

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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

Plaintiffs,

vs.

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

Defendants.

NO. 2:16-cv-01023-RSM

FIRST AMENDED COMPLAINT

JURY DEMAND

Plaintiffs Tamara Lohr and Ravikiran Sindogi, on behalf of themselves and all others similarly situated, allege the following against Defendants Nissan North America, Inc. and Nissan Motor Company, Ltd. (collectively, “Nissan” or “Defendants”):

I. SUMMARY OF CASE

1. Larger style “panoramic” automobile sunroofs, which span a large section of the roof, are aesthetically pleasing, and thus command a premium price, but also pose new and significant engineering challenges. Replacing metal roofs with large plates of glass requires precision in the strengthening, attachment, and stabilization of the glass. Several manufacturers have failed to meet these demands, with at least three manufacturers issuing safety recalls because their panoramic sunroofs were spontaneously shattering.

1 2. Several Nissan models have the same problem. More than sixty Nissan drivers
2 have complained that their panoramic sunroofs shattered suddenly and without warning. The
3 shattering occurs so powerfully that some startled drivers have compared the sound to a
4 gunshot followed by shards of glass hitting the vehicle’s occupants. Nonetheless, Nissan not
5 only refuses to warn drivers of the danger, but also continues to sell and lease the vehicles
6 without disclosing the defect to consumers.

7 3. Nissan’s conduct violates the consumer protection and warranty laws of
8 Washington. On behalf of the class they propose to represent, Plaintiffs seek an award of
9 damages and appropriate equitable relief, including an order enjoining Nissan from continuing
10 to sell vehicles with defective panoramic sunroofs and requiring Nissan to disclose the defect to
11 current owners of the Class Vehicles (defined below) and repair their vehicles.

12 **II. PARTIES**

13 4. Plaintiff Tamara Lohr is a citizen and resident of Tumwater, Thurston County,
14 Washington.

15 5. Plaintiff Ravikiran Sindogi is a citizen and resident of Bothell, Snohomish
16 County, Washington.

17 6. Defendant Nissan North America, Inc. is a California corporation with its
18 headquarters and principal place of business in Franklin, Tennessee.

19 7. Defendant Nissan Motor Company, Ltd., along with its subsidiaries, develops,
20 manufactures, and sells automotive vehicles worldwide. Nissan’s global headquarters are
21 located in Yokohama, Japan.

22 **III. JURISDICTION AND VENUE**

23 8. This Court has jurisdiction over this action under the Class Action Fairness Act,
24 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated
25 claims of the individual class members exceed the sum or value of \$5,000,000, exclusive of
26
27

1 interest and costs, and this is a class action in which Defendants and more than two-thirds of
2 the proposed plaintiff class are citizens of different states.

3 9. This Court may exercise jurisdiction over Defendants because they are
4 registered to conduct business in Washington, they have sufficient minimum contacts in
5 Washington, and they intentionally avail themselves of the markets within Washington through
6 the promotion, sale, marketing, and distribution of their vehicles, thus rendering jurisdiction by
7 this Court proper and necessary.

8 10. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants
9 transact business in this District and a substantial part of the events or omissions giving rise to
10 Plaintiffs' claims occurred in this District.

11 **IV. SUBSTANTIVE ALLEGATIONS**

12 **A. The Nissan Panoramic Sunroof Defect**

13 11. Defendants manufacture, market, and distribute mass produced automobiles in
14 the United States under the Nissan brand name. The Nissan automobile models that are the
15 subject of this case are the 2008-2016 Rogue, Maxima, Sentra, Pathfinder and Altima models,
16 2009-2016 Murano models, and 2011-2016 Juke models with factory-installed panoramic
17 sunroofs (collectively, the "Class Vehicles").

18 12. Starting in at least the 2008 model year, Nissan introduced vehicles with an
19 optional upgrade of a factory-installed panoramic sunroof. Panoramic sunroofs are relatively
20 new and are both wider and longer than traditional sunroofs, covering most of the vehicle's
21 roof. The panoramic sunroofs in all of Nissan's models are substantially similar in design and
22 manufacture.

23 13. Nissan generally markets the panoramic sunroofs as a luxury upgrade and
24 charges several thousand dollars for the upgrade. The actual material cost of the panoramic
25 sunroofs is relatively low, making the option one of the most profitable features in the
26 automotive industry.

2015 Nissan Murano



15 15. Panoramic sunroofs present manufacturing, design, and safety challenges for
16 manufacturers because the large plates of glass take up much of the surface area of the
17 vehicle’s roof.

18 16. One aspect of the challenge is the material make-up of the glass. Whereas some
19 manufacturers, such as Volvo and Honda, have used a laminated glass, other manufacturers,
20 such as Nissan, Kia, Hyundai and Volkswagen, have opted to install panoramic sunroofs with
21 tempered glass that features large areas of ceramic paint.

22 17. In the automotive industry, tempered or toughened glass is made generally in the
23 same manner: a piece of annealed glass is shaped and cut as to original equipment
24 manufacturing (“OEM”) standards. The glass is heated and then rapidly cooled, *i.e.*, tempered.
25 The tempering process creates an outer layer of compression shrink-wrapped around the middle
26 of the glass that is constantly pressing outwards otherwise known as in tension or tensile force.
27

1 The compressive and tensile layers create a stronger piece of glass as compared to non-
2 tempered glazing. If the compressive layer is compromised, however, the entire piece of glass
3 fails catastrophically, and often explosively.

4 18. The problems with panoramic sunroofs are compounded by automakers' use of
5 thinner glass. Nissan and other automobile manufacturers are under mandates to improve fuel
6 efficiency. As a result, car makers like Nissan use thinner glass in panoramic sunroofs to save
7 weight and thus improve fuel efficiency. Thinner glass, however, is very difficult to temper
8 properly (especially when thicknesses are 4mm or less) as the compressive layers are thinner,
9 allowing greater probability of compromise.

10 19. Additionally, the tempered glass used in Nissan sunroofs in the Class Vehicles
11 features a ceramic paint applied prior to tempering. Automotive ceramic paint or ceramic
12 enamels are composed of fine powders of low melting glass frit fluxes (ground glass),
13 pigments, and other additive oxides, sulfides, or metals. After application of the ceramic
14 enamel, the glass is then tempered, as described above. These ceramic enamels are applied on
15 the top around the edges of panoramic sunroof glazing and serve aesthetic and functional
16 purposes. The ceramic paint area appears as a "black band" along the edge of the glass.

17 20. Ceramic enamels are known "adulterants" in automotive glass tempering, and
18 significantly weaken the structural strength and integrity of the Class Vehicles' tempered
19 panoramic sunroof glazing. Among other factors, ceramic enamels compromise glass strength
20 because: (1) the enamels have different thermal expansion coefficients than the glass substrates
21 (the glass and the paint expand at different rates), resulting in residual stress between the
22 ceramic enamel and the glass substrate; and (2) the glass frit will ion exchange with the glass
23 substrate lessening or eliminating the compressive layer above the tensile region thereby
24 significantly weakening it.

25 21. The ceramic paint area was relatively small in conventional sunroofs, but
26 ceramic paint areas have become larger with the advent of panoramic sunroofs with the result
27

1 that the glass has become progressively weaker, more likely to spontaneously burst or explode
2 and, for the unsuspecting driver and passengers, more dangerous.

3 22. In 2013, the Korea Automobile Testing & Research Institute (“KATRI”), a
4 vehicle safety testing institute, concluded that the enamel used for ceramic paint areas in
5 panoramic sunroofs like those installed in Nissan vehicles impairs the strength of the glass,
6 making the glass not only less durable than the usual toughened glass, but also less durable than
7 ordinary glass.

8 23. Following KATRI’s report, an Informal Working Group on Panoramic Sunroof
9 Glazing was established by the United Nations Economic Commission for Europe to evaluate
10 the safety of panoramic sunroofs. The Working Group is chaired by a representative from
11 KATRI and is considering whether to amend the UN regulations on safety glazing.

12 24. Another challenge presented by the panoramic sunroofs is the need to ensure the
13 sunroof glass is fastened to the vehicle with a sufficient degree of tightness. Nissan and other
14 manufacturers seek to fasten the sunroof in a manner that reduces road and wind noise, as well
15 as to make the sunroofs less susceptible to leaking rainwater. At the same time, the sunroof
16 may be weakened with the application of pressure, as flexing and vibration caused in ordinary
17 driving can impose stress and ultimately shattering of the glass.

18 25. In the Nissan models at issue, the compromised tempered glass cannot withstand
19 the pressures and flexing that the sunroof frame and vehicle demand, even when the vehicle
20 and sunroof are brand new. The consequence is that under ordinary driving conditions the
21 glass spontaneously shatters as seen below:
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

2015 Nissan Rogue¹



2012 Nissan Murano²



¹ Plaintiff Tamara Lohr's 2015 Nissan Rogue.

² Plaintiff Ravikiran Sindogi's 2012 Nissan Murano.

1 **B. Consumer Complaints Reveal the Magnitude of the Defect**

2 26. Below are just a few examples of the numerous complaints lodged with the
3 NHTSA. Few, if any, of the drivers who have contacted the federal government have reported
4 that the shattering occurred because of an external object striking their vehicle. The complaints
5 are also viewable online at www.safercar.gov.³

6 2008 Nissan Rogue: Glass from moonroof exploded/shattered to
7 pieces while driving. Temperature was 50 degrees, speed of 60
8 mph, nothing hit the glass to cause it to break. Took delivery of
9 the car 1 week prior to incident. Dealer replaced glass and said it
10 was defective.

(NHTSA ID: 10230496 – Date Complaint Filed: 06/10/2008)

11 2008 Nissan Altima: On March 22, 2008 at approximately 1:30
12 PM I was driving my 2008 Nissan Altima down Knik-Goose Bay
13 RD in Wasilla Alaska when my moon/sun roof blow out. I had
14 just speed up to about 50 MPH and had no other vehicles in my
15 immediate vicinity when I heard a loud pop and glass falling on
16 me. After the glass had fallen on me I reached over and felt my
17 check where I noticed a ¾ inch gash in my face with blood pouring
18 out of it. Luckily I was able to keep my composure and keep my
19 vehicle on the road. The dealership nor Nissan USA could and
20 still has not given me an explanation on why or how this could
21 have happened.

(NHTSA ID: 10222188 – Date Complaint Filed: 03/24/2008)⁴

22 2009 Nissan Murano: Sunroof exploded out while traveling at
23 highway speed (70 mph) at approximately 0930 am. Weather
24 conditions: clear and sunny. Road conditions: dry and smooth, no
25 debris. No other vehicles to the front or sides so it is impossible to
26 be road debris damage such as rocks or other debris. Appears to be
27 a product or design defect.

(NHTSA ID: 10410329 – Date Complaint Filed: 07/03/2011)

3 These customer complaints are reproduced verbatim, and include uncorrected spelling and grammatical errors in the original.

4 The narrative for this consumer complaint is taken from a document accompanying the NHTSA complaint.

1 2009 Nissan Murano: My sunroof over driver and passenger seats
2 literally exploded while driving on interstate – sunny 38 degree
3 day, not under a bridge or near other cars. The noise was
4 deafening, and glass came crashing on my (the driver) head and on
5 the children in the back seat. The roof was exploded upward like a
6 volcano. Nothing hit the roof, as we were shaken but able to pull
7 over and check the car for any evidence of something crashing into
8 sunroof. But the roof exploded upward and outward as it became
9 obvious that a large chunk of glass from roof was missing. The
10 sunroof was closed, but the sun shade was open. Reported the
11 problem to Nissan, but they have yet to get back to me. This is a
12 major problem and a huge safety concern. This problem seems to
13 stem from a pressure problem within the Murano. This is
14 extremely dangerous!! Sunroof is being replaced, but I'm now
15 terrified to drive my car, seeing as how this can happen again, and
16 we may not be as fortunate to pull over safely and make it to the
17 side of road! Nissan must deal with this problem! This can
18 potentially be a fatal flaw on the Murano.

19 (NHTSA ID: 10683749C – Complaint Filed: 02/17/2015)

20 2009 Nissan Altima: I have a 2009 Nissan Altima with just over
21 13000 miles on it. Last week as I was driving to work at about 65
22 mph I heard what sounded like a shotgun blast over my head. The
23 sunroof glass had shattered (more like exploded) leaving about a 2
24 foot circular hole in the glass. At first I thought something must
25 have hit me but when I pulled over I could obviously see that the
26 glass was mushroomed out as if it had exploded from the inside
27 out, not pushed in. I took the car to my Nissan dealer and they
28 agreed that that there was no evidence that anything had hit the
29 glass and that it had simply spontaneously shattered. They also
30 pointed out chips in the paint on the roof and trunk lid caused by
31 the pieces of broken glass. After first denying any coverage,
32 Nissan now has agreed to pay for the new glass as a “goodwill
33 repair” but they still refuse to pay for installation or the paint
34 damage. The dealership picked up the installation and my
35 insurance company is covering the \$2500 of paint damage. I did
36 contact Nissan consumer affairs to appeal their decision but was
37 very curtly denied again.

38 (NHTSA ID: 10379898 – Date Complaint Filed: 02/01/2011)

39 2009 Nissan Rogue: I was driving on the highway nothing more
40 than 50 mph. and my sunroof exploded on the highway with out
41 notice. The glass cut my skin on my hand. And was a loud
42 exploding sound. As I done research on my exploding sound roof
43 incident on google on the internet. I found out I was not the only
44 one that has experienced this sunroof glass exploding while

1 driving. Nothing fell on my car. But caused glass to fall on me
2 and almost a accident from shock of this happening. I am begging
3 you to please make the 2009 Nissan Rogue sunroofs a recall.
4 Because I was lucky enough not to die. But there may not be
5 someone else that is luck. I just got glass cuts. I spoke to Nissan
6 and they told me 800 dollars to fix a manufacture defect.
7 (NHTSA ID: 10596713 – Date Complaint Filed: 06/06/2014)

8
9 2010 Nissan Murano: 2010 Nissan Murano. While driving on
10 highway, the glass of the sunroof suddenly and spontaneously
11 shattered into bits. It was not hit by any object, as traffic was clear
12 on the highway and there was no overpass in the area. Nissan said
13 they found no manufacturer's defect, and my insurance would not
14 cover it as glass. I paid for repair out of pocket.
15 (NHTSA ID: 10363977 – Date Complaint Filed: 11/04/2010)

16
17 2010 Nissan Murano: For the second time in 6 months, my sunroof
18 exploded. The first time was in July, 2012, and I will file a
19 separate report for that incident.. Both times the dealer said they
20 were not responsible. Out of the blue, it sounded like a gun shot, it
21 was so loud. The glass was pushed up with the force, with a big
22 circle of glass missing. I was not following another car and there
23 was no stone kicked up as claimed by the dealer. With the cold air
24 outside, the glass was pushed up with the pressure. The first time
25 it happened was in the summer, and with the pressure the glass was
26 pushed inward. This seems to be a design flaw, as many others on
27 the internet have claimed the same problem, even though the
dealers claim they have not heard of this problem. This problem
should not be ignored, as sooner or later this issue will result in
serious accidents, possibly a fatality, and it would be difficult for
Nissan to say they were not aware of this problem. It is outrageous
that I am afraid to drive this car when at any time, the sun roof may
once again explode for no apparent reason. This dangerous
situation is not what I signed up for when I bought this car and I
am upset that this problem is not being acknowledged by Nissan.
(NHTSA ID: 10493536 – Date Complaint Filed: 01/20/2013)

2011 Nissan Murano: Sunroof of my 2011 Nissan Murano
exploded suddenly while driving down the highway on a clear day
and no other cars in the area. The malfunction of the sunroof
exploding caused the sunroof glass to protrude outward into a dome
shape while glass pieces shattered into the cabin of the Murano.
Upon contacting the Nissan dealer, they referred me to the national
Nissan customer service number, but after 4 days I am still waiting
on a call back from the regional Nissan office. This is a major

1 safety issue that Nissan must take responsibility for correcting as
2 soon as possible.

(NHTSA ID: 10641082 – Date Complaint Filed: 10/03/2014)

3 2011 Nissan Maxima: The rear glass panel of sunroof “exploded”
4 with chunks of glass coming off the panel and over the next few
5 hours the entire panel exhibited major cracking throughout.
6 Sunroof was closed at the time and outside temperature was about
7 45 degrees. Wife was slowing on highway to turn into driveway.
8 She stated the nearest vehicle was over ¼ mile ahead of her so no
9 possibility of rock being thrown from their tires. Sounded like a
10 shotgun blast in the car when it occurred. Since it was the back
11 panel no glass fell into the car that we could see.

(NHTSA ID: 10689956 – Date Complaint Filed: 02/23/2015)

9 2012 Nissan Murano: I was traveling on the interstate at 75mph
10 when I heard a loud boom. I looked around and discovered that
11 the moonroof had shattered. It was a sunny day and there was no
12 traffic around. The glass is broken around the edges of the glass.
13 There is no sign of impact anywhere on the glass.

(NHTSA ID: 10682170 – Date Complaint Filed: 02/09/2015)

14 2012 Nissan Sentra: My sunroof exploded on my 2012 Nissan
15 Sentra. It was parked in my driveway and all the sudden it just
16 exploded. There was no reason for this to happen. No one was
17 around it, no rocks, limbs, hail, no bad weather, or anything.

(NHTSA ID: 10652611 – Date Complaint Filed: 11/04/2014)

18 2012 Nissan Sentra: Spouse parked and waiting in the car at airport
19 arrival curb around 8:30PM. As I was walking toward the car, I
20 heard a loud explosion, sounded like a gunshot. Then I noticed the
21 car sunroof pieces shattered all over. No cars passing by. Temp
22 around 90F. Luckily no passengers close by to the car. Spouse
23 was in shock and luckily the sunroof cover was closed. I could not
24 find a cause other than suspecting this is a vehicle manufacturing
25 defect. The only damage part was sunroof itself. This is a serious
26 safety issue that deem a safety recall of sunroof replacement.
27 Luckily no one was injured. Reported the issue to Nissan
Consumer Affair and waiting to hear back from them.

(NHTSA ID: 10640510 – Date Complaint Filed: 10/01/2014)

1 2012 Nissan Murano: I have a 2012 Nissan Murano (SL) with
2 about 35K miles on it. While traveling to work the morning of
3 09/16/14 the sunroof literally exploded upward for no reason. No
4 impact, road hazard, or other debris. Temperature was constant
5 (60's) Dry, no extremes. Part of the roof was the sliding section
6 for the sunroof. Original sunroof as of purchase (I am the original
7 owner).

8 (NHTSA ID: 10637055 – Date Complaint Filed: 09/17/2014)

9 2012 Nissan Sentra: I was driving in the center lane of a 3 lane
10 highway when I heard an explosion and felt something hit me and
11 realized by sunroof shattered and the glass came down on top of
12 me. I pulled over when I could and could not find a cause for this.
13 The only thing damaged was the sunroof itself. I did not have the
14 visor closed so it covered me in glass plus I still feel the impact
15 from either the spray or just the force on my right head, ear, and
16 shoulder. No cuts, just sore. Outside temp was about 55-60 and I
17 had driven about 20 miles so the cabin was comfortable. I was not
18 around any trucks nor did I drive under an overpass. No
19 explanation other than it exploding by itself.

20 (NHTSA ID: 10605360 – Date Complaint Filed: 06/23/2014)

21 2012 Nissan Sentra: While driving to work at about 6:45 am I
22 heard a loud noise like an explosion and heard glass cracking and
23 looked at sunroof. It had exploded and burst into pieces. I closed
24 the sunshield to protect myself and pulled to the side of the road. I
25 called 911 and a GA state patrol came and inspected the incident
26 and stated it looked like a manufacturers defect with no sign of
27 anything impacting the car. He wrote an incident report and I had
28 to drive onto work. Nissan is looking at my car later to diagnose
29 the problem and I hope they do things right so I don't have to fight
30 to get this resolved.

31 (NHTSA ID: 10563356 – Date Complaint Filed: 02/07/2014)

32 2013 Nissan Pathfinder: On June 9, 2014, at approximately 9:15
33 AM while driving down Crain Hwy on Route 5 with my sunroom
34 retracted. Without warning I heard this loud explosion. I thought I
35 had a blown tire or someone shot at me. I kept driving for about a
36 half a mile until I got to a traffic light. While waiting for the light
37 to turn green, I looked up and saw that there was noise coming
38 from my 2013 Nissan Pathfinder Platinum sunroof. I closed the
39 sunroof slide because I didn't want any glass to fall on me or into
40 my vehicle. Once I arrived at church, I pulled my sunroof forward
41 to see what was going on. The sunroof exploded outward and all
42 the glass landed inside the headliner because my sunroof was
43 retracted, there weren't any cars in front of me for a rock or some

1 other hard object to hit the sunroof, and there wasn't an overpass
2 for something to fall down from up top. On June 11th, I brought
3 my SUV into Tischer Nissan Service Manager so they could see
4 my vehicle and repair the damaged sunroof. My vehicle has
5 23,200 miles on it. I showed him stacks of complaints about this
6 sunroof defect and safety issue. I was told that Nissan Regional
7 Manager decided that Nissan wasn't going to pay for my damaged
8 sunroof. The justification was maybe a semi truck may have
9 kicked a rock inside the sunroof and over a period of time, the rock
10 put pressure on the pressure point of the glass which caused the
11 glass to explode. He told me to contact my insurance company.
12 Quite frankly that is an insult to my intelligence. On June 11th, I
13 contacted Nissan Consumer Affairs. I was given a case #. On
14 June 17th, I was informed that my sunroof damage would not be
15 covered under warranty because there are no known defects,
16 something hard must have hit it, it is temper glass, and to contact my
17 insurance.

(NHTSA ID: 10599068 – Date Complaint Filed: 06/18/2014)

18 2013 Nissan Altima: The contact owns a 2013 Nissan Altima. The
19 contact stated that while driving at approximately 65 MPH, the
20 sunroof exploded and small particles of glass shattered outside of
21 the vehicle. The sunroof sliding cover was closed when the failure
22 occurred. The vehicle was maneuvered to the side of the road.
23 The vehicle was taken to the dealer where the entire sunroof was
24 replaced. The manufacturer was notified of the failure. The
25 approximate failure mileage was 49,000.

(NHTSA ID: 10816880 – Date Complaint Filed: 12/29/2015)

26 2013 Nissan Juke: The vehicle was parked. Driver got in and
27 closed the door. After hearing an odd sound of something raining
down on the roof area, driver got out and discovered that the
sunroof had shattered. Since the sunroof shade was closed, the
glass did not enter the vehicle.

(NHTSA ID: 10641939 – Date Complaint Filed: 10/07/2014)

28 2014 Nissan Maxima: I was driving along the highway on a sunny
29 day, about 75 degrees Fahrenheit, going approximately 65 MPH
30 when I heard a loud exploding type of noise. The next thing I
31 know I hear rattling overhead. I don't live far from where the
32 incident happened so continued to drive .25 miles approximately to
33 my residence and immediately get out to inspect my vehicle. The
34 sunroof was shattered into a million pieces and there was a huge
35 hole right in the middle of it. I had not opened the sunroof while
36 driving so the visor was thankfully closed when it broke.

(NHTSA ID: 10809463 – Date Complaint Filed: 12/10/2015)

1 **C. Nissan’s Knowledge of the Defect**

2 27. Nissan has long known that its panoramic sunroofs are prone to unexpected and
3 dangerous shattering.

4 28. Even before the introduction of panoramic sunroofs, Nissan was aware of the
5 danger created by shattering sunroofs. Nissan’s “Skyview” sunroof, a precursor to panoramic
6 sunroofs, was introduced in the 2003 model year Nissan Maxima. Due to shattering glass,
7 Nissan issued a recall of 2004 Maxima models in order to replace the “Skyview” sunroof
8 (NHTSA Campaign #04V3260000).

9 29. NHTSA has requested information from Nissan regarding exploding sunroofs
10 for vehicles in model years 2006 through 2016, but it is likely that Nissan knew of the defect
11 well before the NHTSA request. A survey of the driver complaints, for example, shows that
12 the sunroofs often shatter within weeks or months of purchase, and the complaints to the
13 NHTSA, above, show that drivers were reporting the problem as early as 2008. Nissan
14 monitors the NHTSA website for emerging problems with its vehicles.

15 30. Nissan also uses a variety of other means to track data about how its vehicles are
16 performing in the days, weeks, and months after they are sold. Nissan collects information
17 from drivers and dealerships, including through complaints, warranty claims, replacement parts
18 data, and other aggregated data sources. Even earlier, Nissan studies and tracks potential
19 vehicle defects through exhaustive pre-release testing. Given the speed and frequency with
20 which the defect becomes apparent, it is not plausible that these various sources of data did not
21 alert Nissan early on to the defect. Nissan has nearly exclusive access to this information,
22 however.

23 31. Nissan is also aware that other manufacturers whose vehicles with similarly
24 designed panoramic sunroofs and similar shattering problems have voluntarily initiated safety
25 recalls to notify drivers of the danger and repair the sunroofs free of cost.

1 32. Nissan claims its sunroofs shatter only as a result of impact from objects on the
2 roadway. Rocks or other objects thrown up by cars and trucks on the roadway would not
3 impact the sunroof with sufficient force to cause it to shatter, let alone to shatter outward, a fact
4 Nissan is aware of. Moreover, driver reports specifically contradict Nissan's position.

5 **D. The Dangers Posed to Class Vehicle Occupants**

6 33. In addition to NHTSA, the KATRI (the South Korean government's automotive
7 safety and testing arm), and various manufacturers have acknowledged that the sudden
8 shattering of a panoramic sunroof endangers drivers, passengers, and others on the road.
9 Panoramic sunroofs, which are intended to last the life of the vehicle, are also an expensive
10 upgrade option that can cost thousands of dollars to replace. A reasonable person considering
11 whether to purchase or lease a Nissan vehicle would therefore want to be informed about the
12 panoramic sunroof defect so that he or she could opt against paying the thousands of dollars for
13 a "luxury upgrade" or simply forego purchasing or leasing the vehicle altogether.

14 34. When the Nissan panoramic sunroofs shatter, they make a sudden and extremely
15 loud noise, followed by shards of glass raining down onto the driver and passengers. Drivers
16 report that the falling shards of glass have cut them and their passengers and have also caused
17 damage to the interior of the vehicles. Drivers have also reported a number of near-miss
18 accidents that occurred after they were startled or distracted by the shattering. Likewise, both
19 Nissan and the NHTSA have received reports of injuries resulting from Nissan panoramic
20 sunroofs shattering.

21 35. Other manufacturers concur. When Volkswagen initiated a safety recall for
22 shattering panoramic sunroofs, for example, it acknowledged that drivers "could be injured by
23 falling glass," and that "[i]f the glass panel were to break while the vehicle is in motion, it
24 could cause driver distraction, increasing the risk of a crash."⁵ And when Hyundai initiated its

25 _____
26 ⁵ Jenna Reed, *VW Recalls Certain Beetle Models Over Potential Panoramic Sunroof Issue*, glassBYTES.com (Dec.
27 11, 2014), <http://www.glassbytes.com/2014/12/vw-recalls-certain-beetle-models-over-potential-panoramic-sunroof-issue/>;

1 recall, it too acknowledged that the shattering of panoramic sunroofs “relates to motor vehicle
2 safety,” including by posing a risk of cutting vehicle occupants.

3 36. In connection with the Hyundai recall, the NHTSA wrote that the breaking of
4 the panoramic sunroof could lead “to personal injury or a vehicle crash.” In connection with an
5 Audi recall, the NHTSA wrote that “should the sunroof’s glass break while the vehicle is in
6 use, the falling glass could cut and injure the driver or passengers [and] could also distract the
7 driver, increasing the risk of a crash.”

8 37. KATRI likewise concluded that the sudden shattering of a panoramic sunroof
9 while driving may cause “abrasions due to shattered glass” and also cause the “risk of
10 secondary accidents.”

11 38. In December 2012, KATRI launched an investigation into exploding panoramic
12 sunroofs of numerous automotive manufacturers, including Nissan. KATRI’s investigation
13 culminated in November 2013, when it met with numerous car manufacturers in Seoul, South
14 Korea, and announced its finding that the ceramic tint in panoramic sunroofs substantially
15 weakens the glass and compromises the safety of the glass. KATRI recommended widespread
16 recalls. KATRI’s recommendations went unheeded by Nissan.

17 **E. Nissan Refuses to Warn Drivers**

18 39. Despite the high number of complaints and the danger posed by the defect,
19 Nissan continues to conceal its existence from current drivers and potential customers alike.
20 Nissan has not warned consumers at the point of sale or lease or when drivers who have
21 experienced a shattered sunroof bring their vehicle in for repairs (or instructed its dealerships to
22 do so), and has made no effort to alert drivers to the risk.

23
24
25
26 Volkswagen of America, Inc., *Volkswagen Issues Voluntary Recall* (Dec. 7, 2014),
<https://media.vw.com/release/856/>.

1 40. Nissan continues to conceal the defect even though it knows that the defect is
2 not reasonably discoverable by drivers unless they experience the defect first hand and are thus
3 exposed to the attendant safety risks.

4 41. Nissan remains silent even as it continues to receive complaints from frightened
5 drivers and has received an inquiry from NHTSA.

6 42. As a result of Nissan’s inaction and silence, many drivers are unaware that they
7 purchased or leased a vehicle which has a defective sunroof from the point of sale, and
8 continue to drive these unsafe and unreliable vehicles. In addition, drivers who have
9 experienced an exploding sunroof and bring their vehicles to a dealership for repairs are not
10 told that a sunroof with the same danger has been installed on their vehicles. Nissan knows of
11 the defect yet continues to profit from the sale and lease of vehicles to unwitting consumers.

12 43. Other manufacturers who have had vehicles with similar panoramic sunroof
13 problems—Audi, Hyundai, and Volkswagen—have all voluntarily initiated safety recalls as a
14 result, notifying drivers of the danger and offering to repair the sunroofs free of cost.

15 **F. Nissan’s Deceptive Warranty Process**

16 44. Nissan advertises that “[e]very Nissan is backed by a 36-month/36,000-mile
17 limited vehicle coverage and a 5-year/60,000-mile limited powertrain coverage.” Nissan’s
18 marketing and advertising campaign touts the “Nissan Safety Shield” philosophy as a
19 comprehensive approach to safety and claim that Nissan vehicles are of “high quality.” Nissan
20 warrants to correct defects in materials or workmanship in all parts and components of new
21 Nissan vehicles.

22 45. The relevant terms of the warranties for each of the model years of the Class
23 Vehicles are identical or substantially similar.

24 46. Plaintiffs and the class members experienced damage from the sunroof defect
25 within the warranty periods of their vehicles. Plaintiffs and the class reasonably expected that
26
27

1 any and all damage that resulted from the sunroof defect would be covered under the warranty,
2 and that they would not be charged for such repairs.

3 47. Nissan has systematically denied coverage with respect to the defective
4 sunroofs. Numerous class members have been forced to incur substantial repair bills in cases in
5 which the sunroofs of their vehicles spontaneously shattered. In addition, Plaintiff Ravikiran
6 Sindogi and class members have been forced to make claims under their automotive insurance
7 policies, and, as a result, they have incurred large sums for payment of insurance deductibles.

8 V. PLAINTIFFS' EXPERIENCES

9 Plaintiff Tamara Lohr

10 48. Plaintiff Tamara Lohr leased a new 2015 Nissan Rogue SV with a panoramic
11 sunroof on August 22, 2015 from the Bruce Titus Automotive Group in Olympia, Washington.
12 Ms. Lohr agreed to make 35 monthly payments of \$338.84. She was provided with a warranty
13 that was a basis of her lease of the vehicle.

14 49. Before leasing her vehicle, Plaintiff Lohr and her father spent about two months
15 researching the Rogue and other vehicles. Plaintiff Lohr was particularly interested in the
16 vehicles' safety ratings. She compared the Rogue with a number of its competitors based on
17 National Highway Safety ratings, gas mileage, road noise, the estimated 5 year depreciated
18 value of the car, and how smoothly the car drove as well as other aesthetic qualities. Ms. Lohr
19 was considering leasing a number of other vehicles with a panoramic sunroof, including the
20 Subaru Forester.

21 50. Plaintiff Lohr reviewed Nissan's website, advertisements, consumer reports, and
22 automotive review magazines before deciding on the Rogue. Ms. Lohr also spoke with
23 dealership personnel—including Jeff Hill and Sarah Rice at the Olympia dealership—and test-
24 drove the 2015 Nissan Rogue at two different dealerships before leasing it.

1 51. Nissan concealed from Ms. Lohr and did not warn her that her 2015 Nissan
2 Rogue’s panoramic sunroof was prone to unexpected and dangerous shattering, even though
3 Nissan knew she could not reasonably discover this defect before she leased it.

4 52. The panoramic sunroof was an optional luxury upgrade, for which Ms. Lohr
5 paid a premium and a product feature that materially influenced her decision to lease the 2015
6 Nissan Rogue. The “Moonroof Package” was listed on the 2015 Nissan Rogue’s window
7 sticker as costing \$1,320.

8 53. Plaintiff Lohr would not have leased the 2015 Nissan Rogue had she known that
9 its panoramic sunroof was prone to unexpected and dangerous shattering. She may have
10 chosen to lease her next choice, a 2015 Subaru Forester, instead.

11 54. On Wednesday, January 13, 2016, Ms. Lohr was driving on I-5 North between
12 Nisqually and Lakewood, Washington. She was driving alone, with the sunroof closed, but the
13 sunshade open. About twenty minutes into her drive, there was an extremely loud noise, like a
14 gunshot, followed by shattering glass and a sudden gust of air from the shattered sunroof. The
15 sunroof had exploded from the center. The sudden shattering of the glass was incredibly
16 jarring to Ms. Lohr, because she believed her car had been shot. Glass fell from the shattered
17 sunroof onto Ms. Lohr’s head and body.

18 55. There was no indication that anything had fallen on the sunroof and no other
19 cars or trucks seemed to have dropped anything.

20 56. Plaintiff Lohr called the Bruce Titus Automotive Group dealership in Olympia
21 to determine how she could get the Rogue repaired. She spoke with Sarah Rice, who tried to
22 find another Nissan dealership near where Ms. Lohr was on her route to Seattle where she
23 could have the panoramic sunroof repaired and be provided a loaner vehicle. None of the
24 nearby Nissan dealerships could provide Ms. Lohr with a free loaner vehicle that she could use
25 while her Rogue was being repaired.

1 57. To avoid having to pay for a loaner vehicle from one of the other dealerships,
2 Ms. Lohr was forced to drive the damaged vehicle about 20 miles back to the dealership in
3 Olympia where her vehicle was repaired and she was provided with a free loaner vehicle.

4 58. Although Nissan replaced Ms. Lohr's panoramic sunroof, they did not inform
5 Ms. Lohr that the sunroof is defective and has a propensity to spontaneously shatter, offer to
6 terminate her lease, or otherwise fix the problem. Instead, upon information and belief, her
7 sunroof was replaced with an identically defective sunroof.

8 59. If Nissan had informed Plaintiff Lohr that they were replacing her shattered
9 sunroof with the same panoramic sunroof with a propensity to shatter unexpectedly, Ms. Lohr
10 would have sought to terminate the lease and discontinue payments made on the lease instead
11 of accepting the replacement panoramic sunroof.

12 60. Had Ms. Lohr been aware of the sunroof defect, she would have either not
13 leased her 2015 Nissan Rogue or would have paid less to lease the vehicle than she did, thus
14 she lost the benefit of her bargain.

15 Plaintiff Ravikiran M. Sindogi

16 61. Plaintiff Ravikiran M. Sindogi purchased a new 2012 Nissan Murano with a
17 panoramic sunroof in February 2013 from the Campbell Nelson Nissan dealership in Edmonds,
18 Washington.

19 62. Mr. Sindogi decided to purchase the Murano because it was within the price
20 range he budgeted to purchase a vehicle and he liked its size and comfort. He paid about
21 \$32,000 for the Murano. Plaintiff Sindogi was provided with a warranty that was a basis of his
22 purchase of the vehicle.

23 63. Nissan concealed from Mr. Sindogi and did not warn him that the panoramic
24 sunroof on his 2012 Murano was prone to unexpected and dangerous shattering, even though
25 Nissan knew he could not reasonably discover this defect before he purchased it.

1 64. Plaintiff Sindogi would not have purchased the 2012 Nissan Murano had he
2 known that its panoramic sunroof was prone to unexpected and dangerous shattering.

3 65. In April or May of 2016, Plaintiff Sindogi was driving with his wife and 8-year-
4 old daughter in the Murano on I-5 North from Seattle to his home in Bothell, Washington.
5 They were returning home after enjoying a family dinner in in Seattle. While driving at about 9
6 p.m. near exit 172 on I-5, the family heard a loud bang, like the sound of a shotgun going off.
7 Shards of glass from the panoramic sunroof rained down on Mr. Sindogi, his wife in the
8 passenger seat, and his daughter in the backseat. The sudden shattering of the glass startled Mr.
9 Sindogi, his wife, and his daughter. Mr. Sindogi was forced to drive the damaged vehicle the
10 rest of the way home with a shaken family in the vehicle.

11 66. When the panoramic sunroof shattered, there were no trucks on the interstate
12 near Mr. Sindogi's vehicle. There was no indication of anything falling on the sunroof and no
13 other cars or trucks seemed to have dropped anything. The sky was clear.

14 67. Plaintiff Sindogi called the Campbell Nelson Nissan dealership in Edmonds to
15 determine what to do about the shattered panoramic sunroof. He was told that his warranty had
16 expired but to call Nissan's customer care center to discuss the issue and open a case with
17 them, which he did (case # 22301535). Mr. Sindogi spent 3 to 4 hours on the phone with
18 Nissan's customer care center during several calls and eventually set up a time to bring the
19 Murano into the Campbell Nelson Nissan dealership for a diagnostic test to determine why the
20 sunroof shattered.

21 68. This process took about two weeks. During this time, Mr. Sindogi's Murano
22 remained damaged with a shattered sunroof. Plaintiff Sindogi had to take 2 or 3 hours off work
23 to drive the Murano to the Campbell Nelson Nissan dealership in Edmonds to have a diagnostic
24 test performed. He drove the damaged vehicle from his home in Bothell, Washington to the
25 dealership, a drive of about 11 miles that took about 45 minutes in morning traffic.

1 69. Plaintiff Sindogi spoke with John, the service manager at the Campbell Nelson
2 Nissan dealership, about the diagnostic test. John told Mr. Sindogi that the dealership could not
3 determine what caused the panoramic sunroof to shatter but opined that it was probably caused
4 by something striking the sunroof, even though no object was seen, heard, or found at the time
5 of the incident.

6 70. Nissan did not inform Mr. Sindogi that the sunroof is defective and has a
7 propensity to spontaneously shatter, and did not offer to repurchase his vehicle or otherwise fix
8 the problem. Nissan refused to replace or repair the Murano's sunroof. The dealership charged
9 him about \$164.50 for performing the diagnostic test on the Murano, but later refunded it.

10 71. Nissan's refusal to repair or replace the panoramic sunroof forced Plaintiff
11 Sindogi to submit a claim to his insurance company, State Farm. His insurance company
12 required him to have the Murano's sunroof repaired at an approved repair shop in Bellevue,
13 Washington.

14 72. To have the Murano's sunroof repaired, Plaintiff Sindogi had to drive the
15 Murano from his home in Bothell, Washington to Bellevue, Washington where the repair shop
16 was located. He spent a total of about 3 hours driving to and from Bellevue and waiting for the
17 repair to be completed.

18 73. Plaintiff Sindogi paid about \$1,200 to have the sunroof repaired. He had to pay
19 a \$500 deductible out of pocket, and State Farm reimbursed him about \$700 to cover the
20 remaining cost of the repair. On information and belief, the sunroof was replaced with an
21 identically defective sunroof.

22 74. Neither Nissan nor the repair shop provided Plaintiff Sindogi with a loaner
23 vehicle while the Murano's sunroof was being repaired.

24 75. In June 2016, following the repair to the Murano's sunroof, Plaintiff Sindogi
25 sold the Murano. He traded it in for a Toyota Sienna minivan. Mr. Sindogi sold the Murano
26 because he was concerned about the safety of the car. He was worried that the sunroof might
27

1 spontaneously shatter again. Mr. Sindogi was particularly concerned that his wife and daughter
2 might be injured if the Murano's replacement sunroof shattered while they were in the car.

3 76. Had Mr. Sindogi been aware of the sunroof defect in the first place, he would
4 have either not purchased the 2012 Nissan Murano or would have paid less for this vehicle than
5 he did. Thus, he lost the benefit of his bargain.

6 VI. CLASS ACTION ALLEGATIONS

7 77. Pursuant to Washington Civil Rule 23, Plaintiffs bring this case as a class action
8 on behalf of a class defined as follows:

9 All Washington state residents who purchased or leased in the State of Washington a
10 model year 2008-2016 Rogue, Maxima, Sentra, Pathfinder or Altima, 2009-2016
11 Murano, or 2011-2016 Juke with a factory-installed panoramic sunroof.

12 78. Excluded from the proposed class is Nissan; any affiliate, parent, or subsidiary
13 of Nissan; any entity in which Nissan has a controlling interest; any officer, director, or
14 employee of Nissan; any successor or assign of Nissan; anyone employed by counsel in this
15 action; any judge to whom this case is assigned, his or her spouse; and members of the judge's
16 staff; and anyone who purchased a Class Vehicle for the purpose of resale.

17 79. Members of the proposed class are readily ascertainable because the class
18 definition is based upon objective criteria.

19 80. Numerosity. Nissan sold thousands of Class Vehicles, including a substantial
20 number in Washington. Members of the proposed class likely number in the thousands and are
21 thus too numerous to practically join in a single action. Class members may be notified of the
22 pendency of this action by mail, supplemented by published notice (if deemed necessary or
23 appropriate by the Court).

24 81. Commonality and Predominance. Common questions of law and fact exist as to
25 all proposed class members and predominate over questions affecting only individual class
26 members. These common questions include:

1 a. Whether the panoramic sunroofs in Class Vehicles are defectively
2 designed such that they have a propensity to spontaneously shatter;

3 b. Whether Nissan knew or should have known that its panoramic sunroofs
4 are defectively designed such that they have a propensity to spontaneously shatter, and if so,
5 when it discovered this;

6 c. Whether the knowledge of this fact would be important to a reasonable
7 person, for example, because it poses an unreasonable safety hazard;

8 d. Whether Nissan failed to disclose or concealed the existence of the
9 sunroofs' propensity to shatter from potential customers;

10 e. Whether Nissan has breached its warranty obligations;

11 f. Whether Nissan has a pattern and practice of attributing damages
12 claimed by Plaintiffs and the class to causes other than the complained-of defect;

13 g. Whether Nissan should be required to notify class members about the
14 sunroofs' propensity to spontaneously shatter and cease its practice of providing identical
15 replacement sunroofs;

16 h. Whether this Court should grant the declaratory relief requested herein;

17 i. Whether Nissan had a duty to disclose to Plaintiffs and all class members
18 the true character, quality, and nature of the Class Vehicles and the sunroof defect;

19 j. Whether Nissan engaged in unfair or deceptive acts or practices in
20 violation of RCW 19.86.020, as alleged herein;

21 k. Whether Nissan has acted or refused to act on grounds generally
22 applicable to the class.

23 82. Typicality. Plaintiffs' claims are typical of the claims of the proposed class.
24 Plaintiffs and the members of the proposed class all purchased or leased Class Vehicles with
25 panoramic sunroofs that contain a propensity to spontaneously shatter, giving rise to
26 substantially the same claims.
27

1 83. Adequacy. Plaintiffs are adequate representatives of the proposed class because
2 their interests do not conflict with the interests of the members of the class they seek to
3 represent. Plaintiffs have retained counsel competent and experienced in complex class action
4 litigation, and will prosecute this action vigorously on class members' behalf.

5 84. Superiority. A class action is superior to other available means for the fair and
6 efficient adjudication of this dispute. The injury suffered by each class member, while
7 meaningful on an individual basis, is not of such magnitude as to make the prosecution of
8 individual actions against Nissan economically feasible. Even if class members themselves
9 could afford such individualized litigation, the court system could not. In addition to the
10 burden and expense of managing many actions arising from the defective panoramic sunroofs,
11 individualized litigation presents a potential for inconsistent or contradictory judgments.
12 Individualized litigation increases the delay and expense to all parties and the court system
13 presented by the legal and factual issues of the case. By contrast, a class action presents far
14 fewer management difficulties and provides the benefits of single adjudication, economy of
15 scale, and comprehensive supervision by a single court.

16 85. In the alternative, the proposed class may be certified because:

17 a. the prosecution of separate actions by the individual members of the
18 proposed class would create a risk of inconsistent adjudications, which could establish
19 incompatible standards of conduct for Nissan;

20 b. the prosecution of individual actions could result in adjudications, which
21 as a practical matter, would be dispositive of the interests of non-party class members or which
22 would substantially impair their ability to protect their interests; and

23 c. Nissan has acted or refused to act on grounds generally applicable to the
24 proposed class, thereby making appropriate final and injunctive relief with respect to the
25 members of the proposed class as a whole.

VII. TOLLING OF STATUTES OF LIMITATIONS

1
2 86. Discovery Rule. Plaintiffs' claims accrued upon discovery that the sunroofs
3 installed in their Class Vehicle were defective in that sunroofs of this type spontaneously
4 shatter which results in costly repairs. While Nissan knew, and concealed, the fact that the
5 sunroofs installed in the Class Vehicles have a defect that causes spontaneous shattering,
6 Plaintiffs and class members could not and did not discover this fact through reasonable
7 diligent investigation until after they experienced such spontaneous shattering. Even then,
8 Nissan claims the sunroofs shatter only as a result of impact from objects on the roadway and
9 conceals from Plaintiffs and class members that the sunroofs are defective. Plaintiffs and class
10 members who experienced exploding sunroofs also could not know that the new sunroofs that
11 were installed in their vehicles presented the same danger of spontaneously shattering.

12 87. Active Concealment Tolling. Any statutes of limitations are tolled by Nissan's
13 knowing and active concealment of the fact that the sunroofs installed in the Class Vehicles
14 suffered from an inherent defect. Nissan kept Plaintiffs and all class members ignorant of vital
15 information essential to the pursuit of their claims, without any fault or lack of diligence on the
16 part of Plaintiffs. The details of Nissan's efforts to conceal its above-described unlawful
17 conduct are in its possession, custody, and control, to the exclusion of Plaintiffs and class
18 members, and await discovery. Plaintiffs and class members could not reasonably have
19 discovered the fact that the sunroofs installed in their Class Vehicles were defective and that
20 such sunroofs spontaneously shatter.

21 88. Estoppel. Nissan was and is under a continuous duty to disclose to Plaintiffs and
22 all class members the true character, quality, and nature of the sunroofs installed in the Class
23 Vehicles. At all relevant times, and continuing to this day, Nissan knowingly, affirmatively,
24 and actively misrepresented and concealed the true character, quality, and nature of the
25 sunroofs installed in the Class Vehicles. The details of Nissan's efforts to conceal its above-
26 described unlawful conduct are in its possession, custody, and control, to the exclusion of
27

1 Plaintiffs and class members, and await discovery. Plaintiffs reasonably relied upon Nissan’s
 2 affirmative misrepresentations and knowing, affirmative, and/or active concealment. Based on
 3 the foregoing, Nissan is estopped from relying upon any statutes of limitation in defense of this
 4 action.

5 89. Equitable Tolling. Nissan took active steps to conceal the fact that it
 6 wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, sold,
 7 and/or leased Class Vehicles with defective sunroofs. The details of Nissan’s efforts to conceal
 8 its above-described unlawful conduct are in its possession, custody, and control, to the
 9 exclusion of Plaintiffs and class members, and await discovery. When Plaintiffs learned about
 10 this material information, they exercised due diligence by thoroughly investigating the
 11 situation, retaining counsel, and pursuing their claims. Nissan fraudulently concealed its
 12 above-described wrongful acts. Should such be necessary, therefore, all applicable statutes of
 13 limitation are tolled under the doctrine of equitable tolling.

14 **VIII. FIRST CLAIM**

15 **Violation of the Washington Consumer Protection Act, RCW 19.86 *et seq.* –** 16 **Non-Per Se Unfair Business Practices – On Behalf of the Class**

17 90. Plaintiffs re-allege and incorporates the preceding paragraphs as if fully set
 18 forth herein.

19 91. Nissan is a “person” within the meaning of the CPA, RCW 19.86.010(1), and
 20 conducts “trade” and “commerce” within the meaning of RCW 19.86.010(2).

21 92. Plaintiffs and other class members are “persons” within the meaning of the
 22 Washington Consumer Protection Act, RCW 19.86.010(1).

23 93. Nissan engaged in unfair acts or practices by engaging in a pattern and practice
 24 of: (i) failing to disclose that its Class Vehicles, and the panoramic sunroofs in its Class
 25 Vehicles, were not of a particular standard, quality, or grade; (ii) failing to disclose, at and after
 26 the time of purchase or lease and repair, any and all known material defects or material
 27 nonconformity of the Class Vehicles, including the panoramic sunroofs of the Class Vehicles;

1 (iii) failing to disclose at the time of purchase or lease that the Class Vehicles, including the
2 panoramic sunroofs of the Class Vehicles, were not in good working order, were defective, and
3 were not fit for their intended purpose; (iv) failing to give adequate warnings and notices
4 regarding the use, defects, and problems with the Class Vehicles' panoramic sunroofs to
5 customers and consumers who purchased and/or leased said Class Vehicles, despite the fact
6 that Defendants possessed prior knowledge of the inherent defects to the Class Vehicles'
7 panoramic sunroofs; (v) failing to disclose, either through warnings or recall notices, and/or
8 actively concealed the fact that the Class Vehicles' panoramic sunroofs were defective, despite
9 the fact that Nissan learned of the defects through consumer complaints as early as 2008, if not
10 before; (vi) causing Plaintiffs and members of the class to expend sums of money at its
11 dealerships to repair and/or replace the Class Vehicles' panoramic sunroofs, despite Nissan's
12 knowledge of the defect; and (vii) replacing the Class Vehicles' panoramic sunroofs pursuant
13 to warranty provisions, where Nissan utilized equally defective panoramic sunroofs such that
14 the defect was not corrected even though Nissan informed consumers that the defect was
15 corrected.

16 94. Nissan's systematic practice of failing to disclose defects in the Class Vehicles'
17 panoramic sunroofs, failing to give adequate warnings regarding defects with the class
18 Vehicles' panoramic sunroofs, and failing to repair the Class Vehicles' panoramic sunroofs are
19 unfair because these acts or practices offend public policy as it has been established by statutes,
20 regulations, the common law or otherwise, including, but not limited to, the public policy
21 established by RCW 19.230.005.

22 95. Nissan's systematic practice of failing to disclose defects in the Class Vehicles'
23 panoramic sunroofs, failing to give adequate warnings regarding defects with the Class
24 Vehicles' panoramic sunroofs, and failing to repair the Class Vehicles' panoramic sunroofs are
25 unfair because these acts or practices: (1) cause substantial financial injury to Plaintiffs and
26
27

1 class members; (2) are not outweighed by any countervailing benefits to consumers or
2 competitors; and (3) are not reasonably avoidable by consumers.

3 96. Nissan's unfair acts and practices affect the public interest. The unfair acts and
4 practices were committed in the general course of Nissan's business and have already injured
5 thousands of individuals nationwide. There is a likelihood that Nissan's practices will injure
6 other members of the public.

7 97. As a direct and proximate result of Nissan's unfair acts or practices, Plaintiffs
8 and class members suffered injury in fact and lost money. Defendants' unfair or deceptive acts
9 or practices resulted in Plaintiffs and the Class: (i) expending out-of-pocket monies for repairs
10 of the Class Vehicles' panoramic sunroofs, replacement of the Class Vehicles' panoramic
11 sunroofs, and loss of use of the Class Vehicles while panoramic sunroofs were being repaired
12 and/or replaced; (ii) the failure of consideration in connection with and/or difference in value
13 arising out of the variance between the Class Vehicles as warranted and the Class Vehicles
14 containing the defect; and (iii) the diminution of resale value of the Class Vehicles resulting
15 from the defect.

16 98. Plaintiffs and the class members are therefore entitled to legal relief against
17 Nissan, including recovery of actual damages, treble damages, attorneys' fees, costs of suit, and
18 such further relief as the Court may deem proper.

19 99. Plaintiffs and the class are also entitled to injunctive relief in the form of an
20 order prohibiting Nissan from engaging in the alleged misconduct and such other equitable
21 relief as the Court deems appropriate, including, but not limited to, disgorgement, for the
22 benefit of the class members, of all or part of the ill-gotten profits Nissan received from the
23 failure to disclose defects with Class Vehicle panoramic sunroofs.

IX. SECOND CLAIM

**Violation of the Washington Consumer Protection Act, RCW § 19.86 et seq. –
Non-Per Se Deceptive Business Practices – On Behalf of the Class**

100. Plaintiffs re-allege and incorporates the preceding paragraphs as if fully set forth herein.

101. Nissan is a “person” within the meaning of the CPA, RCW 19.86.010(1), and conducts “trade” and “commerce” within the meaning of RCW 19.86.010(2).

102. Plaintiffs and other class members are “persons” within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(1).

103. Nissan has engaged in deceptive acts or practices. Nissan has long known that its panoramic sunroofs have a propensity to shatter spontaneously, posing a serious safety risk, which it concealed and failed to disclose to Plaintiffs and the proposed class members.

104. Nissan has further engaged in deceptive acts or practices by representing that defects in the Class Vehicles would be covered under its warranty program, while systematically denying coverage with respect to the defective panoramic sunroofs.

105. Nissan’s deceptive acts or practices have repeatedly occurred in its trade or business and were and are capable of deceiving a substantial portion of the public. The acts complained of herein are ongoing and/or have a substantial likelihood of being repeated.

106. Nissan’s unfair acts and practices affect the public interest. The unfair acts and practices were committed in the general course of Nissan’s business and have already injured thousands of individuals nationwide. There is a likelihood that Nissan’s practices will injure other members of the public.

107. As a direct and proximate result of Nissan’s unfair acts or practices, Plaintiffs and Class members suffered injury in fact and lost money. Defendants’ unfair or deceptive acts or practices resulted in Plaintiffs and the class: (i) expending out-of-pocket monies for repairs of the Class Vehicles’ panoramic sunroofs, replacement of the Class Vehicles’ panoramic sunroofs and loss of use of the Class Vehicles while panoramic sunroofs were being repaired

1 and/or replaced; (ii) the failure of consideration in connection with and/or difference in value
2 arising out of the variance between the Class Vehicles as warranted and the Class Vehicles
3 containing the defect; and (iii) the diminution of resale value of the Class Vehicles resulting
4 from the defect.

5 108. Plaintiffs and the class members are therefore entitled to legal relief against
6 Nissan, including recovery of actual damages, treble damages, attorneys' fees, costs of suit, and
7 such further relief as the Court may deem proper.

8 109. Plaintiffs and the class are also entitled to injunctive relief in the form of an
9 order prohibiting Nissan from engaging in the alleged misconduct and such other equitable
10 relief as the Court deems appropriate, including, but not limited to, disgorgement, for the
11 benefit of the class members, of all or part of the ill-gotten profits Nissan received from the
12 failure to disclose defects with Class Vehicle panoramic sunroofs.

13 **X. THIRD CLAIM**

14 **Breach of Express Warranty – On Behalf of the Class**

15 110. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth
16 herein.

17 111. Nissan provided all purchasers and lessees of the Class Vehicles with the
18 express warranties described herein, which became part of the basis of the bargain.
19 Accordingly, Nissan's warranties are express warranties under Washington law.

20 112. The parts affected by the defect, including the panoramic sunroofs, and the
21 brackets and assemblies to which the sunroofs were attached, were manufactured and
22 distributed by Nissan in the Class Vehicles and are covered by the warranties Nissan provided
23 to all purchasers and lessors of Class Vehicles.

24 113. Nissan breached these warranties by selling and leasing Class Vehicles with the
25 panoramic sunroof defect, requiring repair or replacement within the applicable warranty
26 periods, and refusing to honor the warranties with free repairs or replacements during the
27 applicable warranty periods.

1 114. Nissan further breached these warranties by not correcting the defect. Although
2 Nissan warranted that it would correct defects in materials and workmanship in the Class
3 Vehicles, Nissan instead replaced shattered sunroofs in the Class Vehicles with identical
4 defective sunroofs and thus has not corrected the defect. Nissan has failed and refused to
5 conform the panoramic sunroofs in the Class Vehicles to the express warranty. Nissan's
6 conduct has voided any attempt to disclaim liability for its actions.

7 115. Plaintiffs notified Nissan of the breach within a reasonable time or were not
8 required to do so, because affording Nissan a reasonable opportunity to cure its breach of
9 written warranty would have been futile. Nissan also knew of the defect and chose to conceal it
10 and to fail to comply with its warranty obligations.

11 116. Nissan's attempt to disclaim or limit these express warranties vis-à-vis
12 consumers is unconscionable and unenforceable under these circumstances. Nissan's warranty
13 limitation is unenforceable because it knowingly sold a defective product without informing
14 consumers about the defect.

15 117. Nissan's attempt to limit its express warranty in a manner that would result in
16 replacing its defectively designed panoramic sunroofs with identical defective sunroofs causes
17 the warranty to fail its essential purpose and renders the warranty null and void.

18 118. The time limits contained in Nissan's warranty period were also unconscionable
19 and inadequate to protect Plaintiffs and class members. Among other things, Plaintiffs and
20 class members had no meaningful choice in determining these time limitations, the terms of
21 which unreasonably favored Nissan. A gross disparity in bargaining power exists between
22 Nissan and the class members, and Nissan knew or should have known that the Class Vehicles
23 were defective at the time of sale and would fail well before the end of their useful lives.

24 119. Plaintiffs and class members have complied with all obligations under the
25 warranty, or otherwise have been excused from performance of those obligations as a result of
26 Nissan's conduct described herein.

1 120. As a direct and proximate cause of Nissan's breach, Plaintiffs and the other class
2 members bought or leased Class Vehicles they otherwise would not have, overpaid for their
3 vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a
4 diminution in value. Plaintiffs and class members have also incurred and will continue to incur
5 costs for repair and replacement of defective panoramic sunroofs and damage resulting from
6 the spontaneous shattering of such sunroofs.

7 121. Plaintiffs and the class members are entitled to legal and equitable relief against
8 Nissan, including damages, consequential damages, specific performance, attorney fees, costs
9 of suit, and such further relief as the Court may deem proper.

10 XI. FOURTH CLAIM

11 Violation of the Uniform Commercial Code, RCW 62A *et seq.* 12 Breach of Warranty of Merchantability – On Behalf of the Class

13 122. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth
14 herein.

15 123. Nissan is and was at all relevant times a merchant with respect to the Class
16 Vehicles.

17 124. Nissan was and is in actual or constructive privity with Plaintiffs and all Class
18 Members.

19 a. Plaintiffs and class members had and continue to have sufficient direct
20 dealings with Nissan and/or its authorized dealers, franchisees, representatives, and agents to
21 establish any required privity of contract. Nissan's authorized dealers, franchisees,
22 representatives, and agents were not intended to be the ultimate consumers of the Class
23 Vehicles and have no rights under the warranty agreements provided with the Class Vehicles.
24 The warranty agreements were designed for and intended to benefit only the ultimate
25 purchasers and lessees of the Class Vehicles, i.e., Plaintiffs and class members.

1 b. Privity is not required to assert this claim because Plaintiffs and class
2 members are intended third-party beneficiaries of contracts between Nissan and its dealers,
3 franchisees, representatives, and agents.

4 c. By extending express written warranties to end-user purchasers and
5 lessees, Nissan brought itself into privity with Plaintiffs and class members.

6 125. At all relevant times, Washington law imposed upon Nissan a duty that the
7 sunroofs installed in the Class Vehicles be fit for the ordinary purposes for which sunroofs are
8 used and that they pass without objection in the trade under the contract description.

9 126. Nissan has not validly disclaimed, excluded, or modified the implied warranties
10 or duties described above, and any attempted disclaimer or exclusion of the implied warranties
11 was and is ineffectual.

12 127. The sunroofs installed in the Class Vehicles were defective at the time they left
13 Nissan's possession. Nissan knew of this defect at the time the purchase and lease transactions
14 occurred. Thus, the sunroofs installed in the Class Vehicles, when sold or leased and at all
15 times thereafter, were not in merchantable condition or quality because they are not fit for their
16 ordinary intended purpose and they do not pass without objection in the trade under the
17 contract description.

18 128. Nissan failed to inform Plaintiffs and class members of the defective condition
19 of the panoramic sunroofs. The failure to warn Plaintiffs and class members of this defective
20 condition constitutes a further breach by Nissan of the implied warranties of merchantability.

21 129. Plaintiffs and class members used the sunroofs installed in the Class Vehicles in
22 a manner consistent with their intended use and performed each and every duty required under
23 the terms of the warranties, except as may have been excused or prevented by the conduct of
24 Nissan or by operation of law in light of Nissan's unconscionable conduct.

1 130. Nissan had actual knowledge of, and received timely notice regarding, the defect
2 at issue in this litigation and, notwithstanding such notice, failed and refused to offer an
3 effective remedy.

4 131. In addition, Nissan received, on information and belief, numerous consumer
5 complaints and other notices from customers advising of the defect associated with the
6 sunroofs installed in the Class Vehicles.

7 132. By virtue of the conduct described herein, Nissan breached the implied warranty
8 of merchantability.

9 133. As a direct and proximate result of Nissan's breach of warranties, Plaintiffs and
10 class members suffered economic damage, including loss attributable to the diminished value
11 of their Class Vehicles, loss of use of their Class Vehicles and other tangible property, as well
12 as the monies spent and to be spent to repair and/or replace their sunroofs.

13 134. Plaintiffs and class members are entitled to legal and equitable relief against
14 Nissan, including damages, consequential damages, specific performance, attorney fees, costs
15 of suit, and such further relief as the Court may deem proper.

16 **XII. FIFTH CLAIM**

17 **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.**
18 **Breach of Written Warranty – On Behalf of the Class**

19 135. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth
20 herein.

21 136. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(d)(1), provides a cause of
22 action for any consumer who is damaged by the failure of a warrantor to comply with a written
23 or implied warranty.

24 137. Plaintiffs and class members are "consumers" within the meaning of the
25 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

26 138. Defendants are "suppliers" and "warrantors" within the meaning of the
27 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

1 139. The Class Vehicles are “consumer products” within the meaning of the
2 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

3 140. Nissan’s express warranties are written warranties within the meaning of the
4 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Class Vehicles’ implied warranties
5 are covered under 15 U.S.C. § 2301(7).

6 141. Nissan breached these warranties as described in more detail above by:

7 a. Extending a 36 month/36,000 mile New Vehicle Limited Warranty with
8 the purchase or lease of the Class Vehicles, thereby warranting to repair or replace any part
9 defective in material or workmanship at no cost to the owner or lessee;

10 b. Selling and leasing Class Vehicles with panoramic sunroofs that were
11 defective in material and workmanship, requiring repair or replacement within the warranty
12 periods; and

13 c. Refusing to honor the express warranties by repairing or replacing the
14 panoramic sunroofs free of charge.

15 142. Nissan’s breach of the express warranties has deprived the Plaintiffs and class
16 members of the benefit of their bargain.

17 143. Plaintiffs and class members have had sufficient direct dealings with either
18 Nissan or its franchisees, representatives, and agents to establish any required privity of contract.
19 Nonetheless, privity is not required here because Plaintiffs and each of the other class members
20 are intended third-party beneficiaries of contracts between Nissan and its dealers, and
21 specifically of Nissan’s express and implied warranties. The dealers were not intended to be
22 the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements
23 provided with the Class Vehicles. The warranty agreements were designed for and intended to
24 benefit the consumers only.

25 144. Nissan has been afforded reasonable opportunity to cure its breach of warranty,
26 including when Plaintiffs brought their vehicles in for repair of the defective panoramic
27 sunroofs.

1 145. The amount in controversy of Plaintiffs' individual claims meets or exceeds the
2 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
3 interest and costs, computed on the basis of all claims to be determined in this lawsuit.

4 146. As a direct and proximate cause of Nissan's breach of written warranties,
5 Plaintiffs and class members sustained damages and other losses in an amount to be determined
6 at trial.

7 147. Plaintiffs and class members are entitled to recover damages, consequential
8 damages, specific performance, diminution in value of the Class Vehicles, rescission, attorney
9 fees, costs of suit, and such further relief as the Court may deem proper.

10 **XIII. DEMAND FOR JURY TRIAL**

11 Plaintiffs respectfully request a trial by jury on all issues properly triable by jury.

12 **XIV. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs request that the Court enter a judgment awarding the
14 following relief:

15 A. An order certifying the proposed class, and appointing Plaintiffs and her counsel
16 to represent the class;

17 B. An order awarding Plaintiffs and class members their actual damages,
18 exemplary damages, and/or any other form of monetary relief provided by law;

19 C. An order awarding Plaintiffs and the class restitution, disgorgement, rescission,
20 or other equitable relief as the Court deems proper;

21 D. An order requiring Nissan to adequately disclose and repair the defect;

22 E. An order awarding Plaintiffs and the class pre-judgment and post-judgment
23 interest as allowed under the law;

24 F. An order awarding Plaintiffs and the class reasonable attorney fees and costs of
25 suit, including expert witness fees; and
26
27

1 G. An order awarding such other and further relief as this Court may deem just and
2 proper.

3 RESPECTFULLY SUBMITTED AND DATED this 26th day of August, 2016.

4 TERRELL MARSHALL LAW GROUP PLLC

5 By: /s/ Beth E. Terrell, WSBA #26759

6 Beth E. Terrell, WSBA #26759

7 Email: bterrell@terrellmarshall.com

8 A. Janay Ferguson, WSBA #31246

9 Email: jferguson@terrellmarshall.com

10 936 North 34th Street, Suite 300

11 Seattle, Washington 98103-8869

12 Telephone: (206) 816-6603

13 Facsimile: (206) 319-5450

14 Gregory F. Coleman

15 Email: greg@gregcolemanlaw.com

16 Lisa A. White

17 Email: lisa@gregcolemanlaw.com

18 Mark E. Silvey

19 Email: mark@gregcolemanlaw.com

20 GREG COLEMAN LAW PC

21 First Tennessee Plaza

22 800 South Gay Street, Suite 1100

23 Knoxville, Tennessee 37929

24 Telephone: (865) 247-0080

25 Facsimile: (865) 533-0049

26 Charles Crueger

27 Email: ccrueger@hrdclaw.com

Erin Dickinson

Email: edickinson@hrdlaw.com

Andrew Kramer

Email: akramer@hrdclaw.com

HANSEN REYNOLDS DICKINSON

CRUEGER LLC

316 North Milwaukee Street, Suite 200

Milwaukee, Wisconsin 53202

Telephone: (414) 455-7676

Facsimile: (414) 273-8476

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Edward A. Wallace
Email: eaw@wexlerwallace.com
WEXLER WALLACE LLP
55 West Monroe Street, Suite 3300
Chicago, Illinois 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on August 26, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Heather A. Hedeem, WSBA #50687
Email: hhedeem@shb.com
SHOOK HARDY & BACON L.L.P.
701 Fifth Avenue, Suite 6800
Seattle, Washington 98104
Telephone: (206) 344-3113
Facsimile: (206) 344-3113

Amir Nassihi, *Admitted Pro Hac Vice*
Email: anassihi@shb.com
SHOOK HARDY & BACON L.L.P.
One Montgomery Street, Suite 2700
San Francisco, California 94104
Telephone: (415) 544-1900
Facsimile: (415) 391-0281

William R. Sampson, *Admitted Pro Hac Vice*
Email: wsampson@shb.com
SHOOK HARDY & BACON L.L.P.
2555 Grand Boulevard
Kansas City, Missouri 64108
Telephone: (816) 474-6550
Facsimile: (816) 421-5547

Attorneys for Nissan North America, Inc.

DATED this 26th day of August, 2016.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Beth E. Terrell, WSBA #26759

Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

Attorneys for Plaintiffs