



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

May 18, 2020

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

VIA UPS GROUND

The Honorable Heidi S. Barshinger, Clerk
Circuit Court for the County of Henrico
4309 East Parham Road
Henrico, Virginia 23273-0775

Re: **Commonwealth of Virginia, ex rel. Mark R. Herring v. Santander Consumer USA Inc.**

Dear Ms. Barshinger:

Please find enclosed for filing the following documents for the purpose of instituting, and resolving, the above-referenced action pursuant to Virginia Code § 59.1-202:

- (1) Civil Action Cover Sheet;
- (2) Complaint; and
- (3) Final Consent Judgment ("Consent Judgment").

In accordance with Virginia Code § 17.1-266, no filing or service fees are enclosed because this action is brought on behalf of the Commonwealth.

I ask that you please present these pleadings to one of the judges at your earliest convenience for review, approval, and entry of the enclosed Consent Judgment. Counsel for the Commonwealth and counsel for the Defendant have endorsed the enclosed Consent Judgment.

Please do not hesitate to call me at (804) 823-6341 if you have any questions regarding this filing. Thank you for your attention with respect to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen John Sovinsky".

Stephen John Sovinsky
Assistant Attorney General
Consumer Protection Section

The Honorable Heidi S. Barshinger, Clerk
March 18, 2020
Page 2

Enclosures

cc: David B. Anders, Esquire (via First Class Mail w/ encls.)
Wachtell, Lipton, Rosen & Katz
51 West 52nd St.
New York, New York 10019

Donald R. Pocock, Esquire (via First Class Mail w/ encls.)
Nelson, Mullins, Riley & Scarborough, LLP
380 Knollwood Street, Suite 530
Winston-Salem, North Carolina 27103

COVER SHEET FOR FILING CIVIL ACTIONS

COMMONWEALTH OF VIRGINIA

Case No.

(CLERK'S OFFICE USE ONLY)

Henrico County

Circuit Court

Commonwealth of Virginia, ex rel. Mark R. Herring, v./In re:

Santander Consumer USA Inc.

PLAINTIFF(S)

DEFENDANT(S)

Attorney General

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL**Subsequent Actions**

- ☐ Claim Impleading Third Party Defendant
☐ Monetary Damages
☐ No Monetary Damages
☐ Counterclaim
☐ Monetary Damages
☐ No Monetary Damages
☐ Cross Claim
☐ Interpleader
☐ Reinstatement (other than divorce or driving privileges)
☐ Removal of Case to Federal Court

Business & Contract

- ☐ Attachment
☐ Confessed Judgment
☐ Contract Action
☐ Contract Specific Performance
☐ Detinue
☐ Garnishment

Property

- ☐ Annexation
☐ Condemnation
☐ Ejectment
☐ Encumber/Sell Real Estate
☐ Enforce Vendor's Lien
☐ Escheatment
☐ Establish Boundaries
☐ Landlord/Tenant
☐ Unlawful Detainer
☐ Mechanics Lien
☐ Partition
☐ Quiet Title
☐ Termination of Mineral Rights

Tort

- ☐ Asbestos Litigation
☐ Compromise Settlement
☐ Intentional Tort
☐ Medical Malpractice
☐ Motor Vehicle Tort
☐ Product Liability
☐ Wrongful Death
☐ Other General Tort Liability

ADMINISTRATIVE LAW

- ☐ Appeal/Judicial Review of Decision of (select one)
☐ ABC Board
☐ Board of Zoning
☐ Compensation Board
☐ DMV License Suspension
☐ Employee Grievance Decision
☐ Employment Commission
☐ Local Government
☐ Marine Resources Commission
☐ School Board
☐ Voter Registration
☐ Other Administrative Appeal

DOMESTIC/FAMILY

- ☐ Adoption
☐ Adoption – Foreign
☐ Adult Protection
☐ Annulment
☐ Annulment – Counterclaim/Responsive Pleading
☐ Child Abuse and Neglect – Unfounded Complaint
☐ Civil Contempt
☐ Divorce (select one)
☐ Complaint – Contested*
☐ Complaint – Uncontested*
☐ Counterclaim/Responsive Pleading
☐ Reinstatement – Custody/Visitation/Support/Equitable Distribution
☐ Separate Maintenance
☐ Separate Maintenance Counterclaim

WRITS

- ☐ Certiorari
☐ Habeas Corpus
☐ Mandamus
☐ Prohibition
☐ Quo Warranto

PROBATE/WILLS AND TRUSTS

- ☐ Accounting
☐ Aid and Guidance
☐ Appointment (select one)
☐ Guardian/Conservator
☐ Standby Guardian/Conservator
☐ Custodian/Successor Custodian (UTMA)
☐ Trust (select one)
☐ Impress/Declare/Create
☐ Reformation
☐ Will (select one)
☐ Construe
☐ Contested

MISCELLANEOUS

- ☐ Amend Death Certificate
☐ Appointment (select one)
☐ Church Trustee
☐ Conservator of Peace
☐ Marriage Celebrant
☐ Approval of Transfer of Structured Settlement
☐ Bond Forfeiture Appeal
☐ Declaratory Judgment
☐ Declare Death
☐ Driving Privileges (select one)
☐ Reinstatement pursuant to § 46.2-427
☐ Restoration – Habitual Offender or 3rd Offense
☐ Expungement
☐ Firearms Rights – Restoration
☐ Forfeiture of Property or Money
☐ Freedom of Information
☒ Injunction
☐ Interdiction
☐ Interrogatory
☐ Judgment Lien-Bill to Enforce
☐ Law Enforcement/Public Official Petition
☐ Name Change
☐ Referendum Elections
☐ Sever Order
☐ Taxes (select one)
☐ Correct Erroneous State/Local
☐ Delinquent
☐ Vehicle Confiscation
☐ Voting Rights – Restoration
☒ Other (please specify)

☐ Damages in the amount of \$ are claimed.

Virginia Consumer Protection Act

05/18/2020

DATE

☐ PLAINTIFF☐ DEFENDANT☒ ATTORNEY FOR☒ PLAINTIFF☐ DEFENDANT

Stephen John Sovinsky, Assistant Attorney General

PRINT NAME

Office of the Attorney General of Virginia

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

202 North Ninth Street, Richmond, Virginia 23219 / (804) 823-6341

ssovinsky@oag.state.va.us

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

**"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA,)	
EX REL. MARK R. HERRING,)	
ATTORNEY GENERAL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. _____
)	
SANTANDER CONSUMER USA INC.,)	
an Illinois corporation,)	
)	
Defendant.)	
)	

COMPLAINT

The Plaintiff, Commonwealth of Virginia (the "Plaintiff" or "Commonwealth"), by, through, and at the relation of Mark R. Herring, Attorney General of Virginia, brings this action against Defendant, Santander Consumer USA Inc. (the "Defendant" or "Santander"), for violating § 59.1-200 of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, and states as follows:

JURISDICTION AND VENUE

1. The Circuit Court of the County of Henrico has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

2. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c) because some or all of the acts to be enjoined are, or were, being done in the County of Henrico. Venue is permissible in this Court pursuant to Virginia Code §§ 8.01-262 (2), (3), and (4)

because the Defendant's registered office is in the County of Henrico, the Defendant has appointed an agent to receive process in the County of Henrico, the Defendant regularly conducts substantial business activity in the County of Henrico, and portions of the cause of action arose in the County of Henrico.

3. Prior to the commencement of this action, the Plaintiff gave the Defendant (a) written notice, through communications by a multistate group of attorneys general, that these proceedings were contemplated, and (b) a reasonable opportunity to demonstrate that no violations of the VCPA had occurred, or, in the alternative, the opportunity to execute an appropriate Assurance of Voluntary Compliance, pursuant to § 59.1-203(B). The Defendant thereafter failed to establish that no violations of the VCPA had occurred, but agreed to execute an acceptable Final Consent Judgment in lieu of an Assurance of Voluntary Compliance.

PARTIES

4. Plaintiff is the Commonwealth of Virginia, by, through and at the relation of Mark R. Herring, Attorney General of Virginia.

5. Santander Consumer USA Inc. 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. Santander has registered with the Virginia State Corporation Commission ("SCC") and is authorized to transact business in the Commonwealth. Santander's registered address on file with the SCC is in Henrico County and is listed as 4701 Cox Rd, Ste 285, Glen Allen, Virginia 23060.

FACTS

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

7. 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

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

9. 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.

10. 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.

11. 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 a multistate group of attorneys general including Virginia, 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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

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

26. 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.

27. 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.

28. 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

29. 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.

30. 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.

31. 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.

32. 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.

33. Taken together, Santander's practices impose significant harm on Virginia 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: Virginia Consumer Protection Act

34. The Plaintiff Commonwealth of Virginia realleges and incorporates by reference the allegations in Paragraphs 1 to 33.

35. Santander is now, and was at all relevant times mentioned herein, a "supplier" of

“goods” or “services,” and engaged in “consumer transactions,” as those terms are defined in § 59.1-198 of the VCPA, by providing financing for automobile loans to consumers.

36. While engaged in trade or commerce, Santander committed the following deceptive acts or practices which are unlawful under §§ 59.1-200(A)(5) and (14) of the VCPA:

- a. 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. Deceptively 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 Plaintiff, Commonwealth of Virginia, prays that this Court:

1. Permanently enjoin Santander from any future violations of Virginia Code §§ 59.1-200(A)(5) and (14);
2. Grant judgment to the Commonwealth, as trustee, against Santander in an amount


necessary to make restitution to harmed customers of Santander, pursuant to Virginia Code § 59.1-205;

3. Grant judgment to the Commonwealth against Santander for civil penalties in the amount of \$2,500 for each and every separate willful violation of the VCPA, pursuant to Virginia Code § 59.1-206;

4. Grant judgment to the Commonwealth against Santander for its costs, reasonable investigative expenses, and attorney's fees, pursuant to Virginia Code § 59.1-206; and

5. Order such other and further relief as may be deemed proper and just.

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 
Stephen John Sovinsky

Mark R. Herring
Attorney General

Erin B. Ashwell
Chief Deputy Attorney General

Samuel T. Towell
Deputy Attorney General
Civil Litigation Division

Richard S. Schweiker, Jr.
Senior Assistant Attorney General and Chief
Consumer Protection Section

Mark S. Kubiak
Assistant Attorney General and Manager
Charitable Solicitations and Deceptive Conduct Unit

Stephen J. Sovinsky (VSB No. 85637)
Assistant Attorney General
Consumer Protection Section

202 North Ninth Street
Richmond, Virginia 23219
ssovinsky@oag.state.va.us
Phone: (804) 823-6341
Fax: (804) 786-0122

CERTIFICATE OF SERVICE

I, Stephen John Sovinsky, certify that on May 18, 2020, true copies of the foregoing
Complaint was mailed via first class mail to:

David B. Anders
Wachtell, Lipton, Rosen & Katz
51 West 52nd St.
New York, New York 10019

Donald R. Pocock
Nelson, Mullins, Riley & Scarborough, LLP
380 Knollwood Street, Suite 530
Winston-Salem, North Carolina 27103


Stephen John Sovinsky

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA,)	
<i>EX REL.</i> MARK R. HERRING,)	
ATTORNEY GENERAL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. _____
)	
SANTANDER CONSUMER USA INC.,)	
an Illinois corporation,)	
)	
Defendant.)	
)	

FINAL CONSENT JUDGMENT

Plaintiff, Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia (the “Commonwealth” or “Plaintiff”), and Santander Consumer USA Inc. (collectively, with its subsidiaries and parent, Santander Consumer USA Holdings, Inc., “Santander” or “Defendant”), having stipulated to the entry of this Final Consent Judgment (“Judgment”) by the Court without the taking of proof and without trial or adjudication of any fact or law, without this Judgment constituting evidence of or an admission by Santander regarding any issue of law or fact alleged in the Complaint on file, and without Santander admitting any liability, and with all parties having waived their right to appeal, and the Court having considered the matter and good cause appearing:

IT IS HEREBY ORDERED THAT:

I. FINDINGS

1. This Court has jurisdiction over the subject matter of this lawsuit and over the

Parties.

2. The terms of this Judgment shall be governed by the laws of the Commonwealth of Virginia.

3. Entry of this Judgment is in the public interest and reflects a negotiated Judgment among the Parties.

4. Plaintiff and Santander (collectively the “Parties”) have agreed to resolve the issues resulting from the Covered Conduct by entering into this Judgment.

5. This Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Santander in any other action, or of Santander’s right to defend itself from, or make any arguments in, any private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Judgment. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the Signatory Attorney General may file an action to enforce the terms of this Judgment.

6. It is the intent of the Parties that this Judgment not be admissible in other cases or binding on Santander in any respect other than in connection with the enforcement of this Judgment.

7. No part of this Judgment shall create a private cause of action or confer any right to any third party for violation of any federal or state statute.

II. DEFINITIONS

8. As used in this Judgment, the following words or terms shall have the following meanings:

- a. “Ancillary Product” shall mean any service, product or insurance sold in conjunction with the Loan, including, but not limited to, guaranteed asset

protection (“GAP”) insurance, GAP waiver products, debt cancellation products, vehicle service contracts, etch, protection products and pre-paid maintenance plans. These are also referred to as “back end” products.

- b. “Basic Living Expenses” means necessary monthly expenditures that a Consumer incurs, adjusted for inflation and geographic location, but does not include Monthly Debt Obligations. Basic living expenses includes, but is not limited to, expenditures for utilities, food, transportation, healthcare, clothing, and dependent care.
- c. “Consumer” shall mean any person who is committed by contract or other arrangement to make payments on all or part of any Loan.
- d. “Covered Conduct” shall mean the underwriting and servicing practices of Santander in connection with Loans made to any Consumer in the Commonwealth.
- e. “DPM Dealer” shall mean a Dealer that was on Santander’s high-risk dealer or dealer performance management list at any point during the Relevant Time Period.
- f. “Dealer” shall mean any business entity that sells or leases new or used vehicles to a Consumer.
- g. “Debt to Income” shall mean the ratio of the Monthly Debt Obligations for a Consumer on a Loan to that Consumer’s gross monthly income. If a Loan has a borrower and a co-borrower (including a guarantor), Debt to Income shall mean the ratio of the total Monthly Debt Obligations for both Consumers on the Loan to the total of those Consumers’ gross monthly income.

- h. “Default” or “Defaulted” shall mean any Loan which has been charged-off, closed with a positive charge-off balance, or under which a vehicle has been repossessed.
- i. “Deficiency” shall mean the balance due to Santander or any assignee of Santander on a Defaulted Loan after Santander has received the proceeds from the sale of the vehicle that secured the Loan and all refunds and/or proceeds due from third parties (e.g., GAP provider) on the Loan.
- j. “Delinquent” shall mean any Loan in which the Consumer is delinquent for one or more sixty (60) day periods.
- k. “Effective Date” shall mean May 1, 2020.
- l. “Loan” or “Loans” shall mean the contract under which a Consumer agrees to pay for the acquisition of a vehicle over a set period of time. Loan refers to both (a) the closed-end contract between a Consumer and Santander and (b) a retail installment contract or closed-end contract between a Consumer and Dealer purchased by Santander.
- m. “Mandatory Relief Consumer” shall mean a Consumer who entered into a Loan during the Relevant Time Period and where the following conditions are true:
 - i. The Consumer had a loss forecasting score of less than or equal to 501;
 - ii. The Consumer purchased a vehicle from a DPM Dealer while such Dealer was on Santander’s high-risk dealer or dealer performance management list;
 - iii. Santander purchased the Loan from the DPM Dealer while such Dealer was on the high-risk dealer or dealer performance management list;

- iv. Santander did not obtain proof of income; *and*
- v. The Consumer has Defaulted.
- n. “Monitoring Committee” shall mean the Multistate Executive Committee or the Attorneys General of states in the Multistate Working Group designated by the Multistate Executive Committee to oversee and monitor Santander’s compliance with the terms of this Judgment.
- o. “Monthly Debt Obligations” shall mean a Consumer’s housing expenses, including monthly rent or mortgage payment, and required payments under any debt obligations (including the Consumer’s monthly payment under the Loan and insurance for the vehicle to be obtained under the Loan). In calculating required payments under debt obligations, Santander shall include:
 - i. All tradelines with a fixed regular payment schedule reported to a consumer reporting agency (“CRA”);
 - ii. The monthly payment reported by the CRA and, if not reported, Santander’s estimate of the monthly payment for tradelines that do not have fixed regular payments; and
 - iii. If housing or vehicle insurance expenses are not provided by a Consumer or reported by a CRA, Santander shall include reasonable default amounts, based on geographic location, in its calculation of Monthly Debt Obligation to account for a consumer’s housing and vehicle insurance expenses.
- p. “Multistate Executive Committee” shall mean the Attorneys General and their staffs representing California, Illinois, Maryland, New Jersey, Oregon, and

Washington.

- q. “Multistate Working Group” shall mean the Attorneys General and their staffs representing Arizona, Arkansas, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland¹, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wyoming.
- r. “Owns”, when referring to Santander Owning a Loan, means on the Company’s balance sheet and not part of a securitization.
- s. “Power booking,” shall mean when a dealer misrepresents to Santander the equipment included on the car to be financed.
- t. “Relevant Time Period” shall mean January 1, 2010 to the Effective Date.
- u. “Residual Income” shall mean the Consumer’s gross monthly income minus Monthly Debt Obligations. If the Consumer’s income has been verified, the Verified Income, as opposed to stated income, shall be used in calculating the Consumer’s Residual Income.
- v. “Signatory Attorney General” shall mean the Attorney General of the Commonwealth charged with enforcing the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 through 59.1-207, or his authorized designee, who has agreed to this Judgment.
- w. “Treatments” shall mean screens, documentation requirements, stipulations and

¹ With regard to Maryland, any references to the Attorney General or Attorneys General shall mean the Consumer Protection Division, Office of the Attorney General of Maryland.

any other enhanced requirements that Santander uses to verify the accuracy of information submitted by a Dealer to Santander related to the sale of a vehicle by a Dealer to a Consumer.

- x. “Verified Income” shall mean when, subsequent to receiving a credit application, Santander obtains written or oral verification, that the income information submitted on a credit application to Santander is accurate.

III. MONETARY RELIEF

9. Santander shall pay a total amount of \$5,000,000 to the Multistate Working Group (“Multistate Payment”). The \$5,000,000 shall be divided and a portion paid by Santander directly to each Participating Attorney General and the NAGTRI Endowment Fund maintained in trust by the National Association of Attorneys General in amounts to be designated by and in the sole discretion of the Multistate Executive Committee. Payment shall be made within ten (10) calendar days of Santander’s receipt of written payment processing instructions from the Illinois Attorney General’s office. Said payment shall be used by the States as attorneys’ fees and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection enforcement fund, including future consumer protection enforcement, consumer education, litigation or local consumer aid fund or revolving fund, or any lawful purpose, at the sole discretion of each Attorney General of the Multistate Working Group.

10. Within ten (10) calendar days of Santander’s receipt of written payment processing instructions from the Illinois Attorney General’s office, Santander shall pay a total amount of \$65,000,000 to a trust account for a Settlement Administrator selected by the Multistate Executive Committee for the purpose of remediating alleged Consumer losses (the “Settlement Fund”). Santander shall separately pay an additional \$2,000,000 to a trust account for the Settlement Administrator’s costs. Should the Settlement Administrator’s costs not reach

\$2,000,000, the remaining funds in that trust account shall revert to Santander. The Multistate Executive Committee shall have sole discretion concerning the Consumers entitled to relief and the nature and amounts of such relief except that any such relief shall include amounts to Mandatory Relief Consumers. Santander agrees to provide the Multistate Executive Committee with information the Multistate Executive Committee deems necessary to determine which Consumers are entitled to relief, the amount of such relief, and how to locate Consumers entitled to relief including, but not necessarily limited to, providing the Consumer's name, last known address, last known contact information, and loan identification number. The Settlement Administrator and/or Multistate Executive Committee shall provide all necessary tax reporting related to this agreement as required by law.

11. Santander shall provide additional Consumer relief as follows: (1) Santander shall not repossess and instead shall provide the title to the vehicle and waive the outstanding Loan balance for all Consumers who had a loss forecasting score of 401 or less and, as of December 31, 2019, have Defaulted but have not had their vehicle repossessed and (2) Santander shall not repossess and instead shall provide the title to the vehicle and waive the outstanding Loan balance for any Consumer with a loss forecasting score of 401 or less who defaults in the future. Santander shall implement the relief as described in (1) and (2) by providing the relief in (1) prior to the relief in (2). When the cumulative value of the outstanding Loan balances in (1) and (2) equals \$45,000,000, Santander has met its obligations under this paragraph and does not need to provide additional relief pursuant to this paragraph.

12. Santander shall waive the Deficiency on Loans it Owns for a) Mandatory Relief Consumers and b) to the extent not included in a), Defaulted Consumers who had a loss forecasting score of 401 or less at the time of origination, when the loan was originated between

January 1, 2013 and December 31, 2019, and who Defaulted within 12 months of origination of the Loan. In addition, Santander shall have an obligation to buy back such Loans originated between January 1, 2013 and December 31, 2017 in order to waive the Deficiency for those Loans, as set forth in paragraphs 14 and 15 below. The Consumers entitled to relief in this paragraph shall collectively be referred to as the “Deficiency Relief Consumers.” If a Defaulted Consumer receives a payment under paragraph 10 but is not a Deficiency Relief Consumer, Santander agrees that it will not collect on or sell that Consumer’s Loan for one year from when the Defaulted Consumer is sent payment. The Multistate Working Group will send notice to the Company that payment has been sent to the Defaulted Consumer within 10 calendar days of such payment being sent.

13. The moratorium on collecting or selling certain Consumer’s Loans described in paragraph 12 does not prohibit Santander from repossessing those Consumers’ vehicles, except for those Consumers entitled to relief under paragraph 11.

14. Santander shall be required to waive Deficiencies only to the extent that Santander owns a Deficiency Relief Consumer’s Loan as of December 31, 2019 or, for those loans originated between January 1, 2013 and December 31, 2017 which Santander no longer Owns, is able to repurchase a Deficiency Relief Consumer’s Loan for equal to or less than the price at which it sold the Deficiency Relief Consumer’s Loan to the third party. In order to waive the Deficiencies, Santander shall attempt to repurchase any Loans that may be held by third parties. Santander shall use best efforts to repurchase Deficiency Relief Consumer Loans and, after the Effective Date, shall not sell, transfer, or otherwise dispose of any Loans to avoid the provisions of this paragraph. Santander shall make all reasonable efforts to repurchase the Loans for which there is a Deficiency within 150 days of the Effective Date of the Judgment. After 150

days from the Effective Date, Santander may discontinue its efforts to repurchase the Loans for which there is a Deficiency that Santander does not own.

15. Santander agrees to provide the Multistate Working Group with a list of Deficiency Relief Consumers including the amount of each Deficiency and whether each such Deficiency has been waived. Santander further agrees to provide a detailed accounting of the amount the Loans were purchased for, a copy of correspondence requesting the purchase of the Loans from third parties at the previous purchase price, and any explanation of why Santander was unable to repurchase specific Loans including, but not limited to, rejection of Santander's offer by third parties, denials based on the lapse of time or a lack of response to Santander's offer letters, which lack of response explanation should include the number of attempted communications and dates of the communications.

16. Santander agrees to provide notice to each CRA to which Santander reports, requesting the deletion of the trade lines associated with the account for all Deficiency Relief Consumers and for the Consumers who receive relief pursuant to Paragraph 11.

17. For a Defaulted Loan that Defaulted between January 1, 2010 and December 31, 2012, Santander will not attempt to either collect the Deficiency or sell the Loan.

IV. INJUNCTIVE RELIEF

18. Santander agrees to the following injunctive provisions:

- a. Santander shall comply with the VCPA.
- b. Santander shall review a Consumer's Residual Income prior to purchasing a Loan.
 - i. If only one Consumer is obligated to pay a Loan and that Consumer's Residual Income at the time of origination is zero or negative, Santander shall not purchase the Loan.

- ii. If more than one Consumer is obligated to pay a Loan, Santander may purchase the Loan if at least one Consumer who is obligated to pay the Loan has a positive Residual Income at the time of origination. If all Consumers who are obligated to pay a Loan do not have a positive Residual Income at the time of origination, Santander shall ensure that all Consumers who are obligated to pay a Loan are informed that each Consumer is responsible for paying the entire Loan obligation should a co-signer not pay.
- c. Santander shall not require any Dealer to sell any Ancillary Product.
- d. In its evaluation of an application for a Loan, Santander shall account for a Consumer's ability to pay the Loan on its specific terms, consistent with the terms of this Judgment.
- e. Santander shall set a reasonable Debt to Income threshold to ensure that Santander is reasonably evaluating a Consumer's ability to pay. At least annually, Santander shall evaluate its Debt to Income calculation and threshold to ensure that it is reasonably accounting for Consumers' ability to pay.
- f. Santander shall not purchase a Loan if the Consumer's Debt to Income exceeds the Debt to Income threshold.
- g. Starting in the second quarter of 2020, and at least quarterly thereafter, Santander shall test a statistically relevant sample of Loans to monitor the accuracy of the Debt to Income calculation and compliance with the threshold.
- h. Starting in the second quarter of 2020, and at least quarterly thereafter, Santander will back-test its portfolio of Defaulted Loans and provide relief

according to the following:

- i. Santander will determine whether, at the time of origination, the Consumer's residual monthly income was zero or negative based on the following calculation: gross monthly income minus the sum of (1) the Consumer's Monthly Debt Obligations, (2) a reasonable estimate for the Consumer's Basic Living Expenses, and (3) a reasonable estimate for the Consumer's payroll taxes.²
- ii. For the classes of Consumers identified in 18(h)(iii)-(v) below, if the Consumer's residual monthly income was zero or negative based on the calculation in subparagraph 18(h)(i), for any loan that Santander Owns or has securitized, to the extent permitted by the relevant securitization documents, Santander shall waive any remaining Deficiency and provide notice to each CRA to which Santander reports, requesting that the CRA remove the trade line associated with the Loan.
- iii. In accordance with 18(h)(ii), if a Consumer had a loss forecasting score of 501 or below at the time of origination and Defaulted within 18 months from the date of origination, Santander shall waive any remaining Deficiency and request each CRA to which Santander reports remove the trade line associated with the Loan;
- iv. In accordance with 18(h)(ii), if a Consumer had a loss forecasting score between 502 and 600 at the time of origination and Defaulted

² "Payroll taxes" refers to either a stated amount of taxes withheld from a Consumer's paycheck, or an amount provided by Santander that would reasonably account for FICA, federal income tax and state income tax for that Consumer's income bracket based on that Consumer's geographic location.

within 12 months from the date of origination, Santander shall waive any remaining Deficiency and request each CRA to which Santander reports remove the trade line associated with the Loan; and

- v. In accordance with 18(h)(ii), if a Consumer had a loss forecasting score of 601 or above at the time of origination and Defaulted within 6 months from the date of origination, Santander shall waive any remaining Deficiency and request each CRA to which Santander reports remove the trade line associated with the Loan.
- vi. Santander shall not substantially change its loss forecasting score formula. If Santander intends to substantially change its loss forecasting score formula, Santander shall provide 60 days' notice to the Monitoring Committee prior to implementation, which notice shall include information concerning the change in formula and its potential impact on this Subparagraph 18(h).
- i. By December 31, 2020, Santander shall employ an income reasonability model, which uses historical consumer, third-party and geographic data, to determine confidence in stated income, to assist in determining whether additional manual review of the loan is required. Santander must reevaluate the model's assumptions on an annual basis for their reasonableness, and make appropriate changes when warranted. Santander shall record the basis for any update to the model and shall retain documents supporting its decision for a period of two (2) years from the update.
- j. Santander shall take appropriate steps to monitor Dealers for possible income

inflation, power booking or expense deflation. If Santander knows, or has reason to know, that a Dealer has engaged in, or is engaging in, income inflation, power booking or expense deflation, Santander shall apply additional Treatments to such Dealer.

- k. Santander will develop, implement, and maintain procedures such that, when Santander applies additional Treatments to a Dealer to address any income inflation, power booking, or expense deflation at such Dealer, Santander will not permit exceptions to, waive or remove such additional Treatments related to the Dealer until it determines that the Dealer has taken appropriate steps to address the apparent income inflation, power booking, or expense deflation. Santander shall record the basis for this determination and retain documents supporting the decision for a period of two (2) years.
- l. By June 30, 2020, if Santander must employ a default mortgage or rent payment value, such value must reasonably reflect such costs for the consumer's zip code or other reasonably designated geographic area. Further, Santander must reevaluate any default mortgage or rent payment values on an annual basis for their reasonableness, and make appropriate changes when warranted. Santander shall record the basis for any update to the default values and shall retain documents supporting its decision for a period of two (2) years from the date of any update.
- m. Santander shall maintain policies and procedures with respect to deferments, forbearances, modifications, and other related servicing and collection matters, and ensure that these policies and procedures are followed by its employees.

- n. Santander shall not misrepresent a Consumer's prospect of redeeming a vehicle that has been repossessed.
- o. Santander shall clearly and prominently disclose during enrollment calls, on its extension³ authorization forms, and on extension confirmation letters the following material terms of an extension: (i) the effect of an extension on a Consumer's Loan maturity date, (ii) the application of payments between interest and principal when the Consumer resumes making payments, and (iii) that the extension may delay repayment of principal, resulting in more interest accruing over the life of the Loan than if the Consumer had not entered into the extension.
- p. Santander shall clearly and prominently disclose during enrollment calls, on written extension authorization forms, and on extension confirmation letters that the interest accruing during the extension period becomes immediately due when the Consumer resumes making payments; and
- q. Santander shall not require Consumers to make payments through methods that require the Consumer to pay additional third-party fees, such as a money order.

V. RELEASE

19. By execution of this Judgment, the Signatory Attorney General shall release any civil claim the Attorney General could assert against Santander under the VCPA arising out of the Covered Conduct prior to the Effective Date. Claims pertaining to civil rights and securities statutes and regulations are specifically excluded from this release. This release shall take effect 91 days after Santander makes the payments described in paragraphs 9 and 10. The Signatory

³ "Extension" means an extension of the maturity date on a Consumer's Loan, through which the Consumer modifies the Consumer's Loan status from "delinquent" to "current," and restarts the time period that would otherwise be running toward Default.

Attorney General executes this release in his official capacity and releases only claims, referenced above, that the Signatory Attorney General has the authority to bring and release.

VI. MONITORING

20. Santander shall create and maintain, for a period of at least three (3) years (unless a shorter time is specified for specific records elsewhere in this Judgment), all records necessary to demonstrate Santander's compliance with obligations under the Judgment. Upon receipt of written notice from the Monitoring Committee asking that Santander provide a compliance report regarding Santander's obligations under this Judgment, Santander shall, within a reasonable period of time not to exceed 60 days, provide a report to the Monitoring Committee. The Monitoring Committee may not request the report pursuant to this paragraph more than once annually, unless the report shows that Santander is not in compliance. Should the report demonstrate that Santander is not in compliance with the obligations under the Judgment, Santander shall submit a remediation plan to the Monitoring Committee demonstrating Santander's plan to comply with the Judgment. The Monitoring Committee will provide its objection or non-objection to any remediation plan within 30 days of receipt of the remediation plan. The right of the Signatory Attorney General or any other member of the Multistate Working Group to object or not object to a remediation plan is in addition to any other lawful means of enforcement under this Judgment, and any non-objection under this paragraph shall not waive the right of the Signatory Attorney General or any other member of the Multistate Working Group to obtain relief for violations of this Judgment in court.

21. Santander shall cooperate with reasonable written requests for information relating to a Dealer or Dealers from a designated representative of the Monitoring Committee or the Signatory Attorney General's office.

VII. GENERAL PROVISIONS

22. This Judgment does not constitute an approval by the Signatory Attorney General of Santander's business practices, and Santander shall make no representation or claim to the contrary.

23. Any failure of the Signatory Attorney General or Santander to exercise its rights under this Judgment shall not constitute a waiver of its rights.

24. No part of the Judgment shall be construed to create, waive or limit a private cause of action.

25. Santander and the Signatory Attorney General hereby stipulate and agree that the Order of this Court to be issued pursuant to this Judgment shall act as an injunction under the VCPA.

26. Santander admits to the jurisdiction of the Court and consents to the entry of this Judgment and to the rights of the Signatory Attorney General to enforce the terms and conditions of this Judgment.

27. If any portion of the Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, then such portion will be severed from the remainder and will not affect the validity and enforceability of the remaining portions of the Judgment.

28. Nothing in this Judgment shall be construed to waive or limit any claim of sovereign immunity the Commonwealth may have in any action or proceeding.

29. Any failure by any Party to this Judgment to insist upon the strict performance by any other Party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of the Judgment.

30. Santander shall notify its officers and directors and use reasonable efforts to notify its employees, agents, and contractors responsible for carrying out and effecting the terms of this Judgment of the obligations, duties, and responsibilities imposed on Santander by this Judgment.

31. This Judgment is intended to be for the benefit of the Parties and does not create any other third-party rights.

32. This Judgment is governed by the laws of the Commonwealth of Virginia.

33. This Court shall retain jurisdiction to enforce the terms of this Judgment. Subparagraphs 18(b), (d)-(g), (i)-(l) and (o)-(q) of this Judgment shall be in effect for a period of seven (7) years from the date of implementation. Subparagraph 18(h) of this Judgment shall be in effect for a period of four (4) years from the implementation of the back-test described in subparagraph 18(h). The expiration of Subparagraphs 18(b), (d)-(l), and (o)-(q) is contingent upon Santander not having been adjudged by a court in any Multistate Working Group state to have violated any provision of Paragraph 18 of any Multistate Working Group Judgment. If, prior to the Effective Date plus seven (7) years, Santander is adjudged by a court in any Multistate Working Group state to have violated any provision of any Multistate Working Group Judgment, Santander shall continue to be subject to Subparagraphs 18(b), (d)-(g), (i)-(l) and (o)-(q) of this Judgment in all Multistate Working Group States for seven (7) years and Subparagraph 18(h) for four (4) years from the date of the court's decision. This paragraph is in addition to all other remedies available to the Commonwealth in law and equity.

34. Each Party and signatory to this Judgment represents that it freely and voluntarily enters into this Judgment without any degree of duress or compulsion.

35. For the purposes of construing the Judgment, this Judgment shall be deemed to

have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any dispute.

36. This Judgment constitutes the complete Judgment between the Parties. This Judgment may not be amended except by written consent of the Parties.

37. The undersigned counsel represents and warrants that he is fully authorized to execute this Judgment on behalf of the Commonwealth of Virginia.

38. The undersigned counsel represents and warrants that he is fully authorized to execute this Judgment on behalf of Santander.

39. This Judgment may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Judgment.

40. All parties consent to the disclosure to the public of this Judgment by Santander and the Signatory Attorney General.

41. Nothing in this Judgment shall be construed as relieving Santander of its obligations to comply with all state and federal laws, regulations, or rules, or granting Santander permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

42. This court retains jurisdiction of the Judgment and the Parties for purpose of enforcing and modifying the Judgment and for the purpose of granting such additional relief as may be necessary and appropriate.

43. Any notices required to be sent to the Signatory Attorney General or to Santander under this Judgment shall be sent by certified mail, return-receipt requested, or other tracked mail delivery service. The documents shall be sent to the following addresses:

For the Commonwealth of Virginia:

Stephen John Sovinsky, Assistant Attorney General
Consumer Protection Section
Office of the Virginia Attorney General
202 North Ninth Street
Richmond, Virginia 23219
ssovinsky@oag.state.va.us

For Santander Consumer USA Inc.:


David B. Anders
Wachtell, Lipton, Rosen & Katz
51 West 52nd St.
New York, NY 10019
DBAnders@wlrk.com

ENTER: / /

Judge, Circuit Court of the County of Henrico

WE ASK FOR THIS:

**COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL**

By: 
Stephen J. Sovinsky (VSB No. 85637)
Assistant Attorney General
Consumer Protection Section
202 North 9th Street
Richmond, Virginia 23219
ssovinsky@oag.state.va.us
Phone: (804) 823-6341
Fax: (804) 786-0122

Date: 5/18/20

SANTANDER CONSUMER USA INC.

By: David B. Anders w/permission by DDP Date: 5/16/2020
David B. Anders
Wachtell, Lipton, Rosen & Katz
51 West 52nd St.
New York, NY 10019

By: Donald R. Pocock (VSB No. 93126) Date: 5/16/2020
Donald R. Pocock
Nelson, Mullins, Riley & Scarborough, LLP
380 Knollwood Street
Suite 530
Winston-Salem, NC 27103

Counsel for Santander Consumer USA Inc.

SANTANDER CONSUMER USA INC.

By: Christopher K. Pfirman w/permission by DDP Date: 5/16/2020
Christopher K. Pfirman
Chief Legal Officer
Santander Consumer USA Inc.