

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

COLIN LOEWENTHAL

Plaintiff

-and-

SIRIUS XM HOLDINGS, INC., SIRIUS XM RADIO, INC.
SIRIUS XM CANADA HOLDINGS, INC., SIRIUS XM CANADA INC.,
SIRIUS XM CONNECTED VEHICLE SERVICES HOLDINGS INC.,
SIRIUS XM CONNECTED VEHICLE SERVICES INC.,
SXM CVS CANADA INC. AND ADSWIZZ, INC.

Defendants

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

(Notice of Action issued on October 1, 2020)

DEFINITIONS

1. In this Statement of Claim, in addition to the terms defined elsewhere herein, the following terms have the following meanings:

- (a) “Act” means the *Class Proceedings Act, 1992*, S.O. 1992, c.6;
- (b) “ARPIPI” means the *Act Respecting the Protection of Personal Information in the Private Sector*, C.Q.L.R. c. P-39.1, as amended;
- (c) “BC Privacy Act” means the *Privacy Act*, R.S.B.C. 1996, c. 373, as amended;
- (d) “CPA” means the *Consumer Protection Act, 2002*, S.O. 2002, c. 30;
- (e) “CCQ” means the *Civil Code of Quebec* C.Q.L.R. c. C.C.Q.-1991, as amended;
- (f) “Class” or “Class Members” means the Class as defined in paragraph 32;
- (g) “Consumer Protection Act” means the *Consumer Protection Act, 2002*, S.O. 2002, Chapter 30, Schedule A;

- (h) “Defendants” means SiriusXM Holdings, Inc., SiriusXM Radio, Inc., SiriusXM Canada Holdings, Inc., SiriusXM Canada Inc., SiriusXM Connected Vehicle Services Holdings Inc., SiriusXM Connected Vehicle Services Inc., SXM Cvs Canada Inc., and Adswizz, Inc.
- (i) “FTC” means the United States Federal Trade Commission;
- (j) “IPC” means Information and Privacy Commissioner of Ontario;
- (k) “*Manitoba Privacy Act*” means *The Privacy Act*, C.C.S.M., c. P125, as amended;
- (l) “*NFLD Privacy Act*” means the *Privacy Act*, R.S.N.L. 1990, c. P-22, as amended;
- (m) “OPC” means Office of the Privacy Commissioner of Canada;
- (n) “Personal Information” means any factual or subjective information, recorded or not, about an identifiable individual, including the name of a person, as defined in *PIPEDA*;
- (o) “*PIPEDA*” means the *Personal Information Protections and Electronic Documents Act*, S.C. 2000, c.5, as amended;
- (p) “Plaintiff” means Colin Loewenthal;
- (q) “Privacy breach” is defined by the OPC as follows: A privacy breach is the loss of, unauthorized access to, or disclosure of, personal information. Breaches can happen when personal information is stolen, lost or mistakenly shared. The IPC states that: “A privacy breach involves improper or unauthorized collection, use, disclosure, retention or disposal of personal information”;
- (r) “*Provincial Privacy Acts*” means the *BC Privacy Act*, the *Manitoba Privacy Act*, the *Saskatchewan Privacy Act*, the *NFLD Privacy Act*, the *CCQ*, the *Quebec CHRF*, and the *ARPIP*;
- (s) “*Quebec CHRF*” means the *Charter of Human Rights and Freedoms*, CQLR c C-12, as amended; and
- (t) “*Saskatchewan Privacy Act*” means *The Privacy Act*, R.S.S. 1978, c. P-24, as amended.

THE CLAIM

2. The Plaintiff claims on his own behalf and on behalf of the Class (as defined in paragraph 32):

- (a) an order pursuant to the *CPA* certifying this action as a Class Proceeding

and appointing him as representative of the Class;

- (b) an aggregate assessment of damages in the amount of \$500,000,000.00 for:
 - i. the tort of intrusion upon seclusion, including moral damages;
 - ii. negligence;
 - iii. breach of confidence;
 - iv. breach of publicity given to private life;
 - v. unjust enrichment;
 - vi. the tort of conversion;
 - vii. breach of a duty of good faith and fair dealing;
 - viii. breach of an implied contractual duty;
 - ix. breach of the *Consumer Protection Act*, 2002, S.O. 2002, c. 30;
 - x. breach of the *BC Privacy Act*;
 - xi. breach of the *Manitoba Privacy Act*;
 - xii. breach of the *Saskatchewan Privacy Act*;
 - xiii. breach of the *NFLD Privacy Act*; and
 - xiv. violation of the *CCQ*, *Quebec CHRF*, and of the *ARPIP*;

- (c) an order pursuant to section 25 of the *CPA* directing individual hearings, inquiries and determinations for the Plaintiff and Class Members who have suffered or may have suffered special damages as a result of or attributable to unlawful conduct by third parties, including but not limited to identity theft, which may have been occasioned by or attributable to breaches as alleged herein, and all necessary directions relating to the procedures to be followed in conducting hearings, inquiries and determinations;

- (d) an interim fund and a fund for credit monitoring services including any appropriate remedies for the breach of data and Personal Information;

- (e) general and special damages for intentional and/or reckless conduct leading to intrusion upon seclusion including moral damages, negligence, breach of confidence, unjust enrichment, conversion, breach of the duty of good faith and fair dealing, breach of an implied contractual duty, and breach of privacy,

including costs for preventing identity theft, risk of future identity theft, monitoring, loss of reputation and harmed credit scores, and other damages and losses caused;

- (f) a declaration that the Defendants intentionally or recklessly and without lawful justification invaded the private affairs or concerns of the Plaintiff and Class Members in a way that a reasonable person would regard the invasion as highly offensive causing distress, humiliation, or anguish;
- (g) with respect to the Class Members who are residents of the Province of British Columbia, a declaration that the Defendants breached section 1 of the *BC Privacy Act*;
- (h) with respect to the Class Members who are residents of the Province of Manitoba, a declaration that the Defendants breached section 2 of the *Manitoba Privacy Act*;
- (i) with respect to the Class Members who are residents of the Province of Newfoundland and Labrador, a declaration that the Defendants breached section 3 of the *NFLD Privacy Act*;
- (j) with respect to the Class Members who are residents of the Province of Québec, a declaration that the Defendants breached articles 3 and 35-37 of the *CCQ*, section 5 of the *Quebec CHRF*, and section 10 of the *ARPIP*, and are liable to the Plaintiff and Class Members pursuant to articles 1457, 1463 and 1464 of the *CCQ*, each as amended;
- (k) general damages for the tort of intrusion upon seclusion for the Plaintiff and Class Members who are residents of Yukon, Northwest Territories, Nunavut,

Alberta, Ontario, New Brunswick, Nova Scotia and Prince Edward Island;

- (l) a declaration that the Defendants negligently collected, maintained, used and/or data that included the Plaintiff's and Class Members' Personal Information;
- (m) a declaration that the Defendants failed to warn or advise, adequately or at all, and/or in timely manner, that the Plaintiff's and Class Members' Personal Information had been shared with them;
- (n) a declaration that a privacy breach is the loss of, unauthorized access to, or disclosure of, personal information;
- (o) a declaration that the Defendants are strictly liable to the Plaintiff and Class Members;
- (p) a declaration that the Defendants are liable to the Plaintiff and the Class Members for the damages caused by their negligence in relation to their Personal Information that is capable of continually and in the future being disseminated and distributed on the "dark web";
- (q) a declaration that the damages are serious and prolonged, and go beyond the ordinary inconveniences, anxieties and fears that a person living in society can expect;
- (r) damages for breach of the *CPA Act*, including *inter alia* ss. 14(1), 14(2) and 15(1), 15(2), 17 of the *CPA*; and an order that the pleading issued constitutes notice under s. 92(1) of the *CPA*, or an order waiving the requirement for notice on behalf of the plaintiff and Class Members;
- (s) an injunction ordering SiriusXM to disclose a complete list of all

putative Class Members, both within and outside of Canada, affected by the breach;

- (t) a tracing order to determine to determine what data SiriusXM acquired without the consent of the Plaintiff and Class Members;
- (u) an order requiring SiriusXM to provide the Plaintiff and Class Members with a copy of the Personal Information it holds on each of them without charging \$15.00 to each of them;
- (v) special damages, including time lost for precautionary steps in dealing with credit monitoring and agencies, and the costs of administering the plan of distribution of the recovery in this action in the sum of \$10,000,000.00 or such other sum as this Honourable Court finds appropriate;
- (w) aggravated damages, exemplary damages and punitive damages;
- (x) costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes;
- (y) costs of this action pursuant to the *Act*, and s. 131(1) of the *Courts of Justice Act* on a substantial indemnity basis plus applicable taxes;
- (z) prejudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 128;
- (aa) postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 129; and
- (bb) such further and other relief as to this Honourable Court seems just.

NATURE OF THE ACTION

3. This action concerns the breach of personal data and information of Canadians and other purchasers of vehicles in Canada when SiriusXM engages in a scheme to place its services in vehicles purchased and leased in Canada.

4. The OPC defines a privacy breach as “the loss of, unauthorized access to, or disclosure of, personal information.” Breaches occur when Personal Information is stolen, lost or shared.

5. The IPC states that: “A privacy breach involves improper or unauthorized collection, use, disclosure, retention or disposal of personal information.”

6. SiriusXM has approximately 2.7 million subscribers in Canada.

7. SiriusXM provides satellites and internet radio services to consumers throughout Canada pursuant to a subscription agreement.

8. SiriusXM also operates as a data company. Through its subsidiary, AdsWizz it creates a system that enables creators to publish and generate revenue from podcasts and a suite of digital audio advertising software that powers ad-sale houses, publishers, music platforms, shows, podcast publishers, trading desks, and digital agencies, including services such as Pandora, iHeart Radio, TuneIn, NPR, Cox Radio, CBS Radio/ Entercom, Deezer, Kiss FM, and Rogers Media Radio in Canada.

9. SiriusXM launched AdWave Canada in 2016, expanding AdWave Reach to 33 Countries and formed other partnerships to develop the digital audio advertising market in Canada.

10. When automobile manufacturers and/or dealerships assemble, market, distribute, sell or lease vehicles in Canada, a SiriusXM Application “App” is part of the infotainment system installed in the vehicle.

11. SiriusXM receives, collects, maintains, stores and uses the data and Personal Information of the Plaintiff and Class Members who purchase new and pre-owned vehicles with the infotainment system and App.

12. SiriusXM does not warn Canadians at the time of sale or in a timely manner or in fact at all that it has acquired their Personal Information from the manufacturers and/or dealerships.

13. The precise details of the contractual arrangements between the manufacturers/dealerships and SiriusXM is unknown to the Plaintiff and Class Members but is a profit sharing arrangement, alliance agreement or joint venture.

14. SiriusXM is aware that the Personal Information of the Plaintiff and Class Members is in the possession of the manufacturers/dealerships only as a consequence of the sale or lease of new or pre-owned automobiles to the Plaintiff and Class Members.

15. The Plaintiff and Class Members plead, that to the best of their knowledge, at no time did SiriusXM take adequate, or any, steps to verify that the manufacturers/dealerships had obtained the requisite authority or consent to the use of the Plaintiff's and Class Members' Personal Information the purposes of the alliance or joint venture agreements.

16. By virtue of the terms of the said agreements, SiriusXM is or ought to be aware that SiriusXM is not at liberty to use the Personal Information of the Plaintiff and Class Members for the purposes of providing the subject services. SiriusXM also requires a payment of \$15.00 to provide a copy of the Personal information to each of the Class Members, and sought to charge the Plaintiff Mr. Loewenthal this amount when he tried to get a copy of the Personal Information that SiriusXM held in regard to himself in order to see what it comprised of.

17. A substantial portion of SiriusXM's total annual revenues are derived from income from the alliance or joint venture agreements.

18. SiriusXM does not enter into any contracts at the time of sale or lease of the vehicle with the Plaintiff and Class Members. It does not warn them that it is taking and/or using their Personal Information.

THE PARTIES

The Plaintiff

19. The plaintiff, Colin Loewenthal, resides in the City of Vancouver, in the Province of British Columbia. The Plaintiff's Personal Information was collected and placed into the stream of commerce in Ontario and elsewhere in Canada by the Defendants.

20. When Mr. Loewenthal got his new vehicle, he was surprised to learn that SiriusXM had his Personal Information. In trying to ascertain what was held, SiriusXM requested a fee of \$15.00.

The Defendants

21. The Defendant, SiriusXM Holdings Inc. ("SiriusXM") is an American broadcasting company headquartered in Manhattan, New York City that provides satellite radio and online radio services operating in the United States. It was formed by the 2008 merger of Sirius Satellite Radio and XM Satellite Radio, merging them into SiriusXM Radio. The company also has a 70% equity interest in SiriusXM Canada Inc., an affiliate company that provides Sirius and XM service in Canada. SiriusXM Holdings, Inc. was incorporated on May 21, 2013. SiriusXM has entered into a Services Agreement and an Advisory Services Agreement with SiriusXM Canada.

22. The Defendant, SiriusXM Radio, Inc. ("SiriusXM") is a Delaware corporation with its principal place of business located at 1221 Avenue of the Americas, New York, NY 10020. In

November 2013, SiriusXM reorganized their corporate structure, which made SiriusXM Radio Inc. a direct, wholly owned subsidiary of SiriusXM Holdings, Inc.

23. The Defendant, SiriusXM Canada Holdings, Inc. (“SiriusXM”) is the parent company of the Defendant SiriusXM Canada Inc. SiriusXM has entered into licensing and services agreements between SiriusXM and SiriusXM Canada. On May 13, 2016, SiriusXM announced that it and SiriusXM Radio Inc., its operating subsidiary, entered into agreements with Sirius Canada Holdings Inc. to recapitalize SiriusXM Canada. SiriusXM contributed approximately US\$275 million to facilitate the transaction. Additionally, the licensing and services agreement between SiriusXM and SiriusXM Canada was renewed and extended upon the consummation of the transaction.

24. The Defendant, SiriusXM Canada Inc. (“SiriusXM”) markets to Canadians and engages in the sale of the subscription services, and is responsible for the Canadian Sirius customer website to advertise the SiriusXM services to Canadians.

25. The Defendant, SiriusXM Connected Vehicle Services Inc. (“SiriusXM”) provides telematics services. The Company has its headquarters in Irving, Texas. It provides safety, security, and convenience services for drivers and end-to-end turnkey solutions for automakers.

26. The Defendant, SiriusXM Connected Vehicle Services Holdings Inc. (“SiriusXM”) is the parent company of SiriusXM Connected Vehicle Services Inc., and is also located in Irving, Texas.

27. The Defendant, SXM CVS Canada Inc. (“SiriusXM”) is incorporated pursuant to the Canada Business Corporations Act and is located in Toronto. SXM CVS Canada Inc. is affiliated with SiriusXM Connected Vehicle Services Inc. in providing services, including a consumer

wireless service and platform and related smartphone applications and a suite of connected vehicle services and applications.

28. The Defendants are collectively responsible for placing SiriusXM services into vehicles, purchased, leased, or operated by the Plaintiff and Class Members. Each and all of the Sirius Defendants are referred to in this action as “SiriusXM.”

29. The Defendant, AdsWizz, Inc. (“AdsWizz”) is the adtech subsidiary of SiriusXM, and is located in California. AdsWizz creates an end-to-end solution that enables creators to publish and generate revenue from their podcasts and has a suite of digital audio advertising software that powers leading digital ad-sale houses, publishers, music platforms, shows, podcast publishers, trading desks, and digital agencies.

30. AdsWizz’s advertising software powers large platforms, such as Pandora, iHeart Radio, TuneIn, NPR, Cox Radio, CBS Radio/ Entercom, Deezer, Kiss FM, and Rogers Media Radio in Canada. AdsWizz launched AdWave Canada in 2016, expanding AdWave Reach to 33 Countries and formed other partnerships to develop the digital audio advertising market in Canada.

31. The Plaintiff and Class Members plead that each and all of the Defendants are vicariously liable for the acts and omissions of their partners, directors, officers, employees, agents, salespersons, and other staff, and for the conduct of their subsidiaries and affiliated companies, including marketing companies that they own or operate. The Defendants are jointly and severally liable for the actions of any of them and damages allocable to any of them.

THE PROPOSED CLASS

32. The Class in this action is defined as:

Persons and corporations, who from 2010 to present purchased or leased any new or pre-owned vehicle that came with the SiriusXM application (Sirius App), and did not consent to their Personal Information being provided to SiriusXM, or any other Class to be determined by the Court at the time of certification.

Included also are each of the Class Members' estates, executors, and personal representatives.

MATERIAL FACTS

33. At all relevant times, SiriusXM's primary source of revenue has been subscription fees collected from consumers who subscribe to multi-year, annual, semi-annual, quarterly or monthly plans.

34. SiriusXM does not obtain consent, informed or otherwise, from the Plaintiff and Class Members.

35. SiriusXM does not obtain ongoing consent from the Plaintiff and Class Members.

36. In short, SiriusXM has no legal right granted by the Plaintiff and Class Members to obtain their Personal Information.

37. SiriusXM uses this data to sell services, including subscriptions, which renew. SiriusXM also uses this data to contact new car owners by purchase or lease in order to market its other products and services.

38. Sirius is also a data and advertising company. Its subsidiary AdsWizz offers an end-to-end solution that enables creators to publish and generate revenue. AdsWizz also profits from digital audio advertising software that powers leading digital ad-sale houses, publishers, music platforms, shows, podcast publishers, trading desks, and digital agencies.

39. The Plaintiff and Class Members' data is used in advertising. It advertises to them and it also accepts advertising dollars from third parties who benefit from the data.

40. The data includes Personal Information. As consent is not obtained, it is impossible to know what information SiriusXM collects, maintains, stores and uses. It includes, at the least, contact information and other personally identifying information, such as the name and address, phone number and email of the individuals. The OPC has stated that Driver's Licenses and the information contained therein is Private Information.

41. SiriusXM has no right in law to this information. It has no legal right to know what vehicle type was purchased, to whom that vehicle belongs, and the information of the owner.

42. SiriusXM also uses this data to provide a free trial period for its satellite services and for marketing purposes for profit.

43. As a result that this entire process occurs without consent, or certainly without free and informed consent, or consent on an ongoing basis, it is unknown what SiriusXM ultimately does with this data. It is unknown if SiriusXM destroys the data when it is not in use (i.e. if a person cancels the service).

44. There is no way to know if the data and Personal Information in this action has been copied, backed up, stored or otherwise held by SiriusXM.

45. The Plaintiff and Class Members plead that SiriusXM engages in sales to third parties of their data for marketing purposes, and has even acquired companies including AdsWizz over the years specifically for this purpose, and that SiriusXM also sells advertisements on its satellite radio services and podcasts.

46. By collecting this data, SiriusXM not only can sell the data of its "customers," but can also market to them.

47. Without the consent of persons in Canada, SiriusXM thus engages in a scheme to collect, maintain, store and use their data for profit.

48. Canadians who provide their data to automobile manufacturers and dealerships do so for the purpose of purchasing or leasing a vehicle. The Single Purpose Use is for that basis. SiriusXM acquires this data for profit. It is unknown whether SiriusXM enters into an independent contract with the manufactures and/or dealerships.

49. By collecting, maintaining, storing and using this data, SiriusXM has breached the privacy of the Plaintiff and Class Members. SiriusXM obtained the Data from automobile manufacturers and dealerships, knowing that it was provided for a Single Purpose Use which was the purchase or lease of a vehicle, and then used that data for a collateral purpose which was to market SiriusXM subscriptions to the Plaintiff and Class.

50. SiriusXM then contacted the Plaintiff and Class Members, sent marketing mailings, sent emails, telephoned them, offered them services and subscriptions, and continued to collect, maintain, store and use their data that it had wrongfully collected in the first place for profit.

SIRIUS AND ITS MISUSE OF THE PLAINTIFF'S AND CLASS MEMBERS' DATA

51. In the course of doing business with a person whose data it has acquired, SiriusXM may obtain any of the following, which is then collected, maintained, used and stored by SiriusXM:

- (a) name, address, telephone number(s), age, email address(es);
- (b) date of birth;
- (c) marital status;
- (d) the identity of the individual's spouse;
- (e) car licence details;
- (f) VIN;

- (g) estimated wealth and identified assets, including loan information if any;
- (h) history of an individual's relationship with an automobile company, including past purchases of leases of vehicles, the value of same, and the dates of purchase or lease;
- (i) billing transaction amount(s); and
- (j) transaction records.

52. The Personal Information of such individuals was received by, accessed, used, and maintained by SiriusXM, and is stored on SiriusXM's computer systems, back up system, and/or on its cloud or third party cloud storage providers, in or out of Canada.

53. SiriusXM has collected, maintained, used and stored the Personal Information of the Plaintiff and Class Members.

54. For those who continue to keep its services, they have no information in regard to what was initially acquired by SiriusXM without consent.

55. For those who cancel, they have no way of knowing if the data is still stored, sold, marketed or used for some other purpose, or even if it has been breached. Some may not even know that SiriusXM received and collected, maintained, stored and used their data.

56. As a result of SiriusXM's acquisition of marketing companies, and its own sales and marketing and advertising on its satellite services, the Plaintiff and Class Members have no way of knowing if other parties obtained their data, or if SiriusXM or its marketing companies have compiled more advanced "derivative" information personalized about each person.

57. The Plaintiff and Class Members plead that a combination of raw and derivative Personal Information makes this data highly attractive to cybercriminals because a significant amount of knowledge can be obtained, used, and abused for a myriad of illegitimate purposes, including more targeted identity theft and social engineering attacks against individuals.

58. Among the Class Members are many who may have cancelled the services immediately, and in effect SiriusXM has acquired their data without any legal right, and for those who continue to keep the Service, SiriusXM initially acquired their data without any legal right.

59. The Defendants consist of interrelated companies in both Canada and the US. It is impossible for the Plaintiff and Class Members to know with whom the data is shared, among its own subsidiaries and partners, or with others.

60. The data was provided for an entirely different use. The Privacy Policy that SiriusXM has on its website is entirely irrelevant to this action, as the data was taken without any consent in the first instance.

61. The Plaintiff and Class Members plead that even ongoing customers, who were given a free trial and remained, were not apprised of the Privacy Policy in advance and that SiriusXM cannot rely upon it. In effect, this action is a bait and switch. People buy or lease a vehicle, and SiriusXM has obtained their Personal Information.

DRIVER'S LICENSE INFORMATION IS PERSONAL INFORMATION

62. *PIPEDA*, and Alberta and British Columbia's respective Personal Information Protection Acts or *PIPA*'s) require that organizations collect, use or disclose personal information for appropriate or reasonable purposes, that collection is limited to what is necessary or reasonable to meet those purposes, and that any personal information collected by the organization be appropriately protected against such risks as unauthorized access, collection, use or disclosure.

63. OPC states that under the law, when it comes to driver's licence information, "collection" can mean examining the driver's licence; or recording information from it, such as the driver's licence number; or photocopying the licence.

64. The OPC states that while very few organizations have legislated reasons for collecting driver's licence information, photocopying or scanning the licence generally goes too far beyond the requirements to collect minimal data to satisfy a legitimate business activity.

65. Importantly, the OPC notes that: This duty is distinct and irrespective of any consent obtained from an individual. Even in cases where individuals willingly agree to provide their driver's licence information, the organization must still satisfy the reasonableness requirement set out in PIPEDA and PIPA.

66. The OPC states that Canadians have expressed their concerns about the practice among retailers of asking for and recording information from their driver's licences.

67. SiriusXM obtained Personal Information without consent from the Plaintiff's and each Class member's driver's license that is considered Personal Information by the OPC.

RIGHTS OF ACTION

Failure to Comply with Obligations and Standards Imposed by PIPEDA

68. Under the various data protection laws and standards, corporations operating in Canada are bound by *PIPEDA*, regulations promulgated and decisions made by the Privacy Commissioner of Canada under *PIPEDA*, the *Provincial Privacy Acts*, and the common law.

69. SiriusXM is subject to the provisions under *PIPEDA*. Section 5(1) of *PIPEDA* provides "Subject to sections 6-9 [which do not apply in this action], every organization shall comply with the obligations set out in Schedule 1." Schedule 1 of *PIPEDA* consists of principles that obligated SiriusXM to, *inter alia*:

- (a) be responsible and accountable for Personal Information and required SiriusXM to implement policies and practices to give effect to the principles concerning the protection of Personal Information (Principle 1);

- (b) obtain the knowledge and consent of the Plaintiff and Class Members to collect, use and disclose their respective Personal Information (Principle 3);
- (c) that SiriusXM was not permitted to use or disclose the Class Members' Personal Information for any purposes other than those for which it was collected, except with the Class Members' consent (Principle 5); and
- (d) that SiriusXM must protect the Plaintiff's and Class Members' Personal Information by security safeguards appropriate to Personal Information's sensitivity to unauthorized access, disclosure, copying or use (Principle 7).

70. SiriusXM has wrongfully acquired the data of the Plaintiff and Class Members. *PIPEDA* obligates organizations aware of a privacy breach to give timely notice to those affected by such breach. Section 10.1 of *PIPEDA* provides:

Notification to individual

[10.1] (3) Unless otherwise prohibited by law, an organization shall notify an individual of any breach of security safeguards involving the individual's personal information under the organization's control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to the individual.

...

Time to give notification

(6) The notification shall be given as soon as feasible after the organization determines that the breach has occurred.

Definition of significant harm

(7) For the purpose of this section, significant harm includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property.

Real risk of significant harm — factors

(8) The factors that are relevant to determining whether a breach of security safeguards creates a real risk of significant harm to the individual include

- (a) the sensitivity of the personal information involved in the breach;

- (b) the probability that the personal information has been, is being or will be misused;
and
- (c) any other prescribed factor.

71. As a result of its actions and omissions contrary to the industry standards, knowingly or recklessly, SiriusXM also disclosed the Plaintiff's and Class Members' Personal Information to third party advertisers including one of its subsidiaries, unauthorized persons, or caused it to be disclosed to unauthorized persons, without the Plaintiff's and Class Members' knowledge or consent.

72. At all material times that their Personal Information was under SiriusXM's control, SiriusXM was subject to the provisions of *PIPEDA* and breached the principles and its obligations set out in *PIPEDA*.

73. The Plaintiff and Class Members plead that SiriusXM knows or ought to know of the risks of a privacy breach given the volume and types of Personal Information collected, maintained, stored and used.

74. Since the data was collected without the consent of the Plaintiff and Class Members, they were not advised how it was being collected, maintained, stored and used and did not meaningfully consented to it being obtained or held by SiriusXM. It is unknown if the data is safeguarded, unknown where it is stored, and unknown if it is encrypted, or shared.

75. The Plaintiff and Class Member's plead that SiriusXM has failed to delete Personal Information and any backup of Personal Information from its systems including that of Class Members who are no longer customers of the Defendants.

Failure to Comply with Obligations and Standards Imposed by Industry Practice

76. SiriusXM is obligated to act in accordance with industry standards and practices, including the guidelines and standards set out by the FTC, to reasonably and diligently act to safeguard Individuals' Personal Information. It has failed to do so.

77. An FTC document titled "Start with Security, A Guide for Business," dated July 2015, set out the standards expected in regard to the collection, use, maintenance and safeguard of Personal Information. In October 2016, the FTC issued a further document titled "Protecting Personal Information, A Guide for Business," which required, among other things, and which is consistent with the requirements under *PIPEDA*, that SiriusXM:

- (a) know the Personal Information they had in its files and on its computer systems;
- (b) keep only the information needed for its business;
- (c) understand their network vulnerabilities;
- (d) protect the information maintained including by using an intrusion detection system to expose a breach as soon as it occurs, monitoring all incoming traffic for activity indicating someone is attempting to hack the system, and watching for large amounts of data being transmitted from the system;
- (e) properly dispose of the information no longer needed; and
- (f) create a plan to respond to security incidents.

78. The FTC guidelines set out the industry standards reasonably expected of and applicable to the Defendants at all material times in handling and safeguarding the Class Members' Personal Information. SiriusXM ought to have, but failed to comply with those standards and obligations.

79. Contrary to the industry standards applicable to SiriusXM, including by virtue of the guidelines set out by the FTC, and pursuant to *PIPEDA*, and its own Privacy Policy, SiriusXM has:

- (a) failed to obtain consent, especially on an ongoing basis, and for Single Purpose Use;
- (b) has failed introduce, implement and/or maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of the Plaintiff's and Class Members' Personal Information;
- (c) has failed to exercise reasonable care and diligence to securely collect, store and manage the Plaintiff's and Class Members' Personal Information;
- (d) has failed to limit the collection, maintenance and use of the Plaintiff's' and Class Members' Personal Information to the information they needed for the stated purpose of the information collection and/or its business;
- (e) has failed to properly dispose of the Plaintiff's and Class Members' Personal Information that was no longer needed for the stated purpose of the information collection and/or its business;
- (f) has failed to establish, implement and/or maintain proper policies, procedures and/or technical or technological capabilities to safeguard the Plaintiff's and Class Members' Personal Information against unauthorized access or theft;
- (g) has failed to establish, implement and/or maintain proper policies, procedures and/or technical or technological capabilities to warn the Plaintiff and Class Members that it has acquired their data;
- (h) failed to perform effective, regular audits to identify the risks to the security, confidentiality and integrity of the Plaintiff's and Class Members' Personal Information; and/or
- (i) failed to perform effective, regular audits to ensure its computer security measures remained effective and appropriate at all times, including obtaining free and informed consent.

BREACH OF PROVINCIAL PRIVACY ACTS

80. In addition to the standards and requirements of PIPEDA, substantially similar requirements and standards were imposed on SiriusXM by virtue of the *Provincial Privacy Acts*.

SiriusXM is governed by the *Provincial Privacy Acts*, including as follows:

- (a) Section 1 of the *BC Privacy Act* provides that:
 - i. It is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of another.
 - ii. The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.
 - iii. In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.
 - iv. Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

- (b) Section 2 of the *Manitoba Privacy Act* provides:

A person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person.

An action for violation of privacy may be brought without proof of damage.

- (c) Section 2 of the *Saskatchewan Privacy Act* provides:

It is a tort, actionable without proof of damage, for a person willfully and without claim of right, to violate the privacy of another person.

- (d) Section 3 of the *NFLD Privacy Act* provides:

It is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of an individual.

The nature and degree of privacy to which an individual is entitled in a situation or in relation to a matter is that which is reasonable in the

circumstances, regard being given to the lawful interests of others; and in determining whether the act or conduct of a person constitutes a violation of the privacy of an individual, regard shall be given to the nature, incidence, and occasion of the act or conduct and to the relationship, whether domestic or other, between the parties.

(e) Articles 3, 35 and 37 of the *CCQ* provide:

3. Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy.

These rights are inalienable.

35. Every person has a right to the respect of his reputation and privacy. The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law.

37. Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was established. In addition, he may not, when establishing or using the file, otherwise invade the privacy or injure the reputation of the person concerned.

(f) Section 5 of the *Quebec ChRF* provides that every person has a right to respect for his private life;

(g) Section 10 of Act *ARPIP* provides that a person carrying on an enterprise must take the security measures necessary to ensure the protection of the personal information collected, used, communicated, kept or destroyed and that are reasonable given the sensitivity of the information, the purposes for which it is to be used, the quantity and distribution of the information and the medium on which it is stored.

81. For residents of Quebec, the Plaintiff and Class Members also plead that the conduct of SiriusXM in communicating the Personal Information to a third party without authorization under law, without consent, and for a purpose other than for which it was obtained, SiriusXM is in violation of articles 3 and 35-37 of the *CCQ*, section 5 of the *Quebec ChRF*, and section 10 of

the *ARPIP*, and is liable to the Class Members resident in Quebec pursuant to articles 1457, 1463 and 1464 of the CCQ.

82. On behalf of the Class Members resident in the Province of British Columbia, the Plaintiff and Class Members plead that SiriusXM violated section 1 of the *BC Privacy Act*.

83. SiriusXM willfully and without a claim of right violated the privacy of the Class Members who are residents of the Province of British Columbia.

84. On behalf of the Class Members resident in the Province of Saskatchewan, the Plaintiff and Class Members plead that SiriusXM violated section 2 of the *Saskatchewan Privacy Act*.

85. SiriusXM willfully and without claim of a right violated the privacy of the Class Members who are residents of the Province of Saskatchewan.

86. On behalf of the Class Members resident in the Province of Manitoba, the Plaintiff and Class Members plead that SiriusXM violated section 2 of the *Manitoba Privacy Act*.

87. SiriusXM substantially, unreasonably and without claim of right violated the privacy of the Class Members who are residents of the Province of Manitoba.

88. On behalf of the Class Members resident in the Province of Newfoundland and Labrador, the Plaintiff and Class Members plead that SiriusXM violated section 3 of the *NFLD Privacy Act*.

89. SiriusXM willfully and without a claim of right violated the privacy of the Class Members who are residents of the Province of Newfoundland and Labrador.

TORT OF INTRUSION UPON SECLUSION

90. The Plaintiff and Class Members incorporate by reference, repeat and plead the factual allegations, including the duties and obligations imposed upon SiriusXM, and SiriusXM's failure to comply with those duties and obligations.

91. They plead that because consent was not obtained prior to taking their data, SiriusXM is strictly liable and ought to be subjected to moral damages under this tort. SiriusXM's lack of transparency in taking their data is highly offensive.

92. The Defendants invaded, without lawful justification, the Plaintiff and Class Members' private affairs or concerns.

93. The Defendants' conduct was intentional or reckless.

94. SiriusXM's actions constitute intentional or reckless intrusions upon seclusion that would be highly offensive to a reasonable person, for which SiriusXM is liable. SiriusXM failed to take appropriate steps to protect and safeguard the Personal Information of the Plaintiff and Class Members. A reasonable person would regard the privacy invasion as highly offensive, causing distress, humiliation, anguish and damages.

95. The Plaintiff and Class Members have a reasonable expectation of privacy in their Personal Information collected, maintained, used and stored by SiriusXM.

96. The Plaintiff and Class Members provided information to automobile manufacturers and dealerships and not to SiriusXM.

97. An adverse inference should be drawn against SiriusXM in that it engaged in a scheme to deliberately obtain the data to which it is not entitled.

98. By this breach, theft and misappropriation, SiriusXM invaded, with no lawful justification, the private affairs of the Plaintiff and Class Members.

99. Such invasion was highly offensive, causing distress, humiliation and anguish to the Plaintiff and Class Members in light of the following:

- (a) the bait and switch tactics;
- (b) the failure to obtain consent;
- (c) the scale of the privacy breach;
- (d) its attempt to conceal the privacy breach;
- (e) the type and sensitivity of the information compromised;
- (f) the failure to warn the Plaintiff and Class Members; and
- (g) SiriusXM demonstrated a disregard and disrespect for the Plaintiff's and Class Members' privacy and in their interest to safeguard the integrity of their Personal Information.

100. SiriusXM, by its failings, intentionally or recklessly committed the intrusion upon the seclusion of the Plaintiff and Class Members and caused their Personal Information to be misappropriated.

101. The intrusion on the Plaintiff's and Class Members' privacy was furthermore highly offensive in light of the risks it imposes on the Plaintiff and Class Members, including identity theft, humiliation, damages to reputation or relationships, loss of employment, business or

professional opportunities, financial loss, negative effects on their credit record, and the risk of ongoing fraud and identity theft.

102. Accordingly, SiriusXM is liable to the Plaintiff and Class Members for moral damages per person of \$10,000.00.

BREACH OF CONFIDENCE

103. SiriusXM's conduct constitutes a breach of confidence. The Plaintiff's and Class Members provided their Personal Information for an entirely different Single Purpose Use, and on the basis that it would be held confidentially, and protected by SiriusXM.

104. SiriusXM wrongfully acquired, and then misused that information to the detriment of the Plaintiff's and Class Members.

105. The Personal Information conveyed to SiriusXM is highly confidential as it included detailed data and information about the Plaintiff and each Class Member, as set out in paragraph number 32.

106. At all material times, SiriusXM was fully aware of the confidential nature of the Plaintiff's and Class Members' Personal Information provided to, maintained, used and stored by the Defendants.

107. The data was obtained without consent. Notwithstanding that, the Plaintiff's and Class Member's can still have reasonable expectations that it will be safeguarded. Those expectations are that it will be collected, maintained, used, stored and protected in confidence and not be disclosed to unauthorized third parties.

108. Since SiriusXM's wrongful appropriation of the data it has also been disclosed to an unauthorized third-party beyond the Plaintiff's and Class Member's confidence, and without their express, freely given, informed, ongoing consent.

BREACH OF PUBLICITY GIVEN TO PRIVATE LIFE

109. SiriusXM gave publicity to the Plaintiff's and Class Members' Personal Information for which it is liable.

110. The Plaintiff's and Class Members' Personal Information is of no legitimate concern to the public. The disclosure of this information is highly offensive to a reasonable person.

111. As a result of SiriusXM's actions or omissions as set forth in this Statement of Claim, SiriusXM publicized the Plaintiff's and Class Members' Personal Information to a broad group that includes the personele, agents employees, and tech departments of systems designed for satellite radio services offered by SiriusXM, podcasts offered by SiriusXM, advertisers who utilize its systems, marketers who compile and sell its data.

112. This further exposes the Plaintiff's and Class Member's risks of future breaches.

NEGLIGENCE

113. The data of the Plaintiff and Class Members was acquired without their requisite content. In spite of this, SiriusXM owes a duty of care to the Plaintiff and each of the Class Members to exercise reasonable care in safeguarding and protecting their Personal Information from being compromised, lost, stolen or misused and/or disclosed to third parties. This duty included, *inter alia*:

- (a) designing, maintaining and testing its data security systems to ensure the Plaintiff's and Class Members' Personal Information in SiriusXM's possession is adequately secured and protected;
- (b) informing the Plaintiff and Class Members on an ongoing basis of the collection, maintenance, storage and use of their data;
- (c) implementing processes and systems that would maintain the safe receipt, maintenance and storage of the data;
- (d) encrypting the Personal Information or having adequate passwords, security and monitoring to stop or prevent the Personal Information from being accessed, copied and/or stolen;
- (e) maintaining data and cyber security measures consistent with industry standards;
- (f) timely acting upon warnings and alerts, including those generated by its own security systems, regarding intrusions to its networks;
- (g) disclosing in a timely, forthright and transparent manner the nature and extent of their breach of the data of the Plaintiff and Class Members; and
- (h) meeting the statutory requirements in the retention and disclosure of data, and in particular to delete the data that it no longer needs to store.

114. SiriusXM owes a duty to the Plaintiff and Class Members to protect their Personal Information, especially given the vast amount, depth and sensitivity of the Personal Information collected, used, maintained and stored.

115. Timely notification of the acquisition of the data without consent, the privacy breach, was required and necessary so that, *inter alia*, the Plaintiff and Class Members could take appropriate measures including to freeze or lock their credit profiles, avoid unauthorized charges to their credit or debit cards, cancel or change usernames and passwords.

116. Instead, SiriusXM shared the data for profit.

117. SiriusXM has breached its duty of care owed to the Plaintiff and Class Members in that:

- (a) it knew or ought to have known that the Personal Information of the Plaintiff and Class Members is in the possession of the manufacturers/dealerships only as a consequence of the sale or lease of new or pre-owned automobiles to the Plaintiff and Class Members, but it took data;
- (b) it failed to take adequate, or any, steps to verify that the manufacturers/dealerships had obtained the requisite authority or consent to the use of the Plaintiff's and Class Members' Personal Information for the purposes of the alliance or joint venture agreements.
- (c) it knew or ought to have known that it is not at liberty to use the Personal Information of the Plaintiff and Class Members for the purposes of providing the subject services;
- (d) it took the data without consent and without ongoing consent;
- (e) it took the data when it knew or ought to have known it was provided for a Single Purpose Use under the requirements of *PIPEDA*;
- (f) it failed to warn the Plaintiff and Class Members in a timely manner or at all that it had simply taken their data without their consent;
- (g) it took steps, and continues to take steps, to avoid disclosing the nature of the initial privacy breach;
- (h) it failed to protect the Personal Information and shared it with AdsWizz, and with other marketers and advertisers which are not subsidiaries, all without consent;
- (i) it failed to adopt, maintain and/or enforce proper policies and practices to ensure the Plaintiff and Class Members could withdraw or otherwise restrict access to the Personal Information;
- (j) it failed to encrypt the data or have adequate passwords;
- (k) it failed to design and/or implement advanced end-point detection and response tools to stop breaches before they occur;
- (l) it failed, diminished or misled individuals about its privacy breach;
- (m) it failed and continues to fail to offer any credit monitoring or identity theft protection services;
- (n) it failed to and continues to fail to disclose that there is risk that the data held across more than one subsidiary or affiliated company is at risk of a further breach, or to alert the Plaintiff and Class Members of the ongoing and continuing risk of fraud, identity theft, phishing attempts, and other risks;

- (o) it failed to delete Personal Information and backups of such information from its systems; and
- (p) it failed to maintain and, in fact, breached industry obligations and standards, and the minimum standards of *PIPEDA*.

118. But for SiriusXM's breach of its duties owed to the Plaintiff and Class Members their Personal Information would not have been compromised and disclosed to third parties, subsidiaries or otherwise.

119. SiriusXM failed, at all material times, to hire competent employees, failed to properly supervise its employees, and/or failed to provide proper training to its employees.

120. By obtaining, collecting, using, and deriving a benefit from the Plaintiff's and Class Members' Personal Information, SiriusXM assumed legal and equitable duties and knew or should have known that it was responsible for protecting Plaintiff's and Class Members' Personal Information from disclosure.

121. The Plaintiff and the Class Members have taken reasonable steps to maintain the confidentiality of their Personal Information.

122. The Plaintiff and Class Members plead further that a robust "cyber black market" exists in which criminals openly post stolen Personal Information on multiple underground Internet websites.

UNJUST ENRICHMENT

123. The Plaintiff and Class Members have a legal and equitable interest in the Personal Information that was wrongfully collected, maintained, stored and used by SiriusXM.

124. SiriusXM understood that the Plaintiff's and Class Member's Personal Information was confidential.

125. But for the bait and switch tactics that were used, and for the concealment of the collection in the first instance, SiriusXM would not have been entrusted with such information.

126. SiriusXM benefited from the improper acquisition of the data obtained without consent.

127. It did not have to invest in the required technology, infrastructure and security up-front at the expense of the Plaintiff and Class Members' privacy.

128. It did not have to market to the Plaintiff and Class Members or persuade them that the data was safeguarded.

129. If SiriusXM would have incurred such costs up-front instead of committing a privacy breach, the Plaintiff and Class Members would not have incurred losses and damages.

130. SiriusXM benefited and continues to benefit from failing to disclose information, including complete and accurate information, about the nature and extent of the breach at the loss and expense of the Plaintiff and Class Members.

131. Disclosing such information would negatively impact SiriusXM's financial and public reputation. By failing to disclose such information SiriusXM continues to put their financial interests ahead of and to the detriment of the Plaintiff and Class Members.

132. SiriusXM should therefore be liable for such unjust enrichment.

133. It is unjust, inequitable, unconscionable, and against public policy to allow SiriusXM to retain the aforementioned benefits at the expense of the Plaintiff and Class Members.

134. They are at further risk of identity theft and fraud, while experiencing distress and anxiety about whether their Personal Information will at some point be used for nefarious purposes beyond the intentions of SiriusXM.

135. SiriusXM charges Canadians who wish to find out what Personal Information of theirs it has collected, acquired, maintained and used. SiriusXM recognizes that Personal Information has a value.

TORT OF CONVERSION

136. The Plaintiff's and Class Members' Personal Information is valuable personal property.

137. The Plaintiff and Class Members own their Personal Information and possess the right to control such information, including the right to decide who can collect it, who it can be shared with and the conditions under which such information will be shared with third parties.

138. They must know if and when a person or organization has collected their Personal Information in order for them to maintain control of such information, including its value.

139. Once an individual's Personal Information is wrongfully collected, it is no longer within their control. SiriusXM intentionally and knowingly, or recklessly collected, maintained, stored and used the Personal Information of the Plaintiff and Class Members without their consent. SiriusXM also shared their Personal Information with AdsWizz and other advertisers and marketers.

140. By doing so, SiriusXM has wrongfully obtained and interfered with the Plaintiff's and Class Members' Personal Information and their control over it. SiriusXM is not in lawful

possession of their Personal Information. It has wrongfully interfered with it without lawful justification.

141. When the Plaintiff, Mr. Loewenthal requested that SiriusXM disclose his Personal Information, SiriusXM requested that he pay \$15.00. Mr. Loewenthal sought to inspect what Personal Information was collected, maintained, stored and used. It is his Personal Information. He was shocked that SiriusXM was not prepared to disclose it without a fee, as he had never consented to it being taken initially. SiriusXM is wrongfully withholding access to his own Personal Information.

142. Further, by intentionally withholding and/or refusing to advise the Plaintiff and Class Members what Personal Information was collected by SiriusXM, without payment of a fee, SiriusXM continues to wrongfully interfere without lawful justification with the Plaintiff's and Class Members' right to own and possess their Personal Information.

143. Each piece of Personal Information of the Plaintiff and Class Members is valuable. It becomes even more valuable when combined with other data and Personal Information. By withholding and/or refusing to advise the Plaintiff and Class Members what Personal Information SiriusXM collected, maintained, stored and used, SiriusXM is effectively exercising dominion and control of the Personal Information to the exclusion of the Plaintiff and Class Members.

PROVISIONS UNDER THE *CONSUMER PROTECTION ACT*

144. At all material times, SiriusXM engaged in practices in contravention of the *Consumer Protection Act (CPA)* pursuant to Part III, which governs unfair practices, in respect of false, misleading or deceptive representations.

145. In particular, SiriusXM failed to advise the Plaintiff and Class Members that it had wrongfully taken their data. The free trial is subject to automatic renewal, and the Plaintiff and Class Members were deceived into taking a free trial on the services in the first place.

146. The Plaintiff and Class Members plead that SiriusXM breached s. 14(1) and s. 14(2) and s. 15(1), and s. 15(2) of the *CPA*, and engaged in following unfair practices:

- (a) it made a representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive;
- (b) it made a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive; and
- (c) it made a representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.

147. It is an unfair practice to make an unconscionable representation, pursuant to s. 15 of the *CPA* which includes:

- (a) that the consumer is not reasonably able to protect his or her interests because of ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) that the goods or services are available for a reason that does not exist;
- (c) that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
- (d) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable; and
- (e) that the consumer is being subjected to undue pressure to enter into a consumer transaction.

148. The representations are unconscionable in that SiriusXM knew or ought to have known that in any circumstances of simply taking their data, the agreement is one-sided, misleading, and

the consumers cannot protect their interests. The consumers are also subjected to undue pressure since their data has already been taken.

149. The plaintiff and Class Members plead that subject to s. 17 (1) of the *CPA*, no person shall engage in an unfair practice.

150. The Plaintiff and Class Members plead that any ambiguity, to the extent that one may exist, shall be resolved in favour of the consumers.

DUTY OF GOOD FAITH AND FAIR DEALING

151. In the event that the privacy torts and breaches thereof and violations of privacy law are not found, the Plaintiff and Class Members plead and rely upon a duty of good faith and fair dealing.

152. SiriusXM, without obtaining consent from the Plaintiff and Class Members, took the data. The fact that SiriusXM had a contractual relationship with the manufacturers and/or dealerships is of no import to the Plaintiff and Class Members.

153. SiriusXM had a duty to act in good faith when enrolling persons in Canada in its service. It had a duty to disclose the material facts in advance.

154. These facts include without limitation:

- (a) information describing the actual services offered;
- (b) information in regard to billing and renewal policies;
- (c) information on cancelling the subscription;
- (d) an agreement in regard to automatic renewals; and

- (e) a policy setting up precisely what Personal Information was gathered and kept, how it would be stored, and when it would be destroyed if it was not needed.

155. SiriusXM did not disclose these material facts in advance.

156. In effect, the Plaintiff and Class Members plead that SiriusXM purported to enter into a contract with them.

157. A breach of a duty of good faith and fair dealing arises where:

- (a) where the parties must cooperate to achieve the objectives of the contract;
- (b) where one party exercises a discretionary power under the contract; and
- (c) where one party seeks to evade contractual duties.

158. SiriusXM evaded its contractual duties by essentially taking the Personal Information and foisting its services upon potential customers. Regardless of whether those customers liked the service or continued with the service, their consent cannot simply be assumed.

159. If continuation of the service amounted to an implied contractual relationship, then the Plaintiff and Class Members plead that SiriusXM still failed in its duty to get consent beforehand. One cannot simply take the data, hold it hostage, and assume that the customers who later like the service have consented in the first instance.

160. Further, SiriusXM still obtained and kept the data of persons who cancelled, even if it was for a short period of time.

161. There is a general common law duty of good faith, which applies to all contracts, to act honestly in the performance of contractual obligations. The Plaintiff and Class Members plead

that this means simply that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract.

162. The duty imposes a simple requirement not to lie or mislead the other party about one's contractual performance.

163. The facts as disclosed in this action constitute a breach of the duty of good faith and fair dealing. While the duty of honesty does not require a party disclose material information to other contracting parties, a party cannot "actively mislead" or deceive the other contracting party in relation to performance of the contract.

164. SiriusXM took the data. That the Defendants had a contractual arrangement with the manufacturers or dealerships is immaterial to the Plaintiff and Class Members. It was not even disclosed to them.

165. In addition, the Plaintiff and Class Members do not even know what data SiriusXM obtained, and Sirius withholds the data unless and until they pay \$15.00 to find out.

166. They still do not know precisely what Personal Information was taken, where it is stored, what the purpose of it is, and how it is being used, or when it will be destroyed, as their free and informed consent was never even requested.

167. To attain even a copy of their own Personal Information that is being held, they need to pay a fee to SiriusXM.

DAMAGES

168. The Plaintiff's and Class Members' Personal Information was knowingly, willfully or recklessly taken by SiriusXM in this privacy breach.

169. As a result, the Plaintiff and Class Members will continually be at a heightened risk of identity theft and fraud.

170. Further, the Plaintiff and Class Members have suffered and will continue to suffer damages, including:

- (a) costs incurred to remedy and/or prevent identity theft and fraud;
- (b) risks of Sim swapping as a result that their cell numbers are exposed;
- (c) risks of theft due to two factor identification where other Apps are linked, including banking to email or cell numbers;
- (d) risks of unlawful conduct by third parties, including those with whom the data was illegally shared;
- (e) damage to reputation;
- (f) out-of-pocket expenses; and
- (g) emotional and mental distress.

171. The Plaintiff and Class Members have suffered reasonably foreseeable damages for which SiriusXM is responsible, including:

- (a) ongoing, imminent, impending threat of identity theft crimes, fraud and abuse, resulting in monetary loss and economic harm;
- (b) loss of trust and confidence in online systems, including those for making payments;
- (c) actual identity theft, crime, fraud and abuse, resulting in monetary loss and economic harm;
- (d) loss of the value of privacy;

- (e) loss of confidentiality in regard to the stolen data;
- (f) future illegal sale of the compromised data;
- (g) expenses and/or time spent on credit monitoring and identity theft insurance;
- (h) time spent scrutinizing bank statements, credit card statements, and credit reports;
- (i) lost and wasted time and inconvenience;
- (j) time spent responding to the privacy breach;
- (k) time spent dealing with marketing communications by SiriusXM and other affiliate companies and advertisers;
- (l) time spent responding to organizations to determine if such communications are legitimate or not and responding to same;
- (m) money paid and/or time spent initiating fraud alerts;
- (n) potentially decreased credit scores and ratings;
- (o) damages arising from distress, humiliation and anguish; and
- (p) damages arising from the highly offensive conduct of SiriusXM and continual failure to disclose the true nature, scope and implications of the privacy breach.

172. SiriusXM's actions and omissions constitute intentional, willful or reckless intrusions upon seclusion and are highly offensive to a reasonable person requiring an award of moral damages per person.

173. The unauthorized disclosure and compromise of the Class Members' Personal Information in the privacy breach exposes the Plaintiff and Class Members to other real and significant risks of harm, including loss of employment, business or professional opportunities, financial loss.

174. The Plaintiff's and Class Members' damages claim represents general, compensatory and consequential damages for:

- (a) general damages to be assessed in the aggregate;
- (b) intrusion upon seclusion including moral damages;
- (c) loss of privacy;
- (d) loss of valuable Personal Information;
- (e) damage resulting from synthetic or fictitious identity fraud schemes;
- (f) damage to credit ratings and perceived creditworthiness; and
- (g) costs and expenses incurred or required to protect the Plaintiff and Class Members against identity theft or other misuse or abuse of their Personal Information.

175. For those individuals wishing to ascertain what Personal Information SiriusXM holds, even if they have cancelled the service, SiriusXM demands a fee of \$15.00. If they have continued with the service, the fee is still required.

176. The Plaintiff and Class Members claim punitive damages in the sum of \$100,000,000.00 or such other sum as the Court may order. This is a serious breach. It involves switch and bait tactics and acquisition of the Plaintiff's and Class Members' data without consent.

177. SiriusXM's conduct was high-handed, outrageous, reckless, wanton, entirely without care, callous, disgraceful, willful, in contemptuous disregard of the rights of the Class Members, thereby rendering the Defendant liable to pay exemplary and punitive damages.

178. A significant award of damages is justified in this case in light of, among other things:

- (a) the nature of SiriusXM's wrongful acts and omissions;
- (b) the lack of any actual relationship between the Plaintiff, Class Members with SiriusXM; and
- (c) the conduct of SiriusXM prior to, during, and after the privacy breach.

SERVICE OUTSIDE OF ONTARIO

179. If necessary, this Statement of Claim may be served outside of Ontario without leave in accordance with rule 17.04 of the Rules of Civil Procedure, because it is:

- (a) a claim in respect of personal property in Ontario (clause 17.02(a));
- (b) a claim in respect of damages sustained in Ontario (clause 17.02(h));
- (c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (clause 17.02(n));
- (d) a claim against a person outside of Ontario who is necessary or proper party to a proceeding properly brought against another person served in Ontario (clause 17.02(o)); and
- (e) a claim against a person ordinarily resident or carrying on business in Ontario (clause 17.02(p)).

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

180. The Class Plaintiff plead that this action and each Class Member's claims have a real and substantial connection with Ontario because:

- (a) SiriusXM carries on business in Ontario;
- (b) contracts relating to the subject matter of this action were made in Ontario;
- (c) the Plaintiff's and Class Members' Personal Information was collected, stored and transmitted in and through Ontario; and
- (d) a substantial portion of the Class Members reside in Ontario.

RELEVANT LEGISLATION

181. The Plaintiff and Class Members plead and rely on the *Act, Courts of Justice Act*, R.S.O. 1990, c. C.43, the *CPA, PIPEDA, Provincial Privacy Acts, Family Law Act*, R.S.O. 1990, c. F.3, and *Negligence Act*, R.S.O. 1990, c. N.1.

PLACE OF TRIAL

182. The Plaintiff and Class Members propose that this action be tried in the City of Toronto, in the Province of Ontario.

November 2, 2020

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SCHEDULE “A”

The Class Plaintiff claims and relies upon the following statutes and Regulations:

Relevant Provincial and Territorial Class Proceedings Acts

Class Proceedings Act, 1992, S.O. 1992, c. 6;

Class Proceedings Act, S.A. 2003, c. C-16.5;

Class Proceedings Act, R.S.B.C. 1996, c. 50;

Class Proceedings Act, C.C.S.M., c. C130;

Class Proceedings Act, R.S.N.B. 2011, c. 125;

Class Actions Act, S.N.L. 2001, c. C-18.1;

Northwest Territories and Nunavut, Rules of Court (Rule 62);

Class Proceedings Act, S.N.S. 2007, c. 28;

Prince Edward Island, Rules of Court, Rule 12;

Code of Civil Procedure, C.Q.L.R., c. C-25.1 – Book VI Special Procedural Routes and Title III Special Rules for Class Actions;

Class Actions Act, S.S. 2001, c. 1201; and

Yukon Rules of Court, Rules 5 and 8.

Relevant Federal, Provincial and Territorial Privacy Acts

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31;

Privacy Act, R.S.B.C. 1996, c. 373;

Privacy Act, R.S.C. 1985, c. P-21;

Privacy Act, R.S.N.L. 1990, c. P-22;

The Privacy Act, C.C.S.M., c. P125;

The Privacy Act, R.S.S. 1978, c. P-24;

Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25;
Right of Information and Protection of Privacy Act, S.N.B. 2009, c. R-10.6;
Access to Information and Privacy Act, S.N.W.T. 1994, c. 20;
Access to Information and Privacy Act, S.N.W.T. (Nu) 1994, c. 20;
Freedom of Information and Protection of Privacy Act, S.N.S. 1993, c. 5;
Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1998, c. F-15.01;
Act Respecting the Protection of Personal Information in the Private Sector,
R.S.Q., c. P-39.1;
Access to Information and Protection of Privacy Act, R.S.Y. 2002, c. 1; and
Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5.

Relevant Negligence Acts

Negligence Act, R.S.O. 1990, c. N.1;
Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50;
Negligence Act, R.S.B.C. 1979, c. 298;
Contributory Negligence Act, R.S.N.L. 1990, c. C-33;
The Tortfeasors and Contributory Negligence Act, C.C.S.M., c. T90;
The Contributory Negligence Act, R.S.S. 1978, c. C-31;
Contributory Negligence Act, R.S.A. 2000, c. C-27;
Contributory Negligence Act, R.S.N.B. 2011, c. 131;
Contributory Negligence Act, R.S.N.W.T. 1988, c. C-18;
Contributory Negligence Act, R.S.N.W.T. (Nu) 1988, c. C-18;
Contributory Negligence Act, R.S.N.S. 1989, c. 95;
Contributory Negligence Act, R.S.P.E.I. 1988, c. C-21;
Civil Code of Quebec, L.R.Q., c. C-1991, art. 1457; and

Contributory Negligence Act, R.S.Y. 2000, c. 42.

Relevant Provincial and Territorial Consumer Protection Acts

Consumer Protection Act, 2002, S.O. 2002, Chapter 30, Schedule A;

Canada Consumer Product Safety Act, S.C. 2010, c. 21;

Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2;

Consumer Protection and Business Practices Act, S.N.L. 2009, c. C-31.1;

The Consumer Protection Act, C.C.S.M., c. C-200;

The Consumer Protection and Business Practices Act, S.S. 2013, c. C-30.2;

Consumer Protection Act, R.S.A. 2000, c. C-26.3;

Consumer Product Warranty and Liability Act, S.N.B. 1978, c. C-18.1;

Consumer Protection Act, R.S.N.W.T. 1988, c. C-17;

Consumer Protection Act, R.S.N.W.T. (Nu) 1988, c. C-17;

Consumer Protection Act, R.S.N.S. 1989, c. 92;

Consumer Protection Act, R.S.P.E.I. 1988, c. C-19;

Consumer Protection Act, C.Q.L.R., c. P-40.1; and

Consumers Protection Act, R.S.Y. 2002, c. 40.

Relevant Federal, Provincial and Territorial Courts of Justice and Judicature Acts

Courts of Justice Act, R.S.O. 1990, c. C.4;

Supreme Court Act, R.S.B.C. 1996, c. 443;

Judicature Act, R.S.N.L. 1990, c. J-4;

The Court of Queen's Bench Act, C.C.S.M., c. C-280;

The Queen's Bench Act, 1998, S.S., c. Q-1.01;

Judicature Act, R.S.A. 2000, c. J-2;

Judicature Act, R.S.N.B. 1973, c. J-2;

Judicature Act, R.S.N.W.T. 1988, c. J-1;

Judicature Act, S.N.W.T. (Nu) 1998, c.34, s.1;

Judicature Act, R.S.N.S. 1989, c. 240;

Judicature Act, R.S.P.E.I. 1988, c. J-2.1;

Courts of Justice Act, C.Q.L.R. c. T-16; and

Judicature Act, R.S.Y. 2002, c. 128.

Other Relevant Federal, Provincial and Territorial Statutes

Act Respecting the Protection of Personal Information in the Private Sector, R.S.Q., c. P-39.1;

Civil Code of Quebec, L.R.Q., c. C-1991, art. 35-40;

Electronic Commerce Act, 2000, S.O. 2000, c. 17;

Payment Card Networks Act, S.C. 2010, c. 12, s. 1834; and

Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5.

COLIN LOEWENTHAL

Plaintiff

-and-

SIRIUS XM HOLDINGS, INC., SIRIUS XM RADIO, INC.

et. al.

Defendants

Court File No. CV-20-00648610-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto, Ontario

STATEMENT OF CLAIM

BOUGHTON LAW

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Solicitors for the Plaintiff and Class Members



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 01-Oct-2020
Délivré par voie électronique : 01-Oct-2020
Toronto

COLIN LOEWENTHAL

Plaintiff

-and-

**SIRIUS XM HOLDINGS, INC., SIRIUS XM RADIO, INC.
SIRIUS XM CANADA HOLDINGS, INC., SIRIUS XM CANADA INC.,
SIRIUS XM CONNECTED VEHICLE SERVICES HOLDINGS INC.,
SIRIUS XM CONNECTED VEHICLE SERVICES INC.,
SXM CVS CANADA INC. AND ADSWIZZ, INC.**

Defendants

Proceeding under the Class Proceedings Act, 1992

NOTICE OF ACTION

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT WILL BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: September 30, 2020

Issued by: _____
Local Registrar

Address of court office:
Court House
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: SIRIUS XM HOLDINGS INC.
1290 Avenue of the Americas
11th Floor
New York, NY 10104
USA

TO: SIRIUS XM RADIO, INC.
1221 Avenue of the Americas
37th Floor
New York, NY 10020
USA

TO: SIRIUS XM CANADA HOLDINGS, INC.
135 Liberty Street, 4th Floor
Toronto, Ontario
M6K 1A7

TO: SIRIUS XM CANADA INC.
135 Liberty Street, 4th Floor
Toronto, Ontario
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TO: SIRIUS XM CONNECTED VEHICLE SERVICES HOLDINGS INC.
8550 Freeport Parkway
Irving, Texas 75063
USA

TO: SIRIUS XM CONNECTED VEHICLE SERVICES INC.
8550 Freeport Parkway
Irving, Texas 75063
USA

TO: **SXM CVS CANADA INC.**
222 Bay Street
Suite 3000
Toronto
M5K 1E7

AND TO: **ADSWIZZ, INC.**
487A S El Camino Real,
San Mateo, CA 94402
USA

CLAIM

1. The plaintiff claims on his own behalf and on behalf of the Proposed Class:

(a) an order pursuant to the *Class Proceedings Act, 1992*, (“CPA”) certifying this action as a Class proceeding and appointing Victor Cardoso as the representative plaintiff for the Proposed Class;

(b) an aggregate assessment of damages as will particularized in the Statement of Claim for:

- i. negligence;
- ii. theft or conversion;
- iii. breach of contract;
- iv. unjust enrichment;
- v. intrusion upon seclusion;
- vi. breach of the *Privacy Act*, R.S.B.C. 1996, c. 373;
- vii. breach of *The Privacy Act*, C.C.S.M., c. P125;
- viii. breach of *The Privacy Act*, R.S.S. 1978, c. P-24;
- ix. breach of the *Privacy Act*, R.S.N.L. 1990, c. P-22; and
- x. breach of the *Civil Code of Quebec*, L.R.Q., c. C-1991, art. 35-40, and Act Respecting the *Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1;

(c) an order pursuant to s. 25 of the CPA directing individual hearings, inquiries and determinations for Class Members who have suffered or may have suffered special damages as a result of unlawful conduct by third parties, including identity theft, which may have been occasioned by or attributable to breaches as alleged, and all necessary directions relating to the procedures to be followed in conducting hearings, inquiries and determinations;

(d) exemplary, punitive and/or aggravated damages in the amount of \$100 million;

- (e) interim relief compelling the defendants to give direct notice to affected Canadians that a privacy breach occurred in relation to their personal information;
- (f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) the costs of this proceeding, plus all applicable taxes; and
- (i) such further and other relief as this Honourable Court may deem just.

NATURE OF THE ACTION

2. The defendants are in the business of providing radio programming for a fee. In doing so, the defendants have collected the Personal Information of the plaintiff and Class Members.
3. Sirius XM is integrated into the audio system of most new cars from every major car company.
4. As of December 31, 2019, Sirius XM Canada had approximately 2.7 million subscribers.
5. Sirius XM Holdings Inc. is the world's largest radio company measured by revenue and has more than 30 million subscribers. SiriusXM creates and offers commercial-free music, sports talk and live events, comedy, news, talk and entertainment, and a wide-range of music.
6. The plaintiff and Class Members did not give free and informed consent for the collection and use for profit of their Personal Information to any of the defendants.

7. In particular, the defendants have collected, stored, and placed into the stream of marketing in Ontario and elsewhere in Canada its product that is installed in cars, and has used and sold the Personal Information and customer data to obtain subscriptions for paid services and for marketing and advertising.

THE PARTIES

8. The plaintiff, Colin Loewenthal, resides in the City of Vancouver, in the Province of British Columbia. The Plaintiff's Personal Information was collected and placed into the stream of commerce in Ontario and elsewhere in Canada by the defendants.
9. The defendant, Sirius XM Holdings Inc. ("Sirius XM") is an American broadcasting company headquartered in Manhattan, New York City that provides satellite radio and online radio services operating in the United States. It was formed by the 2008 merger of Sirius Satellite Radio and XM Satellite Radio, merging them into Sirius XM Radio. The company also has a 70% equity interest in Sirius XM Canada Inc., an affiliate company that provides Sirius and XM service in Canada. Sirius XM Holdings, Inc. was incorporated on May 21, 2013. Sirius XM has entered into a Services Agreement and an Advisory Services Agreement with Sirius XM Canada.
10. The defendant, Sirius XM Radio, Inc. is a Delaware corporation with its principal place of business located at 1221 Avenue of the Americas, New York, NY 10020. In November 2013, Sirius XM reorganized their corporate structure, which made Sirius XM Radio Inc. a direct, wholly owned subsidiary of Sirius XM Holdings, Inc.
11. The defendant, Sirius XM Canada Holdings, Inc. is the parent company of the defendant Sirius XM Canada Inc. Sirius XM has entered into licensing and services agreements between Sirius XM and Sirius XM Canada. On May 13, 2016, Sirius XM announced that

it and Sirius XM Radio Inc., its operating subsidiary, entered into agreements with Sirius Canada Holdings Inc. to recapitalize Sirius XM Canada. Sirius XM contributed approximately US\$275 million to facilitate the transaction. Additionally, the licensing and services agreement between Sirius XM and Sirius XM Canada was renewed and extended upon the consummation of the transaction.

12. The defendant, Sirius XM Canada Inc. markets to Canadians and engages in the sale of the subscription services, and is responsible for the Canadian Sirius customer website to advertise the Sirius XM services to Canadians.
13. The defendant, Sirius XM Connected Vehicle Services Inc. provides telematics services. The Company has its headquarters in Irving, Texas. It provides safety, security, and convenience services for drivers and end-to-end turnkey solutions for automakers.
14. The defendant, Sirius XM Connected Vehicle Services Holdings Inc. is the parent company of Sirius XM Connected Vehicle Services Inc., and is also located in Irving, Texas.
15. The defendant, SXM CVS Canada Inc. is incorporated pursuant to the *Canada Business Corporations Act* and is located in Toronto. SXM CVS Canada Inc. is affiliated with Sirius XM Connected Vehicle Services Inc. in providing services, including a consumer wireless service and platform and related smartphone applications and a suite of connected vehicle services and applications.
16. The defendants are collectively responsible for placing Sirius XM services into vehicles, purchased, leased, or operated by the plaintiff and Class Members.
17. The defendant, AdsWizz, Inc. is the adtech subsidiary of SiriusXM, and is located in California. AdsWizz creates an end-to-end solution that enables creators to publish and

generate revenue from their podcasts and has a suite of digital audio advertising software that powers leading digital ad-sale houses, publishers, music platforms, podcast publishers, trading desks, and digital agencies, including services such as Pandora, iHeart Radio, TuneIn, NPR, Cox Radio, CBS Radio/ Entercom, Deezer, Kiss FM, and Rogers Media Radio in Canada. This defendant launched AdWave Canada in 2016, expanding AdWave Reach to 33 Countries and formed other partnerships to develop the digital audio advertising market in Canada.

DAMAGES

18. As a result of the defendants' intrusion upon seclusion and privacy breach, to which the plaintiff and Class Members have been subjected, the plaintiff and Class Members have suffered damages, including damages for breach of privacy, which further subjects them to the additional risks of:

- (a) damages resulting from synthetic or fictitious identity fraud schemes;
- (b) costs incurred to remedy and prevent identity theft;
- (c) damage as a result of the risk of SIM-swapping and linked phone numbers and contact information to bank accounts, two-factor verification, and credit cards;
- (d) damage to reputation;
- (e) out-of-pocket expenses;
- (f) general damages to be assessed in the aggregate; and
- (g) special damages caused by unlawful conduct by third parties, including the future risks of identity theft, occasioned by or attributable to the privacy breach.

19. The plaintiff and Class Members plead and rely upon the following provisions of Rule 17 of the Rules of Civil Procedure in support of such service: 17.02 (g) – the tort was committed in Ontario; and 17.02(p) – the defendants carries on business in Ontario, and 17.05 – service outside Ontario in relation to the defendants in the United States.

The plaintiff proposes that this action be tried in the City of Toronto, Ontario.

September 30, 2020

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Solicitors for the Plaintiff and Class
Members

COLIN LOEWENTHAL

Plaintiff

-and-

SIRIUS XM HOLDINGS, INC., SIRIUS XM RADIO, INC.
et. al.

Defendants

Court File No.

ONTARIO
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NOTICE OF ACTION

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