IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
______ DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL **PLAINTIFF**

v. **CASE NO.:________________**

SANTANDER CONSUMER USA INC. **DEFENDANT**

COMPLAINT

COMES NOW, Plaintiff, State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General ("Plaintiff" or "the State" or "Attorney General"), for its Complaint against Defendant Santander Consumer USA Inc. ("Defendant" or "Santander") for violating the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101 *et seq.* ("ADTPA"), and states as follows:

INTRODUCTION

2. This is a consumer protection action brought to redress and restrain violations of the ADTPA and is in the public interest of the citizens of the State of Arkansas.

3. Santander is a consumer finance company that specializes in vehicle financing with its principal place of business in Fort Worth, Texas.

4. Santander was, at all times relative hereto, engaged in business in Arkansas by advertising auto loans or extensions of credit to Arkansas consumers and Arkansas dealers, purchasing retail installment contracts from Arkansas dealers

executed by Arkansas consumers to acquire new and used vehicles, servicing these contracts, and collecting outstanding balances due on these contracts.

5. Santander has engaged in acts and practices as alleged herein that constitute violations of the ADTPA. Santander's conduct, described in more detail below, is ongoing and has the potential to impact Arkansas consumers.

PARTIES

6. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. § 4-88-104 and § 4-88-113, the State may seek civil enforcement of the ADTPA.

7. Defendant is Santander Consumer USA, Inc., a corporation with its principal place of business in Fort Worth, Texas. According to the Arkansas Secretary of State, Santander registered in Arkansas as a foreign for-profit corporation on November 13, 2006 and is currently in good standing.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and the common law of the State of Arkansas.

9. Santander has actively conducted business in the State of Arkansas and intentionally availed itself of the privileges of conducting business activities within the State sufficient to establish personal jurisdiction over the Defendant pursuant to Ark. Code Ann. § 16-4-101.

10. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, 4-88-112, 16-60-103, and the common law of the State of Arkansas.

FACTUAL ALLEGATIONS

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

12. 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

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

14. 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.

15. 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.

16. 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.

B. Santander exposes consumers to unnecessarily high levels of risk

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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

28. 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.

29. 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.

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

31. 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.

32. 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.

33. 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

34. 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.

35. 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.

36. 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.

37. 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.

38. Taken together, Santander's practices impose significant harm on Arkansas 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

39. The State re-asserts and incorporates by reference the allegations in Paragraphs 1 to 38.

40. The ADTPA, Ark. Code Ann. §§ 4-88-101 to 116, sets forth the State's statutory prohibitions of deceptive and unconscionable trade practices.

41. Santander is a "person" within the meaning of Ark. Code Ann. § 4-88-102(5).

42. Santander's business practices constitute the sale of "goods" or "services" under Ark. Code Ann. § 4-88-102(4) and (7), and the same business practices constitute business, commerce, or trade under Ark. Code Ann. § 4-88-107.

43. Pursuant to Ark. Code Ann. § 4-88-107(a)(1), it is a violation of the ADTPA for a person to knowingly make "a false representation as to the characteristics…uses, benefits…approval, or certification of goods or as to whether the goods are…of a particular standard, quality, [or] grade."

44. Pursuant to Ark. Code Ann. § 4-88-108(a)(1) and (2), it is a violation of the ADTPA for a person, in connection with the sale or advertisement of any goods or services to utilize an "act, use or employment…of any deception, fraud, or false pretense" or "[t]he concealment, suppression, or omission any material fact with intent that others rely upon the concealment, suppression, or omission."

45. Pursuant to Ark. Code Ann. § 4-88-107(a)(10), it is a violation of the ADTPA for person to engage "in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade."

46. Based on the factual allegations set out above, Defendant Santander violated Ark. Code Ann. §§ 4-88-107(a)(1), 4-88-108(a)(1) and (2), 4-88-107(a)(10) by knowingly engaging in the following deceptive acts or practices with intent that

consumers rely on such 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.

PRAYER FOR RELIEF

47. Pursuant to Ark. Code Ann. § 4-88-113(a)(1), the Attorney General may bring a civil action seeking to prevent persons from engaging in the use or employment of prohibited practices.

48. Under the provisions of Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), the Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.

49. Pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), the Court may enter such orders or judgments as are necessary to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.

50. Pursuant to Ark. Code Ann. § 4-88-113(a)(3), any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to $10,000 for each violation.

51. In addition, under the provisions of Ark. Code Ann. § 4-88-113(e), any person who violates the provisions of the ADPTA shall be liable for all costs and fees including, but not limited to, expert witness fees and attorneys' fees, incurred by the Office of the Attorney General in the prosecution of such actions.

52. Pursuant to Ark. Code Ann. § 4-88-113(d)(1), "[e]very person who directly or indirectly controls another person who is in violation of or liable under" the ADTPA and every partner, officer, or director of another person who is liable thereunder "shall be jointly and severally liable for any penalties assessed and any monetary judgments awarded in any proceeding for civil enforcement of the provisions of" the ADTPA. Further, said statue requires that such "persons to be held

jointly and severally liable knew or reasonably should have known of the existence of the facts by reason of which the violation or liability exists."

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Honorable Court enter an Order:

53. Finding that Santander is a "person" within the meaning of Ark. Code Ann. § 4-88-102(5), that Santander's business practices constitute the sale of "goods" or "services" under Ark. Code Ann. § 4-88-102(4) and (7), and that same business practices constitute business, commerce, or trade under Ark. Code Ann. § 4-88-107.

54. A finding that Santander has engaged in and is engaging in acts or practices that constitute violations of the ADTPA, specifically: Ark. Code Ann. §§ 4-88-107(a)(1), 4-88-108(a)(1) and (2), 4-88-107(a)(10);

55. Pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), 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 deceptive, false, or unconscionable practices alleged herein;

56. Pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Santander, to pay restitution to those Arkansas consumers affected by the activities outlined herein. In addition to, or in the alternative, the Defendants should be ordered to disgorge all funds received by Santander as a result of the use of prohibited practices;

57. Pursuant to Ark. Code Ann. § 4-88-113(a)(3), imposing civil penalties against Santander in the amount of ten thousand dollars ($10,000.00) for each violation of the ADTPA proved at a trial of this matter;

58. Pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendants to pay the State's costs and fees in this investigation and litigation including, but not limited to, attorneys' fees and costs; and

59. Granting any other just and equitable relief that the Court deems just and appropriate.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I certify that on this 19th day of May, 2020, a copy of the foregoing has been served upon the Defendant via electronic mail to:

David B. Anders
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David A.F. McCoy