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3  
4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR MULTNOMAH COUNTY

6  
7 **MICHAEL FULLER,**

8 Plaintiff,

9 v.

10 **SIRIUS XM HOLDINGS INC.,**

11 Defendant.  
12  
13

Case No.

**UNLAWFUL TRADE PRACTICES ACT  
AND OVER SEAS FRAUD DATA  
BREACH COMPLAINT**

Claim subject to mandatory arbitration

Fee authority: ORS 21.160(1)(b)

Filing fee: \$252

Jury trial requested  
14

15 1.

16 **INTRODUCTION**

17 In a certified letter dated April 12, 2016, Mr. Fuller reached out to Sirius XM Holdings  
18 Inc. (“Sirius XM”) in hopes of resolving this dispute outside of Court. The letter asked Sirius XM  
19 to immediately investigate this matter and cooperate with the City of Portland Police Department.

20 As of the date of this complaint, Sirius XM has failed to respond to Mr. Fuller’s letter.  
21

22 2.

23 **JURISDICTION AND THE PARTIES**

24 Having no other choice to make things right, Mr. Fuller now files this complaint against  
25 Sirius XM to recover fair compensation after suffering ascertainable economic loss and identity  
26

27 **UNLAWFUL TRADE PRACTICES ACT AND OVER SEAS FRAUD DATA BREACH**  
28 **COMPLAINT - Page 1 of 13**

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1  
2 theft caused by Sirius XM’s willful violation of ORS 646.608(1)(e) and (i), over seas fraud and/or  
3 data breach on April 10, 11, and 12, 2016.

4  
5 3.

6 Mr. Fuller lived in Portland, Oregon at all times material and is a “person” as defined at  
7 ORS 646.605(4).

8 4.

9 Sirius XM is a Delaware corporation with its principal executive offices at 1221 Avenue  
10 of the Americas, 36th Floor, New York, New York, 10020. Sirius XM’s CEO is James Meyer.

11 5.

12 Sirius XM operated its satellite radio services business in Oregon at all times material and  
13 was in the business of regularly selling its satellite radio services to consumers at all times material  
14 and was a “person” as defined at ORS 646.605(4).

15 6.

16 Venue is proper in Multnomah County, Oregon because the forum is most convenient for  
17 the parties, Mr. Fuller lives here, and Sirius XM regularly sells its satellite radio services here.

18 7.

19  
20  
21 **FACTUAL ALLEGATIONS**

22 This complaint’s allegations are based on personal knowledge as to Mr. Fuller’s own  
23 conduct and are made on information and belief as to the acts of others. Sirius XM is liable for  
24 the acts of its over seas agents and employees.

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2 8.

3 On or around April 10, 2016, Mr. Fuller used his mobile phone to call Sirius XM at its  
4 phone number 1-877-647-3004. Mr. Fuller placed the call from his mobile phone number 503-  
5 201-4570 at approximately 8:31am PST. The call lasted approximately 17 minutes.  
6

7 9.

8 Through the course of Sirius XM's business of selling its satellite radio services to Oregon  
9 consumers, Sirius XM represented to Mr. Fuller and caused Mr. Fuller to understand that if Mr.  
10 Fuller purchased Sirius XM's satellite radio services, Mr. Fuller could listen to Sirius XM's  
11 satellite radio services using his mobile phone at a cost of approximately \$22.77 for five months  
12 of service.  
13

14 10.

15 At all materials times, Mr. Fuller believed the representations of the Sirius XM agent that  
16 he could listen using his mobile phone at a cost of approximately \$22.77 for five months of  
17 service. Mr. Fuller does not use a standalone satellite radio unit and would not have purchased  
18 Sirius XM's satellite radio services if he could not listen on his mobile phone. Mr. Fuller's prior  
19 use of Sirius XM's satellite radio services was exclusively on his mobile phone.  
20

21 11.

22 Sirius XM's representation concerning the cost of its satellite radio services and Mr.  
23 Fuller's ability to listen to its satellite radio services on his mobile phone were material and false  
24 because Mr. Fuller purchased Sirius XM's satellite radio services based on Sirius XM's  
25 representation and could not listen to the satellite radio services on his mobile phone.  
26

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2 12.

3 Sirius XM later informed Mr. Fuller that its \$22.77 offer in fact did not include the ability  
4 to listen to its satellite radio services on his mobile phone, and that the cost to listen to its satellite  
5 radio services on his mobile phone was substantially more than its original offer.  
6

7 13.

8 As soon as Mr. Fuller learned of Sirius XM's false representation, he immediately  
9 complained about unfair trade practices and revoked his \$22.77 payment but Sirius XM collected  
10 the payment anyway from Mr. Fuller's American Express pre-paid card number ending 6289.  
11

12 14.

13 On or around April 11 and 12, 2016, Sirius XM, through the fraud of its over seas agent  
14 or negligent data breach, used Mr. Fuller's American Express pre-paid card information to initiate  
15 fraudulent transactions in Thai baht, including charges of ฿6870 on April 11, 2016, ฿1490 on  
16 April 11, 2016, ฿510 on April 12, 2016, and others.  
17

18 15.

19 Mr. Fuller never would have provided Sirius XM his card information if he had known  
20 Sirius XM intended to use the information to commit over seas fraud and identity theft, or that its  
21 inadequate security procedures would lead to a negligent data breach.  
22

23 16.

24 As soon as Mr. Fuller learned of Sirius XM's over seas fraud and identify theft or  
25 negligent data breach, he immediately filed a police report (Case No. 16-114588) with the  
26 Portland, Oregon police department and reported the activities to American Express.  
27

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2 17.

3 Sirius XM's conduct as alleged above violated ORS 646.608(1)(e) because Sirius XM  
4 misrepresented that its offer included satellite radio services that Mr. Fuller could listen to using  
5 his mobile phone, when in fact, the services Sirius XM sold Mr. Fuller did not have that  
6 characteristic or quality.  
7

8 18.

9 Sirius XM's conduct as alleged above violated ORS 646.608(1)(i) because Sirius XM  
10 represented to Mr. Fuller that if Mr. Fuller purchased Sirius XM's satellite radio services, Mr.  
11 Fuller could listen to its satellite radio services using his mobile phone at a cost of approximately  
12 \$22.77 for five months of service, when in fact, Sirius XM never intended to provide Mr. Fuller  
13 its services for use on his mobile phone at that price.  
14

15 19.

16 Sirius XM's violation of ORS 646.608(1)(e) and (i) as alleged above was "willful"  
17 because Sirius XM knew and should have known its conduct constituted unlawful trade practices,  
18 as Sirius XM was aware Oregon law prohibited false representations in connection with the offer  
19 and sale of its satellite radio services.  
20

21 20.

22 Sirius XM's unlawful trade practices, fraud and/or negligence directly and proximately  
23 caused Mr. Fuller to incur ascertainable economic loss because Mr. Fuller was unable to listen to  
24 Sirius XM's satellite radio services on his mobile phone at the price offered, and now has  
25 unauthorized charges on his American Express pre-paid card.  
26

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21.

Sirius XM’s unlawful trade practices, fraud and/or negligence also directly and proximately caused Mr. Fuller to suffer foreseeable frustration, wasted time, and annoyance.

22.

As of the date of this complaint, Sirius XM and its subsidiaries have a net worth of almost \$20 billion, annual revenues of over \$4 billion, and provide satellite radio services to over 20 million subscribers.

23.

Sirius XM’s conduct as alleged above constituted extraordinary transgressions of socially tolerable behavior because its unlawful trade practices were in pursuit of profit.

24.

Upon discovery of actual evidence of Sirius XM’s malice, Mr. Fuller intends to amend this complaint to bring a claim against Sirius XM for punitive damages, in accordance with the reprehensibility of Sirius XM’s conduct.

1  
2 25.

3 **CAUSES OF ACTION**

4 **FIRST CLAIM FOR RELIEF**

5 **(Unlawful Trade Practices)**

6 **(ORS 646.638)**

7  
8 Mr. Fuller re-alleges the above paragraphs by reference.

9 26.

10 Sirius XM's violation of ORS 646.608(1)(e) and (i) as alleged above caused Mr. Fuller  
11 ascertainable economic loss, and Mr. Fuller is entitled to recover fair compensation for his actual  
12 damages and reimbursed attorney fees and costs under ORS 646.638.

13  
14 **SECOND CLAIM FOR RELIEF**

15 **(Fraud)**

16 Mr. Fuller re-alleges the above paragraphs by reference.

17  
18 27.

19 As alleged above, Sirius XM requested Mr. Fuller's American Express pre-paid card  
20 information and represented to Mr. Fuller that the information would be used to purchase its  
21 satellite radio services so Mr. Fuller could listen using his mobile phone at a cost of approximately  
22 \$22.77 for five months of service.

23  
24 28.

25 Sirius XM's representation was false, both because Mr. Fuller could not listen to its  
26 satellite radio services on his mobile phone at the cost offered, and because Sirius XM actually

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1  
2 used Mr. Fuller's card information to incur unauthorized charges through over seas fraud and  
3 identity theft.

4  
5 29.

6 Sirius XM's representation was material, as Mr. Fuller would not have provided his card  
7 information to Sirius XM outside the terms of its offer, or for any improper purpose.

8  
9 30.

10 The Sirius XM agent who spoke with Mr. Fuller on April 10, 2016, while working under  
11 Sirius XM's employ and within the scope of his employment, had knowledge that his  
12 representation concerning the \$22.77 offer was false, or at a minimum, had ignorance of the true  
13 services Mr. Fuller would receive in an attempt to profit from his sale. The Sirius XM agent also  
14 had present intent to obtain Mr. Fuller's card information to incur unauthorized charges through  
15 over seas fraud and identity theft, in part based on the short time it took for the unauthorized  
16 charges to take place. Mr. Fuller was ignorant of the falsity of Sirius XM's representation or the  
17 intent of its agent.  
18

19  
20 31.

21 Mr. Fuller relied on Sirius XM's offer and would not have provided his card information  
22 to Sirius XM as requested if he knew of its false offer or that the card information was being  
23 requested to incur unauthorized charges through over seas fraud and identity theft. Mr. Fuller had  
24 a legal right to rely on Sirius XM's representations because over seas fraud and identity theft are  
25 wrongful acts. Mr. Fuller's reliance was reasonable because he had no actual knowledge of Sirius  
26 XM's pricing procedures.

27  
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2 32.

3 As a result of Sirius XM's fraud as alleged above, Mr. Fuller suffered actual damages to  
4 be proved at trial.

5  
6 33.

7 **THIRD CLAIM FOR RELIEF**

8 **(Negligence)**

9 Mr. Fuller re-alleges the above paragraphs by reference.

10  
11 34.

12 Sirius XM was negligent by unreasonably creating a foreseeable risk of harm to Mr. Fuller  
13 in one or more other particulars: 1) failing to properly communicate within its own company that  
14 it was not authorized to charge Mr. Fuller; 2) failing to properly train its employees on its pricing  
15 practices; 3) failing to properly manage employees who discuss pricing with potential customers,  
16 such as the employee who discussed pricing with Mr. Fuller; 4) failing to enact reasonable safety  
17 policies and or data theft procedures; or 5) failing to properly implement any reasonable safety  
18 policies and or procedures to protect against data theft. Sirius XM owed a duty to Mr. Fuller to  
19 use and exercise reasonable and due care in obtaining, retaining, securing, and deleting the  
20 personal and financial information Sirius XM collected from Mr. Fuller on or around April 10,  
21 2016. Sirius XM owed a duty to Mr. Fuller to implement adequate security procedures, consistent  
22 with industry standards and requirements, to ensure that its computer systems and networks, and  
23 the agents and employees responsible for them, adequately protected the personal and financial  
24 information Sirius XM collected from Mr. Fuller on or around April 10, 2016. Sirius XM owed a  
25

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1  
2 duty of care to Mr. Fuller because he was a foreseeable and probable victim of any inadequate  
3 security procedures. Sirius XM knew it inadequately safeguarded Mr. Fuller's personal and  
4 financial information on its computer systems and Mr. Fuller's information was subject to  
5 unauthorized access from both internal and external persons. Sirius XM knew that a compromise  
6 of Mr. Fuller's personal and financial information would inflict immediate and potentially  
7 irreparable harm to Mr. Fuller's credit and subject his pre-paid card to immediate unauthorized  
8 use and financial loss. Sirius XM was thus charged with a duty to adequately protect Mr. Fuller's  
9 personal and financial information.  
10

11  
12 35.

13 Sirius XM maintained a special relationship with Mr. Fuller. Mr. Fuller entrusted Sirius  
14 XM with his personal and financial information on the premise that Sirius XM would adequately  
15 safeguard his information, and Sirius XM was in a position to protect against the harm suffered  
16 by Mr. Fuller as a result of its negligent data breach.  
17

18 36.

19 In light of its special relationship with Mr. Fuller, Sirius XM knew, and should have  
20 known, of the risks inherent in collecting and storing Mr. Fuller's personal and financial  
21 information, and the importance of providing adequate security of his information.  
22

23 37.

24 Sirius XM's conduct created a foreseeable risk of harm to Mr. Fuller. Sirius XM's  
25 misconduct included, and was not limited to, hiring at least one over seas agent or third party  
26 vendor that did not follow broadly accepted security practices, and permitting that over seas agent  
27

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2 or third party vendor credentials that were used to access and use Mr. Fuller's credit information  
3 without authorization. Sirius XM's misconduct also included its decision not to comply with  
4 industry standards for the safekeeping and maintenance of customers' personal and financial  
5 information.

6  
7 38.

8 Sirius XM breached its duties to Mr. Fuller by failing to exercise reasonable care and  
9 implement adequate security procedures sufficient to protect Mr. Fuller's credit and personal  
10 information from identity theft and over seas fraud.

11  
12 39.

13 Sirius XM breached the duties it owed Mr. Fuller by failing to properly maintain and  
14 safeguard his personal and credit information. Given the risk involved and the sensitivity of the  
15 data involved, Sirius XM's breach was entirely unreasonable. Sirius XM also knew Mr. Fuller  
16 was a foreseeable victim of a data breach of its systems.

17  
18 40.

19 As a direct and proximate result of Sirius XM's negligent conduct as alleged above, Mr.  
20 Fuller suffered injury and is entitled to damages in an amount to be proven at trial.

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1  
2 41.

3 **WHEREFORE**, Mr. Fuller requests judgment against Sirius XM as follows:

- 4 **A.** Money judgment for \$25,000 against Sirius XM in favor of Mr. Fuller;  
5  
6 **B.** Money judgment for reasonable attorney fees and costs against Sirius XM in favor of  
7 the law firm of Olsen Daines PC; and  
8 **C.** For such other and further relief as this Court may deem just and proper.  
9

10 DATED: April 26, 2016

11 /s/ Neal Peton

12 **Neal Peton, OSB No. 074912**  
13 Lead Trial Attorney for Plaintiff  
14 **Eric Olsen, OSB No. 783261**  
15 Of Attorneys for Plaintiff  
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2 **PROOF OF MAILING**

3 Under ORS 646.638(2), I declare and certify that on the date below I caused a copy of this  
4 complaint to be mailed to the Oregon Attorney General at the following address:

5  
6 **Ellen Rosenblum**  
7 **Oregon Attorney General**  
8 **Oregon Department of Justice**  
9 **1162 Court Street NE**  
10 **Salem, Oregon 97301-4096**

11 DATED: April 26, 2016

12 /s/ Neal Peton  
13 **Neal Peton, OSB No. 074912**  
14 Lead Trial Attorney for Plaintiff  
15 **Eric Olsen, OSB No. 783261**  
16 Of Attorneys for Plaintiff  
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