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1 2 3 4 5 6 7	Tina Wolfson, CA Bar No. 174806 twolfson@ahdootwolfson.com Bradley K. King, CA Bar No. 274399 bking@ahdootwolfson.com AHDOOT & WOLFSON, PC 10728 Lindbrook Drive Los Angeles, California 90024 Telephone: (310) 474-9111 Facsimile: (310) 474-8585 Counsel for Plaintiff	CONFURMED COPY ORIGINAL FILED Superior Court of California County of Los Anneles AUG 2 8 2018 Sherri R. Carter, Executive Officer/Clerk By: Rita Nazarya County	
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	IN THE COUNT	Y OF LOS ANGELES	
10 11	PHILIP ALVAREZ, individually and on behalf of all others similarly situated,	Case No. BC71,9411	
12 13	Plaintiff, v. '	CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ONLY	
14	SIRIUS XM RADIO INC.,	1 Mintaine of the Onlifermie Unfein	
15 16	Defendant.	1. Violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.;	
17		2. Violations of the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.;	
18		 Fraudulent Misrepresentation; Negligent Misrepresentation; 	
19 20		5. Declaratory and Injunctive Relief	
21		JURY TRIAL DEMANDED	
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	CLASS ACTION COMPLAINT EXHIBIT A PAGE 10		

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

SUMMARY OF ACTION

1. Defendant owns various digital radio stations that transmit programming via 7 satellite. In an effort to gain subscribers and substantially increase revenue - cspecially 8 at the outset of its operations – Defendant offered and sold lifetime subscriptions to 9 consumers. Purchasers of the lifetime subscriptions took a chance and paid large upfront 10 lifetime subscription fees to Defendant with no guarantee that Defendant would survive 1.1 as an ongoing business, but in the hope that if Defendant did survive, their lifetime 12 subscription purchases would pay off over time. Defendant is now failing to honor the 13 lifetime subscriptions it sold to consumers, thereby harming those consumers who 14 purchased the lifetime subscriptions. 15

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

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JURISDICTION AND VENUE

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

- 4. This Court has personal jurisdiction over Defendant because Defendant is
 authorized to do business in the State of California and sold its satellite radio
 subscriptions to Los Angeles County residents.
- 4 5. Venue is proper under California Code of Civil Procedure Section 395.5 as
 5 liability against Defendant arose in Los Angeles County.

PARTIES

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Plaintiff Philip Alvarez is an individual residing in Los Angeles County.

7. Defendant Sirius XM Radio Inc. is a Delaware corporation headquartered in
9 New York, New York, and doing business in the State of California. Defendant is a
10 wholly owned subsidiary of Sirius XM Holdings Inc.

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

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STATEMENT OF FACTS

9. Defendant is a satellite radio service that transmits music, sports, 15 entertainment, comedy, talk, news, traffic and weather stations, as well as "infotainment" 16 services, in the United States on a subscription fee basis. Defendant touts these stations 17 as being superior to free terrestrial radio stations because they are commercial free, crystal 18 clear, and available across the continent. As of December 31, 2015, Defendant had 19 approximately 29.6 million subscribers in the United States of which approximately 24.3 20 million were self-pay subscribers and approximately 5.3 million were paid promotional 21 subscribers. 22

10. Defendant's satellite radios are primarily distributed through automakers,
retail stores nationwide, and directly through Defendant. 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

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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.

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.

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

13. Defendant offered and sold lifetime subscriptions to consumers in California. 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.

1 14. Defendant's refusal to honor the lifetime subscriptions has allowed it to reap 2 millions of dollars in profits while individual consumers find they have spent hundreds 3 of dollars for a lifetime subscription that is not as it was represented and not as expected.

Plaintiff purchased two Sirius XM "lifetime" subscriptions directly from 15. 4 Defendant by telephone in March of 2009, for approximately \$400 each. No service 5 agreement or other written agreement was provided to Plaintiff at the time he purchased 6 the lifetime subscriptions. At the time of purchase of his lifetime subscriptions, no verbal 7 or written notice was provided to Plaintiff that the lifetime subscriptions were subject to 8 or conditioned upon a service agreement, other written agreement, or other terms to be 9 presented at a later datc. At the time of purchase of his lifetime subscriptions, Plaintiff 10 understood "lifetime" to be his lifetime, as is used in the ordinary course of business. At 11 the time of purchase of his lifetime subscriptions, Plaintiff received no verbal or written 12 notice that "lifetime" meant anything other than his lifetime. At the time of purchase of 13 his lifetime subscriptions, Plaintiff received no verbal or written notice that the lifetime 14 subscriptions were limited to the original device only, or were subject to a limited number 15 of device transfers, or any other encumbrance. In March of 2016, Plaintiff attempted to 16 transfer one of his lifetime subscriptions to a new portable satellite radio receiver device 17 and Defendant required that Plaintiff pay a \$75 transfer fee to continue the lifetime 18 subscription. 19

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CLASS ALLEGATIONS

21 16. Plaintiff brings this class action lawsuit individually and on behalf of all
22 other persons similarly situated (the "Class"). Plaintiff seeks to represent the following
23 defined Class for declaratory and injunctive relief only:

All persons in California 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

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at the time of purchase.

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

17. Plaintiff does not know the exact number of Class members but believes that
the Class comprises thousands of consumers throughout California. Class members are
so numerous that joinder of all members is impracticable. Plaintiff is informed and
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
 affecting only individual Class members. The common questions include:

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a. Whether Defendant acted in bad faith or abused its discretion in failing to honor the lifetime subscriptions without encumbrances never disclosed at the time of purchase;

b. Whether Defendant's failure to honor the lifetime subscriptions without encumbrances never disclosed at the time of purchase was contrary to Plaintiff's and Class members' objectively reasonable expectations;

c. Whether Defendant's promise of a "lifetime" satellite radio subscription was likely to mislead objectively reasonable consumers;

d. Whether Defendant engaged in deceptive and unfair business and trade practices under California law; and

e. Whether Defendant should be enjoined from engaging in this type of conduct.

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

20. Plaintiff will fairly and adequately protect Class members' interests.
 Plaintiff has no interests antagonistic to Class members' interests, and Plaintiff has
 retained counsel who have considerable experience and success in prosecuting complex
 class action and consumer protection cases.

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

a. Class members' claims are relatively small compared to the burden
and expense required to litigate their claims individually, so it would be impracticable for
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.

CAUSES OF ACTION 18 COUNT 1 19 Violations of the California Unfair Competition Law 20 Cal. Bus. & Prof. Code § 17200, et seq. 21 Plaintiff incorporates all previous factual allegations as if fully set forth 22. 22 herein. 23 California Business & Professions Code § 17200, et seq. (the "UCL") 23. 24 prohibits any "unlawful," "unfair," or "fraudulent" business practice. 25 Defendant violated the "unlawful" prong of the UCL by making material 24. 26 misrepresentations that its lifetime subscriptions were for the lifetime of consumers, 27 when in fact Defendant regularly cancels and limits or prohibits transfers of lifetime 28 6 CLASS ACTION COMPLAINT **EXHIBIT A PAGE 16**

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

25. Defendant's practice of regularly failing to honor the lifetime subscriptions
without encumbrances never disclosed at the time of purchase violated the "unfair" prong
of the UCL because it was immoral, unethical, oppressive, unscrupulous, unconscionable,
and/or substantially injurious to Plaintiff and Class members. Defendant's practice was
also contrary to legislatively declared and public policy and the harm it caused to
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, and18 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 secks 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.

COUNT 2

Violations of the California Consumers Legal Remedies Act

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Cal. Civ. Code § 1750, et seq.

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

CLASS ACTION COMPLAINT EXHIBIT A PAGE 17

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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).

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

34. Plaintiff's and Class members' purchases of lifetime subscriptions constitute "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).

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

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

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

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

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

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

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

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

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

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

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

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CLASS ACTION COMPLAINT EXHIBIT A PAGE 19

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COUNT 3

Fraudulent Misrepresentation

2 Plaintiff incorporates all previous factual allegations as if fully set forth 43. 3 herein. 4

44. Defendant represented to Plaintiff and Class members that it was selling 5 satellite radio subscriptions that would last the lifetime of the consumer, and omitted that 6 it would not honor the lifetime subscription at all, or without additional encumbrances. 7

Defendant knew its representations were false at the time it made those 45. 8 representations. 9

Defendant induced Plaintiff and Class members to pay a larger sum of 46. 10 money for a "lifetime" subscription (than what a shorter subscription would cost) with 11 the intent to not honor those subscriptions as represented. 12

Plaintiff and Class members justifiably relied on Defendant's 47. 13 14 misrepresentation and were damaged.

As a result of Defendant's misrepresentation, Plaintiff seeks injunctive relief 48. 15 on behalf of himself and Class members requiring Defendant to honor their lifetime 16 subscriptions without encumbrances. 17

COUNT 4

Negligent Misrepresentation

Plaintiff incorporates all previous factual allegations as if fully set forth 49. 20 21 herein.

Defendant has continuously referred to the subscriptions at issue here as 50. 22 "lifetime subscriptions," knowing that the word "lifetime" would lead consumers to 23 believe that such subscriptions are for the lifetimes of the consumers, rather than for the 24 lifetime of the radio or the car. 25

Defendant expected consumers to rely on the characterization of 51. 26 subscriptions as "lifetime subscriptions," and consumers acted on that characterization 27 by purchasing the subscriptions. 28

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52. 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.

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4 53. As a result of Defendant's misrepresentation, Plaintiff seeks injunctive relief 5 on behalf of himself and Class members requiring Defendant to honor their lifetime 6 subscriptions without encumbrances.

COUNT 5

Declaratory and Injunctive Relief

9 54. Plaintiff incorporates all previous factual allegations as if fully set forth
10 herein.

55. Plaintiff is informed and believes, and based thereon alleges, that
Defendant's violations of the UCL and the CLRA are continuing. There is no plain,
speedy, and/or effective remedy available to Plaintiff to end these violations.

14 56. Plaintiff therefore requests that the Court declare Defendant's practices 15 unlawful and enter a preliminary injunction, followed by a permanent injunction, barring 16 Defendant from all the following: (1) terminating or purporting to terminate any lifetime 17 subscriptions; (2) failing to honor any and all lifetime subscriptions previously purchased; 18 and (3) charging and/or purporting to charge Plaintiff and/or Class members any 19 additional monies for any such services.

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PRAYER FOR RELIEF

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

A. An order certifying the proposed Class, appointing Plaintiff as class
 representative of the proposed Class and their undersigned counsel as Class counsel;

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B. A judgment declaring Defendant's conduct unlawful as alleged above;

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,	
10		Hall	
11		Tina Wolfson, CA Bar No. 174806	
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