

ASSURANCE OF DISCONTINUANCE

In the Matter of:

SANTANDER CONSUMER USA, INC.

Respondent.

This Assurance of Discontinuance (“AOD”) dated as of August 1, 2021 is entered into by and among the Colorado Administrator of the Uniform Consumer Credit Code and Santander Consumer USA, Inc. The purpose of this agreement is to resolve issues, as more particularly described herein, arising from the Administrator’s investigation into Santander’s compliance with Colorado’s Uniform Consumer Credit Code. As noted below, this is a compromise of claims and not an admission of any liability or wrongdoing. Santander denies any wrongdoing.

I. DEFINITIONS

1. As used in this AOD, the following words or terms shall have the following meanings:
 - a. “Administrator” shall mean the Colorado Administrator of the UCCC, C.R.S. § 5-6-103.
 - b. “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.
 - c. “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.
 - d. “Consumer” shall mean any person who is committed by contract or other arrangement to make payments on all or part of any Loan.
 - e. “Covered Conduct” shall mean, in connection with Loans made to any Colorado Consumer, Santander’s underwriting, loss modeling, and servicing practices, including Santander’s alleged: extension of credit to Colorado Consumers that it knew or should have known had no reasonable probability of repaying; failure to disclose to Colorado Consumers that they were obtaining credit on terms that were likely to fail; misleading, failing to disclose material information, or otherwise confusing consumers about the impact of an extension and the costs of such extensions; requirement to make payments through methods that forced Colorado Consumers to incur third-party fees; and misrepresentation of Colorado

Consumers' ability to acquire repossessed vehicles sent to auction and accepting payments from Colorado Consumers when Santander knew or should of known it had no control over whether Colorado Consumers would be able to get their vehicle back. Covered Conduct does not include any other actions or omissions of Santander or the propriety, cost, or functionality of any Ancillary Product, including, for example, the calculation of a Colorado Consumer's GAP insurance payments and/or the refunding, in whole or in part, of a Colorado Consumer's GAP insurance payments.

- f. "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.
- g. "Dealer" shall mean any business entity that sells or leases new or used vehicles to a Consumer.
- h. "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.
- i. "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.
- j. "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.
- k. "Delinquent" shall mean any Loan in which the Consumer is delinquent for one or more sixty (60) day periods.
- l. "Effective Date" shall mean August 1, 2021.
- m. "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.
- n. "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.
- 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. “Owns”, when referring to Santander Owning a Loan, means on the Company’s balance sheet and not part of a securitization.
- q. “Power Booking,” shall mean when a dealer misrepresents to Santander the equipment included on the car to be financed.
- r. “Relevant Time Period” shall mean January 1, 2010 to May 1, 2020.
- s. “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.
- t. “Santander” shall mean, collectively, Santander Consumer USA, Inc. along with its subsidiaries and parent, Santander Consumer USA Holdings, Inc.
- u. “Treatments” shall mean screens, documentation requirements, stipulations and 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.
- v. “UCCC” shall mean Colorado’s Uniform Consumer Credit Code, C.R.S. §§ 5-1-101 to 5-9-103.
- w. “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.

II. BACKGROUND

2. The Administrator is authorized to enforce compliance with the UCCC, to conduct examinations of licensees, and to investigate possible UCCC violations. *See* UCCC, C.R.S. §§ 5-1-101 to 5-9-103.

3. Santander is licensed by the Administrator as a Colorado supervised lender (license nos. SUP-4000105; SUP-4000105-001; SUP-4000105-002; SUP-4000105-003; and SUP-4000105-004) and a sales finance notification filer (SFN-6000078).

4. The Administrator and Santander desire to enter into this AOD to avoid the expense, inconvenience, and inherent risk of litigation as well as the concomitant disruption of their affairs.

5. The Administrator and Santander enter into this AOD pursuant to the UCCC, C.R.S. § 5-6-110.

III. CONSUMER RELIEF

6. 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 waive the Deficiency on Loans it Owns for Mandatory Relief Consumers when the loan was originated between January 1, 2020 and December 1, 2020, so long as the loan Deficiency existed as of June 1, 2021. Further, 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 8 and 9 below. The Consumers entitled to relief in this paragraph shall collectively be referred to as the “Deficiency Relief Consumers.”

7. The moratorium on collecting or selling certain Consumer’s Loans described in

paragraph 6 does not prohibit Santander from repossessing those Consumers' vehicles, except for those Consumers entitled to relief under paragraph 6.

8. 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 date of this AOD. After 150 days from the date of this AOD, Santander may discontinue its efforts to repurchase the Loans for which there is a Deficiency that Santander does not own.

9. Within 60 days of the date of this AOD, Santander agrees to provide the Administrator 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.

10. 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 6.

11. 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

12. No later than the Effective Date, Santander agrees to the following injunctive provisions and, where noted, represents that it has undertaken the stated action:

- a. Santander shall comply with the UCCC, Colorado's Fair Debt Collection Practices Act, C.R.S. §§ 5-16-101 to 5-16-135; and Colorado's Consumer Protection Act, C.R.S. §§ 6-1-101 to 6-1-1214.
- b. Santander shall review a Consumer's Residual Income.
 - i. If only one Consumer is obligated to pay a Loan and that Consumer's Residual Income is determined to be zero or negative, Santander shall follow the procedure specified in Section 12(h) of this agreement.
 - ii. If more than one Consumer is obligated to pay a Loan, Santander may purchase the Loan if it is determined that at least one Consumer who is obligated to pay the Loan has a positive Residual Income. If it is determined that all Consumers who are obligated to pay a Loan do not have a positive Residual Income, 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 AOD.
- 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. As of the second quarter of 2020, and at least quarterly thereafter, Santander has tested and shall continue to test a statistically relevant sample of Loans to monitor the accuracy of the Debt to Income calculation and compliance with the threshold.
- h. As of the second quarter of 2020, and at least quarterly thereafter, Santander has

back-tested and shall continue to 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.¹
 - ii. For the classes of Consumers identified in 12(h)(iii)-(v) below, if the Consumer's residual monthly income was zero or negative based on the calculation in subparagraph 12(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 13(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 13(h)(ii), if a Consumer had a loss forecasting score between 502 and 600 at the time of origination and Defaulted 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 13(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 Administrator prior to implementation, which notice shall include information concerning the change in formula and its potential impact on this Subparagraph 12(h).
- i. As of December 31, 2020, Santander has employed and shall continue to employ an income reasonability model, which uses historical consumer, third-party and geographic data, to determine confidence in stated income, to assist in determining

¹ "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.

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. As of 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 extension² 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

² "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

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

13. By execution of this AOD, the Administrator shall release any civil claim the Administrator could assert against Santander 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. The Administrator executes this release in her official capacity and releases only claims, referenced above, that the Administrator has the authority to bring and release.

VI. MONITORING

14. 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 AOD), all records necessary to demonstrate Santander's compliance with obligations under the AOD. Upon receipt of written notice from the Administrator asking that Santander provide a compliance report regarding Santander's obligations under this AOD, Santander shall, within a reasonable period of time not to exceed 60 days, provide a report to the Administrator. The Administrator 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 AOD, Santander shall submit a remediation plan to the Administrator demonstrating Santander's plan to comply with the AOD. The Administrator will provide its objection or non-objection to any remediation plan within 30 days of receipt of the remediation plan. The right of the Administrator to object or not object to a remediation plan is in addition to any other lawful means of enforcement under this AOD, and any non-objection under this paragraph shall not waive the right of the Administrator to obtain relief for violations of this AOD in court.

15. Santander shall cooperate with reasonable written requests for information relating to a Dealer or Dealers from a designated representative of the Administrator.

VII. GENERAL PROVISIONS

16. This AOD does not constitute an approval by the Administrator of Santander's business practices, and Santander shall make no representation or claim to the contrary.

17. Any failure of the Administrator or Santander to exercise its rights under this AOD shall not constitute a waiver of its rights.

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

19. Santander and the Administrator hereby stipulate and agree that this AOD shall act as an injunction under the UCCC, § 5-6-111.

20. Santander consents to this AOD and to the rights of the Administrator to enforce the terms and conditions of this AOD.

21. If any portion of the AOD 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 AOD.

22. Any failure by any Party to this AOD to insist upon the strict performance by any other Party of any of the provisions of this AOD shall not be deemed a waiver of any of the provisions of this AOD, 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 AOD.

23. 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 AOD of the obligations, duties, and responsibilities imposed on Santander by this AOD.

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

25. This AOD is governed by the laws of Colorado.

26. Subparagraphs 12(b), (d)-(g), (i)-(l) and (o)-(q) of this AOD shall be in effect for a period of seven (7) years from the date of implementation. Subparagraph 12(h) of this AOD shall be in effect for a period of four (4) years from the implementation of the back-test described in subparagraph 12(h). The expiration of Subparagraphs 12(b), (d)-(l), and (o)-(q) is contingent upon Santander not having been adjudged by a Colorado court to have violated any provision of Paragraph 12 of the AOD. If, prior to the Effective Date plus seven (7) years, Santander is adjudged by a Colorado court to have violated any provision of the AOD, Santander shall continue to be subject to Subparagraphs 12(b), (d)-(g), (i)-(l) and (o)-(q) of this AOD for seven (7) years and Subparagraph 12(h) for four (4) years from the date of the Colorado court's decision. This paragraph is in addition to all other remedies available to Colorado in law and equity.

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

28. For the purposes of construing the AOD, this AOD 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.

29. This AOD constitutes the complete agreement between the Parties. This AOD may not be amended except by written consent of the Parties.

30. Undersigned counsel represents and warrants that he is fully authorized to execute this AOD on behalf of the Administrator.

31. Undersigned counsel represents and warrants that he is fully authorized to execute this AOD on behalf of Santander.

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

33. All parties consent to the disclosure to the public of this AOD by Santander and the

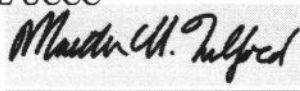
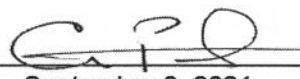
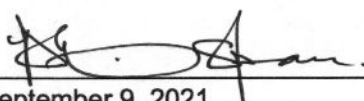
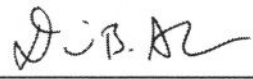
Administrator.

34. Nothing in this AOD 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.

35. Any notices required to be sent to the Administrator or to Santander under this AOD shall be sent by certified mail, return-receipt requested, or other tracked mail delivery service. The documents shall be sent to the following addresses:

Martha U. Fulford
Administrator of the UCCC
Email: uccc@coag.gov
Colorado Department of Law
1300 Broadway, 6th Floor
Denver, CO 80203

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

<p>THE COLORADO ADMINISTRATOR OF THE UCCC</p> <p>By: <u></u></p> <p>Date: <u>September 9, 2021</u></p> <p>Martha Fulford Administrator Colorado UCCC</p>	<p>SANTANDER CONSUMER USA, INC.</p> <p>By: <u></u></p> <p>Date: <u>September 9, 2021</u></p> <p>Christopher K. Pfirman Chief Legal Officer Santander Consumer USA, Inc.</p>
<p>FOR THE COLORADO ADMINISTRATOR OF THE UCCC (AS TO FORM)</p> <p>By: <u></u></p> <p>Date: <u>September 9, 2021</u></p> <p>Philip Sparr Assistant Attorney General Colorado Department of Law 1300 Broadway, 6th Floor Denver, CO 80237</p>	<p>FOR SANTANDER CONSUMER USA, INC. (AS TO FORM)</p> <p>By: <u></u></p> <p>Date: <u>September 9, 2021</u></p> <p>David B. Anders Partner Wachtell, Lipton, Rosen & Katz 51 West 52nd St. New York, NY 10019</p>