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Superior Court of California  
County of Los Angeles

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN THE COUNTY OF LOS ANGELES**

PHILIP ALVAREZ, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

SIRIUS XM RADIO INC.,

Defendant.

Case No. **BC719411**

**CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF ONLY**

1. Violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*;
2. Violations of the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
3. Fraudulent Misrepresentation;
4. Negligent Misrepresentation;
5. Declaratory and Injunctive Relief

**JURY TRIAL DEMANDED**

1 Plaintiff Philip Alvarez ("Plaintiff"), individually and on behalf of the Class  
 2 defined below of similarly situated persons, alleges the following against Defendant  
 3 Sirius XM Radio Inc. ("Defendant"), based upon personal knowledge with respect to  
 4 himself and on information and belief derived from, among other things, investigation of  
 5 counsel and review of public documents as to all other matters:

### 6 **SUMMARY OF ACTION**

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

16 2. Plaintiff is a consumer harmed by Defendant's failure to honor the lifetime  
 17 subscriptions Defendant sold to him. Plaintiff seeks to represent himself as well as a class  
 18 of all other California consumers similarly situated to whom Defendant sold a lifetime  
 19 subscription and whose lifetime subscription Defendant is not honoring. On behalf of all  
 20 similarly situated California consumers, Plaintiff seeks solely declaratory and injunctive  
 21 relief from Defendant to honor the lifetime subscriptions without encumbrances.

### 22 **JURISDICTION AND VENUE**

23 3. This Court has subject matter jurisdiction in this action because Defendant  
 24 sold lifetime subscriptions to Plaintiff and other Class members in Los Angeles County.  
 25 Further, Plaintiff's complaint is not subject to arbitration pursuant to *McGill v. Citibank*,  
 26 N.A. (2017) 2 Cal.5th 945 because it seeks public injunctive relief. *Id.* at 961.



1 of Defendant's service. Defendant shares with certain automakers a portion of the  
2 revenues Defendant derives from subscribers using vehicles equipped to receive  
3 Defendant's service. Defendant also reimburses various automakers for certain costs  
4 associated with the satellite radios installed in new vehicles, including, in certain cases,  
5 hardware costs, engineering expenses and promotional and advertising expenses.

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

13 12. At various times during its existence, Defendant has considered filing for  
14 bankruptcy protection. In an effort to gain subscribers and substantially increase revenue  
15 – especially at the outset of its operations – Defendant offered and sold lifetime  
16 subscriptions to consumers. Purchasers of the lifetime subscriptions took a chance and  
17 paid large upfront lifetime subscription fees to Defendant with no guarantee that  
18 Defendant would survive as an ongoing business, but in the hope that if Defendant did  
19 survive, their lifetime subscription purchase would pay off over time. Defendant is now  
20 failing to honor the lifetime subscriptions it sold to consumers, thereby harming those  
21 consumers who purchased the lifetime subscriptions.

22 13. Defendant offered and sold lifetime subscriptions to consumers in  
23 California. Defendant systematically advertised and sold its lifetime subscriptions to  
24 consumers by leading consumers to believe that such lifetime subscriptions were for the  
25 lifetime of the consumer. However, when consumers have tried to transfer their lifetime  
26 subscriptions from one receiver to another or from one automobile to another, Defendant  
27 has taken the position that the "lifetime" referred to is not the lifetime of the purchasing  
28 consumer, but the lifetime of the receiver or automobile.



1 Specifically excluded from the above Class are: Defendant and its parents or  
 2 subsidiaries, any entities in which Defendant has a controlling interest, as well as  
 3 Defendant's officers, directors, affiliates, legal representatives, heirs, predecessors,  
 4 successors, and assigns. Also excluded are any Judges to whom this case is assigned as  
 5 well as their judicial staff and immediate family members.

6 17. Plaintiff does not know the exact number of Class members but believes that  
 7 the Class comprises thousands of consumers throughout California. Class members are  
 8 so numerous that joinder of all members is impracticable. Plaintiff is informed and  
 9 believes that all Class members are ascertainable through Defendant's business records.

10 18. Common questions of law and fact exist and predominate over any questions  
 11 affecting only individual Class members. The common questions include:

- 12 a. Whether Defendant acted in bad faith or abused its discretion in  
 13 failing to honor the lifetime subscriptions without encumbrances  
 14 never disclosed at the time of purchase;
- 15 b. Whether Defendant's failure to honor the lifetime subscriptions  
 16 without encumbrances never disclosed at the time of purchase was  
 17 contrary to Plaintiff's and Class members' objectively reasonable  
 18 expectations;
- 19 c. Whether Defendant's promise of a "lifetime" satellite radio  
 20 subscription was likely to mislead objectively reasonable consumers;
- 21 d. Whether Defendant engaged in deceptive and unfair business and  
 22 trade practices under California law; and
- 23 e. Whether Defendant should be enjoined from engaging in this type of  
 24 conduct.

25 19. Plaintiff's claims are typical of Class members' claims. Plaintiff and Class  
 26 members all sustained injury as a direct result of Defendant's practice of regularly failing  
 27 to honor the lifetime subscriptions without encumbrances never disclosed at the time of  
 28 purchase.



21. A class action is the superior method for fairly and efficiently adjudicating this controversy for the following reasons without limitation:

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

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

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

**COUNT 1**

**Cal. Bus. & Prof. Code § 17200, et seq.**

22            22. Plaintiff incorporates all previous factual allegations as if fully set forth  
23 herein.

24 23. California Business & Professions Code § 17200, *et seq.* (the "UCL")  
25 prohibits any "unlawful," "unfair," or "fraudulent" business practice.

26           24. Defendant violated the "unlawful" prong of the UCL by making material  
27 misrepresentations that its lifetime subscriptions were for the lifetime of consumers,  
28 when in fact Defendant regularly cancels and limits or prohibits transfers of lifetime

1 subscriptions in violation of California's Consumers Legal Remedies Act, Cal. Civ. Code  
2 § 1750 *et seq.* (the "CLRA").

3 25. Defendant's practice of regularly failing to honor the lifetime subscriptions  
4 without encumbrances never disclosed at the time of purchase violated the "unfair" prong  
5 of the UCL because it was immoral, unethical, oppressive, unscrupulous, unconscionable,  
6 and/or substantially injurious to Plaintiff and Class members. Defendant's practice was  
7 also contrary to legislatively declared and public policy and the harm it caused to  
8 consumers outweighed its utility, if any.

9 26. Defendant violated the "fraudulent" prong of the UCL by making material  
10 misrepresentations that its lifetime subscriptions were for the lifetime of consumers,  
11 when in fact Defendant regularly fails to honor the subscriptions within the lifetime of  
12 the consumer without further encumbrances never disclosed at the time of purchase.  
13 These material misrepresentations were likely to mislead consumers.

14 27. Plaintiff and Class members relied on Defendant's material  
15 misrepresentations and would not have paid for, or would not have paid as much for, the  
16 lifetime subscriptions had they known the truth.

17 28. As a direct and proximate result of Defendant's unfair, unlawful, and  
18 fraudulent conduct, Plaintiff and Class members have been damaged.

19 29. Defendant's conduct caused substantial injury to Plaintiff and Class  
20 members. Accordingly, Plaintiff seeks an order enjoining Defendant from committing  
21 such unlawful, unfair, and fraudulent business practices, and requiring Defendant to  
22 honor Plaintiff's and Class members' lifetime subscriptions without encumbrances.  
23 Plaintiff also seeks attorneys' fees and costs under Cal Code Civ. Proc. § 1021.5.

24 **COUNT 2**

25 **Violations of the California Consumers Legal Remedies Act**

26 **Cal. Civ. Code § 1750, *et seq.***

27 30. Plaintiff incorporates all previous factual allegations as if fully set forth  
28 herein.



1           31. Defendant is a "person," as defined by Cal. Civ. Code § 1761(c).

2           32. Plaintiff and Class members are "consumers," as defined by Cal. Civ. Code  
3 § 1761(d).

4           33. The lifetime subscriptions that Defendant marketed and sold constitute  
5 "services," as defined by Cal. Civ. Code § 1761(a) and (b).

6           34. Plaintiff's and Class members' purchases of lifetime subscriptions constitute  
7 "transactions," as defined by Cal. Civ. Code § 1761(e).

8           35. Plaintiff's and Class members' purchases of lifetime subscriptions for  
9 personal, family, and household purposes as meant by Cal. Civ. Code § 1761(d).

10          36. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial  
11 portion of the transactions at issue occurred in this District. An affidavit establishing that  
12 this Court is the proper venue for this action is attached below.

13          37. Defendant deceived consumers in that it misrepresented that lifetime  
14 subscriptions were for the lifetime of consumers, when in fact Defendant regularly  
15 cancels and limits or prohibits transfers of lifetime subscriptions.

16          38. Defendant's misrepresentations, active concealment, and failures to disclose  
17 violated the CLRA in the following manner:

18           a. In violation of Section 1770(a)(5), Defendant misrepresented that its  
19 lifetime subscriptions had characteristics, benefits, or uses that they did not have  
20 (representing the subscriptions were to last the lifetime of the consumer then refusing to  
21 honor them);

22           b. In violation of Section 1770(a)(7), Defendant misrepresented that its  
23 lifetime subscriptions were of a particular standard, quality, and/or grade when they were  
24 of another (representing the subscriptions were to last the lifetime of the consumer then  
25 refusing to honor them);

26           c. In violation of Section 1770(a)(9), Defendant advertised its lifetime  
27 subscriptions with an intent not to sell them as advertised (representing the subscriptions  
28 were to last the lifetime of the consumer then refusing to honor them);

1           d. In violation of Section 1770(a)(14), Defendant misrepresented that its  
2 lifetime subscriptions conferred or involved rights, remedies, or obligations that they did  
3 not have (representing the subscriptions were to last the lifetime of the consumer then  
4 refusing to honor them); and

5           e. In violation of Section 1770(a)(16), Defendant misrepresented that its  
6 lifetime subscriptions were supplied in accordance with previous representations when  
7 they were not (representing the subscriptions were to last the lifetime of the consumer  
8 then refusing to honor them).

9           39. Defendant's misrepresentations and nondisclosures regarding lifetime  
10 subscriptions and its practice of regularly failing to honor the lifetime subscriptions  
11 without encumbrances never disclosed at the time of purchase were material to Plaintiff  
12 and Class members because a reasonable person would have considered them important  
13 in deciding whether or not to purchase the lifetime subscriptions and because Defendant  
14 had a duty to disclose the truth.

15           40. Plaintiff and Class members relied upon Defendant's material  
16 misrepresentations and nondisclosures, and had Plaintiff and Class members known the  
17 truth they would have acted differently.

18           41. As a direct and proximate result of Defendant's material misrepresentations  
19 and nondisclosures, Plaintiff and the Class have been irreparably harmed.

20           42. On behalf of the Class, Plaintiff seeks injunctive relief in the form of an  
21 order enjoining Defendant from making such material misrepresentations and failing to  
22 disclose or actively concealing its practice of regularly canceling and limiting or  
23 prohibiting transfers of lifetime subscriptions, and requiring Defendant to honor  
24 Plaintiff's and Class members' lifetime subscriptions without encumbrances. Plaintiff  
25 also seeks attorneys' fees and costs.

**COUNT 3**

**Fraudulent Misrepresentation**

43. Plaintiff incorporates all previous factual allegations as if fully set forth herein.

44. Defendant represented to Plaintiff and Class members that it was selling satellite radio subscriptions that would last the lifetime of the consumer, and omitted that it would not honor the lifetime subscription at all, or without additional encumbrances.

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

46. 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.

47. Plaintiff and Class members justifiably relied on Defendant's misrepresentation and were damaged.

48. As a result of Defendant's misrepresentation, Plaintiff seeks injunctive relief on behalf of himself and Class members requiring Defendant to honor their lifetime subscriptions without encumbrances.

**COUNT 4**

**Negligent Misrepresentation**

49. Plaintiff incorporates all previous factual allegations as if fully set forth herein.

50. 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 lifetimes of the consumers, rather than for the lifetime of the radio or the car.

51. Defendant expected consumers to rely on the characterization of subscriptions as "lifetime subscriptions," and consumers acted on that characterization by purchasing the subscriptions.



1 C. A judgment enjoining Defendant from continuing to terminate, encumber,  
2 or otherwise fail to honor Plaintiff's and Class members' lifetime subscriptions for their  
3 lifetimes without encumbrances;

4 D. Attorneys' fees, expenses, and the costs of this action; and

5 E. All other and further relief as the Court deems necessary, just, and proper.

6 **JURY TRIAL DEMANDED**

7 Plaintiff hereby demands a jury trial of his claims to the extent authorized by law.

8  
9 DATED: August 28, 2018

Respectfully submitted,

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