

CIVIL ACTION COVER SHEET

DOCKET NUMBER

2284CV00377

Trial Court of Massachusetts
The Superior Court 2/18/2022



COUNTY Suffolk Superior Court (Boston)

Plaintiff: Commonwealth of Massachusetts; Defendant: Santander Consumer USA Inc.
ADDRESS: Attorney General's Office; 1601 Elm Street Suite 800
Plaintiff Attorney: Glenn Kaplan; Defendant Attorney:
BBO: 567308

TYPE OF ACTION AND TRACK DESIGNATION (see instructions section below)

CODE NO. E99; TYPE OF ACTION (specify) Other Administrative Action; TRACK X; HAS A JURY CLAIM BEEN MADE? YES NO

*If "Other" please describe: Assurance of Discontinuance pursuant to G.L. c. 93A, section 5

Is there a claim under G.L. c. 93A?

YES NO

Is there a class action under Mass. R. Civ. P. 23?

YES NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages.

TORT CLAIMS

A. Documented medical expenses to date

- 1. Total hospital expenses
2. Total doctor expenses
3. Total chiropractic expenses
4. Total physical therapy expenses
5. Total other expenses (describe below)
Subtotal (1-5): n/a

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

TOTAL (A-F): n/a

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

CONTRACT CLAIMS

This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Table with 3 columns: Item #, Detailed Description of Each Claim, Amount. Row 1: 1., Total, n/a

Signature of Attorney/Unrepresented Plaintiff: X [Signature]

Date: February 18, 2022

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney/Unrepresented Plaintiff: X [Signature]

Date: February 18, 2022

Suffolk, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
DEP'T OF THE TRIAL COURT
Civ. No. 2284CV00377

In the Matter of Santander Consumer USA Inc.)
_____)

2/18/2022

ASSURANCE OF DISCONTINUANCE

PURSUANT TO M.G.L CHAPTER 93A, §5

I. Introduction

1. The Office of the Attorney General of the Commonwealth of Massachusetts ("AGO") through its Attorney General, Maura Healey, is conducting an investigation pursuant to M.G.L. c. 93A into whether certain entities collecting, servicing and/or funding auto loans utilized notices to consumers post-repossession that failed to state that deficiencies would be based on the application of Fair Market Value for auctioned vehicles ("the Investigation"). As part of the Investigation, the AGO reviewed the practices of Santander Consumer USA, Inc. ("SC").

2. The AGO alleges that there were instances between November 18, 2017 and the present in which SC provided form notices identified by CID production numbers SCMASS00000001/SCMASS00000003, SCMASS00000007/SCMASS00000009, SCMASS00000020/SCMASS00000022 and certain other forms to borrowers and co-borrowers subject to arbitration of their disputes regarding auction processes ("Relevant Borrowers") which

allegedly failed to reference the use of Fair Market Value in the calculation of deficiency amounts. These form notices, which include notices sent pre-auction and some proffered post-auction, allegedly failed to provide Relevant Borrowers with the information they were entitled to receive by law.

3. In recognition of SC's cooperation with the Investigation, the AGO agrees to accept this Assurance of Discontinuance ("Assurance") on the terms and conditions contained herein. SC, without admitting any facts, liability, or wrongdoing, in the interest of resolution of this matter and for settlement purposes only, agrees to accept this Assurance on the terms and conditions contained herein. This Assurance is made without trial or adjudication of any issue of fact or of law.

II. Terms of the Assurance of Discontinuance

4. SC shall pay \$5,560,000.00 to an independent trust (the "Fund") for purposes of (i) making payments to eligible Relevant Borrowers, (ii) paying costs of implementation, and (iii) paying the Attorney General's costs of investigation. The Fund shall be overseen by an independent trustee (the "Trustee") to be mutually agreed upon by the AGO and SC within ten (10) days of the date of this Assurance. If the AGO and SC are unable to agree on the identity of the Trustee, the AGO shall choose the Trustee in its sole discretion. The Trustee shall deposit the Fund into interest bearing accounts such that, to the extent possible: (a) all of the funds are fully guaranteed by the Federal Deposit Insurance Corporation or the United States Department of the Treasury; and (b) 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

AGO and may vary from the investment criteria of this paragraph only with the consent of the AGO. SC shall retain the Trustee and pay Trustee's fees and costs associated with its duties under this Assurance up to \$75,000 (the "Limited Trust Administration Fee").

5. This Limited Trust Administration Fee is separate, apart, and in addition to any and all other payments required under this Assurance. No later than forty-five (45) business days after the filing of this Assurance, the AGO shall provide the Trustee with a list of borrowers that it preliminarily determines are eligible for relief based upon the information provided by SC and such other information as the AGO has otherwise developed, together with associated amounts (the "Relief List"). The Relief List shall include eligible Relevant Borrowers of certain loans serviced, funded or collected upon by SC where the borrowers allegedly were provided with defective notices as described in the Investigation and whom the AGO, in its sole discretion determines should receive payments from the Fund. The AGO 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.

6. Within thirty (30) days of receiving the Relief List, the Trustee shall provide the AGO 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 AGO. This information shall be combined with the Relief List and the resulting list shall be known as the "Initial Borrower List." The AGO 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 Assurance as the "Final Borrower List." The AGO may direct the Trustee to send a letter drafted by the AGO to each borrower on the

Final Borrower List. The letter shall, if so directed by the AGO, include a web address and/or a dedicated telephone number for the Trustee that the recipient may use to obtain information concerning the Assurance.

7. With each letter, the Trustee shall also include a postage paid return envelope and a form drafted by the AGO for participation in the payment program of this Assurance ("Opt-in Form"). The letter shall also contain such other forms as the AGO shall determine. The Trustee shall send the letter and Opt-in Form within three (3) business days of the AGO's direction and shall resend them, if undeliverable, by such means as the AGO 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 AGO. The Trustee shall provide the AGO with information relating to the loans and/or the payment program implementation reasonably available to the Trustee upon request. The Trustee shall cooperate fully with the AGO in the implementation of this Assurance. Should the AGO determine that additional letters are required in connection with implementing this Assurance, the Trustee shall send such letters at the AGO's direction.

8. For each borrower for whom the Trustee receives an executed Opt-in Form, the Trustee shall take action as directed by the AGO. 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 AGO, the AGO may direct the Trustee to stop payment on the check. At a date to be determined by the AGO but no earlier than three (3) months from the date of filing of this Assurance, the Trustee shall transfer some or all of the remaining monies in the Fund as the AGO directs to the AGO pursuant to G.L. c. 12, § 4A for the purposes of

consumer financial education, monitoring and implementation of this Assurance, and related financial services mediation or investigative work.

9. Any funds paid under this Assurance may, at the discretion of the AGO, if not otherwise obligated, encumbered or expended by June 1, 2022, be directed to the Treasurer for deposit in the Commonwealth's General Fund. Deadlines in this Assurance, as well as procedures for the identification, contact, calculation or distribution to consumers of payments, may be altered by the AGO in its sole discretion.

10. For any Relevant Borrowers whose automobile loan or retail installment contract balances have been reduced to zero prior to the entry of this Assurance of Discontinuance but who have not been sent a Form 1099 from SC, SC will, if requested by the AGO, confirm for the AGO the loan or retail installment contract numbers and balance reductions for such Relevant Borrowers. SC also agrees that for each such Relevant Borrower/co-borrower, SC will not collect on the automobile loan or retail installment contract, will return any collections obtained after (i) the date the relevant balance has been reduced to zero, or (ii) January 1, 2022, whichever is earlier, and will not transfer or sell the loan or retail installment contract.

11. For any Relevant Borrowers whose automobile loan or retail installment contract balances have not been reduced to zero prior to the entry of this Assurance ("Relevant Deficiency Borrowers"), SC will, upon the request of the AGO, for each Relevant Deficiency Borrower and related co-borrower, provide to the AGO the loan/retail installment contract account number, the original balance of the retail installment contract, and the amount of debt still existing on the retail installment contract as of January 1, 2022. Subsequently, the AGO will identify for SC a list of Relevant Deficiency Borrowers ("Deficiency List"). SC agrees that for each such individual on the Deficiency List and related co-borrower, SC will not collect on the

automobile loan or retail installment contract, will return any collections obtained after January 1, 2022, and will not transfer or sell the loan or retail installment contract.

12. For all Relevant Borrowers and co-borrowers, SC will request that the credit reporting bureaus remove the tradeline associated with the Relevant Borrowers' loans for which the Relevant Borrowers received the notices referenced in paragraph 2.

13. This Assurance contains the complete agreement between the parties. This Assurance may be modified or supplemented only by a written document signed by both parties. This Assurance is not intended to impair any right of action that SC may have against any other person or entity, or any right of action that any person or entity other than the AGO might have against SC. Neither the terms of this Assurance nor the payment of any money hereunder is, nor shall either be construed to be, an admission of any wrongdoing, nor an admission to the allegations in this Assurance.

14. This Assurance and its provisions will be effective on the date that it is filed in the Superior Court for Suffolk County.

15. SC shall provide to the AGO, upon reasonable request, such information and data which relates to and/or will assist with the implementation of this Assurance. Such materials shall be productions under G.L. c. 93A § 6 and provided with the protections related thereto. Any notifications by SC regarding the Assurance or its implementation shall be provided to AGO staff Glenn Kaplan and Gia Kim at contact addresses provided for that purpose. The AGO may substitute other individuals as points of contact as necessary.

16. By signing below, SC agrees to comply with all the terms of this Assurance. By signing below, the AGO agrees that it will not recommend, proceed with or institute a civil action or proceeding, or make any referral, based upon M.G.L. c. 93A, c. 106, c. 255B, or any

other statute or regulation, or common law, against SC for any acts or practices committed by SC prior to the date of this Assurance related to the Investigation. The terms of this Assurance may be enforced by the AGO in a civil action or proceeding.

Respectfully Submitted:

FOR: Santander Consumer USA Inc.

FOR: Office of the Attorney General for the Commonwealth of Massachusetts

By: 

By: 

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Dated: February 10, 2022

Dated: February 18, 2022