STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. SANTANDER CONSUMER USA INC., Defendant.	NO. COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The Plaintiff, State of Washington, by and through its attorneys Robert W. Ferguson, Attorney General, and Katharine Barach, Assistant Attorney General, brings this action against the Defendant Santander Consumer USA Inc. for violations of the Consumer Protection Act, RCW 19.86, associated with unfair and deceptive conduct in vehicle financing. The State alleges the following on information and belief:

I. PARTIES

1.1 The Plaintiff is the State of Washington.

1.2 The Defendant Santander Consumer USA Inc. ("Santander") is a Washington foreign profit corporation with its principal place of business in Dallas, Texas.

II. JURISDICTION AND VENUE

2.1 The State files this Complaint and institutes these proceedings pursuant to the Consumer Protection Act, RCW 19.86.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

2.2 The Attorney General has authority to commence this action as conferred by RCW 19.86.080 and RCW 19.86.140.

2.3 This Court has personal jurisdiction over Santander pursuant to RCW 19.86.160, RCW 4.28.180, and RCW 4.28.185, because Santander has engaged in the conduct set forth in this Complaint in King County and elsewhere in the State of Washington.

2.4 At all times material to this lawsuit, Santander was registered to do business in the State of Washington and conducted business through its agents, employees, and representatives in counties through the State of Washington, including King County.

2.5 Venue is proper in King County pursuant to RCW 4.12.020 and RCW 4.12.025, and Court Rule 82 because Santander transacts business in King County and engaged in the conduct set forth in this Complaint in King County and elsewhere in Washington.

III. NATURE OF TRADE OR COMMERCE

3.1 The Complaint is filed and these proceedings are instituted under the provisions of the CPA, RCW 19.86.

3.2 Santander, at all times relative to this action, has been engaged in trade or commerce in Washington within the meaning of RCW 19.86.010(2), by advertising auto loans or extensions of credit to Washington consumers and Washington dealers, purchasing retail installment contracts from Washington dealers executed by Washington consumers to acquire new and used vehicles, servicing these contracts, and collecting outstanding balances due on these contracts.

3.3 In the course of trade or commerce, Santander has engaged in acts and practices declared unlawful under RCW 19.86. Santander's conduct, described in more detail below, is ongoing and has the potential to impact Washington consumers.

IV. FACTS

Santander's Business Practices

4.1 Santander is a consumer finance company that specializes in vehicle financing.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

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

4.3 Since 2010, Santander has consistently accounted for the largest share of the subprime auto lending market (as measured by total dollar value in asset-backed security 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.

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

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

5.2 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 is then converted into a scaled score on a proprietary, FICO-like scale.

5.3 Because the above model only indicates how likely it is that a consumer will become 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.

5.4 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 Washington, Santander projected that these consumers with the lowest proprietary scores had a greater than 70 percent likelihood of default over the life of the loan.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Santander Exposes Consumers to Unnecessarily High Levels of Risk

5.5 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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

5.10 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

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

minimize the risk of receiving falsified information, including the amounts specified for consumers' income and expenses.

5.11 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.

5.12 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.

5.13 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.

5.14 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

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

5.16 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

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

long as a sufficient amount of the installment contracts purchased from those dealers proved profitable for Santander.

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

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

5.19 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.

5.20 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.

5.21 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

5.22 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.

5.23 Santander often requires that payments be made through methods that require

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

consumers to pay additional third-party fees, such as money orders. These fees tend to most significantly affect consumers who are unbanked or underbanked.

5.24 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.

5.25 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.

5.26 Taken together, Santander's practices impose significant harm on Washington 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.

V. FIRST CAUSE OF ACTION
(VIOLATIONS OF THE CONSUMER PROTECTION ACT, RCW 19.86.020)

6.1 Plaintiff re-alleges Paragraphs 1.1 through 5.26 and incorporates them as if set fully herein.

6.2 Pursuant to the CPA, RCW 19.86.020, "unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

6.3 In connection with its vehicle financing services, Santander engaged in unfair and/or deceptive acts or practices in trade or commerce in violation of the CPA, including but not limited to the following:

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

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. Misrepresenting, 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.

6.4 Defendant's acts or practices described herein occurred in trade or commerce as defined in RCW 19.86.010(2).

6.5 Defendant's acts or practices described herein affected the public interest because they impacted numerous Washington consumers. These practices constituted a pattern of conduct that Defendant committed in the course of business and for which there is a real and substantial potential for repetition.

VI. PRAYER FOR RELIEF

Wherefore, the State of Washington requests that this Court grant the following relief:

7.1 That the Court adjudge and decree that Defendant has engaged in the conduct complained of herein.

7.2 That the Court adjudge and decree that Defendant has engaged in and is engaging in trade or commerce within the meaning of RCW 19.86.010(2).

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

7.3 That the Court adjudge and decree that the conduct complained of herein that Defendant has engaged in and is engaging in affected the public interest.

7.4 That the Court adjudge and decree that the conduct complained of herein constitutes unfair and deceptive acts or practices in violation of the Consumer Protection Act, RCW 19.86.

7.5 That the Court issue an order 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 unfair, misleading, or deceptive practices alleged herein.

7.6 That the Court assess civil penalties pursuant to RCW 19.86.140 of up to $2,000 per violation for each and every violation of RCW 19.86.020 committed by Defendant.

7.7 That the Court make such orders pursuant to RCW 19.86.080 as it deems appropriate to provide for restitution to consumers of money or property that may have been acquired by Defendant by means of the unlawful conduct complained of herein, regardless of the geographical location of the consumers' residences.

7.8 That the Court make such orders pursuant to RCW 19.86.080 as it deems appropriate to provide that Plaintiff, State of Washington, have and recover from Defendant the costs of this action, including reasonable attorneys' fees.

//

//

//

//

//

//

//

//

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

7.9 That the Court order such other relief as it may deem just and proper to fully and effectively dissipate the effects of the conduct complained of herein, or which may otherwise seem proper to the Court.

DATED this 19th day of May, 2020.

ROBERT W. FERGUSON
Attorney General

KATHARINE BARACH, WSBA #51766
Assistant Attorney General
Attorney for Plaintiff State of Washington
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744