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11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 LARRY McINTOSH, YANGJIE CHENG, )  
 14 PING CHEN, STEVE HAEFFELE, LEBIN )  
 15 CHENG, VATSAL SONECHA, and )  
 16 JONATHAN WONG, individually and on )  
 17 behalf of all those similarly situated, )

18 Plaintiffs, )

19 v. )

20 McAfee, INC., )

21 Defendant. )

22 Case No. C06-07694 JW

23 **PLAINTIFFS' NOTICE OF MOTION**  
 24 **AND MOTION FOR REPORT AND**  
 25 **RECOMMENDATION TO AWARD**  
 26 **ATTORNEYS FEES AND COSTS TO**  
 27 **PLAINTIFFS; MEMORANDUM OF**  
 28 **POINTS AND AUTHORITIES**

Date: December 16, 2008  
 Time: 10:00 a.m.  
 Courtroom: 2  
 Honorable Howard R. Lloyd

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on December 16, 2008, before the Honorable Howard R. Lloyd, United States Magistrate Judge, Plaintiffs will move the Court for a Report and Recommendation as to (1) the exact date that Defendant McAfee Inc. (“McAfee”) completed the provision of relief to former employees who are members of the putative class and (2) the fees incurred by Plaintiffs’ Counsel, Cotchett, Pitre & McCarthy, as of that date and an appropriate award under applicable California law.

This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Mark C. Molumphy, the Court’s October 17, 2008 Order Granting Plaintiffs’ Motion to Dismiss; Denying Defendant’s Motion for Summary Judgment; Granting Plaintiffs’ Motion for Attorneys’ Fees and Costs, the pleadings and records on file, and such other matters as may be presented to the Court.

**ISSUES TO BE DECIDED**

1. The exact date on which Defendant McAfee completed provision of relief to former employees who are members of the putative class.
2. The fees incurred by Plaintiffs’ Counsel, Cotchett, Pitre & McCarthy, as of that date, and an appropriate award under applicable California law.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this class action, Plaintiffs allege that Defendant McAfee breached its stock option  
4 agreements with former employees by refusing to give them the contractual 90-day period to  
5 exercise their options before they expired. Instead, while McAfee imposed a “blackout” period  
6 on exercising options while it investigated backdating by senior executives, it continued to run  
7 the 90-day exercise period during the blackout until the options ultimately expired.

8 Notably, before Plaintiffs filed suit, McAfee rejected Plaintiffs’ pleas to extend the  
9 exercise period until after the blackout was lifted. However, after the suit was filed, McAfee  
10 announced that it would provide the requested relief to all former employees. In 2008, after  
11 litigating for over a year, McAfee finally provided \$23.5 million in relief to former employees.

12 Plaintiffs recently moved for an award of attorneys’ fees and expenses as “successful  
13 parties” under California’s private attorney general statute. Cal. Civ. Proc. Code § 1021.5.  
14 McAfee opposed the motion, claiming that the class action was not a “catalyst” for its decision  
15 to provide relief.

16 On October 17, 2008, the Court granted Plaintiffs’ motion, holding that Plaintiffs were  
17 entitled to fees incurred until the point that McAfee provided full relief to all former employees.  
18 *See* Order at 11:23-26, Exhibit A to Declaration of Mark C. Molumphy (“Molumphy Decl.”).  
19 However, since it had no evidence of that date, the Court asked for a Report and  
20 Recommendation of:

- 21 “(1) The exact date on which Defendant completed provision of relief to former  
22 employees who are members of the putative class; and  
23 (2) The fees incurred by Plaintiffs’ counsel under applicable California law.”

24 Order at 12:4-8. Plaintiffs submit this motion to address these two remaining questions.

25 First, only McAfee can confirm the exact date that it completed providing relief to former  
26 employees, i.e., all those other than the seven Plaintiffs. Plaintiffs can only confirm the last day  
27 that they received relief, January 15, 2008, and have based their fee request on that date.  
28 Plaintiffs reserve the right to amend their motion if the date turns out to be later.

1 Second, as to the amount of fees under applicable California law, Plaintiffs' counsel  
2 respectfully request an award of \$686,122.50. This amount reflects counsel's lodestar of  
3 \$228,707.50 as of January 15, 2008, with a multiplier of three. In appropriate cases, California  
4 courts apply an upward adjustment to take into account the contingent risk of litigation and  
5 substantial benefits achieved from the action. These same factors favor a modest multiplier here.  
6 Indeed, the requested fee is still just 2.91% of the \$23.5 million recovered in this case.

## 7 **II. RELEVANT PROCEDURAL HISTORY**

### 8 **A. Overview Of Case**

9 This is a class action brought by former employees of McAfee. Plaintiffs allege that, on  
10 July 27, 2006, following an investigation into possible stock option backdating, McAfee notified  
11 the SEC that it was unable to timely file its quarterly results and ceased issuing new shares under  
12 the Company's stock option plans pending the filing of corrected financials. Molumphy Decl.,  
13 ¶3. This unilateral freeze, commonly referred to as a "blackout," effectively prevented McAfee  
14 employees from exercising their earned and vested stock options as of July 28, 2006. *Id.*

15 Plaintiffs allege that, under McAfee's stock option agreements, former employees  
16 were entitled to have 90 days following their termination to exercise their vested stock options.  
17 *Id.*, ¶4. McAfee allegedly breached the agreements by not giving former employees 90 days to  
18 exercise their options and, instead, running the 90 day exercise period during the blackout – even  
19 though former employees were precluded by McAfee from exercising. *Id.*

### 20 **B. McAfee Rejects Plaintiffs' Pleas To Resolve Dispute Before Filing Lawsuit**

21 Before retaining legal counsel, and incurring the expense of filing a lawsuit, Plaintiffs  
22 repeatedly tried to resolve their dispute with McAfee, asking for either (1) the opportunity to  
23 exercise their vested options immediately or (2) in the alternative, to defer the 90 day exercise  
24 period until after McAfee lifted its blackout. *Id.*, ¶5. Unfortunately, McAfee rejected all of  
25 Plaintiffs' requests and took the uniform position that the 90 day period to exercise options  
26 would continue to run during the blackout, even if that meant that Plaintiffs would lose their  
27 options without an opportunity to exercise them. *Id.*

1           **C. McAfee Changes Its Policy In Response To Class Action**

2           On December 15, 2006, after McAfee confirmed that it would not allow former  
3 employees to exercise their options, Plaintiffs filed a class action complaint. *Id.*, ¶6. Plaintiffs  
4 sued for breach of contract on behalf of a Class of McAfee’s former employees who were unable  
5 to exercise their stock options due to the blackout imposed by McAfee as of July 28, 2006 (the  
6 “Class”). *Id.* Plaintiffs also brought fraud claims for Class members who left McAfee in  
7 reliance on McAfee’s written representations that the exercise period would commence when the  
8 blackout was lifted. *Id.*

9           On January 8, 2007, just three weeks after Plaintiffs filed their complaint, McAfee  
10 announced that its Board had voted to extend the exercise period for former employees until  
11 after the blackout was lifted. *Id.*, ¶7. However, McAfee set a deadline of December 31, 2007,  
12 such that options still expired if the blackout was not lifted by then. *Id.* Further, the offer to  
13 exercise was not offered to former employees whose options had already expired, i.e., the  
14 majority of the Class, who were instead promised an undefined “cash” consideration at some  
15 future date. Finally, the amendment was not binding as a judgment, allowing the Board to  
16 change its mind yet again before any relief was provided. *Id.*

17           On February 6, 2007, McAfee filed a motion to dismiss, asserting that (1) Plaintiffs’  
18 claims were preempted by federal securities law and (2) Plaintiffs no longer had standing due to  
19 McAfee’s proposed remedial measures announced on January 8, 2007. *Id.*, ¶8. On September  
20 28, 2007, the Court entered an order on McAfee’s motion to dismiss. *Id.*, ¶9. While the Court  
21 held that the Class claims for fraud were preempted, the breach of contract claim survived. The  
22 Court also rejected defendant’s standing argument, holding that McAfee’s remedial actions did  
23 not conclusively establish that Plaintiffs lacked standing. *Id.*

24           On October 26, 2007, Plaintiffs filed a First Amended Complaint against McAfee  
25 asserting a breach of contract claim on behalf of the class of former McAfee employees, and  
26 fraud claims on behalf of themselves individually. *Id.*, ¶10. The proposed class was defined as:

27           All persons who were employed at McAfee and who received stock options but  
28           were unable to exercise them due to the blackout imposed by McAfee as of July  
28, 2006 (the “Class”).



1 The parties then engaged in meet and confer discussions about efficiently litigating and  
2 resolving the case. After submitting a Joint Statement, the Court entered its pre-trial Scheduling  
3 Order on November 15, 2007 and ordered that all discovery be completed by June 16, 2008. *Id.*,  
4 ¶11. Plaintiffs subsequently served their initial disclosure pursuant to Rule 26. However,  
5 McAfee never served an initial disclosure. McAfee filed its Answer to the First Amended  
6 Complaint and denied every class allegation and every allegation related to the breach of  
7 contract cause of action asserted by the Class. *Id.*, ¶12.

8 On December 21, 2007, McAfee announced that it had filed restated financial statements  
9 and amended reports with the SEC. *Id.*, ¶13. Plaintiffs' counsel then contacted McAfee to  
10 determine whether McAfee intended to provide relief to all other Class members and, if not, the  
11 basis for any exceptions. *Id.*, ¶14. McAfee refused to provide the confirmation and, instead,  
12 took the position that, since no class was certified, the named Plaintiffs could not know how  
13 absent Class members were being treated. *Id.*, ¶15. McAfee then served written objections to  
14 the pending discovery on the same grounds, preventing Plaintiffs from confirming that other  
15 class members would receive the same relief being offered to them – even though such  
16 confirmation would have resulted in dismissal. *Id.*, ¶16.

#### 17 **D. McAfee Provides Relief To The Named Plaintiffs**

18 As noted above, McAfee lifted its trading blackout and gave former employees, whose  
19 options had not already expired, a 90-day opportunity to exercise their options. The 90-day  
20 period expired on or about March 20, 2007.

21 For those former employees whose options had already expired during the blackout,  
22 McAfee mailed them checks representing the value of their options. While McAfee has refused  
23 to confirm the date that the last checks were mailed to former employees, Plaintiffs received  
24 checks dated January 15, 2008. *Id.*, ¶17, Ex. B.

25 As noted in the Court's October 2008 Order, McAfee has disclosed that approximately  
26 690 former employees received either a cash payment for their expired options or an extended 90  
27 day period to exercise their options. Former employees with expired options received cash  
28 payments totaling \$5.2 million. With respect to former employees allowed to exercise their

1 unexpired options, McAfee recorded a compensation charge of \$14.0 million (applied to 2007)  
2 and \$4.3 million (applied to 2006), for a total of \$18.3 million, based on the value of the options.  
3 Thus, the total relief provided to former employees is \$23.5 million. *Id.*, ¶¶18-22, Ex. D.

4 **E. The Court Grants Plaintiffs’ Motion For Attorneys Fees And Costs**

5 On May 7, 2008, Plaintiffs filed their motion for attorneys fees and costs. *Id.*, ¶18.  
6 Plaintiffs contended that they were entitled to an award of attorney fees and costs under  
7 California’s Private Attorney General Doctrine under a catalyst theory because they successfully  
8 obtained relief from Defendants as a consequence of this litigation. McAfee filed its papers in  
9 opposition to the motion on August 29, 2008, claiming there was no causal connection between  
10 this litigation and McAfee’s actions; that Plaintiffs’ lawsuit had no merit; and that Plaintiffs were  
11 not entitled to an award of fees and costs. *Id.*

12 The Court heard oral argument on both motions on September 22, 2008. *Id.* On October  
13 17, 2008, the Court granted Plaintiffs’ motion for attorneys fees and costs. *Id.*, ¶19. The Court  
14 held that there was a causal connection between the lawsuit and McAfee’s decision to provide  
15 relief. *Id.*, Ex. A., Order at 6:23-24. The Court also held that Plaintiffs’ action had enforced a  
16 important right affecting the public interest, noting that the contractual-based right to exercise  
17 stock options affects a great number of people. *Id.*, 10:3-5. Notably, evaluating the extensive  
18 evidentiary record before it, the Court found that “nearly 700 individuals received approximately  
19 \$23 million in recovery as a result of Defendant’s provision of Plaintiffs’ desired relief in early  
20 2008.” Accordingly, the Court held that “this litigation had a beneficial impact on a sufficiently  
21 large group of private parties to warrant a fee award under § 1021.5.” *Id.*, 10:17-21.

22 **III. ARGUMENT**

23 **A. McAfee Completed The Provision Of Class Relief No Earlier Than January**  
24 **15, 2008, And As Late As March 20, 2008**

25 In its October 17, 2008 Order, the Court first asked for a determination of “the exact  
26 dated on which Defendant completed provision of relief to former employees who are members  
27 of the putative class.” *Id.*, 12:6-7. There are several possible dates to choose from.

28 As noted above, after McAfee lifted its blackout, it gave former employees, whose  
options had not already expired, a 90-day opportunity to exercise their options. The 90-day

1 period expired on or about March 20, 2007. For former employees whose options had already  
2 expired during the blackout, McAfee mailed checks representing the value of their options.  
3 While Plaintiffs do not know when the last checks were mailed to former employees, Plaintiffs  
4 received checks dated January 15, 2008. Molumphy Decl., ¶¶22-23. Further, according to  
5 McAfee's most recent Form 10-Q, all former employees had received either cash payments or a  
6 90-day period to exercise their options as of March 31, 2008. *Id.*, Ex. D.

7 Thus, while only McAfee knows the precise date that it "completed" providing relief to  
8 former employees, the date is no earlier than January 15, 2008 and potentially as late as March  
9 20, 2008 or March 31, 2008. To be conservative, Plaintiffs have used the earlier date of January  
10 15, 2008 with respect to their fee request described below.

11 **B. Plaintiffs Request An Award Of Fees Based On Their Work Performed Up**  
12 **Until January 15, 2008**

13 **1. Under California Law, A Fee Award Should Be Based On Counsel's**  
14 **Lodestar And, If Appropriate, A Reasonable Multiplier**

15 The Court's October 17, 2008 Order also asked for a determination of "the fees incurred  
16 by Plaintiffs' counsel under applicable California law." *Id.*, Ex. A, Order at 12:8.

17 Under California law, the Court first determines a firm's lodestar to calculate an  
18 appropriate fee award pursuant to Section 1021.5. *Graham v. DaimlerChrysler Corp.*, 34 Cal.  
19 4th 553, 579-80 (2004); *Paulson v. City of San Diego*, No. Civ. 89-0820GT(LSP), 2007 U.S.  
20 Dist. LEXIS 43587, at \*11 (S.D. Cal. June 13, 2007); *Lealao v. Benefit Cal.*, 82 Cal. App. 4th  
21 19, 39 (2000). A lodestar is calculated by multiplying the reasonable hours expended by a  
22 reasonable hourly rate. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001).  
23 Declarations by the supervising attorney describing the work performed are typically used to  
24 support an award of attorney's fees. *Id.* at 255; *see also* N.D. Cal. Civil L.R. 54-6(b) (requiring  
25 declaration describing services rendered and time spent by each person, relevant qualifications  
26 and experience, manner in which time records maintained, and customary hourly charges).

27 Next, under California law, the Court determines whether the lodestar figure should be  
28 adjusted by applying a "multiplier" to take into account factors relevant to a particular case and  
to better approximate the market value of the attorneys' services. *Ketchum v. Moses* 24 Cal. 4th

1 1122, 1134 (2001); *Lealao v. Benefit Cal.*, 82 Cal. App. 4th 19, 41 (2000). Adjustment of the  
2 lodestar serves to “fix the fee at the fair market value for the legal services provided.”  
3 *Ketchum*, 24 Cal. 4th at 1134 (quoting *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095  
4 (2000)).

5 [T]he unadorned lodestar reflects the general local hourly rate for a *fee-bearing*  
6 case; it does *not* include any compensation for contingent risk, extraordinary skill,  
7 or any other factors a trial court may consider under *Serrano III*. The adjustment  
8 to the lodestar figure . . . is intended to approximate market-level compensation  
9 for such services, which typically includes a premium for the risk of nonpayment  
10 or delay in payment of attorneys fees. In this case, for example, the lodestar was  
11 expressly based on the general local rate for legal services in a *noncontingent*  
12 matter, where a payment is certain regardless of outcome.

13 *Id.* at 1138 (italics in original).

14 California courts identify several factors by which a lodestar amount can be adjusted,  
15 including: (1) the results achieved and how many people have benefitted, (2) the novelty and  
16 difficulty of the questions involved and the skill displayed in presenting them, (3) the extent to  
17 which the nature of the litigation precluded other employment by the attorneys, and (4) the  
18 contingent nature of the fee award. *Lealao*, 82 Cal. App. 4th at p. 40-41, n.8; *Serrano v. Priest*,  
19 20 Cal. 3d 25, 49 (1977) ("*Serrano III*"); *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407,  
20 1417 (1991).

21 **2. Plaintiffs’ Counsel Request An Award Representing Their Lodestar  
22 As Of January 15, 2008 And A Multiplier Of Three**

23 Plaintiffs’ counsel respectfully request approval of an award of attorneys’ fees in  
24 the amount of \$686,122.50. The requested amount represents (1) the Cotchett firm’s “lodestar”  
25 (hours multiplied by customary hourly rate) of \$228,707.50 for all time spent in this litigation  
26 until January 15, 2008, with a multiplier of three.<sup>1/</sup> Consistent with California law and Civil  
27 Local Rule 54-6, Plaintiffs have provided a detailed lodestar report for all Cotchett employees  
28 working on this case – including a description of the employees, the time spent and nature of  
their work, and their customary hourly rate. *Id.*, ¶¶24-37

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1 The lodestar does not include any time spent after January 15, 2008, including on such matters as briefing and arguing McAfee’s motion for summary judgment.

1 The Cotchett firm’s modest lodestar reflects time devoted to the initial investigation of  
2 the case, witness interviews, drafting the complaint, opposition to defendants’ motion to dismiss  
3 based on SLUSA preemption and standing arguments, preparation of an amended complaint,  
4 discovery, settlement discussions, and correspondence with clients and opposing counsel. *Id.*  
5 The lodestar is a fair reflection of months of litigation that ultimately helped to produce a  
6 substantial recovery for Plaintiffs and other McAfee former employees. *Id.* At the same time,  
7 the lodestar reflects genuine efforts by Plaintiffs’ counsel to focus efforts at trying to resolve the  
8 action and not spend an inordinate amount of time on matters that would not ultimately benefit  
9 the class. *Id.*<sup>2/</sup>

10 In addition, several factors identified by California courts for adjusting a lodestar figure  
11 upward also exist in this case.

12 First, as determined by the Court in the underlying motion for attorneys fees, the class  
13 action unquestionably achieved a substantial result for almost 700 former employees of McAfee.  
14 Approximately \$23.5 million in benefits were ultimately paid to putative class members,  
15 whereas McAfee refused to pay anything before the suit was filed. *Id.*, ¶41; Order at 10.

16 Indeed, the requested fee of \$686,122.50 represents just 2.91% of the total \$23.5 million  
17 value of relief. California courts frequently compare a firm’s lodestar and requested multiplier  
18 to the percentage that it represents of the overall recovery to others. This percentage “cross-  
19 check” provides a “credible measure of the market value of the legal services provided.” *Lealao*,  
20 82 Cal. App. 4th at 48-49. In *Lealao*, the court approved fees representing 24% of the total  
21 recovery, holding:

22 intermediate appellate courts in this state have, in effect, adopted the common  
23 federal practice of “cross-checking” the lodestar against the value of the class  
24 recovery (which is not duplicative because the amount or value of the recovery is  
25 not reflected in the basic lodestar), because the award is still “anchored” in the  
26 time spent by counsel on the case, and the practice is therefore consistent with the  
mandate of *Serrano III*. . . .

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27 <sup>2</sup> Thus, for example, after the pleadings were resolved when McAfee filed its answer on  
28 November 2007, Plaintiffs’ counsel devoted much of its efforts to trying to resolve the case,  
rather than immediately taking merits depositions or moving for class certification. The amount  
of time spent by the Cotchett firm reflects efforts to streamline the litigation.

1 *Id.* at 45, 51 (footnote omitted); *see also Glendora Community Redevelopment Agency v.*  
2 *Demeter*, 155 Cal. App. 3d 465 (1984) (approving fee award amounting to 25% of recovery);  
3 *Trew v. Volvo Cars of N. Am., LLC*, No. Civ. S-05-1379 RRB EFB, 2007 U.S. Dist. LEXIS  
4 55305, at \*15 (E.D. Cal. July 30, 2007) (applying lodestar cross-check to catalyst fees case: “The  
5 fee of \$1,385,000 is roughly 5% of the potential common fund secured by the action.”); *Beasley*,  
6 235 Cal. App. 3d at 1412 (approving fee award of \$1,958,509, which amounted to 37% of the  
7 total recovery).

8 Second, an upward enhancement is warranted given the contingent terms of counsel’s  
9 employment, reflecting both the risk of nonpayment with an unfavorable outcome and the extent  
10 to which the litigation precluded other employment by the attorneys. *Ketchum*, 24 Cal. 4th at  
11 1132-33, 1138. California courts hold that a contingency enhancement reflects that “[a]  
12 contingent fee must be higher than a fee for the same legal services paid as they are performed.”  
13 *Id.* at 1132. Here, Plaintiffs’ counsel litigated this case for over a year, and advanced all  
14 expenses, without receiving any compensation and risking an uncertain recovery. *Molumphy*  
15 Decl., ¶40. While McAfee announced its intention to change its policy after the complaint was  
16 filed, it then actively litigated the case, filed a motion to dismiss, denied class action allegations  
17 in its answer, resisted discovery and, most recently, filed a motion for summary judgment.  
18 *Compare, Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 835 (2001) (defendant never  
19 contested plaintiffs’ legal claims and tried to settle case and pay reasonable attorneys’ fees  
20 almost immediately after the complaints were filed).

21 Finally, the case involved novel and complex legal questions. At its core, the case  
22 depended on the parties’ interpretation of complex stock option agreements, impacting hundreds  
23 of employees over several years, and alleged federal securities trading restrictions. At the  
24 motion to dismiss stage, McAfee asserted that the entire case should be dismissed based on  
25 federal preemption under SLUSA, requiring the parties to analyze the application of federal  
26 securities statutes to stock option plans and claims made under such plans. This was not an issue  
27 with extensive legal precedent. McAfee further asserted that its remedial actions stripped  
28 Plaintiffs of legal standing, again raising novel issues that required detailed factual analysis of

1 McAfee's actions compared against the damages available to Class members. When McAfee's  
2 motion to dismiss was overruled, it filed an answer denying virtually every allegation and  
3 asserting numerous affirmative defenses. For example, McAfee took the position that it was  
4 legally precluded from allowing former employees to exercise and, presumably, extending their  
5 exercise period beyond the blackout. McAfee challenged Plaintiffs' right to conduct discovery  
6 pending class certification and concerning absent Class members. Throughout this process,  
7 Plaintiffs' counsel acted diligently to ensure recovery for the seven named Plaintiffs, as well as  
8 all other McAfee employees denied the ability to exercise their stock options. Molumphy Decl.,  
9 ¶¶8, 39.

10 All of these considerations support an upward adjustment of the lodestar. As one  
11 California court explained:

12 . . . Given the unique reliance of our legal system on private litigants to enforce  
13 substantive provisions of law through class and derivative actions, attorneys  
14 providing the essential enforcement services must be provided incentives roughly  
15 comparable to those negotiated in the private bargaining that takes place in the  
16 legal marketplace, as it will otherwise be economic for defendants to increase  
17 injurious behavior.

18 *Lealao*, 82 Cal. App. 4th at 47. The requested lodestar of three also comports with similar  
19 multipliers approved in other cases. *See, e.g., Wershba*, 91 Cal. App. 4th at 255 (“[m]ultipliers  
20 can range from 2 to 4 or even higher”); *Glendora Community Redevelopment Agency*, 155 Cal.  
21 App. 3d at 479-480 (approving multiplier of 12); *Oakland v. Oakland Raiders*, 203 Cal. App. 3d  
22 78, 82-83, 85 (1988) (approving multiplier of approximately 3); *Sternwest Corp. v. Ash*, 183 Cal.  
23 App. 3d 74, 76 (1986) (trial court had discretion to award multiplier of 2, 3, 4, or another  
24 number); *Paulson*, 2007 U.S. Dist. LEXIS 43587 at \*14-17 (applying multiplier of 2 for  
25 underlying litigation and no multiplier for the fees on fees litigation).

26 **3. Plaintiffs' Counsel Requests Reimbursement Of \$4,996.23,**  
27 **Representing Reasonable Expenses Advanced**

28 Costs under the private attorney general statute are determined under the general costs  
statute, California Code of Civil Procedure Section 1033.5. *Benson v. Kwikset Corp.*, 152 Cal.  
App. 4th 1254, 1283 (2007) (“Code of Civil Procedure section 1021.5 authorizes recovery of  
attorney fees by the prevailing party. Since the statute does not mention costs, we conclude the

1 Legislature intended Code of Civil Procedure section 1033.5, the general costs statute, to  
2 apply.”)

3 The Cotchett firm advanced litigation expenses of \$4,996.23 through January 15, 2008 to  
4 fund this action. See Molumphy Decl., ¶42. These expenses fall within the purview of  
5 categories of costs covered by Section 1033.5. Accordingly, Plaintiffs’ counsel respectfully  
6 request that the Court approve reimbursement of \$4,996.23 in expenses.

7 **IV. CONCLUSION**

8 Consistent with the Court’s Order approving an award of fees and costs based on the  
9 substantial relief obtained for Class members, Plaintiffs respectfully request that the Court issue  
10 a Report and Recommendation finding that (1) McAfee completed the provision of relief to  
11 former employees no later than January 15, 2008 and (2) Plaintiffs’ counsel, Cotchett, Pitre &  
12 McCarthy, is entitled to an award of \$686,122.50 in attorneys fees (\$228,707.50 lodestar with  
13 multiplier of three) and \$4,996.23 in costs.

14 Date: October 31, 2008

COTCHETT, PITRE & MCCARTHY

15 By: \_\_\_\_\_/s/  
16 MARK C. MOLUMPHY

17 *Attorneys for Plaintiffs and the Class*

