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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General,

Plaintiff,

v.

Santander Consumer USA, Inc.,

Defendant.

No.: CV 2020-005932

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

(Non-classified Civil; Consumer Fraud)

The State of Arizona (the "State"), brings this action against Defendant, Santander Consumer USA Inc., for violating the Arizona Consumer Fraud Act, Arizona Revised Statutes ("A.R.S.") §§ 44-1521 to -1534, and states as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534 (the "CFA"), to obtain injunctive and other relief.

2. This Court has jurisdiction over the Defendant because the Defendant transacted business within Arizona at all times relevant to this Complaint.

3. This Court may issue appropriate orders both prior to and following a determination of liability pursuant to A.R.S. § 44-1528.

4. Venue for this action properly lies in Maricopa County, pursuant to A.R.S. § 12-401(17).

PARTIES

5. Plaintiff is the State of Arizona ("State"), *ex rel.* Mark Brnovich, the Attorney General of Arizona, who is authorized to bring this action under the Arizona Consumer Fraud Act (the "CFA"), A.R.S. §§ 44-1521 to -1534.

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

ALLEGATIONS

7. Santander was, at all times relative hereto, engaged in the sale or advertisement of merchandise as defined in the CFA, by advertising auto loans or extensions of credit to Arizona consumers and Arizona dealers, purchasing retail installment contracts from Arizona dealers executed by Arizona consumers to acquire new and used vehicles, servicing these contracts, and collecting outstanding balances due on these contracts.

8. In the course of trade or commerce, Santander has engaged in acts and practices declared unlawful under the CFA. Santander's conduct harmed Arizona consumers.

SANTANDER'S BUSINESS PRACTICES

9. Santander is one of the largest lenders in the subprime auto lending market.

10. 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 projected high defaults for certain segments of its consumer population

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

12. 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 (the "loss forecasting score").

13. 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 it is that a consumer with a given loss forecasting score will default over the full life of the loan.

14. The life-of-the-loan model projects that consumers with loss forecasting 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 loss forecasting 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 Arizona, Santander projected that these consumers with the lowest loss forecasting scores had a greater than 70% likelihood of default over the life of the loan.

15. However, despite knowing that certain consumers faced an extraordinarily high likelihood of default, Santander originated and purchased high-interest loan agreements with those consumers anyway and did not tell consumers that Santander knew that those consumers were likely to default under the terms of the loans.

B. Santander exposed consumers to unnecessarily high levels of risk

16. Santander also exposed consumers to unnecessarily high levels of risk.

17. 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.

18. Even when acting as an "indirect" auto lender by purchasing installment contracts from dealers, Santander had 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 asserted control over the amount dealers can include in the back-end, but allowed dealers a tremendous amount of leeway.

19. The generous allowances for dealers on the back-end facilitated Santander obtaining more market share, but those same large back-end charges exposed consumers to increased risk in at least two ways: 1) significant back-end charges increased the overall amount financed, which increased the loan-to-value ratio on the loan; and 2) high finance costs either increased the consumer's monthly principal-to-interest ratio or increased the term of the loan.

20. Santander was aware that these loan features contribute to deteriorating loan quality but continued to make these loans or purchase the underlying installment contracts and did not tell consumers that Santander knew that these loan features made it even less likely that consumers would be able to make their payments.

C. Santander created an environment that was ripe for dealer abuse

21. Although Santander had sophisticated models that forecasted consumer default, Santander's policies with respect to stated income and expenses allowed dealers to manipulate default risk in important ways in order to obtain loans for consumers who were unlikely to be able to pay for their loans. Santander also failed to meaningfully monitor dealer behavior to minimize the risk of receiving falsified information, including the amounts specified for consumers' income and expenses.

22. One area where Santander's lack of verification as part of its underwriting opened the door for dealer abuse was 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 used consumers' monthly housing debt to calculate consumers' debt-to-income ratios.

23. 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.

24. Santander generally allowed loan applications to state the consumer's mortgage and rent expenses, as opposed to providing proof of a mortgage or rent payment, and Santander had no apparent measures in place to minimize the risk of falsified mortgage or rent income. Dealers routinely used 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.

25. Housing costs, however, are not the only area in which Santander allowed for data manipulation. 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

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

27. 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.

28. 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.

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

30. 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.

31. 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 continued to purchase installment contracts from dealers which Santander itself identified as problematic.

32. For example, in 2018, the State entered into a consent judgment with ABC Nissan, resolving allegations that ABC Nissan employees repeatedly had falsified consumers' financial information on forms sent to Santander.

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 defaulted at a higher rate than loans made by other lenders.

E. Santander's servicing and collection practices

34. The consumer harm caused by the conduct described above was compounded by Santander's servicing and collection practices, where Santander employees confused, frustrated, and, in some cases, actively misled consumers about their rights and the costs of taking certain actions.

35. Santander often required that payments be made through methods such as money orders that required consumers to pay additional third-party fees. These fees tend to most significantly affect consumers who are unbanked or underbanked.

36. In servicing loans, Santander's employees routinely confused consumers about the benefits and risks of extensions. Santander's employees also did not tell consumers important facts about extensions when dealing with consumers. As a result, consumers routinely made partial payments or accepted extensions without understanding that interest would continue to accrue and that future payments would likely go towards interest as opposed to paying down their principal balance. Consumers also were unaware that their loan terms

were lengthened to accommodate the extension, partial payment and interest accrual and that a payment may not stop a repossession.

37. Additionally, Santander employees often misled consumers about consumers' 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 imposed significant harm on Arizona consumers. These consumers obtained credit from Santander under the false pretense that they were acquiring a vehicle they would eventually own. In reality, these consumers agreed to extremely costly leases that Santander knew would likely result in loan defaults and repossession of the vehicles.

FIRST CLAIM FOR RELIEF

I. VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. §§ 44-1521 to -1534

39. The State realleges and incorporates by reference the allegations in Paragraphs 1 to 38.

40. The conduct described in the preceding paragraphs of this Complaint constitutes deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises, misrepresentations, or concealment, suppression or omission of material facts with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of merchandise in violation of A.R.S. §§ 44-1521 to -1534, including, but not limited to:

a. Santander engaged in deceptive and unfair acts and practices by extending credit to consumers when Santander knew or should have known there was no reasonable probability that those consumers would be able to make the payments on the loan;

b. Santander concealed, suppressed, or omitted material facts, including the fact that the consumers would not be able to make the payments on the loan, and did so with intent that the consumers rely on such concealments, suppressions, or omissions;

c. Santander engaged in deceptive and unfair acts and practices by misleading or otherwise confusing consumers about the impact of an extension and the costs to the consumer of extending their monthly payment;

d. Santander concealed, suppressed, or omitted material facts about extensions, including the fact that extensions would make consumers pay much more in interest, and did so with intent that the consumers rely on such concealments, suppressions, or omissions;

e. Santander engaged in deceptive and unfair acts and practices by requiring consumers to make payments through methods that forced them to incur third-party fees;

f. Santander engaged in deceptive and unfair acts and practices by 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

g. Santander concealed, suppressed, or omitted material facts about repossessions, including the fact that Santander could not control whether a consumer would get their vehicle back even if additional payments were made to Santander, and did so with intent that the consumers rely on such concealments, suppressions, or omissions.

While engaging in the acts and practices alleged in this Complaint, Santander knew or should have known that its conduct was of the nature prohibited by A.R.S. § 44-1522, subjecting itself to enforcement and penalties as provided in A.R.S. § 44-1531(A).

PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that the Court:

42. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction, enjoining and restraining (a) Defendant, (b) its officers, agents, servants, employees, attorneys, and (c) all persons in active concert or participation with anyone described in part (a) or (b) of this paragraph, directly or indirectly, from engaging in deceptive, misleading, or unfair acts or practices, or concealments, suppressions, or omissions, that violate the CFA, A.R.S. § 44-1522(A);

43. Pursuant to A.R.S. § 44-1528(A)(2), order Defendant to restore to all persons in interest any monies or property, real or personal, which may have been acquired by any means or any practice in this article declared to be unlawful;

44. Pursuant to A.R.S. § 44-1528(A)(3), order Defendant to disgorge all profits, gains, gross receipts, or other benefits obtained as a result of its unlawful acts alleged herein;

45. Pursuant to A.R.S. § 44-1531, order Defendant to pay to the State of Arizona a civil penalty of up to $10,000 for each willful violation of A.R.S. § 44-1522;

46. Pursuant to A.R.S. § 44-1534, order Defendant to reimburse the State for its costs and attorneys' fees incurred in the investigation and prosecution of Defendant's activities alleged in this Complaint;

47. Pursuant to A.R.S. § 44-1201, require Defendant to pay pre-judgment and post-judgment interest to the State and all consumers; and

48. Award the State such further relief the Court deems just and proper under the circumstances.

DATED this 19th of May, 2020.

MARK BRNOVICH
ATTORNEY GENERAL

By: ______________________
Samuel Fox
Matthew du Mee
Assistant Attorneys General
Attorneys for Plaintiff State of Arizona