

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No.
)	
HSBC FINANCE CORPORATION,)	
)	
Defendant.)	
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CONSENT ORDER

I. INTRODUCTION

1. This Consent Order resolves the allegations contained in the United States’ Complaint that Defendant HSBC Finance Corporation (successor in interest to HSBC Auto Finance, Inc.) violated the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, when it repossessed certain automobiles from “SCRA-protected servicemembers”¹ without court orders from at least January 2008 through when it completed the sale of its automobile lending and servicing business in 2010 to Santander Consumer USA Inc.
2. 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.
3. This Order covers all automobile loans or deficiency balances originated, acquired, and/or serviced by Defendant or any of its subsidiaries, predecessors, acquired

¹ For purposes of this Consent Order, the term “SCRA-protected servicemember” includes servicemembers as defined in 50 U.S.C. § 3911(1) and (2).

companies, or successor entities. For purposes of this Order, loans are defined to include retail installment contracts.

4. Defendant has cooperated fully with the United States' investigation in this matter.
5. The parties agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. § 4041.
6. The parties agree that, to avoid costly and protracted litigation, the claims against Defendant should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the United States and Defendant agree to the entry of this Order. Defendant neither admits nor denies any of the allegations in the United States' Complaint.
7. The effective date of this Order will be the date on which it is approved and entered by the Court.

It is hereby ORDERED, ADJUDGED and DECREED:

II. INJUNCTIVE RELIEF

8. Defendant represents that HSBC Auto Finance, Inc. has neither originated nor serviced automobile loans since 2010. In the event that Defendant reenters the business of originating or servicing automobile loans during the term of this Order, as provided by Paragraph 37, it shall notify the United States at the earlier of sixty (60) days before it intends to reenter this line of business or the time that it notifies its federal regulators of its intention to reenter this line of business. Prior to implementing such reentry, Defendant shall also implement policies, procedures, and training designed to prevent and detect potential SCRA violations in its servicing of automobile loans, including 1) the repossession of automobiles owned

by SCRA-protected servicemembers without a court order during the servicemember's military service,² provided the servicemember paid a deposit on the automobile or installment on the automobile loan while not in military service and 2) processing relief requests from SCRA-protected servicemembers. Defendant shall provide counsel for the United States³ with the details of the policies, procedures, and training forty-five (45) days prior to implementation of such reentry. The United States shall have thirty (30) days to review and agree or object to the proposed policies, procedures, and training.

III. COMPENSATION

9. Defendant will deposit in an interest-bearing escrow account the sum of \$434,500 to fund the compensation payments required by Paragraphs 12 and 13. Title to this account will be in the name of "HSBC Finance Corporation for the benefit of aggrieved persons pursuant to Order of the Court in Civil Action No. [XXX]". Defendant will provide written verification of the deposit to the United States within fifteen (15) calendar days of the effective date of this Order. Any interest that accrues will become part of the Settlement Fund and will be used and disposed of as set forth herein. Any taxes, costs, or other fees related to the escrow account shall be paid by Defendant.

² For purposes of this Consent Order, the term "military service" is defined by 50 U.S.C. § 3911(2).

³ All materials required by this Consent Order to be sent to counsel for the United States shall be sent by commercial overnight delivery addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 1800 G Street, N.W., 7th Floor, Washington, DC 20006, Attn: DJ 216-23-1.

10. The United States has determined that HSBC Auto Finance, Inc. conducted 75 automobile repossessions between January 1, 2008 and when Defendant completed the sale of its automobile lending and servicing business in 2010 to Santander Consumer USA Inc. that were not in compliance with the SCRA. The United States has previously provided the list of these repossessions to Defendant.
11. For 71 of the repossessions identified pursuant to Paragraph 10, the United States has obtained partial compensation of \$5,000 for each servicemember through the settlement of *United States v. Santander Consumer USA Inc.* (N.D. Tex.). The United States has previously provided the list of these repossessions to Defendant.
12. For each repossession identified pursuant to Paragraph 11, Defendant shall provide the following compensation:
 - a. an amount of \$5,000; and
 - b. an additional amount of \$500, which the United States considers to be a fair estimate of the lost equity in the repossessed automobile and interest accrued subsequent to the repossession.
13. For the four repossessions identified pursuant to Paragraph 10 and not identified pursuant to Paragraph 11, Defendant shall provide the following compensation:
 - a. an amount of \$10,000; and
 - b. an additional amount of \$1,000, which the United States considers to be a fair estimate of the lost equity in the repossessed automobile and interest accrued subsequent to the repossession.
14. The amounts described in Paragraphs 12(a) and 13(a) shall be paid entirely to the servicemember-borrower on the note securing the automobile who signs the

Declaration at Exhibit 1 and the Release at Exhibit 2. The amounts described in Paragraph 12(b) and Paragraph 13(b) shall be distributed equally among all owners (including non-servicemember owners) on the title to the automobile who sign the Declaration at Exhibit 1 and the Release at Exhibit 2. In cases where Defendant has already taken remedial actions with respect to a repossession identified pursuant to Paragraph 10, the United States shall consider such remedial actions and adjust the compensation to be awarded.⁴

15. Within sixty (60) calendar days of the effective date of this Order, Defendant shall enter into a contract retaining an Independent Settlement Administrator (“Administrator”) to conduct the activities set forth in Paragraphs 15-20. The selection of the Administrator and the terms of the Administrator’s contract related to the Administrator’s duties pursuant to this Consent Order shall be subject to the non-objection of the United States. Defendant shall bear all costs and expenses of the Administrator. Defendant’s contract with the Administrator shall require the Administrator to comply with the provisions of this Consent Order as applicable to the Administrator. The Administrator’s contract shall require the Administrator to work cooperatively with Defendant and the United States in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the United States. The Administrator’s contract shall require the

⁴ In determining the amount of compensation due to any servicemember or co-borrower pursuant to Paragraphs 12 and 13, the United States will credit any monetary compensation or other remediation efforts, including the return of the automobile to the borrower, already made by Defendant to any servicemember or co-borrower for alleged compliance issues pursuant to Section 3952 of the SCRA arising from the same automobile loan.

Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator.

16. The Administrator's contract shall require the Administrator, as part of its operations, to establish, and to maintain throughout the contract period, multiple cost-free means for affected servicemembers to contact it, including an electronic mail address, a website, and a toll-free telephone number.
17. Within sixty (60) days of the effective date of this Order, Defendant shall provide to the Administrator the name, most recent mailing address in its servicing records, Social Security number, loan account number(s), and any other information as requested by the United States and the Administrator with respect to the repossessions and borrowers identified pursuant to Paragraph 10. Such information and data shall be used by the Administrator solely for the purpose of implementing the Consent Order.
18. For repossessions identified pursuant to Paragraph 10, the Administrator's contract shall require the Administrator to notify each identified servicemember by letter (using wording mutually agreeable to Defendant and the United States) within sixty (60) calendar days of the effective date of this Order. For repossessions where money is due to a non-servicemember owner pursuant to Paragraph 14, the Administrator's contract shall require the Administrator to notify each identified non-servicemember owner by letter (using wording mutually agreeable to Defendant and the United States) within fifteen (15) calendar days of receiving the Declaration from the servicemember-borrower. The Administrator's contract shall require the Administrator to provide the United States with samples of all letters,

and receive the United States' approval of the sample letters, before mailing any letter required by this Paragraph, and all letters mailed pursuant to this Paragraph shall be accompanied by the Declaration at Exhibit 1 and the Release at Exhibit 2. The Administrator's contract shall require the Administrator to skip trace and redeliver any letter that is returned to the Administrator as undeliverable.

19. The Administrator's contract shall require the Administrator to issue and mail compensation checks no later than twenty-one (21) calendar days after receipt of a signed declaration and release. The Administrator's contract shall require the Administrator to skip trace and redeliver any payment that is returned to the Administrator as undeliverable, or that is not deposited or cashed within six (6) months.
20. The Administrator's contract shall require the Administrator to provide the United States with a monthly accounting of all declarations received, checks issued (including copies of issued checks), and notifications without responses or that were returned as undeliverable for a period of two (2) years following the date the initial notifications are sent to persons eligible for the compensation payments required by Paragraphs 12 and 13, or until the United States is satisfied that best efforts to locate the servicemembers entitled to receive remediation checks are exhausted, whichever comes first. The Administrator's contract shall require the Administrator to report any uncashed checks in accordance with state unclaimed property laws.
21. Any money not distributed from the escrow account, including accrued interest, within two (2) years of the date the initial notifications are sent to persons eligible for the compensation payments required by Paragraphs 12 and 13 will be

distributed to one or more charitable organizations that assist servicemembers. Recipient(s) of such funds must not be related to Defendant. Before selecting the organization(s), Defendant will obtain a proposal from the organization(s) on how the funds will be used consistent with furthering the goals of the SCRA, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. The United States and Defendant may request modification of the proposal before approving the organization(s). The parties will thereafter seek approval from the Court to distribute the remaining funds to the qualified organization(s). Defendant will require each recipient to submit to Defendant and the United States a detailed report on how funds are utilized within one (1) year after the funds are distributed, and every year thereafter until the funds are exhausted.

22. Defendant will not be entitled to a set-off, or any other reduction, of the amount of compensation payments required by Paragraphs 12 and 13 because of any debts owed by the recipient, except in the calculation of lost equity as provided by Paragraphs 12(b) and 13(b). Defendant also will not refuse to make a payment based on a release of legal claims, arbitration agreement, or loan modification previously signed by any such recipient.
23. In the event that the United States has reason to believe that the Administrator is not materially complying with the terms of its contract with Defendant, Defendant shall present for review and determination of non-objection a course of action to effectuate the Administrator's material compliance with its contract with Defendant. The United States shall make a determination of non-objection to the

course of action or direct Defendant to revise it. In the event that the United States directs revisions, Defendant shall make the revisions and resubmit the course of action to the United States within thirty (30) days. Upon notification that the United States has made a determination of non-objection, Defendant shall implement the course of action. In the event that the United States and Defendant are unable to agree upon the terms of a contract or a course of action to effect the Administrator's material compliance with its contract with Defendant, the parties may present the matter to the Court. The Court shall determine whether the contract is sufficient to require the Administrator's full compliance with the provisions of the Order as applicable to the Administrator, and whether the Administrator is materially complying with the terms of its contract with Defendant, and it shall direct Defendant to remedy promptly any deficiencies it finds.

24. No individual may obtain review by the Court, the parties, or the Administrator of the identifications made, and payments disbursed, pursuant to Paragraphs 10-22.

IV. OTHER RELIEF

25. Concurrent with providing financial compensation to the servicemember-borrower, Defendant must request that all three (3) major credit bureaus delete trade lines for accounts belonging to the servicemember(s) and any co-borrower(s) attributable specifically to the wrongful repossessions. Further, Defendant shall not pursue, and must indemnify the servicemember and his or her co-borrower(s) against any third-party's pursuing, any deficiency that was remaining on the SCRA-protected loan

after a repossession, where the repossession was completed in violation of the SCRA by Defendant.

26. Following the effective date of this Order, Defendant shall provide the United States with a monthly accounting of relief provided pursuant to Paragraph 25 for the same period that monthly accounting is required pursuant to Paragraph 20, at which time such obligation to provide a monthly accounting shall terminate.

V. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

27. For the duration of this Order, as provided by Paragraph 37, Defendant shall retain all records relating to its obligations hereunder. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request during the term of this Order.
28. During the term of this Order, as provided by Paragraph 37, in the event that Defendant reenters the business of originating or servicing automobile loans, Defendant shall notify counsel for the United States in writing every six (6) months of receipt of any SCRA or military-related complaint. Defendant shall provide a copy of any written complaints with the notifications.

VI. SCOPE OF CONSENT ORDER

29. The provisions of this Order shall apply to Defendant and any of its subsidiaries, predecessors, acquired companies, or successor entities. It shall also apply to the officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with all of those entities, including with respect to any automobile loans they acquired from January 1, 2008 to the effective date of this Order.

30. In the event that Defendant is acquired by or merges with another entity, Defendant shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Order for the remaining term of this Order, as provided by Paragraph 37.
31. This Order releases all claims for practices addressed in the Complaint's allegations against Defendant, its parent companies, and any of their respective subsidiaries, affiliates, predecessors, acquired companies, and successor entities, and their respective officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with all of those entities. To the extent not addressed otherwise, this Order also resolves and releases all claims for violations of Section 3952(a) of the SCRA for the accounts identified in Paragraphs 12 and 13. This Order does not release any claims that may be held or are currently under investigation by any federal agency, or any claims that may be pursued for actions that may be taken by any executive agency established by 12 U.S.C. § 5491 or the appropriate Federal Banking Agency (FBA), as defined in 12 U.S.C. § 1813(q), against Defendant, HSBC North America Holdings Inc., HSBC Bank USA, N.A., HSBC Holdings plc, any of their affiliated entities, and/or any of their institution-affiliated parties, as defined by 12 U.S.C. § 1818 or any other statute or regulation. This Order does not release any claims that the United States or Defendant may have against Santander Consumer USA Inc.
32. Nothing in this Order will excuse Defendant's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Defendant that imposes additional obligations on it.

33. The parties agree that, as of the effective date of this Order, litigation is not “reasonably foreseeable” concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Order.

VII. MODIFICATIONS, ATTORNEY’S FEES AND COSTS, AND REMEDIES FOR NON-COMPLIANCE

34. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the parties.

35. The parties shall be responsible for their own attorney’s fees and court costs, except as provided for in Paragraph 36.

36. The parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by Defendant, whether willful or otherwise, to perform in a timely manner any act required by this Order or otherwise comply with any provision thereof, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring the performance of such act or deeming such act to have been performed, and an award of any damages, costs, and attorney’s fees which may have been occasioned by Defendant’s violation or failure to perform.

VIII. RETENTION OF JURISDICTION

37. This Order shall expire in five (5) years from its date of entry. However, if Defendant has not reentered the business of originating or servicing automobile loans, this Order shall expire at the time that the requirements set forth in Paragraphs 20 and 21 have been satisfied. The Court shall retain jurisdiction for the duration of this Order to enforce its terms, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of this Order in the interests of justice.

SO ORDERED, this ___ day of _____, ____.

UNITED STATES DISTRICT JUDGE

The undersigned hereby apply for and consent to the entry of the Order:

For the United States of America:

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United States Attorney
Northern District of Illinois

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For Defendant HSBC Finance Corporation:

/s/ Valerie L. Hletko (by consent)
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EXHIBIT 1

DECLARATION

I, [INSERT NAME], do hereby declare and state as follows:

1. I purchased a vehicle obtained through a loan that was originated, financed, or serviced by an affiliate of HSBC Finance Corporation, Loan Number [LOAN NUMBER], that was repossessed.
2. I obtained the loan on or about [LOAN FUNDING DATE].
3. On or about [REPOSSESSION DATE], I **WAS** either:
 - i. on a covered period of military service; **OR**
 - ii. a member of a reserve component (Reserves or National Guard) and had received orders to report for a covered period of military service.
4. Please consider the following additional information in support of this Declaration:

I confirm that the foregoing is true and correct.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

APPENDIX REGARDING MILITARY SERVICE

As used in this Declaration, a “covered period of military service” is either of the following:

- a) Full-time active duty with the armed forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard);
- b) A period of active service with the National Guard: i) authorized by the President or the Secretary of Defense; ii) longer than thirty (30) consecutive days; iii) under orders issued under Section 502(f) of Title 32 of the United States Code; and iv) for the purpose of responding to a national emergency declared by the President and supported by federal funds;
- c) Active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration; or
- d) A period of time during which I was a servicemember absent from duty on account of sickness, wounds, leave, or other lawful cause.

If you have any additional questions about whether your service constitutes a “covered period of military service” for purposes of this declaration, please contact the Department of Justice at 202-514-4713.

EXHIBIT 2

RELEASE

In consideration for the parties' agreement to the terms of the Consent Order entered by the United States District Court for the Northern District of Illinois in United States v. HSBC Finance Corporation, and HSBC Finance Corporation's payment to me of \$ [AMOUNT], I, [BORROWER'S NAME], hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above and related to the alleged violation of Section 3952(a) of the Servicemembers Civil Relief Act, that I may have against HSBC Finance Corporation and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and its heirs, executors, administrators, successors or assigns. I do not release any claims that I may have against any subsequent owner(s), not related to HSBC Finance Corporation, of my retail installment contract or automobile loan, as applicable.

Executed this _____ day of _____, 20__.

BORROWER'S SIGNATURE: _____

PRINT NAME: _____