

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU,

Plaintiff

v.

SECURITY NATIONAL
AUTOMOTIVE ACCEPTANCE
COMPANY, LLC, an Ohio limited liability
company,

Defendant.

Civil Action No. 1:15-cv-401

COMPLAINT

Electronically Filed

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The Consumer Financial Protection Bureau (the “Bureau”) brings this action against Security National Automotive Acceptance Company, LLC (“SNAAC”) and alleges as follows:

INTRODUCTION

1. Defendant SNAAC is an auto-finance company specializing in lending to members of the United States military. SNAAC has engaged in unlawful acts and practices in its collection of consumer debt. SNAAC has threatened to contact delinquent borrowers’ commanding officers and has in fact contacted commanding officers, disclosing details about borrowers’ debts and delinquencies; SNAAC has made misleading statements regarding the potential impacts on borrowers’ military careers and tax liability if they remained delinquent; and SNAAC has made misleading statements regarding its intention to take legal action and its ability to obtain involuntary allotments and garnishments. This conduct is unfair, deceptive,

and abusive in violation of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531, 5536.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over this action because it presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345; 12 U.S.C. § 5565.

3. Venue is proper because Defendant is located, resides, and does business in this District. 12 U.S.C. § 5564(f).

PARTIES

4. The Bureau is an independent agency of the United States charged with regulating the offering and provision of consumer-financial products and services under “Federal consumer financial laws.” 12 U.S.C. § 5491(a). The Bureau is authorized to commence civil actions by its own attorneys to address violations of Federal consumer financial laws, including the prohibition on covered persons from engaging in any unfair, deceptive, or abusive act or practice under the CFPA, 12 U.S.C. §§ 5564(a)-(b), 5531, 5536.

5. SNAAC is an Ohio limited-liability company headquartered in Mason, Ohio. SNAAC purchases and services retail-installment-sales contracts originated by motor vehicle dealers – primarily in the sale of used vehicles. It conducts business in approximately 30 states. SNAAC lends principally to current and retired members of the United States military, although it also lends to some civilians. (SNAAC’s borrowers will be referred to collectively as “servicemembers.”)

6. At all times between July 21, 2011 and the present, SNAAC has collected millions of dollars in consumer debt from thousands of servicemembers arising from retail-installment-sales contracts. Accordingly, SNAAC has offered or

provided a consumer-financial product or service and is a “covered person” under the CFPA. 12 U.S.C. § 5481(6)(A), (15)(A)(i) & (x).

FACTUAL BACKGROUND

Threatened and Actual Contacts with Commanding Officers and Representations Regarding Impacts of Delinquency on Servicemembers’ Military Careers

7. On many occasions in telephone and written collection communications with servicemembers, SNAAC collectors have said that they would contact servicemembers’ commanding officers or chains of command (collectively “command”)* about the servicemembers’ debts and delinquencies. In numerous such communications, SNAAC collectors have said that they would inform command that the servicemembers were in violation of the Uniform Code of Military Justice (“UCMJ”), a Department of Defense instruction, standard, or regulation (collectively “DoDI”), or military regulations, and that the servicemembers consequently could be subject to proceedings or discipline under the UCMJ (collectively “UCMJ action”) for indebtedness.

8. On many occasions, SNAAC collectors have contacted servicemembers’ commands by telephone and in writing, disclosing details of the servicemembers’ debts and delinquencies and requesting assistance in bringing the accounts current. In numerous such communications, SNAAC collectors have characterized delinquencies as violations of a DoDI or military regulations and have said that the servicemembers were subject to UCMJ action.

9. In many instances, SNAAC collectors have contacted commanding officers on multiple occasions regarding a single account and have escalated contacts up the chain of command. On numerous occasions, after servicemembers had

* “Command” as used herein will also include civilian employers of SNAAC borrowers.

requested that SNAAC cease contacts with command, SNAAC has continued such contacts.

10. In telephone and written communications, SNAAC collectors have on many occasions told servicemembers and their commands not only that servicemembers' delinquencies could result in UCMJ action, but also that those delinquencies could have a number of adverse impacts on the servicemembers' military careers, including demotion, loss of promotion, discharge, denial of re-enlistment, loss of security clearance, or re-assignment. In many instances, consequences described by SNAAC collectors were exaggerated: they were extremely unlikely to occur or could not occur as a result of servicemembers' consumer-debt delinquencies.

11. The above-described communications with servicemembers and their commands caused or were likely to cause servicemembers to suffer substantial injury.

Contract Addendum Purporting to Authorize Contacts with Command

12. Since at least July 21, 2011, servicemembers who obtained financing through SNAAC have been required to sign a contract addendum entitled, "Addendum to Retail Installment Contract and Security Agreement (Includes an Arbitration Clause)." Buried in the addendum is a provision purporting to give SNAAC permission to contact the borrower's "employer/commanding officer" to assist in collecting in the event of default and for other purposes.

13. Many servicemembers were unaware that among the documents they signed when purchasing their vehicle was a contract addendum containing such a provision. Even if they had read the language, servicemembers had no ability to bargain or negotiate the provision out of the contract addendum. And even if servicemembers signed the addendum knowing that it contained such a provision, they could not reasonably have anticipated the nature and frequency of the

threatened and actual contacts with command to which they would be subject upon default.

Representations Regarding Intent to File Collection Action

14. On many occasions, SNAAC has stated to servicemembers that it intended to file collection actions when, at the time SNAAC made the statement, it had not determined whether to take such action. Under company policy, SNAAC does not file a collection action unless an account meets multiple internal criteria. Only after a SNAAC representative has researched the account and found that it meets all of the criteria and after one or more other SNAAC personnel has independently reviewed the account for compliance with the internal criteria does SNAAC make a determination regarding whether to take legal action.

15. In many instances, SNAAC has nevertheless represented to servicemembers – both directly and through communications with their commands – that it intended to file suit before completing the required internal research and review.

Misrepresentations Regarding Other Consequences of Delinquency

16. In numerous collection communications, SNAAC has made the following misrepresentations:

- a. SNAAC has misleadingly suggested that it could immediately commence an involuntary allotment or wage garnishment – without first obtaining a judgment;
- b. SNAAC has misleadingly suggested that failure to pay a deficiency judgment could result in the servicemember being held in contempt of court or subject to court-ordered penalties, when such consequences were extremely remote or impossible; and
- c. SNAAC has misleadingly suggested that servicemembers could be taxed on all or a portion of an unpaid balance when SNAAC had not

satisfied the Internal Revenue Service's criteria for reporting the servicemembers' debts as being discharged and thereby taxable.

COUNT I

(Violation of the CFPA – Unfair Acts or Practices – Threatened and Actual Contact with Command)

17. The allegations in paragraphs 1-16 are incorporated here by reference.

18. An act or practice is unfair under the CFPA if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c)(1).

19. Since July 21, 2011, in communications with consumers for the purpose of collecting debt, SNAAC has threatened to contact command regarding the debt and delinquency; has threatened to notify command that the consumer is in violation of the UCMJ, DoDI, and military regulations and is subject to potential UCMJ action; and has represented that the consumer could suffer damage to his or her military career for failing to pay the debt. In communications with command for the purpose of collecting on credit contracts, SNAAC has disclosed details of consumers' debts and delinquencies, has characterized the delinquencies as violations of the DoDI and military regulations subjecting the consumer to potential UCMJ action, and has described negative consequences to the consumers' military careers that allegedly could result from their indebtedness.

20. SNAAC's conduct caused or was likely to cause substantial injury to consumers that was not outweighed by any countervailing benefits.

21. Many consumers were unaware of the contractual language purporting to authorize SNAAC to contact their command. Even if they had been aware of the provision, they had no opportunity to bargain for its removal, and they could not reasonably have anticipated the nature and frequency of threatened and actual contacts with command to which they could be subject upon default. In numerous

instances, SNAAC continued to contact command after consumers requested a cessation of such contacts.

22. Accordingly, SNAAC committed unfair acts or practices in violation of 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

COUNT II
(Violation of the CFPA – Abusive Acts or Practices – Threatened and Actual Contact with Command)

23. The allegations in paragraphs 1-16 are incorporated here by reference.

24. An act or practice is abusive under the CFPA if it takes unreasonable advantage of consumer's inability to protect his or her interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

25. Since July 21, 2011, SNAAC has taken unreasonable advantage of consumers' inability to protect their interests in connection with their selection of SNAAC to finance vehicle purchases and SNAAC's collection of debt arising from such financing.

26. At the time they selected SNAAC to finance their purchases, many consumers did not know that upon default, they would be subject to the threatened and actual contacts with command described above. Many consumers were not aware of the contractual language purporting to authorize such contacts. Even if they had been aware of the provision, they had no opportunity to bargain for its removal, and they could not have anticipated the nature and frequency of threatened and actual contacts with command to which they could be subject upon default.

27. Once consumers defaulted, they became subject to the repeated threats to contact and actual contacts with command described above. In numerous instances, SNAAC continued to contact command after consumers had requested a cessation of such contacts.

28. SNAAC took unreasonable advantage of consumers' inability to protect their interests, leveraging consumers' military status in its collection of debt.

Through exaggerated claims regarding the potential impacts of a delinquency on consumers' military careers, threats to inform command about delinquencies and notify command of alleged military violations, as well as actual contacts with command in which SNAAC asserted that consumers had committed such violations and were therefore subject to discipline, SNAAC brought enormous pressures to bear on servicemember borrowers that would not be available in the collection of debt from civilian borrowers. Consumers who became delinquent on vehicle loans found themselves subject to coercive debt-collection tactics against which they could not have protected themselves, either at the time of contracting or after becoming delinquent.

29. Accordingly, SNAAC committed abusive acts or practices in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

COUNT III
(Violation of the CFPA – Deceptive Acts or Practices – Intent to Sue)

30. The allegations in paragraphs 1-16 are incorporated here by reference.

31. An act or practice is deceptive under the CFPA if there is a misrepresentation or omission of information that is likely to mislead consumers acting reasonably under the circumstances and that information is material to consumers.

32. Since July 21, 2011, in numerous instances in connection with the collection or attempt to collect debt from consumers, SNAAC has represented, directly or indirectly, expressly or by implication, that it intended to take legal action against the consumers.

33. In truth and in fact, in numerous instances, SNAAC did not intend to take such action against consumers at the time SNAAC made the statement.

34. Such representations were material and likely to mislead consumers acting reasonably under the circumstances.

35. Accordingly, SNAAC committed deceptive acts or practices in violation of 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

**COUNT IV
(Violation of the CFPA – Deceptive Acts or Practices – Impacts on Military Careers)**

36. The allegations in paragraphs 1-16 are incorporated here by reference.

37. Since July 21, 2011, in numerous instances in connection with the collection or attempt to collect debt from consumers, SNAAC has represented, directly or indirectly, expressly or by implication, that a consumer's failure to pay a debt could result in UCMJ action and have a number of adverse career consequences.

38. In truth and in fact, in numerous instances, it was extremely unlikely that the described consequences would occur.

39. Such representations were material and likely to mislead consumers acting reasonably under the circumstances.

40. Accordingly, SNAAC committed deceptive acts or practices in violation of 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

**COUNT V
(Violation of the CFPA – Deceptive Acts or Practices – Other Consequences of Delinquency)**

41. The allegations in paragraphs 1-16 are incorporated here by reference.

42. Since July 21, 2011, in numerous instances in connection with the collection or attempt to collect debt from consumers, SNAAC has represented, directly or indirectly, expressly or by implication, that:

- a. SNAAC could immediately commence an involuntary allotment or wage garnishment – without first obtaining a judgment;
- b. a consumer's failure to pay a deficiency judgment could result in the consumer's being held in contempt of court or subject to court-ordered penalties; and

- c. a consumer's failure to pay a delinquent debt could result in all or a portion of the unpaid balance to be taxed.
43. In truth and in fact, in numerous instances, such consequences would not or could not occur.
44. Such representations were material and likely to mislead consumers acting reasonably under the circumstances.
45. Accordingly, SNAAC committed deceptive acts or practices in violation of 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

DEMAND FOR RELIEF

The Bureau requests that the Court:

- a. permanently enjoin Defendant from committing future violations of the CFPA;
- b. award damages or other monetary relief against Defendant;
- c. order Defendant to pay redress to consumers harmed by its unlawful conduct;
- d. order disgorgement of ill-gotten revenue against Defendant;
- e. impose civil money penalties against Defendant;
- f. order Defendant to pay the Bureau's costs incurred in connection with prosecuting this action; and
- g. award additional relief as the Court may determine to be just and proper.

Dated: June 17, 2015

Respectfully submitted,

Anthony Alexis
Enforcement Director
Jeffrey Paul Ehrlich
Deputy Enforcement Director
John C. Wells
Assistant Litigation Deputy
/s/ Maxwell S. Peltz
Maxwell S. Peltz, Trial Attorney
Senior Litigation Counsel
1700 G Street NW
Washington, DC 20552
Phone: (415) 633-1328
Fax: (415) 677-9954
Email: maxwell.peltz@cfpb.gov

Attorneys for Plaintiff
Consumer Financial Protection Bureau