

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
By ATTORNEY GENERAL JOSH SHAPIRO,

Plaintiff,

vs.

Santander Consumer USA Inc.,

Defendant.

CIVIL DIVISION

GD No. _____

Issue No. _____

COMPLAINT

Code: 020 - Equity

Filed on Behalf of Plaintiff:
Commonwealth of Pennsylvania,
By Attorney General Josh Shapiro

Counsel of Record:
Nicholas F. B. Smyth
PA I.D. No. 307972
Office of Attorney General
1251 Waterfront Place, Level M
Pittsburgh, PA 15222
Phone: (412) 880-0475
nsmyth@attorneygeneral.gov

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyer Referral Service
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 261-5555
<http://www.acba.org/>
PA Bar Association: www.pabar.org**

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de esta demanda expuesta en las siguientes páginas, usted tiene veinte (20) días a partir de la fecha en que la demanda y la notificación fueron servidas para tomar acción mediante la introducción de su apariencia, personalmente o a través de un abogado, y entregarle a la corte, en forma escrita, sus defensas o sus objeciones a los reclamos expuestos en contra de su persona. Sea avisado que si usted no se defiende o toma ninguna acción, puede que el caso o demanda en contra suya continúe, y puede que una decisión o resolución sea declarada en su contra sin previo aviso o notificación, por cualquier dinero reclamado en la demanda, o por cualquier otro reclamo o compensación solicitada por el/la demandante. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

USTED DEBE TOMAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE A UN ABOGADO VAYA EN PERSONA O LLAME POR TELEFONO A LA OFFICINA LISTADA A CONTINUACION ABAJO. ESTA OFICINA LE PUEDE PROPORCIONAR CON INFORMACION ACERCA DE COMO EMPLEAR A UN ABOGADO.

SI USTED NO TIENE DINERO PARA CONTRATAR O PAGAR UN ABOGADO, ESTA OFICINA PUEDE PROVEERLE INFORMACION ACERCA DE AGENCIAS QUE PUEDEN OFRECER SERVICIOS LEGALES A PERSONAS ELEGIBLES A UN HONORARIO O COSTO REDUCIDO, O GRATIS.

SERVICIO DE REFERIDO DE ABOGADOS

Allegheny County Bar Association

11th Floor Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219

Telephone: (412) 261-5555

<http://www.acba.org/>

PA Bar Association: www.pabar.org

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Josh Shapiro (“Commonwealth” or “Plaintiff”), and brings this action pursuant to Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (“Consumer Protection Law”), to restrain unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of the Consumer Protection Law. The Consumer Protection Law authorizes the Attorney General to bring an action in the name of the Commonwealth of Pennsylvania, to restrain by temporary and/or permanent injunction, unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of the Consumer Protection Law. The Commonwealth brings this action against Defendant, Santander Consumer USA Inc., for violating the Consumer Protection Law, and states as follows:

PUBLIC INTEREST

1. The public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and practices alleged herein.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the Defendant pursuant to Section 931 of the Judicial Code, 42 Pa.C.S.A. § 931(a) because the Defendant transacted business within Pennsylvania at all times relevant to this Complaint.

3. Venue for this action properly lies with this court pursuant to Pa.R.C.P. 1006(a)(1).

PARTIES

4. Plaintiff is the Commonwealth of Pennsylvania, by Attorney General Josh Shapiro, with offices located at 1251 Waterfront Place, Level M, Pittsburgh, PA 15222.

5. Santander Consumer USA Inc. (“Santander”), is an Illinois corporation with its principal place of business in Fort Worth, Texas. Santander is a consumer finance company that specializes in vehicle financing.

TRADE AND COMMERCE

6. Santander was, at all times relative hereto, engaged in trade or commerce as defined in Consumer Protection Law, by advertising auto loans or extensions of credit to Pennsylvania consumers and Pennsylvania dealers, purchasing retail installment contracts from Pennsylvania dealers executed by Pennsylvania consumers to acquire new and used vehicles, servicing these contracts, and collecting outstanding balances due on these contracts.

SANTANDER’S BUSINESS PRACTICES

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

8. 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 in 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

9. Santander’s underwriting process relies on credit scoring models.

10. 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.

11. 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.

12. 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 Pennsylvania, 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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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

30. 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.

31. 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.

32. 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 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.

33. 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.

34. Taken together, Santander's practices impose significant harm on Pennsylvania 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 LAW

COUNT ONE: Violations of the Consumer Protection Law

35. The Commonwealth realleges and incorporates by reference the allegations in Paragraphs 1 to 34.

36. While engaged in trade or commerce, Santander committed the following unfair and/or deceptive acts or practices:

- a. Unfairly and deceptively extending credit to consumers that Santander knew or should have known there was no reasonable probability the consumer would be able to repay;
- b. Failing to disclose to consumers that they were obtaining credit on terms that were likely to fail;
- 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; and
- 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.

37. The aforesaid acts and practices constitute unfair methods of competition and/or unfair or deceptive acts or practices as prohibited by Section 201-3 of the *Consumer Protection Law*, 73 P.S. § 201-3, including, without limitation:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of Section 201-2(4)(v); and
- b. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi).

73 P.S. § 201-2(4)(v) and (xxi).

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth prays that this Honorable Court enter an Order:

- A. Finding that Santander has engaged in and is engaging in trade or commerce within the meaning of the Consumer Protection Law;
- B. Finding that Santander has engaged in and is engaging in acts or practices that constitute violations of by Section 201-3 of the Consumer Protection Law;

C. Permanently enjoining Santander, its agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in the false, misleading, or deceptive practices alleged herein;

D. Directing Santander, pursuant to Section 201-4.1 of the Consumer Protection Law, to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this Complaint and any other acts or practices which violate the Consumer Protection Law;

E. Pursuant to Section 201-8 (b) of the Consumer Protection Law, directing Santander to pay civil penalties in the amount of in the amount of one thousand dollars (\$1,000) for each and every violation of the Consumer Protection Law, and three thousand dollars (\$3,000) for each such violation involving a victim age sixty (60) or older;

F. Pursuant to the Consumer Protection Law, directing Santander to pay costs incurred by the Commonwealth in connection with the investigation and litigation of this matter; and

G. Granting any other just and equitable relief that the Court deems necessary.

[Signatures on Following Page]

Date: May 19, 2020

Respectfully submitted,

Josh Shapiro
Attorney General

Michelle A. Henry
First Deputy Attorney General

James A. Donahue III
Executive Deputy Attorney General
Public Protection Division

Sarah A. E. Frasci
Chief Deputy Attorney General

/s/ Nicholas Smyth
Nicholas F. B. Smyth, PA 307972
Email: nsmyth@attorneygeneral.gov
Phone: 412-880-0475
John M. Abel, PA 47313
Email: jabel@attorneygeneral.gov
Phone: 717-783-1439
Senior Deputy Attorneys General

Attorneys for Plaintiff
Commonwealth of Pennsylvania
Office of Attorney General
1251 Waterfront Place, Level M
Pittsburgh, PA 15222

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
By ATTORNEY GENERAL JOSH SHAPIRO,

CIVIL DIVISION

Plaintiff,

GD No. _____

vs.

Issue No. _____

Santander Consumer USA Inc.,

Code: 020 - Equity

Defendant.

VERIFICATION

I, Kathryn Passarelli, being duly sworn according to law, hereby state that I am an Agent with the Commonwealth of Pennsylvania, Office of Attorney General, that I am authorized to make this verification on behalf of the Plaintiff, and that the facts in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.



Kathryn Passarelli
Agent Supervisor

5/18/2020

Date