

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 16 C 7940
	)	
HSBC FINANCE CORPORATION,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, the United States of America, alleges as follows:

**INTRODUCTION**

1. The United States brings this action under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. § 3901, *et seq.*, against HSBC Finance Corporation, as successor in interest to HSBC Auto Finance, Inc., for illegally repossessing 75 automobiles from servicemembers during their military service. These repossessions took place between January 1, 2008 and 2010, when Defendant completed the sale of its automobile lending and servicing business to Santander Consumer USA Inc.
  
2. The purpose of the SCRA is to provide servicemembers with protections against certain transactions that could adversely affect their civil legal rights while they are in military service. One of those protections is the requirement that a court review and approve a lender’s repossession of any motor vehicle owned by a servicemember if the servicemember took out the loan and made a deposit or an installment payment before entering military service. The court may delay the repossession or condition the

repossession on the refunding of all or part of the prior installments or deposits made by the servicemember. The court may also appoint an attorney to represent the servicemember, require the lender to post a bond with the court and issue any other orders it deems necessary to preserve the interests of all parties.

3. By failing to obtain court orders before repossessing automobiles owned by protected servicemembers, Defendant denied servicemembers their right to obtain a court's review of whether their repossessions should be delayed or adjusted to account for their military service.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C § 1345, and 50 U.S.C § 4041.
5. Defendant is a Delaware corporation with its headquarters located at 1421 W. Shure Drive, Suite 100, Arlington Heights, Illinois, in the Northern District of Illinois.
6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because Defendant is headquartered and conducts business in the Northern District of Illinois.

#### **DEFENDANT**

7. Until early 2010, Defendant provided automobile loans to consumers through HSBC Auto Finance, Inc. In 2010, Defendant transferred its automobile loan servicing operation and sold its automobile loan portfolio to Santander Consumer USA, Inc. Defendant has neither originated nor serviced automobile loans since 2010.

## BACKGROUND

8. On February 25, 2015, the United States filed a lawsuit, Case Number 3:15-cv-00633-B, against Santander Consumer USA, Inc. in the United States District Court for the Northern District of Texas alleging SCRA violations with respect to over 1,100 motor vehicle repossessions.
9. During the investigation that led up to filing that lawsuit, the United States learned that, for some of those repossessions, HSBC Auto Finance, Inc. had arranged for the physical repossession of the automobile and later sold the account to Santander Consumer USA, which attempted to collect fees relating to the unlawful repossession.
10. On February 26, 2015, the United States District Court for the Northern District of Texas entered a consent order obligating Santander Consumer USA to provide relief to borrowers subject to repossessions that violated the SCRA. Santander Consumer USA was obligated to pay \$5,000 to each servicemember whose account Santander Consumer USA acquired after HSBC Auto Finance, Inc. had arranged for the illegal physical repossession. When Santander Consumer USA was responsible for arranging for the illegal physical repossession itself, it was required to pay \$10,000 plus lost equity and interest.
11. The consent order provided that Santander Consumer USA's obligation to pay \$5,000 did not release any claims by the United States against Defendant for those repossessions.
12. On March 20, 2015, the United States notified Defendant that it was opening an investigation into Defendant's motor vehicle loan servicing policies, practices, and procedures. The United States' investigation included reviewing data on all of Defendant's motor vehicle repossessions between January 1, 2008 and 2010, when it

completed the sale of its automobile lending and servicing business to Santander Consumer USA Inc.

### **SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS**

13. The SCRA provides that “[a]fter a servicemember enters military service, a contract by [a] servicemember for . . . the purchase of real or personal property (including a motor vehicle)” and “for which a deposit or installment has been paid by the servicemember before the servicemember enters military service,” “may not be rescinded or terminated for a breach of terms of the contract . . . *nor may the property be repossessed for such breach without a court order.*” 50 U.S.C. § 3952(a) (emphases added).
14. From January 1, 2008 through 2010, when it completed the sale of its automobile lending and servicing business to Santander Consumer USA Inc., Defendant initiated and completed 75 repossessions, without court orders, of automobiles owned by SCRA-protected servicemembers.
15. At the time of the repossessions, the individuals who owned the repossessed vehicles were servicemembers who were in military service, as defined by 50 U.S.C. § 3911(1) and (2), or were members of a reserve component ordered to report for military service, as defined by 50 U.S.C. § 3917(a).
16. The servicemembers who owned the repossessed vehicles made at least one deposit or installment payment before they entered military service, as defined by 50 U.S.C. § 3911(2).
17. The Department of Defense provides lenders and others seeking to comply with the SCRA an automated database run by the Defense Manpower Data Center (“DMDC database”), to check whether their customers are SCRA-protected servicemembers.

Defendant's written policies did not require it to check the DMDC database, or take any other measures to determine borrowers' military statuses, prior to repossessing their vehicles without court orders.

18. Defendant conducted repossessions even when it had evidence in its own records suggesting that a borrower could be an SCRA-protected servicemember. For example, after Defendant ordered the repossession of a Chevy Malibu owned by a member of the Army National Guard who had been notified of a future call-up to active duty, the contracted repossession company reported back to Defendant on October 16, 2008 that its initial attempt was unsuccessful because the borrower's address was on "a secured military post" in Indiana and "Guards will not let repo truck in there." Defendant nevertheless continued its efforts to repossess the car and eventually succeeded on November 14, 2008.
19. Defendant has engaged in a pattern or practice of violating Section 3952(a)(1) of the SCRA by repossessing the motor vehicles of SCRA-protected servicemembers without court orders.
20. Defendant's violations of Section 3952(a)(1) of the SCRA raise issues of significant public importance.
21. The servicemembers whose motor vehicles were repossessed without court orders in violation of the SCRA are "person[s] aggrieved" pursuant to 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Defendant's conduct.
22. Defendant's conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

**RELIEF REQUESTED**

WHEREFORE, the United States requests that the Court enter an ORDER that:

1. Declares that Defendant's conduct violated the SCRA;
2. Enjoins Defendant, its agents, employees, and successors, and all other persons and entities in active concert or participation with them, with respect to any financial products serviced by them, from:
  - a. repossessing the motor vehicles of SCRA-protected servicemembers without court orders, in violation of the SCRA, 50 U.S.C. § 3952;
  - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of Defendant's illegal conduct to the position he or she would have been in but for that illegal conduct; and
  - c. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any illegal conduct in the future and to eliminate, to the extent practicable, the effects of Defendant's illegal conduct;
3. Awards appropriate monetary damages to each identifiable victim of Defendant's violations of the SCRA, pursuant to 50 U.S.C. § 4041(b)(2).

The United States prays for such additional relief as the interests of justice may require.

Dated: August 8, 2016

Respectfully submitted,

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