

**BEFORE THE CONSUMER PROTECTION DIRECTOR
FOR THE STATE OF DELAWARE**

In the Matter of

**SANTANDER CONSUMER USA
HOLDINGS INC.**

CPU Case No. **17-17-17001637**

CEASE AND DESIST BY AGREEMENT

INTRODUCTION

1. The State of Delaware (“State”), through the Delaware Department of Justice, Office of Attorney General Matthew P. Denn (“DEDOJ”), and Santander Consumer USA Holdings Inc. (together with its subsidiaries, “SC”) enter into this Cease and Desist By Agreement (“C&D”) pursuant to 29 Del. C. § 2525(a).

2. SC is a Delaware corporation that is a holding company for Santander Consumer USA Inc. and subsidiaries, a specialized consumer finance company focused on vehicle finance as well as unsecured consumer lending products.

3. Pursuant to 6 Del. C. § 73-401 and 29 Del. C. § 2520(a), the DEDOJ is conducting an ongoing investigation into the financing and securitization of non-prime (or subprime) automobile loans originated in Delaware (“Delaware Loans”). As part of this review, the DEDOJ reviewed SC’s business practices in Delaware.

4. Based on the DEDOJ’s review of SC’s activities, the DEDOJ alleges that SC facilitated the origination of certain Delaware loans that SC knew or should have known were

unfair in violation of 6 Del. C. §§ 2512 and 2513. Certain of these loans were sold to third parties.

5. In lieu of litigation and in recognition of SC's assistance and cooperation throughout the investigation, the DEDOJ agrees to accept this C&D on the terms and conditions contained herein, pursuant to Delaware law, 29 Del. C. § 2525(a). The DEDOJ and SC both voluntarily enter into this C&D.

6. This C&D does not constitute an admission by SC of any fact or noncompliance with any state or federal law, rule, or regulation. SC enters into this C&D for settlement purposes only and neither admits nor denies the DEDOJ's allegations. This C&D is made without any trial or adjudication of any issue of fact or law.

ALLEGATIONS

7. The DEDOJ alleges the following:

BACKGROUND

8. SC is engaged in the business of indirect auto lending. In indirect auto lending, the consumer seeking an auto loan first enters a Retail Installment Contract ("RIC") with an auto dealer. The dealer then sells the RIC to a finance company like SC, or to a bank or other lender. SC purchased numerous auto loans from Delaware auto dealers during a period that includes 2009-2014. SC acquired most of such Delaware loans from auto dealers in the form of RICs.

9. During the RIC sale process, SC typically has no direct contact with the borrower. SC approves and authorizes the terms of any particular loan based upon information provided on the credit application, which the dealers generally submit electronically to SC. At the time a dealer enters a RIC with a customer, the dealer expects to sell it to a particular finance company,

such as SC. The loans are on the dealers' books for only a short amount of time before being transferred to SC.

10. A significant portion of SC's loans are in the category known as subprime (or nonprime). According to SC, obligors of this type of loan do not qualify for conventional motor vehicle financing as a result of, among other things, a lack of or adverse credit history, low income levels and/or the inability to provide adequate down payments.

11. For subprime loans acquired from certain Delaware auto dealers, SC predicts, based upon previous experience, that more than half of the loans will default.

12. SC funds its subprime auto loan business in part by selling some of the loans it purchases to third parties. As of the most recent data provided by SC, more than 75% of its loans originated through Delaware auto dealers were sold to third parties.

13. The sale of loans to third parties typically provides SC with capital to be used to purchase more loans.

DEALER REVIEWS

14. SC's dealer monitoring systems were inadequate to prevent the purchase of loans originated in violation of Delaware law during a period that includes 2009-2014.

15. In 2008, SC conducted an internal audit that found that SC's oversight of dealer originations was inadequate.

16. SC later developed a process for identifying and managing dealers with higher levels of delinquency, default and other issues. Dealers identified through this process were included on a list that was initially known as the "High Risk Dealer" or "HRD" list and is currently referred to as the "Dealer Performance Management" or "DPM" list.¹

¹ We use the terms "HRD" and "DPM" interchangeably hereafter.

17. SC could subject the dealers on the DPM list to greater scrutiny of their origination practices and also to greater stipulations (which are requirements that applicants and dealers document certain origination data - proof of income is one example of a stipulation).

18. SC examines the accuracy of income information on loan applications provided by certain dealers by conducting targeted dealer audits.² At times, these audits have included dealers on the DPM list. In the course of these audits, SC may seek to verify the borrower's income by consulting a third-party database containing employment and salary information, contacting the employer, and/or contacting the consumer. Where a borrower's verified income information is substantially lower than the income information on the application, SC, depending on the circumstances, considers the income "inflated" or "overinflated." These targeted dealer audits gave SC insight into the accuracy of the data reported by certain dealers in Delaware.

19. Loans from DPM list dealers perform worse both on early delinquency and gross credit losses than other loans.

20. SC also had a group of dealers that it referred to informally as the "fraud dealers," which described a subset of dealers for a certain car manufacturer ("Car Manufacturer A") that SC identified as having unusually high rates of early payment defaults ("EPDs"), primarily between 2013 and 2014. SC employees suspected that many of these dealers were engaging in fraud against SC by submitting loan applications reflecting inflated borrower income, thereby inducing SC to purchase loans it might not otherwise have purchased.

² Similar reviews are sometimes known as performance reviews or quality reviews. We use the term "dealer audit" to refer to all of these types of reviews.

21. The issues for these dealers principally occurred during the early stages of an agreement between SC and Car Manufacturer A under which SC became the preferred provider of Car Manufacturer A loans.

22. In response, SC took some measures, such as increasing stipulations (including income stipulations) on loans purchased from dealers showing high levels of EPDs. SC also demanded that the dealers repurchase certain loans that defaulted on the first payment and look into and address the performance issues.

23. In a November 2013 email, a VP of Sales recognized that the high rate of early payment defaults at these dealers was likely the result of dealer efforts to inflate borrower income.

24. Ultimately, however, SC's follow up on findings concerning dealers with problematic activity was inadequate. SC did not focus sufficient attention on income inflation at dealers where fewer than half of the verified loans in a dealer audit indicated income inflation. While SC noted that a reason for this is that the higher the ratio, the more likely it is that the dealer is involved in the false submissions, the practice had the effect of not focusing attention on other dealers that also had instances of income inflation.

25. Moreover, SC audits had a threshold for counting individual loans with income inflation, and only considered them in audit reviews when the inflation was at least \$500 or \$1,000 per month.

26. Further, in its dealer audits, SC was able to verify a significant percentage, approximately 40%, of income inflation loans by asking the borrowers about their income. Where borrowers self-identified that their reported incomes were false, this was an indication that the false information derived from the dealer.

27. Nonetheless, SC continued to purchase loans from dealers even when income inflation rates at a particular dealership were high.

DELAWARE LOAN ORIGINATIONS

28. SC predicts that approximately 42% of the subprime loans originated by Delaware dealers on the DPM list during the period 2009-2014 have defaulted or are expected to default. For certain Delaware DPM list dealers, the expected default rate exceeds 50 percent.

29. SC also sometimes waived proof of income requirements for Delaware dealers that had been on the DPM list. During a period that includes 2009-2014, for Delaware dealers that at some point were on the DPM list, SC waived proof of income on approximately 14% of the loans that were supposed to require POI.

30. Despite having this information, SC did not conduct any audits of Delaware DPM dealers during the period of 2009-2014.

31. Had audits been conducted, SC likely would have identified other issues beyond default rates with certain dealers on the DPM list. For example, with respect to one non-Delaware dealer group ("Dealer A"), SC identified "power booking" in 2010. Power booking refers to stating that a vehicle, which serves as collateral for a loan, has additional equipment that it does not have so that the reported car value increases, which supports a higher loan amount.

32. Among other consequences, power booking allows a dealer to add more ancillary products (such as service contracts) to a loan without eclipsing maximum loan-to-value ratios. Dealers make money from ancillary product sales. When done improperly, adding ancillary products is known as "packing."

33. In a 2010 email, a SC Fraud / Risk Manager wrote of Dealer A: ". . . it looks like this dealer is power booking every deal."

34. SC confirmed power booking on nine loans from Dealer A and took certain steps to address it.

35. SC audited Dealer A again in May 2013. SC reviewed 11 loans from Dealer A. Of those loans, one income was verified correct, seven were verified inflated, and three were not able to be verified. The smallest income overstatement in the verified inflated loans in the review was \$45,324/year. There was also an allegation that the dealer “packed” a warranty. Moreover, the incomes the dealer reported contained a highly unlikely number of sevens, which SC called an “income trend.” These findings were provided to SC’s former CEO directly. SC continued to purchase hundreds of new loans from Dealer A. Those loans continued to default at a high rate, consistent with Dealer A’s earlier loans. The anticipated default rate for Dealer A’s subprime loans is over 50%.

36. Despite the information known and available to SC regarding problematic activity and loan performance at certain dealers, SC continued to purchase loans from these dealers. In some instances, borrowers were not likely to be able to repay the loans that SC purchased, in part because the income data provided by the dealers was overstated. SC was thus reckless with respect to the unfairness under 6 Del. C. §§ 2512 and 2513 of certain loans it purchased from certain Delaware dealers.

SC’S RESPONSE TO FINDINGS OF ISSUES

37. Loans from SC’s dealers with problematic activity, in the aggregate, made up a significant portion of SC’s total volume of loans.

38. Over time, SC has taken steps to improve its dealer monitoring processes and how it addresses dealers with problematic activity. Generally speaking, at various junctures SC has applied stipulations to those dealers, including proof of income stipulations. It has also

demanded that the dealers repurchase some problem loans. In late 2014, SC created a group called the Dealer Council, comprised of SC personnel, to review dealer conduct and consider actions to be taken with respect to problem dealers.

39. SC believes that requiring proof of income often puts it at a competitive disadvantage and, therefore, will result in it acquiring fewer loans. SC explained that as a general matter, requiring proof of income decreased the number of acquired or "captured" loans, and therefore volume.

40. When SC demanded that a dealer repurchase loans, it was often limited to loans with early payment defaults and excluded loans with income inflation. If the borrower was making payments on a loan, SC would generally not seek to have the dealer repurchase that loan. Until relatively recently, SC would continue funding dealers' loans as long as dealers agreed to repurchase loans from SC.

41. Around the 2013-2014 period, dealers whose loans SC purchased asked to be subjected to tougher requirements. In November 2013, for instance, SC's Pricing and Credit Risk Oversight Committee learned that certain dealership owners asked SC to require stipulations for lower credit loans because they did not trust some of their Finance and Insurance employees responsible for originating loans.

42. Ultimately, SC's dealers requested stipulations on all business in SC's riskiest credit tier.

43. The DEDOJ's position is that SC's limited requests for income documentation, waivers of a number of those requests when made, failure to audit Delaware DPM dealers, as well as SC's purchasing loans with excessive predicted default rates (in some cases over 50%), resulted in SC recklessly causing the origination of unfair Delaware loans, including certain

loans that the borrowers are not likely to be able to repay. Certain of these loans were sold to third parties and/or securitized.

REMEDICATION AND UNDERTAKINGS

44. At a date to be decided between the DEDOJ and SC, but in no event later than ten (10) business days from the filing date of this C&D, SC shall pay \$2,875,000.00 to an independent trust (the "Fund") for purposes of (i) making payments to provide relief for eligible customers, (ii) paying costs of implementation, and (iii) paying the Attorney General's costs of investigation. The Fund shall be overseen by an independent Delaware-based trustee (the "Trustee") to be mutually agreed upon by the DEDOJ and SC within ten (10) days of the date of this C&D. If the DEDOJ and SC are unable to agree on the identity of the Trustee, the DEDOJ shall choose the Trustee in its sole discretion. The Trustee shall deposit the Fund into interest-bearing accounts such that, to the extent possible: (i) all of the funds are fully guaranteed by the Federal Deposit Insurance Corporation ("FDIC") or the United States Department of the Treasury; and (ii) the interest rate at the time of the aforementioned deposit are at least equal to the highest interest rate available from among the five largest banks in the City of Boston for a fully liquid federally insured deposit account holding such a sum of money. The Trustee will make investments and disbursements from the Fund only with the consent of the DEDOJ and may vary from the investment criteria of this paragraph only with the consent of the DEDOJ. SC shall retain the Trustee and pay the Trustee's fees and costs associated with its duties under this C&D separate and apart from all other payments required under this C&D. Payments to the Trustee shall not exceed \$75,000. SC shall also pay \$1,025,000.00 to the State of Delaware, by certified check payable to the State of Delaware and delivered to Gregory Strong, Delaware Department of Justice, 820 N. French Street, 5th Floor, Wilmington, DE 19801.

45. No later than forty-five (45) business days after the filing of this C&D, the DEDOJ shall provide the Trustee with a list of borrowers that it preliminarily determines are eligible for relief based upon the information provided by SC, together with associated amounts (the "Relief List"). The Relief List shall include borrowers of certain loans sold to SC by certain Delaware dealers on the DPM list that the DEDOJ, in its sole discretion and based upon its review of dealer specific information and data, determines may have made loans in violation of 6 Del. C. §§ 2511, *et. seq.* This shall include certain subprime loans purchased from such dealers while such dealers were on the DPM list and where the borrower: (a) did not provide proof of income or had proof of income waived; and (b) defaulted or is at elevated risk of default based upon the DEDOJ's analysis. The DEDOJ shall have sole discretion concerning which borrowers are on the Relief List and the nature and amounts of relief to be provided to each borrower.

46. Within thirty (30) days of receiving the Relief List, the Trustee shall provide the DEDOJ with the following information, to the extent the Trustee can obtain it without undue burden and in accordance with all requisite and advisable security protocols: the name, address, and social security number of the borrower, as well as any other information reasonably requested by the DEDOJ. This information shall be combined with the Relief List and the resulting list shall be known as the "Initial Borrower List." The DEDOJ may make such corrections or amendments to the Initial Borrower List as it deems appropriate in its sole discretion. The finalized version of this list shall be referred to in this C&D as the "Final Borrower List."

47. The DEDOJ may direct the Trustee to send a letter drafted by the DEDOJ to each borrower on the Final Borrower List. The letter shall include a web address and a dedicated telephone number for the Trustee that the recipient may use to obtain information concerning the

C&D. With each letter, the Trustee shall also include a postage paid return envelope and a form drafted by the DEDOJ for participation in the relief program of this C&D (“Opt-in Form”). The letter shall also contain such other forms as the DEDOJ shall determine.

48. The Trustee shall send the letter and Opt-in Form within three (3) business days of the DEDOJ’s direction and shall resend them, if undeliverable, by such means as the DEDOJ shall direct. Opt-in Forms executed and returned to the Trustee shall be maintained in a secure fashion. In addition, the Trustee shall keep in the same manner any additional Opt-in Forms provided to the Trustee by the DEDOJ.

49. The Trustee shall provide the DEDOJ with information relating to the loans and/or the relief program implementation reasonably available to the Trustee upon request. The Trustee shall cooperate fully with the DEDOJ in the implementation of this C&D, and shall provide materials relevant to the implementation of this C&D promptly to the DEDOJ upon request. Should the DEDOJ determine that additional letters are required in connection with implementing this C&D, the Trustee shall send such letters at the DEDOJ’s direction.

50. For each borrower for whom the Trustee receives an executed Opt-in Form, the Trustee shall take action as directed by the DEDOJ. Payments shall be made to identified recipients in the amounts specified on the Final Borrower List. If a check is not cashed within a number of days to be determined by the DEDOJ, the DEDOJ may direct the Trustee to stop payment on the check.

51. At a date to be determined by the DEDOJ but no earlier than six (6) months from the date of filing of this C&D, the Trustee shall transfer any remaining monies in the Fund to the DEDOJ pursuant to 6 Del. C. § 2527 and such money shall be used for any purpose permitted by that statute including consumer financial education and outreach efforts.

52. SC will ensure that no third party who holds an interest in a loan originated by a dealer and purchased by SC will suffer a loss of principal as a result of the default of a loan made by a dealer on the DPM list at the time of the loan in which the borrower was not required to provide proof of income.

53. SC shall waive any deficiency amounts and other post-default charges otherwise due from the borrower for any loan on the Final Borrower List that defaulted prior to the filing date of this C&D and for which SC continues to own such loan as of the filing date of this C&D. SC represents and warrants that it has the ability to cause these amounts and charges to be waived with respect to each such defaulted loan. The relief provided under this C&D will have the effect of equitably reforming these loans to be in compliance with law.

54. If SC and/or the Trustee receives any letters or forms in relation to this C&D from any borrower who received an offer under this C&D, SC and/or the Trustee shall forward such forms to the DEDOJ even if the letters or forms are received outside of the time frames contemplated by this C&D.

55. SC will develop procedures such that when SC applies additional screens and documentation requirements to a Delaware dealer based in part or whole on the determination that there appears to be income inflation or power booking at such dealer, SC will not waive such screens or documentation requirements related to proof of income or proof of book out and will not permit exceptions thereto. SC will not remove such additional screens and/or documentation requirements related to proof of income or proof of book out until it determines that the dealer has taken appropriate steps to address the apparent income inflation or power booking, and shall not sell loans from such dealer that has failed these screens to third parties. SC shall record the

basis for this determination and retain documents supporting the decision in accordance with SC's currently existing document retention policies.

56. SC will establish screens adequate to prevent the sale to third parties of Delaware Loans that SC identifies as being out of compliance with Delaware law, for reasons including but not limited to unfair or deceptive dealer conduct and the associated risk that the borrower will be unable to repay the loan according to its terms. SC will develop procedures for future sales to third parties such that, where SC identifies such loans after they have been sold to third parties, SC will repurchase such loans.

57. SC will develop procedures to identify and repurchase Delaware loans sold to third parties in the future that do not comply with DE law.

COOPERATION AND RECORD KEEPING

58. SC shall cooperate with the DEDOJ in the implementation of this C&D.

59. SC shall comply with all reasonable requests by the DEDOJ for documents or information related to the subject matter of this C&D.

60. SC shall create and maintain, for a period of at least three (3) years from the filing date of this C&D all records necessary to demonstrate SC's compliance with its obligations under this C&D and will provide such records to the DEDOJ upon request.

MISCELLANEOUS PROVISIONS

61. The DEDOJ will not proceed with or institute a civil action or proceeding based upon 6 Del. C. §§ 2511, *et. seq.* or any other statute or regulation, or common law, against SC, or any of SC's present or former employees, officers, directors, agents, subsidiaries and subdivisions, shareholders, successors, assigns, or any purchases of all or substantially all of its business assets, including but not limited to any action or proceeding seeking restitution,

injunctive relief, fines, penalties, attorneys' fees, or costs, based upon the following SC conduct prior to the filing date of this C&D: purchasing, financing, originating, and/or securitizing Delaware RICs that did not comply with 6 Del. C. §§ 2511, *et. seq.* Claims pertaining to (a) leases; and (b) civil rights statutes and regulations, are specifically excluded from this release. This release does not extend to dealers.

62. The C&D constitutes the entire agreement between the DEDOJ and SC and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of the C&D. This C&D can be modified or supplemented only by a written document signed by both parties.

63. This C&D is not intended to indicate that SC, or any of its present or former employees, officers, directors, agents, subsidiaries and subdivisions, shareholders, successors, assigns, or any purchasers of all or substantially all of its business assets, shall be subject to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon registration exemptions or safe harbor provisions, or other federal or state law. In addition, this C&D is not intended to form the basis for any such disqualifications.

64. The C&D will be binding upon SC and any of SC's agents, subsidiaries and subdivisions, successors, assigns, and/or purchasers of all or substantially all of SC's business assets.

65. The DEDOJ may extend any deadlines in this C&D in its sole discretion.

66. The C&D and its provisions will be effective on the date that it is fully executed by all parties.

67. SC represents and warrants that it has the full legal power, capacity, and authority to bind the parties for whom it is acting, including its subsidiaries.

68. The DEDOJ agrees that all confidential information disclosed to it by SC in the course of the investigation and in connection with this C&D shall be kept confidential by the DEDOJ.

69. By signing below, SC agrees to comply with all of the terms of this C&D. The parties shall work together in good faith to try to resolve any disputes or disagreements with respect to the terms of this C&D. Any violation of this C&D may be pursued in an action pursuant to 29 Del. C. § 2526 hereafter commenced by the DEDOJ.

70. Notices to be sent pursuant to this C&D shall be sent as follows:

To SC:
David B. Anders
Wachtell, Lipton, Rosen & Katz
51 W 52nd St.
New York, NY 10019

To the DEDOJ:
Gregory Strong
Deputy Attorney General
Delaware Department of Justice
820 N. French Street
Wilmington, Delaware 19801

Signed this 29th day of March, 2017.

**FOR SANTANDER CONSUMER
USA HOLDINGS INC.**

For itself and its subsidiaries

By:  _____

Christopher Pfirmman
General Counsel
Santander Consumer USA Holdings Inc.
1601 Elm Street
Dallas, TX 75201
(214) 838-4999
cpfirmman@santanderconsumerusa.com

**FOR THE DELAWARE DEPARTMENT
OF JUSTICE**

By:  _____

Gregory Strong
Deputy Attorney General
Delaware Department of Justice
820 N. French St., 5th Floor
Wilmington, DE 19801
(302) 577-8424