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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, UNION COUNTY  
DOCKET NO.: MER-C-

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GURBIR S. GREWAL, Attorney General of  
the State of New Jersey, and PAUL R.  
RODRÍGUEZ, Acting Director of the New  
Jersey Division of Consumer Affairs,

Plaintiffs,

v.

SANTANDER CONSUMER USA INC.,

Defendant

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Civil Action

**COMPLAINT**

Plaintiffs Gurbir S. Grewal, Attorney General of the State of New Jersey (“Attorney General”), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Paul R. Rodríguez, Acting Director of the New Jersey Division of Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, (collectively, “Plaintiffs”), by way of this Complaint bring this action against Defendant Santander Consumer USA Inc. (“Defendant” or “Santander”), for violating the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -211 (“CFA”), as follows:

### **PUBLIC INTEREST**

1. Plaintiffs deem this action to be in the public interest of the citizens of the State of New Jersey and bring this lawsuit pursuant to the CFA.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the Defendant pursuant to R. 4:3-2 because Defendant has transacted business within the State of New Jersey at all times relevant to this Complaint.

3. Venue for this action properly lies in Mercer County, New Jersey pursuant to R. 4:3-2(b) because Defendant transacts business in Mercer County, New Jersey, many of the transactions out of which this action arose occurred in Mercer County, New Jersey.

### **PARTIES**

4. The Attorney General is charged with enforcing the CFA. The Director is charged with administering the CFA on behalf of the Attorney General.

5. Santander is an Illinois corporation with its principal place of business in Dallas, 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 in New Jersey as defined in the CFA, by advertising auto loans or extensions of credit to New Jersey consumers and New Jersey dealers, purchasing retail installment contracts from New Jersey dealers executed by New Jersey consumers to acquire new and used vehicles, servicing these contracts, and collecting outstanding balances due on these contracts.

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

## **SANTANDER'S BUSINESS PRACTICES**

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

9. 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***

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

11. 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.

12. 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.

13. 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 New Jersey, 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***

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.***

19. 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.

20. 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.

21. 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.

22. 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 resulted in a higher acceptance rate from Santander.

23. 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.***

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

25. 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.

26. 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.

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

28. 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.

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

30. 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*

31. 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.

32. 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.

33. 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.

34. 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.

35. Taken together, Santander's practices impose significant harm on New Jersey 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 I**

#### **VIOLATIONS OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES, MISREPRESENTATIONS AND KNOWING OMISSIONS)**

36. The Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1 to 35.

37. While engaged in trade or commerce, Santander committed the following unfair and/or deceptive acts or practices, with intent that consumers rely on such acts or practices declared unlawful under the CFA:

- 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**

**WHEREFORE**, the Plaintiffs pray that this Honorable Court enter an Order:

- A. A finding that Santander has engaged in and is engaging in trade or commerce within the meaning of the CFA
- B. A finding that Santander has engaged in and is engaging in acts or practices that constitute violations of the CFA;
- C. 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 false, misleading, or deceptive practices alleged herein;
- D. Pursuant to N.J.S.A. 56:8-13, that Santander be ordered to pay the maximum statutory civil penalties for each and every violation of the CFA
- E. Pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19, that Santander be ordered to pay costs and reasonable attorneys' fees incurred by the Plaintiffs in connection with the investigation and litigation of this matter; and

F. An order granting any other just and equitable relief that the Court deems necessary.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: /s/ Jeffrey Koziar  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: May 18, 2020  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party that should be joined in this action at this time.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: /s/ Jeffrey Koziar  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: May 18, 2020  
Newark, New Jersey

**RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: /s/ Jeffrey Koziar  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: May 18, 2020  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Jeffrey Koziar is hereby designated as trial counsel for the Plaintiffs in this action.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: /s/ Jeffrey Koziar  
Jeffrey Koziar  
Deputy Attorney General

Dated: May 18, 2020  
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