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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13
14

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

16 Plaintiff,

17 v.

18 MCAFEE, INC.,

19 Defendant.
20

Case No. 5:14-CV-00158-EJD

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

21
22 Plaintiff, individually and on behalf of all others similarly situated, alleges on personal
23 knowledge, investigation of his counsel, and on information and belief, as follows:

24 **NATURE OF THE ACTION**

25 1. This proposed class action alleges that McAfee, Inc. (“McAfee”) has
26 systematically charged customers enrolled in its software “auto-renewal” program (hereinafter
27 “Auto-Renewal”) higher prices than it charges other customers for identical products, in violation
28

1 of its contractual obligations and contrary to its express representations concerning its Auto-
2 Renewal program.

3 2. McAfee induces customers to enroll in its Auto-Renewal program by representing
4 that the cost to automatically renew their McAfee anti-virus software subscriptions will be no
5 more than McAfee's normal, then-current price charged to other customers for the same products.
6 McAfee's representations include reassurances that its customers will not incur any cost
7 disadvantage by enrolling in Auto-Renewal, as compared to the alternative of purchasing a
8 software subscription outside of the Auto-Renewal program when their prior subscription expires.
9 McAfee's promises in this regard are made at the point-of-sale to Plaintiff and the proposed Class
10 and are also memorialized in McAfee's standardized Consumer Agreement.

11 3. Contrary to its representations and the Consumer Agreement, McAfee consistently
12 charges Auto-Renewal customers more than it charges other customers for the same products.

13 4. As a result of McAfee's conduct and practices alleged herein, Plaintiff and the
14 Class members have been damaged.

15 5. On behalf of himself and the proposed Class of McAfee Auto-Renewal customers
16 (the "Class"), Plaintiff brings this lawsuit against McAfee for breach of contract and for
17 violations of California Business & Professions Code §§ 17200 *et seq.* ("UCL"), California
18 Business & Professions Code §§ 17500 *et seq.* ("FAL"), and California Business & Professions
19 Code §§ 17600 *et seq.*

20 6. McAfee uses its Auto-Renewal pricing scheme to further yet another unlawful
21 pricing scheme—this one perpetrated by McAfee on those customers who purchase subscriptions
22 or manually renew existing subscriptions via McAfee's website or through their McAfee
23 Software. To these customers, McAfee advertises two prices for McAfee Software subscriptions:
24 (a) the selling price; and (b) directly next to the selling price, a higher expressly-referenced
25 former price with a line, or "slash," through it, along with a representation that the customer will
26 "Save" money—the difference between the slash-through price and actual selling price—if they
27 make their purchase at that time. The slash-through reference prices and corresponding
28 representations of savings that McAfee advertises are false because they do not represent

1 McAfee’s true regular or former prices for the products in question. The only time that McAfee
2 ever, or virtually ever, charges the higher reference prices for McAfee Software subscriptions are
3 when it improperly imposes such higher prices on Auto-Renewal customers.

4 7. On behalf of himself and the proposed “Reference Price Class,” as defined below,
5 Plaintiff brings claims against McAfee for injunctive relief, for violations of California Business
6 & Professions Code §§ 17200 *et seq.* (“UCL”) and California Business & Professions Code §§
7 17500 *et seq.* (“FAL”).

8 **PARTIES**

9 8. Plaintiff Sam Williamson is an individual residing in Garden Grove, California.
10 Plaintiff Williamson is a citizen of California.

11 9. Defendant McAfee, Inc. (“McAfee”) is a Delaware corporation, and is
12 headquartered in Santa Clara, California, which is McAfee’s principle place of business. McAfee
13 is a wholly-owned subsidiary of Intel Corporation.

14 10. McAfee is one of the largest computer security software companies in the United
15 States and the world. Its revenues from consumer sales in the United States, alone, are well in
16 excess of \$100 million annually.

17 **JURISDICTION AND VENUE**

18 11. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
19 § 1332(d) as there are numerous class members who are citizens of states other than McAfee’s
20 state of citizenship, and the amount in controversy exceeds \$5,000,000, exclusive of interest and
21 costs.

22 12. This Court has personal jurisdiction over McAfee because McAfee is
23 headquartered in California; a substantial part of the wrongdoing alleged in this Complaint took
24 place in California; McAfee is authorized to do business, and does a substantial portion of its
25 business, in California; McAfee has sufficient minimum contacts with California; and McAfee
26 intentionally avails itself of markets in California through the promotion, marketing and sale of its
27 products and services in California, rendering the exercise of jurisdiction by this Court
28 permissible under traditional notions of fair play and substantial justice.

1 13. McAfee is headquartered in California and, on information and belief, its
2 operations relevant to the allegations and claims in this Complaint predominately emanate from
3 California. On information and belief, the contracts, representations, policy and practice
4 decisions, and misconduct at issue in this case predominately emanated from California.

5 14. Venue is proper under 28 U.S.C. §§ 1391(a) and (b) because McAfee is
6 headquartered in this District and a substantial part of the events or omissions giving rise to
7 Plaintiff's claims occurred in this District.

8 15. **Intra-District Assignment**. Pursuant to the N.D. Cal. Civil Local Rules 3-2 and
9 3-5, Plaintiff has requested assignment to the San Jose Division of the Northern District of
10 California. Defendant McAfee, Inc. is headquartered in Santa Clara County and a substantial part
11 of the events or omissions giving rise to Plaintiff's claims occurred in Santa Clara County.

12 **COMMON FACTUAL ALLEGATIONS**

13 **A. McAfee Software**

14 16. McAfee markets and sells subscriptions to its anti-virus computer software
15 products. Generally, the subscriptions are one year in length. Three of the software products that
16 McAfee has marketed and sold subscriptions to throughout the relevant time period are McAfee
17 AntiVirus Plus, McAfee Internet Security, and McAfee Total Protection. These three products
18 are collectively referred to herein as the "McAfee Software."

19 17. McAfee represents to consumers that subscribing to McAfee Software will help
20 them protect their computers from hackers and other "online threats," computer viruses, and other
21 computer problems. For example, McAfee represents that its McAfee Total Protection software
22 will help "Guard your PC, social network, identity, family, and home network with our ultimate
23 protection against hackers, malware, thieves, phishing, and other online threats." Similarly,
24 McAfee represents that its McAfee AntiVirus Plus software will allow customers to "Confidently
25 surf, shop, and socialize online as our essential antivirus, antimalware, and firewall protect your
26 PC and data."

1 18. Consumers can purchase McAfee Software directly from McAfee’s website or
2 from a retailer authorized to sell McAfee Software, such as Amazon.com, Wal-Mart, Target, Best
3 Buy, or Office Depot.

4 19. In addition, some consumers initially sign up for “free trial” subscriptions to
5 McAfee Software (*e.g.*, for a 30-day or 60-day “trial” period), after which McAfee aggressively
6 encourages them, through expiration warning messages and other advertising and prompts, to
7 purchase a one-year paid subscription to McAfee Software, which the customer can do via
8 McAfee’s website or by following a purchase path provided by McAfee in their McAfee
9 Software.

10 **B. The Auto-Renewal Program**

11 20. For consumers who purchase a one-year subscription to McAfee Software through
12 McAfee’s website or through the McAfee Software itself, McAfee automatically enrolls them in
13 McAfee’s Auto-Renewal program. Under the Auto-Renewal program, upon the expiration of the
14 customer’s current McAfee Software subscription, McAfee automatically renews the subscription
15 for a subsequent one-year period, charging the customer’s credit card on file. These annual
16 renewals and charges continue from year-to-year so long as the customer remains enrolled in
17 Auto-Renewal.

18 21. Customers may also renew existing McAfee Software subscriptions manually, *i.e.*,
19 outside the Auto-Renewal program, through McAfee’s website or the McAfee Software itself.
20 McAfee promotes Auto-Renewal over these other forms of renewal, including by making
21 misrepresentations at the point-of-sale about Auto-Renewal pricing that are designed by McAfee
22 to persuade customers to enroll and remain enrolled in Auto-Renewal, and which Plaintiff
23 reasonably relied upon and which are material to a reasonable consumer. McAfee promotes
24 Auto-Renewal in this manner in order to maximize renewal rates and as means to charge higher
25 subscription rates to those customers who are subject to the Auto-Renewal program.

26 22. McAfee has long been, and continues to be, heavily reliant upon the Auto-
27 Renewal program and the massive amounts of revenue it receives from customers through the
28 program. In order to keep the steady stream of Auto-Renewal money flowing, McAfee’s

1 business model has been, and continues to be, deliberately designed and focused on maximizing
2 enrollment in the Auto-Renewal program.

3 23. One manifestation of McAfee's aggressive Auto-Renewal business model is its
4 practice of automatically enrolling customers in the program, by default, as soon as McAfee has a
5 credit card number for the customer on file.

6 24. Another manifestation of McAfee's aggressive Auto-Renewal business model, are
7 McAfee's pervasive representations to consumers that there is no cost disadvantage in having
8 subscriptions automatically renewed pursuant to the Auto-Renewal program, as compared to
9 manual renewals or separate additional purchases. For years, McAfee has consistently promised
10 and reassured customers that under Auto-Renewal, their subscriptions will be automatically
11 renewed at a price no higher than the normal, then-current price that McAfee charges other
12 customers for the same software. These representations and promises, which are made expressly
13 by McAfee at the point-of-sale, in McAfee's standardized Consumer Agreement, and elsewhere,
14 are specifically designed by McAfee to lull customers into enrolling and remaining enrolled in the
15 Auto-Renewal program. As described herein, these promises and representations are false,
16 because McAfee consistently charges Auto-Renewal customers more than it charges other
17 customers for identical products.

18 25. Another manifestation of McAfee's aggressive Auto-Renewal business model is
19 its modification, in 2009, of the choice-of-law provision in its form Consumer Agreement.
20 Whereas the Consumer Agreement previously provided for the application of the laws of
21 California, where McAfee has its headquarters, in 2009 the clause was amended to provide for the
22 application of New York law, even though McAfee's operations have little or no direct
23 connection to New York. On information and belief, McAfee made this modification in an
24 attempt to avoid the application of California consumer protection laws, including new California
25 laws which became effective in 2010, that were specifically designed to address misconduct
26 regarding automatic renewal services, such as those alleged herein.

27 26. This lawsuit is not the first time McAfee has found itself in legal trouble for its
28 aggressive tactics regarding Auto-Renewal. In 2009, McAfee was investigated by the New York

1 Attorney General's office after it received numerous complaints that McAfee was enrolling
2 customers in Auto-Renewal, and charging them for automatic renewals, with virtually no notice
3 whatsoever to the customer of their enrollment.¹ That investigation resulted in a settlement, and
4 did not address the pricing schemes that are the subject of this Complaint.

5 **C. The McAfee Consumer Agreement**

6 27. All customers who purchase McAfee Software subscriptions, including Plaintiff
7 and all Class members, enter into and are subject to the McAfee Consumer Products End User
8 License Agreement (hereinafter the "Consumer Agreement"). The Consumer Agreement is a
9 standardized, form contract of adhesion. It is several pages long, is drafted by McAfee, the party
10 with superior bargaining power, and is presented to customers on a take-it-or-leave-it basis. The
11 Consumer Agreement states that it is "enforceable like any written contract," and by its terms it
12 governs numerous aspects of the relationship between McAfee and the customer. An example of
13 the Consumer Agreement (the iteration effective as of approximately February 2, 2013) is
14 attached hereto as **Exhibit A**.

15 28. Customers are required by McAfee to click a button and/or check a box to signify
16 their "acceptance" of the terms and conditions of the Consumer Agreement.

17 29. The Consumer Agreement contains terms and conditions about the Auto-Renewal
18 program, including regarding the prices that McAfee will charge customers under the Auto-
19 Renewal program. At all relevant times, the Consumer Agreement has provided that customers
20 whose subscriptions are automatically renewed pursuant to the Auto-Renewal program will be
21 charged, at the time of renewal, a price that is no greater than the normal, then-current price that
22 McAfee charges other customers for the products in question. For example, the iteration of the
23 Consumer Agreement that was in place as of February 2, 2013 provides:

24 [T]his Agreement is effective for the term set forth in the Documentation.
25 If no term is agreed to, the default term shall be one (1) year from the date

26 ¹ See <http://www.ag.ny.gov/press-release/cuomo-forges-settlement-symantec-and-mcafee-over-automatic-subscription-renewals>.

27 ² The "Checkout" page screen shot also shows additional deceptive practices by McAfee,
28 including adding, by default, an unrequested physical CD to the order for an extra \$12.95, and adding, by default, an unrequested software program called Registry Power Cleaner for \$4.95 (at

1 of purchase...If You have provided McAfee with a valid credit card
2 number or an alternative payment method, **Your subscription will be**
3 **automatically renewed (and charged to the Account You have**
4 **provided) for another term at the expiration of Your current term,**
5 **whenever Your local regulations will allow, for a fee no greater than**
6 **McAfee's then-current price, excluding promotional and discount**
7 **pricing.** The new term will be for the same duration as the expired term
8 unless otherwise specified at the time of renewal.....

9 See **Exhibit A** at ¶ 14 (emphasis added). All iterations of the Consumer Agreement during the
10 relevant time period have included similar terms regarding Auto-Renewal pricing.

11 30. The provisions in the Consumer Agreement regarding Auto-Renewal pricing
12 constitute a binding contractual obligation. Under the Consumer Agreement, McAfee was and is
13 obligated to charge Plaintiff and the Class members, at the time their subscriptions are
14 automatically renewed, prices that are no higher than the normal, then-current prices that McAfee
15 charges other customers for the products in question.

16 **D. Enrollment in Auto-Renewal and McAfee's Misrepresentations Regarding**
17 **Auto-Renewal Pricing.**

18 31. McAfee's misrepresentations regarding Auto-Renewal pricing are not only
19 expressly made in the Consumer Agreement, they have also been pervasive on McAfee's website,
20 in the McAfee Software itself, and elsewhere.

21 32. McAfee's misrepresentations regarding Auto-Renewal pricing were, and continue
22 to be, made at the point-of-sale to Plaintiff and the Class. Pursuant to a 2009 agreement with the
23 New York Attorney General, McAfee was required to provide customers with an opportunity to
24 opt-out of Auto-Renewal and with instruction regarding how they can opt-out of Auto-Renewal.
25 However, when McAfee presented this information to Plaintiff and the Class at the point-of-sale,
26 such information was embedded with material misrepresentations about Auto-Renewal pricing,
27 which representations Plaintiff reasonably relied upon, are material to a reasonable consumer, and
28 are designed by McAfee to persuade customers to remain enrolled in Auto-Renewal rather than
opt-out of Auto-Renewal.

33. All enrollees in Auto-Renewal, including Plaintiff and the Class members, have
been exposed to McAfee's false promises and representations regarding Auto-Renewal pricing at
the point-of-sale.

1 34. Through these misrepresentations, McAfee has consistently promised and
2 reassured customers that, under Auto-Renewal, their subscriptions will be automatically renewed
3 at a price no higher than the normal, then-current price that McAfee charges other customers for
4 the software in question. These representations are designed by McAfee to persuade and reassure
5 customers that it is in their interest to be enrolled and remain enrolled in Auto-Renewal, and that
6 there is no cost disadvantage of having their McAfee Software automatically renewed by McAfee
7 as compared to manually renewing their subscriptions or other options the customers might have
8 to protect their computers.

9 35. These representations and promises are false and misleading because McAfee, in
10 fact, consistently charges Auto-Renewal customers prices that are higher than the normal, then-
11 current prices that McAfee charges other customers for the same products.

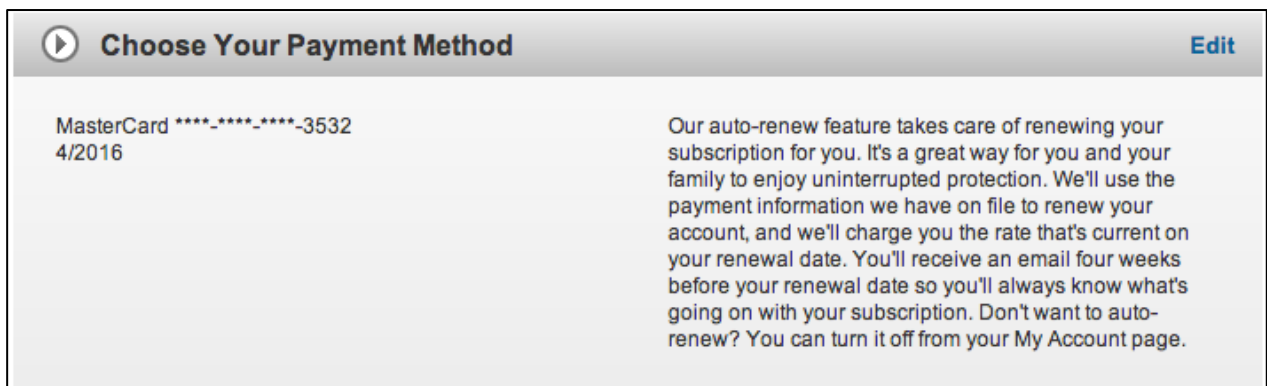
12 36. There are three ways that customers become enrolled in the Auto-Renewal
13 program. On information and belief, McAfee enrolls most Auto-Renewal customers under one of
14 the first two scenarios described below. In all three scenarios, Auto-Renewal customers are
15 exposed to McAfee's false promises and representations regarding Auto-Renewal pricing.

16 37. As discussed below, McAfee's point-of-sale misrepresentations regarding Auto-
17 Renewal pricing, made to customers who are enrolled in Auto-Renewal when making a
18 subscription purchase or renewal via McAfee's website or through their McAfee Software, make
19 no mention of any supposed "discount" or "promotional" prices being excluded from the Auto-
20 Renewal pricing promise.

21 **1. Customers Enrolled When Purchasing or Manually Renewing**
22 **Subscriptions On McAfee's Website.**

23 38. Customers who purchase a McAfee Software subscription via McAfee's website
24 are automatically enrolled by McAfee in the Auto-Renewal program going forward, by default.
25 Similarly, customers who manually renew an existing McAfee Software subscription via
26 McAfee's website are automatically enrolled by McAfee in the Auto-Renewal program going
27 forward, by default. Such customers must take affirmative steps to un-enroll in Auto-Renewal.
28

1 39. These customers are exposed to McAfee’s false promises regarding Auto-Renewal
 2 pricing when they enter their credit card information and confirm their purchase on the
 3 “Checkout” web page of McAfee’s website. During this stage of the purchase process, to induce
 4 these customers to remain enrolled in Auto-Renewal, McAfee reassures them that the price they
 5 will be charged when their subscription is automatically renewed will be **“the rate that’s current
 6 on your renewal date.”** These point-of-sale representations make no mention of any supposed
 7 “discount” or “promotional” prices being excluded from the Auto-Renewal pricing promise. A
 8 screen shot of this portion of the “Checkout” web page is below:

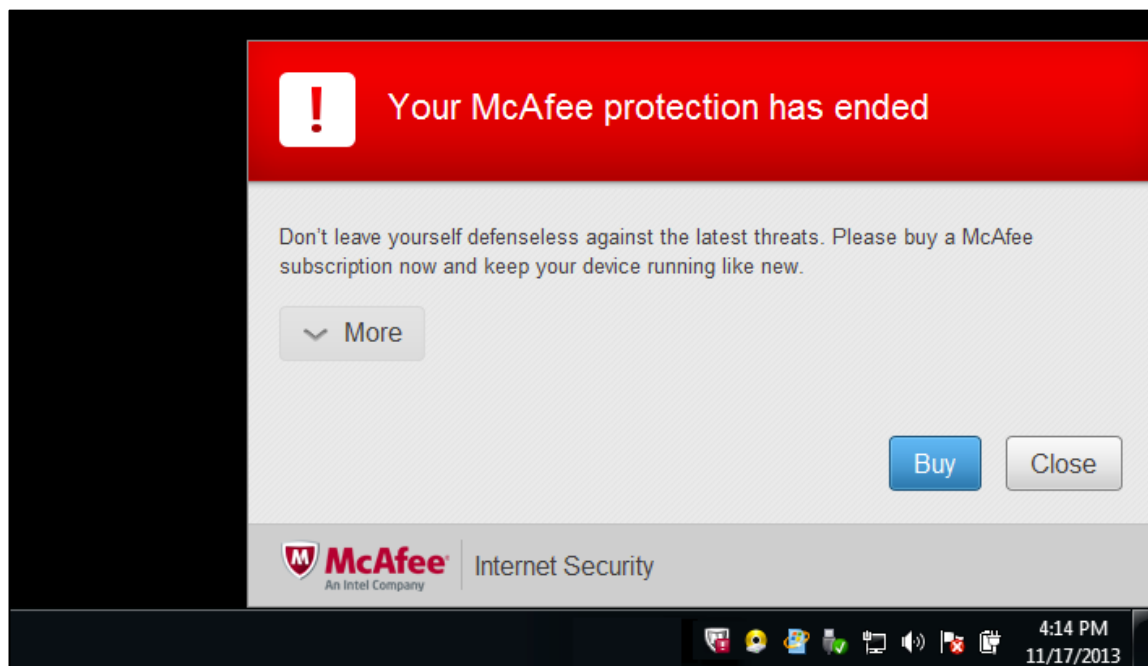


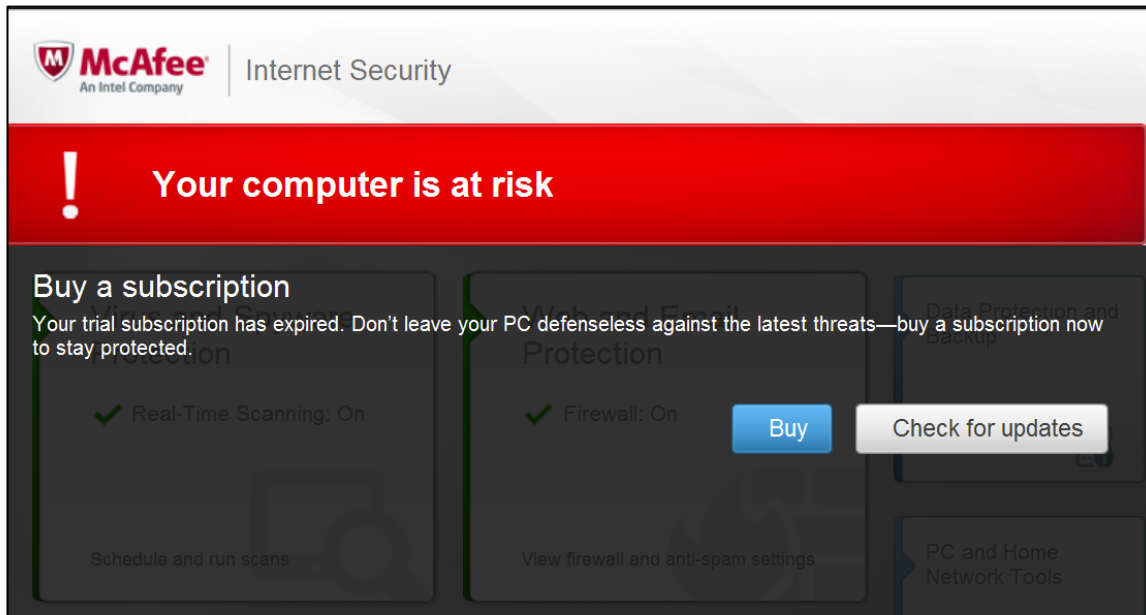
16 40. The “Checkout” web page states that customers can “turn [Auto-Renewal] off” if
 17 they “[d]on’t want to auto-renew,” referring customers to the “My Account” web page of
 18 McAfee’s website, which can be accessed by customers only after they have completed their
 19 purchase and received an account ID. However, McAfee’s instruction regarding how to turn
 20 Auto-Renewal off is presented alongside McAfee’s misrepresentation about Auto-Renewal
 21 pricing, which is designed by McAfee to dissuade customers from pursuing the steps required to
 22 turn Auto-Renewal off. McAfee’s misrepresentations regarding Auto-Renewal pricing at the
 23 point-of-sale are material in that a reasonable consumer would consider the information important
 24 in deciding whether to enroll or opt-out of Auto-Renewal.

25 **2. Customers Enrolled When Purchasing or Manually Renewing**
 26 **Subscriptions Via Their McAfee Software.**

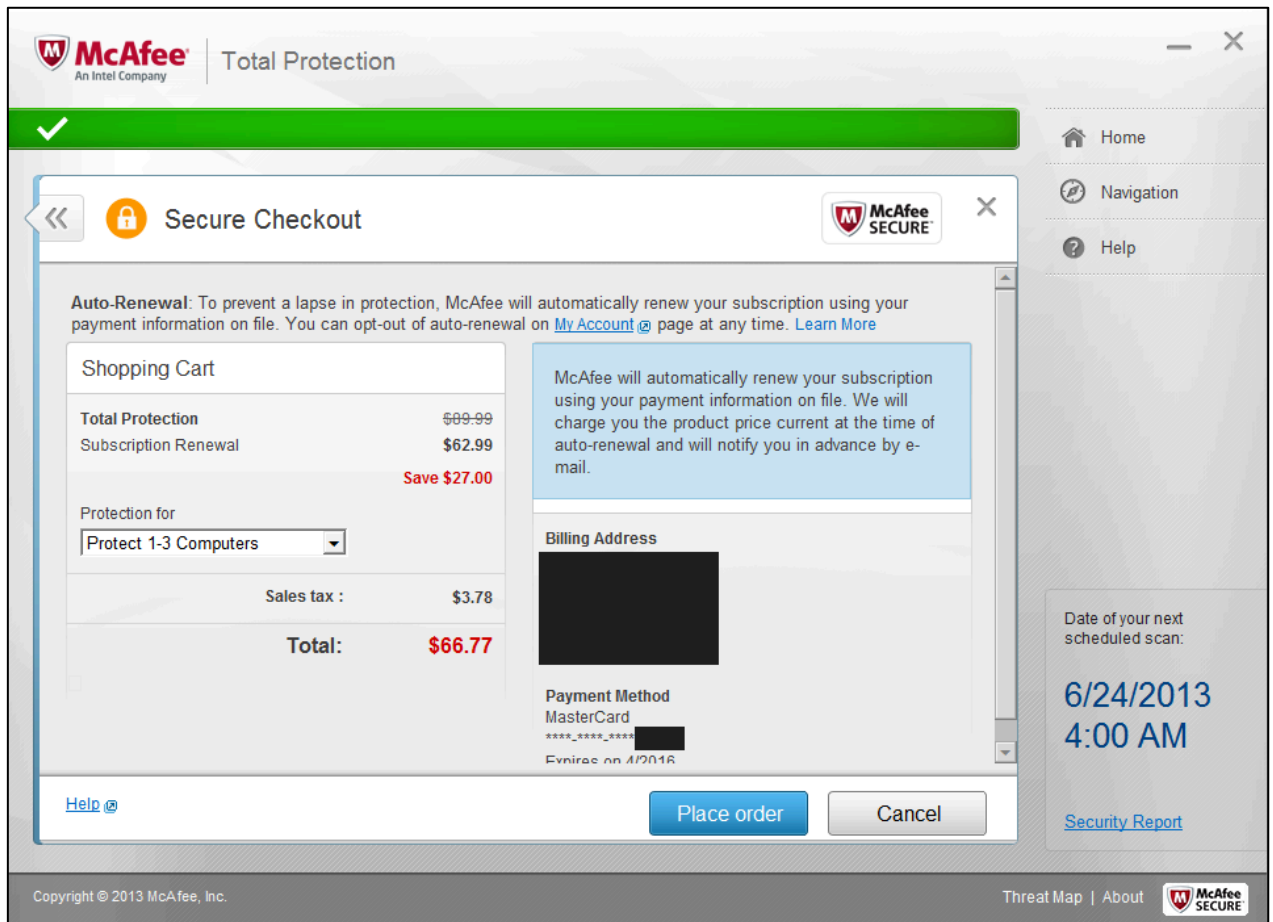
27 41. McAfee lures customers into its Auto-Renewal scheme who did not originally
 28 purchase their McAfee Software subscription directly from McAfee, by pressuring them to

1 manually renew their subscription via a purchase path in the software itself. McAfee targets such
2 customers by bombarding them with ominous on-screen expiration warning messages which
3 direct the customers to click a link to renew their subscriptions within the software. Once the
4 customers have manually renewed their subscriptions, they are automatically enrolled in the
5 Auto-Renewal program going forward, by default. McAfee uses similar tactics to urge customers
6 who initially signed up for a “free trial” subscription (which is often pre-installed on new
7 computers) to purchase a paid McAfee Software subscription through the software itself. Again,
8 once the customers have purchased their paid software subscriptions, they are automatically
9 enrolled in the Auto-Renewal program going forward, by default. Such customers must take
10 affirmative steps to un-enroll in Auto-Renewal. Below are some examples of the warning
11 messages that McAfee displays on the computer desktops of these customers to create urgency
12 and encourage them to renew their subscriptions and purchase paid subscriptions through their
13 McAfee Software:





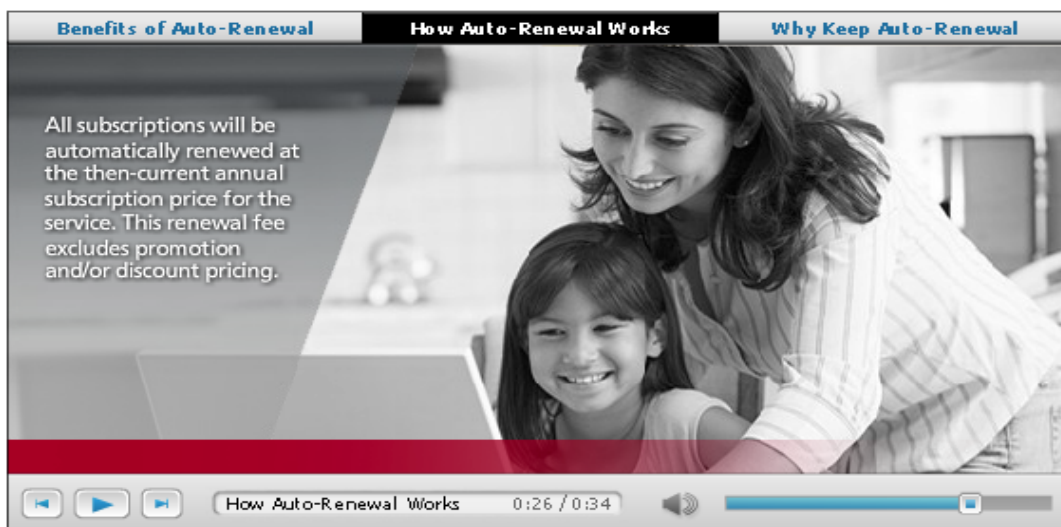
42. Like the Auto-Renewal customers who are enrolled in the program when they make a purchase or renewal via McAfee’s website, customers who renew or purchase their subscriptions through the purchase path in the software, including Plaintiff Williamson, are exposed to McAfee’s false promises regarding Auto-Renewal pricing when they enter their credit card information and confirm their purchase. On the “Secure Checkout” page, where these customers complete their purchases, McAfee states: “To prevent a lapse in protection, McAfee will automatically renew your subscription using your payment information on file.” Under a “Learn More” icon on that page, McAfee states that under Auto-Renewal, “We will charge you **the product price current at the time of auto-renewal....**” These point-of-sale representations make no mention of any supposed “discount” or “promotional” prices being excluded from the Auto-Renewal pricing promise. A screen shot of the “Secure Checkout” page is below:



43. Like the “Checkout” web page that is part of the website purchase path, the “Secure Checkout” page that is part of the software purchase path states that customers can “opt-out of auto-renewal,” referring customers to the “My Account” web page of McAfee’s website, which can be accessed by customers only after they have completed their purchase and received an account ID. However, as with the website purchase path, McAfee’s instruction regarding how to opt-out of Auto-Renewal is presented in the software purchase path alongside McAfee’s misrepresentation about Auto-Renewal pricing, which is designed by McAfee to dissuade customers from pursuing the steps required to opt-out of Auto-Renewal.

44. McAfee’s misrepresentations regarding Auto-Renewal pricing at the point-of-sale are material in that a reasonable consumer would consider them important in deciding whether to enroll or opt-out of Auto-Renewal. Plaintiff Williamson reasonably relied upon McAfee’s point-of-sale misrepresentations regarding Auto-Renewal pricing in deciding not to visit the My Account web page to opt-out of Auto-Renewal.

1 45. For those customers who do visit the My Account web page to pursue opting-out
 2 of Auto-Renewal after making their purchase via the website or software, and who proceed to the
 3 “My Auto-Renewal Settings” portion of the “My Account” web page (which is where Auto-
 4 Renewal can be turned off), McAfee makes a further misrepresentation on that page regarding
 5 Auto-Renewal pricing, in a further attempt to dissuade the customer from opting-out of Auto-
 6 Renewal, via a video presentation in which McAfee urges customers to enroll and remain
 7 enrolled in Auto-Renewal. In a segment of the video entitled “How Auto-Renewal Works,”
 8 McAfee states that an enrolled customer’s subscription “will be automatically renewed at the
 9 then-current annual subscription price for the service. This renewal fee excludes promotion
 10 and/or discount pricing.” A screen shot from McAfee’s Auto-Renewal video presentation is
 11 below:



21 3. Customers Who Manually Enable Auto-Renewal.

22 46. Those customers who are not already enrolled in the Auto-Renewal program can
 23 manually enable Auto-Renewal by visiting the “My Auto-Renewal Settings” portion of the “My
 24 Account” web page on McAfee’s website after logging into their account. McAfee encourages
 25 customers who initially purchased McAfee Software from a retailer to visit this web page to
 26 enable Auto-Renewal, including through a prompt that appears when such customers are
 27 installing the software on their computers. For example, during the software installation process,
 28 customers receive a prompt from McAfee, encouraging them to “**Stay Protected. Let Always On**

1 Protection automatically renew your subscription when it expires to guarantee there is no
2 protection gap from everyday new threats. Sign Up Now.” The customer is then provided with a
3 link, which takes the customer to the “My Auto-Renewal Settings” web page. These customers
4 are exposed to McAfee’s misrepresentations regarding Auto-Renewal pricing via the misleading
5 Auto-Renewal video presentation described above.

6 47. Similar false and misleading representations about Auto-Renewal pricing have
7 appeared elsewhere on McAfee’s website, including on portions of the website where McAfee
8 answers “Frequently Asked Questions” about Auto-Renewal.

9 48. McAfee’s false representations and promises, described herein, have been
10 pervasive throughout the Class period. Plaintiff and the Class have been exposed to McAfee’s
11 false representations and promises.

12 49. McAfee’s false representations and promises, described herein, are material in that
13 a reasonable consumer would attach importance to them in deciding whether to enroll or op-out
14 of Auto-Renewal. It is McAfee’s intention that customers will rely on these representations, and
15 Plaintiff and the Class have reasonably relied upon these representations to their detriment.

16 50. McAfee’s representations and promises alleged herein are false, have a tendency
17 to deceive, and are likely to deceive reasonable consumers and members of the public.

18 51. McAfee has failed to disclose to Plaintiff and the Class material information
19 regarding the true nature of Auto-Renewal pricing. These material omissions are particularly
20 misleading given McAfee’s affirmative false and deceptive promises and representations
21 regarding Auto-Renewal pricing.

22 52. For example, McAfee sends email notices to Auto-Renewal customers prior to the
23 end of the customer’s subscription term, and then emails them another notice informing them
24 when their credit card has been charged for the renewed subscription. Customers are not required
25 to read or confirm receipt of, or otherwise respond to, these notices. Neither these notices, nor
26 any other notice or information provided by McAfee, discloses that, contrary to McAfee’s
27 contractual promises and pervasive representations, the prices that Auto-Renewal customers are
28

1 charged when their subscriptions are renewed by McAfee are actually higher than the normal,
2 then-current prices that McAfee charges other customers for the same products.

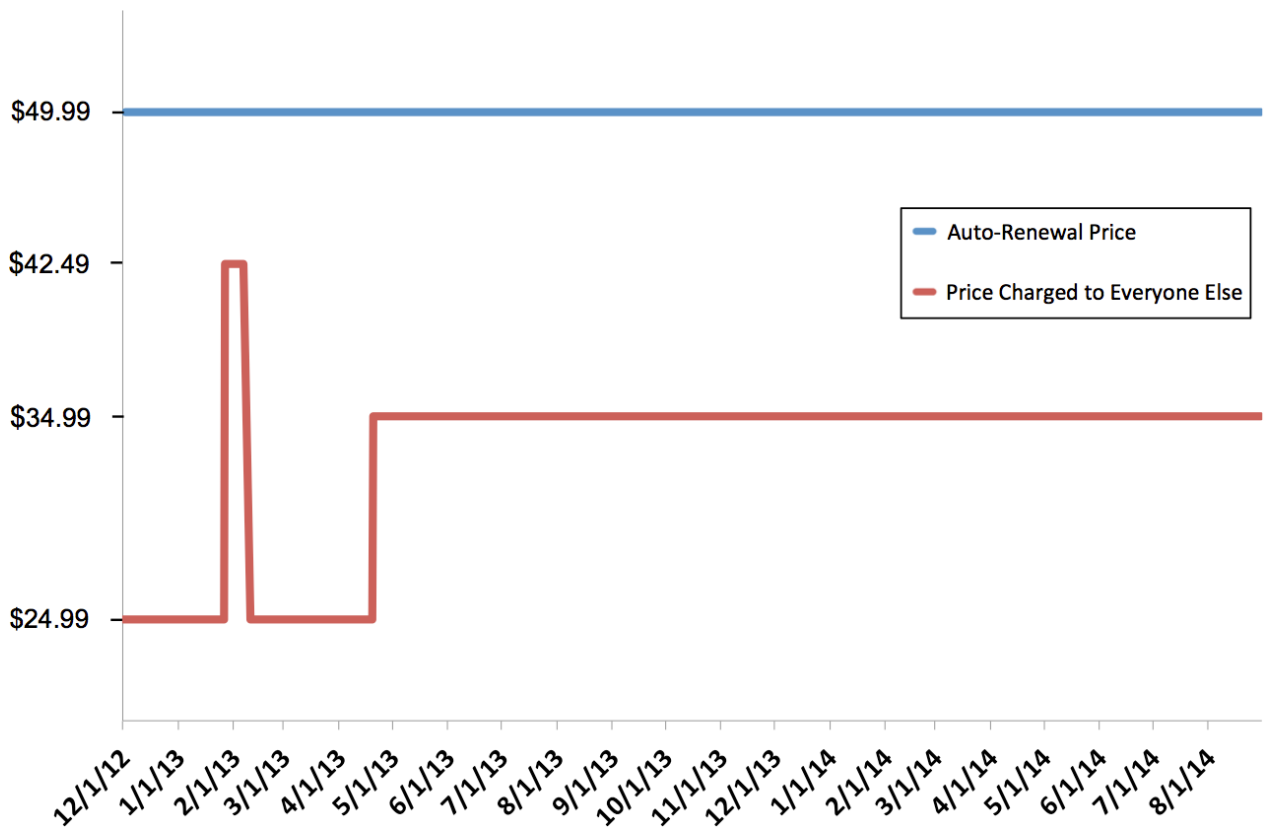
3 **E. McAfee Consistently Charges Auto-Renewal Customers More Than Other**
4 **Customers for the Same Products.**

5 53. Contrary to its contractual obligations and representations, and unbeknownst to
6 Plaintiff and the Class, the prices that McAfee charges Auto-Renewal customers are consistently
7 higher than the normal, then-current prices that McAfee charges other customers for the same
8 products. In essence, McAfee consistently has a special, higher price for McAfee Software that it
9 imposes *only* on Auto-Renewal customers, and another, lower price that it offers to all other
10 customers for the same products.

11 54. For example, customers who had their McAfee AntiVirus Plus subscriptions auto-
12 renewed by McAfee on January 1, 2014 would have been charged \$49.99 by McAfee for their
13 renewed one-year subscription. To all other customers that day, McAfee offered the same one-
14 year McAfee AntiVirus Plus subscription for just \$34.99, whether the customers were purchasing
15 a new subscription or manually renewing an existing subscription, and whether they made their
16 purchase or manual renewal on McAfee's website or via their McAfee Software. In fact, during
17 the three months prior to January 1, 2014, McAfee's selling price for a one-year McAfee
18 AntiVirus Plus subscription was consistently \$34.99. During the twelve months prior to January
19 1, 2014, McAfee never charged any customers as much as \$49.99 for a one-year McAfee
20 AntiVirus Plus subscription, other than Auto-Renewal customers. The following chart shows the
21 higher prices that McAfee charges Auto-Renewal customers compared to the prices McAfee
22 offers and charges all other customers, for McAfee AntiVirus Plus:

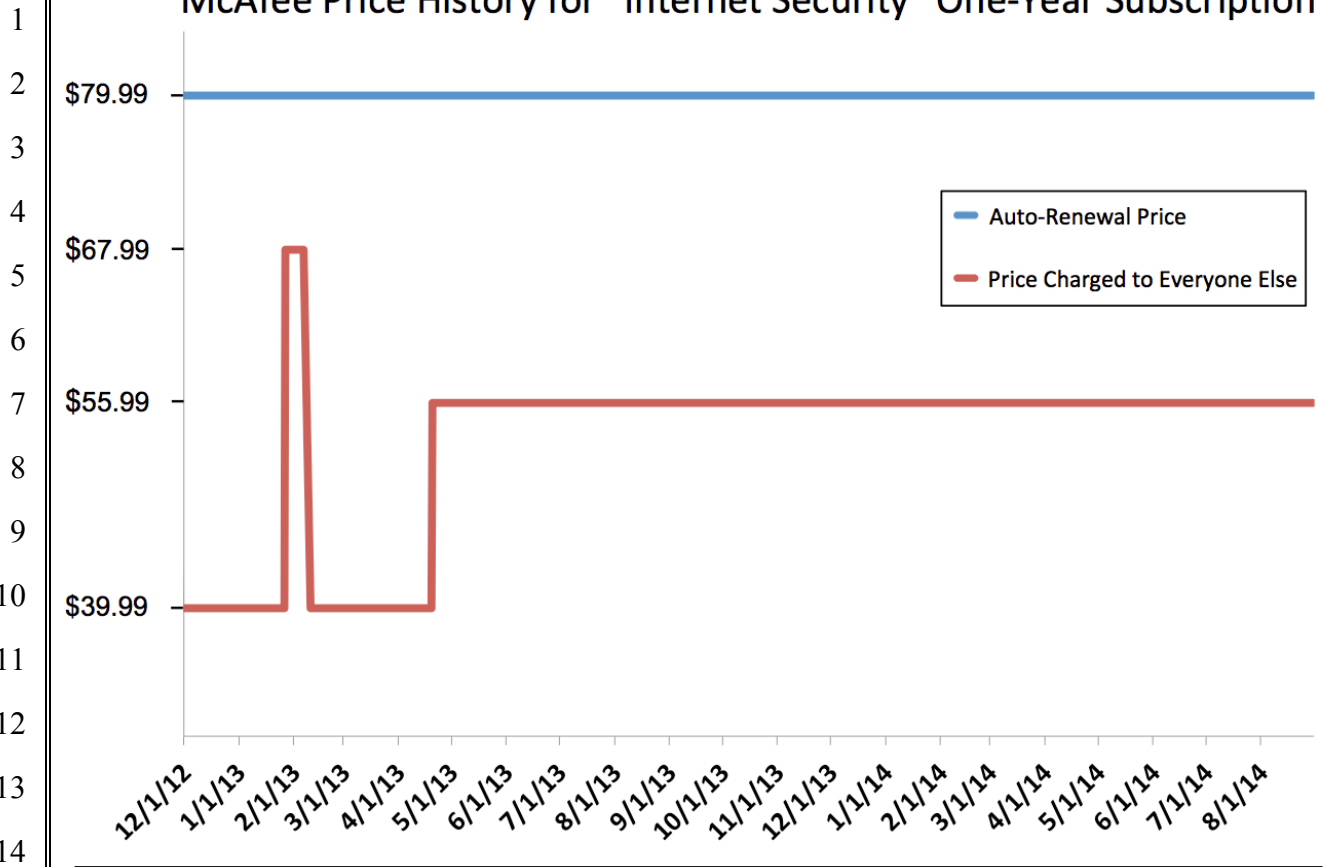
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McAfee Price History for “AntiVirus Plus” One-Year Subscription

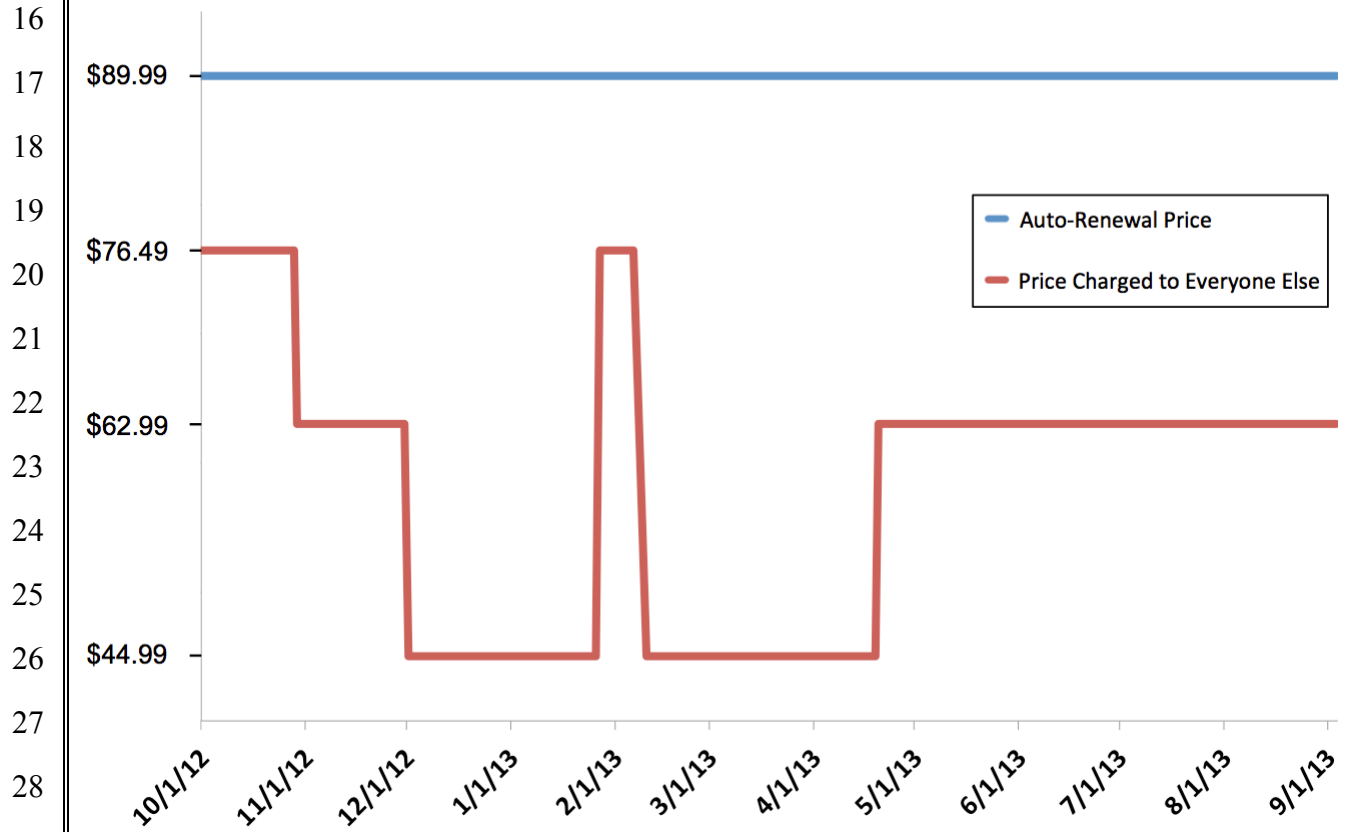


55. Similar disparities between the prices that McAfee charges Auto-Renewal customers and the prices it offers and charges other customers have been persistent for the McAfee Internet Security and McAfee Total Protection products as well, as shown in the following charts:

McAfee Price History for "Internet Security" One-Year Subscription



McAfee Price History for "Total Protection" One-Year Subscription



1 56. The actual selling prices that McAfee offers to customers who are purchasing or
2 manually renewing McAfee Software subscriptions are McAfee’s normal, then-current prices,
3 and are not discounted or promotional prices. Those actual selling prices are the highest prices
4 that McAfee should be charging Auto-Renewal customers for the products in question, under the
5 terms of the Consumer Agreement and based on McAfee’s pervasive representations regarding
6 Auto-Renewal pricing.

7 57. Based on information and belief, the prices that McAfee charges Auto-Renewal
8 customers are not only higher than the prices that McAfee charges other customers, they are also
9 higher than the suggested “list” prices that McAfee provides to retailers of McAfee Software. As
10 the chart below demonstrates, the Manufacturer’s Suggested Retail Prices (“MSRPs”) which
11 McAfee sets for its retailers are lower than the prices that McAfee charges Auto-Renewal
12 customers for the same products:

13 **McAfee MSRP vs. Auto-Renewal Price (2012 – 2014)**

14 Product	15 MSRP	16 Auto-Renewal Price
17 AntiVirus Plus	18 \$39.99	19 \$49.99
20 Internet Security	21 \$69.99	22 \$79.99
23 Total Protection	24 \$79.99	25 \$89.99

26 58. Retailers of McAfee Software routinely discount the products far below the
27 MSRPs that McAfee provides to them. For example, Amazon.com regularly offers McAfee
28 Software at over 70% off the MSRP. Below is a screenshot from Amazon.com, taken January 5,
2014, showing Amazon.com offering McAfee Internet Security for \$13.45, discounted from the
“List Price” (*i.e.*, the MSRP) of \$69.99:

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The screenshot shows the Amazon.com product page for McAfee Internet Security 3PC 2014. The page includes the Amazon logo, navigation links (Your Amazon.com, Today's Deals, Gift Cards, Sell, Help), a search bar, and a department filter (Software). The product title is 'McAfee Internet Security 3PC 2014' by McAfee. The platform is listed as Windows 8 / 7 / XP. The product has a 4-star rating from 15 customer reviews and 3 answered questions. The list price is \$69.99, and the current price is \$13.45 with free shipping on orders over \$35. The product is in stock and ships from and sold by Amazon.com. A '30 new' badge is visible at the bottom of the product listing.

14 59. On information and belief, in the relatively rare event that an Auto-Renewal
15 customer discovers that McAfee has charged him or her more than McAfee should have for the
16 customer's McAfee Software subscription renewal, and the customer contacts McAfee to
17 complain about it, McAfee has a policy and/or practice, not to disclose the truth about its Auto-
18 Renewal pricing scheme, but instead to pacify such customers by offering them discounts and/or
19 free months of McAfee Software subscriptions.

20 **PLAINTIFF'S FACTUAL ALLEGATIONS**

21 60. On October 8, 2011, Plaintiff Sam Williamson purchased a desktop computer from
22 a Micro Center retail store in Tustin, California. The computer that Mr. Williamson purchased
23 came pre-installed with a 60-day "free trial" subscription to McAfee AntiVirus Plus. Later that
24 day, Mr. Williamson activated the "free trial" subscription on his new computer by clicking an
25 icon on the desktop and following instructions provided by McAfee.

26 61. While Mr. Williamson was in the process of activating the "free trial"
27 subscription, McAfee displayed advertising on his computer encouraging him to purchase a one-
28 year paid subscription to the software. McAfee's prompts and advertising promised Mr.

1 Williamson that if he immediately purchased a one-year subscription, he would receive a discount
2 from McAfee's purported regular selling price for the product. McAfee offered to sell Mr.
3 Williamson a one-year subscription to McAfee AntiVirus Plus for \$29.99, at a promised discount
4 of \$20.00 from the purported regular price of \$49.99. McAfee prominently displayed both the
5 purported "regular" price and the representation that Mr. Williamson would supposedly save
6 \$20.00 by making the purchase at that time.

7 62. Relying on McAfee's representations, Mr. Williamson clicked on one of McAfee's
8 advertising prompts, which took him to a page in the software where he could purchase a paid
9 subscription to McAfee AntiVirus Plus. On that page, McAfee again prominently represented to
10 Mr. Williamson that its regular selling price for a one-year subscription to McAfee AntiVirus
11 Plus was \$49.99, and that the \$29.99 price offered to Mr. Williamson that day reflected a discount
12 of \$20.00 from the purported regular price. Relying on McAfee's representations, Mr.
13 Williamson purchased a one-year subscription to McAfee AntiVirus Plus for \$29.99 by entering
14 his credit card information as prompted by McAfee.

15 63. The purported discount that McAfee represented to Mr. Williamson was false and
16 misleading, because the purported regular price of \$49.99 that McAfee represented was fabricated
17 and failed to represent McAfee's prevailing regular or former price for a one-year McAfee
18 AntiVirus Plus subscription. Plaintiff's pre-filing investigation has revealed a clear pattern by
19 McAfee, lasting approximately two years, of consistently advertising both an actual selling price
20 and a false slash-through reference price for the software within the class definition. *See infra* ¶¶
21 131-132, ¶ 66. This pattern is consistent with the pricing that McAfee presented to Plaintiff
22 Williamson when he made his AntiVirus Plus subscription purchase in October 2011. Based on
23 this information, Plaintiff has an ample basis to believe, and does allege, that McAfee did not
24 offer for sale, or make substantial sales of, McAfee AntiVirus Plus at a price of \$49.99 within a
25 reasonable period of time before Plaintiff Williamson's October 8, 2011 purchase, and that for
26 months prior to October 8, 2011, McAfee consistently offered the same one-year subscription to
27 McAfee AntiVirus Plus at a selling price lower than \$49.99. McAfee's historical pricing (actual
28 selling prices and reference prices) for the time period before when Plaintiff's counsel was able to

1 track, is not publicly available and is within McAfee's exclusive control. McAfee's counsel has
2 confirmed, during meet and confer in this case regarding data and document preservation issues,
3 that McAfee has maintained the pertinent pricing data for the relevant time period.

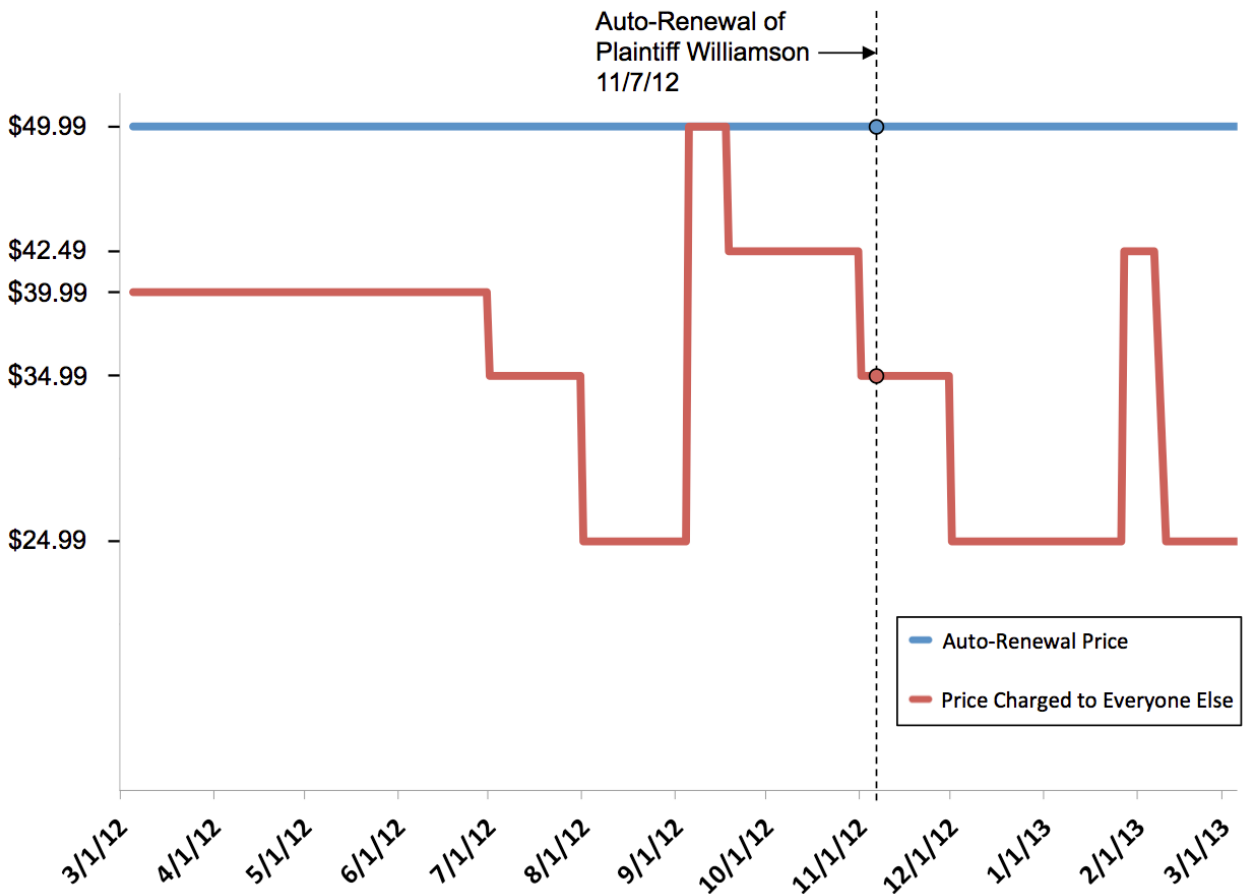
4 64. At the time Mr. Williamson made his one-year subscription purchase in October
5 2011, McAfee automatically enrolled Mr. Williamson in the Auto-Renewal program. McAfee
6 represented to Mr. Williamson, on the page where he entered his credit card information to make
7 his purchase, that he could opt-out of Auto-Renewal by visiting the "My Account" web page on
8 McAfee's website. Alongside that representation, McAfee represented to Mr. Williamson that
9 when his AntiVirus Plus subscription was automatically renewed under Auto-Renewal, McAfee
10 would charge him "the product price current at the time of auto-renewal" or substantially similar
11 language. Mr. Williamson relied on this representation, and as a result he expected that, when his
12 subscription was automatically renewed under Auto-Renewal, he would be charged a price no
13 higher than McAfee's normal, then-current price that McAfee offered and charged other, non-
14 Auto-Renewal, customers for a one-year AntiVirus Plus subscription. Because of McAfee's
15 representation about this limitation on Auto-Renewal pricing, Mr. Williamson did not visit the
16 My Account page to un-enroll in Auto-Renewal. Had Mr. Williamson known the truth about
17 Auto-Renewal pricing, he would have un-enrolled in Auto-Renewal.

18 65. By virtue of his McAfee Software subscription purchase, Mr. Williamson entered
19 into, and was subject to, McAfee's form Consumer Agreement, including the terms governing the
20 Auto-Renewal program and Auto-Renewal pricing.

21 66. On November 7, 2012, McAfee automatically renewed Mr. Williamson's McAfee
22 AntiVirus Plus subscription for an additional one-year period. McAfee charged Mr. Williamson
23 \$49.99 for the renewed subscription, even though McAfee's selling price for a one-year
24 AntiVirus Plus subscription that day, and the price that McAfee offered and charged all non-Auto
25 Renewal customers that day for the same one-year AntiVirus Plus subscription, was just \$34.95,
26 whether the customers were purchasing a new subscription or manually renewing an existing
27 subscription, and whether they were doing so on McAfee's website or via the purchase path
28 within the software. The \$34.95 price was not a promotional price or a discounted price off of a

1 normal selling price of \$49.99. The \$49.99 price that McAfee charged Mr. Williamson under
 2 Auto-Renewal was not McAfee’s normal, then-current price for the product in question. The
 3 \$49.99 price that McAfee charged Mr. Williamson under Auto-Renewal was not McAfee’s then-
 4 current price for the product in question excluding discount and promotional pricing. In fact, as
 5 the chart below shows, with the exception of one approximately 13-day period, McAfee’s selling
 6 price for McAfee AntiVirus Plus was consistently less than \$49.99 for at least eight months prior
 7 to the automatic renewal of Mr. Williamson’s subscription:

8 **McAfee Price History for “AntiVirus Plus” One-Year Subscription**



25 67. As a result of McAfee’s contractual breaches and misconduct alleged herein, Mr.
 26 Williamson suffered damages, including by paying additional amounts for his renewed software
 27 subscription, over and above what he should have been charged and otherwise would have paid,
 28 and by paying more than he otherwise would have paid for his initial one-year subscription and

1 being denied the discount and value that McAfee promised him in connection with his initial one-
2 year subscription.

3 CLASS ACTION ALLEGATIONS

4 68. Plaintiff brings this class-action lawsuit on behalf of himself and the proposed
5 members of the “Class” pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and on
6 behalf of himself and the proposed members of the “Reference Price Class” pursuant to Rule
7 23(b)(2) of the Federal Rules of Civil Procedure.

8 69. Plaintiff seeks certification of the following “Class”:

9 All persons in the United States who have incurred charges from McAfee for the automatic
10 renewal of a subscription to the following McAfee-branded products during the following time
11 periods:

12 Product	Time Periods
13 McAfee AntiVirus Plus	Applicable statute of limitation through 9/4/2012; 9/18/2012 through the present
14 McAfee Internet Security	Applicable statute of limitation through 9/4/2012; 9/18/2012 through the present
15 McAfee Total Protection	Applicable statute of limitation through 9/5/2012; 9/18/2012 through 9/3/2013

16 70. Plaintiff also seeks certification of the following “Reference Price Class”:

17 All persons in the United States who purchased or manually renewed, on McAfee’s website or via
18 their McAfee Software, McAfee-branded software advertised as discounted from a represented
19 former sales price as indicated and set forth in the chart immediately below:

20 Product	Time Periods
21 McAfee AntiVirus Plus	Applicable statute of limitation through the present
22 McAfee Internet Security	Applicable statute of limitation through the present
23 McAfee Total Protection	Applicable statute of limitation through 9/3/2013

24 71. Specifically excluded from the Class and Reference Price Class are McAfee and
25 any entities in which McAfee has a controlling interest, McAfee’s agents and employees, the
26 judge to whom this action is assigned, members of the judge’s staff, and the judge’s immediate
27 family.
28

1 72. **Numerosity.** Plaintiff does not know the exact number of Class members and
2 Reference Price Class members but believes that the Class and Reference Price Class each
3 comprise at least hundreds of thousands of consumers throughout the United States. As such,
4 Class members and Reference Price Class members are so numerous that joinder of all members
5 is impracticable.

6 73. **Commonality and predominance.** Well-defined, nearly identical legal or factual
7 questions affect all Class members. Similarly, well-defined, nearly identical legal or factual
8 questions affect all Reference Price Class members. These questions predominate over questions
9 that might affect individual Class members or Reference Price Class members. With respect to
10 the Class, these common questions include, but are not limited to, the following:

11 a. Whether the Consumer Agreement required McAfee to charge Auto-
12 Renewal customers prices that were no higher than the normal, then-current prices that McAfee
13 charged other customers for the same products;

14 b. Whether McAfee breached its contractual obligations to Plaintiff and the
15 Class by charging them prices that were higher than the normal, then-current prices that McAfee
16 charged other customers for the same products;

17 c. Whether McAfee's representations to Plaintiff and the Class regarding
18 Auto-Renewal pricing were objectively material;

19 d. Whether McAfee failed to disclose objectively material information to
20 Plaintiff and the Class regarding Auto-Renewal pricing;

21 e. Whether McAfee's representations and omissions regarding Auto-Renewal
22 pricing had a tendency to deceive consumers;

23 f. Whether McAfee's conduct alleged herein violated California Business &
24 Professions Code § 17200 *et seq*, California Business & Professions Code § 17500 *et seq*, and/or
25 California Business & Professions Code § 17600 *et seq*.

26 g. Whether Plaintiff and the Class are entitled to damages and/or restitution;
27 and

28

1 h. Whether McAfee should be enjoined from further engaging in the
2 misconduct alleged herein.

3 74. With respect to the Reference Price Class, the common questions include, but are
4 not limited to, the following:

5 a. Whether McAfee falsely advertises price discounts from purported regular
6 sales prices;

7 b. Whether McAfee's representations directed to members of the Reference
8 Price Class contain false representations of material fact;

9 c. Whether McAfee's conduct alleged herein violated California Business &
10 Professions Code § 17200 *et seq.* and/or California Business & Professions Code § 17500 *et seq.*

11 d. Whether McAfee should be enjoined from further engaging in the
12 misconduct alleged herein.

13 75. **Typicality.** Plaintiff's claims are typical of Class members' claims. Plaintiff and
14 the Class members were all subject to McAfee's misconduct alleged herein regarding Auto-
15 Renewal pricing. Plaintiff's claims are typical of Reference Price Class members' claims.
16 Plaintiff and Reference Price Class members were all subject to McAfee's false former price and
17 false discount representations.

18 76. **Adequacy.** Plaintiff will fairly and adequately protect Class members' and
19 Reference Price Class members' interests. Plaintiff has no interests antagonistic to Class
20 members' or Reference Price Class members' interests, and Plaintiff has retained counsel that
21 have considerable experience and success in prosecuting complex class-actions and consumer-
22 protection cases.

23 77. **Superiority.** A class action is the superior method for fairly and efficiently
24 adjudicating this controversy for the following reasons without limitation:

25 a. Class members' claims and Reference Price Class members' claims are
26 relatively small compared to the burden and expense required to litigate their claims individually,
27 so it would be impracticable for Class members or Reference Price Class members to seek
28 individual redress for McAfee's illegal and deceptive conduct;

1 b. Even if Class members and Reference Price Class members could afford
2 individual litigation, the court system could not. Individual litigation creates the potential for
3 inconsistent or contradictory judgments and increases the delay and expense to all parties and to
4 the court system. By contrast, a class action presents far fewer management difficulties and
5 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
6 a single court; and

7 c. Plaintiff anticipates no unusual difficulties in managing this class action.

8 **CHOICE OF LAW/ MCAFEE’S ATTEMPT TO EVADE CALIFORNIA LAW**

9 78. Even though it is headquartered in California and its operations predominately
10 emanate from California, McAfee’s form Consumer Agreement currently contains a provision
11 providing for the application of New York law to certain claims, regardless of where in the
12 United States the consumer party resides. Until approximately 2009, McAfee’s Consumer
13 Agreement provided for the application of California law for all United States consumers
14 regardless of where in the United States they resided, presumably because McAfee is a
15 California-based company with its operations predominately emanating from California.

16 79. On information and belief, McAfee modified the choice-of-law provision in the
17 Consumer Agreement, in or around 2009, in a deliberate attempt to evade California’s consumer
18 protection laws, including: (a) California Business & Professions Code §§ 17600 *et seq*, which
19 was scheduled to take effect, and did take effect, beginning in 2010, and which was specifically
20 enacted by the California Legislature to address unfair, deceptive, and harmful practices
21 regarding automatic renewal services, such as McAfee’s unfair and deceptive practices regarding
22 the Auto-Renewal program; (b) California Business & Professions Code § 17501, which requires
23 that “[n]o price shall be advertised as a former price of any advertised thing, unless the alleged
24 former price was the prevailing market price . . . within three months next immediately preceding
25 the publication of the advertisement.”; and/or (c) generally, California’s UCL and FAL, which
26 generally provide for greater protection to consumers, including non-California consumers when
27 a California company like McAfee is the alleged wrongdoer.
28

1 80. On information and belief, McAfee also modified the choice-of-law provision in
2 the Consumer Agreement in an attempt to foreclose customers residing in states other than New
3 York from being able to pursue claims under state consumer protection statutes.

4 81. To the extent the Consumer Agreement provides for the application of New York
5 law, it is not applicable or enforceable as to the claims alleged herein under applicable choice-of-
6 law principles. There is no substantial relationship between the contractual relationship, conduct,
7 or claims alleged herein and New York, and there is no reasonable or legitimate basis for the
8 choice or application of New York law. California has a materially greater interest than New
9 York or any other state in having its laws apply, given that McAfee is a California company with
10 operations predominately emanating from California, and the conduct alleged herein emanated
11 predominately from California. Moreover, the application of New York law would violate
12 fundamental policies of California, including, but not limited to, as follows: (a) Customers from
13 states other than New York may be restricted in their ability pursue claims under New York
14 General Business Law § 349 and § 350, whereas customers from all fifty states would be able to
15 pursue claims against California-based McAfee under California's UCL and FAL and thus the
16 application of New York law would deprive California consumers and consumers from other
17 states doing business with a California company, McAfee, of important rights and remedies, and
18 would interfere with California's important interests in protecting consumers who conduct
19 business in California and deterring California companies from engaging in unfair and deceptive
20 business practices, such as those alleged herein; and (b) California law provides consumers with
21 enhanced protection and relaxed pleading and evidentiary burdens, and thus the application of
22 New York law would interfere with California's important interests in protecting consumers who
23 conduct business in California and deterring California companies from engaging in unfair and
24 deceptive business practices, such as those alleged herein.

25 82. Application of New York law to the Class members' claims in this case would
26 reward McAfee for its deliberate attempt to evade the application of California laws that are
27 designed to protect consumers and deter California companies from engaging in unfair and
28 deceptive business practices, such as those alleged herein.

1 83. California law applies to the claims of all Class members under applicable choice-
2 of-law principles and for the reasons set forth herein. Alternatively, California law applies to all
3 Class members residing in states other than New York, and New York law applies only to those
4 Class members residing in New York.

5 **CAUSES OF ACTION**

6 **COUNT I**

7 **Breach of Contract**

8 (On Behalf the Class)

9 84. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
10 preceding paragraphs as though alleged in this Count.

11 85. McAfee entered into valid contractual agreements with Plaintiff and all Class
12 members.

13 86. The material terms of McAfee's contracts with Plaintiff and the Class members
14 included McAfee's obligation that, under the Auto-Renewal program, customers enrolled in the
15 program would have their McAfee Software subscriptions renewed at a price no higher than the
16 normal, then-current price that McAfee charged other customers for the same products.

17 87. Plaintiff and all Class members gave consideration that was fair and reasonable,
18 and have performed all conditions, covenants, and promises required to be performed under their
19 contracts with McAfee.

20 88. McAfee has breached its contracts with Plaintiff and the Class members by
21 charging them prices that were higher than the normal, then-current prices that McAfee charged
22 other customers for the same products.

23 89. By reason of McAfee's contractual breaches, Plaintiff and all Class members have
24 suffered damages, in an amount to be proven at trial, including by paying additional amounts for
25 their renewed McAfee Software subscriptions.

26 90. McAfee's contractual breaches are ongoing. Absent an order from the Court
27 requiring McAfee to perform as it is required to do under its contracts with Plaintiff and the Class
28 members, McAfee will continue to breach its contracts to the detriment of the Class.

COUNT II

Violations of California Business & Professions Code § 17200, et. seq.

(On Behalf of the Class)

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4 91. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
5 preceding paragraphs as though alleged in this Count.

6 92. McAfee’s practices alleged herein constitute unlawful, unfair, and fraudulent
7 business practices in violation of California Business and Professions Code § 17200 *et seq.*
8 (“UCL”).

9 93. McAfee has violated the “unlawful” prong of the UCL through its contractual
10 breaches and other legal violations regarding Auto-Renewal pricing alleged herein.

11 94. McAfee has violated the “fraudulent” prong of the UCL through its
12 misrepresentations and omissions regarding Auto-Renewal pricing alleged herein.

13 95. McAfee’s misrepresentations and omissions regarding Auto-Renewal pricing are
14 material, in that a reasonable person would attach importance to the information and would be
15 induced to act on the information in making purchase decisions, including deciding whether to
16 enroll or opt-out of Auto-Renewal.

17 96. McAfee’s misrepresentations and omissions regarding Auto-Renewal pricing are
18 false and misleading.

19 97. McAfee’s misrepresentations and omissions regarding Auto-Renewal pricing
20 deceive or have a tendency to deceive reasonable consumers.

21 98. Plaintiff and the Class reasonably relied upon McAfee’s misrepresentations and
22 omissions regarding Auto-Renewal pricing to their detriment. Because of McAfee’s
23 misrepresentation regarding Auto-Renewal pricing, Mr. Williamson did not un-enroll in Auto-
24 Renewal. Had Mr. Williamson known the truth about Auto-Renewal pricing, he would have un-
25 enrolled in Auto-Renewal.

26 99. McAfee has violated the “unfair” prong of the UCL through its practices regarding
27 Auto-Renewal pricing alleged herein, under both the *Cel-Tech* “tethering” test and “balancing”
28 test utilized by California courts.

1 100. McAfee's practices regarding Auto-Renewal pricing, alleged herein, violate
2 California public policy, including as such policy is reflected in California Business &
3 Professions Code § 17600 *et. seq.*, which the California Legislature specifically enacted to protect
4 consumers from unscrupulous and unfair conduct regarding automatic renewal services. Among
5 other things, California Business & Professions Code § 17600 *et. seq.* reflects and confirms
6 California's public policy that consumers whose services are subject to automatic renewal should
7 be presented, before they are enrolled in such a program, with accurate information, to the extent
8 it is available to the seller at that time, regarding the pricing terms that will apply at the time of
9 renewal. *See* Cal. Bus. § Prof. Code §§ 17601(a)(3), 17602(a)(1). McAfee's practices alleged
10 herein, which include misrepresentations and failures to provide accurate information to
11 customers about Auto-Renewal pricing, before and after their enrollment, not only violate the
12 express terms of California Business & Professions Code § 17600 *et. seq.*, they also violate the
13 spirit of the public policy reflected in that statute, which is intended to ensure, *inter alia*, that
14 customers are properly and accurately informed about automatic renewal offer terms before being
15 enrolled in such programs.

16 101. McAfee's practices regarding Auto-Renewal pricing, alleged herein, are immoral,
17 unethical, oppressive, unscrupulous, and substantially injurious to consumers.

18 102. McAfee has engaged in a years-long, pervasive scheme of making
19 misrepresentations to its customer about Auto-Renewal pricing in order to falsely reassure
20 customers that it is in their interest to enroll and remain enrolled in Auto-Renewal, and thereby to
21 extract additional money from these customers for McAfee's own benefit. McAfee has
22 deliberately calibrated its representations to give customers the false impression that there is no
23 cost disadvantage to having their subscriptions be renewed pursuant to Auto-Renewal, as
24 compared to alternatives such as manually renewing their subscriptions when they expire.
25 Having promoted a false expectation about Auto-Renewal pricing, McAfee then consistently
26 charges customers enrolled in Auto-Renewal special premium prices that are significantly higher
27 than the prices McAfee offers and charges all other customers for the same products.
28

1 Perpetrating a systemic practice of misleading customers and overcharging them is immoral,
2 unethical, and unscrupulous.

3 103. Moreover, McAfee's practices are oppressive and substantially injurious to
4 consumers. McAfee has improperly extracted substantial additional money from consumers
5 through its Auto-Renewal pricing scheme, pursuant to which Auto-Renewal customers are
6 charged significantly more (on average, greater than 40% more) than McAfee's true regular
7 prices offered and charged to all other customers for the same products. McAfee has improperly
8 extracted these additional funds from many thousands of customers. There is no utility to
9 McAfee's misconduct, and even if there were any such utility, it would be significantly
10 outweighed by the gravity of the harm to consumers caused by McAfee's misconduct.

11 104. As a result of the foregoing, Plaintiff and each Class member have been injured
12 and have lost money or property, including by paying additional amounts for their renewed
13 software subscriptions, over and above what they should have been charged and otherwise would
14 have paid, and are entitled to restitution and injunctive relief.

15 105. Unless restrained by this Court, McAfee will continue to engage in unfair,
16 deceptive, and unlawful conduct, as alleged above, in violation of California Business &
17 Professions Code § 17200 *et. seq.*

18 **COUNT III**
Violations of California Business & Professions Code § 17500, et. seq.

19 (On Behalf of the Class)

20 106. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
21 preceding paragraphs as though alleged in this Count.

22 107. McAfee has committed acts of untrue and misleading advertising, as defined by
23 California Business and Professions Code § 17500 *et seq.*, including by: (a) making false
24 representations regarding Auto-Renewal pricing to Plaintiff and the Class; and (b) failing to
25 disclose to Plaintiff and the Class the true nature of Auto-Renewal pricing.

26 108. McAfee's misrepresentations and omissions regarding Auto-Renewal pricing
27 deceive or have a tendency to deceive the general public.
28

1 109. McAfee’s misrepresentations and omissions regarding Auto-Renewal pricing are
2 material, in that a reasonable person would attach importance to the information and would be
3 induced to act on the information in making purchase decisions, including deciding whether to
4 enroll or opt-out of Auto-Renewal.

5 110. Plaintiff and the Class reasonably relied upon McAfee’s misrepresentations and
6 omissions regarding Auto-Renewal pricing to their detriment. Because of McAfee’s
7 misrepresentation regarding Auto-Renewal pricing, Mr. Williamson did not un-enroll in Auto-
8 Renewal. Had Mr. Williamson known the truth about Auto-Renewal pricing, he would have un-
9 enrolled in Auto-Renewal.

10 111. As a result of the foregoing, Plaintiff and each Class member have been injured
11 and have lost money or property, including by paying additional amounts for their renewed
12 software subscriptions, over and above what they should have been charged and otherwise would
13 have paid, and are entitled to restitution and injunctive relief.

14 112. Unless restrained by this Court, McAfee will continue to engage in untrue and
15 misleading advertising, as alleged above, in violation of California Business & Professions Code
16 § 17500 *et. seq.*

17 **COUNT IV**
Violations of California Business & Professions Code § 17600 *et seq.*

18 (On Behalf of the Class)

19 113. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
20 preceding paragraphs as though alleged in this Count.

21 114. Plaintiff and the Class members are “consumers” under California Business &
22 Professions Code § 17601(d).

23 115. McAfee’s Auto-Renewal program constitutes an “automatic renewal” plan or
24 arrangement under California Business & Professions Code § 17601(a).

25 116. Auto-Renewal pricing terms constitute “automatic renewal offer terms” under
26 California Business & Professions Code § 17600(a)(3).

27 117. Pursuant to California Business & Professions Code §§ 17600(a)(3) and
28 17602(a)(1), McAfee was required to clearly and conspicuously present to Plaintiff and the Class,

1 before they were enrolled in the Auto-Renewal program, information, if known by McAfee at the
2 time, regarding the pricing terms that would apply when Plaintiff and the Class members'
3 McAfee Software subscriptions were automatically renewed. To satisfy this requirement, the
4 pricing information presented by McAfee to Plaintiff and the Class was required to be accurate.

5 118. McAfee has violated California Business & Professions Code § 17600 *et seq.* by
6 failing to present to Plaintiff and the Class, before (or, for that matter, after) they were enrolled in
7 the Auto-Renewal program, accurate information regarding the pricing terms that would apply
8 when their software subscriptions were automatically renewed. McAfee knew, at the time it
9 enrolled Plaintiff and the Class in the Auto-Renewal program, the true nature and terms of Auto-
10 Renewal pricing (*i.e.*, that, McAfee intended to charge Plaintiff and the Class special premium
11 prices at Auto-Renewal that were substantially higher than the normal, then-current prices offered
12 and charged to all other customers for the same products), but nevertheless the only information
13 that McAfee presented to Plaintiff and the Class about Auto-Renewal pricing was false and
14 misleading.

15 119. Plaintiff and the Class reasonably relied upon McAfee's misrepresentations and
16 omissions regarding Auto-Renewal pricing to their detriment.

17 120. As a result of the foregoing, Plaintiff and each Class member have been injured
18 and have lost money or property, including by paying additional amounts for their renewed
19 software subscriptions, over and above what they should have been charged and otherwise would
20 have paid, and are entitled to restitution and injunctive relief pursuant to California Business &
21 Professions Code § 17604.

22 121. Unless restrained by this Court, McAfee will continue to engage in the misconduct
23 alleged above, in violation of California Business & Professions Code § 17600 *et seq.*

24 **COUNT V**

25 **Violations of California Business & Professions Code §§ 17200 *et seq.***

26 (On Behalf of the Reference Price Class)

27 122. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
28 preceding paragraphs as though alleged in this Count.

1 123. Plaintiff brings this Count individually and on behalf of the proposed members of
2 the Reference Price Class. Plaintiff seeks injunctive relief to enjoin McAfee from continuing to
3 advertise false former prices and false discounts, as alleged herein.

4 124. McAfee uses its Auto-Renewal pricing scheme, alleged above, to help carry out
5 yet another unlawful pricing scheme—this one perpetrated by McAfee on those customers who
6 purchase new McAfee Software subscriptions or manually renew existing subscriptions via
7 McAfee’s website or their McAfee Software.

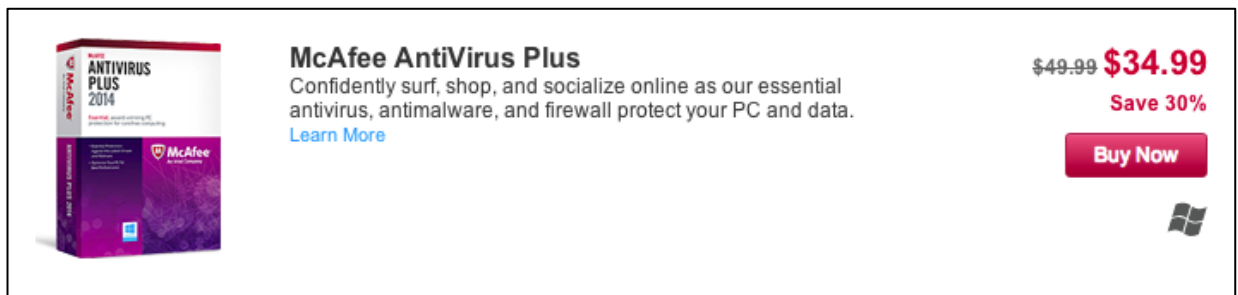
8 125. To these customers, McAfee advertises two prices for McAfee Software
9 subscriptions: (a) the selling price; and (b) directly next to the selling price, a higher expressly-
10 referenced former price with a line, or “slash,” through it. McAfee also expressly represents that
11 the customer will “Save” money if they make their purchase at that time. McAfee states the
12 “savings” in specific dollar or percentage amounts that equal the difference between the
13 referenced former price and the selling price. McAfee prominently advertises the former
14 reference price and the purported discount from such price. McAfee also prominently features
15 phrases such as “Buy Now” regarding the false discounts in order to create a sense of urgency and
16 the false impression that customers will miss out on the purported markdowns if they do not buy
17 the products immediately.

18 126. McAfee designs its slash-through price and corresponding discount representations
19 to create the false impression that the slash-through prices are McAfee’s former prices for the
20 product that the customer would have had to pay if they had made their purchase on another day
21 within a reasonable time period.

22 127. The purported discounts that McAfee represents to these customers are false
23 because the referenced former prices are fabricated and fail to represent McAfee’s true regular or
24 former prices for the products in question. The only time that McAfee ever, or virtually ever,
25 charges the higher reference prices for McAfee Software subscriptions are when it improperly
26 imposes such higher prices on Auto-Renewal customers. On information and belief, McAfee
27 tries to “establish” its false former reference prices, advertised to consumers on its website and
28 through its software, through its inflated and unfair charges to Auto-Renewal customers.

1 128. McAfee's false reference price scheme has been rampant across all three McAfee
2 Software product lines. Its representations of discounts from false reference prices have been
3 pervasive on its website and in representations made to customers through the software.

4 129. For example, a customer purchasing or manually renewing a one-year subscription
5 to McAfee AntiVirus Plus on December 9, 2013, either via McAfee's website or via their
6 McAfee Software, would have been presented by McAfee with: (a) the actual selling price for the
7 subscription, \$34.99; and (b) directly next to that selling price, a former reference price of \$49.99
8 with a "slash" line through it, together with a representation that the customer will "Save 30%" if
9 they "Buy Now." For example, see the screenshot below taken from McAfee's website on
10 December 9, 2013:



17 130. After customers clicked the "Buy Now" button, they would have been taken to the
18 following "Checkout" page, where they again would have been exposed to the former reference
19 price and discount representations. McAfee explicitly states on the "Checkout" page: "**Save \$15**
20 **off** the regular price of \$49.99."²

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26 ² The "Checkout" page screen shot also shows additional deceptive practices by McAfee,
27 including adding, by default, an unrequested physical CD to the order for an extra \$12.95, and
28 adding, by default, an unrequested software program called Registry Power Cleaner for \$4.95 (at
a purported \$35.00 discount from the claimed regular price of \$39.95, even though the product
cannot be otherwise found for sale on McAfee's website). The customer must take affirmative
steps to remove the unwanted add-ons or will be charged for them.

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McAfee
An Intel Company

| For Consumer




TESTED 09-DEC

Checkout

[Continue Shopping](#)


Complete Your Order



McAfee AntiVirus Plus - 1-year subscription
Confidently surf, shop, and socialize online as our essential antivirus, antimalware, and firewall protect your PC and data.
Save \$15.00 off the regular price of \$49.99

1 computer

\$34.99
[Remove](#)



Registry Power Cleaner \$4.95


Revitalize and optimize your PC to make it function like new!

- Speed up your PC and improve system performance
- Protect your PC with automatic back-ups
- Fast and Powerful Scans to locate registry errors
- Find & Safely Repair harmful registry errors that make your PC unstable
- Prevent system crashes

Save \$35.00 off the regular price of \$39.95

1 product

\$4.95
[Remove](#)



Discover and Recover Emergency Reinstall CD \$12.95
[Learn More](#)

\$12.95
[Remove](#)

Promo code Apply

Sub Total **\$52.89**

Tax* --

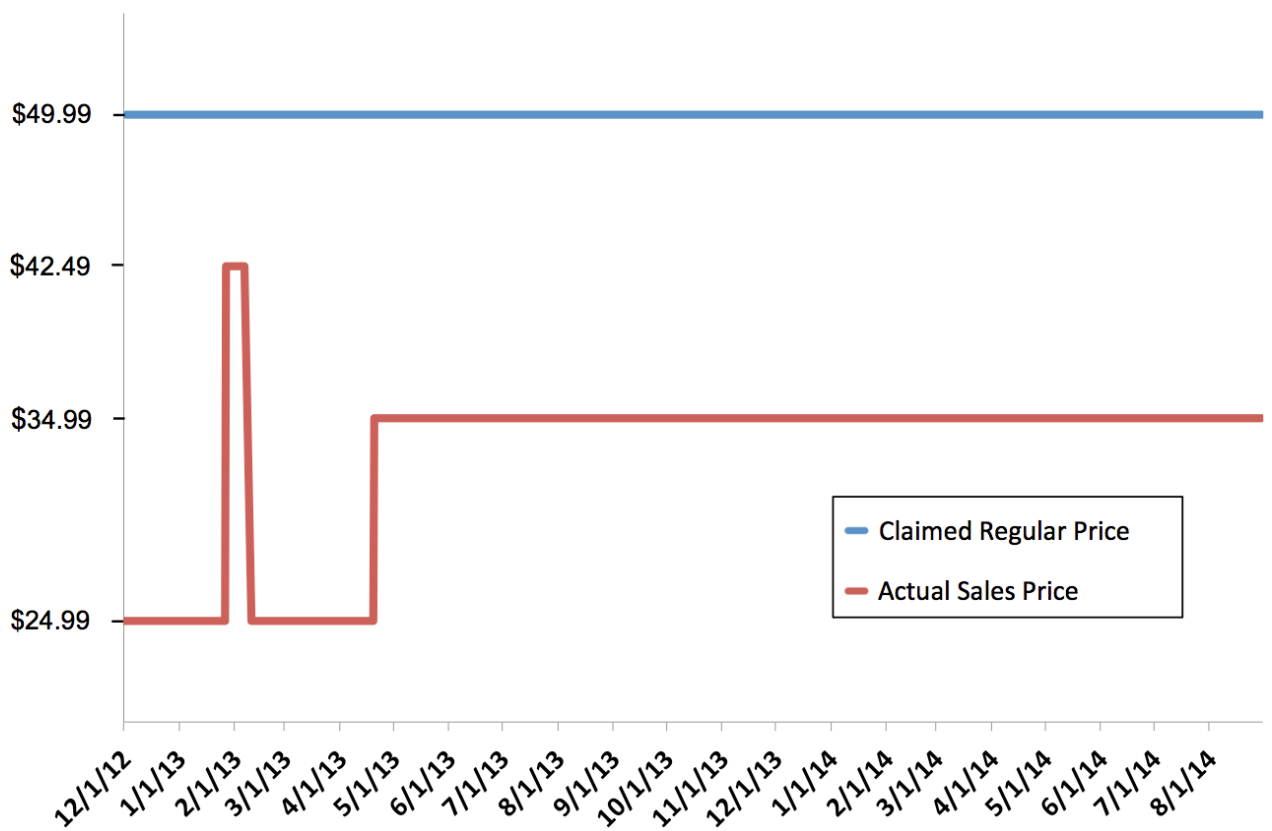
Total \$52.89

*Your sales tax is calculated based on your billing info.

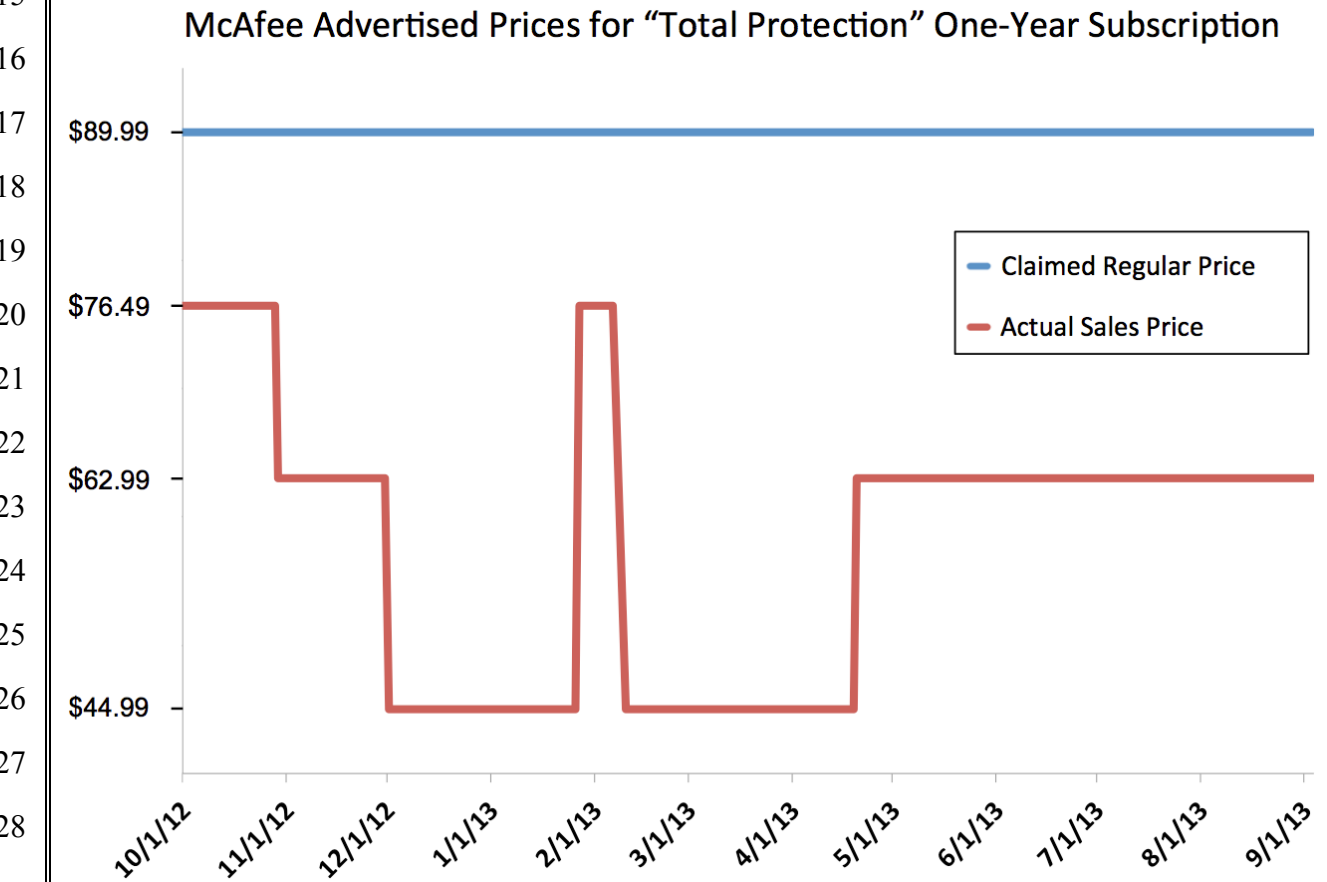
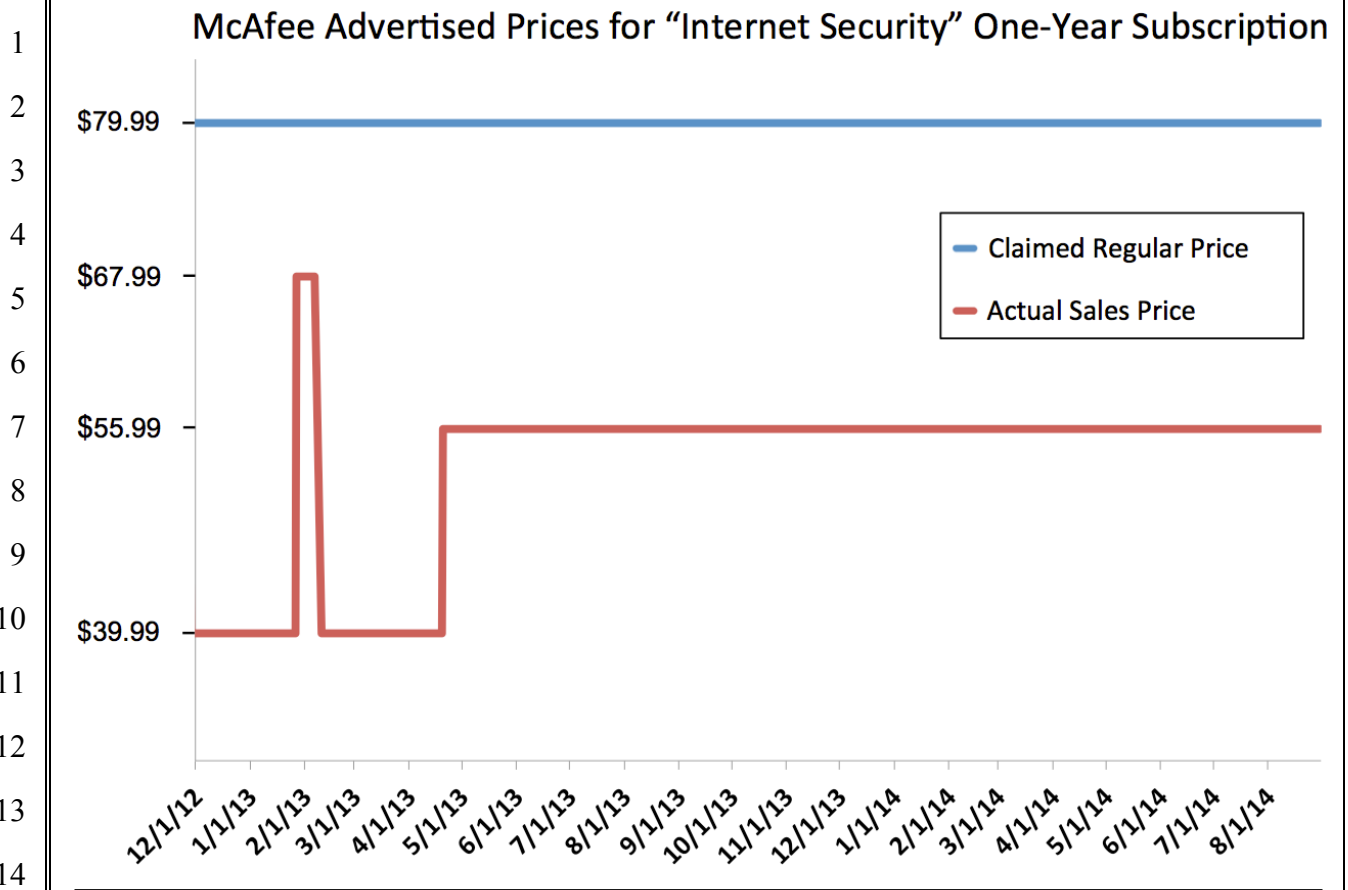
19 131. The \$49.99 reference price is false, as is McAfee’s corresponding representation of
20 “savings,” because the reference price does not represent McAfee’s true “regular” or former price
21 for the product. During the 12 months prior to December 9, 2013, McAfee always offered the
22 same one-year subscription to McAfee AntiVirus Plus at a selling price lower than \$49.99. The
23 only time during this period that McAfee charged as much as \$49.99 for a one-year AntiVirus
24 Plus subscription was when it improperly and unfairly imposed this higher price on Auto-
25 Renewal customers. The following chart demonstrates that McAfee has consistently advertised
26 McAfee AntiVirus Plus at a purported discount from a false former reference price:

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McAfee Advertised Prices for “AntiVirus Plus” One-Year Subscription



132. The following charts further demonstrate that McAfee’s advertising of purported discounts from false former reference prices has been pervasive for its Internet Security and Total Protection products as well:



1 133. McAfee’s reference price representations do not include any indication that the
2 reference prices represent, not McAfee’s true former or regular selling prices for the products in
3 question, but instead premium prices imposed only pursuant to Auto-Renewal.

4 134. McAfee deliberately and artificially sets the false reference prices to create false
5 impressions among customers regarding the products’ values and the bargains that customers will
6 receive if they purchase McAfee’s products, and to artificially increase demand for McAfee
7 Software.

8 135. McAfee’s integrated marketing scheme of advertising false savings from false
9 former prices increases the demand for its products and enables McAfee to charge higher prices.
10 As a result of this scheme, consumers who purchase new software subscriptions or manually
11 renew existing subscriptions, on McAfee’s website or via their McAfee Software, end up paying
12 more than they bargained for because they do not receive the price discounts and value of
13 products that McAfee promises them, and pay more than they otherwise would pay for the
14 products.

15 136. McAfee advertised a false reference price and false discount to Plaintiff
16 Williamson, regarding its AntiVirus Plus product. *See* ¶¶ 61-63, above. Mr. Williamson
17 reasonably relied upon McAfee’s false representations and thereby believed that he was receiving
18 a discount from McAfee’s regular price by making his purchase on October 8, 2011. Mr.
19 Williamson was injured by McAfee’s false reference price and false discount representations,
20 including by paying more for his McAfee Software subscription than he otherwise would have
21 paid, and being denied the discount and product value he was promised.

22 137. McAfee’s practices alleged herein constitute unlawful, unfair, and fraudulent
23 business practices in violation of California Business and Professions Code § 17200 *et seq.*
24 (“UCL”).

25 138. McAfee has violated the “unlawful” prong of the UCL through its false reference
26 price scheme alleged herein. McAfee’s false reference price scheme violates California law
27 prohibiting advertising goods for sale as discounted from former prices which are false. Pursuant
28 to California Business and Professions Code § 17501, “[n]o price shall be advertised as a former

1 price of any advertised thing, unless the alleged former price was the prevailing market price . . .
2 within three months next immediately preceding the publication of the advertisement.”

3 139. McAfee has violated the “fraudulent” prong of the UCL through its false reference
4 price scheme alleged herein. McAfee’s misrepresentations regarding false reference prices and
5 false discounts and savings are false and misleading.

6 140. McAfee’s misrepresentations regarding false reference prices and false discounts
7 and savings deceive or have a tendency to deceive reasonable consumers.

8 141. McAfee’s misrepresentations regarding false reference prices and false discounts
9 and savings are material, in that a reasonable person would attach importance to the information
10 and would be induced to act on the information in making purchase decisions.

11 142. Plaintiff and the Reference Price Class reasonably relied upon McAfee’s
12 misrepresentations regarding false reference prices and false discounts and savings to their
13 detriment.

14 143. McAfee has violated the “unfair” prong of the UCL through its false reference
15 price scheme alleged herein, under both the *Cel-Tech* “tethering” test and “balancing” test utilized
16 by California courts.

17 144. McAfee’s false reference price scheme violates California public policy, including
18 as such policy is reflected in California Business & Professions Code § 17501, which is
19 specifically directed at protecting consumers from false reference price advertising. McAfee’s
20 false reference price scheme also violates California public policy as such policy is reflected in
21 California Civil Code § 1770(a)(13), which prohibits companies from “[m]aking false or
22 misleading statements of fact concerning reasons for, existence of, or amounts of price
23 reductions.” The Court has determined that Plaintiff cannot pursue a claim here under the CLRA
24 because the Court found that McAfee Software does not constitute a “good” or “service” under
25 the CLRA, and has dismissed that claim without leave to amend. Nevertheless, the CLRA (and in
26 particular California Civil Code § 1770(a)(13)) reflects and confirms that the advertising of false
27 discounts to consumers is inconsistent with California public policy.
28

1 145. McAfee’s false reference price scheme is immoral, unethical, oppressive,
2 unscrupulous, and substantially injurious to consumers.

3 146. McAfee has engaged in a years-long, pervasive scheme of advertising false
4 information to its customers about the former selling prices of its products, the value of its
5 products, and the discounts and savings customers will receive. McAfee deliberately advertises
6 false reference prices and uses formatting and language designed to create a false sense of
7 urgency and to convince consumers that they will receive significant discounts if they “Buy
8 Now,” even though the purported discounts are false. The purpose of McAfee’s false reference
9 price scheme is to increase demand for, and sales of, McAfee Software and to extract additional
10 money from customers for McAfee’s own benefit. Perpetrating a systemic practice of misleading
11 customers is immoral, unethical, and unscrupulous.

12 147. Moreover, McAfee’s practices are oppressive and substantially injurious to
13 consumers. McAfee has improperly extracted substantial additional money from consumers
14 through its false reference price scheme. McAfee has extracted these additional funds from many
15 thousands of customers. There is no utility to McAfee’s misconduct, and even if there were any
16 such utility, it would be significantly outweighed by the gravity of the harm to consumers caused
17 by McAfee’s misconduct.

18 148. As a result of the foregoing, Plaintiff and the Reference Price Class have been
19 injured and lost money or property and are entitled to injunctive relief.

20 149. Unless restrained by this Court, McAfee will continue to engage in unfair,
21 deceptive, and unlawful conduct, as alleged above, in violation of California Business &
22 Professions Code § 17200 *et. seq.*

23 150. Plaintiff, on behalf of himself and the Reference Price Class, seeks a permanent
24 injunction, enjoining McAfee from continuing to engage in the misconduct alleged in this Court.

25
26 **COUNT VI**
Violations of California Business & Professions Code §§ 17500 *et seq*

27 **(On Behalf of the Reference Price Class)**
28

1 151. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
2 preceding paragraphs as though alleged in this Count, including but not limited to the allegations
3 set forth in Count V, above, specifically regarding McAfee's false reference price scheme.

4 152. Plaintiff brings this Count individually and on behalf of the proposed members of
5 the Reference Price Class. Plaintiff seeks injunctive relief to enjoin McAfee from continuing to
6 advertise false former prices and false discounts, as alleged herein.

7 153. McAfee has committed acts of untrue and misleading advertising, as defined by
8 California Business and Professions Code § 17500 *et seq.*, including, but not limited to, by: (a)
9 advertising false former prices and false discounts and savings; and (b) advertising prices as
10 former prices of McAfee Software when such prices were not the prevailing price within the three
11 months next preceding the publication of the advertisement. Cal. Bus. & Prof. Code § 17501.

12 154. McAfee's misrepresentations regarding false reference prices and false discounts
13 and savings are false and misleading.

14 155. McAfee's misrepresentations regarding false reference prices and false discounts
15 and savings deceive or have a tendency to deceive the general public.

16 156. McAfee's misrepresentations regarding false reference prices and false discounts
17 and savings are material, in that a reasonable person would attach importance to the information
18 and would be induced to act on the information in making purchase decisions.

19 157. Plaintiff and the Reference Price Class reasonably relied upon McAfee's
20 misrepresentations regarding false reference prices and false discounts and savings to their
21 detriment.

22 158. As a result of the foregoing, Plaintiff and the Reference Price Class have been
23 injured and lost money or property and are entitled to injunctive relief.

24 159. Unless restrained by this Court, McAfee will continue to engage in untrue and
25 misleading advertising, as alleged above, in violation of California Business & Professions Code
26 § 17500 *et seq.*

27 160. Plaintiff, on behalf of himself and the Reference Price Class, seeks a permanent
28 injunction, enjoining McAfee from continuing to engage in the misconduct alleged in this Count.

PRAYER FOR RELIEF

On behalf of himself and the Class and Reference Price Class, Plaintiff requests that the Court order relief and enter judgment against McAfee as follows:

- a. An order certifying the proposed Class and Reference Price Class and appointing Plaintiff and his counsel to represent the Class and Reference Price Class;
- b. An order that McAfee is permanently enjoined from its misconduct as alleged;
- c. A judgment awarding Plaintiff and the Class members restitution, including, without limitation, restitutionary disgorgement of all profits that McAfee may have received as a result of its misconduct as alleged;
- d. A judgment awarding Plaintiff and the Class members actual damages;
- e. Pre-judgment and post-judgment interest;
- f. Attorneys' fees, expenses, and the costs of this action; and
- g. All other and further relief as this Court deems necessary, just, and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 8, 2014

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Michael W. Sobol

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Menlo Park, CA 94025
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Attorneys for Plaintiff

Exhibit A



For Home



TESTED 02-FEB

Consumer Products End User License Agreement

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1.

Definitions

- a. "Computer" means a device that accepts information in digital or similar form and manipulates it for a specific result based upon a sequence of instructions, and includes, but is not limited to, personal computers, laptops, netbooks, mobile handsets, end-point, smartphone, PDA and tablet devices.
- b. "McAfee" means (a) McAfee, Inc., a Delaware corporation, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054 if the Software is purchased in the United States, Mexico, Central America, South America, or the Caribbean; (b) McAfee Security S.A.R.L. with offices located at 26, Boulevard Royal, 2449 Luxembourg, Luxembourg if the Software is purchased in Canada, Europe, the Middle East, Africa, Asia, or the Pacific Rim; and (c) McAfee Co., Ltd. with offices located at Shibuya Mark City West Building 12-1, Dogenzaka 1-Chrome, Shibuya-ku, Tokyo 150-0043, Japan if the Software is purchased in Japan.
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UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL MCAFEE, OR SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR LOSS OF PROFITS, LOSS OF GOODWILL, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR NEGLIGENCE OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY OTHER DAMAGE OR LOSS. IN NO EVENT SHALL MCAFEE, OR SUPPLIERS BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE PRICE PAID FOR THE SOFTWARE, IF ANY, EVEN IF MCAFEE, OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL NOT APPLY TO LIABILITY FOR DEATH OR PHYSICAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. **NOTHING IN THIS AGREEMENT WILL DIMINISH ANY RIGHTS YOU MAY HAVE UNDER EXISTING CONSUMER PROTECTION LEGISLATION OR OTHER APPLICABLE LAWS IN YOUR JURISDICTION THAT MAY NOT BE WAIVED BY CONTRACT.** MCAFEE IS ACTING ON BEHALF OF ITS SUPPLIERS FOR THE PURPOSE OF DISCLAIMING, EXCLUDING AND/OR LIMITING OBLIGATIONS, WARRANTIES AND LIABILITY AS PROVIDED IN THIS AGREEMENT, BUT IN NO OTHER RESPECTS AND FOR NO OTHER PURPOSE. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.

License Restrictions:

McAfee reserves the right to terminate this Agreement, Your account and access to the Software or Service if McAfee determines, in its sole discretion that You have or are attempting to, where applicable:

- a. Reverse engineer, disassemble, decompile or otherwise attempt to derive source code from the Service and/or Software, except to the extent the foregoing restriction is expressly prohibited by applicable law, or make error corrections to, or otherwise adapt or modify, or create derivative works based upon the Service or Software;
- b. Provide false information to set up an account, attempt to gain unauthorized access to any services, user accounts, computer systems or networks, through hacking, password mining or any other means, or otherwise use the Service to impersonate any person, business or entity, including McAfee or its employees and agents;
- c. Utilize the Service, Software or any portion thereof as a means to track or monitor the location and activities of any individual without their express consent and authorization;
- d. Reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, the Service or any portion thereof, including without limitation any content other than Your personal digital content displayed in connection with the Services;

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- e. Transmit content that is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, or fraudulent; invasive of another's privacy; is tortious, or contains explicit or graphic descriptions, or accounts of, sexual acts, or illegally exploits or solicits personal information from a minor;
 - f. Victimize, harass, degrade, or intimidate an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability or any other category prohibited by relevant legislation;
 - g. Propagate software that contains viruses or any other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, or otherwise permit the unauthorized use of a computer or computer network;
 - h. Encourage conduct that would constitute a criminal offense, or that gives rise to civil liability;
 - i. Permit third parties to benefit from the use or functionality of the Software via a timesharing, service bureau or other arrangement.
 - j. Rent, lease, license, loan or assign Your rights to the Software or Service to another party. If You administer the Service on a mobile device and You transfer ownership of that device to someone else, then You must ensure any Software is deleted from that device and remove that device from Your account; or
 - k. Engage in any activity that otherwise interferes with the use and enjoyment of the Software and/or Service by others, including without limitation: using the Software or Service in any way that may damage, disable, overburden, or impair McAfee's servers or networks; harvesting personal information about other Service users for any reason; transmitting, directly or indirectly, any unsolicited bulk communications (including e-mails and instant messages).

8.

Limitations On Use:

McAfee may, in its sole discretion, establish policies and procedures to limit or modify the operation and availability of the Software or Service to maximize the benefit for all users and to prevent abuse of the Software or Service by, e.g., limiting size of content storage, number of Computers, or bandwidth consumption. The Software may contain enforcement technology that limits the number of Computers on which the Software may be installed.

9.

Data Service Charges:

If applicable, You are responsible for any charges incurred with Your data/mobile service provider as a result of the Service, including any overage and penalties assessed for exceeding the limits imposed by Your service provider. Certain benefits and features of the Service require access to and communication with McAfee servers through Your service provider's network, consuming data or minute allowance limits You purchased from Your mobile service provider, such as: Software downloads and updates, Content synchronization, device tracking, locking and wiping, collection of device information necessary to provision the Service.

10.

Equipment Charges:

You are responsible for the cost of Your equipment and to ensure that Your equipment meets the system requirements of the Service, including obtaining updates or upgrades from time to time from Your mobile device service provider in order to continue using the Service. McAfee may modify system requirements or the Service software at any time. MCAFEE DOES NOT WARRANT OR GUARANTEE THAT ANY PARTICULAR DEVICE OR COMPUTER WILL BE COMPATIBLE OR FUNCTION WITH THE SERVICE OR SOFTWARE, NOR DOES MCAFEE WARRANT OR ACCEPT ANY LIABILITY FOR OPERATION OF YOUR PERSONAL EQUIPMENT USED TO ACCESS THE SERVICE. Necessary equipment may include: a mobile device, a GSM mobile connection (supporting SMS and data connection), a computer, Internet access, 3rd party software, and other.

11.

Anti-Theft Software:

With respect to Software known as "Anti Theft Software", the following shall apply:

- a. System Requirements. You acknowledge that no system can guarantee absolute security under all conditions. Use of the Anti-Theft Software product ("AT Software") requires an enabled chipset, BIOS, certain firmware and software and a product subscription. Consult Your system manufacturer and McAfee for availability and functionality. For more information, visit McAfeeAT.intel.com.
- b. Computer Synchronization: You must regularly connect Your enrolled Computer to the Internet so that it can synchronize with the product's system server. Lack of regular synchronization with the product's system server may lead to Your enrolled Computer being **locked down**, which will require You to use Your unlock password to unlock Your Computer. If You forget Your user name or password, You may be unable to use Your enrolled Computer, including without limitation, accessing the data or files on Your enrolled Computer in the event that Your enrolled Computer is locked down. **You are encouraged to have an alternative back-up system for data or files on Your enrolled Computer.**
- c. Regular Updates: You must ensure that You install or permit to be installed periodic Software updates on Your enrolled Computer in order to ensure proper functioning of the AT Software.
- d. NO LIABILITY: MCAFEE WILL NOT BE LIABLE FOR ANY LOST OR STOLEN DATA, FILES OR SYSTEMS OR ANY OTHER DAMAGES OR LOSSES RESULTING, DIRECTLY OR INDIRECTLY, FROM YOUR USE OF, OR INABILITY TO USE, AT SOFTWARE. MCAFEE WILL NOT BE LIABLE FOR ANY DOWNTIME OR SERVICE INTERRUPTION DUE TO MAINTENANCE OR OTHER REASONS.
- e. Effects of Termination. Upon termination of Your subscription, You will no longer have access to AT Software and any portions thereof and Your enrolled Computer will be un-enrolled from subscription. McAfee will delete all information and data stored in or as part of Your Account, including without limitation, Your user name and password.

- f. Effects of Un-Enrollment, Un-use or De-Installation. Your un-enrolled Computer will be protected by the AT Product. Upon un-enrollment or termination, any individual portions of the AT Software that You may have used that are subject to separate software licenses may also be terminated by McAfee in accordance with those license agreements.

12.

Trial/Evaluation Software.

ANY SOFTWARE PROVIDED TO YOU ON A "TRIAL" OR "EVALUATION" BASIS IS PROVIDED TO YOU "AS IS", WITH NO WARRANTY, INDEMNITY OR SUPPORT WHATSOEVER, EXPRESS OR IMPLIED. You are solely responsible to take appropriate measures to back up Your Computer and take other measures to prevent any loss of files or data. The Sections of this EULA entitled "Limited Warranty", "Customer Remedies" and "End User Customer Support" specifically do not apply to Trial or Evaluation Software.

13.

Pre-Release Software.

ANY SOFTWARE OR PORTIONS OF SOFTWARE LABELLED AS "BETA", "PRE-RELEASE", OR OTHERWISE DESCRIBED AS EXPERIMENTAL, UNTESTED OR NOT FULLY FUNCTIONAL ("PRE-RELEASE SOFTWARE") ARE PROVIDED TO YOU "AS IS", WITH NO WARRANTY, INDEMNITY, OR SUPPORT WHATSOEVER, EXPRESS OR IMPLIED. You are solely responsible to take appropriate measures to back up Your Computer and take other measures to prevent any loss of files or data. The Sections of this EULA entitled "Limited Warranty", "Customer Remedies" and "End User Customer Support" specifically do not apply to Pre-Release Software.

14.

Term and Automatic Renewal.

Unless earlier terminated as set forth herein, this Agreement is effective for the term set forth in the Documentation. If no term is agreed to, the default term shall be one (1) year from date of purchase, except with regards to a free version of the Software for which the default term shall be for so long as McAfee makes such Software available to You. If You have provided McAfee with a valid credit card number or an alternate payment method, Your subscription will be automatically renewed (and charged to the account You have provided) for another term at the expiration of Your current term, whenever Your local regulations allow, for a fee no greater than McAfee's then-current price, excluding promotional and discount pricing. The new term will be for the same duration as the expired term unless otherwise specified at time of renewal. This renewal will be processed (and Your card charged) within 30 days prior to the expiration of the term and each anniversary thereafter. If You do not desire to have Your subscription automatically renewed, You must, prior to the expiration of Your subscription term, inform McAfee of Your intention not to renew Your subscription to the Software. McAfee will send written notice of Your renewal to the e-mail address You have provided to McAfee prior to the time of Your renewal and upon the renewal of Your subscription term. If Your subscription is automatically renewed and You request a refund of the subscription price via McAfee's customer support within sixty days of the renewal (or any such longer period that McAfee may, in its sole discretion, allow), McAfee will refund the full subscription price to You. Upon any termination or expiration of this Agreement, You must cease use of the Software and destroy all copies of the Software and the Documentation.

You may terminate this Agreement at any time by destroying the Software and canceling Your account. If You are receiving the Mozy on-line back-up service via a McAfee partner, please note that should You cancel the Service You are receiving from that partner, You would also terminate Your agreement to use the McAfee Online Backup, powered by Mozy product. This Agreement automatically terminates if You fail to comply with its terms and conditions. McAfee reserves the right to refuse or discontinue participation to any user at any time at its sole discretion. You agree that, upon such termination, You will destroy and permanently erase all copies of the Software and that Your access rights to the Mozy back-up service will immediately terminate.

If You fail to renew the Mozy on-line back-up or terminate this Agreement, McAfee will not continue to store Your data for any duration beyond the renewal or termination date. **It is Your responsibility to ensure that You have stored Your data elsewhere prior to cancelling or terminating Mozy Service. McAfee has no obligation to provide You with a copy of Your data and may remove and discard any data.**

15.

Termination of Service:

You may close Your Service account and end Your use of the Service at any time, for any reason or no reason, however, except as provided for auto-renewal of subscriptions, You will not receive a refund for any fees which You may have paid in advance (e.g., if You terminate Your subscription early) and You shall remain liable for all fees incurred or accrued by You. Upon expiration or termination of the Service for any reason, You are no longer authorized to use or access the Service and Your account will be cancelled, closed, or both. You agree that, upon such termination, You will destroy and permanently erase all copies of the Software and that Your access rights to the Service will immediately terminate. When Your account is closed, You understand that You will no longer have access to Your Content stored on the Service and the Content will be deleted by McAfee according to its policies. You are responsible for storing or backing up Your Content elsewhere before cancellation or termination of Your account.

16.

Accounts, Passwords and Security.

You are responsible for keeping Your password secure. You will be solely responsible and liable for any activity that occurs under Your user name. If You lose Your password or the encryption key for Your account, You may not be able to access Your Data. The Software and Service is for Your personal use only, to use for devices that You own or are authorized to monitor and administer. You may only use the Software and Service for the number of devices or subscriptions described in Your purchasing

documentation. The Service may require You to create and manage Your account and Service using an account on a McAfee website (<https://home.mcafee.com/Secure/Protected/Login.aspx>). When creating Your account, You agree to completely and accurately provide the required information and to be responsible for ensuring Your billing information is current, complete, and accurate (such as a change in billing address, credit card number, or credit card expiration date). You must promptly notify McAfee if Your credit card is canceled (for example, for loss or theft). You are solely responsible for the activity that occurs on Your account, including the activity of others who are on Your account (for example, when Your subscription allows multiple users). You must keep Your account password secure, and notify McAfee immediately of any breach of security or unauthorized use of Your account.

17.

Your Synchronized Content:

When the Service or Software provides a feature to synchronize (or "back up") any information, text, files, links, images, or other materials ("Content") on Your device with a McAfee server, You represent and warrant that:

- (1) You are the rightful owner of the Content You synchronize,
- (2) You have obtained all rights necessary to synchronize the Content on to a McAfee server, and
- (3) Neither the Content or nor the synchronizing of such Content to the Service infringes or violates the rights of third parties or any applicable laws.

You acknowledge and agree that McAfee has no obligation to enforce, defend or otherwise protect Your rights in synchronized Content, and You release McAfee and any of its affiliates (and its respective officers, directors, agents, subsidiaries and employees) from and against any and all claims, demands, losses, costs, expenses, liabilities and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to the Content or disputes with third parties regarding Your rights in or to the Content. You further acknowledge and agree that You are legally liable for the Content (e.g., if the Content infringes 3rd party intellectual property or civil rights, is illegal, etc.). You are solely responsible for the Content You store, make available or retrieve from Your account and from all public folders. McAfee is not liable for Your losses caused by any unauthorized use of Your account; however, You may be liable for the losses of McAfee or others due to such unauthorized use.

18.

Buddy Registration:

When the service provides a feature to register any contact as a buddy, You must ensure that You have such contact's consent before adding their contact details as a buddy. In the event a buddy requests deletion of their contact details from Your buddy list You must immediately delete that person's contact details from Your buddy list.

19.

Multiple Environment Software/Multiple Language Software/Dual Media Software/Multiple Copies/Bundles/Updates.

If the Software supports multiple platforms or languages, if You receive the Software on multiple media, if You otherwise receive multiple copies of the Software, or if You receive the Software bundled with other software, the total numbers of Your Computers on which all versions of the Software are installed may not exceed the Permitted Number. If the Software is an Update to a previous version of the Software, You must possess a valid license to such previous version in order to Use the Update. You may continue to Use the previous version of the Software on Your Computer after You receive the Update to assist You in the transition to the Update, provided that the Update and the previous version are installed on the same Computer; the previous version or copies thereof are not transferred to another Computer unless all copies of the Update are also transferred to such Computer, and You acknowledge that any obligation McAfee may have to support the previous version of the Software ends upon availability of the Update.

20.

Notice to United States Government End Users.

The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

21.

Encryption Feature Specific Notice.

The Software provided hereunder contains features and functionality that allow You to protect sensitive information in files and folders on Your Computer. You will be required to provide a password in order to encrypt and protect such information. Additionally, You may provide a challenge question that will allow You to recover Your password in the event You forget such password. In the event that You lose or cannot remember the password and the answer to the challenge question You will not be able to recover the information You have encrypted. You acknowledge that the level of encryption used by the Software should protect Your information from the average computer user; however the encryption may be broken by sophisticated users, certain software programs and government entities. Encryption without strong passwords (At least seven characters with at least 1 number, one uppercase letter, one lowercase letter and a character such as a hyphen.) can lessen the value of the protection that the Software offers. You also acknowledge that information that has been encrypted may not be unencrypted if Your hard drive has bad sectors or fails. McAfee shall not bear responsibility for access of Your information where You have provided Your password to a third party or have failed to use reasonable efforts to protect such information, password, answers to challenge questions or for user error.

22.

23. If You have purchased or will purchase a McAfee Backup CD for the Software, duties may apply to shipping of the CD addition to the fee for the McAfee Backup CD. The duties, if any, depend upon the location to which the CD is received by You. For any McAfee Backup CD requested by You, You agree that You are the importer of record and that McAfee is authorized by You to select the freight forwarder for importation of the McAfee CD on Your behalf.

Export Controls.

24. Your use of the Software and its related Documentation, including technical data, may not be exported or re-exported in violation of the U.S. Export Administration Act, its implementing laws and regulations, the laws and regulations of other U.S. agencies, or the export and import laws of the jurisdiction in which the Software was obtained. Export to any individual, entity, or country specifically designated by applicable law is strictly prohibited. Information about such restrictions can be found at the following websites: <http://www.treas.gov/ofac> and www.bis.doc.gov/complianceand enforcement/LitsToCheck.htm.

High Risk Activities.

25. The Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). MCAFEE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

Governing Law.

26. This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in the State of New York, if You purchased the Software in the United States, Mexico, Central America, South America, or the Caribbean; (b) in Luxembourg, if You purchased the Software in Canada, Europe, Middle East, Africa, Asia, or the region commonly known as the Pacific Rim; and (c) in Japan if You purchased the Software in Japan. If You purchased the Software in any other country, then the substantive laws of Luxembourg shall apply, unless another law is required to be applied. The United States District Court for the Southern District of New York and the State Courts in New York County, New York, when New York law applies, the courts of Luxembourg, when the law of Luxembourg applies, and, the courts of Japan when Japanese law applies shall each have non-exclusive jurisdiction over all disputes relating to this Agreement. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If You are an individual consumer, this shall not affect any mandatory right You may have to take action in Your country of residence and under the laws of that country.

Open Source/Free Software.

27. This product includes or may include some software programs that are licensed (or sublicensed) to the End User under the GNU General Public License (GPL) or other similar Free Software licenses which, among other rights, permit the user to copy, modify and redistribute certain programs, or portions thereof, and have access to the source code. The GPL requires that for any software covered under the GPL, which is distributed to someone in an executable binary format, that the source code also be made available to those users. For any such software covered under the GPL, the source code is made available on this CD. If any Free Software licenses require that McAfee provide rights to use, copy or modify a Free Software program that are broader than the rights granted in this agreement, then such rights shall take precedence over the rights and restrictions herein.

Privacy.

28. By entering into this Agreement, You agree that the McAfee privacy policy, as it exists at any relevant time, shall be applicable to You. The most current privacy policy can be found on the McAfee website at: <http://www.mcafee.com/common/privacy/english/index.htm>. By entering into this Agreement, You agree to the transfer of Your personal information to McAfee's offices in the United States and other countries outside of Your own.

Collection of System and Personal Information:

McAfee Software or Service may employ applications and tools to retrieve information about You, Your Computer, and Your Computer's interactions with other Computers (e.g., device ID, IP address, location, content, etc.) to enable provisioning, delivery and support of certain Software or Service(s) (e.g., Content synchronization, device tracking, Service improvements, etc.). Some of this information may be personally identifiable information and include sensitive data stored in files on Your Computer. This information is essential to enable McAfee to improve Service or Software and provide You with the Service or Software features You subscribed to and up-to-the-minute threat protection; for these reasons there may not be an opt-out option available for some of this information collection other than uninstalling the Software or disabling the Service. By using the Service and Software and accepting these terms, You agree to the collection, backup and storage of this data by McAfee and its service providers. McAfee will not undertake any further processing of this information other than in accordance with its privacy policy. You agree that McAfee and its

service providers may copy and store your data (including personally identifiable information or sensitive data which you made part of Your Content or provided in Your Account) in the United States, Europe, or other countries or jurisdictions outside of Your own as part of the Service or Software. McAfee Online Backup Software may install .NET framework on Your Computer.

29.

End User Customer Support.

End Users with unexpired, paid subscriptions will receive technical support in accordance with McAfee's current standard support offerings, policies and procedures as set forth on <http://service.mcafee.com>, which may be changed from time to time at McAfee's sole discretion. McAfee's standard support offerings, policies and procedures may vary by country.

30.

Audit.

McAfee reserves the right to periodically use technological features to audit You to ensure that You are not using any Software in violation of this Agreement. By entering into this Agreement, You agree to the transfer of information related to such audits to McAfee's offices in the United States and other countries outside of Your own.

31.

Advertising.

Some Software may display advertisements or search boxes. The manner, mode and extent of advertising by McAfee through its Software are subject to change. As consideration for Your use of the Software, You agree that McAfee shall not be responsible or liable for any loss or damage associated with any third party advertisers or sites You may choose to contact.

32.

Miscellaneous.

This Agreement sets forth all rights for the user of the Software and Documentation and is the entire agreement between the parties. This Agreement supersedes any other communications, representations or advertising relating to the Software and Documentation. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by McAfee. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.

33.

McAfee Customer Contact.

If You have any questions concerning these terms and conditions, or if You would like to contact McAfee for any other reason, You may contact Your local McAfee entity at <http://service.mcafee.com/> or by calling at: 866-622-3911, or writing with detailed account information, including your name and the email address registered to the account, to: McAfee, Inc., Attention: Customer Service, 2821 Mission College Blvd., Santa Clara, California 95054.

End of Terms and Conditions

THE SOFTWARE IS PROTECTED BY INTELLECTUAL PROPERTY LAWS AND INTERNATIONAL TREATY PROVISIONS. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

We accept: 

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