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DARLENE VAUGH, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

SIRIUS XM RADIO INC.,

Defendant.

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ATLANTIC COUNTY**

CLASS ACTION COMPLAINT,  
DESIGNATION OF TRIAL COUNSEL,  
AND DEMAND FOR JURY TRIAL

Docket No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

Plaintiff Darlene Vaugh, individually and on behalf of all others similarly situated, complains and alleges as follows:

**NATURE OF ACTION**

1. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant Sirius XM Radio Inc. related to Plaintiff's lifetime subscriptions, which Defendant has subsequently refused to honor without encumbrances. Defendant's conduct amounts to a breach of express and implied contracts, fraudulent and negligent misrepresentation, and unjust enrichment.

**PARTIES**

2. Plaintiff is, and at all times relevant hereto was, a citizen and resident of Atlantic County, New Jersey. Plaintiff purchased a lifetime subscription from Defendant on January 2, 2017.

3. Defendant is a Delaware corporation with its principal place of business in New York, New York. Defendant is a satellite radio provider that offers its radio services via subscription to customers in New Jersey. Prior to the merger of Sirius Radio and XM Radio, the two entities were competitors who sold lifetime subscriptions over the telephone to existing and prospective subscribers for a one-time fee. After the merger in or around 2009, Defendant continued selling lifetime subscriptions briefly before discontinuing that type of subscription.

### **JURISDICTION AND VENUE**

4. This is an action for damages collectively exceeding \$15,000.00, exclusive of interest, costs and attorneys' fees, and for injunctive and declaratory relief.

5. This Court has subject-matter jurisdiction over this action pursuant to N.J. Const. Art. VI, § III.2.

6. Defendant is subject to personal jurisdiction in New Jersey because it initiated and directed, or caused to be initiated and directed by its agent(s), satellite radio services into the state of New Jersey to New Jersey residents.

7. Plaintiff's claims against Defendant, and the resulting injuries caused to Plaintiff by Defendant, arose in substantial part from Defendant's advertising and trade practices related to its satellite radio services to Plaintiff and other New Jersey residents.

8. Venue is proper in Atlantic County, New Jersey because Plaintiff's causes of action arose in this County, Plaintiff resides in this County, and her injuries occurred in this County.

### **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

9. Defendant is a satellite radio service that transmits music, sports, entertainment, comedy, talk, news, traffic and weather stations, as well as "infotainment" services, in the United States on a subscription fee basis. Defendant touts these stations as being superior to free terrestrial radio stations because they are commercial free, crystal clear, and available across the continent. As of

December 31, 2015, Defendant had approximately 29.6 million subscribers in the United States of which approximately 24.3 million were self-pay subscribers and approximately 5.3 million were paid promotional subscribers.

10. Defendant's satellite radios are primarily distributed through automakers, retail stores nationwide, and through Defendant's website. Defendant has agreements with every major automaker to offer satellite radios as a factory or dealer-installed option in the majority of vehicles sold in the United States. Most automakers include a subscription to Defendant's radio service in the sale or lease of their new vehicles. In certain cases, Defendant receives subscription payments from automakers in advance of the activation of Defendant's service. Defendant shares with certain automakers a portion of the revenues Defendant derives from subscribers using vehicles equipped to receive Defendant's service. Defendant also reimburses various automakers for certain costs associated with the satellite radios installed in new vehicles, including, in certain cases, hardware costs, engineering expenses and promotional and advertising expenses.

11. Defendant sells the right to listen to its programming to consumers and its primary source of revenue is subscription fees, with most customers subscribing on an annual, semi-annual, quarterly or monthly basis. Defendant offers discounts for prepaid and longer-term (including "lifetime") subscription plans as well as discounts for multiple subscriptions. Defendant also derives revenue from the sale of advertising on select non-music channels, activation and other fees, the direct sale of satellite radios and accessories, and other ancillary services, such as weather, traffic and data services.

12. At various times during its existence, Defendant has considered filing for bankruptcy protection. In an effort to gain subscribers and substantially increase revenue—especially at the outset of its operations—Defendant offered and sold lifetime subscriptions to consumers. Purchasers of the lifetime subscriptions took a chance and paid large upfront lifetime subscription fees to Defendant

with no guarantee that Defendant would survive as an ongoing business, but in the hope that if Defendant did survive, their lifetime subscription purchase would pay off over time. Defendant is now failing to honor the lifetime subscriptions it sold to consumers, thereby harming those consumers who purchased the lifetime subscriptions.

13. Defendant offered and sold lifetime subscriptions to consumers in New Jersey. Defendant systematically advertised and sold its lifetime subscriptions to consumers by leading consumers to believe that such lifetime subscriptions were for the lifetime of the consumer. However, when consumers have tried to transfer their lifetime subscriptions from one receiver to another or from one automobile to another, Defendant has taken the position that the “lifetime” referred to is not the lifetime of the purchasing consumer, but the lifetime of the receiver or automobile.

14. Defendant’s refusal to honor the lifetime subscriptions has allowed it to reap millions of dollars in profits while individual consumers find they have spent hundreds of dollars for a lifetime subscription that is not as it was represented and not as expected.

#### **PLAINTIFF’S FACTUAL ALLEGATIONS**

15. Plaintiff purchased a Sirius XM “lifetime” subscription directly from Defendant by telephone on January 2, 2017 for approximately \$500.

16. No service agreement or other written agreement was provided to Plaintiff at the time she purchased the lifetime subscription. At the time of purchase of her lifetime subscription, no verbal or written notice was provided to Plaintiff that the lifetime subscription was subject to or conditioned upon a service agreement, other written agreement, or other terms to be presented at a later date.

17. At the time of purchase of her lifetime subscription, Plaintiff understood “lifetime” to be her lifetime, as is used in the ordinary course of business. At the time of purchase of her lifetime subscription, Plaintiff received no verbal or written notice that “lifetime” meant anything other than her lifetime. At the time of purchase of her lifetime subscription, Plaintiff received no verbal or

written notice that the lifetime subscription was limited to the original device only or was subject to a limited number of device transfers, or any other encumbrance.

18. Subsequent to her lifetime subscription purchase, Plaintiff specifically asked Defendant's customer service representative if "lifetime" meant her lifetime or the lifetime of the device. Defendant's customer service representative indicated that it meant Plaintiff's lifetime. Nevertheless, Defendant has attempted to charge Plaintiff a \$75 transfer fee when she sought transfer of her subscription to a new device and has threatened to terminate her subscription based on the number of transfers.

### **CLASS REPRESENTATION ALLEGATIONS**

19. Plaintiff bring this lawsuit as a class action on behalf of herself individually and on behalf of all other similarly situated persons as a class action pursuant to R. 4:32-1. The "Class" which Plaintiff seeks to represent are comprised of and defined as follows:

All persons in New Jersey who purchased a lifetime subscription from Defendant and whose lifetime subscription Defendant later failed to honor within the person's lifetime without encumbrances never disclosed at the time of purchase.

20. Excluded from each of the Class are Defendant, any entity in which any Defendant has a controlling interest or which has a controlling interest of any of the Defendant, and Defendant's legal representatives, assigns or successors. Also excluded are any judge presiding over this case and any member of any judge's immediate family. Members of the Class are referred to as "Class Members."

21. Plaintiff reserves the right to modify the Class definition (or add one or more subclass) after further discovery.

22. Plaintiff and all Class Members have been impacted and harmed by Defendant's acts.

23. Plaintiff seeks injunctive relief and monetary damages on behalf of herself and the Class.

24. This action may properly be brought and maintained as a class action pursuant to R. 4:32-1. This class action satisfies the numerosity, typicality, adequacy, commonality, predominance, and superiority requirements.

25. Upon application by Plaintiff's counsel for certification of the Class, the Court may also be requested to utilize and certify subclasses in the interests of manageability, justice, and/or judicial economy.

26. Numerosity. The number of persons within the Class is substantial, believed to amount to thousands of persons dispersed throughout New Jersey. It is therefore impracticable to join each member of the Class as a named plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impracticable. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation.

27. Typicality. Plaintiff purchased a lifetime subscription from Defendant, and Defendant subsequently has failed to honor the subscriptions without encumbrances, such as transfer fees and limitations on the number of transfers, that were never disclosed at the time of Plaintiff's purchase. Consequently, the claims of Plaintiff are typical of those of the other Class Members she seeks to represent, and Plaintiff's interest is consistent with and not antagonistic to those of the other Class Members she seeks to represent. Plaintiff and all Class Members have been impacted by, and face continuing harm out of, Defendant's violations and/or misconduct as alleged herein.

28. Adequacy. As Class representative, Plaintiff has no interests that are adverse to, or conflict with, the interests of the absent Class Members and is able to fairly and adequately represent and protect the interests of the Class Members. Plaintiff has raised viable claims of the type reasonably

expected to be raised by Class Members and will vigorously pursue those claims. If necessary, Plaintiff may seek leave to amend this Complaint to add additional Class representatives or assert additional claims.

29. Competency of Class Counsel. Plaintiff has retained and is represented by experienced, qualified, and competent counsel committed to prosecuting this action. Plaintiff's counsel is experienced in handling complex class action claims, including alleging violations of the N.J. Stat. Ann. § 56:8-1, *et seq.*

30. Commonality and Predominance. There are well defined common questions of fact and law that exist as to all Class Members and predominate over any questions affecting only individual members. These common legal and factual questions, which do not vary from Class Member to Class Member and may be determined without reference to the individual circumstances of any Class Member, include (but are not limited to) the following:

- a. Whether Defendant breached an express contract with Plaintiff and Class Members;
- b. Whether Defendant breached an implied contract with Plaintiff and Class Members;
- c. Whether Defendant fraudulently misrepresented its lifetime subscriptions to Plaintiff and Class Members;
- d. Whether Defendant negligently misrepresented its lifetime subscriptions to Plaintiff and Class Members;
- e. Whether Defendant was unjustly enriched;
- f. Whether Defendant violated the New Jersey Consumer Fraud Act; and
- g. Whether Defendant should be enjoined from engaging in such conduct in the future.

31. Superiority. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford to pursue individual litigation,

the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each Class Member. Plaintiff anticipates no difficulty in the management of this action as a class action. The interest of Class Members in individually controlling the prosecution of separate claims is small because the potential damages in an individual action for Plaintiff's claims are small. Management of these class claims is more efficient than managing the claims of separate, individual actions. The Class Members can be readily located and notified of this class action through Defendant's records.

32. Additionally, the prosecution of separate actions by individual Class Members may create a risk of multiple adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to such adjudications, thereby substantially impairing or impeding the ability of such nonparty Class Members to protect their interests. The prosecution of individual actions by Class Members could further establish inconsistent results and/or establish incompatible standards of conduct for Defendant.

33. Defendant and/or any of their affiliates, subsidiaries, or agents have acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class appropriate. Moreover, on information and belief, the misconduct complained of herein is substantially likely to continue in the future if an injunction is not entered.



**CAUSES OF ACTION**

**FIRST CLAIM FOR RELIEF**

**Breach of Express Contract**

34. Plaintiff incorporates by reference all preceding factual allegations.
35. Plaintiff and Class Members have entered into contracts with Defendant.
36. Defendant offered Plaintiff and Class Members lifetime satellite radio subscriptions in exchange for large upfront fees.
37. Plaintiff and Class Members have paid for their lifetime subscriptions and thus fully performed their obligations under the contracts.
38. Defendant is now refusing to honor the lifetime subscriptions.
39. By refusing to honor the lifetime subscriptions for the life of Plaintiff and Class Members who have purchased them, without encumbrances never disclosed at the time of purchase, Defendant has breached the contracts.
40. This breach has damaged Plaintiff and Class Members in that they have not received the benefits of their bargains with Defendant. Defendant unjustly retained its benefit of the bargain.
41. As a result of Defendant's breach, Plaintiff and the Class Members sustained damages in an amount to be determined by this Court, including the costs of the lifetime subscriptions and reasonable attorneys' fees. Plaintiff also seeks restitution and disgorgement of profits relating to Defendant's refusal to honor the lifetime subscriptions and/or declaratory relief as may be appropriate.

**SECOND CLAIM FOR RELIEF**

**Breach of Implied Contract**

42. Plaintiff incorporates by reference all preceding factual allegations.
43. Plaintiff and Class Members submitted payment to Defendant for their lifetime

satellite radio subscriptions.

44. In accepting such payment, Defendant entered into an implied covenant of good faith and fair dealing with Plaintiff and Class Members whereby Defendant would honor their subscriptions for each subscriber's entire lifetime without any additional encumbrances never disclosed at the time of purchase.

45. Plaintiff and Class Members paid for their lifetime subscriptions and thus fully performed their obligations under the contracts.

46. Defendant is now refusing to honor the lifetime subscriptions.

47. By refusing to honor the lifetime subscriptions for the lifetimes of Plaintiff and Class Members who have purchased them, without encumbrance never disclosed at the time of purchase, Defendant has breached its implied contracts with Plaintiff and Class Members.

48. Defendant's breach damaged Plaintiff and Class Members in that they have not received the benefits of their bargains with Defendant. Defendant unjustly retained its benefit of the bargain.

49. As a result of Defendant's breach, Plaintiff and the Class Members sustained damages in an amount to be determined by this Court, including the costs of the lifetime subscriptions and reasonable attorneys' fees. Plaintiff also seeks restitution and disgorgement of profits relating to Defendant's refusal to honor the lifetime subscriptions and/or declaratory relief as may be appropriate.

**THIRD CLAIM FOR RELIEF**  
**Fraudulent Misrepresentation**

50. Plaintiff incorporates by reference all preceding factual allegations.

51. Defendant represented to Plaintiff and Class Members that it was selling satellite radio subscriptions that would last the lifetime of the consumer but omitted that it would not honor the

lifetime subscription at all, or without additional encumbrances.

52. Defendant knew its representations were false at the time it made those representations.

53. Defendant induced Plaintiff and Class Members to pay a larger sum of money for a “lifetime” subscription (than what a shorter subscription would cost) with the intent to not honor those subscriptions as represented.

54. Plaintiff and Class Members justifiably relied on Defendant’s misrepresentation and were damaged in the amounts paid for the so-called “lifetime” subscriptions.

**FOURTH CLAIM FOR RELIEF**  
**Negligent Misrepresentation**

55. Plaintiff incorporates by reference all preceding factual allegations.

56. Defendant has continuously referred to the subscriptions at issue here as “lifetime subscriptions,” knowing that the word “lifetime” would lead consumers to believe that such subscriptions are for the lifetime of the consumer, rather than for the lifetime of the radio or vehicle.

57. Defendant expected consumers to rely on the characterization of subscriptions as “lifetime subscriptions,” and consumers acted on that characterization by purchasing the subscriptions.

58. As described above, Plaintiff and Class Members have been injured in that they paid for subscriptions that they either would not have paid for, or would not have paid as much for, had they known the truth.

**FIFTH CLAIM FOR RELIEF**  
**Unjust Enrichment**

59. Plaintiff incorporates by reference all preceding factual allegations.

60. Defendant engaged in deceptive conduct when selling the “lifetime” subscriptions as alleged above.

61. Defendant has been unjustly enriched by collecting the price of the lifetime subscriptions, which Plaintiff and Class Members paid in reliance on Defendant's deceptive conduct.

62. Plaintiff, individually and on behalf of the Class, seeks restitution of the price paid for the lifetime subscriptions that Defendant is now failing to honor without encumbrances.

**SIXTH CLAIM FOR RELIEF**

**Violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, et seq.**

63. Plaintiff incorporates by reference all preceding factual allegations.

64. The New Jersey Consumer Fraud Act ("CFA") protects consumers against "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . . ." N.J. Stat. Ann. § 56:8-2.

65. Plaintiff and Class Members are consumers who purchased the lifetime subscriptions for personal, family, or household use.

66. At all relevant times, Defendant conducted trade and commerce in New Jersey within the meaning of the CFA.

67. Defendant violated the CFA by affirmatively representing that its lifetime subscriptions would last the lifetime of the consumer at the time of purchase, then subsequently failing to honor the lifetime subscriptions without encumbrances, such as transfer fees and limitations on the number of transfers to another device.

68. Plaintiff and Class Members reasonably expected Defendant to honor its contractual obligations as represented to them at the time they purchased their lifetime subscriptions.

69. The injury to consumers by this conduct greatly outweighs any alleged countervailing benefit to consumers or competition under all of the circumstances.

70. Had Plaintiff and Class Members known Defendant would fail to honor their lifetime subscriptions without encumbrances, they would not have purchased the lifetime subscriptions or would have paid much less for them.

71. As a direct and proximate result of Defendant's actions, Plaintiff and Class Members have suffered economic damages including, but not limited to, loss of use of the lifetime subscriptions, substantial losses in value of the lifetime subscriptions, and other damages.

72. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiff will serve the New Jersey Attorney General with a copy of this Complaint within 10 days of filing.

#### **PRAYER FOR RELIEF**

Plaintiff prays for relief and judgment in her favor, as follows:

A. Injunctive relief prohibiting Defendant's misconduct in the future by barring Defendant from terminating, failing to honor, or charging any additional monies for its customers' lifetime subscriptions;

B. As a result of the Defendant's misconduct as alleged herein, Plaintiff seeks for herself and each Class Member damages in an amount to be proven at trial;

C. Restitution and disgorgement of profits relating to Defendant's refusal to honor the lifetime subscriptions and/or declaratory relief as may be appropriate;

D. An award of attorneys' fees and costs to counsel for Plaintiff and the Class; and

E. An Order certifying this action to be a proper class action pursuant to R. 4:32-1, establishing an appropriate Class and any additional subclasses the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing Plaintiff's counsel as Class Counsel.

#### **DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and the Class, hereby demands a jury trial on all issues so triable.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Bradley King is hereby designated as trial attorney in the above matter.

Respectfully submitted,

**AHDOOT & WOLFSON, PC**

Date: May 8, 2018

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