

1 Tina Wolfson, SBN 174806
twolfson@ahdootwolfson.com
2 Robert Ahdoot, SBN 172098
rahdoot@ahdootwolfson.com
3 Theodore Maya, SBN 223242
tmaya@ahdootwolfson.com
4 Bradley King, SBN 274399
bking@ahdootwolfson.com
5 **AHDOOT & WOLFSON, PC**
10728 Lindbrook Drive
6 Los Angeles, California 90024
Telephone: (310) 474-9111
7 Facsimile: (310) 474-8585

8 *Counsel for Plaintiffs*

9 *[Additional Counsel on Signature Page]*

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13
14 PHILIP ALVAREZ, RANDALL
15 BETTISON, MARC KELLEHER, and
16 DARLENE VAUGH, individually and
on behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 SIRIUS XM RADIO INC.,

20 Defendant.

Case No. 2:18-cv-8605-JVS-SS

**AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Philip Alvarez, Randall Bettison, Marc Kelleher, and Darlene Vaughn
2 (collectively, “Plaintiffs”), individually and on behalf of the Class defined below of
3 similarly situated persons, allege the following against Defendant Sirius XM Radio Inc.
4 (“Defendant”), based upon personal knowledge with respect to themselves and on
5 information and belief derived from, among other things, investigation of counsel and
6 review of public documents as to all other matters:

7 **SUMMARY OF ACTION**

8 1. Defendant owns various digital radio stations that transmit programming
9 via satellite. In an effort to gain subscribers and substantially increase revenue –
10 especially at the outset of its operations – Defendant offered and sold lifetime
11 subscriptions to consumers. Purchasers of the lifetime subscriptions took a chance and
12 paid large upfront lifetime subscription fees to Defendant with no guarantee that
13 Defendant would survive as an ongoing business, but in the hope that if Defendant did
14 survive, their lifetime subscription purchases would pay off over time. Defendant is
15 now failing to honor the lifetime subscriptions it sold to consumers, thereby harming
16 those consumers who purchased the lifetime subscriptions.

17 2. Plaintiffs are consumers harmed by Defendant’s failure to honor the
18 lifetime subscriptions Defendant sold to them. Plaintiffs seek to represent themselves
19 as well as a class of all other consumers similarly situated to whom Defendant sold a
20 lifetime subscription and whose lifetime subscription Defendant is not honoring.

21 **JURISDICTION AND VENUE**

22 3. This Court has subject matter jurisdiction over this action under the Class
23 Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5
24 million exclusive of interest and costs. Plaintiffs and Defendant are citizens of different
25 states. There are more than 100 putative Class Members.

26 4. This Court has personal jurisdiction over Defendant because it regularly
27 conducts business in California, has sufficient minimum contacts with California, and
28 the events giving rise to this matter arose out of those contacts. Defendant intentionally

1 availed itself of this jurisdiction by marketing and selling products and services to
2 thousands of consumers in California.

3 5. Venue is appropriate pursuant to 28 U.S.C. § 1391. A substantial portion
4 of the events and conduct giving rise to the violations alleged in this complaint occurred
5 in this District.

6 **PARTIES**

7 6. Plaintiff Philip Alvarez is an individual residing in Los Angeles County,
8 California.

9 7. Plaintiff Randall Bettison is an individual residing in Multnomah County,
10 Oregon.

11 8. Plaintiff Marc Kelleher is an individual residing in Cape May County,
12 New Jersey.

13 9. Plaintiff Darlene Vaugh is an individual residing in Atlantic County, New
14 Jersey.

15 10. Defendant Sirius XM Radio Inc. is a Delaware corporation headquartered
16 in New York, New York, and doing business in the state of California. Defendant is a
17 wholly owned subsidiary of Sirius XM Holdings Inc.

18 11. Defendant was formed after the FCC approved the merger of XM Satellite
19 Radio Holding, Inc. and Sirius Satellite Radio, Inc. in July of 2008. Upon its formation,
20 Defendant assumed and acquired all duties, obligations, and liabilities of its
21 predecessors.

22 **STATEMENT OF FACTS**

23 12. Defendant is a satellite radio service that transmits music, sports,
24 entertainment, comedy, talk, news, traffic and weather stations, as well as
25 “infotainment” services, in the United States on a subscription fee basis. Defendant
26 touts these stations as being superior to free terrestrial radio stations because they are
27 commercial free, crystal clear, and available across the continent. As of December 31,
28 2015, Defendant had approximately 29.6 million subscribers in the United States of

1 which approximately 24.3 million were self-pay subscribers and approximately 5.3
2 million were paid promotional subscribers.

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

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

21 15. At various times during its existence, Defendant has considered filing for
22 bankruptcy protection. In an effort to gain subscribers and substantially increase
23 revenue – especially at the outset of its operations – Defendant offered and sold lifetime
24 subscriptions to consumers. Purchasers of the lifetime subscriptions took a chance and
25 paid large upfront lifetime subscription fees to Defendant with no guarantee that
26 Defendant would survive as an ongoing business, but in the hope that if Defendant did
27 survive, their lifetime subscription purchase would pay off over time. Defendant is now
28

1 failing to honor the lifetime subscriptions it sold to consumers, thereby harming those
2 consumers who purchased the lifetime subscriptions.

3 16. Defendant offered and sold lifetime subscriptions to consumers in
4 California and throughout the United States. Defendant systematically advertised and
5 sold its lifetime subscriptions to consumers by leading consumers to believe that such
6 lifetime subscriptions were for the lifetime of the consumer. However, when
7 consumers have tried to transfer their lifetime subscriptions from one receiver to
8 another or from one automobile to another, Defendant has taken the position that the
9 “lifetime” referred to is not the lifetime of the purchasing consumer, but the lifetime of
10 the receiver or automobile.

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

15 18. Plaintiffs purchased Sirius XM “lifetime” subscriptions directly from
16 Defendant. No service agreement or other written agreement was provided to Plaintiffs
17 at the time of their purchase. At the time of purchase of their lifetime subscriptions, no
18 verbal or written notice was provided to Plaintiffs that the lifetime subscriptions were
19 subject to or conditioned upon a service agreement, other written agreement, or other
20 terms to be presented at a later date. At the time of purchase of their lifetime
21 subscriptions, Plaintiffs understood “lifetime” to be their lifetimes, as is used in the
22 ordinary course of business. At the time of purchase of their lifetime subscriptions,
23 Plaintiffs received no verbal or written notice that “lifetime” meant anything other than
24 their lifetimes. At the time of purchase of their lifetime subscriptions, Plaintiffs
25 received no verbal or written notice that the lifetime subscriptions were limited to the
26 original devices only, were subject to a limited number of device transfers, or were
27 subject to any other encumbrance. When Plaintiffs subsequently attempted to transfer
28

1 their lifetime subscriptions to other receiver devices, Defendant required Plaintiffs to
2 pay \$75 transfer fees to continue the lifetime subscriptions and/or refused the transfers.

3 **CLASS ALLEGATIONS**

4 19. Plaintiffs bring this class action lawsuit individually and on behalf of the
5 proposed Class members under Rule 23 of the Federal Rules of Civil Procedure.

6 20. Plaintiffs seek certification of the following Class:

7 **All persons in the United States who purchased a paid subscription**
8 **from Sirius XM (or one of its predecessors) that was marketed as a**
9 **“lifetime plan” or “lifetime subscription.”**

10 Specifically excluded from the above Class are: Defendant and its parents,
11 subsidiaries, or any entities in which it has a controlling interest, as well as Defendant’s
12 officers, directors, employees, affiliates, legal representatives, heirs, predecessors,
13 successors, and assigns. Also excluded are any Judges to whom this case is assigned as
14 well as their judicial staff and immediate family members.

15 21. The proposed Class meets the criteria for certification under Federal Rule
16 of Civil Procedure 23(a) and (b):

17 22. **Numerosity.** There are hundreds of thousands of putative Class members
18 throughout the United States. Class members are so numerous that joinder of all
19 members is impracticable.

20 23. **Commonality.** Common questions of law and fact exist and predominate
21 over any questions affecting only individual Class members. The common questions
22 include:

- 23 a. Whether Defendant offered to Plaintiffs and Class members
24 “lifetime” satellite radio subscriptions;
25 b. Whether Plaintiffs and Class members accepted Defendant’s offer
26 for “lifetime” satellite radio subscriptions;

- 1 c. Whether Defendant breached its agreements with Plaintiffs and
2 Class members by failing to honor the lifetime subscriptions without
3 encumbrances never disclosed at the time of purchase;
- 4 d. Whether Defendant acted in bad faith or abused its discretion in
5 failing to honor the lifetime subscriptions without encumbrances
6 never disclosed at the time of purchase;
- 7 e. Whether Defendant's failure to honor the lifetime subscriptions
8 without encumbrances never disclosed at the time of purchase was
9 contrary to Plaintiffs' and Class members' objectively reasonable
10 expectations;
- 11 f. Whether Defendant's promise of a "lifetime" satellite radio
12 subscription was likely to mislead objectively reasonable consumers;
- 13 g. Whether Plaintiffs and Class members are entitled to restitution and
14 other equitable relief;
- 15 h. Whether Plaintiffs and Class members are entitled to damages, and
16 i. Whether Defendant should be enjoined from engaging in this type of
17 conduct.

18 24. **Typicality.** Plaintiffs' claims are typical of Class members' claims.
19 Plaintiffs and the Class members all sustained injury as a direct result of Defendant's
20 practice of regularly failing to honor the lifetime subscriptions without encumbrances
21 never disclosed at the time of purchase.

22 25. **Adequacy.** Plaintiffs will fairly and adequately protect Class members'
23 interests. Plaintiffs have no interests antagonistic to Class members' interests, and
24 Plaintiffs have retained counsel who have considerable experience and success in
25 prosecuting complex class action and consumer protection cases.

26 26. **Superiority.** A class action is the superior method for fairly and efficiently
27 adjudicating this controversy for the following reasons without limitation:
28

1 a. Class members' claims are relatively small compared to the burden
2 and expense required to litigate their claims individually, so it would be impracticable
3 for Class members to seek individual redress for Defendant's illegal and deceptive
4 conduct;

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

11 c. Plaintiffs anticipate no unusual difficulties in managing this class
12 action.

13 **CAUSE OF ACTION**

14 **Breach of Contract**

15 27. Plaintiffs incorporate all previous factual allegations as if fully set forth
16 herein.

17 28. Plaintiffs and Class members have entered into contracts with Defendant.

18 29. Defendant offered Plaintiffs and Class members lifetime satellite radio
19 subscriptions in exchange for large upfront fees.

20 30. Plaintiffs and Class members have paid for their lifetime subscriptions and
21 thus fully performed their obligations under the contracts.

22 31. Defendant is now refusing to honor the lifetime subscriptions.

23 32. By refusing to honor the lifetime subscriptions for the life of Plaintiffs and
24 Class members who have purchased them, without encumbrances never disclosed at the
25 time of purchase, Defendant has breached the contracts.

26 33. This breach has damaged Plaintiffs and Class members in that they have
27 not received the benefits of their bargains with Defendant.

28

1 34. As a result of Defendant’s breach, Plaintiffs and the Class Members
2 sustained damages in an amount to be determined by this Court, including the costs of
3 the lifetime subscriptions and reasonable attorneys’ fees.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of the Class set forth
6 herein, respectfully request that the Court order relief and enter judgment against
7 Defendant as follows:

- 8 A. An order certifying the proposed Class, appointing Plaintiffs as class
9 representatives of the proposed Class and their undersigned counsel as Class counsel;
- 10 B. A judgment awarding Plaintiffs and Class members appropriate monetary
11 relief, including actual damages, restitution, and disgorgement;
- 12 C. A judgment awarding Plaintiffs and Class members appropriate injunctive
13 relief, including reinstatement of terminated lifetime subscriptions without
14 encumbrances on device transfers;
- 15 D. Pre- and post-judgment interest;
- 16 E. Attorneys’ fees, expenses, and the costs of this action; and
- 17 F. All other and further relief as the Court deems necessary, just, and proper.

18 **JURY TRIAL DEMANDED**

19 Plaintiffs demand a trial by jury for all issues so triable under the law.

20
21 Respectfully submitted,

22 DATED: June 11, 2020

23 */s/ Tina Wolfson*
 Tina Wolfson, SBN 174806
twolfson@ahdootwolfson.com
 Robert Ahdoot, SBN 172098
rahdoot@ahdootwolfson.com
 Theodore Maya, SBN 223242
tmaya@ahdootwolfson.com
 Bradley King, SBN 274399
bking@ahdootwolfson.com

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AHDOOT & WOLFSON, PC
10728 Lindbrook Drive
Los Angeles, California 90024
Telephone: (310) 474-9111
Facsimile: (310) 474-8585

Cornelius P. Dukelow*, OK Bar No. 19086
cdukelow@abingtonlaw.com

ABINGTON COLE + ELLERY
320 S. Boston Avenue, Suite 1130
Tulsa, Oklahoma 74103
Telephone & Facsimile: (918) 588-3400

Keith S. Dubanevich*, OR Bar No. 975200
kdubanevich@stollberne.com

**STOLL STOLL BERNE LOKTING &
SHLACHTER P.C.**

209 SW Oak Street, Suite 500
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

**Pro Hac Vice application to be submitted*

Counsel for Plaintiffs