

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TAMARA LOHR and RAVIKIRAN  
SINDOGI, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC., and  
NISSAN MOTOR CO., LTD.,

Defendants.

Case No. C16-1023RSM

ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT

**I. INTRODUCTION**

This putative class action comes before the Court on Defendants Nissan North America, Inc. and Nissan Motor Co., LTD (“Nissan”)’s Motion for Summary Judgment. Dkt #193. Nissan moves to dismiss all of Plaintiffs’ claims as a matter of law, with particular focus on Plaintiffs’ CPA claims. Plaintiffs oppose. Dkt. #197. The Court has determined that it can rule without oral argument. For the following reasons, the Court GRANTS Nissan’s Motion.

**II. BACKGROUND**

This case is about exploding panoramic sunroofs. Plaintiff Tamara Lohr filed her original complaint in state court nearly six years ago, on May 25, 2016. Dkt. #1-1 at 3-30. There were two causes of action under Washington State’s Consumer Protection Act, RCW 19.86 *et seq.*, (“CPA”). *See id.* After removal, Nissan filed a Motion to Dismiss. Dkt. #11. Plaintiff Lohr amended her Complaint. Dkt. #12 (“FAC”). The Amended Complaint added Plaintiff Ravikiran Sindogi and causes of action for breach of express warranty, breach of the

1 warranty of merchantability under RCW 62A *et seq.*, and violation of the Magnuson-Moss  
2 Warranty Act, 15 U.S.C. § 2301 *et seq.* See Dkt. #12. An Amended Motion to Certify Class  
3 remains pending before the Court. Dkt. #94.

4 Plaintiff Lohr leased a new 2015 Nissan Rogue with a panoramic sunroof on August 22,  
5 2015. FAC ¶¶ 48-49. Her car came with a 36-month/36,000-mile limited warranty. See FAC ¶  
6 44. On January 13, 2016, her panoramic sunroof (“PSR”) “shattered” without warning while  
7 she was driving. FAC ¶ 54. A Nissan dealership replaced the sunroof. FAC ¶ 57.

9 Plaintiff Sindogi purchased a new 2012 Nissan Murano in February 2013. FAC ¶ 61.  
10 He was provided with a 36-month/36,000-mile limited warranty. FAC ¶¶ 44, 62. In April or  
11 May of 2016, after the warranty expired, the panoramic sunroof of his Murano shattered while  
12 driving. FAC ¶¶ 65, 67. Glass from the panoramic sunroof rained down on Mr. Sindogi, his  
13 wife in the passenger seat, and his daughter in the backseat. *Id.*

15 Plaintiffs seek to represent “[a]ll Washington state residents who purchased or leased in  
16 the State of Washington a model year 2008-2016 Rogue, Maxima, Sentra, Pathfinder or Altima,  
17 2009-2016 Murano, or 2011-2016 Juke with a factory installed panoramic sunroof.” FAC ¶ 77.

19 One issue raised by Nissan is the difference between an external and internal cause for  
20 the shattering events in Plaintiffs’ vehicles. Plaintiffs plead that the shattering events occurred  
21 without any indication of something falling on the sunroof. FAC at ¶ 55 and ¶ 66. The FAC  
22 states “[r]ocks or other objects thrown up by cars and trucks on the roadway would not impact  
23 the sunroof with sufficient force to cause it to shatter, let alone to shatter outward, a fact Nissan  
24 is aware of.” FAC at ¶ 32. The FAC pleads that the shattering is instead caused by an internal  
25 defect, known to Nissan. Essentially, Plaintiffs plead that these panoramic sunroofs use glass  
26 that is tempered instead of laminated, too thin, covered in ceramic paint that weakens the glass,  
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1 and attached to the car with too much tension. *See* FAC at ¶¶ 11–25. Nissan argues in briefing  
2 that Plaintiffs have now abandoned these theories of what caused the shattering, citing  
3 Plaintiffs’ expert reports and depositions. *See* Dkt. #193 at 6. This issue is further discussed  
4 below, although as the parties will see it is ultimately irrelevant for the Court’s ruling.

5 Another issue raised by Nissan are the damages suffered by the two named Plaintiffs,  
6 who now argue only that they “were injured at the point of sale,” *i.e.* they would have paid less  
7 if they had known of the defect. Dkt. #197 at 26. No evidence is submitted as to this injury;  
8 instead, Plaintiffs say such evidence will come from a forthcoming survey of the proposed class.  
9 Plaintiffs point to no evidence of Lohr’s or Sindogi’s medical or other out-of-pocket expenses.  
10 Plaintiff Lohr’s PSR was repaired for free, she had no out-of-pocket expenses, and she claims  
11 no amount for “loss of use” during the lease. Dkt. #193-5 (“Lohr Dep.”) at 186:1–7; 246:10–  
12 16, 21–23. Plaintiff Sindogi pled that he had to pay some amount of money to repair his  
13 sunroof, *see* FAC at ¶73, but this is not discussed in responsive briefing. Plaintiff Sindogi  
14 eventually traded in his vehicle and has conceded in deposition testimony that the trade-in value  
15 was not reduced because of the alleged defect. Dkt. #193-7 (“Sindogi Dep.”) at 193:2–194:20.  
16 He did not tell the buyer about the alleged defect, but testified the value would have been the  
17 same even if he had. *Id.* at 193:2–5, 194:17–20.

### 21 III. DISCUSSION

#### 22 A. Legal Standard for Summary Judgment

23 Summary judgment is appropriate where “the movant shows that there is no genuine  
24 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
25 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are  
26 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at  
27 28

1 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of  
2 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*  
3 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny &*  
4 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

5 On a motion for summary judgment, the court views the evidence and draws inferences  
6 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*  
7 *Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable  
8 inferences in favor of the non-moving party. See *O’Melveny & Meyers*, 969 F.2d at 747, *rev’d*  
9 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a “sufficient  
10 showing on an essential element of her case with respect to which she has the burden of proof”  
11 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

## 14 B. Analysis

### 15 1. Whether CPA Claims are Barred by a “Safe Harbor” Provision

16 Nissan first argues:

17 The CPA does not apply to “actions or transactions permitted by  
18 any ... regulatory body or officer acting under statutory authority of  
19 this state or of the United States...” RCW 19.86.170. The mere  
20 fact of regulation is not sufficient, but express permission exempts  
21 an action from the CPA. *Vogt v. Seattle-First Nat’l Bank*, 817 P.2d  
22 1364, 1370 (Wash. 1991). Plaintiffs contend Nissan’s PSRs are  
23 “defective” and unsafe because Nissan uses tempered glass.  
Because using tempered glass is expressly permitted by federal  
safety regulations, neither its use nor a failure to disclose that use  
can support a CPA claim.

24 Dkt. #193 at 17. Nissan points to an automobile glass safety regulation promulgated by the  
25 National Highway Traffic Safety Administration (“NHTSA”). *Id.* at 18 (citing FMVSS 205,  
26 “requiring ‘glazing materials for use in motor vehicles’ to conform to a particular engineering  
27 standard,” namely ANSI/SAE Z26.1–1996, which “expressly permits manufacturers to use  
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1 either tempered glass or laminated glass.”). In response, Plaintiffs say their claim is not that  
2 Nissan violated the CPA by simply using tempered glass, but in how that glass was applied to  
3 the sunroofs as designed for the vehicles in question. *See* Dkt. #197 at 14–15.

4 “Washington courts have long interpreted [RCW] 19.86.170 to shield only conduct [that  
5 is] affirmatively authorized by the agency.” *Blaylock v. First Am. Title Ins. Co.*, 504 F. Supp.  
6 2d 1091, 1104-05 (W.D. Wash. 2007) (collecting cases). “An act or transaction is not exempt  
7 merely because it is regulated generally, or merely because a regulating agency acquiesces in  
8 it.” *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wn. App. 834, 844 (Wash. Ct. App. 1997)  
9 (internal citations omitted). Rather, the agency must take “overt affirmative actions specifically  
10 to permit the actions or transactions engaged in by the person or entity involved in a Consumer  
11 Protection Act complaint.” *Id.* (quoting *Vogt v. Seattle-First Nat’l Bank*, 117 Wn.2d 541, 552  
12 (1991)).

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14  
15 The Court finds that the “safe harbor” provision cited by Nissan does not preclude  
16 Plaintiffs’ more nuanced claim that Nissan violated the CPA in how the tempered glass was  
17 applied to the vehicles in question. This is not a valid basis for dismissal of the CPA claim.

## 18 19 **2. CPA Claim – Unfair or Deceptive Act or Practice Element**

20 To prevail on their CPA claims, Plaintiffs must prove: (1) an unfair or deceptive act or  
21 practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a  
22 person’s business or property, and (5) causation. *Ambach v. French*, 216 P.3d 405, 407 (Wash.  
23 2009); *Panag v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 889 (Wash. 2009). Whether an act  
24 is “deceptive” is a question of law for the court. *Panag*, 204 P.3d at 894. Where the alleged  
25 “act” is a failure to disclose, the plaintiff must prove the omitted fact was material. *Young v.*  
26 *Toyota Motor Sales USA*, 472 P.3d 990, 995 (Wash. 2020).  
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1 Plaintiffs claim Nissan acted deceptively by failing to disclose a defect. FAC ¶ 2. This  
2 is also the basis for their “unfair act” claim. *See, e.g., id.* at ¶ 93.

3 Nissan contends Plaintiffs have failed to make a sufficient showing of an unfair or  
4 deceptive act. First, Nissan tries to pin down exactly what Plaintiffs will claim at trial is  
5 defective with the panoramic sunroofs. Nissan states:

6  
7 Plaintiffs have conceded PSRs do not shatter “spontaneously” in  
8 the sense the FAC uses that term, meaning “with no external  
9 cause.” *See, e.g.,* FAC ¶¶ 19– 25 (alleging design defect weakens  
10 glass so that ordinary driving conditions can cause it to shatter  
11 “spontaneously”). They now say there must be an external cause:  
12 either an impact forceful enough to cause the glass to shatter  
13 immediately, or an impact causing some lesser damage that may  
14 gradually “propagate” through the glass and cause it to shatter  
15 later. *See* Pls.’ Mot. for Class Cert. at 1, Reply at 7; Read Dep. at  
16 44:21–47:24, 188:6–190:11.

17 Dkt. #193 at 21. Plaintiffs begrudgingly consent to the gist of this characterization. *See* Dkt.  
18 #197 at 17 (“Plaintiffs never equated ‘spontaneously’ to mean ‘with no external cause’”); and at  
19 18 (“...the PSR shattering is ‘spontaneous’ because the reason for the failure is not *apparent* to  
20 the user and occurs without warning.... Nissan’s own expert, Dr. Verghese, explains that once a  
21 progressive crack enters the tensile layer, the PSR shatters so rapidly—in milliseconds, with the  
22 crack traveling throughout the glass at over 1,000 miles per hour—that it appears to an  
23 unsuspecting occupant that the PSR shatters, essentially, spontaneously.”)

24 Of course, a design that is susceptible to sudden shattering minutes, hours, or days after  
25 some lesser damage incurred through ordinary driving conditions could still be considered a  
26 defect by the average consumer. Impact with a small object on the roof is relatively  
27 commonplace for highway drivers; total failure of a panoramic sunroof well after that impact is  
28 surprising and clearly undesirable. What Plaintiffs are alleging is not, as Nissan characterizes,  
“glass may break if struck by some external object” or “stone chipping.” *See* Dkt. #193 at 21.

1 The change in what Plaintiffs are claiming caused the shattering, or how it occurred, is not fatal  
2 to their CPA claim.

3 However, Nissan also argues Plaintiffs have failed to demonstrate Nissan’s knowledge  
4 of the defect prior to when they received their vehicles in 2013 and 2015. Dkt. #193 at 26  
5 (citing, *inter alia*, *Hiner v. Bridgestone/Firestone, Inc.*, 959 P.2d 1158, 1162–63 (Wash. App.  
6 1998) (“Failure to warn of inherent dangers in the use of a product is not a deceptive or unfair  
7 act unless the manufacturer knows of the dangers” and fails to reveal them), *rev’d on other*  
8 *grounds*, 978 P.2d 505 (Wash. 1999)).

9  
10 In their Response, Plaintiffs barely address this point. They state “there is a genuine  
11 issue of fact regarding whether Nissan knew of the Defect from the first year the PSRs were  
12 offered to consumers.” Dkt. #197 at 23. Plaintiffs then state “[t]he evidence shows that Nissan  
13 received complaints relating to the Defect as early as 2008 and was aware of the Defect when it  
14 responded to NHTSA’s inquiry. ECF Nos. 108-1, 108-19 through 108-20.” *Id.* at 24. Plaintiffs  
15 do not elaborate or direct the Court’s attention to any portion of these cited exhibits.  
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18 On Reply, Nissan summarizes the situation thusly:

19 ECF 108-19 and 108-20 contain information about class vehicle  
20 sales. Plaintiffs do not explain how this shows Nissan’s knowledge  
21 of “the Defect.” ECF 108-1 is Nissan’s response to NHTSA’s  
22 inquiry. But that was sent in June 2016—well after both Plaintiffs’  
23 transactions. The letter refers to earlier allegations or reports at  
24 various times that a PSR had broken, but Plaintiffs make no effort  
25 to explain how these reports meet their burden. Knowledge that  
26 some consumers complained is not enough to show a manufacturer  
27 knew of a material safety defect at the time of the plaintiff’s  
28 purchase. *Wilson v. Hewlett Packard Co.*, 668 F.3d 1136, 1147–48  
(9th Cir. 2012). A detailed analysis of such complaints along with  
supporting facts may be enough at the pleading stage. *Williams v.*  
*Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1026–27 (9th Cir. 2017);  
*see id.* at 1028 (noting importance of fact that Yamaha had “filed a  
motion to dismiss, not a motion for summary judgment.”). A single

1 offhand reference to the mere fact of complaints, with no analysis  
2 whatsoever, cannot meet Plaintiffs' burden here.

3 DKt. #207 at 14.

4 The Court has reviewed these three cited exhibits, the content of which can be found  
5 under seal at Dkts. #90-1, #90-18, and #90-19, and agrees with Nissan. At best, these exhibits  
6 show that there were other PSR incidents involving vehicles that were manufactured prior to  
7 2013 or 2015, but not when that incident occurred or what was reported to Nissan. It is not the  
8 Court's responsibility to connect the dots here, or comb through other exhibits attached to other  
9 Motions to make Plaintiffs' case. Plaintiffs fail to make a sufficient showing that Nissan knew  
10 of the defect prior to the leasing and sale of Plaintiffs' vehicles. Plaintiffs have failed to set  
11 forth sufficient evidence to support their claim of an unfair or deceptive act by demonstrating  
12 that Nissan knew of and failed to disclose a potential defect in their panoramic sunroofs.  
13 Dismissal of this claim is therefore warranted. *See Celotex, supra*.

### 16 3. CPA Claim – Injury

17 Nissan also argues that Plaintiffs have failed to demonstrate injury under the CPA. In  
18 Washington, a plaintiff must present "some rational basis" for his or her damages. *O'Brien v.*  
19 *Larson*, 11 Wn. App. 52, 54 (Wash. Ct. App. 1974). "The precise amount need not be shown  
20 with mathematical certainty." *Olympia Oyster Co. v. Rayonier Inc.*, 229 F. Supp. 855, 861  
21 (W.D. Wash. 1964). Under the CPA, damages "must be broadly construed;" even "minimal  
22 injury" is sufficient to meet the damages element; damages are established if the "consumer's  
23 property interest or money is diminished because of the unlawful conduct even if the expenses  
24 are minimal." *Harvey v. Centene Mgmt. Co. LLC*, 357 F. Supp. 3d 1073, 1081 (E.D. Wash.  
25 2018) (internal citations and quotations omitted). Nonquantifiable injuries such as loss of use of  
26 property will suffice. *Id.*



1 Plaintiffs intend to show injury “at the point of sale.” Dkt. #197 at 26 (“Plaintiffs  
2 contend that they and class members would not have purchased or leased their Nissan vehicles  
3 had they known about the PSR Defect, or they would have paid less if they had known about  
4 it.”). But Plaintiffs present no evidence of this injury. It is for the Plaintiffs to demonstrate at  
5 this stage in litigation that they suffered some damages—it is circular logic to say they suffered  
6 injury because they overpaid for their vehicles where the cost failed to include the risk of  
7 injury—that injury being the risk of overpaying. Plaintiffs must demonstrate some injury to  
8 bring a CPA claim.  
9

10 “Plaintiffs’ experts will measure class members’ damages by calculating the amount  
11 they overpaid for Class Vehicles—that is, the difference in market value between the defective  
12 vehicles as purchased and the non-defective vehicles they believed they were receiving (and  
13 were entitled to receive).” *Id.* at 27. Well, this evidence has not been created yet, so the Court  
14 cannot consider it. The Court is essentially left with just Plaintiffs’ word that their experts will  
15 conclude that Plaintiffs overpaid after conducting a classwide survey. Not only is this  
16 speculative, Nissan was able to get Plaintiffs’ expert stating on the record that the survey could  
17 conclude Plaintiffs did not overpay for their vehicles. *See* Dkt. #193-19 (“Weir Dep.”), 93:11–  
18 24. Meanwhile, Nissan submits evidence from its expert witness who examined market data  
19 and found no evidence of a price differential due to the alleged defect. *See* Dkt. #193-20 at ¶¶  
20 14–15, 45–48. Plaintiffs do not discuss this evidence. Plaintiffs conclude their briefing with,  
21 “[t]hat the survey and conjoint analysis have not yet been performed is not a basis for granting  
22 summary judgement.” Dkt. #197 at 28. There is no citation to support this assertion. While it  
23 may be true that Plaintiffs do not need to establish class-wide damage prior to the certification  
24 of the class, Plaintiffs are responding now to a motion to dismiss *their* claims.  
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1 Bizarrely, Plaintiffs have not submitted evidence of more traditional forms of injury.  
2 There are no medical bills. Plaintiffs apparently had no repair expenses, or they were fully  
3 compensated. While it seems as if these incidents should have caused loss of use or other out-  
4 of-pocket expenses, the Court will not preserve a CPA claim based on its own conjecture.

5 Given all of the above, the Court finds Plaintiffs have failed to make a sufficient  
6 showing on this element as well, and dismissal is independently warranted under *Celotex*.  
7

8 **4. Remaining Warranty Claims**

9 Nissan moves to dismiss all of Plaintiffs' claims, including their warranty claims. Dkt.  
10 #193 at 7 ("the Court should... dismiss Plaintiffs' complaint with prejudice"). Nissan attacks  
11 the breach of warranty claims in a blink-and-you'll-miss-it way. Dkt. #193 at 15–16. Plaintiffs  
12 do not address their warranty claims at all, and thus fail to make a "sufficient showing" on the  
13 essential elements of these claims. Even if they had, the Court would likely dismiss for lack of  
14 damages given the above. Dismissal is warranted. *Celotex, supra*.  
15

16 **IV. CONCLUSION**

17 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
18 finds and ORDERS that Defendants' Motion for Summary Judgment, Dkt. #193, is GRANTED.  
19 All of Plaintiff Lohr and Plaintiff Sindogi's claims are DISMISSED WITH PREJUDICE. The  
20 Court believes the case cannot proceed given this ruling and DIRECTS the parties to file a joint  
21 status report within seven (7) days as to any remaining issues.  
22

23 DATED this 9<sup>th</sup> day of May, 2022.  
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25 

26 RICARDO S. MARTINEZ  
27 CHIEF UNITED STATES DISTRICT JUDGE  
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