

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1427 Bannock Street, Room 256 Denver, Colorado 80202</p>	<p>COURT USE ONLY</p>
<p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>Toyota Motor Corporation; Toyota Motor North America, Inc.; Toyota Motor Sales U.S.A., Inc.; Toyota Motor Engineering & Manufacturing, North America, Inc,</p> <p>Defendants.</p>	
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General OLIVIA C. DEBLASIO, *358671 Assistant Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 (702) 508-6000 (702) 508-6040 Fax *Counsel of Record</p>	<p>Case No.:</p> <p>Div</p>
<p align="center">COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, brings this action against Defendants Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Sales USA, Inc., Toyota Motor Engineering & Manufacturing, North America Inc. (hereinafter collectively referred to as “Defendants” or “Toyota”) for violating the Colorado Consumer Protection Act §§6-1-101 *et seq.*, C.R.S. (2012) (“CCPA”), as follows:

JURISDICTION AND VENUE

1. This action is brought for and on behalf of State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, pursuant to the provisions of the CCPA.

2. This Court has jurisdiction over the Defendants pursuant to C.R.S. §§6-1-103 and 6-1-110 because Defendants have transacted business within the State of Colorado or have engaged in conduct impacting Colorado at all times relevant to this complaint.

3. Venue for this action properly lies in Denver District Court pursuant to C.R.C.P. Rule 98 and C.R.S. § 6-1-103 because Defendants transact business in the City and County of Denver, the transactions out of which this action arose occurred in the City and County of Denver, and this action is brought by the Attorney General, on behalf of the State of Colorado, for the benefit thereof.

PARTIES

4. The Colorado Attorney General (hereinafter “Plaintiff”) is charged, *inter alia*, with the enforcement of the CCPA, pursuant to § 6-1-103, C.R.S. (2012).

5. Defendants are Toyota Motor Corporation (hereinafter “TMC”), Toyota Motor North America, Inc. (hereinafter “TMA”), Toyota Motor Sales USA, Inc. (hereinafter “TMS”), and Toyota Motor Engineering & Manufacturing North America Inc. (hereinafter “TEMA”).

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

7. Under the CCPA, C.R.S. § 6-1-105(e),

A person engages in a deceptive trade practice when, in the course of such person’s business, vocation, or occupation, such person . . . [k]nowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith.

8. Under C.R.S. § 6-1-105(u),

A person engages in a deceptive trade practice when, in the course of such person’s business, vocation, or occupation, such person . . . [f]ails to disclose material information concerning goods, services, or property

which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.”

9. Defendants were at all times relative hereto, engaged in trade or commerce in the State of Colorado, to wit: manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

BACKGROUND

10. Toyota manufactures, assembles, advertises, markets, promotes, sells, and distributes motor vehicles nationally and in the State of Colorado.

11. 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.

12. In 2011, Toyota Motor Sales reported that Toyota sold 1,644,661 vehicles in the United States.

UNINTENDED ACCELERATION

13. 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.”

14. 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.

TOYOTA RECALLS OF 2009 AND 2010

15. Reports of unintended acceleration in Toyota vehicles first prompted NHTSA investigations in 2003.

16. Between July, 2003 and April, 2009, NHTSA opened eight separate unintended acceleration-related investigations into Toyota vehicles.

17. 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.

18. 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.

19. 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 Saylor family 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.

20. Soon after the Saylor crash, on September 29, 2009, Toyota issued a consumer advisory regarding the potential floor mat entrapment of the accelerator pedal.

21. 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.

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

23. 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.

24. 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).

25. The number of vehicles affected by the pedal entrapment and “sticky pedal” recalls totaled nearly 6 million vehicles in the United States alone.

NHTSA'S TIMELINESS QUERIES

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

THE "SLATER PANEL" REPORT

32. Shortly after the massive recalls of 2009 and 2010, and the announcement of one of NHTSA's record-setting fines against Toyota, Toyota announced the creation of the "Toyota North American Quality Advisory Panel" (hereinafter "Panel"). On April 29, 2010, Toyota announced the Panel members and indicated that the Panel would be chaired by Rodney Slater, who was the United States Secretary of Transportation from 1997 through 2001.

33. Toyota tasked the Panel to conduct an independent review of Toyota's safety and quality processes and to review the company's management structure.

34. According to the Panel, Toyota granted Panel members full cooperation and was responsive to requests for information and assistance from Panel members.

35. In May, 2011, the Panel issued their report summarizing their findings upon completion of the first year of their two-year term.

36. The Slater Panel Report, as it became known, included several observations regarding Toyota's management structure and decision-making process that, in the Panel's view, may have contributed to the delay in identifying and resolving safety issues. To wit:

- a. Toyota's policy of "global centralization" – that is, maximizing control by TMC in Japan – "contributed to several of Toyota's quality and safety issues in North America." This "global centralization" policy hindered information-sharing and "delayed response time to quality and safety issues;"
- b. Toyota does not treat feedback from sources external to Toyota (such as consumer complaints or NHTSA concerns) in the same positive manner that it treats internal feedback; and
- c. Toyota conflates safety with quality, when these should be treated as separate qualities of a motor vehicle.

37. The Slater Panel Report also included several recommendations to improve Toyota's "safety and quality processes." According to the Panel, Toyota should

- a. Consider appointing one North American chief executive to oversee all North American operations;
- b. Include North American executives in decisions regarding product recalls;
- c. Strengthen communications and decision-making between regions;
- d. Seek out external feedback, including the creation of a "Consumer Representative Team" and integrate it into the decision-making processes;
- e. Work cooperatively with NHTSA and other regulators;
- f. Appoint a new "Chief Safety Technology Officer;" and
- g. Simplify the downloading and decoding of Electronic Data Recorder ("EDR") data.

VIOLATIONS OF LAW
§§ 6-1-105(1)(e) and (u), C.R.S. (2012)

38. The State incorporates by reference and re-alleges each allegation contained in paragraphs 1-37.

All of the acts and practices engaged in and employed by the Defendants as alleged herein, are unfair or deceptive acts or practices affecting the conduct of any trade or commerce in Colorado, which are declared unlawful by §§ 6-1-105(1)(e) and (u), C.R.S. (2012). Specifically, Defendants:

- a. **Failed to warn of a known danger:** Defendants failed to disclose to consumers and regulators known safety risks associated with operation of Toyota motor vehicles and motor vehicle equipment;
- b. **Misrepresented safety and reliability:** Defendants misrepresented, directly or by implication, Toyota motor vehicles and motor vehicle equipment as safe and reliable;
- c. **Failed to perform consistent with contract obligations imposed by express and implied warranties:** Defendants failed to timely diagnose and repair Toyota motor vehicles and motor vehicle equipment that were the subject of consumer complaints related to sudden unintended acceleration as required pursuant to express and implied warranty representations and terms and as required by state warranty and Lemon Laws; and
- d. **Failed to share critical safety related information and decision making between Japan and North American Toyota officials:** Defendant TMC withheld safety related decision making authority and critical safety data, information, engineering/design changes and safety repairs from TMNA.

39. Each and every unfair or deceptive act or practice engaged in by Defendants, as recited above, constitutes a separate violation of the CCPA as provided by § 6-1-112, C.R.S. (2012).

40. Because Defendants knowingly failed to reveal material facts regarding the motor vehicles sold to consumers nationwide, the Defendants have violated § 6-1-105(1)(e) and (u), C.R.S. (2012) with each representation or omission.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this honorable Court enter an order:

A. Issuing a permanent injunction prohibiting Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with

any of them, from engaging in unfair, unconscionable, deceptive, or misleading conduct as provided by the CCPA, §6-1-105(1), C.R.S. (2012);

B. Ordering Defendants to implement all recommendations of the Slater Panel Report;

C. Ordering Defendants to pay, civil penalties payable to the general fund of the State of Colorado of up to two thousand dollars for each such violation with respect to each consumer or transaction involved, not more than ten thousand dollars for each such violation with respect to each elderly person, not to exceed five hundred thousand dollars for any related series of violations as provided by § 6-1-112(1)(a) and (c), C.R.S. (2012)

D. Ordering Defendants to pay all costs and reasonable attorneys' fees for the prosecution and investigation of this action, as provided by § 6-1-113(4), C.R.S. (2012)

E. Granting such other and further relief as the Court deems equitable and proper.

Dated this 14th Day of February, 2013.

Respectfully submitted,

JOHN W. SUTHERS
Attorney General

/s/ Olivia C. DeBlasio
OLIVIA C. DEBLASIO, 35867*
Assistant Attorney General
Consumer Protection Section
JAY B. SIMONSON, 24077*
First Assistant Attorney General
Consumer Protection Section
Attorneys for Plaintiff
*Counsel of Record