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14 \**Pro Hac Vice* application to be submitted

15 *Counsel for Plaintiff*

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **Southern Division**

14 PAUL WRIGHT, individually and on  
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 SIRIUS XM RADIO INC.,

19 Defendant.

Case No. 8:16-cv-1688

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Paul Wright (“Plaintiff”), individually and on behalf of the Class defined  
 2 below of similarly situated persons, alleges the following against Defendant Sirius XM  
 3 Radio Inc. (“Defendant”), based upon personal knowledge with respect to himself and  
 4 on information and belief derived from, among other things, investigation of counsel  
 5 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  
 8 via satellite. In an effort to gain subscribers and substantially increase revenue –  
 9 especially at the outset of its operations – Defendant offered and sold lifetime  
 10 subscriptions to consumers. Purchasers of the lifetime subscriptions took a chance and  
 11 paid large upfront lifetime subscription fees to Defendant with no guarantee that  
 12 Defendant would survive as an ongoing business, but in the hope that if Defendant did  
 13 survive, their lifetime subscription purchases would pay off over time. Defendant is  
 14 now failing to honor the lifetime subscriptions it sold to consumers, thereby harming  
 15 those consumers who 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  
 18 class of all other consumers similarly situated to whom Defendant sold a lifetime  
 19 subscription and whose lifetime subscription Defendant is not honoring.

### 20 **JURISDICTION AND VENUE**

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

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

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 Paul Wright is an individual residing in Huntington Beach,  
8   California.

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

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

16                                   **STATEMENT OF FACTS**

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

25          10.    Defendant’s satellite radios are primarily distributed through automakers,  
26   retail stores nationwide, and through Defendant’s website. Defendant has agreements  
27   with every major automaker to offer satellite radios as a factory or dealer-installed  
28   option in the majority of vehicles sold in the United States. Most automakers include a

1 subscription to Defendant's radio service in the sale or lease of their new vehicles. In  
2 certain cases, Defendant receives subscription payments from automakers in advance of  
3 the activation of Defendant's service. Defendant shares with certain automakers a  
4 portion of the revenues Defendant derives from subscribers using vehicles equipped to  
5 receive Defendant's service. Defendant also reimburses various automakers for certain  
6 costs associated with the satellite radios installed in new vehicles, including, in certain  
7 cases, hardware costs, engineering expenses and promotional and advertising expenses.

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

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

24 13. Defendant offered and sold lifetime subscriptions to consumers in  
25 California and throughout the United States. Defendant systematically advertised and  
26 sold its lifetime subscriptions to consumers by leading consumers to believe that such  
27 lifetime subscriptions were for the lifetime of the consumer. However, when  
28 consumers have tried to transfer their lifetime subscriptions from one receiver to

1 another or from one automobile to another, Defendant has taken the position that the  
2 “lifetime” referred to is not the lifetime of the purchasing consumer, but the lifetime of  
3 the receiver or automobile.

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

8 15. Plaintiff purchased a Sirius XM “lifetime” subscription directly from  
9 Defendant by telephone in December of 2006, for approximately \$400. No service  
10 agreement or other written agreement was provided to Plaintiff at the time he purchased  
11 the lifetime subscription. At the time of purchase of his lifetime subscription, no verbal  
12 or written notice was provided to Plaintiff that the lifetime subscription was subject to  
13 or conditioned upon a service agreement, other written agreement, or other terms to be  
14 presented at a later date. At the time of purchase of his lifetime subscription, Plaintiff  
15 understood “lifetime” to be **his** lifetime, as is used in the ordinary course of business.  
16 At the time of purchase of his lifetime subscription, Plaintiff received no verbal or  
17 written notice that “lifetime” meant anything other than **his** lifetime. At the time of  
18 purchase of his lifetime subscription, Plaintiff received no verbal or written notice that  
19 the lifetime subscription was limited to the original device only, or was subject to a  
20 limited number of device transfers, or any other encumbrance. In January of 2016,  
21 Plaintiff attempted to transfer his lifetime subscription to a new Stiletto (a portable  
22 satellite radio receiver device) after his previous Stiletto quit working, but Defendant  
23 refused the transfer.

#### 24 CLASS ALLEGATIONS

25 16. Plaintiff brings this class action lawsuit individually and on behalf of the  
26 proposed Class members under Rule 23 of the Federal Rules of Civil Procedure.

1  
2 17. Plaintiff seeks certification of the following Class:

3 **All persons in the United States who purchased a lifetime subscription**  
4 **from Defendant and whose subscription Defendant later failed to honor**  
5 **within the person's lifetime without encumbrances never disclosed at**  
6 **the time of purchase.**

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

12 18. The proposed Class meets the criteria for certification under Federal Rule  
13 of Civil Procedure 23(a) and (b):

14 19. **Numerosity.** Plaintiff does not know the exact number of Class members  
15 but believes that the Class comprises tens of thousands of consumers throughout the  
16 United States. Class members are so numerous that joinder of all members is  
17 impracticable.

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

- 21 a. Whether Defendant offered to Plaintiff and Class members  
22 "lifetime" satellite radio subscriptions;  
23 b. Whether Plaintiff and Class members accepted Defendant's offer for  
24 "lifetime" satellite radio subscriptions;  
25 c. Whether Defendant breached its agreements with Plaintiff and Class  
26 members by failing to honor the lifetime subscriptions without  
27 encumbrances never disclosed at the time of purchase;  
28

- d. 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;
- e. 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;
- f. Whether Defendant's promise of a "lifetime" satellite radio subscription was likely to mislead objectively reasonable consumers;
- g. Whether Defendant engaged in deceptive and unfair business and trade practices under California law;
- h. Whether Plaintiff and Class members are entitled to restitution and other equitable relief;
- i. Whether Plaintiff and Class members are entitled to damages, and
- j. Whether Defendant should be enjoined from engaging in this type of conduct.

21. **Typicality.** Plaintiff's claims are typical of Class members' claims. Plaintiff and the 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.

22. **Adequacy.** 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.

23. **Superiority.** A class action is the superior method for fairly and efficiently adjudicating 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

1 for Class members to seek individual redress for Defendant's illegal and deceptive  
2 conduct;

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

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

## 11 **CAUSES OF ACTION**

### 12 **COUNT 1**

#### 13 **Breach of Express Contract**

14       24. Plaintiff incorporates all previous factual allegations as if fully set forth  
15 herein.

16       25. Plaintiff and Class members have entered into contracts with Defendant.

17       26. Defendant offered Plaintiff and Class members lifetime satellite radio  
18 subscriptions in exchange for large upfront fees.

19       27. Plaintiff and Class members have paid for their lifetime subscriptions and  
20 thus fully performed their obligations under the contracts.

21       28. Defendant is now refusing to honor the lifetime subscriptions.

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

25       30. This breach has damaged Plaintiff and Class members in that they have not  
26 received the benefits of their bargains with Defendant.

**COUNT 2**

**Breach of Implied Contract**

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

32. Plaintiff and Class members submitted payment to Defendant for their lifetime satellite radio subscriptions.

33. 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.

34. Plaintiffs and Class members paid for their lifetime subscriptions and thus fully performed their obligations under the contracts.

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

36. 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 the implied contracts with Plaintiff and Class members.

37. 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.

38. 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 seek restitution and disgorgement of profits relating to Defendant's refusal to honor the lifetime subscriptions and/or declaratory relief as may be appropriate.

**COUNT 3**

**Violation of the California Unfair Competition Law**

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

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

40. California Business & Professions Code § 17200, *et seq.* (the “UCL”) prohibits any “unlawful,” “unfair,” or “fraudulent” business practice.

41. Defendant violated the “unlawful” prong of the UCL by making material misrepresentations that its lifetime subscriptions were for the lifetime of consumers, when in fact Defendant regularly cancels and limits or prohibits transfers of lifetime subscriptions in violation of California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (the “CLRA”).

42. 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.

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

44. Plaintiff and Class members relied on Defendant’s material misrepresentations and would not have paid for, or would not have paid as much for, lifetime subscriptions had they known the truth.

45. As a direct and proximate result of Defendant’s unfair, unlawful, and fraudulent conduct, Plaintiff and Class members lost money or property.

46. Defendant's conduct caused substantial injury to Plaintiff and Class members. Accordingly, Plaintiff seeks an order enjoining Defendant from committing such unlawful, unfair, and fraudulent business practices, and seek the full amount of money Plaintiff and Class members paid for their lifetime subscriptions and/or restitutionary disgorgement of profits from Defendant. Plaintiff also seeks attorneys' fees and costs under Cal Code Civ. Proc. § 1021.5.

**COUNT 4**

## Violation of the California Consumers Legal Remedies Act

**Cal. Civ. Code § 1750, *et seq.***

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

48. Defendant is a “person,” as defined by Cal. Civ. Code § 1761(c).

49. Plaintiff and Class members are “consumers,” as defined by Cal. Civ. Code § 1761(d).

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

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

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

53. 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.

54. 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.

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

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

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

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

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

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

20         56.     Defendant's misrepresentations and nondisclosures regarding lifetime  
21 subscriptions and its practice of regularly failing to honor the lifetime subscriptions  
22 without encumbrances never disclosed at the time of purchase were material to Plaintiff  
23 and Class members because a reasonable person would have considered them important  
24 in deciding whether or not to purchase the lifetime subscriptions and because Defendant  
25 had a duty to disclose the truth.

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

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

59. 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. Plaintiff also seeks attorneys' fees and costs.

60. In accordance with Cal. Civ. Code § 1782(a), on September 12, 2016, Plaintiff's counsel served Defendant with notice of the CLRA violations by certified mail, return receipt requested.

61. If Sirius XM fails to provide appropriate relief for the CLRA violations within 30 days of receipt of Plaintiff's notification letter, Plaintiff will amend this complaint to seek compensatory and exemplary damages as permitted by Cal. Civ. Code §§ 1780 and 1782(b).

**COUNT 5**

## Fraudulent Misrepresentation

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

63. 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.

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

65. 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.

## COUNT 6

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

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

## COUNT 7

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

73. Plaintiff therefore requests that the Court enter a preliminary injunction, followed by a permanent injunction, barring Defendant from all the following: (1) terminating or purporting to terminate; (2) failing to honor any and all “lifetime”

1 satellite radio subscriptions previously purchased; and (3) charging and/or purporting to  
2 charge Plaintiff and/or Class members any additional monies for any such services.

3 **PRAYER FOR RELIEF**

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

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

9 B. A judgment awarding the Plaintiff and Class members appropriate  
10 monetary relief, including actual and statutory damages, restitution, and disgorgement;

11 C. A judgment awarding Plaintiff and Class members actual damages for all  
12 of Defendant's conduct alleged under all causes of action herein entitling Plaintiff and  
13 Class members to actual damages;

14 D. A judgment awarding Plaintiff and Class members restitution, including,  
15 without limitation, disgorgement of all profits and unjust enrichment obtained by  
16 Defendant as a result of its unlawful, unfair, and fraudulent business practices and  
17 conduct alleged herein;

18 E. Pre- and post-judgment interest;

19 F. Attorney fees, expenses, and the costs of this action; and

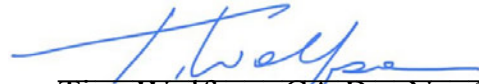
20 G. All other and further relief as the Court deems necessary, just, and proper.

**JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury for all issues so triable under the law.

DATED: September 12, 2016

Respectfully submitted,



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*\*Pro Hac Vice* application to be submitted

*Counsel for Plaintiff*

**AFFIDAVIT OF TINA WOLFSON**

I, Tina Wolfson, declare as follows:


1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Paul Wright ("Plaintiff") in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiff suffered injuries as a result of Defendant's acts in this District, many of the acts and transactions giving rise to this action occurred in this District, and Defendant (1) is authorized and registered to conduct business in this District and has intentionally availed itself of the laws and markets of this District through the distribution and sale of its products in this District and (2) is subject to personal jurisdiction in this District.

3. Plaintiff is a resident of Orange County, California.

4. Defendant is a Delaware registered corporation with its principal place of business located at 1221 Avenue of the Americas, New York, New York 10020.

I declare under penalty of perjury under the laws of the United States and the State of California this 12th day of September, 2016 in West Hollywood, California that the foregoing is true and correct.

  
Tina Wolfson