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7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 OFFICE DEPOT, INC.,

13 Defendant(s).

NO. 19-2-29918-5

CONSENT DECREE

[CLERK'S ACTION REQUIRED]

14 **I. JUDGMENT SUMMARY**

15	1.1	Judgment Creditor	State of Washington
16	1.2	Judgment Debtor	Office Depot, Inc.
17	1.3	Principal Judgment Amount	\$900,000.00
18	1.4	Post Judgment Interest Rate:	12% per annum
19	1.5	Attorneys for Judgment Creditor:	Craig J. Rader Lynda Atkins Assistant Attorneys General
20			
21	1.6	Attorneys for Judgment Debtor:	Jason E. Bernstein Focal PLLC
22			

23 1.7 Plaintiff, the Attorney General of the State of Washington, by and through its
24 attorneys, Robert Ferguson, Attorney General, and Craig J. Rader and Lynda Atkins, Assistant
25 Attorneys General, conducted an investigation and commenced this action pursuant to
26 Revised Code of Washington (RCW) 19.86, the Consumer Protection Act (CPA). Defendant

1 Office Depot, Inc. (Defendant), by and through its attorneys, agree on a basis for the settlement
2 of the matters subject to Plaintiff's investigation and to the entry of this Consent Decree against
3 Defendant without the need for trial or adjudication of any issue of law or fact.

4 The Court finds no just reason for delay.

5 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
6 follows:

7 II. PARTIES AND JURISDICTION

8 2.1 Plaintiff is the Attorney General of the State of Washington.

9 2.2 Defendant is Office Depot, Inc., a corporation with its principal office located at
10 6600 N Military Trail, Boca Raton, Florida 33496.

11 2.3 This Court has jurisdiction of the subject matter of this action, jurisdiction over
12 the parties to this action, and venue is proper in this Court. RCW 4.12.

13 2.4 Jurisdiction is proper because Defendant transacted business within Washington,
14 including King County, and has engaged in conduct impacting Washington or its residents at all
15 times relevant to the claims at issue.

16 2.5 Entry of this Consent Decree is in the public interest and reflects a negotiated
17 agreement between the parties.

18 2.6 This Consent Decree is entered pursuant to and subject to RCW 19.86 *et seq.*

19 2.7 Defendant, by entering into this Consent Decree, does not admit the allegations
20 of the Complaint other than those solely as necessary to establish the jurisdiction of this Court.

21 2.8 Plaintiff and Defendant agree this Consent Decree does not constitute evidence or
22 an admission regarding the existence or non-existence of any issue, fact, or violation of any law
23 alleged by Washington.

24 2.9 Defendant recognizes and states this Consent Decree is entered into voluntarily
25 and that no promises, representations, or threats have been made by the Attorney General's
26

1 Office or any member, officer, agent, or representative thereof to induce them to enter into this
2 Consent Decree, except for the promises and representations provided herein.

3 2.10 Defendant waives any right it may have to appeal from this Consent Decree or to
4 otherwise contest the validity of this Consent Decree.

5 2.11 Defendant further agrees this Court shall retain jurisdiction of this action and
6 jurisdiction over Defendant for the purpose of implementing and enforcing the terms and
7 conditions of this Consent Decree and for all other purposes related to this matter.

8
9 **III. DEFINITIONS**

10 3.1 "Electronic Device" means any cell phone, handheld device, smartphone, tablet,
11 laptop computer, desktop computer, or any other device on which a software program, code,
12 script, or other content can be downloaded, installed, or run.

13 3.2 "PC Health Check" shall mean any and all iterations of the computer diagnostic
14 program by that name or similar names provided by Support.com, Inc. (and/or predecessor
15 entities) and made available to retail consumers by Office Depot and Office Max Incorporated
16 between approximately 2007 and 2016.

17 3.3 "Person" means any natural person or entity, including but not limited to any
18 individual, firm, corporation, company, partnership, association, trade association, business
19 trust, public agency, department, bureau, board, or any other form of public, private or legal
20 entity.

21 **IV. INJUNCTIONS**

22 4.1 The injunctive provisions of this Consent Decree shall apply to Defendant and
23 to its successors and assigns.¹

24
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¹ The form and scope of this language, as used throughout this document, is intended to have the same
26 form, scope, and application as subsection (d) of Washington Civil Rule 65.

1 General has or could have brought under the Consumer Protection Act, RCW 19.86; arising out
2 of Office Depot's conduct related to, and the Attorney General's investigation of, PC Health
3 Check, up to and through the Effective Date of this action, including all claims and allegations
4 alleged in the Complaint. This release includes all aspects of Office Depot's employment of PC
5 Health Check, to include advertisements, the use of the program to diagnose computers and sell
6 repair services, and representations made to the consumers by PC Health Check. Nothing
7 contained in this paragraph shall be construed to limit the ability of the Attorney General to
8 enforce the obligations that Office Depot has under this Consent Decree.

9 **VII. ENFORCEMENT**

10 7.1 Upon request by the Plaintiff, Defendant shall provide to the Attorney General's
11 Office any reports or information submitted as required by the Stipulated Order For Permanent
12 Injunction and Monetary Judgment entered into on March 28, 2019, between the Federal Trade
13 Commission and Office Depot, Inc., to include the compliance reporting described in paragraph
14 VII, within thirty (30) days of the request.

15 7.2 If Defendant violates a material condition of this Consent Decree, Plaintiff may
16 seek the imposition of additional conditions, civil penalties of up to \$25,000.00 per violation
17 pursuant to RCW 19.86.140, restitution, injunctive relief, attorney's fees, costs, and such other
18 remedies as the Court may deem appropriate. In any successful action to enforce this Consent
19 Decree, the prevailing party may seek its reasonable costs, including reasonable attorneys' fees
20 pursuant to RCW 19.86.080(1).

21 **VIII. ADDITIONAL PROVISIONS**

22 8.1 This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
23 retained for the purpose of enabling any party to this Consent Decree with or without the prior
24 consent of the other party to apply to the Court at any time for enforcement of or compliance
25 with this Consent Decree, to punish violations thereof, or to modify or clarify this Consent
26 Decree.

1 8.2 Under no circumstances shall this Consent Decree, or the name of the State of
2 Washington, this Court, the Office of the Attorney General, the Consumer Protection Division,
3 or any of their employees or representatives (collectively the “Washington persons”) be used by
4 Defendant or any of its respective owners, members, directors, successors, assigns, transferees,
5 officers, agents, servants, employees, representatives, and all other persons or entities in active
6 concert or participation with Defendant, in connection with any selling, advertising, or
7 promotion of products or services, or as an endorsement or approval of Defendant’s acts,
8 practices, or conduct of business, that are subject to this Consent Decree. For avoidance of
9 doubt, nothing herein shall prevent Defendant from listing and/or describing any business
10 dealings with the Washington persons listed in this paragraph for purposes of (1) regulatory
11 filings and other submissions pursuant to law; (2) procurements or business proposals that
12 provide identifying information about other customer relationships; and (3) other similar listings
13 or descriptions that do not include a representation that the Washington persons have endorsed
14 the practices described herein.

15 8.3 Nothing in this Consent Decree shall grant any third-party beneficiary or other
16 rights to any person who is not a party to this Consent Decree.

17 8.4 Nothing in this Consent Decree shall be construed to limit or bar any other
18 governmental entity or person from pursuing other available remedies against Defendant or any
19 other person.

20 8.5 Nothing in this Consent Decree shall be construed as relieving Defendant of the
21 obligation to comply with all state and federal laws, regulations, and rules, nor shall any of the
22 provisions of this Consent Decree be deemed to be permission to engage in any acts or practices
23 prohibited by such laws, regulations, and rules.

24 8.6 This Consent Decree in no way limits the Plaintiff from conducting any lawful
25 non-public investigation to monitor Defendant’s compliance with this Consent Decree or to
26

1 investigate other alleged violations of the CPA, which may include but, is not limited to,
2 interviewing customers or former employees of Defendant.

3 8.7 This Consent Decree shall be binding upon and inure to the benefit of Defendant's
4 successors and assigns. For 10 years after entry of this Order, Defendant and its successors and
5 assigns shall notify the Plaintiff within (5) days after any change in control of Defendant that
6 would change the identity of the corporate entity responsible for this Consent Decree; including,
7 but not limited to, dissolution, assignment, sale, merger, or other action that results in the
8 emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or
9 affiliate that engages in any acts or practices subject to this order; the filing of a bankruptcy
10 petition; or a change in the corporate name or address.

11 8.8 Any notice or other communication required or permitted under this Consent
12 Decree shall be in writing and delivered to the following persons or any person subsequently
13 designated by the parties:

14
15 For the Plaintiff:

16 Office of the Attorney General
17 Consumer Protection Division
18 Attention: Craig Rader and Lynda Atkins
19 Assistant Attorneys General
20 800 Fifth Avenue, Suite 2000
21 Seattle, WA 98104-3188

22 For the Defendants

23 Office of the General Counsel
24 Office Depot, Inc.
25 Corporate Office
26 6600 North Military Trail
 Boca Raton, FL 33496

1 8.9 The Clerk of the Court is ordered to immediately enter the foregoing Consent
2 Decree.

3 DONE IN OPEN COURT this ____ day of November, 2019.
4
5

6 _____
JUDGE/COURT COMMISSIONER

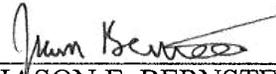
7 Presented by:

Notice of Presentment Waived and
Approved as to Form by:

8 ROBERT W. FERGUSON
9 Attorney General

Jason E. Bernstein

10 
11 _____
CRAIG J. RADER, WSBA #50300
12 LYNDA ATKINS, WSBA #52396
Assistant Attorneys General
13 Attorneys for Plaintiff State of Washington
800 Fifth Avenue, Suite 2000
14 Seattle, WA 98104
(206) 442-4482

15 
16 _____
JASON E. BERNSTEIN, WSBA #39362
17 Focal PLLC
18 Attorney for Defendant Office Depot, Inc.
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-29918-5
Case Title: State of Washington vs Office Depot
Document Title: Order

Signed By: Commissioner Henry Judson
Date: November 12, 2019

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'H. Judson' written in a cursive style.

Judge/Commissioner: Commissioner Henry
Judson

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 844294CA764423F255D4AB35ECB784887D24E34F
Certificate effective date: 7/22/2019 4:01:59 PM
Certificate expiry date: 7/22/2024 4:01:59 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Samuel Chung:
uuI45JNJ6RGQluq2jC11QQ=="

1 diagnostic and repair services. The Office Depot Companies advertised the PC Health Check
2 Program to consumers as a free service that would purportedly diagnose consumers' computers
3 for security problems and performance issues, including scanning the computer for viruses.

4 1.2 In numerous instances throughout this time-period, the Defendant used the
5 PC Health Check Program to report to customers that the scan had found or identified "Malware
6 Symptoms" when no such symptoms existed. Additionally, in numerous instances, the PC Health
7 Check Program falsely reported to consumers that the program had found "infections" on the
8 consumer's computer.

9 1.3 Contrary to these representations, the PC Health Check Program did not, and by
10 design, could not "find" or "identify" anything to return these results. Rather, Support.com
11 programmed the PC Health Check Program so that whenever an Office Depot employee checked
12 any one of four checkboxes (relating to generic computer concerns, such as pop-ups, slowness,
13 crashes, or virus warnings) that appeared at the beginning of the program before the scan started
14 (the "Initial Checkbox Statements"), the PC Health Check Program automatically reported the
15 detection of malware symptoms, and for a time, "infections." Despite the statements in the
16 PC Health Check Program's Detailed Report that the scan "found infections" or "found" or
17 "identified" malware symptoms, the PC Health Check Program's detection of malware
18 symptoms was entirely dependent on whether any of the Initial Checkbox Statements was
19 checked and not on the actual state of the computer. Nothing in the PC Health Check Program
20 or in the Office Depot Companies employee's interaction with the customer informed consumers
21 that this predetermined result was simply the result of checking a box.

22 1.4 Based on the deceptive representations made by the Defendant through the PC
23 Health Check Program, consumers purchased computer diagnostic and repair services that could
24 cost more than \$300 per service.
25
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1 **II. PARTIES**

2 2.1 The Plaintiff is the State of Washington. The Attorney General is authorized to
3 commence this action pursuant to RCW 19.86.080 and RCW19.86.140.

4 2.2 Defendant Office Depot, Inc., is a publicly traded Delaware corporation with a
5 business address of 6600 North Military Trail, Boca Raton, Florida, 33496. Office Depot is a
6 nationwide retailer that operates over a thousand stores selling office supplies, furniture, print
7 services, and technical support services.

8 **III. JURISDICTION AND VENUE**

9 3.1 The State files this Complaint and institutes these proceedings under the
10 provisions of the Consumer Protection Act, RCW 19.86.

11 3.2 The Defendant has engaged in the conduct set forth in this Complaint in King
12 County and elsewhere in the State of Washington by operating retail stores within the State and
13 selling computer repair services utilizing the PC Health Check Program.

14 3.3 Venue is proper in King County pursuant to RCW 4.12.020 and RCW 4.12.025,
15 and Court Rule 82 because Office Depot transacts business in King County.

16 **IV. NATURE OF TRADE OR COMMERCE**

17 4.1 Defendant, at all times relevant to this action, has been engaged in trade or
18 commerce within the meaning of RCW 19.86.020, by operating retail stores that sell computer
19 repair services, amongst other goods and services.

20 **V. FACTS**

21 **A. OFFICE DEPOT’S COMPUTER REPAIR PLATFORM**

22 5.1 In July 2007, Office Depot and Support.com entered into an agreement whereby
23 Support.com provided computer repair and technical services to Office Depot customers.
24 Pursuant to this agreement, Office Depot sold computer tune-up, diagnostic, and repair services
25 at Office Depot stores that it branded as Office Depot services but were fulfilled by Support.com
26 employees. Those employees remotely accessed consumers’ computers that had been brought

1 into Office Depot stores. Office Depot and Support.com divided the proceeds from the sale of
2 each tech-support service that Support.com fulfilled for Office Depot customers.

3 5.2 Under this agreement, from approximately July 2007 to November 2016,
4 Support.com licensed, made available, and distributed to Office Depot a software program
5 variously known as PC Health Check, PC Tune-up, PC Support Agent, and PC Checkup (“the
6 PC Health Check Program”) in order to facilitate the sale of computer repair services to Office
7 Depot retail customers.

8 5.3 Office Depot and Support.com configured the PC Health Check Program to
9 recommend to consumers specific services sold by Office Depot and fulfilled by Support.com.
10 Office Depot used the PC Health Check Program at its stores to further its goal of increasing
11 sales of tech-support services.

12 5.4 To assuage Office Depot’s concerns about the length of time the PC Health Check
13 Program ran, Support.com presented it to Office Depot as one of its “conversion tools that
14 simplify sales process for associates and expand program reach” and a “recommendation map
15 designed to maximize return on in-store traffic.” Support.com informed Office Depot that this
16 software program runs in only a few minutes using “heuristic questions to identify likely
17 malware infestations.”

18 5.5 With this understanding of the PC Health Check Program, Office Depot
19 instructed its store employees to use the PC Health Check Program to sell tech-support services
20 offered in the Office Depot stores and performed remotely by Support.com technicians.

21 5.6 OfficeMax entered into a similar agreement with Support.com in 2009 and, by
22 2011, began using the PC Health Check Program in a similar fashion in its stores.

23 5.7 After Office Depot and OfficeMax merged in or around November 2013, the
24 Defendant continued to use the PC Health Check Program under the Office Depot and
25 OfficeMax store banners until November 2016.
26

1 **B. THE OFFICE DEPOT COMPANIES LURED CONSUMERS INTO STORES**
2 **WITH PROMISES OF A “FREE PC TUNE-UP”**

3 5.8 To promote the PC Health Check Program offered in its stores, the Office Depot
4 Companies used various marketing and advertising methods, including radio commercials, print
5 and online ads, promotions, and promotional cards. The Office Depot Companies crafted these
6 marketing and advertising materials to encourage consumers to bring their computers into stores
7 so that an Office Depot Company employee could install and run PC Health Check on the
8 consumer’s computer.

9 5.9 The Office Depot Companies marketed the PC Health Check Program as a “free
10 PC tune-up,” a “free PC checkup,” and, at times, as a free “professional tune-up.” In numerous
11 instances, the Office Depot Companies claimed that the value of the free PC tune-up service was
12 \$19.99, \$29.99, or even \$60, but offered the service to consumers for free.

13 5.10 The Office Depot Companies explained their “tech experts” would “run complete
14 diagnostics” and “optimize” the computer. As described below, PC Health Check did not run
15 complete diagnostics on consumers’ computers.

16 5.11 In addition to commercial advertisements on radio, in print ads, and online, the
17 Defendant created the “PCHC card,” a card for store employees to hand out to consumers in its
18 stores. One typical iteration of the PCHC card advertised: “We fix computers. Come in today
19 for your FREE PC tune-up. Improve overall system performance. Security Assessment. Scans
20 the system for viruses.”

21 5.12 The Office Depot Companies trained store employees to ask consumers, “When
22 was the last time you had a professional tune up done on your PC?” The Office Depot Companies
23 also trained store employees to tell consumers that the PC Health Check Program will make their
24 PC run faster and check for viruses and to schedule the consumer for an appointment to return
25 to the store with his or her computer for the free PC tune up. The Office Depot Companies
26

1 instructed its employees to offer to run the PC Health Check Program on every computer that a
2 consumer brought into a store.

3 5.13 The PC Health Check Program became an important part of the Office Depot
4 Companies' tech services sales strategy and was responsible for a substantial share of its tech
5 service revenues.

6 **C. AN OVERVIEW OF THE OFFICE DEPOT COMPANIES' USE OF THE PC**
7 **HEALTH CHECK PROGRAM**

8 5.14 When the consumer brought a computer into an Office Depot or OfficeMax store
9 for the "free PC tune-up," the Office Depot Companies' store employees would install and run
10 the most recent version of the PC Health Check Program on the consumer's computer.

11 5.15 Support.com made accessible the most recent version of the PC Health Check
12 Program on a webpage or web portal created and maintained specifically for the Office Depot
13 Companies' store employees.

14 5.16 The Defendant, through Support.com, actively tracked the number of times
15 Office Depot and OfficeMax store employees utilized the PC Health Check Program. At the
16 request of the Office Depot Companies, Support.com captured this data whenever Office Depot
17 Companies store employees ran the PC Health Check Program and downloaded the software
18 from the web portal. Support.com supplied this information to the Defendant in various reports.

19 5.17 The Office Depot Companies used the information and data from these reports to
20 monitor and comparatively assess stores' performance based on their usage of PC Health Check.

21 5.18 The PC Health Check Program was composed of a number of components,
22 including, inter alia, a pre-scan questionnaire page containing four questions with corresponding
23 checkboxes, a brief system scan (including a Quick Malware Scan"), a Detailed Report, and a
24 service recommendation. Later versions of the PC Health Check Program also included limited
25 optimizations that took place between the brief system scan and the Detailed Report, such as
26 removing junk files and reconfiguring certain settings.

1 5.19 However, the results of the Quick Malware Scan were unrelated to the results
2 returned when one of the Initial Checkbox Statements was selected. That is, even if the Quick
3 Malware Scan found no evidence of malware or a virus, such a finding would not change the
4 poor “security status” result and finding of “malware symptoms” or “infections” that was
5 automatically returned whenever one of the Initial Checkbox Statements was selected.

6 5.20 Once the PC Health Check Program was installed and opened on a consumer’s
7 computer, the program displayed the question “Does your computer have any of the problems
8 below?” followed by the Initial Checkbox Statements. While PC Health Check page containing
9 the Initial Checkbox Statements changed in appearance from 2009 to 2016, the wording of the
10 Initial Checkbox Statements remained the same. The Initial Checkbox Statements, as illustrated
11 in Figure 1 below, read: (i) “Frequent pop-ups or other problems prevent me from browsing the
12 internet,” (ii) “My PC recently became much slower or is too slow to use,” (iii) “I am often
13 warned of a virus infection or I am asked to pay for virus removal,” and (iv) “My PC frequently
14 crashes.”



16 *Figure 1: PC Health Check Program initial screen (2016 in-store version)*

17 5.21 The Defendant trained store employees on how to utilize the PC Health Check
18 Program and instructed their employees to check any of the Initial Checkbox Statements that
19 applied based on the consumers response. Consistent with their training, Office Depot and
20 OfficeMax store employees read each of the Initial Checkbox Statements once the program
21 began and selected the corresponding box based on the consumer's response. If the consumer
22 indicated that she had not experienced any of the issues, the store employee could proceed to the
23 scan portion of the PC Health Check Program with none of the boxes checked.

24 5.22 Consistent with corporate policy, the Office Depot Companies required its store
25 employees to run PC Health Check in front of the consumer. Once the store employee initiated
26 the scan, PC Health Check displayed a screen listing four categories starting with, as shown in

1 Figure 2 below, performance (represented by a gauge icon), security (represented by a shield
2 icon), data (represented by a meter icon), and system (represented by a gear icon).



13
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18 *Figure 2: PC Health Check Program scanning screen (2016 in-store version)*

19 5.23 The Defendant configured and customized the PC Health Check Program to
20 briefly scan specific parts of the computer, conduct certain checks of the performance, security,
21 data, and system, and assign a “status” to each of these categories. Support.com customized the
22 PC Health Check Program pursuant to the general specifications required by the Office Depot
23 Companies. The Office Depot Companies thereafter reviewed and approved upgrades or
24 modifications to the design or configuration of the PC Health Check Program before it was made
25 available to the Office Depot and OfficeMax stores.

26 5.24 The PC Health Check Program displayed a progress bar under each category

1 reflecting the progress of the scan and checks for that category. After completing the scan, the
2 PC Health Check Program listed on a scan results screen the status of each category as “poor,”
3 “fair,” or “good” (as shown in Figure 3 below).



19 *Figure 3: PC Health Check Program initial scan results screen (2016 in-store version)*

20 5.25 In addition to displaying the terms “poor,” “fair,” and “good,” the status of each
21 category was also reflected through the use of colors and either a checkmark or an “X.” A status
22 of “poor” resulted in a red “X” with the word “poor” also rendered in red, a “fair” status resulted
23 in a yellow checkmark with the word “fair” rendered in yellow, and the status of “good” resulted
24 in a green checkmark with the word “good” rendered in green. Additionally, the icons
25 representing each category were shaded with the color corresponding to the status. For example,
26 the PC Health Check Program displayed the shield representing “security” in red if the security

1 status was “poor” or green if it was “good.”

2 5.26 Displayed under each category’s status was a link titled “more details.” Clicking
3 on this link pulled up the “Detailed Report” listing the results of the scan and various checks run
4 by the PC Health Check Program for each category. The Detailed Report again displayed the
5 automated “results” of the Initial Checkbox Statements and the Quick Malware Scan. The Office
6 Depot Companies required its store employees to review with the consumer the scan results
7 generated in the Detailed Report.

8 5.27 In addition to the “more details” link, the PC Health Check Program displayed a
9 button labeled “Repair & Recommend” in the upper right corner of the screen. Clicking on this
10 button initiated a number of limited modifications that the Defendant claimed would improve
11 the performance category for the computer. These optimizations, however, had no effect on the
12 security category.

13 5.28 After this process, the PC Health Check Program displayed a final scan results
14 page that reflected the changed status of one or more non-security categories.

15 5.29 In conjunction with displaying the final scan results page, the PC Health Check
16 Program generated an updated Detailed Report purporting to show the specific results found by
17 the program and any changes the program made. This Detailed Report also displayed the
18 automated “results” of the Initial Checkbox Statements and the Quick Malware Scan. The Office
19 Depot Companies required its store employees to review the final scan results generated in the
20 detailed Report with the consumer. The Office Depot Companies required its store employees
21 running the scan to save this Detailed Report to the desktop on the consumer’s PC.

22 5.30 PC Health Check’s final scan results page displayed a button labeled “view
23 recommendation” in the upper right hand corner.

24 5.31 Clicking on this button led to a final screen that displayed a detailed description
25 of the service the PC Health Check Program recommend for purchase (as shown in Figure 4
26 below).

1 PC SUPPORT AGENT

2 Office DEPOT OfficeMax TECH SERVICES PC SUPPORT AGENT

3

4 **Diagnostic, Repair, and Protection service**

5 With this service the Technician will use the latest diagnostic and resolution techniques to troubleshoot your computer problem

6 **Service Includes:**

7 • Diagnose the cause of crashes, lockups, and error messages

8 • Remove any viruses and/or spyware

9 • Fix any damage caused by viruses

10 • Install McAfee security software for ongoing security on your PC and provision it for additional devices like a tablet or smartphone.

11 • Plus, you will get 12 months of virus removal support

12

13 **Additional Recommended Services:**

14 • In-Store Data Backup

15  Complete Associate Survey

16

17 **BACK TO REPORT** **CLOSE**

18 **Feedback** 1-877-384-9202 | officedepot.support.com

16 *Figure 4: PC Health Check Program Service Recommendation Page (2016 in-store version)*

17 5.32 The Office Depot Companies instructed its store employees to offer the

18 recommendations made by the PC Health Check Program. For example, when the PC Health

19 Check Program recommended a diagnostic, repair, and protection service, in numerous

20 instances, the Office Depot Companies' store employees would recommend a service package

21 that contained a diagnostic, repair, and protection service, in addition to any add-on services or

22 products included in the package.

23 **D. THE DEFENDENT USED THE PC HEALTH CHECK PROGRAM TO MAKE**

24 **DECEPTIVE REPRESENTATIONS TO CONSUMERS**

25 5.33 The Defendant configured, with Support.com, and used the PC Health Check

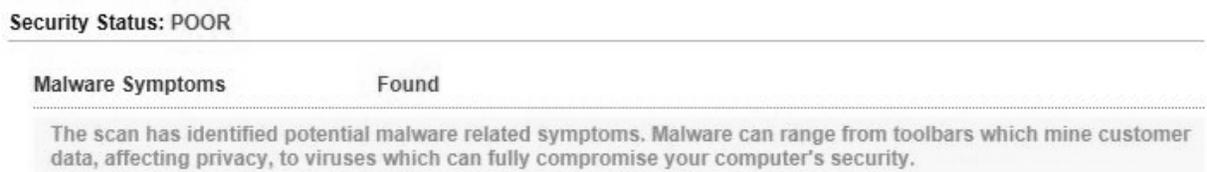
26 Program to falsely report to consumers that the scan portion of the program “found” or

1 “identified” malware symptoms or infections whenever an Initial Checkbox Statement was
2 checked, regardless of whether the computer was infected or had symptoms of malware. These
3 misrepresentations were stated in a section of the Detailed Report relating to “Malware
4 Symptoms.” In fact, the scan itself did not “find” or “identify” anything to return the results
5 listed in the “Malware Symptoms” section because the results under this section were triggered
6 only by checking one of the Initial Checkbox Statements.

7 5.34 The PC Health Check Program reported the results of the Quick Malware Scan
8 under a separate heading in the Detailed Report. The results of the Quick Malware Scan had no
9 impact on the findings that were always returned whenever one of the Initial Checkbox
10 Statements was selected.

11 5.35 The Office Depot Companies, with Support.com, configured the PC Health
12 Check Program to make these misrepresentations throughout the time Support.com provided the
13 program to the Office Depot Companies.

14 5.36 Since at least 2009 through November 2016, the Office Depot stores, through the
15 PC Health Check Program Detailed Report, falsely represented to consumers that the scan found
16 symptoms of malware on the consumer’s computer, as illustrated below:



17 **Security Status: POOR**
18
19
20 *Figure 5: PC Health Check Program Detailed Report when any Initial Checkbox Statements were checked.*

21 5.37 In fact, the scan was not connected to the finding in the Detailed Report. Rather,
22 the PC Health Check Program automatically generated the “Malware Symptoms Found” result
23 solely because the Office Depot store employee checked one or more of the Initial Checkbox
24 Statements at the outset of the running of the program on a consumer’s computer. As such, the
25
26

1 “Malware Symptoms Found” result was independent of any actual scan or check performed by
2 the PC Health Check Program.

3 5.38 The Defendant further misrepresented to consumers, through the PC Health
4 Check Program Detailed Report, what the scan had found or identified by making additional
5 statements directly below the “Malware Symptoms Found” result. Support.com configured this
6 language, with input and approval from the Office Depot Companies. The language in the
7 Detailed Report changed over the time that Office Depot stores used the PC Health Check
8 Program.

9 5.39 For example, from at least 2009 until approximately June 2011, immediately after
10 misrepresenting to consumers that the PC Health Check Program scan found malware symptoms,
11 the Defendant compounded the misrepresentation by stating in the Detailed Report that
12 consumers’ computers “could be infected with malware.”

13 5.40 Starting in or around July 2011 and until October 2015, this language was
14 modified and the Defendant represented to consumers that the PC Health Check Program had
15 “found infections in your system” in addition to “finding” malware symptoms.

16 5.41 In October 2015, at Office Depot’s request, Support.com changed the language
17 found under the “Malware Symptoms Found” statement to state the “scan has identified potential
18 malware related symptoms.” This language in the Detailed Report appeared until November
19 2016 when the Office Depot Companies stopped using the PC Health Check Program.

20 5.42 In late 2010 or early 2011, Support.com began providing OfficeMax the
21 PC Health Check Program for use in OfficeMax stores. From at least July 2011 to November
22 2016, OfficeMax used PC Health Check to misrepresent to consumers that the scan found
23 malware symptoms whenever an Initial Checkbox Statement was checked. Along with
24 deceptively claiming that the PC Health Check Program found malware symptoms, the programs
25 also stated, without substantiation, “Your system may be infected with malware.”
26

1 5.43 Contrary to the statements made by the PC Health Check Program described in
2 Paragraphs 5.24 through 5.42, the scan portion of the PC Health Check Program did not search
3 for or find anything to generate the results appearing under the “Malware Symptoms” section of
4 the Detailed Report. Rather, the PC Health Check Program was configured such that whenever
5 a store employee checked one or more of the Initial Checkbox Statements before running the
6 scan, the program would automatically and invariably return the result “Malware Symptoms
7 Found” and the explanatory language that appeared under that heading.

8 **E. THE DEFENDANT KNEW THAT THE PC HEALTH CHECK PROGRAM**
9 **FALSELY REPORTED THAT THE SCAN FOUND MALWARE SYMPTOMS**

10 5.44 Since at least 2012, the Office Depot Companies understood that checking any of
11 the four boxes would lead to a finding of malware symptoms. Indeed, in May 2013, OfficeMax
12 warned its stores not to run the PC Health Check Program after a tech repair service had been
13 completed because, if “any of the questions at the beginning of the [PC Health Check Program]
14 are checked, it will automatically suggest a Software repair,” because the “tool ‘assumes’ there
15 is an infection based on the questions asked.”

16 5.45 In 2015, Support.com account executives reminded the Office Depot Companies
17 sales management team that “if any of these [boxes] are selected, the recommended service will
18 be a Diagnostic SKU, as the assumption is that the system is infected.”

19 **F. OFFICE DEPOT COMPANIES AGGRESIVELY PUSHED THE PC HEALTH**
20 **CHECK PROGRAM DESPITE COMPLAINTS FROM STORE EMPLOYEES**

21 5.46 Since at least 2012, the Office Depot Companies received complaints and
22 concerns from store employees about the accuracy and reliability of how the PC Health Check
23 Program reported the detection of malware or malware symptoms.

24 5.47 In 2012, for example, an employee notified Office Max’s corporate management
25 team that PC Health Check would report malware symptoms on a computer that “doesn’t have
26 anything wrong with it” just by checking one of the four boxes. The employee wrote: “I cannot

1 justify lying to a customer or being TRICKED into lying to them for our store to make a few
2 extra dollars.”

3 5.48 In 2013, the Florida Attorney General’s Office informed Office Depot about
4 complaints regarding Office Depot’s tech-support services. One of the complaints came from an
5 Office Depot employee who reported that Office Depot was using a software program that “will
6 make consumers believe their computer has a virus...” This sample of complaints was forwarded
7 to Office Depot’s corporate counsel.

8 5.49 In 2014, an Office Depot store employee observed that the PC Health Check
9 Program is “rather poor and either wrong or inconclusive” and that the program “finds malware
10 symptoms but independent scans reveal no issues.” The employee suggested that the Defendant
11 reconfigure the PC Health Check software “so it does not come back with false positives and/or
12 Diag+Repair every time.” The employee’s concerns and suggestions were escalated to Office
13 Depot’s corporate management team.

14 5.50 In 2015, an Office Depot store employee told the manager of his store that he
15 believe the statement “found infections in your system” from PC Health Check was deceptive.
16 The store manager escalated this complaint through his chain of command at Office Depot,
17 informing his district manager that the employee had mentioned “calling a lawyer” and
18 complaining to an internal employee complaint hotline. The district manager escalated the
19 complaint to other management personnel and Support.com.

20 5.51 Despite these complaints and concerns, the Office Depot Companies instructed
21 its store employees to continue to advertise the free tune-up service, continue to run the
22 PC Health Check Program on computers brought into the stores, and to convert 50% or more of
23 all PC Health Check runs into tech-support service sales.

24 5.52 The Office Depot Companies rewarded store employees who were promoting the
25 PC Health Check Program with positive performance reviews and by paying extra commissions
26 to store managers and store employees who met their weekly PC Health Check runs and tech-

1 support service sales goals. At the same time, the Office Depot Companies censured store
2 managers and employees who continually failed to meet company-wide targets.

3 5.53 For example, the Office Depot Companies' sales management team
4 communicated to stores on a weekly (and often daily) basis, both the number of PC Health
5 Checks stores were expected to run weekly, as well as the expected rate of converting such
6 PC Health Checks into sales of tech-support services. The Office Depot Companies singled out
7 stores that failed to meet these weekly PC Health Check targets by conducting
8 "underperforming" calls with the stores' managers that reproached their stores' performances.
9 In numerous instances, district or store managers evaluated store employee performance based
10 on how many PC Health Check appointments the store employee scheduled and what tech-
11 support services they sold from that appointment.

12 **G. DESPITE NUMEROUS EMPLOYEE WARNINGS, THE DEFENDANT ONLY**
13 **CEASED USING THE SOFTWARE WHEN A NEWS MEDIA STORY EXPOSED**
14 **THE DECEPTIVE PROGRAM**

15 5.54 In late 2016, a Seattle-area television station ("KIRO 7") aired a series of
16 investigative reports about the tech service divisions of Office Depot stores in Washington and
17 Oregon that were flagging malware or malware symptoms on computers that were, unbeknownst
18 to the stores, brand new and straight out of the box. A former Office Depot employee at one
19 these stores alerted KIRO 7 of these business practices. In November 2016, shortly after this
20 news report broke, the Office Depot Companies suspended its use of the PC Health Check
21 Program.

22 5.55 From the inception of the PC Health Check Program, the Office Depot
23 Companies ran the PC Health Check Program on thousands of Washington consumer's
24 computers and collected millions of dollars selling costly, unnecessary diagnostic and repair
25 services with the program.
26

