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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. **SANTANDER CONSUMER USA INC.** Defendant	Case No. 20-CIV-02157 **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

The People of the State of California ("the People"), by and through Xavier Becerra, Attorney General, bring this action against Defendant Santander Consumer USA Inc. for violations of the Unfair Competition Law ("UCL"), Business & Professions Code section 17200 et seq. Santander Consumer USA Inc., one of the largest participants in the subprime auto finance market, violated California's consumer protection laws by placing borrowers with subprime credit into auto loans it knew carried an unacceptably high probability of default. The People allege as follows:

DEFENDANT

1. Santander Consumer USA Inc. (collectively, with its subsidiaries and parent, Santander Consumer USA Holdings, Inc., "Santander" or "Defendant"), is an Illinois corporation with its principal place of business in Dallas, Texas. Santander is a consumer finance company that specializes in vehicle financing.

JURISDICTION AND VENUE

2. At all relevant times, Defendant has transacted business in the State of California, including but not limited to business in the County of San Mateo.

3. This Court has jurisdiction over this action pursuant to California Constitution, article VI, section 10, Code of Civil Procedure section 664.6, and Business and Professions Code section 17203.

4. The violations of law alleged in this Complaint occurred in the County of San Mateo and elsewhere throughout California.

5. Venue is also proper in this Court pursuant to Business and Professions Code section 17203 and Code of Civil Procedure section 393, subdivision (a) because violations of law that occurred in the County of San Mateo are a "part of the cause" upon which the People seek the relief imposed by statute.

SANTANDER'S BUSINESS PRACTICES

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

7. 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 focus on subprime auto lending. In its subprime lending business, Santander both makes direct loans to consumers and purchases installment contracts from dealers.

A. Santander's underwriting and loss models project high defaults for certain segments of its consumer population

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

9. 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.

10. 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.

11. 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 People, Santander projected that these consumers with the lowest proprietary scores had a greater than 70% likelihood of default over the life of the loan.

B. Santander exposes consumers to unnecessarily high levels of risk

12. 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.

13. 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.

14. 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.

15. 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 payment-to-income ratio or increase the term of the loan.

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

C. Santander's aggressive pursuit of market share led it to underestimate risk associated with loans with stated income and expenses.

17. 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.

18. 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.

19. 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.

20. Santander generally allows consumers who apply for a loan to simply state their mortgage and rent expenses, rather than providing proof of those expenses, and Santander has no apparent measures in place to minimize the risk of falsified mortgage or rent income by a dealer or a consumer. In addition, when mortgage or rent expenses are not stated, Santander has routinely assumed a default amount for mortgage or rent expenses that would not be reasonably sufficient to pay for mortgage or rent in the vast majority of localities. Consequently, Santander employs modeling that makes use of housing costs that are based on faulty information and therefore likely incorrect.

21. 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.

D. Santander turned a blind eye to dealer abuse.

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

23. 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.

24. 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.

25. Around the same time, as explained above, Santander dramatically changed its funding policy to accept increased numbers of stated-income loans. A stated-income loan is a loan in which Santander accepts a stated income figure from a dealer or a consumer, without requiring the dealer or consumer to submit documentation proving the stated income.

26. 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.

27. 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.

28. 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.

E. Santander's Servicing and Collection Practices

29. 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.

30. In some instances, Santander has required that consumers make payments through methods that require consumers to pay additional third-party fees, including money orders. These fees tend to most significantly affect unbanked and underbanked consumers.

31. In servicing loans, Santander's employees routinely confuse consumers about the benefits and risks of extensions. After communicating with Santander's employees, consumers routinely make partial payments or accept extensions without understanding that interest continues to accrue and future payments will likely go towards interest as opposed to paying down principal. Consumers are at times also unaware that Santander has lengthened the loan term, or that a partial payment may not stop a repossession.

32. 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.

33. Taken together, Santander's practices impose significant harm on California 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 unwittingly agree to what are in essence extremely costly leases, in that the terms are so onerous that the loans will most likely fail, plunging the consumers into default and leading to eventual repossession.

34. As the California Supreme Court has recently reaffirmed, "courts have a responsibility to guard against consumer loan provisions with unduly oppressive terms," which violate California's law of unconscionability and the UCL. (*De la Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 973.)

VIOLATIONS OF LAW:

FIRST CAUSE OF ACTION

VIOLATIONS OF UNFAIR COMPETITION LAW

(Bus. & Prof. Code, §§ 17200, et seq.)

35. The People reallege all paragraphs set forth above and incorporate them by reference as though they were fully set forth in this cause of action.

36. Defendant engaged in unfair, unlawful, and deceptive business practices in violation of California's Unfair Competition Law, Business and Professions Code section 17200 et seq., including but not limited to:

a. Unlawfully, unfairly, and deceptively extending credit to consumers in the form of auto loans that Santander knew or should have known were highly likely to fail, resulting in default and repossession;

b. Failing to disclose to consumers that the auto loans they obtained were on terms so onerous that they were highly likely to fail, resulting in default and repossession;

c. 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;

d. Requiring consumers to make payments through methods that forced them to incur third-party fees;

e. Misrepresenting consumers' ability to acquire repossessed vehicles sent to auction and accepting payments from consumers when Santander knew or should have known Santander had no control over whether the consumer would be able to get their vehicle back; and

f. Unlawfully imposing unconscionable contracts and contract terms on consumers, in violation of Civil Code section 1670.5.

PRAYER FOR RELIEF

WHEREFORE, the People respectfully request that the Court enter judgment in favor of the People and against Defendant as follows:

A. That Santander has engaged in unlawful, unfair or fraudulent business acts or practices in violation of Business & Professions Code section 17200 et seq.;

B. That Santander, its agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, be permanently enjoined engaging in unfair competition as defined in Business and Professions Code section 17200, including but not limited to the acts and practices alleged in this complaint, under the authority of Business and Professions Code section 17203;

C. That Santander be ordered be ordered to pay a civil penalty for each violation of Business and Professions Code section 17200 under the authority of Business and Professions Code section 17206;

D. That the Court make such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by Santander of any practice which constitutes unfair competition or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition, under the authority of Business and Professions Code section 17203;

E. That the People recover their costs of suit, including costs of investigation; and

F. That the Court award such other relief that it deems just, proper, and equitable.

Dated: May 19, 2020

Respectfully Submitted,

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