IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE, *ex rel*. HERBERT H. SLATERY III, Attorney General and Reporter, Plaintiff, v. SANTANDER CONSUMER, USA, a foreign corporation, Defendant.	Case No.____________________

COMPLAINT

1. The State of Tennessee, by and through Herbert H. Slatery III, Attorney General and Reporter, brings this civil law enforcement action against Santander Consumer, USA for violations of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 – 131 (TCPA).

2. Defendants have targeted potential subprime borrowers with payment terms and other requirements that are anticipated (and expected) to lead to default.

THE PARTIES

4. The State brings this action through its Attorney General pursuant to Tenn. Code Ann. §§ 47-18-108 and -114.

5. The Attorney General is charged with enforcing the TCPA, which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. The Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA, and to secure such equitable and other relief as may be appropriate in each case

under broad grants of statutory authority in accordance with Tenn. Code Ann. §§ 8-6-109 and 47-18-108.

6. The State has reason to believe that Defendants have violated the TCPA by engaging in unfair and deceptive acts or practices in whole or in part in Tennessee and that this enforcement action is in the public interest.

7. Defendant Santander Consumer USA (Santander), is an Illinois corporation with its principal place of business in Fort Worth, Texas. Santander authorized to transact business in Tennessee as a foreign corporation. Santander is a consumer finance company that specializes in vehicle financing.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Tenn. Code Ann. §§ 47-18-108(a) and 47-18-114. Defendants are doing business in Tennessee and are also subject to the jurisdiction of the State's long-arm statutes.

9. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because it is one of the counties in which Defendants conduct, transact, or have conducted or transacted business and a county in which the alleged unfair and/or deceptive trade practices took place.

STATUTORY FRAMEWORK

10. The TCPA, Tenn. Code Ann. § 47-18-101 to -131, prohibits unfair and deceptive acts and practices in commerce.

11. The acts described below in paragraphs 12–39 constitute unfair and deceptive acts and practices affecting the conduct of any trade or commerce in the state of Tennessee.

SANTANDER'S BUSINESS PRACTICES

12. Santander is one of the largest players in the subprime auto lending market.

13. Since 2010, Santander has consistently accounted for the largest share of the subprime auto lending market (as measured by total dollar value in ABS issuances) among companies that specialize in subprime auto lending. In its subprime lending business, Santander both makes direct loans to consumers and purchases installment contracts from dealers.

Santander's Underwriting and Loss Models Project High Defaults for Certain Segments of its Consumer Population

14. Santander's underwriting process relies on credit scoring models.

15. One of the models incorporates the consumer's borrowing history and features of the loan the consumer has applied for (such as loan-to-value ratio, debt-to-income ratio, payment-to-income ratio, mileage, and term) and generates a probability that a consumer will become severely delinquent during a particular window of time within the term of the loan. This probability then is converted into a scaled score on a proprietary, FICO-like scale.

16. Because the above model only indicates how likely it is that a consumer will go delinquent within that particular window of time within the term of the loan, Santander also uses a separate model to predict how likely a consumer with a given proprietary score will default over the full life of the loan.

17. The life-of-the-loan model projects that consumers with proprietary scores below a given threshold have an unreasonably heightened chance of default before the end of their term, and a subset of those consumers, who have some of the lowest proprietary scores, have a significantly worse probability of default before the end of their term. For example, for at least part of the time period examined by the State, Santander projected that these consumers with the lowest proprietary scores had a greater than 70% likelihood of default over the life of the loan.

Santander Exposes Consumers to Unnecessarily High Levels of Risk

18. Santander is not only originating loans and purchasing installment contracts with a high likelihood of failure, but also exposing consumers to unnecessarily high levels of risk.

19. In a typical auto-financing transaction, car dealers attempt to maximize the profits they earn on the front-end and back-end of an individual deal. The front-end of a transaction involves the negotiation of a sales price, whereas the back-end refers to the negotiation of ancillary products included as part of the financing of the purchase of the vehicle.

20. Even when acting as an "indirect" auto lender by purchasing installment contracts from dealers, Santander has significant control over the extension of credit or financing of a transaction, including the "back-end" of a transaction, such as whether to purchase a contract that includes guaranteed-asset protection (GAP) insurance, a GAP waiver and/or a service contract. Through its credit policies, Santander asserts control over the amount dealers can include in the back end.

21. The generous allowances for dealers on the back-end have facilitated Santander obtaining more market share, but those same large back-end charges expose consumers to increased risk in at least two ways: 1) significant back-end charges increase the overall amount financed, which increases the loan-to-value ratio on the loan; and 2) high finance costs increase either the consumer's monthly principal-to-interest ratio or increase the term of the loan.

22. Santander is aware that these loan features contribute to deteriorating loan quality but continues to make these loans or purchase the underlying installment contracts.

Santander's Aggressive Pursuit of Market Share Led it to Underestimate Risk Associated with Loans with Stated Income and Expenses

23. Although Santander has sophisticated models that forecast consumer default, Santander's policies with respect to stated income and expenses allow it to underestimate default

risk in important ways and to purchase loans from consumers who are unlikely to be able to pay for their loans. Santander also fails to meaningfully monitor dealer behavior to minimize the risk of receiving falsified information, including the amounts specified for consumers' income and expenses.

24. One area where Santander's lack of verification as part of its underwriting exposes consumers to even riskier loans is with respect to the amounts alleged to represent a consumer's mortgage or rent. Housing costs are often a consumer's most significant monthly expense, and Santander uses consumers' monthly housing debt to calculate consumers' debt-to-income ratios.

25. The debt-to-income ratio is important in underwriting because it measures the amount of disposable income a consumer has available to pay off an auto loan and meet non-recurring monthly expenses.

26. Santander generally allows consumers who apply for a loan to merely state their mortgage and rent expenses, as opposed to providing proof of a mortgage or rent payment, and Santander has no apparent measures in place to minimize the risk of falsified mortgage or rent income. Dealers routinely use a default amount for mortgage or rent that would not be reasonably sufficient to pay for mortgage or rent in the vast majority of localities, but regardless, those low amounts result in a higher acceptance rate from Santander.

27. Housing costs, however, are not the only area in which Santander's forecasts are likely incorrect. Santander also made an aggressive push beginning in early 2013 to waive proof of income on most applications.

Santander Turned a Blind Eye to Dealer Abuse

28. Since as early as 2010, Santander has been tracking problematic dealers across Santander's business.

29. Although Santander had a process in place to evaluate problematic dealers, there was internal tension at Santander between punishing problematic dealers and retaining Santander's market share. As a result, Santander was reluctant to act against flagged dealers so long as a sufficient amount of the installment contracts purchased from those dealers proved profitable for Santander.

30. Santander entered into an agreement with Chrysler through which Santander would be the preferred lender on all Chrysler transactions. And, to promote business under this new arrangement, Santander allowed problematic dealers to take advantage of Santander's new Chrysler relationship.

31. Around the same time, as explained above, Santander dramatically changed its funding policy to accept increased numbers of stated-income loans.

32. When Santander rolled out this change to its funding requirements, Santander did not bar those dealers identified as "problematic" by Santander from using stated income on loan applications. Santander's decision to broadly market its new stated-income policy, even to dealers with a history of misstating income, led to a significant spike in the number of early payment defaults.

33. Although Santander later attempted to tighten its policy with respect to problematic dealers, the tension between Santander's business concerns and curbing dealer abuse persists, and Santander continues to purchase installment contracts from dealers which Santander itself identifies as problematic.

34. As a result of Santander's policies with respect to stated income and expenses and the failure to adequately curb dealer abuse, Santander loans default at a higher rate.

Santander's Servicing and Collection Practices

35. The consumer harm caused by the underwriting problems described above is compounded by Santander's servicing and collection practices, where Santander confuses, frustrates, and, in some cases, actively misleads consumers about their rights and the costs of taking certain actions.

36. Santander often requires that payments be made through methods that require consumers to pay additional third-party fees, such as money orders. These fees tend to most significantly affect consumers who are unbanked or underbanked.

37. In servicing loans, Santander's employees routinely confuse consumers about the benefits and risks of extensions. Consumers routinely make partial payments or accept extensions without understanding that interest continues to accrue and that future payments will likely go towards interest as opposed to paying down their principal balance. They also are unaware that their loan terms are lengthened to accommodate the extension, partial payment and interest accrual and that a payment may not stop a repossession.

38. Additionally, Santander employees often mislead consumers about their ability to recover repossessed vehicles, including encouraging consumers to make significant payments to recover vehicles when Santander has no control over whether the vehicle can be recovered.

39. Taken together, Santander's practices impose significant harm on Tennessee consumers. These consumers obtain credit from Santander under the false pretense that they are acquiring a vehicle they will eventually own. In reality, these consumers agree to extremely costly leases, the terms of which are so onerous that consumers will almost certainly fail to perform, resulting in their loan default and likely repossession of the vehicles.

VIOLATIONS OF THE LAW

COUNT I:
Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104(a) and (b)

40. Plaintiff, the State of Tennessee, incorporates by reference and re-alleges every allegation contained in paragraphs 1–39 of this Complaint.

41. Santander's acts and practices in providing consumer financing for automobile purchases in Tennessee, as alleged herein, constitute "trade," "commerce," and/or "consumer transactions" as defined in Tenn. Code Ann. § 47-18-103(19).

42. By unfairly and deceptively extending credit to consumers that Santander know or should have known there was no reasonable probability the consumer would be able to repay, Santander have violated Tenn. Code Ann. § 47-18-104(a) and (b)(27).

43. By failing to disclose to consumers that they were obtaining credit on terms that were likely to fail, Santander have violated Tenn. Code Ann. § 47-18-104(a) and (b)(27).

44. By misleading, failing to disclose material information, or otherwise confusing consumers about the impact of an extension and the costs to the consumer of extending their monthly payment, Santander have violated Tenn. Code Ann. § 47-18-104(a) and (b)(27).

45. By requiring consumers to make payments through methods that forced them to incur third-party fees, Santander have violated Tenn. Code Ann. § 47-18-104(a).

46. By misrepresenting consumers' ability to acquire repossessed vehicles sent to auction and accepting payments from consumers when Santander know or should have known that Santander had no control over whether the consumer would be able to get their vehicle back, Santander has violated Tenn. Code Ann. § 47-18-104(a) and (b)(27).

PRAYER FOR RELIEF

Therefore, the State, pursuant to Tenn. Code Ann. § 47-18-108(a) and (b), and -114, and this Court's own equitable powers, respectfully requests that this Court:

A. Order this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 47-18-108(b)(4) and 47-18-116;

B. Order Defendants to appear and answer this Complaint;

C. Enter judgment against Defendants and in favor of the State for each violation alleged in this Complaint;

D. Adjudge and decree that Defendants have each engaged in the aforementioned acts or practices which violate the TCPA;

E. Enter a permanent injunction to prevent future violations of the TCPA by Defendants;

F. Award such equitable relief as the Court finds necessary to redress consumer injury resulting from Defendants' violations of the TCPA including, but not limited to, disgorgement of ill-gotten gains;

G. Make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses, including statutory and pre-judgment interest, suffered by reason of the alleged violations of the TCPA, and requiring that Defendants be taxed with the costs of the State hiring a restitution administrator to administer and distribute the same, pursuant to Tenn. Code Ann. § 47-18-108(b)(1);

H. Order each Defendant to separately pay civil penalties of not more than $1,000.00 per violation to the State each violation of the TCPA as provided by Tenn. Code Ann. § 47-18-108(b)(3);

I. Enter judgment against Defendants and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of Defendants' actions, including attorneys' fees, expert and other witness fees, and costs, as provided by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4);

J. Order that all costs in this case be taxed against Defendants and no costs be taxed to the State as provided in Tenn. Code Ann. § 47-18-116; and

K. Award the State such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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