WHEELING AND DEALING MISFORTUNE

How Santander's high pressure tactics hurt workers and auto loan customers

NELP NATIONAL EMPLOYMENT LAW PROJECT

AFL-CIO AMERICA'S UNIONS

EXECUTIVE SUMMARY

A decade after the mortgage crisis financial companies continue to extend risky loans at high interest rates, bundling those loans into securities to sell to eager Wall Street investors, and booking big profits and revenues. This is today's subprime auto lending business and regulators and attorneys general in multiple states are taking note. The industry is worth more than $26 billion and growing fast, and it poses a threat to low-income consumers who need transportation to remain in the labor market. Its aggressive lending and collections practices have the potential to impact the economic well-being of millions of families. First among subprime auto lenders is Santander Consumer USA ("Santander"), a Dallas-based subsidiary of the Spanish global banking giant Santander Group. Santander has spent the years since the Great Recession purchasing debt in the subprime auto lending market and now controls nearly a third of this lucrative market.

A financial enterprise on this scale depends on thousands of low-wage workers who scramble to originate and collect on loans in a high stakes environment pressured by performance metrics and constrained by incentive pay. Santander's sophisticated computer monitoring system, ostensibly used to claim the company is meeting consumer protection regulations[1] needs, drives these workers to produce ever more results with less information. This system leaves workers' already-low paychecks unstable and unpredictable, while exacerbating risks for vulnerable customers—none of which can be good for the bank's long-term success.

- About 5,000 people are employed in Santander's six locations, roughly 30 percent in collections. Hundreds more work on behalf of Santander in third-party facilities or overseas providers.
- The workers report earning approximately $31,000 to $41,000 a year, placing many of them near the poverty level and making them eligible for public assistance.
- Workers explain that Santander management closely monitors every moment of their work, not solely to protect consumers but also to rank their production levels against their coworkers in order to determine incentive bonuses and terminate those who don't turn over loans quickly enough.
- Workers state that instructions for how to collect on delinquent loans change frequently and that it is difficult to help borrowers craft realistic payment solutions because they not allowed to ask about financial or family situations that may be important for them to know and relevant to a customer's ability to pay.
- Call center and collections workers report mental and physical ailments induced by workplace stress.

- Santander boasts that its proprietary system for scoring of customers maximizes profits, but its scoring of workers compels them to log an enormous number of calls per day, limiting their effectiveness with each customer interaction.
- Santander's collections workers can articulate with incisive clarity the stories of the victims of predatory practices in this industry: most often, communities of low-income borrowers and their co-borrowers, who are frequently their dependents and often their parents and children.
- Santander employees in Spain and other countries have protections in place that facilitate better customer service and protect those who raise concerns with potentially illegal or unethical behavior.

INTRODUCTION

Nearly a decade has passed since the banking crisis triggered by irrational home lending, and today big banks tout their healthy "stress tests" as indications that their troubles are over. But over the past few years, it has become clear that banks are still engaged in risky practices designed to boost corporate profits at the expense of customers and workers alike. Banks have been found to charge customers for credit monitoring services they never received[2] and compel workers to push unwanted checking or savings accounts onto unsuspecting customers in order to collect fees and penalties.[3] Perhaps less well-known, but no less traumatizing for millions of low-income borrowers, are abusive practices in the selling and servicing of subprime auto loans.

In most areas of the country, having a car is a necessary requirement for holding down a job and caring for one's family. All too often, a spotty employment record, or an outstanding medical bill, or struggles recovering from the ill effects of the Great Recession can cause low credit ratings that make getting a loan to buy a car a challenge. It is here that subprime auto lenders see their chance to benefit from customers' desperate straits. In fact, almost 25 percent of outstanding auto loans are now subprime.[4]

The landscape of subprime lenders is a complicated mix of banks, credit unions, and auto finance companies working together with car dealers, each competing for customers in a lucrative business. The subprime auto loan asset-backed securities market alone was worth more than $26 billion last year and is growing at a rate higher than before the recession hit.[5] Investors see the business as an appealing way to generate income, too. In the words of one Santander investor, "you can sleep in your car, but you can't drive your house to work."[6]

Santander Consumer USA ("Santander"), a Dallas-based subsidiary of the Spanish Santander Group, which has bought up subprime auto lending entities and defaulted debt in recent years to amass more than 30 percent of the subprime auto loan business in the country, leads this industry.[7] Santander recently paid a $22 million settlement to the Commonwealth of Massachusetts for damages to customers there related to lending practices, but as Attorney General Maura Healey observed, "I certainly do not think that this practice is limited to Santander or our state."[8]

While news of banking practices that harm consumers are becoming more publicly known, what is less recognized is how the collection practices encouraged by Santander affect the workers assigned to carry them out, and by extension diminish the level of customer service they are able to offer customers. Borrowers are trying to navigate a complicated system of lending that sometimes turns into a vicious cycle of loans that are defaulted on and reinstated several times, with vehicles that may be repossessed quickly. This report explores some of the practices discussed in interviews with current and former Santander workers, who describe their working conditions and performance management system in detail. The report also suggests ways that policy makers and regulators can take advantage of these whistleblowers' experiences in order to craft strong protections for customers seeking sometimes desperately needed transportation.

SANTANDER USA: REPEAT OFFENDER

Santander is a frequent subject of consumer complaints and enforcement actions around unfair, deceptive and abusive[9] debt collection practices.[10] For years Santander's customers have filed a growing number of complaints with the Consumer Financial Protection Bureau (CFPB).[11] During this time, Santander has skillfully skirted the edges of the law in high-profile consumer class actions, including one recently heard at the Supreme Court, over its debt collection practices, emboldening experts to point out the urgency of an overhaul in this area of regulation that has become outdated.[12] Further, while Santander has touted its investments in technology to comply with consumer protections in disclosures to investors, it has maintained an extensive track record of legal and regulatory non-compliance since at least 2010.[13] As the top lender in the industry, Santander has and will continue to set the industry trends for how auto loans are sold and serviced, for how vehicles are repossessed, and for how employees are motivated to carry out these activities—the very practices that are often at the root of consumers' woes.[14]

Santander is known as one of the first and most aggressive companies in subprime auto lending and is a key driver of growth in the industry. When Santander emerged in 2006, rebranded from Drive Financial, a Santander Group executive in Spain predicted its business model would "drive a quantum leap in net interest income" and he was right. Profits quadrupled in the next seven years to $766 million.[15] During and after the Great Recession, Santander made several strategic moves to drive its scale in the subprime auto lending industry through the conversion or acquisition and origination of almost $100 billion in assets. During this period, Santander became notorious for its aggressive collection and repossession practices.[16]

Santander's loan portfolio has grown at least ten times in size to $53 billion since 2007 and now it serves nearly three million customers.[17] About a third of the debt Santander serviced in 2015, or about $15 billion, it did not own.[18] What's more, echoing the bundling of home mortgages that crashed the banking system a decade ago, Santander packages and issues subprime auto loan asset-backed securities, shifting the risk for delinquent or defaulted loans to investors while it collects a monthly servicing fee and handles collections, repossessions, and resale. In fact it has been the largest issuer of subprime auto asset-backed securities since 2011.[19]

SANTANDER WORKERS: RACING THE CLOCK AND THE COMPUTER

While Santander markets itself as a consumer finance company, much of its business actually lies in collections work. Santander employs about 5,000 people in the US that service its loans at six locations—roughly a third of whom work in collections. Hundreds more perform work for Santander through third-parties or overseas service providers.[20] In Santander's US call centers at least half of the employees work in collections, which includes customer service, early and late stage collections, loss, and recovery. Recovery includes collection on customer's debt after repossessed vehicles have been sold, while they're going through bankruptcies, or while their repossessed or off-lease vehicles are being sold at auctions. It is important to understand that debt collection is a trade. Many Santander collections employees have honed their skills and worked in the industry for decades, and at Santander for many years. Employees describe most of the work at Santander as consisting of some form of debt collection.

Based on worker interviews, we believe that the typical Santander worker earns between $15 and $20 an hour, which in many markets is well below a sustainable wage and in some cases could qualify them for publicly-funded safety net programs. Consequently, successfully earning incentive pay and bonuses becomes critical for these workers to make their own monthly bills.

"Damned if we do, damned if we don't"

Santander's employees work under a company-wide incentive system that uses metrics to rank their performance against their peers monthly. The need to produce results and protect one's ranking means that Santander workers may encourage vulnerable customers to take on products that alter their auto loans without a reasonable understanding of their risk, and that may ultimately hurt their financial situation. In the arduous process of collections, it may mean workers are urged to contact customers excessively about their delinquent accounts or that employees have little time or incentive to provide customers with substantive guidance for their individual situations. According to current and former employees, the parameters and priorities of Santander's metrics and incentive system implicitly or explicitly sanction these types of practices and behaviors. At the same time, due to external pressure from regulatory agencies, Santander has been introducing and enforcing new policies that force collectors to act like customer service representatives and that closely monitor their adherence to this model. The most important distinction between customer service and collection is the age of the debt and thus, the difficulty of the debt's collection.[21] Santander is both a first-party creditor and a debt buyer, therefore Santander's collection employees work with debt on a wide range. A substantial portion of it was purchased and has aged.

In the words of one former Santander employee commenting on this frequent dilemma, “It’s like you’re damned if you do, you’re damned if you don’t. You’re telling me I’m too aggressive, but at the same time I need to be more customer service oriented, but then at the same time you’re telling me not to be too customer service oriented.”

Doing the same job with less

The employees report that, over the last two years, Santander has introduced a new call monitoring system and other workplace policies that are extremely difficult to navigate and uneven. One worker explained it as a very reactive, not proactive, business. Santander has removed technologies or prohibited other practices that employees previously relied on to attain high performance ratings and earn bonuses. For example, one worker said collectors can no longer use a system called Optika to see specific customer information, like their income levels, although some of their supervisors still can. Employees find Santander’s introduction of a “customer service-like script” at the end of 2016 very limiting, because while they’re still expected to reach the same performance levels and ultimately produce a positive collections outcome, it prohibits them from asking dozens of questions about a customer’s specific circumstances that would help the collectors to achieve those goals. While Santander purportedly instituted these changes to be responsive to regulators, the problem is that they continue to evaluate their workers on similar productivity goals and metrics as when they had more information at their disposal.

Former collectors describe an environment where just a few years ago they had the discretion to have individual conversations they could base on specific customer needs or problems. Now that employees are given only limited customer information and any interaction they have with a customer is subject to rigid constraints, dealing with individual situations is challenging and sometimes impossible. As one former employee put it, “I can’t ask someone how long they’ve been out of work if they are out

COLLECTIONS TERMS

Delinquent accounts: percentage of delinquent accounts.

- *Customer service:* 1-30 days past due
- *Early stage:* 31-60 days past due
- *Late stage:* 61-90 days past due
- *Potential loss:* 91-120 days past due
- *Loss:* 121 days past due

Promise to pay: securing a customer’s promise to pay on a delinquent account.

Kept rate: the rate of a collector’s promises to pay from delinquent customers that are paid or settled.

Conversion rate: a call which results in the resolution of an issue with a customer without having to escalate, transfer or return the call.

Right party contact: a successful effort to speak with customers about resolving delinquencies.

Wrap time: the amount of time it takes to complete a call transaction and go to the next call.

Idle time: the time a collector takes between calls.

Improvement per hour: a measure of collector’s success in improving a delinquent loan.

NCAR: a measure of a collector’s success in improving a defaulted or deficient loan.

“Forced Ranking” or “Rank and Yank”: a controversial performance management system that grades a workforce based on the individual productivity of its members and makes relative comparisons between the best and worst employees using subjective criteria, forcing them into an artificial ranking.

of work. You want me to find out what caused them to fall behind, and you know they're out of work, but if they've been out of work two years, that's different. I can't be an effective collector if I can't…if I can't say certain things."

"This call may be monitored and recorded"

In response to pressure to increase compliance, Santander has instituted new workplace technologies to monitor customer interactions and worker behavior. Many of us are familiar with the notice that "this call may be monitored and recorded," but at Santander behind that customer protection is a range of computer programs and complicated metrics that put workers under pressure to produce results or forfeit incentive pay or risk termination.

Supervisors use a tool both during and after calls to scrutinize employees' adherence to their scripts. Employees are disqualified from a bonus if they score under 80% each month in the speech analytics program called the "CallMiner." The software monitors and records employees' calls and inspects their speech for potential problems. For example, if collectors' calls use less than fifty words in a conversation that they log as a customer's promise to pay, or code a call as a "left message" that is less than two minutes, the call will be flagged for potential inspection by a supervisor or analyst.[22]

An apology quota

When a customer gets upset, workers must give at least three rote apologies and are later assessed by Call Miner as to whether they "registered sincerity." One worker said that all he does is apologize all day long, commenting on dealing with frustrated customers whose payments have been received by Santander, but are taking weeks to post. This employee explained that customers were paying off their accounts and were waiting to get new cars, but their accounts were classified as still active and their credit was getting affected. The worker admitted they felt so powerless and worn down after their shift that they needed hours to decompress every day. The employee continued to say that the job was hard because of employees' inability to do anything about customers' problems, or just admit something was the company's fault. Instead, employees have to apologize and reassure customers that everything will be fine. In the vast majority of cases, employees know that something is wrong and won't be alright for some time, if at all.

While Call Miner was implemented to improve the company's regulatory compliance, some employees report that the call monitoring and recording has made it difficult if not impossible for them to talk normally to customers and still rank high enough to meet their metrics and receive their incentive pay. According to an employee, Call Miner has difficulty identifying different tones. In his case, it was unable to identify the specific pronunciation of his words, forcing him to speak in an unnatural way in order to avoid a drop in his performance rating and a risk to his incentive pay. Another former employee who had a minor lisp and a soft voice reported that when her manager played her calls back to her, she realized Call Miner was not accurately registering her words. This impacted her metrics scores and bonus and forced her to hold a piece of paper over the phone microphone and speak very loudly in order to ensure Call Miner picked up her words.

Santander's opaque and questionable "rank and yank" system

Santander collection employees feel their ranking system drives unhealthy competition between individuals. Employees describe the system as opaque. They say their frequent inquiries for clarification on how rankings are calculated go unanswered. For collectors, the ranking system at Santander is a model often referred to in the industry as a "forced ranking" or a "rank and yank"[23] that roughly defined, grades a workforce based on individual productivity and makes relative comparisons between best and worst employees.[24] Santander's version imposes quartiles upon workers, so one-quarter of collections employees are sorted among four tiers and then ranked further within each tier. At Santander, "multiple scorecards" are created for each collection employee by "quality assurance agents [that] perform account reviews" to "ensure adherence to policy and procedure and call model compliance through a proprietary call grading application." Collectors' scorecards are "recorded and utilized in each [collector's] forced ranking."[25]

Workers say the ranking system negatively affects employee morale. A ranking at the bottom often means workers will be written up, put on final warning, or eventually terminated, and *someone* is always on the bottom. The incentive system causes considerable anxiety about job security as well as confusion and embarrassment on the collection floor; workers may perform well and have low performance scores, or overnight find a dramatic change in their ranking. As one worker said, "I've been in the situation where near the last day of the month I'm number 15 or 4 [in the ranking] and the next day I come back and I'm number 80." In their interviews, current and former workers reported they feel the rankings are not determined objectively and seem subject to supervisor manipulation. In another example, one employee who was very high in the ranking at the beginning of one month mentioned this to their supervisor, who responded, the employee shouldn't worry, that they wouldn't be there for long.

The tiered rankings described above are based on employees' monthly performance metrics, scorecards, and other criteria they report not understanding. Sometimes the results of the rankings are shared openly with their peers, sometimes they are not. Over the last two decades, forced ranking systems have been subject to many high-profile lawsuits based on discrimination against a protected class at companies including Ford Motor Co., General Electric, Capital One, 3M Company, Sprint, Microsoft and Yahoo. To avoid lawsuits like these, industry literature advises managers at companies that use forced rankings to "get away from terms and areas where it starts to look like you are putting your own interpretation on what is happening and stay away from words such as 'attitude.'"[26]

WORKPLACE PRACTICES HURT EMPLOYEES AND CUSTOMERS ALIKE

Despite the changes for employees on Santander's collections floor, the quantitative performance metrics and incentive system has changed very little. Collections employees still need to meet an ever-changing set of expectations regardless of individual customers' needs in order to keep their jobs and earn bonuses that enable them to feed their own families. Santander's metrics are based generally on employees' ability to speed successfully through calls, to collect on late payments and outstanding fees, and to extend loan modifications that may generate new fees.[27] Fees are generated or collected on in several stages of customers' loan cycle, in repossession, reinstatement, and in loan deficiency balances after vehicles have been sold at Santander auctions.[28]

Excessive or constant measurement can make a collection employee's job very difficult, especially in a market experiencing a high percentage of late stage delinquencies. According to employees, Santander's algorithm based incentive system has encouraged them at times to carry out the practices often mentioned in consumers' complaints. What's more, the system creates undue pressure on collection employees by narrowly hinging everyone's incentive pay on their performance. Collectors' performance each month is graded at a "tier" that determines the bonus amounts for all employees in their call center, each of which is measured against other call centers to determine group performance rankings.

Employees speed through calls, driven by metrics that weaken service

Just as Santander uses data-driven consumer analytics and scoring to leverage the consumer market, it also implements an array of complicated metrics to evaluate the performance of its employees.[29] The company's metrics pressure collectors to speed successfully through hundreds of calls, using common metrics like "kept rate" and "wrap time," which loosely defined are the rate of customer promises to pay that are kept, and the average amount of time it takes a collector to make and process a call from its beginning to its end. More importantly, metrics measure collectors' productivity and quality of service along the way. Improvement Per Hour (IPH) or delinquency buckets measure their financial or other performance on collection or improvement of delinquent loans. Another measurement, "NCAR" is used with loans that are very late stage, often times more than 120 days past due. The latter metrics are those that are least transparent to employees and pressure them to collect and sometimes push customers toward extensions, temporary reductions in payment plans, and loan remodifications that ultimately generate more interest and fee income for Santander.[30]

In early stage collections, Santander workers are supposed to make 100 calls per day.[31] Even for employees that work solely with dealerships, Santander expects them to make at least 60 calls a day. Former employees who were interviewed generally feel these expectations are extreme if not impossible. In addition, some Santander employees must operate on an autodialer for part or all of their shift. To speed through calls to make the "right party contact," or a successful effort to reach a customer about resolving a delinquency, many employees described being so pressured by metrics that they had to figure out ways to make even more calls to customers.

One worker described how pressure to meet the nearly impossible metrics could drive some workers to seek out methods to avoid "no resolution" calls, which would prevent them from calling the same person again and affect their ranking. Some of the methods to avoid "no resolution" calls included coding the call as "customer hung up," sending the call to System Issues, saying the computer froze up, or hanging up on the customer. All of these methods would allow Santander employees to reach out again to customers to improve their metrics and ranking.

Significant pressure on employees to limit customer interaction puts consumers at risk

According to former employees, Santander calls itself a second chance company, but this second chance comes at a high cost. If a customer has a credit score of 600, according to one former employee, the interest rate on a Santander loan is often 18%.[32] In 2016, the average term for Santander's loans was 70 months and the average customer payment to income ratio was more than 10%. With loans like this, borrowers get "upside down" on their loans very quickly.[33]

This year, consumers registered the highest rate of auto loans in delinquency or default since the foreclosure crisis, and as of June the rate of auto loans in serious delinquency was continuing to rise.[34] While Santander may offer some customers a temporary reprieve with extensions or other modifications, altering their loans in these ways may not ultimately be in the consumer's best interest. Santander's loans often have very high interest rates, terms that are over several years, and high daily late payment penalties, known as "simple interest." If customers take on extensions, the loans become longer and more costly, and may end up worth much more than the value of the car. These are known as "upside down" loans.[35]

The problems consumers face with 'simple interest'

Former employees indicated that once a customer becomes delinquent, a daily penalty, referred to as the per diem, is charged. This is a huge source of concern for customers as the penalty is often not clear to them. According to former employees, they said it was difficult, if not impossible for them to apply a customer's payment to their loan principal.

Consumers have filed complaints with the Consumer Financial Protection Bureau (CFPB) related to issues with "simple interest" loans. According to one such consumer, the initial purchase of the vehicle was $16,000. When filing the complaint, the consumer said, "As of now currently my balance is $17,000. Last week…I called the finance company to ask for a review of my account because my statement doesn't make any sense to me. Apparently I was told by the representative at Santander… that the contract I signed is a 'simple interest contract,' and she explained that interest occurs every day in the amount of $10, adding up to about $310 monthly, and other additional fees. I was completely unaware of this kind of contract I was signing; it was not explained to me. With that said, my monthly car payment is $420 and every month I pay all the money goes to only interest fees and $0 towards the car payment."[36]

Consumers have serious complications with vehicle repossessions

Santander has an extensive track record of legal and regulatory non-compliance, involving numerous federal and state consumer protection laws (and other laws) since at least 2010.[37] In one well-known example, Santander paid almost $10 million in fines and relief to settle a U.S. Justice Department (DOJ) suit for unlawful repossessions of over 1,100 active military service member's cars in 2015. These unlawful repossessions violated the U.S. Service Members Civil Relief Act. One Army Specialist said Santander "illegally repossessed his car in the middle of the night while he was at basic training.[38]

One consumer wrote about a problematic repossession to the CFPB about Chrysler Capital. Santander acts as Chrysler's captive finance company, and Chrysler is one of Santander's most important lines of business.[39] According to the consumer, "A vehicle I had leased through Chrysler Capital was wrongly repossessed without warning though I had no overdue payments and had already received, signed, and returned a lease extension authorization, extending my lease until [date]. My car was repossessed on [date], despite multiple phone calls from/to Chrysler stating that my lease extension agreement had been received signed and that I had 'nothing to worry about.' … I was given verbal confirmation, multiple times, that there would be no penalty for extending my lease, and then my car was repossessed without warning. Had Chrysler told me anything different I would have been glad to return the car on the date stated on my original lease agreement, but instead they took the car and sent me a bill for over $20,000. I am young and just getting my career off the ground and this may severely damage my credit, though I never missed a payment and was in constant communication with Chrysler toward the end of my original lease date."[40]

Issues with collection of consumers' loan deficiency balances

Santander appears to have run afoul of state consumer protection laws in its collection of loan deficiency balances. In 2015, the company agreed in a settlement with California to cease collecting on deficiency accounts for almost 40,000 individuals. These accounts reflected the amount owed on an auto loan in default, even after Santander had repossessed the car and sold at an auction.[41] The settlement brought $200 million in relief to the affected borrowers.[42] In Massachusetts, a similar class action suit was brought over allegations that Santander had unlawfully tried to collect deficiency balances from about 6,400 borrowers, after repossession and sale actions. Santander settled the case by agreeing to cease collecting on $23 million in these deficiency accounts.[43]

A consumer in New Jersey wrote to the CFPB about similar problems with a deficiency balance. In the complaint, Santander repossessed and sold the vehicle, and according to the consumer "now they are trying to collect the deficiency balance," and one "amount is $9,500 and the other amount that they want is $5,600. How are they able to do this if they have taken the car sold it and now they want more money from me?"[44]

Consumer confusion with loan extensions and their approval

Consumer complaints to the CFPB show that Santander customers also have misunderstood what a loan extension is and whether or not loan extensions have been approved on their accounts. At Santander, an extension is the same thing as a deferment, and it "moves a customer's monthly payments to the end of the loan, extending the original maturity of the contract (maximum of eight months extended for the life of the loan are permitted). Majority [of extensions] are of two month payments qualifies."[45]

One consumer wrote, "I have a car loan through Santander from 2013. I applied and was granted [X] extensions on the account. However, they did not honor the extensions and reported that I was late. Since, I have appeared to be at least 60 days late! I have done a dispute via credit bureaus. I sent in the copies of the extensions and Santander "fixed" a couple of months, only to report badly and inaccurately again. After speaking to someone, countless times, I finally got a representative who told me that they only offer a certain amount of extensions. I informed this person that I DID NOT have that many extensions and her response was, 'well, we count two at a time.'"[46]

One former employee reported finding that extensions had been approved on a customer's account, although it appeared that no one had ever contacted the customer. A customer in late stage delinquency would have an account log showing when inbound or outbound calls were made, when they were skip traced, when a worker left them a message, and when a loan extension was approved. Even a manager's call is logged, according to the former employee. This employee indicated seeing evidence that loan extensions may have been approved without customer contact.

As the former employee noted, "I would go back through the notes to see what happened, where did we lose our customer contact, why is this customer…And then all of a sudden you know, no contact, but then two extensions. [These had to be approved by] upper management, because we can't approve extensions. When we submit an extension, it goes to a bulk of management and they will be the ones that have to approve the extension before the end of the month. When you give out all those extensions you're pushing that money back, and you're making all this money look good. But these people just came off extensions in March and here it is June, and you're needing another extension? They pushed that through."

Another consumer wrote, "Santander agreed after researching that they failed to send out the correct information for a deferment and the paperwork out to the correct email. The manager stated at the time that he would remove it from the credit and when I received the call back from the company, they stated that was never agreed on…"[47]

The high-cost of the failure to verify

An April 2017 story in Bloomberg reported that Santander checked income for only 8% of auto loans that it originated and bundled into a subprime asset backed auto loan securitization.[48] Failure to have rigorous or even standard verification protocols for loan applications can lead to borrowers being placed in Santander subprime auto loans they can't afford, for example if their incomes are overstated. Even worse are cases in which borrowers don't know the loans are being submitted under their names.

State attorneys general have been looking into Santander's auto loan underwriting practices as well.[49] In March 2017, the Massachusetts and Delaware Attorneys General settled litigation with Santander for $26 million; the charges alleged Santander worked with a ring of what the company called "high risk" or "fraud dealers," and did so in order to make loans Santander knew customers could not repay. Santander then sold many of these loans to third-party investors in the form of asset-backed securities, while retaining servicing rights to them.

According to the *Cease and Desist Agreement* signed between Santander and the Delaware attorney general, the company's "dealer monitoring systems were inadequate in preventing the origination of loans that violated Delaware law from 2009 to 2014." Specifically, while Santander identified a group of dealers in Delaware that allegedly falsified borrowers' income levels and had high levels of defaults, the company "continued to purchase loans from a particular dealership where income inflation rates were particularly high."[50]

Former employees at Santander recounted witnessing what they saw as unfortunate and avoidable acts in the origination of the loans they serviced, especially involving elderly consumers. These employees detail stories of low-income consumers "with interest rates as high as 27%." One former employee told of occasions dealing with elderly consumers who found themselves as borrowers on loans they did not take out. Some grandparents were under the impression they were co-signing on a loan, but later found out it had been submitted under their names.

This former employee said, “I’ve seen some of that happen and in fact the only way the grandparents can get out of it, they have to get a lawyer, and they’ve got to verify that’s not his signature. This is where Santander is at fault. They don’t do interviews, they don’t check and validate applications. They’re so in a hurry to do a deal.”

As a business practice, inflating borrowers’ incomes as a justification to originate loans will forever be associated with the subprime mortgage crisis that helped cause the Great Recession. As the Massachusetts attorney general, Martha Healy stated in announcing the $26 million settlement, “the global economic collapse wasn’t a cautionary tale. It was a blueprint” for Santander.[51]

The Mississippi attorney general recently sued Santander for violations of state consumer protection laws. The lawsuit focuses on allegations that Santander makes loans to consumers that it knows or should know those consumers will not be able to repay. One way Santander does this is, according to allegations in the suit, is by not making a reasonable determination whether the borrower will be able to repay. The Mississippi Attorney General’s allegations cite former employees, who state that they were educated by management that the company could profit off its loans that go into default in the first year.[52]

The suits filed by attorneys general in Massachusetts, Delaware, and Mississippi raise concerns about Santander’s business model, specifically, that a portion, if not a meaningful portion, of the company’s business involves putting people into loans that they cannot afford and maximizing gains from those loans after borrowers become delinquent.

POLICY RECOMMENDATIONS

Santander's questionable business model relies on high interest loans that are frequently unaffordable, with high default rates and aggressive collections practices to maximize profits. In recent years, as subprime auto loan volumes have grown exponentially, the lax underwriting and aggressive debt collection has become a more large scale and urgent problem. For years, consumer complaints and class actions targeting Santander's business practices have made this problem only more pressing and clear. What's more, while Santander boasts of its commitment to consumers and investments in compliance technology, it has an extensive track record of legal and regulatory noncompliance. Together, these factors demand a closer and more systematic investigation of Santander's business practices.

By doing their jobs and helping Santander execute its business model, collections employees have become trapped between a rock and a hard place. In an industry where products and services with the potential to cause consumer harm are widespread, Santander's metrics and incentive system compel collections employees to use the aggressive collections tactics that they've developed as skills in their trade and while working at Santander. At the same time, Santander has implemented policies demanding collectors act as customer service representatives and uses its call monitoring system to scrutinize their performance.

While Santander instituted these changes in reaction to regulators, the fact that the metrics, ranking and other methods used to evaluate workers on productivity have changed very little is problematic and has created a significant dilemma for collections employees. As low-wage workers, they are forced to weigh the potential risks to customers with their own need to care for themselves and their families. Regulatory bodies need to implement protocols to mitigate these practices, ensuring that these protocols not lead to retaliation or termination of any collections employees that have not had adequate time to adjust or coaching to learn new techniques.

A new incentive system is far overdue at Santander—one that is divorced from parameters and priorities that implicitly or explicitly sanction aggressive collections practices, and that aligns with methods to reduce customer dissatisfaction and harm. As one employee aptly described, it should not hurt workers to have longer calls and help consumers to pay correctly, in order to pay less interest, or to use refinancing. Santander should stop using or significantly change the performance metrics that pressure employees to limit their interactions with customers and put consumers at risk. Moreover, Santander should get rid of its "forced ranking" system—a model that is controversial in human resources—in order to eliminate unnecessary and unfair pressure on collections employees, and the possibility of retaliation against workers that it easily affords. Further, Santander should be encouraged to pay its workers sufficiently so that incentive pay does not become the determining factor for whether they can pay their own bills.

As Santander employees bring their stories to the public, policy makers and regulators should see these whistleblowers as their allies. In other countries where Santander operates, workers earn a decent base pay and have the assurance of union representation, an established grievance procedure and formal dialogue with which to interact with company leadership. This protects front-line workers who raise concerns or share ideas for improvement on current practices. Santander should proactively grant its US employees the freedom to form their own organization by explicitly stating that it will remain neutral as workers come together and seek dialogue with the employer. Santander employees deserve better than the no-win situation they are in today. Moreover, Santander should enter into dialogue with low-income communities where its predatory lending policies have caused financial devastation and consider ways to mitigate the damage it has done to their communities.

CONCLUSION

Even a decade after the banking crisis that triggered an economy-wide recession, companies like Santander continue to design business practices that originate loans with impossibly high interest rates to vulnerable borrowers, bundle those loans for sale to Wall Street investors, and then profit again by pressuring borrowers to dig themselves deeper in to financial trouble. To implement these practices, Santander takes advantage of low-wage employees' need to earn bonuses and incentives in order to care for their own families and limits their ability to perform their jobs effectively by using aggressive and relentless computer monitoring systems. While the financial institution enjoys high profits and astronomical interest payments, some of these workers suffer mental and physical ailments.

As regulators and attorneys general identify the consumer harms in these practices, they should be recognizing these front-line workers as their best allies. If these workers had decent hourly wages, whistleblower protections, and relief from the ever-increasing demands of monitoring systems, they could share their experiences in the workplace to help shape an auto lending system that does not destroy the financial lives of millions. In contemporary America, people need access to transportation to keep their jobs, care for their children, and procure food and other goods for their families. This makes low-income Americans who can't qualify for high quality lending products exceedingly exposed to companies that seek to profit from their plight.

Policy makers need to protect both these customers and the low-wage front-line workers who service their loans in order to ensure that auto lending is done fairly. As the industry leader, Santander should be stepping up to provide a high-road business model by ending aggressive servicing incentive programs, designing a workplace where employees are treated with respect, where they are encouraged to put customers first, and where employees who see legally or ethically questionable practices have the confidence to speak up and improve the industry as a whole.

END NOTES

1. In its IPO offering documents, Santander asserted that: "to manage our legal and compliance risk, we maintain an extensive compliance, internal control, and monitoring framework, which includes the gathering of corporate control performance threshold indicators, Sarbanes-Oxley testing, monthly quality control tests, ongoing compliance monitoring with all applicable regulations, internal control documentation and review of processes and internal audits." In its most recent annual report, Santander asserts that it has made "significant investments in staffing and servicing systems technology in order to make servicing activities compliant with federal and local consumer lending rules in all 50 states. See Company's 10K, p. 12, accessible at: http://d18rn0p25nwr6d.cloudfront.net/CIK-0001580608/a222db77-44d6-4601-ab7f-a0d49c2acaf4.pdf
2. Consumer Financial Protection Bureau, "CFPB Orders Chase and JPMorgan Chase to Pay $309 Million Refund for Illegal Credit Card Practices," Press Release dated September 19, 2013, available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-chase-and-jpmorgan-chase-to-pay-309-million-refund-for-illegal-credit-card-practices/
3. National Employment Law Project, "Banking on the Hard Sell: Low Wages and Aggressive Sales Metrics Put Bank Workers and Customers at Risk," Report dated June 2016, available at: http://www.nelp.org/content/uploads/NELP-Report-Banking-on-the-Hard-Sell.pdf
4. "American car buyers are borrowing like never before—and missing plenty of payments, too," Quartz, February 21, 2017, available at: https://qz.com/913093/car-loans-in-the-us-have-hit-record-levels-and-delinquencies-are-rising-fast-too/
5. Total auto loan asset-backed securities market worth $65 in 2016. Santander issued 25% of subprime ABSs in 2016. See Santander Consumer 2017 Analyst and Investor Day, p. 41 available at: http://s1.q4cdn.com/269973923/files/doc_presentations/2017-Investor-Day-Presentation-Final.pdf and for growth, see "Subprime Auto Loan Payments Slowing in Tandem with Rise in New Vehicle Prices," Forbes, May 31, 2017, available at: https://www.forbes.com/sites/davidkiley5/2017/05/31/sub-prime-auto-loan-payback-and-delinquencies-rising-along-with-new-vehicle-prices/#3f4198ef5974
6. "Investment Riches Built on Subprime Auto Loans to Poor," New York Times, January 26, 2015, available at: https://dealbook.nytimes.com/2015/01/26/investment-riches-built-on-auto-loans-to-poor/
7. "Santander to Buy Citi Auto Loan Portfolio," AutoFinance News, June 24, 2010, available at: http://www.autofinancenews.net/santander-to-buy-citi-auto-loan-portfolio/; "Santander Buys HSBC U.S. Auto Finance Units for $3.56 Billion," AOL Finance, August 31, 2010, available at: https://www.aol.com/2010/08/31/santander-hsbc-auto/; "Santander Just Got Hit Hard for Approving Thousands of Subprime Auto Loans," Business Insider, March 29, 2017, available at: http://www.businessinsider.com/santander-sub-prime-auto-loans-2017-3. For one-third of market, see "Santander Unit to Pay $25 Million Over Subprime Auto Loans," Bloomberg, March 29, 2017,

available at: https://www.bloomberg.com/news/articles/2017-03-29/santander-unit-to-pay-25-million-to-resolve-subprime-auto-probe

8. Santander Just Got Hit Hard for Approving Thousands of Subprime Auto Loans," Business Insider, March 29, 2017, available at http://www.businessinsider.com/santander-sub-prime-auto-loans-2017-3
9. The principle of "unfair" and "deceptive" are informed by Section 5 of the Federal Trade Commission Act (FTC Act). An act or practice is unfair when it causes or is likely to cause substantial injury to consumers, the injury is not reasonably avoided by consumers, and the injury is not outweighed by countervailing benefits to consumers or to competition. An act or practice is deceptive when the act or practice misleads or is likely to mislead the consumer; the consumer's interpretation is reasonable under the circumstances; and the misleading act or practice is material. Deceptive acts can also take to form of an omission. The principle of "abusive" is informed by Dodd-Frank Act Section 1031(d), 12 U.S.C., Section 5531(d). An act or practice is abusive when it materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or takes unreasonable advantage of a) a consumer's lack of understanding of the material risks, costs, or conditions of a product or service; b) a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or c) a consumer's reasonable reliance on a covered person to act in his or her interests.
10. Subprime loans are high interest loans extended to customers with bad or no credit. For largest lender, see The subprime auto market is turning toxic," Wolf Richter, Business Insider, October 5, 2016. Santander USA Holdings, 2017 Analyst and Investor Day, February 23, 2016. p. 41.
11. From 2012 to 2017, consumer complaints about Santander USA to the CFPB have increased when compared quarterly and yearly. Complaints went from 2012 (147), 2013 (329), 2014 (557), 2015 (756), to 2016 (854). In 2017 there are more in the first and second quarter when compared to 2016: first quarter 204 to 288, second quarter 192 to 274.
12. The Supreme Court recently decided in Santander's favor in Henson v. Santander USA, No. 16-349 (decided June 2, 2017). A complaint was filed against Santander as a debt collector under the Fair Debt Collection Practices Act (FDCPA) However, the Supreme Court held that, because Santander bought the debt prior to attempting to collect, it was not a debt collector subject to the FDCPA. In auto finance, regulations haven't kept up with changes in marketplace, weaker underwriting, and technological advancements. See Prepared Remarks of CFPB Director Richard Cordray on Field Hearing on Debt Collection, Sacramento, CA, July 28, 2016.
13. For examples of Santander's history of non-compliance, see the company's Form 10-K/A, as filed with the SEC, 03-02-2017, pp. 47-49.
14. See "An Open Letter to the Repossession and Recovery Industry," Santander.
15. See Santander's Ana Botin has Something to Prove, Edward Robinson and Macarena Munoz Montijano, Bloomberg, November 22, 2015.
16. For $98 billion figure see SC Analyst and Investor Day presentation, November 18, 2014. For

driving scale, $34 billion in assets from certain operations or loan portfolios were converted or acquired from CitiFinancial Auto, Triad Financial (RoadLoans.com), HSBC Auto, and GE Capital. SC Investor Presentation 2017 p. 31. SC also made origination deals with Chrysler and CarMax. In 2014, it became Fiat Chrysler's captive finance arm. The Center for Responsible Lending's (CRL) auto finance industry expert Chris Kukla calls SC "company number 1," as far as the crappy things [it] does to people." Also see "They Had Created This Remarkable System for Taking Every Last Dime From Their Customers", Gary Rivlin, Mother Jones, March 2016.

17. Average managed assets, which include all assets including balance sheet and serviced for others. See Santander USA Holdings, 2017 Analyst and Investor Day, February 23, 2017, p.9.
18. Santander USA Holdings 2015 ABS Investor Day, December 10, 2015, p. 10.
19. The subprime auto market is turning toxic," Wolf Richter, Business Insider, October 5, 2016. Santander USA Holdings, 2017 Analyst and Investor Day, February 23, 2017. p. 41
20. Santander reported it had 5,100 employees not including third-party outsourced in 2017. Santander USA Holdings, 2017 Analyst and Investor Day, February 23, 2017, p. 9. As of December 2015, in collections Santander had at least 1,745 direct employees in the US, and 482 more working at overseas service providers at "KM2" and "Xerox". At that time, Santander had a total of 4,900 direct employees in the US and at least 648 working at overseas service providers. This may or may not include third-party outsourced. See Santander USA Holdings 2015 ABS Investor Day, December 10, 2015, p. 31.
21. See "3 Main Differences Between Debt Buyers and Collection Agencies," Credit Consulting Services, Inc., June 23, 2014. Accessible here: http://www.creditconsultingservices.com/blog/3-main-differences-between-debt-buyers-and-collection-agencies/
22. See Santander 2016 ABS Investor Day Presentation, December 20, 2016, p. 27.
23. See "Keeping Forced Ranking out of Court," Sarah Boehle, Training Mag, June 2008.
24. Santander publicly describes its system as a "forced ranking." See Santander Consumer 2016 ABS Investor Day presentation, May 12, 2016, p. 41. A forced ranking is one of the most controversial ranking systems. Also known as the vitality curve, forced distribution or rank and yank, it grades a workforce based on the individual productivity of its members. Forced ranking is a controversial technique because it focuses on making relative comparisons between a company's best and worst employees using subjective criteria. See "What is a Forced Ranking?" at HRZone. The Wall Street Journal also declared it dead. See "It's Official: Forced Ranking Is Dead," CIO Journal.
25. See Santander Consumer 2016 ABS Investor Day presentation, p. 41. Accessible here: http://s1.q4cdn.com/269973923/files/doc_presentations/Barclays-Investor-Day_Finalv2.pdf
26. See "Keeping Forced Ranking out of Court," Sarah Boehle, Training Mag, June 2008.
27. Metrics are described in later text and include kept rate, wrap time, conversion time, idle time; Improvement Per Hour (IPH) and NCAR (used in loss and may be an acronym for non-collateral asset recovery.)
28. A loan extension at Santander "moves customer's monthly payments to the end of the loan, extending the original maturity of the contract (maximum of eight months extended for the life of

the loan are permitted.) Majority are of two month payments qualifies." "Temporary Reduction in Payment Plan (TRIPP) reduces a customer's payment for a temporary time period (no more than six months permitted). Other modifications are "any permanent change in the original contract terms including principal, interest or maturity of the contract due to the customer's financial difficulty." Santander USA Holdings, 2017 Analyst and Investor Day, February 23, 2017, p. 57.

29. Customer's accounts are given scores that include origination scorecards (an auto lending, personal lending, and deal structure score); post-funding scorecards (loss forecasting score (LFS) and an early payment default score); and behavior scorecards (collection, reinstatement and repossession/skip score). In collections customers are also given a deferment and recovery score for granting extensions and collecting on deficiencies. See Santander Consumer USA 2016 ABS Day Presentation, December 8, 2016, p. 15 and 29.
30. For loan modifications see Santander USA Holdings, 2017 Analyst and Investor Day, February 23, 2016 p. 34.
31. Nelson v. Santander USA, Inc. et.al., U.S. District Court for the Western District of Wisconsin, 11-cv-307-bbc.
32. For retained retail installment contracts, in 2016 the average FICO score was 598, and the average APR was 15.7%. In 2015, the average FICO score was 584, and the average APR was 16.9%. In 2014, the average FICO score was 593, and the average APR was 15.6%. See Company's current 10K, p. 51, accessible here: http://d18rn0p25nwr6d.cloudfront.net/CIK-0001580608/a222db77-44d6-4601-ab7f-a0d49c2acaf4.pdf
33. For average loan origination characteristics, see Santander Consumer USA Holdings, 2017 Analyst and Investor Day Presentation, February 23, 2016. p. 29.
34. See "Almost anyone can get a car loan now — and that's not a good thing for the country," Frank Caparro, Business Insider, April 15, 2017. See also Experian, State of the Automotive Finance Market: A look at loans and leases in Q1 2017, Melinda Zabritski, Senior Director, Financial Solutions, Experian.
35. See "What is 'negative equity' in a car loan," Consumer Financial Protection Bureau blog, August 16, 2016. Available at: https://www.consumerfinance.gov/ask-cfpb/what-is-negative-equity-in-an-auto-loan-en-749/
36. See complaint accessible at CFPB Consumer Complaint database, complaint ID: 1466764, filed January 15, 2016, PA 193XX.
37. For examples of Santander's history of non-compliance, see the company's Form 10-K/A, as filed with the SEC, 03-02-2017, pp. 47-49.
38. "Santander Reaches $9.35 Million Settlement Over Military Repossessions," New York Times, 2-25-2015
39. In working as Fiat Chrysler Automobiles (FCA)' captive provider, Santander bears the risk of loan losses on the Chrysler originations, while FCA shares in residual gains and losses with respect to auto leases. https://www.sec.gov/Archives/edgar/data/1580608/000158060816000185/santander201510-k.htm pg. 12
40. See complaint accessible at CFPB Consumer Complaint database, complaint ID: 2260353, filed

March 15, 2017, CA 902XX. Closed with explanation.

41. In this case, Santander had issued repossession notices (NOIs) without all required disclosures under California law. See "Santander Spares $200M of Auto Debt to Settle Notice Claims," Daniel Siegal, Law360, October 20, 2014. Accessible at https://www.law360.com/articles/588746/santander-spares-200m-of-auto-debt-to-settle-notice-claims
42. Order Granting Motion for Final Approval of Class Action Settlement, Vitrano v. Santander USA, U.S. District Court Central District of California 2:12-cv-02492-AB-MRW, p. 13.
43. Preliminary Order Approving Settlement, Powers v. Santander, USA, Inc., U.S. District Court, District of Massachusetts, 12-cv-11932-TSH, Document 87-1.
44. See complaint accessible at CFPB Consumer Complaint database, complaint ID: 1500617 August 4, 2015, NJ 070XX.
45. Santander USA Holdings, 2017 Analyst and Investor Day, February 23, 2017, p. 57.
46. See complaint accessible at CFPB Consumer Complaint database, complaint ID: 2204671 May 19, 2014, GA 301XX.
47. See complaint accessible at CFPB Consumer Complaint database, complaint ID: 2290650 January 16, 2014, WA 983XX.
48. See "Auto Lender Santander Checked Income on Just 8% in Subprime ABS," Bloomberg, Matt Scully, May 22, 2017. Accessible here: https://www.bloomberg.com/news/articles/2017-05-22/subprime-auto-giant-checked-income-on-just-8-of-loans-in-abs
49. See of Santander USA Holdings Form 10-K/A, as filed with the SEC, February 28, 2017, page 125.
50. See Cease and Desist Agreement accessible here: http://news.delaware.gov/files/2017/03/2017-3-29.SC-executed-CD.pdf
51. See "Why Deep Subprime Auto Loans Are Beginning to Worry Wall Street," The Fiscal Times, Ciro Scotty, March 31, 2017. Accessible here: http://www.thefiscaltimes.com/2017/03/31/Why-Deep-Subprime-Auto-Loans-Are-Beginning-Worry-Wall-Street
52. Complaint, State of Mississippi v. Santander USA, Inc., Chancery Court of the First Judicial District of Hinds County, Mississippi, 25-CH1:17-cv-000020, p. 14.

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