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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SAM WILLIAMSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MCAFEE, INC.,

Defendant.

SAMANTHA KIRBY, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MCAFEE, INC.,

Defendant.

Case No. [5:14-cv-00158-EJD](#)

**ORDER:**

**GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND**

**GRANTING MOTION FOR ATTORNEYS' FEES AND COSTS AND FOR SERVICE AWARDS**

Re: Dkt. Nos. 98, 99

Case No. [5:14-cv-02475-EJD](#)

Re: Dkt. Nos. 69, 70

Plaintiffs bring claims on behalf of two classes of McAfee customers: (1) those who were allegedly overcharged for automatic renewal of McAfee software (the “Auto-Renewal Class”) and (2) those who purchased software where McAfee advertised a “reference price” (a crossed-out price shown alongside a discounted purchase price) that was allegedly false (the “Reference Price Class”). Dkt. No. 42.<sup>1</sup> This Court granted preliminary approval of the proposed settlement. Dkt.

<sup>1</sup> Docket citations refer to Williamson v. McAfee, Case No. 14-cv-158. Another case—Kirby v. McAfee, Case No. 14-cv-2475—was formally related to Williamson and assigned to this Court on May 29, 2015.

1 No. 96. Plaintiffs and class counsel now move for final approval and for attorneys’ fees, costs, and  
2 service awards. Dkt. Nos. 98 and 99.

3 **I. CLASS SETTLEMENT**

4 Under the settlement, each member of the Auto-Renewal Class receives a “value  
5 certificate” for \$11.50 that can only be used to purchase McAfee or Intel Security products. Dkt.  
6 No. 98 at 7–9. \$11.50 is roughly half of the alleged overcharge. Id. Class members had the option  
7 to receive \$11.50 in cash instead of a certificate if they submitted a form by December 23, 2016.  
8 Id. Ultimately, 263,261 class members opted for cash, totaling \$3,027,501.50. Dkt. No. 111 at 7.

9 McAfee also agrees to change its practices regarding pricing and disclosure of auto-  
10 renewal terms. Dkt. No. 98 at 7–8. Members of the Reference Price Class receive no monetary  
11 benefit. Dkt. No. 98 at 8. This is because Plaintiffs sought injunctive relief, but not monetary  
12 relief, for the reference price claims. Dkt. No. 42 ¶¶ 150, 160.

13 Courts apply heightened scrutiny to “coupon settlements.” 28 U.S.C. § 1712; In re Online  
14 DVD-Rental Antitrust Litig., 779 F.3d 934, 949 (9th Cir. 2015). But this is not a coupon  
15 settlement, since class members had the option to receive cash instead of value certificates, even  
16 though they received certificates by default. Id. at 952 (“the claimants in this case had the option  
17 of obtaining cash instead of a gift card, undercutting the argument that the settlement forces them  
18 to buy from the defendant”); CLRB Hanson Indus., LLC v. Weiss & Assocs., PC, 465 F. App’x  
19 617, 619 (9th Cir. 2012) (“The settlement gives every class member the option to receive its share  
20 of the settlement proceeds in cash. . . . This is not a ‘coupon settlement’ and therefore does not  
21 trigger the Class Action Fairness Act of 2005’s limitations on contingent fees awarded in  
22 connection with such settlements.”).

23 Upon review of the settlement terms, the arguments of the parties and class counsel, and  
24 objections from class members, the Court finds that the settlement is “fair, adequate, and  
25 reasonable” and should be approved. Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 576 (9th  
26 Cir. 2004).

1                   **II. ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS**

2                   Class counsel seek \$2,321,225.92 in attorneys’ fees, \$78,774.08 in costs, and \$1,250 in  
3 service awards for each of the named plaintiffs. Dkt. No. 99 at 7–8, 17. Courts in the Ninth Circuit  
4 may use either or both of two methods to evaluate requests for attorneys’ fees: the percentage-of-  
5 the-fund method and the lodestar method. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir.  
6 1998).

7                   Under the percentage-of-the-fund method, courts evaluate attorneys’ fees as a percentage  
8 of the total settlement fund. Id. The guideline is 25%, which courts may adjust depending the  
9 circumstances of the case. Id.; Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048–49 (9th Cir.  
10 2002). In this case, the monetary value of the certificates is uncertain. If the certificates are valued  
11 at zero, the requested attorneys’ fees amount to more than three quarters of the settlement fund:  
12  $(\$2.32\text{m in attorneys’ fees}) / (\$3.03\text{m in cash elections}) = 76.6\%$ . However, if the certificates are  
13 valued at 10% of their face value, or \$1.50, then the attorneys’ fees are about 26.8% of the  
14 settlement fund, which meets the fairness guidelines:  $(\$2.32\text{m in attorneys’ fees}) / (7.53\text{m class}$   
15  $\text{members} \times \$11.50 \times 0.10) = 26.8\%$ . \$1.50 is a cautious estimate: the certificates are likely worth  
16 more to many class members; and if not, the class members were free to choose cash instead. The  
17 Court finds the requested fees to be reasonable under the percentage-of-the-fund method.

18                   Under the lodestar method, the lodestar is the number of hours spent on the case  
19 multiplied by a reasonable hourly rate—so, if one attorney bills 1,000 hours at \$100/hour, the  
20 lodestar is \$100,000. Hanlon, 150 F.3d at 1029. The lodestar “may be adjusted upward or  
21 downward to account for several factors including the quality of the representation, the benefit  
22 obtained for the class, the complexity and novelty of the issues presented, and the risk of  
23 nonpayment.” Id. Here, class counsel present a lodestar of \$1,601,805.85, based on 2,612.95 hours  
24 billed. Dkt. No. 99 at 12–13. Counsel ask the Court to multiply the lodestar by roughly 1.449,  
25 amounting to a total fee award of \$2,321,225.92. Based on counsel’s billing records and the  
26 circumstances of this case, the Court finds the requested fees to be reasonable under the lodestar

1 method. See Vizcaino, 290 F.3d at 1051 (applying a lodestar multiplier of 3.65 and noting that the  
2 majority of cases apply a multiplier between 1.0 and 3.0)

3 Lastly, the Court finds it appropriate to grant class counsel's requests for \$78,774.08 in  
4 costs and \$1,250 in service awards to each named plaintiff.

5 **III. CONCLUSION**

6 The Court orders as follows:

7 1. Plaintiffs' and class counsel's motion for final approval of class settlement is  
8 GRANTED.

9 2. Plaintiffs' and class counsel's motion for attorneys' fees, costs, and service awards  
10 is GRANTED.

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12 **IT IS SO ORDERED.**

13 Dated: February 3, 2017

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EDWARD J. DAVILA  
United States District Judge

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