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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF PIERCE**

9 STATE OF WASHINGTON,

NO.

10 Plaintiff,

v.

STIPULATED FINAL
JUDGMENT AND CONSENT
DECREE

11 TOYOTA MOTOR CORPORATION;
12 TOYOTA MOTOR NORTH AMERICA,
13 INC.; TOYOTA MOTOR SALES, U.S.A.,
14 INC.; and TOYOTA MOTOR
ENGINEERING & MANUFACTURING
NORTH AMERICA, INC.,

(CLERK'S ACTION REQUIRED)

Defendants.

15 **JUDGMENT SUMMARY**

16 Judgment Creditor:

State of Washington

17 Judgment Debtor:

Toyota Motor Sales, U.S.A., Inc.

18 Principal Judgment Amount:

\$1,534,357.14

19 Post Judgment Interest Rate:

12% per annum

20 Attorney for Judgment Creditor:

Mary C. Lobdell

Senior Counsel

21 Attorneys for Judgment Debtor:

Maura Monaghan

Debevoise & Plimpton, LLP

22 David J. Russell

23 Keller Rohrback LLP
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1 Plaintiff, State of Washington, acting by and through its attorneys Robert W.
2 Ferguson, Attorney General, and Mary C. Lobdell, Senior Counsel, having filed a
3 Complaint against the Defendants, has brought this action pursuant to the provisions of
4 the Consumer Protection Act, chapter 19.86 RCW and the Dealers and
5 Manufacturers Act, chapter 46.70 RCW.

6 Plaintiff and Defendants by their counsel have agreed to the entry of this Stipulated
7 Final Judgment and Consent Decree ("Consent Decree") by this Court without trial or
8 adjudication of any issue of fact or law and without admission of any wrongdoing or
9 admission of any of the violations of the Washington State Consumer Protection Act,
10 chapter 19.86 RCW or any other law as alleged by Plaintiff.

11 Contemporaneous with the filing of this Consent Decree between the Attorney
12 General of Washington, Defendants are entering into similar agreements with the
13 Attorneys General of Alabama, American Samoa, Arizona, Arkansas, Colorado,
14 Connecticut, Florida, Illinois, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota,
15 Mississippi, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon,
16 Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin,
17 hereinafter collectively referred to as "States."

18 **PRELIMINARY STATEMENT**

19 WHEREAS, in early 2010, an Attorneys General Multi-State Working Group
20 ("MSWG") was formed to investigate the business practices of Toyota Motor
21 Corporation ("TMC"); Toyota Motor North America, Inc. ("TMA"); Toyota Motor Sales,
22 U.S.A., Inc. ("TMS"); and Toyota Motor Engineering & Manufacturing North America
23 Inc. ("TEMA") (collectively referred to as "Toyota"). Washington is a member of the
24 MSWG.

25 WHEREAS, Toyota has fully cooperated with the MSWG's investigation.
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1 WHEREAS, the MSWG has conducted a comprehensive investigation of Toyota
2 and has obtained sufficient information to resolve its investigation of Toyota.

3 WHEREAS, the Parties have reached an amicable agreement thereby resolving the
4 issues in controversy and concluded this investigation by filing/entering of this Stipulated Final
5 Judgment and Consent Decree ("Consent Decree").

6 NOW THEREFORE, upon the consent of the Parties hereto, in order to amicably
7 resolve the issues in controversy and concluding this investigation by filing/entering this
8 Consent Decree, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
9 FOLLOWS:

10 **I. GENERAL**

11 **1.1.** Plaintiff is the State of Washington.

12 **1.2.** Defendants are Toyota Motor Corporation; Toyota Motor North America,
13 Inc.; Toyota Motor Sales, U.S.A., Inc.; and Toyota Motor Engineering & Manufacturing
14 North America, Inc.

15 **II. JURISDICTION**

16 Pursuant to the Consumer Protection Act ("Consumer Protection Act"), chapter 19.86
17 RCW, the Dealers and Manufacturers Act, chapter 46.70 RCW, RCW 4.28.180, and RCW
18 4.28.185, the jurisdiction of this Court over the subject matter and over the Defendants for
19 the purpose of entering into and enforcing this Consent Decree is admitted. Jurisdiction is
20 retained by this Court for the purpose of enabling the Attorney General or the Defendants
21 to apply to this Court for such further orders and directions as may be necessary or
22 appropriate for the construction and modification of the injunctive provisions herein or
23 execution of this Consent Decree, including enforcement of this Consent Decree and
24 punishment for any violation of this Consent Decree. If the Attorney General is required
25 to file a petition to enforce any provision of this Consent Decree against any (or all)
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1 Defendants, the particular Defendant(s) involved in such petition agree to pay all court
2 costs and reasonable attorneys' fees associated with any successful petition to enforce
3 any provision of this Consent Decree against such Defendant(s). The Defendants waive
4 any defect associated with service of the Attorney General's Complaint and this Consent
5 Decree and do not require issuance or service of a Summons.

6 **III. VENUE**

7 Pursuant to the provisions of RCW 4.12.020, venue as to all matters between the
8 Parties hereto relating to or arising out of this Consent Decree shall lie exclusively in the
9 Court of Pierce County, Washington.

10 **IV. DEFINITIONS**

11 As used in this Consent Decree, the following words or terms shall have the
12 following meanings:

13 **4.1.** "Advertise," "Advertisement," or "Advertising" shall mean all marketing
14 directed to customers residing in the United States and shall mean any written, oral, or
15 electronic statement, illustration, or depiction that is designed to create interest in the
16 purchasing of, impart information about the attributes of, publicize the availability of, or
17 effect the sale or use of goods or services, whether the statement appears in a brochure,
18 newspaper, magazine, freestanding insert, marketing kit, leaflet, circular, mailer, book
19 insert, letter, catalogue, poster, chart, billboard, public-transit card, point-of-purchase
20 display, package insert, package label, product instructions, electronic mail, website,
21 homepage, film, slide, radio, television, cable television, program-length commercial or
22 "infomercial," mobile media, or any other medium. For the avoidance of doubt,
23 information required by 49 C.F.R. § 575.301(d)(2) does not constitute Advertising.

24 **4.2.** "Consent Decree" shall mean this document entitled Stipulated Final
25 Judgment and Consent Decree in the matter of State of Washington v. Toyota Motor
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1 Sales, U.S.A., Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.;
2 Toyota Motor North America, Inc.; and Toyota Motor Corporation, a Japanese
3 corporation.

4 **4.3.** “Attorney General” shall mean the Attorney General of Washington and the
5 Office of the Attorney General of Washington.

6 **4.4.** “Clear and Conspicuous” or “Clearly and Conspicuously” shall mean a
7 statement that, regardless of the medium in which it is made, is readily understandable
8 and presented in such size, color, contrast, duration, location, and audibility, compared to
9 the other information with which it is presented, that it is readily apparent to the person to
10 whom it is disclosed. If a statement modifies, explains, or clarifies other information with
11 which it is presented, it must be presented in close proximity to the information it modifies
12 in a manner that is readily apparent and understandable.

13 **4.5.** “Competent and Reliable Scientific or Engineering Evidence” shall mean
14 tests, analyses, research, studies, or other evidence conducted and evaluated in an
15 objective manner by persons qualified to do so and using procedures or methodologies
16 generally accepted by the relevant professional, scientific, or engineering community to
17 yield accurate and reliable results. For purposes of this Consent Decree, Competent and
18 Reliable Scientific or Engineering Evidence includes new tests, analyses, procedures, or
19 methodologies, provided that they either (a) are based in relevant part on scientific or
20 engineering principles generally accepted by the relevant professional, scientific, or
21 engineering community, or (b) have yielded, or are reasonably expected to yield
22 accurate, reliable, and repeatable scientific or engineering results. For avoidance of
23 doubt, the results of NHTSA’s “Star” ratings or any other motor vehicle ratings prepared
24 by the NHTSA, or prepared pursuant to regulations published by NHTSA, shall be
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1 considered Competent and Reliable Scientific or Engineering Evidence for purposes of
2 this Consent Decree.

3 **4.6.** “Consumer” shall mean and include any person, natural person, individual,
4 governmental agency or entity, partnership, corporation, limited liability company or
5 corporation, trust, estate, incorporated or unincorporated association or any other legal or
6 commercial entity, however organized, who buys or uses a Toyota Motor Vehicle.
7 “Consumer” shall not mean any dealer, distributor, or any other independent group or
8 organization, such as Toyota Dealers Association, which markets and sells Toyota Motor
9 Vehicles and Motor Vehicle Equipment.

10 **4.7.** “Covered Conduct” shall mean Toyota’s promotional and marketing
11 practices, investigated by the Signatory Attorneys General under their respective state
12 consumer protection laws, regarding Toyota Motor Vehicles that were the subject of the
13 following NHTSA campaign numbers: 1) 09V-388 (“floor mat entrapment” safety
14 campaign; Toyota Recall No. 90L/9LG); 2) 10V-017 (“sticky pedal” recall; Toyota Safety
15 Recall No. AOA); 3) 10V-023 (“floor mat entrapment” safety campaign; Toyota Recall
16 No. 90L/9LG); 4) 11V-113 (“floor mat entrapment” safety campaign; Toyota's Recall
17 Campaign No. 90L/9LG); 5) 09V-023 (the Sienna “Safety Improvement Campaign”); and
18 6) 05V-389 (the “steering relay rod” recall; Toyota Recall No. SSC 50N).

19 **4.8.** “Effective Date” shall mean the date on which a copy of this Consent Decree,
20 duly executed by Defendants and by the signatory Attorney General, is approved by, and
21 becomes a judgment, of the Court.

22 **4.9.** “Fantasy Advertising” shall mean Advertising depicting the Motor Vehicle
23 in a manner that so deviates from reality, or real life portrayal, such as driving underwater
24 or on a vertical cliff face, that no reasonable Consumer could interpret the Advertisement
25 as portraying an actual capability or appropriate use of the vehicle.
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1 **4.10.** "Motor Vehicle" shall mean a vehicle that is self-propelled and is manufactured
2 primarily for use on public streets, roads, or highways but does not include a vehicle operated
3 on a rail line.

4 **4.11.** "Motor Vehicle Equipment" shall mean Original and Replacement
5 equipment: (1) Original equipment means an item of motor vehicle equipment (other than
6 a tire) that was installed in or on a Motor Vehicle at the time of its delivery to the first
7 purchaser if the item of equipment was installed on or in the Motor Vehicle at the time of
8 its delivery by TMS to a dealer or distributor for distribution; or the item of equipment
9 was installed by the dealer or distributor with the express authorization of the Motor
10 Vehicle manufacturer; or (2) Replacement equipment means motor vehicle equipment
11 other than Original equipment, and tires. See, Title 49 CFR § 579.4.

12 **4.12.** "Multi-State Executive Committee" ("MSEC") shall mean a committee of
13 the MSWG comprising the Attorneys General and their staff from Connecticut, Florida,
14 Louisiana, Michigan, Nevada, New Jersey, Ohio, South Carolina, and Washington.

15 **4.13.** "Multi-State Working Group" ("MSWG") or "States" shall mean the
16 Attorneys General and their staff from Alabama, American Samoa, Arizona, Arkansas,
17 Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Louisiana, Maryland, Michigan,
18 Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, North Carolina,
19 Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia,
20 Washington, and Wisconsin collectively.

21 **4.14.** "National Highway Traffic Safety Administration" ("NHTSA") shall mean
22 the federal National Highway Traffic Safety Administration. If any of the obligations,
23 duties, or jurisdiction of the NHTSA should at any time be transferred, consolidated, or
24 merged with the obligations, duties, or jurisdiction of any other governmental agency, all
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1 references to "National Highway Traffic Safety Administration" or "NHTSA" herein shall
2 specifically include and reference that other governmental agency or entity.

3 **4.15.** "Plaintiff," "State of Washington" or "State" shall mean the Attorney
4 General of the State of Washington.

5 **4.16.** "Reacquired Motor Vehicle" shall mean all vehicles reacquired through a
6 state Lemon Law, warranty mediation, or arbitration program or warranty action filed in
7 court or in settlements of such proceedings. It also includes any voluntary buy-back
8 where there is an allegation of a safety defect in the bought-back vehicle.

9 **4.17.** "Recall" or "Recalls" shall mean any program undertaken by a Motor
10 Vehicle manufacturer or Motor Vehicle component manufacturer, whether voluntarily or
11 pursuant to an order by NHTSA, to withdraw, repair, replace, or remove from trade or
12 commerce any vehicle or vehicle component to address a defect related to Motor Vehicle
13 safety or a noncompliance with a Federal Motor Vehicle Safety Standard and for which
14 notification and remedy are required by Federal law (unless that noncompliance is
15 expressly agreed by NHTSA to be inconsequential). See, 49 U.S.C. §§ 30118-30120.

16 **4.18.** "Represent," as used in the injunctive provisions of this Consent Decree,
17 shall mean to state or imply through claims, statements, questions, conduct, graphics,
18 symbols, lettering, formats, devices, language, documents, messages, or any other
19 manner or means by which meaning might be conveyed. This definition applies to other
20 forms of the word "Represent," including without limitation "Representation,"
21 "Misrepresent," and "Misrepresentation."

22 **4.19.** "States' Motor Vehicle Safety Authorities" shall mean Washington State
23 Department of Licensing.

24 **4.20.** "Toyota," where not otherwise specified, shall mean Defendants
25 collectively, i.e., Toyota Motor Corporation; Toyota Motor North America, Inc.; Toyota
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1 Motor Sales, U.S.A., Inc.; Toyota Motor Engineering & Manufacturing North America,
2 Inc., and their successors and assigns. For avoidance of doubt, undertakings by Toyota,
3 herein, do not extend to Toyota dealers or distributors or to independent groups or
4 organizations such as Toyota Dealer Associations.

5 4.21. "TMA" shall mean Toyota Motor North America, Inc.

6 4.22. "TMC" shall mean Toyota Motor Corporation.

7 4.23. "TEMA" shall mean Toyota Motor Engineering & Manufacturing, North
8 America, Inc.

9 4.24. "TMS" shall mean Toyota Motor Sales, U.S.A., Inc.

10 **V. PERMANENT INJUNCTIVE RELIEF**

11 Toyota will take all reasonable steps calculated to ensure that employees
12 responsible for carrying out this Injunction are provided with notice of this Consent
13 Decree. Further, Toyota and its successors and assigns shall undertake the following
14 injunctive relief:

15 5.1. With respect to Advertisements in the United States, Toyota shall comply
16 with all State laws that prohibit false and misleading Advertising including, but not
17 limited to chapter 19.86 RCW and RCW 46.70.180. When determining whether a
18 particular Advertisement complies with this provision, the entire Advertisement shall be
19 considered, including the context of the particular depiction at issue, any limitations,
20 warnings, or disclaimers contained in the Advertisement. Nothing herein shall preclude
21 Toyota from (a) demonstrating the ordinary use of vehicle components, systems or
22 features; (b) demonstrating the performance or capabilities of components, systems or
23 features, including safety features; (c) depicting in its Advertisements a Motor Vehicle
24 being driven by a professional driver on a closed course, including in a manner that could
25 be unsafe for a non-professional driver, provided that any necessary and appropriate
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1 disclaimers are Clearly and Conspicuously disclosed in the Advertisement; or (d) using
2 Fantasy Advertising.

3 **5.2.** Toyota shall comply with Chapter 19.118 RCW and all state and federal
4 laws that apply to Motor Vehicles sold by TMS in the United States or any of the
5 signatory states, including any affirmative duty imposed by state or federal law to notify
6 Consumers of a known safety defect. For the avoidance of doubt, issues giving rise to the
7 obligations to notify and remedy under the Motor Vehicle Safety Act are governed by
8 Section 5.3, *infra*.

9 **5.3.** Toyota shall comply in all material respects with the notification and
10 remedy provisions of the Motor Vehicle Safety Act, 49 U.S.C. §§ 30118 to 30120, with
11 materiality as determined by NHTSA.

12 **VI. NON-AFFIRMATIVE INJUNCTIVE RELIEF**

13 For the duration of this Consent Decree, as defined in Section 8.5, *infra*:

14 **6.1.** Toyota shall exclude from eligibility for the “Toyota Certified Used
15 Vehicle” program; the “Toyota Certified Used Hybrids” vehicle program; the “Scion
16 Certified Pre-Owners” program; the “Lexus Certified Pre-Owned” program, or any other
17 similar program, any Reacquired Motor Vehicles, as to which the customer alleged that
18 the Motor Vehicle was not in conformity with the new vehicle limited warranty, that were
19 acquired by Toyota in connection with the Lemon Law process, or that were voluntarily
20 repurchased by Toyota to enhance or ensure customer satisfaction.

21 **6.2.** Toyota shall not resell any Reacquired Motor Vehicle as to which the
22 Consumer alleged that the Motor Vehicle was not in conformity with the new vehicle
23 limited warranty until such vehicle is subject to inspection and any identifiable defect
24 (using diagnostic methods generally accepted in the industry) is repaired. If Toyota wishes
25 to resell a Reacquired Motor Vehicle that it knows, has reason to know, or should
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1 reasonably anticipate may be sold to a Consumer, Toyota may do so only if Toyota
2 certifies and warrants the Reacquired Motor Vehicle has no identifiable defect (using
3 diagnostic methods generally accepted in the industry). In addition, the Purchaser (or
4 prospective Purchaser) must be notified in writing prior to the time of sale of the alleged
5 nonconformity or defect, of the reported concerns leading to Toyota's decision to
6 reacquire said Motor Vehicle, and that Toyota certifies and warrants that the Reacquired
7 Motor Vehicle at issue has no identifiable defect (using diagnostic methods generally
8 accepted in the industry). In addition, Toyota's decision to reacquire said Motor Vehicle
9 shall appear in the NATIONAL SERVICE HISTORY, accessible to authorized Toyota
10 dealers, for said Motor Vehicle. Toyota may resell a Reacquired Motor Vehicle that is
11 subject to a Recall for which a remedy is pending as long as the Purchaser is notified of
12 the Recall.

13 **6.3.** With respect to Advertisements in the United States, Toyota shall not
14 Represent in any Advertisements, by spoken or written words, that a Motor Vehicle is
15 "safest," "safer," or use a term or phrase of similar comparative or superlative meaning
16 regarding safety, unless such Representation is supported by Competent and Reliable
17 Scientific or Engineering Evidence and Toyota Clearly and Conspicuously discloses the
18 information necessary to place the Representation in an accurate context, including:

- 19 a. the Motor Vehicle for which the claim is made; and
20 b. the design, feature, equipment or aspect of performance for
21 which the claim is being made.

22 **6.4.** With respect to Advertisements in the United States, Toyota shall not
23 Advertise that an entire line of vehicles possesses a particular quality, characteristic,
24 feature, or attribute unless all vehicles within that line have the same quality,
25 characteristic, feature, or attribute. Notwithstanding the foregoing, Toyota may Advertise
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1 any quality, characteristic, feature, or attribute of a subset of a line of vehicles, provided
2 that such Advertisement is truthful, accurate, and not misleading.

3 **6.5.** Toyota shall not, when directing Consumers in the United States to take
4 their Motor Vehicles to a Toyota dealer for repair inspection or repair, misrepresent the
5 purpose for the inspection or repair. Nothing herein shall prevent Toyota from conducting
6 customer-satisfaction campaigns, making goodwill adjustments, harvesting components or
7 data for analysis, or performing service pursuant to safety, emissions or customer-
8 satisfaction programs, provided that any Representations relating thereto made are
9 truthful, accurate, and not misleading.

10 **6.6.** With respect to Advertisements in the United States, Toyota shall not, in
11 any Advertisements, make any Representation regarding the safety, performance,
12 reliability, resale value or durability of any specific Motor Vehicle or any Motor Vehicle
13 component or system without possessing Competent and Reliable Scientific or
14 Engineering Evidence that reasonably substantiates each claim. Toyota may truthfully
15 Represent the receipt of awards or rankings from third parties, so long as those third
16 parties are regularly relied on by automotive manufacturers and distributors in
17 Advertisements (including, by way of example, J.D. Power & Associates and the
18 Insurance Institute for Highway Safety) as long as Toyota does not have any knowledge
19 that the basis for the third party award or ranking is false. Notwithstanding the foregoing,
20 Toyota may make Representations about the performance, resale value, style, features, or
21 durability of any Motor Vehicle or any Motor Vehicle component or system which a
22 Consumer should reasonably understand are intended to be statements of opinion or
23 otherwise not based on Competent and Reliable Scientific or Engineering Evidence, such
24 as (by way of example only) the vehicle is "quiet," the seats are "soft to the touch," the
25 vehicle is "good value," or a Consumer claim about his or her experience with his or her
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1 Motor Vehicle. Toyota may also make Representations regarding the safety, reliability,
2 performance, resale value, style, features, or durability of any specific Motor Vehicle or
3 any Motor Vehicle system or component that are supported by Competent and Reliable
4 Scientific or Engineering Evidence that reasonably substantiates each claim.

5 **VII. PROMOTION OF A SAFETY CULTURE**

6 **7.1.** Toyota is committed to achieving the following goals by means of the
7 injunctive relief contained in Section VIII:

8 a. Providing timely access to material actions, data and information to
9 Toyota personnel that relate to the safe operation of Motor Vehicles and Motor
10 Vehicle Equipment sold in the United States without regard to the geographic
11 source or origin of the action, data, or information;

12 b. Ensuring that officials and officers are charged with sufficient authority
13 and have timely access to actions, data and information to fully participate in
14 safety-related decisions affecting the safe operation of Motor Vehicles and
15 Motor Vehicle Equipment sold by Toyota in the United States;

16 c. Developing clear lines of communication, authority and decision-
17 making accountability between Toyota's North America affiliates (including,
18 but not limited to, Toyota Motor North America, Inc., Toyota Motor Sales,
19 U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America,
20 Inc.) and Toyota Motor Corporation;

21 d. Recognizing NHTSA's lead role in the United States in promoting
22 Motor Vehicle safety; and

23 e. Monitoring, listening to, analyzing, and timely and effectively
24 responding to safety concerns, including those expressed by Toyota's North
25 American affiliates, regulators and Consumers.
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1 7.2. While Section VII hereof is not intended to create independent legal
2 obligations, the Parties recognize that the goals described in Section VII are important
3 ones that underlie the specific injunctive relief contained in Section VIII.

4 **VIII. AFFIRMATIVE INJUNCTIVE RELIEF**

5 For the duration of this Consent Decree, as defined in Section 8.5, *infra*:

6 **8.1.** In the context of Toyota's commitment to the goals outlined in Section VII,
7 Toyota, its successors, and assigns shall maintain the following offices and initiatives
8 (or their substantial or functional equivalents) to promote the sharing of material safety-
9 related information and decision-making accountability across regions and business units:

10 a. Regional Product Safety Executive ("RPSE") (or its substantial or
11 functional equivalents), an executive operating in the United States who has
12 access to material safety, technical and engineering information pertaining to
13 Motor Vehicles sold in the United States or outside the United States if they
14 are substantially similar to Motor Vehicles sold in the United States, as
15 defined in Title 49 CFR § 579.4(d). The RPSE may from time to time make
16 recommendations to Toyota Motor Corporation and its United States
17 affiliates regarding potential field actions related to safety for vehicles sold
18 in the United States and participate in discussions about field actions that are
19 potentially related to safety for Motor Vehicles sold in the United States.

20 b. Chief Safety Technology Officer (or its substantial or functional
21 equivalents), an executive who is responsible for developing company-wide
22 safety policies and promoting improvements in the safety of all Toyota Motor
23 Vehicles.

24 c. Vehicle Safety and Compliance Liaison Office (or its substantial or
25 functional equivalents), an office designed to facilitate information sharing
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1 between Toyota personnel with access to information about safety and
2 quality issues and Toyota personnel who are responsible for reporting to the
3 NHTSA Office of the Associate Administrator for Enforcement.

4 d. Swift Market Action and Response Teams ("SMART") (or their
5 substantial or functional equivalents) of specifically trained Toyota
6 employees who, among others, investigate Consumer reports of unintended
7 acceleration.

8 e. Product Quality Field Offices (or their substantial or functional
9 equivalents) located throughout the United States, which offices specialize in
10 specific vehicle quality issues that are of particular importance to the region.

11 **8.2.** Upon request, Toyota shall provide each state in the MSWG with one Bosch
12 Crash Data Retrieval ("CDR") system, one Toyota CDR cable kit, and a software
13 subscription for this system for the duration of this Consent Decree, provided that such
14 items are commercially available.

15 **8.3.** Toyota shall post on Toyota.com and Lexus.com (or their substantial or
16 functional equivalents) and provide each MSWG state with an instruction sheet
17 regarding how Consumers can access on NHTSA's website Foreign Recall Reports
18 ("FRR") filed by Toyota with NHTSA pursuant to 49 C.F.R. § 579.11.

19 **8.4.** Toyota shall post the following information on Toyota.com and Lexus.com:
20 owner's manuals for appropriate model years; certain warranty and maintenance guides; as
21 well as means by which Consumers can ascertain all Recalls and service campaigns
22 applicable to their Toyota Motor Vehicle by inputting a Vehicle Identification Number
23 ("VIN"). Toyota will also provide each MSWG state with an instruction sheet
24 regarding how Consumers can currently access information about Recalls and service
25 campaigns applicable to their Toyota Motor Vehicles.
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1 **8.5.** With the exception of the permanent injunctive relief embodied in Sections
2 5.1 through 5.3, this Consent Decree shall expire on Effective Date + 4 years, provided
3 that Toyota has not been adjudged by the Court in any MSWG state to have violated
4 Sections 5.1 through 5.3, 6.1 through 6.6, or 8.1 through 8.4 of any MSWG Consent
5 Decree with respect to any act or omission by Toyota related to the Covered Conduct.
6 However, if prior to Effective Date + 4 years Toyota is adjudged by the Court in any
7 MSWG state to have violated Sections 5.1 through 5.3, 6.1 through 6.6 or 8.1 through 8.4
8 of this Consent Decree with respect to any act or omission by Toyota related to the
9 Covered Conduct, Toyota shall continue to be subject to this Consent Decree until
10 Effective Date + 7 years in all MSWG states. This paragraph is in addition to all other
11 remedies available to the State in law and equity.

12 **IX. CONSUMER RESTITUTION**

13 **9.1.** In order to help further address Consumers' reasonable out-of-pocket
14 expenses incurred due to the Covered Conduct, Toyota, at its own expense, hereby agrees,
15 for a period of one (1) year after entry of this Consent Decree, to consider in good faith
16 customer requests for reimbursement, as appropriate on a case-by-case basis (and to the
17 extent a Consumer has not already been reimbursed) for those Consumers who have filed
18 complaints, or who may file complaints or requests for reimbursements with Toyota or
19 with any Attorney General's Office of any signatory state, or any signatory state or federal
20 regulator, in which the Consumer reasonably substantiates and documents reasonable taxi
21 fares, towing costs, rental car costs or other similar expenses.

22 **9.2.** Toyota shall maintain images or records of all such complaints and
23 responses thereto for a period of at least three (3) years after receipt of such complaints,
24 and make the complaints and responses (or records or images thereof) available for
25 inspection and copying upon request by the Attorney General.
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1 **9.3.** Toyota has estimated that the costs of implementing the Restitution as set
2 forth in Section 9.1 and Toyota's compliance with this Consent Decree may be as much as
3 Five Million Dollars (\$5,000,000.00). Provided, however, that this is not a limitation on
4 Toyota's obligation to make restitution pursuant to this Consent Decree.

5 **X. PAYMENT TO THE STATES/CIVIL PENALTIES**

6 Toyota shall pay the States 29 Million Dollars (\$29,000,000.00) to be divided and
7 paid by Toyota directly to each signatory Attorney General of the MSWG in amount to be
8 designated in writing by and in the sole discretion of the MSEC. Toyota shall be jointly
9 and severally liable for all amounts that are due and owed under this Section. The MSEC
10 will provide Toyota with instructions for the payments to be distributed under this
11 paragraph and Toyota shall pay the amount owed to the State of Washington on July 15,
12 2013. The payment made to the State of Washington shall be used for such purposes that
13 may include, but are not limited to restitution, civil penalties, attorneys' fees and other
14 costs of investigation and litigation or future consumer protection enforcement at the sole
15 discretion of the Washington Attorney General.

16 **XI. RELEASE**

17 **11.1.** By execution of this Consent Decree and following a full and complete
18 payment to the States, the Attorney General of the State of Washington releases and
19 forever discharges to the fullest extent of the law, the Defendants (collectively, the
20 "Released Parties") from the following: all civil claims, causes of action, damages,
21 restitution, fines, costs, and penalties that the Washington Attorney General has asserted or
22 could have asserted against the Released Parties pursuant to chapter 19.86 RCW and RCW
23 46.70.180 resulting from the Covered Conduct up to and including the Effective Date
24 (collectively, the "Released Claims").
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1 **11.2.** Notwithstanding any term of this Consent Decree, the following do not
2 comprise Released Claims:

- 3 a. private rights of action;
- 4 b. claims of environmental or tax liability;
- 5 c. criminal liability;
- 6 d. claims for property damage;
- 7 e. claims alleging violations of state or federal securities laws;
- 8 f. claims alleging violations of state or federal antitrust laws;
- 9 g. any claims, other than claims under [UDAP statute] relating to
10 the Covered Conduct, against Toyota by the Attorney General;
- 11 h. any claims against Toyota by any other agency or subdivision of
12 the State; and
- 13 i. any obligations created under this Consent Decree.

14 **XII. CONSENT TO JUDGMENT**

15 **12.1.** Toyota is entering into this Consent Decree solely for the purposes of
16 settlement, and it is the intent of the Parties that nothing contained herein may be
17 taken as or construed to be an admission or concession of any violation of law, rule, or
18 regulation or of any other matter of fact or law or of any liability or wrongdoing, all of
19 which Toyota denies. Toyota does not admit any violation of the Consumer Protection
20 Act, chapter 19.86 RCW or the Dealers and Manufacturers Act, chapter 46.70 RCW and
21 does not admit any wrongdoing that could have been alleged by the Washington State
22 Attorney General before the date of the Consent Decree under those laws. No part of this
23 Consent Decree shall constitute evidence of any liability, fault, or wrongdoing by Toyota.

24 **12.2.** The Consent Decree shall not be construed or used as a waiver or limitation
25 of any cause of action or defense otherwise available to the Parties in any action,
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1 including, where applicable, the defense of puffery, or of Toyota's right to defend itself
2 from or make any arguments in any claims or suits of any kind, including without
3 limitation, individual, group or class claims or suits, relating to the subject matter or terms
4 of this Consent Decree. The Consent Decree is made without trial or adjudication of any
5 issue or fact or law or finding of liability of any kind.

6 **12.3.** This Consent Decree may be enforced by, or provide any basis for any
7 action by or for any award of relief to, only the Parties hereto and no other person or
8 entity. In entering this Consent Decree with this provision and other limiting provisions,
9 this Court specifically refers to and invokes the Full Faith and Credit Clause of the United
10 States Constitution and the doctrine of comity and requests that any other court reviewing,
11 construing, or applying this Consent Decree implement and enforce each such limiting
12 provision.

13 **12.4.** Toyota, by and through their counsel, acknowledge that they have read this
14 Consent Decree, are aware of their right to a trial in this matter and have waived that right.

15 **12.5.** Toyota admits to the jurisdiction of the Court and consents to the entry of
16 this Consent Decree and to the rights of the Washington Attorney General to enforce the
17 terms and conditions of this Consent Decree.

18 **12.6.** Toyota states that no promise of any kind or nature whatsoever (other than
19 the written terms of this Consent Decree) was made to them to induce them to enter into
20 this Consent Decree, that Toyota has entered into this Consent Decree voluntarily, and that
21 this Consent Decree constitutes the entire agreement between Toyota and the Office of the
22 Attorney General of the State of Washington.

23 **12.7.** Under no circumstances shall this Consent Decree or the name of the State
24 of Washington or the Office of the Attorney General or any of its employees or
25 representatives be used by Toyota or by its officers, employees, representatives, or agents
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1 in conjunction with any business activity of Toyota. A violation of this paragraph
2 constitutes a violation of an injunctive term of this Consent Decree.

3 **XIII. MONITORING FOR COMPLIANCE**

4 **13.1.** For the purposes of resolving disputes with respect to compliance with this
5 Consent Decree, duly authorized representatives of the Office of the Attorney General of
6 the State of Washington shall be permitted the following:

7 a. If the Attorney General believes that Toyota has engaged in a practice that
8 violates any provision of this Consent Decree, the Attorney General may notify Toyota
9 telephonically (followed by written confirmation) or in writing of the Attorney General's
10 belief that a violation has occurred. The Attorney General's notice shall include:

11 (1) the basis for the belief;

12 (2) the provision of the Consent Decree that the practice appears to violate;

13 and

14 (3) a date for Toyota to respond to the notification, provided, however,
15 that the date for response be at least fifteen (15) days after the date of notification.

16 b. The Attorney General shall, upon reasonable notice including, but not
17 limited to the notice outlined in 13.1a, above, be permitted to make reasonable access to
18 obtain relevant, non-privileged, non-work-product records and documents in the
19 possession, custody or control of Toyota that relate to Toyota's compliance with the issue
20 that was the subject of the notice.

21 c. The Attorney General shall, upon reasonable notice including, but not
22 limited to the notice outlined in 13.1a, above, and subject to applicable discovery rules,
23 have reasonable access to take depositions of Toyota's officers, directors, employees,
24 agents, and contractors, with relevant knowledge, each of whom may have counsel present,
25
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1 relating to Toyota's compliance with the issue that was subject of the notice and Toyota's
2 compliance with the Consent Decree in its entirety.

3 **13.2.** Upon receipt of written notice, Toyota shall provide a response to the
4 Attorney General notification, containing either a statement explaining why Toyota
5 believes it is in compliance with Consent Decree, or a detailed explanation of how the
6 alleged violation occurred and a statement explaining how Toyota intends to address the
7 alleged breach. For purposes of Section 5.3 of this Consent Decree, if NHTSA determines
8 that actions undertaken by Toyota have remedied a purported violation of the Motor
9 Vehicle Safety Act, then the purported violation of the Motor Vehicle Safety Act shall not
10 be deemed a violation Section 5.3 of this Consent Decree.

11 **13.3.** The Attorney General may assert that Toyota has violated the Consent
12 Decree in a separate civil action to enforce this Consent Decree, or seek any other relief
13 afforded by law for such violation(s), only after providing Toyota with at least fifteen (15)
14 days to respond to the notification described in Paragraph 13.1, above. However, such
15 Attorney General may take any action without prior notice or permitting Toyota a
16 reasonable time to cure where the Attorney General reasonably concludes that, because of
17 a specific practice, a threat to the health or safety of the public requires immediate action.

18 **13.4.** Nothing in this Section shall be construed to limit the Attorney General's
19 investigative authority provided under the Consumer Protection Act, chapter 19.86 RCW.

20 **XIV. NOTICES UNDER THIS CONSENT DECREE**

21 Any notices required to be sent to the State or to Toyota under this Consent Decree
22 shall be sent by United States mail or certified mail return receipt requested. The
23 documents shall be sent to the following addresses:
24
25
26

1 For the Attorney General of Washington State:
2 Mary C. Lobdell, Senior Counsel
3 1250 Pacific Avenue, Suite 105
4 P.O. Box 2317
5 Tacoma, WA 98401-2317

6 For TMC, TMS, TEMA and TMA
7 Maura K. Monaghan, Esq.
8 Debevoise & Plimpton LLP
9 919 Third Avenue
10 New York, NY 10022

11 and

12 Christopher P. Reynolds, Esq.
13 General Counsel
14 Toyota Motor Sales, U.S.A., Inc.
15 19001 South Western Avenue
16 Torrance, CA 90501-1106

17 Any party may change its designated notice recipient(s) by written notice to the
18 other party.

19 **XV. GENERAL PROVISIONS**

20 **15.1.** This Consent Decree shall be binding upon the Parties and their successors
21 and assigns. In no event shall assignment of any right, power, or authority under this
22 Consent Decree avoid compliance with this Consent Decree.

23 **15.2.** Toyota shall use reasonable efforts to notify its officers, directors,
24 employees, agents, and contractors responsible for carrying out and effecting the
25 terms of this Consent Decree of the obligations, duties, and responsibilities imposed
26 on Toyota by this Consent Decree.

15.3. This Consent Decree represents the full and complete terms of the
settlement entered into by the Parties hereto.

1 **15.4.** If any portion of this Consent Decree is held invalid by operation of law, the
2 remaining terms of this Consent Decree shall not be affected and shall remain in full force
3 and effect.

4 **15.5.** Nothing in this Consent Decree shall be construed to waive, limit, or
5 expand any claim of sovereign immunity the State may have in any action or proceeding.

6 **15.6.** Except as otherwise expressly set forth herein or as otherwise provided by
7 law, nothing in this Consent Decree shall be interpreted to require Toyota to take any
8 action that would impair any of Toyota's rights under any law governing patents or trade
9 secrets. Provided, however, that nothing herein shall be interpreted as allowing Toyota to
10 withhold production of documents to the Attorney General or to State Motor Vehicle
11 Safety Authorities based on a claim of patent or trade secret where reasonable
12 confidentiality protections have been provided.

13 **15.7.** Unless otherwise prohibited by law, any signatures by the Parties required
14 for entry of this Consent Decree may be executed in counterparts, each of which shall be
15 deemed an original, but all of which shall together be one and the same Consent Decree.

16 **15.8.** For avoidance of doubt, it is not a violation of this Consent Decree for
17 Toyota to litigate cases or defend claims or allegations even if Toyota's position is
18 contested or its defense is unsuccessful.

19 **XVI. COMPLIANCE WITH ALL LAWS**

20 Except as expressly provided in this Consent Decree, nothing in this Consent
21 Decree shall be construed as relieving Toyota of its respective obligations to comply with
22 all state and federal laws, regulations or rules, or as granting permission to engage in any
23 acts or practices prohibited by such law, regulation or rule.
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XVII. REPRESENTATIONS AND WARRANTIES

17.1. TMC warrants and represents that through its U.S. based subsidiaries, it manufactured, assembled, sold, and distributed Toyota Motor Vehicles in the United States.

17.2. TMS warrants and represents that it sold and distributed Toyota Motor Vehicles in certain geographical areas in the United States.

17.3. TEMA warrants and represents that it manufactured or assembled Toyota Motor Vehicles in certain geographical areas in the United States.

17.4. TMS and TMA warrant and represent that they Advertise Toyota Motor Vehicles in the United States.

17.5. TMC, TMS, TEMA and TMA acknowledge that they are proper parties to this Consent Decree and that TMC, TMS, TEMA, and TMA are the true legal names of the entities other than the State(s) agreeing to this Consent Decree.

17.6. Each of the non-Court signatories to this Consent Decree warrants and represents that he or she has authority to agree to this Consent Decree on behalf of one of the Parties.

17.7. Each of the Parties warrants and represents that it negotiated the terms of this Consent Decree in good faith.

17.8. TMC, TMS, TEMA, and TMA warrant and represent that their responses to the subpoenas or civil investigative demands of the MSWG as of the Effective Date of this Consent Decree were prepared pursuant to good-faith searches for documents and information responsive to those portions of the demands that were adequately designated and not otherwise subject to a good-faith objection or to a good-faith claim of privilege or work-product immunity.

1 17.9. TMC and TMS warrant and represent that they have acted in good faith in
2 implementing and conducting the Recall programs administered by TMS and identified in
3 postings in NHTSA's website between 2010 and 2011.

4 17.10. TMC, TMS, TEMA, and TMA acknowledge and agree that the state
5 Attorneys General have relied on all of the representations and warranties set forth in
6 this Consent Decree and that if any representation is proved false, unfair, deceptive,
7 misleading or inaccurate in any material respect, the State Attorneys General have the
8 right to seek any relief or remedy afforded by law or equity in their respective states.

9 **XVIII. PAYMENT OF FILING FEES**

10 All filing fees associated with commencing this action and obtaining the Court's
11 approval and entry of this Consent Decree shall be borne by Toyota.

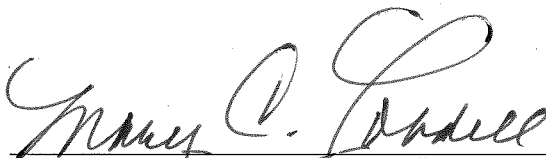
12 IT IS SO ORDERED, ADJUDGED AND DECREED.

13 DONE IN OPEN COURT this _____ day of February, 2013.

14
15
16
17 JUDGE
18

19 Approved for entry and presented by:

20 ROBERT W. FERGUSON
21 Attorney General

22
23 
24 MARY C. LOBDELL, WSBA #17930
25 Senior Counsel
26 on behalf of the State of Washington

DATED: 2/13/13

1 Jointly Approved
2 And Submitted For Entry:

3 

4 MAURA K. MONAGHAN, ESQ.
5 Debevoise & Plimpton LLP
6 on behalf of the Defendants

DATED: February 12, 2013

7
8
9
10 CHRISTOPHER P. REYNOLDS, ESQ.
11 General Counsel Toyota Motor Sales, U.S.A., Inc.

DATED: _____

12
13 Approved as to Form for Entry:

14
15
16 DAVID J. RUSSELL, WSBA # 17289
17 Keller Rohrback LLP
18 1201 Third Avenue, Ste 3200
19 Seattle, Washington 98101

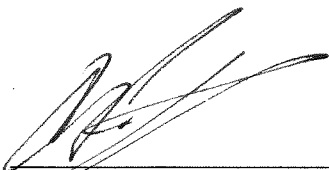
DATED: _____

20 On behalf of Defendants
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1 Jointly Approved
2 And Submitted For Entry:

3
4
5 MAURA K. MONAGHAN, ESQ.
6 Debevoise & Plimpton LLP
on behalf of the Defendants

DATED: _____

7
8 

9
10 CHRISTOPHER P. REYNOLDS, ESQ.
General Counsel Toyota Motor Sales, U.S.A., Inc.

DATED: 2/12/13

11
12
13 Approved as to Form for Entry:

14
15
16
17 DAVID J. RUSSELL, WSBA # 17289
Keller Rohrback LLP
1201 Third Avenue, Ste 3200
18 Seattle, Washington 98101

DATED: _____

19 On behalf of Defendants
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25
26

1 Jointly Approved
2 And Submitted For Entry:

4 _____ DATED: _____

5 MAURA K. MONAGHAN, ESQ.
6 Debevoise & Plimpton LLP
on behalf of the Defendants

9 _____ DATED: _____

10 CHRISTOPHER P. REYNOLDS, ESQ.
11 General Counsel Toyota Motor Sales, U.S.A., Inc.

13 Approved as to Form for Entry:

16 _____ DATED: 2/7/13

17 DAVID J. RUSSELL, WSBA # 17289
18 Keller Rohrback LLP
1201 Third Avenue, Ste 3200
Seattle, Washington 98101

19 On behalf of Defendants