

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General of the State of
New York,

Petitioner,

- against -

SIRIUS XM RADIO INC.,

Respondent.

VERIFIED PETITION

Index No. _____

Petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York (“NYAG”), as and for her Verified Petition, respectfully alleges:

INTRODUCTION

1. Respondent Sirius XM Radio Inc. (“Sirius”) is a New York-based media company with approximately 34.3 million subscribers. Sirius sells subscriptions that are easy to purchase, and extremely difficult to cancel.

2. Sirius renews subscriptions automatically at the end of each subscription term. But once enrolled, Sirius continues to charge consumers unless they undergo a lengthy and burdensome endurance contest that Sirius created and implemented as a strategy for keeping as many consumers from cancelling as possible. Even when consumers outlast Sirius and successfully complete the process, their subscription is not always cancelled.

3. Sirius’s strategy for frustrating cancellations includes forcing most subscribers to interact with a live customer service agent, even though Sirius has the ability to process cancellations without the involvement of live agents. Sirius trains its agents to put subscribers through a lengthy, six-part script, and to refuse cancellation until either the agent reaches the end

of the script, or the subscriber’s frustration reaches a point that they become openly agitated by the process—or give up altogether.

4. As part of its cancellation process, Sirius requires its live agents to present a series of renewal offers to retain the consumer as a subscriber. But when a consumer declines an offer, or refuses to hear further offers, Sirius instructs its agents not to take “no” for an answer. Instead, agents are instructed to “think of every ‘No’ simply as a request for more information!”—and to press forward until the consumer accepts an offer or abandons the cancellation effort, hounding them with additional questions and information. Sirius’s training and instructions to its agents are consistent with consumer experiences navigating the Sirius cancellation process, according to voluminous affidavits and complaints submitted to the NYAG and other agencies.

5. Sirius’s burdensome cancellation process begins even before the consumer is connected with a live agent, including time spent waiting in the queue to be connected. Wait times regularly exceed ten minutes to be connected with a live agent by phone, and 25 minutes to be connected with a live agent by online chat. The wait times do not include time spent going through additional preliminary steps before entering the queue.

6. Sirius subscribers must devote inordinate amounts of time, patience, and stamina trying to cancel a subscription they no longer wish to pay for, and that they have a legal and contractual right to cancel anytime using a process that is simple and efficient. This is by design: as Sirius’s representative testified to the NYAG, Sirius “believe[s] strongly that a good conversation regarding cancellation requires a lot of back and forth with the consumer.”

7. Sirius deliberately wastes its subscribers’ time even though it has the ability to process cancellations with the click of a button. The only reason Sirius requires cancelling

subscribers to interact with a live agent at all is to maximize its opportunity to retain them as subscribers.

8. The facts set out in this petition are based primarily on a review of training materials, data, and other documentary evidence produced by Sirius, the sworn testimony of the corporate executive designated by Sirius as its representative, and consumer complaints and affidavits received by the Attorney General, *e.g.*, *infra* ¶ 24; *see also* Ex. 30 (subpoenas).¹

9. For the reasons set out herein, Sirius has continued to engage in repeated and persistent fraud and illegality in violation of New York Executive Law § 63(12), General Business Law (“GBL”) Article 22-A, § 349, GBL Article 29-BB, § 527-a, and the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403.

PARTIES, JURISDICTION, AND VENUE

10. Petitioner Letitia James is the Attorney General of the State of New York. She is responsible for enforcing the laws of the State of New York, including Executive Law § 63(12), GBL § 349, and GBL § 527-a.

11. Respondent Sirius is a Delaware corporation with its principal place of business located at 1221 Avenue of the Americas, 35th Floor, New York, NY 10020.

12. Petitioner brings this special proceeding on behalf of the People of the State of New York pursuant to Executive Law § 63(12), GBL § 349, and GBL § 527-a.

13. Executive Law § 63(12) authorizes the Attorney General to bring a proceeding for injunctive and other equitable relief “[w]henver any person shall engage in repeated fraudulent

¹ Citations to “Ex.” refer to exhibits to the Affirmation of Adam J. Riff in Support of the Attorney General’s Verified Petition.

or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business.”

14. GBL § 349 authorizes the Attorney General to bring an action for injunctive relief, restitution, and penalties, whenever any person “has engaged in or is about to engage in” “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

15. GBL § 527-a authorizes the Attorney General to bring a proceeding for injunctive relief, restitution, and penalties whenever any “business that makes an automatic renewal offer or continuous service offer” fails to “provide a . . . cost-effective, timely, and easy-to-use mechanism for cancellation.”

16. Venue is properly set in New York County because Petitioner is resident in New York County and has selected New York County, and because Petitioner is a public authority whose facilities involved in the action are located in New York County. *See* CPLR §§ 503, 505, 509.

17. The parties entered into agreements that tolled the applicable statutes of limitation for the period from April 3, 2023 through February 3, 2024. Ex. 31 (tolling agreements).

FACTS

18. Sirius is an audio entertainment business that provides content to consumers on a subscription fee basis. Audio content is distributed (1) through Sirius’s proprietary satellite radio systems (the “Satellite Service”) and (2) via streaming applications for mobile devices, home devices, and other consumer electronic equipment (the “Streaming Service”). *See* Tr. Of Test. Hr’g of Sally McMahon (“McMahon Tr.”), Ex. 4 at 62:13-20. Sirius had approximately 34.3 million subscribers as of the end of 2022. *See* Ex. 28 at 4.

19. Both Satellite Service and Streaming Service subscriptions are sold and marketed on the Internet. *See id.* at 7 (“We sell satellite radios directly to consumers through our website. Satellite radios are also marketed and distributed through national, regional and online retailers, such as Amazon.com.”). In the case of vehicles that have a Sirius satellite radio preinstalled, consumers can activate their Satellite Subscription online themselves, *see, e.g.*, Ex. 27, or the dealer can do it for them using the Sirius app or website, *see* Ex. 26. Consumers use the Sirius website to create and manage their Sirius accounts, including to continue service at a discounted rate after a free trial. *E.g.*, Aff. of Ryan M. White (“White Aff.”), Ex. 48 at 3.

20. During the subscription enrollment process, consumers signing up for Satellite Service or Streaming Service subscriptions can complete their enrollment without needing to interact with any live agent. *See* McMahon Tr. 214:12-23. Consumers can sign up for subscription plans with terms of various lengths, including annual, semi-annual, quarterly, and month-to-month. *See id.* at 68:2-6.

21. For both Satellite Service and Streaming Service, subscriptions renew automatically at the end of the subscription term unless the consumer takes affirmative steps to cancel their subscription. *See id.* at 67:19-68:17. Such automatic renewals are known as “negative options” under applicable state and federal laws, which require negative option sellers like Sirius to provide simple and efficient means of cancellation.

22. The Sirius Customer Agreement promises consumers: “[Y]ou may cancel your Subscription at any time.” Ex. 25 at 2.

23. An earlier investigation by the attorneys general of several states found that Sirius “[f]ailed to honor cancellations or made it difficult for Consumers to cancel their Services.” Ex. 29 at 2 § I.A(2). In 2014, Sirius and 46 states (not including New York), reached a settlement

wherein Sirius was obligated to simplify cancellation requests, among other things. *Id.* at 18 § V.E; *see, e.g., id.* at 19 ¶ 36(B) (“SIRIUS XM shall not engage in harassing or abusive Save attempts and a Customer Service Representative shall promptly and without delay, move on to the next Save attempt or cancellation, depending on the circumstances, when a Consumer declines a rebuttal offer”).

24. During at least 2019 and 2021 to present, Sirius implemented and maintained cancellation policies and practices that were difficult and time consuming, and that frustrated consumers’ ability to cancel their subscriptions. Upon information and belief, the relevant policies and practices were the same or more burdensome during 2020. As a result, consumers from New York and across the country have filed complaints with the NYAG, as well as with the Federal Trade Commission and the Better Business Bureau, complaining about difficulties making it through the Sirius cancellation process. *See, e.g.,*

- Aff. of Therese Banning (“Banning Aff.”), Ex. 32;
- Aff. of Mintra A. Bush (“Bush Aff.”), Ex. 33;
- Aff. of Nancy C. Jagiela (“Jagiela Aff.”), Ex. 34;
- Aff. of Jeremy Kassman (“Kassman Aff.”), Ex. 35;
- Aff. of Jordan Leask (“Leask Aff.”), Ex. 36;
- Aff. of Lisa D. Lopez (“Lopez Aff.”), Ex. 37;
- Aff. of Susan A. Mason (“Mason Aff.”), Ex. 38;
- Aff. of Tracy E. Ohmart (“Ohmart Aff.”), Ex. 39;
- Aff. of Breanne Palmerini (“Palmerini Aff.”), Ex. 40;
- Aff. of Venessa Pettway (“Pettway Aff.”), Ex. 41
- Aff. of Jacob S. Robertson (“Robertson Aff.”), Exs. 42, 43;
- Aff. of Edith Rose (“Rose Aff.”), Ex. 44;
- Aff. of Philip Schwartz (“Schwartz Aff.”), Ex. 45;
- Aff. of Courtney A. Watson (“Watson Aff.”), Ex. 46;
- Aff. of Richard Weaver (“Weaver Aff.”), Ex. 47;
- Aff. of Ryan M. White (“White Aff.”), Ex. 48;
- Ex. 49 (select additional complaints to NYAG).

25. The policies and procedures relevant to this action were established by individuals and teams based in Sirius’s New York headquarters. *See McMahon Tr.* 33:21-37:3, 41:24-45:8.

26. Consumers cancelling a Sirius subscription began by interacting with an automated system. *See id.* at 75:12-76:9. Next, in order to complete the cancellation, most consumers were made to interact with a live customer service agent. *See id.* at 76:15-22. Sirius deliberately draws out consumer interactions with its live agents as part of its strategy to keep consumers from cancelling. *See infra* ¶¶ 66-69.

I. Sirius Subscribers Seeking to Cancel Are Put Through a Lengthy and Burdensome Process Before They Are Even Connected With a Live Agent

27. Since at least 2019, Sirius subscribers have had the ability to cancel their subscription by telephone (the “Call-to-Cancel” process). Until June 2020, Call-to-Cancel was the exclusive means available to most Sirius subscribers to cancel their subscription. *See* McMahon Tr. 73:22-75:10. Since June 2020, Sirius subscribers have also had the ability to cancel their subscription online by chatting with a live agent (the “Chat-to-Cancel” process).² *See id.* at 73:22-75:10. Both processes are burdensome and time-consuming for consumers.

A. Call-to-Cancel

28. Sirius allows subscribers to its Satellite Service and Streaming Service to cancel by telephone using a toll-free number. Except as noted herein, the Call-to-Cancel process is the same for Satellite Service and Streaming Service subscribers in all respects material to this Petition.

29. Subscribers are first connected with an automated interactive voice response (“IVR”) system to, among other things, ascertain the subscriber’s identity and reason for calling. *See* Ex. 23; McMahon Tr. 198:11-19, 206:11-16.

² Sirius allowed select consumers to use Chat-to-Cancel prior to June 2020. *See* McMahon Tr. 73:22-75:10. This method became available to residents of Maine earlier in 2020 and residents of California at some point in 2019. *Id.* It was also available “intermittently” to residents of other states earlier in 2020. *Id.*

30. Once a subscriber has expressed an intent to cancel, the IVR typically presents the subscriber with a new subscription offer. *See* Ex. 23; McMahon Tr. 206:17-208:4.

31. If the IVR does not present a new subscription offer, or if the subscriber declines the offer presented, the subscriber is placed in a queue to be connected with a live agent. *See* Ex. 23; McMahon Tr. 208:13-16.³

32. In some cases, the IVR may give subscribers the option of disconnecting the call and communicating by text message instead. *See* McMahon Tr. 69:17-70:7. Apple iPhone users also have the ability to initiate communications with Sirius through text messaging, including to communicate cancellation requests. *See id.* If a subscriber chooses to communicate by text message, the cancellation process is the same as the Chat-to-Cancel process beginning with the Chatbot. *See* McMahon Tr. 212:7-213:23; *see also infra* ¶¶ 43-46 (describing the Chat-to-Cancel process).

33. After interacting with the IVR, many consumers experience lengthy wait times while in the queue to be connected with a live agent.⁴

34. For example, on 93 days in 2021 (out of 248 business days, *i.e.*, 37 percent), the hourly average wait times to be connected with a live agent exceeded five minutes. *See* Ex. 7. On 40 days, the hourly average wait times exceeded ten minutes. *Id.* On 11 days, the hourly average wait times exceeded 15 minutes, and on June 1, 2021, the hourly average wait times to be connected with a live agent reached 36 minutes. *Id.* Again, these wait times do not include

³ At times, a subset of Streaming Service subscribers have had the ability to cancel directly through the IVR. *See* McMahon Tr. 209:15-210:21; *see also id.* at 177:20-24 (defining the subset). This was not available to any Satellite Service subscribers. *See id.* at 209:15-210:21.

⁴ Since 2021, live telephone agents are available weekdays from 8 a.m. to 8 p.m. *See* McMahon Tr. 155:23-156:5. In 2019, agents were available weekdays from 8 a.m. to 10 p.m., and weekends from 8 a.m. to 8 p.m. *Id.* Upon information and belief, Sirius does not permit subscribers to cancel by phone outside of these hours.

the time spent going through the IVR before entering the queue, or the time spent interacting with the live agent once connected. *See* McMahon Tr. 151:9-152:3. These wait times are corroborated by consumer affidavits. *See* Palmerini Aff. at 2 (30-minute wait); Rose Aff. at 2 (at least 30 minutes); *see also* Lopez Aff. at 2 (“[U]nable to reach a person to cancel over the phone. . . . No one picks up.”).

35. During 2019 and 2021, more than 578,000 subscribers seeking to cancel by telephone abandoned their efforts while waiting in the queue to be connected to the live agent. *See* Ex. 8; McMahon Tr. 163:6-17; *see also* McMahon Tr. 161:23-162:5.

36. One consumer attested to her frustration:

Sirius XM doesn’t allow users to cancel their service in their online portal without speaking to a customer service representative. . . . Then, when trying to speak to a customer service representative in order to cancel, the wait times are exorbitant. When I finally spoke to the first customer representative and explained that I had been waiting nearly a half an hour, I was promptly hung up on. Which means I had to wait again. Another 30 minutes, just to cancel a service I would have preferred to cancel online.

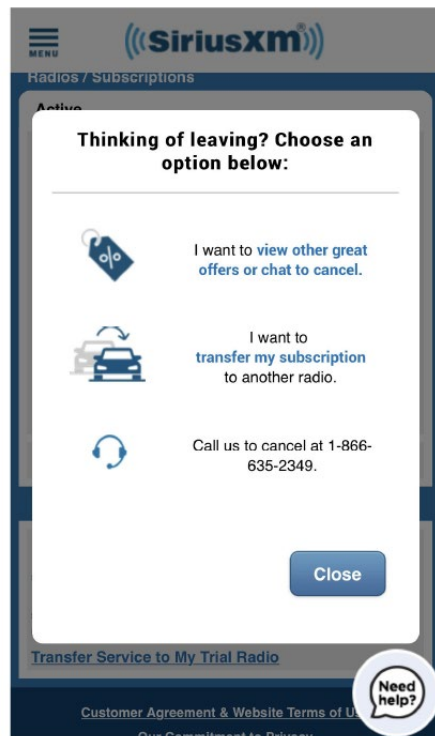
Palmerini Aff. at 2.

B. Chat-to-Cancel

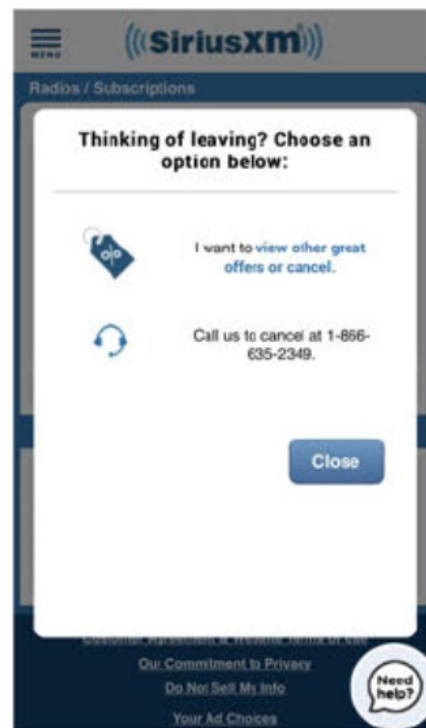
37. Sirius also allows subscribers to its Satellite Service and Streaming Service to cancel online through the Sirius website. Consumers must engage in a number of steps in order to cancel using the Chat-to-Cancel process.

38. Once a subscriber has selected the option to “Cancel my subscription,” the subscriber is presented with a screen titled “Thinking of leaving? Choose an option below.” Exs. 1-3; *see also* McMahon Tr. 167:10-19, 174:15-175:7, 186:15-19. One of the options presented to Satellite Service subscribers is, “I want to view other great offers or chat to cancel”; Streaming Service subscribers are presented with a similar option: “I want to view other great offers or

cancel.” *Id.* Although these options are presented in the disjunctive, in reality, and as explained below, subscribers cannot cancel until they have viewed other offers.



Satellite Service

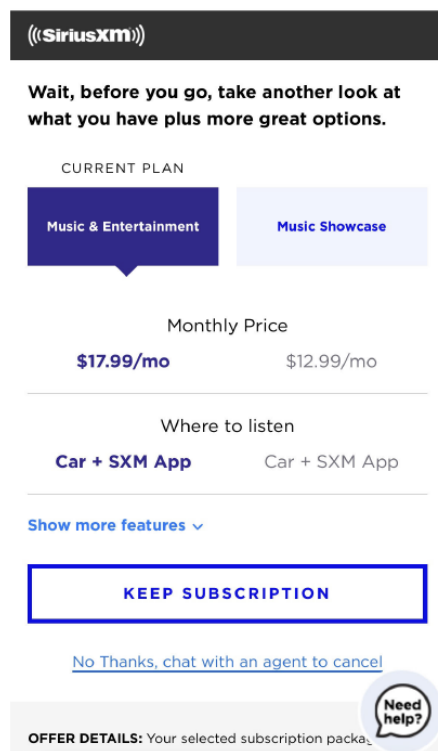


Streaming Service

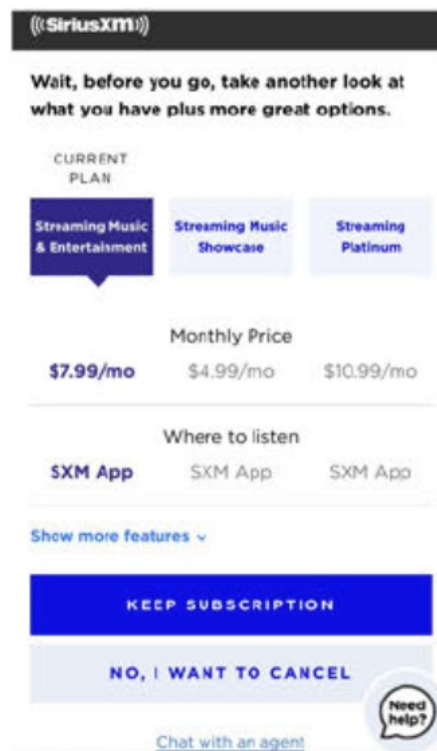
These images, and the images in paragraph 40, *infra*, depict how the screen displays on the mobile-optimized version of the Sirius website; it is materially identical on the standard website. *See* McMahon Tr. 185:4-11.

39. If the subscriber selects “view other great offers or chat to cancel,” the subscriber is presented with a survey: “Before you go... Tell us why you’re thinking of leaving. [1] My subscription is too expensive, [2] I can’t find what I want to listen to, [3] I don’t listen enough, [4] I’m experiencing technical issues, [or] [5] I have other reasons.” Exs. 1-3 (ellipsis in original); *see also* McMahon Tr. 167:20-168:23, 174:15-175:7. The consumer’s survey response has no bearing on any subsequent steps in the cancellation process and is not shared with a live agent. *See* McMahon Tr. 168:24-169:18, 174:15-175:7.

40. The subscriber is then presented with one or more offers, within the website, to retain the consumer as a subscriber. *See* Exs. 1-3; *see also* McMahon Tr. 169:20-170:19, 174:15-175:7. Although a previous screen describes these offers as “great,” *supra* ¶ 38, the offers are not always discounted, *see* McMahon Tr. 170:20-171:20. Satellite Service subscribers can reject the offer(s) by selecting “No Thanks, chat with an agent to cancel”; that option is presented as a hyperlink and is substantially less prominent than the options to “Switch Plan” or “Keep Subscription,” which are presented as large buttons. Exs. 1-3; *see also* McMahon Tr. 172:5-12, 186:20-187:25. Streaming Service subscribers can reject the offer(s) by selecting “No, I want to cancel” or “Chat with an agent.” Exs. 1-3.



Satellite Service



Streaming Service

41. Satellite Service subscribers who select “No Thanks, chat with an agent to cancel” are routed to an automated customer support chatbot (the “Chatbot”). Ex. 1. Streaming Service subscribers who select “Chat with an agent” are also routed to the Chatbot. Ex. 2.

42. Since approximately February 2021, Streaming Service subscribers in at least some states, including New York, have the option to cancel online without interacting with a chatbot (or a live agent) by selecting “No, I want to cancel,” and then clicking “Cancel Subscription” on the subsequent screen (the “Click-to-Cancel” process). Ex. 3; *see also* McMahon Tr. 176:2-12. Click-to-Cancel is not available to any *Satellite* Service subscribers. *See* McMahon Tr. 188:2-7; *see also infra* ¶ 67.

43. Once a subscriber is routed to the Chatbot, the subscriber must restate an intent to cancel. Once the Chatbot understands the subscriber’s intent to cancel, the Chatbot typically presents the subscriber with a new subscription offer. *See* Ex. 24; McMahon Tr. 194:2-10.

44. If the Chatbot does not present a new subscription offer, or if the subscriber declines the offer presented, the subscriber is placed in a queue to chat (via typed text) with a live customer service agent. *See* Ex. 24; McMahon Tr. 194:12-16.

45. After interacting with the Chatbot, many consumers experience lengthy wait times while in the queue to be connected with a live agent.⁵

46. For example, on 190 days between May and December 2021 (out of 245 days, *i.e.*, more than 75 percent), the hourly average wait times to be connected with a live agent exceeded five minutes. *See* Ex. 7. On 131 days (more than half), the hourly average wait times exceeded ten minutes; on 90 days (more than a third) it exceeded 15 minutes; on 62 days (more than a quarter) it exceeded 20 minutes; on 48 days it exceeded 25 minutes; on 31 days it exceeded half an hour; and on ten days it exceeded 45 minutes. *See id.* On each of May 2, May

⁵ Since 2021, live chat agents are available weekdays 8 a.m. to 11 p.m., and weekends 8 a.m. to 8 p.m. *See* McMahon Tr. 155:23-156:5. Agents were available during the same hours in 2019, except that Saturdays were weekday hours. *Id.* Upon information and belief, Sirius does not permit subscribers to cancel online outside of these hours (except those for whom the Click-to-Cancel process is available).

16, and October 4, 2021, the hourly average wait times to be connected with a live chat agent exceeded a full hour. *See id.* The average wait times for the entire months of January to April 2021 ranged from seven-and-a-half minutes to 19 minutes. *See Ex. 6.* The wait times set out in this paragraph do not include the time spent navigating the series of web pages and interacting with the Chatbot, or the time spent interacting with the live agent once connected via chat. *See McMahon Tr. 151:9-152:13.*

47. One consumer described his frustration as follows:

SiriusXM makes it impossible to cancel service with them. If you sign on to your account and select ‘cancel’, they make you call by phone or chat with an agent. So you wait 30-60 minutes before getting anyone. You should be able to cancel without this onerous extra step. . . . Tonight I waited for an hour without getting support to cancel. Nobody has the time to waste on this.”

Weaver Aff. at 2.

II. Sirius Makes Most Subscribers Endure a Lengthy Interaction With a Live Agent Before They Are Allowed to Cancel

48. Satellite Service subscribers cannot cancel their Sirius subscription without interacting with a live agent. *See Ex. 1; McMahon Tr. 188:2-7.*

49. Likewise, Streaming Service subscribers must interact with a live agent in order to cancel their subscription through the Call-to-Cancel process. *See McMahon Tr. 209:15-210:5; see also supra* ¶ 31 n.3. Until approximately February 2021, Streaming Service subscribers seeking to cancel online also had to interact with a live agent through Chat-to-Cancel, and have retained the option to do so since then.⁶

⁶ Since approximately February 2021, Streaming Service subscribers in at least some states, including New York, who wish to cancel online have the option to do so through Chat-to-Cancel or Click-to-Cancel. *See supra* ¶ 42; Ex. 3; McMahon Tr. 176:2-12. Subscribers seeking to simultaneously cancel and obtain a refund (beyond any granted automatically) have no choice but to use Chat-to-Cancel, because Click-to-Cancel does not have any mechanism to request a refund. *See Ex. 3; see, e.g., Bush Aff. at 9.*

50. Subscribers often must spend a long time waiting to be connected with a live agent in either the Call-to-Cancel or Chat-to-Cancel process. *See supra* ¶¶ 34, 46. Once a subscriber is finally connected with the live agent, it is as if they are restarting their interaction anew. The only information carried through to the live agent from earlier in the interaction is the subscriber's name and account (which is sometimes elicited by the live agent again anyway, *e.g.*, White Aff. at 7), and the offer presented by the Chatbot or IVR. *See* McMahon Tr. 194:18-195:11, 197:21-198:6, 208:17-209:14. In some cases, if not all cases, the subscriber must restate even their intent to cancel. *See id.* at 209:6-14.

51. For example, a chat transcript submitted by one consumer shows that the consumer had to restate to the live agent his intent to cancel and his reason for seeking to cancel ("too expensive") after providing the same information to the Chatbot. White Aff. at 5-7. The agent then refused to complete the cancellation unless the consumer provided his name, phone number, and home address, even though the consumer was already logged into his Sirius account to access the chat. *Id.* at 3, 7-9.

52. Once a subscriber seeking to cancel is connected with a live agent, the agent is instructed to take the following steps, in order. These steps hinder the cancellation process, rather than facilitating it.

53. *First*, the agent is instructed to ask probing questions about the subscriber's listening habits. *See* Ex. 9 at 37; Ex. 10 at 20-24; Ex. 11 at 13-17; Ex. 12 at 1; Ex. 13 at 1. The purpose of the interrogation is to allow the agent to gather information that the agent can use to help sell the customer on a new package later in the interaction. *See* Ex. 11 at 13-14 ("[A]sking engaging questions can help you understand the Customer and the information you learn can help you sell the package that does present to you."); *accord* Ex. 9 at 37; Ex. 10 at 20.

54. *Second*, the agent is instructed to point out the benefits and value of the subscriber's existing subscription, with the goal of convincing the subscriber to remain on that plan. *See* Ex. 9 at 20, 28, 35; Ex. 11 at 3; Ex. 14 at 1; Ex. 13 at 1; Ex. 15 at 9; *see also* Ex. 16 at 1; Ex. 17 at 1. According to one training document: "When you are speaking with a Customer who . . . simply wants to cancel, the first thing you should do is *Build Value* of their current package." Ex. 9 at 20 (emphasis in original).

55. *Third*, in some cases the agent is instructed to offer to change the term of the subscription ("Term Options"), *e.g.*, from annual to monthly. *See* Ex. 14 at 1; Ex. 15 at 9; *see also* Ex. 16 at 1; Ex. 17 at 1.

56. *Fourth*, the agent is instructed to offer the subscriber a different full-priced subscription, *see* Ex. 9 at 26-27; Ex. 14 at 1; *see also* Ex. 17 at 1, in some cases first recommending a higher-priced subscription, *see* Ex. 14 at 1; *see also* Ex. 18 at 1. According to one training document: "Your goal should *always* be to keep our Customers on a Full Price Plan." Ex. 9 at 26 (emphasis in original); *accord* Ex. 10 at 15 ("Customers saved on higher priced packages . . . are always more valuable because we earn more money.").

57. *Fifth*, the agent is instructed to offer a discounted subscription. *See* Ex. 9 at 28; Ex. 14 at 1; *see also* Ex. 17 at 1. As one training document explains: "If the Customer is unwilling to remain on the package they currently have or downgrade to a different, less expensive, full price package... your next step is to offer a discount." Ex. 9 at 28 (ellipsis in original).

58. Steps four and five typically include multiple offers. Sirius agents are required to present one offer at a time, in the order preselected and displayed to them onscreen by the company's customer relationship management platform, and they may only skip an offer if it is

declined by the consumer. *See* Ex. 11 at 7-11 (“[S]tart[] with the offer that displays first on the left and only mov[e] to a different offer when the Customer declines the first. Never skip an offer.”); Ex. 10 at 14-20; Ex. 15 at 11; Ex. 14 at 1; *see also* Ex. 16 at 1; Ex. 17 at 1; Ex. 18 at 1. The offers available, and the order in which they are presented, are specifically tailored to the consumer seeking to cancel. *See* Ex. 11 at 7-11 (“Every offer is customized specifically for [the customer], so there is a great likelihood that they will in fact accept the first offer.”); Ex. 10 at 18-19, 51; Ex. 9 at 28; McMahon Tr. 60:12-61:2; *see also* Ex. 16 at 1. Sirius strategically changes whether and when consumers are presented with the “best offer” first, second, third, or later. McMahon Tr. 52:6-53:25, 59:21-61:2. Agents have no discretion to deviate from the offers presented. *See* Ex. 11 at 7-11 (“You should present the offers in the order display[ed] to ensure a better overall Customer experience and to maximize your opportunity to save each Customer. It’s the right thing to do.”); Ex. 10 at 18-19; Ex. 15 at 11; Ex. 19 at 6; Ex. 16 at 1; Ex. 18 at 1.

59. Information elicited from the consumer earlier in the cancellation process does not impact the offers available or the order in which they are presented; those offers are preselected, as noted in the foregoing paragraph. *See supra* ¶ 58; *accord* Ex. 12 at 1. Rather, the point of asking consumers about their listening habits after they have requested to cancel is to elicit information that Sirius agents can use to tailor their pitch of the offers preselected for them. *See* Ex. 10 at 20; Ex. 11 at 13-14; Ex. 12 at 1. As one training document explains: “Even though you don’t get to choose the offers that present for the Customers you work with, asking engaging questions can help you understand the Customer and the information you learn can help you sell the package that does present to you.” Ex. 12 at 1.

60. For example, subscribers who explain to an agent that they are seeking to cancel because the cost of their subscription is too high may nevertheless have to listen to one or more subscription offers that are more expensive than the subscription they are seeking to cancel. *See* Ex. 18 at 1; *see also supra* ¶¶ 58-59 (no discretion to deviate from offers preselected). Sirius makes cancelling subscribers listen to such improbable offers so that they will “see the value” of the other offers. Ex. 18 at 1 (“[B]y telling Customers about all of the [features] they get, like by choosing Platinum instead of [a less expensive plan], they may never know what they’re missing.”).

61. Sirius agents are instructed to “us[e] your best judgement on the maximum number of offers to present to the Customer (usually 4 or 5 offers).” Ex. 15 at 31; Ex. 19 at 22; *accord* Ex. 9 at 48; Ex. 14 at 1. Term Options do not count toward the maximum. Ex. 14 at 1.

62. Sirius agents are instructed to follow any offer that is declined with even more questioning, about the reason for the consumer’s disinterest. *See* Ex. 13 at 1 (“What seems to be the hesitation with the promotional plan?”); *see, e.g.*, Robertson Aff. at 14 (screenshot showing consumer declining offer and restating his intent to cancel for a third time, and the agent waiting approximately eight minutes before replying: “May I ask what makes you hold to renew the service for \$6.48?”).

63. *Sixth and finally*, if none of the prior efforts were successful, the agent is instructed to implement the subscriber’s cancellation request. *See* Ex. 9 at 29 (“If you’ve gone through [all of the previous steps], made the corresponding offers and the customer still wants to cancel, you should honor that request and cancel their service.”); Ex. 14 at 1.

64. Agents are instructed to take all of these steps even though they have the ability to process cancellations immediately, such as where the reason for cancellation is death or sickness. *See* Ex. 17 at 1; Ex. 15 at 1.

III. Sirius Deliberately Draws Out Its Cancellation Interactions with Consumers as Part of Its Strategy to Keep Them From Cancelling

65. Once Sirius has a subscriber on the phone or in a chat with a live agent, Sirius expects that the subscriber will spend a long time there before any cancellation is completed.

66. According to testimony given by Sirius's corporate representative in the Attorney General's investigation: "We believe strongly that *a good conversation regarding cancellation requires a lot of back and forth with the consumer.*" McMahon Tr. 55:24-56:2 (emphasis added).

67. Moreover, the *only* reason Sirius interposes live agents at all in its cancellation processes is so that Sirius has an opportunity to pitch offers to subscribers before they cancel. *See* McMahon Tr. 188:2-190:4. Indeed, Sirius reserves the Click-to-Cancel mechanism (which does not involve any live agent) for subscribers who are not eligible for retention offers. *Id.*

68. But for subscribers simply seeking to cancel, it is often difficult to escape the relentless bombardment of offers from Sirius's live agents. Even when a consumer affirmatively declines an offer or refuses to hear further offers, Sirius training materials teach agents that they should not take "no" for an answer:

The thing to remember is that "*No*" usually means the Customer is telling us that we need to provide them with a little more information before they make a decision.

You're the expert in the conversation. You know a lot more about SiriusXM than they do so *think of every "No" simply as a request for more information!* If they're still talking to you, if they haven't hung up or ended the chat, then there is a good chance you can still wow them with your product knowledge, professionalism, and confidence. Start asking questions, find out what they like and pair that to the features and benefits you're an expert in!

Ex. 10 at 43-44 (emphasis added); Ex. 11 at 25-26 (same). In testimony, Sirius’s corporate representative confirmed that these instructions “describe in substance how Sirius agents are still expected to handle cancellation interactions with consumers today.” McMahan Tr. 132:16-133:19.

69. Other training materials teach agents to accept a consumer’s refusal to hear more offers, but only where the consumer is particularly forceful in their refusal. For example, Sirius instructs agents to proceed with a cancellation if consumers become “very clear and adamant” about cancelling or say “cancel me repeatedly.” Ex. 19 at 36; Ex. 20 at 2; Ex. 16 at 1; Ex. 17 at 1.

70. Unsurprisingly, these policies are burdensome and time-consuming for Sirius subscribers seeking to cancel—and frustrate their ability to do so. *See, e.g.*, Kassman Aff. at 2 (“I am not able to cancel my subscription for my SiriusXM service. Each time I try the customer service agent tries to push more services on me. I have explained that I do not use the service I have now and do not need it but they keep pushing more services.”); Leask Aff. at 2 (“[Sirius’s agent] tried many deals/offers to keep us as customers but all we wanted to do was cancel and get our money back. After being on the phone with him for an hour. . . I was finally able to get him to cancel our subscriptions.”); Mason Aff. at 2 (“I . . . tried to cancel today but I could not do it online or over the phone. I was subjected to a manipulative texting with [the Sirius agent], who would not allow me to cancel until I threatened to file complaints. She still would not cancel. It was unbelievable.”); Schwartz Aff. at 2 (“It was very difficult to cancel. In fact, it took a couple of attempts. Their website was not functional when I went to cancel. And in the end, it took about 1 hour to cancel a \$29.99 per month service that I never used.”).

71. One consumer complained that it took him approximately 25 minutes to cancel, and that he “repeatedly responded cancel,” but the agent “kept trying to sell me additional plans, or keep me using the current plan I was with.” Ohmart Aff. at 2. Sirius’s written response to the consumer admitted that the lengthy interaction was attributable to Sirius’s own policies: “[O]ur representatives are required to present various offers and discounts that may be available in order to retain our customer’s business before cancelling any subscription.” *Id.* at 7.

72. Sirius’s approach also leaves ample room for errors—or even misconduct—by its agents. Some consumers who communicated their intent to cancel to a live Sirius agent, and who understood that the cancellation was completed, nevertheless continued to be charged. *E.g.*, Banning Aff. at 2, 7; Pettway Aff. at 2, 7; Robertson Aff. at 2, 11; Rose Aff. at 2, 7. Such consumers typically needed to either repeat the cancellation process—extending the already time-consuming process even further—or acquiesce to the continuing renewals.

73. Sirius’s existing compliance program, which was in place throughout the relevant period, *see* McMahon Tr. 220:22-223:4, was insufficient to guard against such agent errors, or to facilitate a compliant cancellation process.

74. For example, one consumer’s chat with the Sirius Chatbot and live agent in January 2021 lasted approximately 40 minutes despite the consumer’s clear and repeated requests to cancel, according to a log of the chat. *See* Robertson Aff. at 13-14. After the consumer identified himself and his intent to cancel, the agent began questioning the consumer about his use of the subscription, which the consumer cut short by repeating his request to cancel. *See id.* After a long wait, the agent responded by presenting the consumer with an offer, which the consumer rejected and restated his request to cancel for a third time. *See id.* After another long wait, the agent asked the consumer why he rejected the offer. *See id.* The

consumer repeated his intent to cancel for a fourth time, and concluded the chat. *See id.*

Nevertheless, after another long wait, the agent proposed that the consumer “re-evaluate our service for 3 months.” *Id.* Two months later, the consumer reported that Sirius was continuing to bill him for a subscription. *See id.* at 2. The consumer was left with the impression that “as an organization [Sirius] prey[s] upon the general public by not canceling service when asked, in the hopes that customers will just continue to pay instead of dealing with the hassle.” *Id.* at 11.

75. Sirius’s written response to a complaint from the consumer stated: “We were unable to locate his request to cancel this subscription.” *Id.* at 7; *see also* Banning Aff. at 7 (“[W]e show no documentation of a cancel request”); Rose Aff. at 7 (“Ms. Rose called us to cancel her subscription . . . however, the agent made a processing error”); Pettway Aff. at 7 (“[H]er complaint . . . resulted from a misunderstanding after her subscription was placed on hold for a 5-month period [instead of being cancelled].”).

76. Sirius incentivizes its customer service agents based in part on how many subscribers retain a subscription after indicating an intent to cancel. *See* McMahon Tr. 220:3-20 (“[W]e appropriately incentivize the vendor[s]” based in part on save rates, “and they appropriately incentivize their agents.”).

77. Sirius’s approach to cancellation interactions partly proceeds from a skeptical assumption about its own customers: that they are “play[ing] a game” when they contact Sirius seeking to cancel, and that when they say “I want to cancel,” . . . what they really want is a better price.” McMahon Tr. 138:24-139:6; *see also id.* 215:20-217:5 (testifying that consumers “say[] no to the first and to the second offer to get to what they believe to be the best price”).

78. But to the extent some portion of Sirius subscribers who communicate an intent to cancel are playing such a “game,” it is a shell game that *Sirius* created, controls, and incentivizes,

by choosing to (a) offer “hundreds” of different discounts, McMahon Tr. 188:23-189:15, (b) limit which discounts are available to whom, *see* Ex. 10 at 17 (“[W]e don’t offer every discount option to every Customer.”), and (c) strategically change whether and when consumers are presented with the “best offer” first, second, third, or in some other position during the cancellation interaction, McMahon Tr. 52:6-53:25, 59:21-61:2; *see also* McMahon Tr. 188:17-189:4 (testifying about the link between Sirius’s practices concerning discounts and subscribers’ “gaming” behavior).

79. Having manufactured confusing interactions between agents and subscribers in which some subscribers are playing Sirius’s “game”—which it incentivizes and controls—Sirius expects its agents to make individual assessments, in the course of the conversation, about whether each subscriber they interact with is being sincere in their stated intent to cancel.

McMahon Tr. 138:16-141:5.

80. Data produced by Sirius confirms that many Sirius subscribers are subjected to “a lot of back and forth” with the Sirius agent, McMahon Tr. 55:24-56:2, before they are allowed to cancel.

81. For subscribers using Call-to-Cancel, the average time spent interacting with the live agent was approximately ten minutes in 2019 and 2021. *See* Ex. 5; *see also* McMahon Tr. 152:4-13.

82. For subscribers using Chat-to-Cancel, the average time spent interacting with the live agent was approximately 24 minutes in 2021. *See* Ex. 6; *see also* McMahon Tr. 152:4-153:7.

83. Subscribers using Chat-to-Cancel had to wait an average of one minute and 12 seconds for the live agent to respond to each chat message. *See* Ex. 6; *see also* McMahon Tr.

152:4-153:7. One consumer reported that in January 2021, she “tried to chat online with the representative twice and in both cases I was abandoned for over 1 hour after saying that I would like to cancel my subscription.” Bush Aff. at 9; *see also* Robertson Aff. at 13-14 (screenshots showing lengthy gaps in agent’s responses to consumer’s repeated requests to cancel).

84. Combining the time consumers spent waiting in the queue to be connected with a live agent with the time spent interacting with the agent, it took Sirius subscribers using Call-to-Cancel an average of eleven-and-a-half minutes in 2021. *See* Ex. 5. It took consumers using Chat-to-Cancel an average of 30 minutes during 2021. *See* Ex. 6. Altogether, the total duration of the Call-to-Cancel and Chat-to-Cancel processes was likely substantially longer than these averages suggest, as the averages do not include time spent going through the IVR, interacting with the Chatbot, or going through the initial survey and offer screens.

85. In certain specific circumstances, Sirius wrongly refuses to accept subscribers’ cancellation requests, or delays completing the requests.

86. For example, in some cases, Sirius agents refuse to cancel a consumer’s subscription where the consumer has a current or overdue balance owed to Sirius, increasing the consumer’s debt to Sirius for a service they do not want. *See, e.g.*, Jagiela Aff. at 2 (“Today I was told [by a Sirius telephone agent] I had to pay the bill to cancel.”); Lopez Aff. at 2 (“Live chat cancellation attempts will not allow you to cancel because you have a[n] outstanding balance”); Watson Aff. at 2 (“I was told on 11/2/2021 by [the Sirius agent] that she would cancel my account for me as long as I paid my account.”).

87. Similarly, Satellite Service subscribers continue to incur subscription charges even after returning their satellite radio to Sirius, if they have not proceeded through the cancellation process. *See* Ex. 21 at 1 (“If you purchased a subscription with your radio or if you

activated your radio you must also cancel your subscription plan. Returning your radio does not cancel your subscription.”).

88. In addition, where a Sirius agent receives a cancellation request because the subscriber is deceased, the agent is instructed to keep the subscription active through the end of the monthly billing cycle. *See* Ex. 22 at 1. Immediate deactivations are only permitted upon request, and following escalation to a supervisor. *See id.* (“Express sympathy and set the account to deactivate at the end of the monthly billing cycle. If an immediate deactivation is requested, non-Saves agents should escalate to a supervisor to handle the immediate deactivation.”).

FIRST CAUSE OF ACTION

FRAUD IN VIOLATION OF EXECUTIVE LAW § 63(12)

89. Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief when any person or entity engages in repeated or persistent fraudulent acts in the operation of a business.

90. Fraud under Executive Law § 63(12) is broadly defined to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

91. As set forth in the preceding paragraphs, Sirius has engaged in repeated and persistent fraud through its cancellation policies and procedures that have the capacity or tendency to deceive, and that create an atmosphere conducive to fraud.

92. Consequently, Sirius has engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)**ILLEGAL ACTS IN THE FORM OF DECEPTIVE ACTS AND PRACTICES IN VIOLATION OF GENERAL BUSINESS LAW § 349**

93. N.Y. GBL Article 22-A, § 349 authorizes the Attorney General to seek injunctive and other relief when any person or entity engages in acts or practices that violate the section.

94. N.Y. GBL Article 22-A, § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in the State of New York.

95. As set forth in the preceding paragraphs, Sirius has engaged in repeated and persistent deceptive acts and practices through its cancellation policies and procedures that are likely to mislead a reasonable consumer, in violation of N.Y. GBL Article 22-A, § 349.

96. Consequently, Sirius has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION**DECEPTIVE ACTS AND PRACTICES IN VIOLATION OF GENERAL BUSINESS LAW § 349**

97. N.Y. GBL Article 22-A, § 349 authorizes the Attorney General to seek injunctive and other relief when any person or entity engages in acts or practices that violate the section.

98. N.Y. GBL Article 22-A, § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in the State of New York.

99. As set forth in the preceding paragraphs, Sirius has engaged in deceptive acts and practices through its cancellation policies and procedures that are likely to mislead a reasonable consumer, in violation of N.Y. GBL Article 22-A, § 349.

FOURTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)**ILLEGAL ACTS IN THE FORM OF UNLAWFUL SERVICE OFFER PRACTICES
IN VIOLATION OF GENERAL BUSINESS LAW § 527-A**

100. N.Y. GBL Article 29-BB, § 527-a authorizes the Attorney General to seek injunctive and other relief whenever there shall be a violation of the section.

101. N.Y. GBL Article 29-BB, § 527-a requires any “business that makes an automatic renewal offer or continuous service offer [to] provide a . . . cost-effective, timely, and easy-to-use mechanism for cancellation.”

102. As set forth in the preceding paragraphs, Sirius has engaged in repeated and persistent violations of N.Y. GBL Article 29-BB, § 527-a through its cancellation policies that are not timely or easy to use.

103. Consequently, Sirius has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

FIFTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)**ILLEGAL ACTS IN THE FORM OF VIOLATIONS OF THE RESTORE ONLINE
SHOPPERS’ CONFIDENCE ACT (“ROSCA”), 15 U.S.C. § 8403**

104. Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business.

105. ROSCA makes it illegal for “any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature . . . unless the person . . . provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer’s credit card, debit card, bank account, or other financial account.”

106. As set forth in the preceding paragraphs, Sirius has engaged in repeated and persistent violations of ROSCA through its cancellation policies and procedures that are not simple.

107. Consequently, Sirius has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, the People of the State of New York respectfully request that the Court grant the Verified Petition in all respects by issuing an order and judgment:

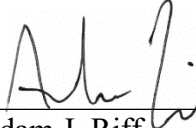
- A. Permanently enjoining Respondent from violating Executive Law § 63(12), GBL §§ 349 and 527-a, and ROSCA, and from engaging in the fraudulent, deceptive, and illegal practices alleged herein;
- B. Directing Respondent to render an accounting to the Attorney General of the name and address of each consumer who cancelled or sought to cancel a Satellite Service or Streaming Service subscription since January 1, 2019, together with the date of the cancellation and the date of any prior cancellation interactions, the duration of all cancellation interactions, and the amount of any funds collected from such consumers subsequent to the cancellation interaction and the date(s) and basis for such charges;
- C. Requiring Respondent to make full monetary restitution and pay damages to all aggrieved consumers, known and unknown;
- D. Directing Respondent to disgorge all profits resulting from the illegal, deceptive, and fraudulent acts described herein;

- E. Directing Respondents to pay a civil penalty in the sum of \$5,000 to the State of New York for each violation of GBL Article 22-A, pursuant to GBL § 350-d;
- F. Directing Respondents to pay a civil penalty in the sum of \$500 to the State of New York for knowing violations of GBL § 527-a;
- G. Awarding the State's costs plus an additional allowance of \$2,000 pursuant to CPLR § 8303(a)(6); and
- H. Granting such other and further relief as the Court deems just and proper.

Dated: December 20, 2023
New York, New York

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: 
Adam J. Riff
Assistant Attorney General
Bureau of Consumer Frauds and Protection
28 Liberty Street
New York, New York 10005
212-416-6250
adam.riff@ag.ny.gov

Attorney for the People of the State of New York

Of counsel:

JANE M. AZIA, Bureau Chief
LAURA J. LEVINE, Deputy Bureau Chief

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ADAM J. RIFF, being duly sworn, deposes and says:

I am an Assistant Attorney General in the Office of Letitia James, Attorney General of the State of New York, assigned to the Bureau of Consumer Frauds and Protection. I am duly authorized to make this verification.

I have read the foregoing Verified Petition and know the contents thereof, which are to my knowledge true, except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The grounds for my beliefs as to all matters stated upon information and belief are investigatory materials contained in the files of the Bureau of Consumer Frauds and Protection in the Office of Letitia James, Attorney General of the State of New York.

The reason this verification is not made by Petitioner is because Petitioner is a body politic, and the Attorney General of the State of New York is the Petitioner's duly authorized representative.

KRISTIN LILIANA MANZUR
Notary Public, State of New York
Qualified in Richmond County
No. 01MA6318068
Commission Expires January 20, 2027

[Signature]
ADAM J. RIFF
Assistant Attorney General

Sworn to before me this
20th day of December, 2023

[Signature]
NOTARY PUBLIC