1		
2		
3		
4		
5		
6		
7	I Company of the Comp	WASHINGTON Y SUPERIOR COURT
8	STATE OF WASHINGTON,	NO.
9 10	Plaintiff,	COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF
11	V.	
12	TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH	
13	AMERICA, INC.; TOYOTA MOTOR SALES, U.S.A., INC.; and TOYOTA MOTOR ENGINEERING &	
14	MANUFACTURING NORTH AMERICA, INC.,	
15	Defendants.	
16 17	COMES NOW Plaintiff, the State of	Washington, by and through its attorneys Robert
18	W. Ferguson, Attorney General, and Mary C	C. Lobdell, Senior Counsel, and brings this action
19	against Defendants Toyota Motor Corporat	ion, Toyota Motor North America, Inc., Toyota
20	Motor Sales, USA, Inc., and Toyota Motor F	Engineering & Manufacturing North America, Inc.
21	(hereinafter collectively referred to as "Defe	endants" or "Toyota") for violating the Consumer
22	Protection Act, chapter 19.86 RCW, and the	ne Dealers and Manufacturers Act, chapter 46.70
23	RCW, as follows:	
24	222 , 400 201101	
25		
26		

1	I. JURISDICTION AND VENUE
2	1.1. This action is brought for and on behalf of the State of Washington, by
3	attorneys Robert W. Ferguson, Attorney General, and Mary C. Lobdell, Senior Counsel
4	pursuant to the provisions of the Consumer Protection Act ("Consumer Protection Act")
5	chapter 19.86 RCW, and the Dealers and Manufacturers Act, chapter 46.70 RCW.
6 7	1.2. This Court has jurisdiction over the Defendants pursuant to the Consumer
8	Protection Act, chapter 19.86 RCW, the Dealers and Manufacturers Act, chapter 46.70 RCW
9	RCW 4.28.180 and RCW 4.28.185 because Defendants transacted business within the State of
10	Washington or engaged in conduct impacting Washington consumers at all times relevant to
11	this complaint.
12	1.3. Venue for this action properly lies in Pierce County, Washington, pursuant to
13	
14	RCW 4.12.020 because Defendants transacted business in Pierce County, Washington, out of
15	which this action arose. This action is brought by the Attorney General on behalf of the State
16	of Washington for the benefit thereof.
17	1.4. Defendants agree to waive any notice required by law.
18	II. PARTIES
19	2.1. Plaintiff, the State of Washington (hereinafter "Plaintiff"), is charged, inter alia
20	
21	with the enforcement of the Consumer Protection Act, chapter 19.86 RCW, and the Dealers
22	and Manufacturers Act, chapter 46.70 RCW.
23	2.2. Defendants are Toyota Motor Corporation (hereinafter "TMC"), Toyota Motor
24	North America, Inc. (hereinafter "TMA"), Toyota Motor Sales, USA, Inc. (hereinafter
25	"TMS"), and Toyota Motor Engineering & Manufacturing North America Inc. (hereinafter
26	11115), and Toyota 1110tor Engineering & Wandiacturing North America inc. (nerematic
•	

. 1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	

24

25

26

"TEMA").

2.3. Defendants are composed of numerous subsidiaries, some of which are based in the United States. However, Defendants' principal corporate offices are located at 1 Toyotacho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota transacts business in Washington and nationwide by manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

III. COMMERCE

Defendant is now, and has been at all times relevant to this lawsuit, engaged in trade or commerce in the State of Washington within the meaning of RCW 19.86.020 including but not limited to manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

IV. BACKGROUND

- **4.1.** Toyota manufactures, assembles, advertises, markets, promotes, sells, and distributes motor vehicles nationally and in the State of Washington.
- **4.2.** Since the formation of Toyota Motor Sales, USA, Inc., on October 31, 1957, Toyota has manufactured, assembled, advertised, marketed, promoted, sold and distributed millions of vehicles in the United States. Defendants, from January 1, 2003, through January 30, 2010, consistently represented in advertising and public statements that Toyota vehicles were safe and reliable transportation.
- **4.3.** In 2011, Toyota Motor Sales reported that Toyota sold 1,644,661 vehicles in the United States.

-	3	
4	1	
4	5	
(5	
,	7	
į	8	
(9	
[()	
1	1	
12	2	
1.	3	
4	4	
1 :	5	
1 (6	
1′	7	
18	8	
19	9	
2(0	
2	1	
2.	2	
2.	3	

25

26

V. UNINTENDED ACCELERATION

- **5.1.** According to the National Highway Traffic Safety Administration (hereinafter referred to as "NHTSA"), the federal agency primarily responsible for maintaining motor vehicle safety in the United States, unintended acceleration generally "refers to the occurrence of any degree of acceleration that the vehicle driver did not purposely cause to occur."
- **5.2.** Recent government studies into the possible causes of unintended acceleration in all vehicles, including Toyota vehicles, indicate that driver error (through pedal misapplication) and mechanical issues (such as "floor mat entrapment" of the accelerator pedal and the "sticky pedal" phenomenon) are the primary causes of reports of unintended acceleration.

VI. TOYOTA RECALLS OF 2009 AND 2010

- **6.1.** Reports of unintended acceleration in Toyota vehicles first prompted NHTSA's investigations in 2003.
- **6.2.** Between July 2003 and April 2009, NHTSA opened eight separate unintended acceleration-related investigations into Toyota vehicles.
- 6.3. One of the above-referenced NHTSA investigations resulted in a voluntary equipment recall of 55,000 all-weather floor mats for Lexus vehicles ("floor mat entrapment" recall, NHTSA campaign no. 09V-388). NHTSA determined that if the all-weather floor mats were not installed correctly, the floor mat may interfere with, or entrap, the accelerator pedal, causing a condition called "wide open throttle" where the vehicle could potentially accelerate uncontrollably.

2
2
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 6.4. As a result of a separate NHTSA investigation conducted in January 2009, Toyota agreed to voluntarily recall 26,501 of the 2004 Model Year Sienna minivans to replace a retention clip and floor carpet cover in or near the Sienna's center console trim panel (the Sienna "Safety Improvement Campaign," NHTSA campaign no. 09V-023). Prior to the recall, the design of the center console and a missing retention clip could have resulted in accelerator "pedal interference" which could have caused instances of unintended acceleration.
- 6.5. In August 2009, a tragic and fatal crash killed four members of the Saylor family in Santee, California. According to a NHTSA report on the crash, 911 calls, and the subsequent investigation by local law enforcement and NHTSA, the crash was likely caused when an improperly installed floor mat in the Lexus vehicle the Saylors were driving entrapped the accelerator pedal. California Highway Patrol Officer Mark Saylor, the driver of the Saylor vehicle, and a highly trained and experienced driver, used his best efforts to slow the vehicle, but was unsuccessful. The floor mat entrapment, in conjunction with a push-button start ignition system in the vehicle, made stopping the vehicle impossible, despite obvious application of the brakes by Officer Saylor.
- **6.6.** Soon after the Saylor crash, on September 29, 2009, Toyota issued a consumer advisory regarding the potential floor mat entrapment of the accelerator pedal.
- **6.7.** At NHTSA's request, on October 5, 2009, Toyota informed NHTSA that the company would recall affected vehicles to address the potential floor mat entrapment safety issue.
- **6.8.** On November 2, 2009, Toyota announced that it would recall 3.8 million vehicles worldwide to address the floor mat entrapment safety concern 09V-388 ("floor mat

26

	4	
	5	
	6	
	7	
	8	
	9	
1	0	
1	1	
1	2	
1	3	
1	4	
1	5	
1	6	
1	7	
ĺ	8	
1	9	
2	0	
2	1	
2	2	
2	3	
2	4	

26

2

3

entrapment" safety campaign; Toyota Recall No. 90L/9LG).

- 6.9. After reports surfaced that floor mat entrapment may not be the only mechanical cause of unintended acceleration in certain Toyota vehicles, on January 21, 2010, Toyota announced an additional recall of 2.3 million vehicles worldwide to address "sticky pedal" safety issues ("sticky pedal" recall, NHTSA campaign no. 10V-017). Essentially, when drivers of some affected vehicles depressed the accelerator pedal, that accelerator pedal would "stick," making the vehicle slow to return to idle or difficult to slow down.
- **6.10.** On January 27, 2010, Toyota expanded the November 2009 floor mat entrapment recalls to include additional models ("floor mat entrapment" recall, NHTSA campaign no. 10V-023).
- **6.11.** The number of vehicles affected by the pedal entrapment and "sticky pedal" recalls totaled nearly 6 million vehicles in the United States alone.

VII. NHTSA'S TIMELINESS QUERIES

- **7.1.** On February 16, 2010, NHTSA announced publicly that they would use their statutory authority to open timeliness queries to determine if Toyota had notified NHTSA of safety defects and carried out safety campaigns in a timely manner.
- **7.2.** On April 5, 2010, NHTSA announced they would demand that Toyota pay the statutory maximum fine of \$16.375 million for failure to timely notify NHTSA of the "sticky pedal" defect. Although federal law requires automakers, including Toyota, to notify NHTSA within five days of learning of a potential safety defect, Toyota waited for nearly four months prior to notifying NHTSA.

I	I	
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		į
14		
15		
16		
17		
18 19		
19		
20		
21		
22		
23		
24	I	

26

- 7.3. According to NHTSA, Toyota knew of the "sticky pedal" safety defect on September 29, 2009, if not before, when it notified distributors in thirty-one European countries and Canada of the potential issue and provided repair procedures to address the issue. Despite having knowledge that consumers in the United States were experiencing the same phenomena, Toyota waited until January 2010 to notify NHTSA of the "sticky pedal" issue and begin the recall process in the United States.
- **7.4.** On December 20, 2010, NHTSA announced they would demand Toyota pay a second statutory maximum fine of \$16.375 million for the failure to timely notify the agency of the dangers of floor mat entrapment in certain Toyota and Lexus model vehicles.
- 7.5. According to NHTSA, Toyota at least became aware of the dangers of floor mat entrapment of the accelerator pedal on September 26, 2007, if not before, when it initially recalled 55,000 all-weather floor mats to address entrapment issues in certain Lexus models.
- 7.6. On December 20, 2010, NHTSA announced that Toyota faced a third statutory maximum penalty of \$16.050 million for failure to timely notify the agency of a safety defect that Toyota found and addressed in certain model trucks sold in Japan in 2004, which could result in a loss of steering control. Despite Toyota's 2004 recall in Japan to fix steering relay rods in the Hilux trucks that were prone to failure, Toyota failed to notify NHTSA that consumers in the United States had filed similar complaints regarding equivalent models of the Hilux trucks sold in the United States. Although Toyota notified NHTSA in 2005 of a voluntary recall of 1 million United States model trucks to address the same steering relay rod issue, NHTSA did not learn of the complaints from consumers in the United States until 2010.

1	VIII. THE "SLATER PANEL" REPORT
2	8.1. Shortly after the massive recalls of 2009 and 2010, and the announcement of
3	one of NHTSA's record-setting fines against Toyota, Toyota announced the creation of the
4 5	"Toyota North American Quality Advisory Panel" (hereinafter "Panel"). On April 29, 2010,
6	Toyota announced the Panel members and indicated that the Panel would be chaired by
7	Rodney Slater, who was the United States Secretary of Transportation from 1997 through
8	2001.
9	8.2. Toyota tasked the Panel to conduct an independent review of Toyota's safety
10	and quality processes and to review the company's management structure.
11 12	8.3. According to the Panel, Toyota granted Panel members full cooperation and
13	was responsive to requests for information and assistance from Panel members.
14	8.4. In May 2011, the Panel issued their report summarizing their findings upon
15	completion of the first year of their two-year term.
16	8.5. The Slater Panel Report, as it became known, included several observations
17	regarding Toyota's management structure and decision-making process that, in the Panel's
18	view, may have contributed to the delay in identifying and resolving safety issues. To wit,
19	8.5.1. Toyota's policy of "global centralization" – that is, maximizing control
20	by TMC in Japan – "contributed to several of Toyota's quality and safety issues in
21	
22	North America." This "global centralization" policy hindered information-sharing and
23	"delayed response time to quality and safety issues;"
24	8.5.2. Toyota does not treat feedback from sources external to Toyota (such as
25	consumer complaints or NHTSA concerns) in the same positive manner that it treats

1	internal feedback; and
2	8.5.3. Toyota conflates safety with quality, when these should be treated as
3	separate qualities of a motor vehicle.
4	8.6. The Slater Panel Report also included several recommendations to improve
5	Toyota's "safety and quality processes." According to the Panel, Toyota should
6 7	8.6.1. Consider appointing one North American chief executive to oversee all
8	North American operations;
9	8.6.2. Include North American executives in decisions regarding product
10	recalls;
11	8.6.3. Strengthen communications and decision-making between regions;
12	8.6.4. Seek out external feedback, including the creation of a "Consumer
13	Representative Team" and integrate it into the decision-making processes;
14	
15	
16	8.6.6. Appoint a new "Chief Safety Technology Officer;" and
17 18	8.6.7. Simplify the downloading and decoding of Electronic Data Recorder
19	("EDR") data.
20	IX. VIOLATIONS OF LAW
21	CONSUMER PROTECTION ACT
22	9.1. The State incorporates by reference and re-alleges each allegation contained in
23	paragraphs 1.1-8.6.
24	9.2. All of the acts and practices engaged in and employed by the Defendants as
25	alleged herein, are unfair or deceptive acts or practices as defined in chapter 19.86 RCW
26	

1	affecting the conduct of any trade or commerce in Washington, which are declared unlawful.
2	Specifically, Defendants
3	9.2.1. Failed to Warn of a Known Danger: Defendants failed to disclose to
4	consumers and regulators known safety risks associated with operation of Toyota motor
5	vehicles and motor vehicle equipment;
7	9.2.2. <u>Misrepresented Safety and Reliability</u> : Defendants misrepresented,
8	directly or by implication, Toyota motor vehicles and motor vehicle equipment as safe
9	and reliable;
10	9.2.3. Failed to Perform Consistent with Contract Obligations Imposed by
11	Express and Implied Warranties: Defendants failed to timely diagnose and repair
12 13	Toyota motor vehicles and motor vehicle equipment that were the subject of consumer
14	complaints related to sudden unintended acceleration as required pursuant to express
15	and implied warranty representations and terms and as required by state warranty and
16	Lemon Laws; and
17	9.2.4. Failed to Share Critical Safety Related Information and Decision
18	Making Between Japan and North American Toyota Officials: Defendant TMC
19 20	withheld safety related decision making authority and critical safety data, information,
21	engineering/design changes and safety repairs from TMNA.
22	9.3. Each and every unfair or deceptive act or practice engaged in by Defendants, as
23	recited above, constitutes a separate violation of the Consumer Protection Act as provided by
24	chapter 19.86 RCW.
25	
26	

1	X. PRAYER FOR RELIEF
2	WHEREFORE, the State of Washington respectfully requests that this Honorable Court
3	enter an order:
4	10.1. Issuing a permanent injunction prohibiting Defendants, their agents,
5	employees, and all other persons and entities, corporate or otherwise, in active concert or
7	participation with any of them, from engaging in unfair, unconscionable, deceptive, or
8	misleading conduct pursuant to RCW 19.86.080;
9	10.2. Ordering Defendants to implement all recommendations of the Slater Panel
10	Report;
11	10.3. Ordering Defendants to pay civil penalties of up to two thousand dollars
12 13	(\$2,000) for each persistent and knowing violation of RCW 19.86.020, as provided by RCW
14	19.86.140;
15	10.4. Ordering Defendants to pay all costs for the prosecution and investigation of
16	this action, as provided by RCW 19.86.080; and
17	10.5. Granting such other and further relief as the Court deems equitable and proper.
18 19	12th
20	DATED this <u>/3</u> day of February, 2013.
21	DODEDT W. EEDCLICON
22	ROBERT W. FERGUSON Attorney General
23	hand Palace
24	MARY Q/LOBDELL, WSBA #17930
25 26	Senior Counsel Attorney for Plaintiff State of Washington