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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY
DOCKET NO: _____

JEFFREY S. CHIESA, Attorney General of the
State of New Jersey, and ERIC T. KANEFISKY,
Acting Director of the New Jersey Division of
Consumer Affairs,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR NORTH AMERICA,
INC., TOYOTA MOTOR SALES U.S.A.,
INC., and TOYOTA MOTOR
ENGINEERING & MANUFACTURING,
NORTH AMERICA, INC,

Defendants.

Civil Action

COMPLAINT

1. Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey (collectively, "Plaintiffs") bring 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 New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), as follows:

JURISDICTION AND VENUE

2. This action is brought for and on behalf of the People of the State of New Jersey, by the Attorney General and Director, pursuant to the provisions of the CFA, N.J.S.A. 56:8-1 et seq.

3. This Court has jurisdiction over the Defendant pursuant to the CFA, N.J.S.A. 56:8-1 et seq., because the Defendant has transacted business within the State of New Jersey (“New Jersey”) or have engaged in conduct impacting New Jersey at all times relevant to this Complaint.

4. Venue for this action properly lies in Mercer County, pursuant to R. 4:3-2(b), because Defendant transacts business in, or some of the transactions upon which this action is based occurred, in Mercer County.

PARTIES

5. The Attorney General is charged with enforcing the CFA. The Director is charged with administering the CFA on behalf of the Attorney General. By this action, the Attorney General and Director seek injunctive and other relief for violations of the CFA, pursuant to N.J.S.A. 56:8-8, 8-11, 8-13 and 8-19.

6. 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”).

7. Defendants are composed 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 New Jersey and nationwide by manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

COMMERCE

8. The CFA, N.J.S.A. 56:8-1(a), defines "advertisement" as:

. . . the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof . . .

9. The CFA, N.J.S.A. 56:8-1(c), defines "merchandise" as "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale."

10. The CFA, N.J.S.A. 56:8-1(e), defines "sale" as "any sale, rental or distribution, offer for sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute."

11. The CFA, N.J.S.A. 56:8-1(d) defines "person" as "any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or *cestuis que trustent* thereof."

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

BACKGROUND

13. Toyota manufactures, assembles, advertises, markets, promotes, sells, and distributes motor vehicles nationally and in the State of New Jersey.

14. 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 cars 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.

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

UNINTENDED ACCELERATION

16. 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."

17. 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

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

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

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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).

26. 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.

27. 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).

28. 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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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

35. 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.

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

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

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

39. 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.
40. 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

COUNT I

**VIOLATIONS OF THE CFA BY DEFENDANT
(UNCONSCIONABLE COMMERCIAL PRACTICES)**

41. The State incorporates by reference and re-alleges each allegation contained in paragraphs 1-40.

42. 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 New Jersey which are declared unlawful by N.J.S.A. 56:8-2. 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 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.

43. Each and every unfair or deceptive act or practice engaged in by Defendants, as recited above, constitutes a separate violation of the CFA as provided by N.J.S.A. 56:8-2.

44. Because Defendants persistently and knowingly failed to reveal material facts regarding the motor vehicles sold to consumers nationwide, the Defendants have violated N.J.S.A. 56:8-2. with each representation or omission.

REMEDIES

45. N.J.S.A. 56:8-8, provides, in relevant part:

Whenever it shall appear to the Attorney General that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this act he may seek and obtain in a summary action in the Superior Court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof or an order appointing a receiver, or both. [...] The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal which may have been acquired by means of any practice herein declared to be unlawful.

46. N.J.S.A. 56:8-13 provides, in pertinent part:

Any person who violates any of the provisions of the act to which this act is a supplement shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$10,000 for the first offense and not more than \$20,000 for the second and each subsequent offense.

47. N.J.S.A. 56:8-11 provides that "[i]n any action or proceeding brought under the provisions of this act, the Attorney General shall be entitled to recover costs for the use of the State."

48. N.J.S.A. 56:8-19 further provides that "[i]n all actions under this section, including those brought by the Attorney General, the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit."

PRAYER FOR RELIEF

WHEREFORE, the People of the State of New Jersey respectfully request 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;
- B. Ordering Defendants to implement all recommendations of the Slater Panel Report;
- C. Ordering Defendants to pay civil penalties of up to \$10,000 for each violation of the CFA as provided by N.J.S.A. 56:8-13;
- D. Ordering Defendants to pay all costs for the prosecution and investigation of this action, as provided by N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- E. Granting such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By:  _____
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 14, 2013
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in this action involving the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private actions have been brought against the Defendants, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

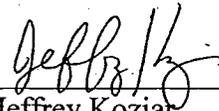
By:  _____
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 14, 2013
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

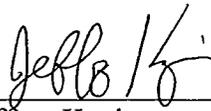
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 14, 2013
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Jeffrey Koziar is hereby designated as trial counsel for the Plaintiffs in this action.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 14, 2013
Newark, New Jersey