their valid periods." *Id.* The
9 Ninth Circuit further recognized that "numerous cases" have approved "similar or higher minimum
10 thresholds." *Id.*

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12 Here, the \$10 minimum threshold should be approved as well. As the Claims Administrator
13 explains, the use of a minimum threshold for sending distribution checks is standard practice for
14 settlements in both private securities litigation and government enforcement actions, like those brought
15 by the SEC. Joaquin Declaration, ¶3. The purpose of minimum payment in this context is to address
16 the "disproportionate administrative expense" that comes with *de minimum* payments to class members.
17 *Id.*, ¶4. In addition to the costs associated with printing and mailing a check, the Claims Administrator
18 would need to track and account for each payment whether or not it is negotiated. *Id.* For checks that
19 are not negotiated, the Claims Administrator needs to follow up by mail, email, and/or telephone, all of
20 which add to the administrative expenses associated with fund distributions. *Id.* Checks under \$10 are
21 often not cashed initially, and in many instances are never cashed. *Id.* Moreover, checks not cashed
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25 *Onyx Pharm., Inc. S'holder Litig.*, No. CIV523789, Notice of Proposed Settlement of Class Action (San
26 Mateo Cnty. Sup. Ct.) (requiring \$10 minimum payment for class members to receive distribution) (Ex.
27 D); *Bemis v. Trius Therapeutics, Inc.*, No. 37-2013-00060593-CU-BT-CTL, Notice of Pendency of
28 Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (San
Diego Cnty. Sup. Ct.) (requiring \$10 minimum payment for class members to receive distribution) (Ex.
E).

1 during their initial valid period often incur additional administrative expense required to re-issue a
2 check because the original becomes stale-dated. *Id.*

3 Accordingly, the same rationale discussed in *MGM Mirage* applies equally here, and the Plan of
4 Allocation should therefore be approved in this action as well.

5 **III. CONCLUSION**

6 For these reasons, Plaintiff respectfully requests that: (1) the Motion for Final Approval of Class
7 Action Settlement and Approval of Plan of Allocation and the Motion for an Award of Attorneys' Fees
8 and Expenses be granted; (2) the Order and Final Judgment be entered; and (3) the Objection be
9 overruled.

10 DATED: September 27, 2019

Respectfully submitted,

11
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DECLARATION OF SERVICE BY E-MAIL

I, JACLYN WILLIAMS, not a party to the within action, hereby declare that on September 27, 2019, served the attached PLAINTIFF'S REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTIONS FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES on the parties in the within action by e-mail addressed as follows:

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