

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CASE NO. _____**

JOHN MITCHELL,)	
on behalf of himself and a)	
Class of persons similarly situated,)	PLAINTIFF
)	
v.)	
)	
GENERAL MOTORS COMPANY)	DEFENDANT

* * * * *

CLASS ACTION COMPLAINT

Plaintiff, John Mitchell, individually and on behalf of all others similarly situated, alleges for his Class Action Complaint against Defendant General Motors Company (“Defendant” or “General Motors”), as follows:

INTRODUCTION

1. This is a class action seeking monetary damages, restitution, and declaratory relief from General Motors, notably arising from its practice of engaging in unfair deceptive trade practices in connection with the merchandising and sale of the Chevrolet Cruze.

2. Since 2008, General Motors, a car manufacturer, has sold thousands of vehicles under the Chevrolet Cruze brand name, throughout the United States and worldwide.

3. Chevrolet Cruzes use antifreeze in order to protect the various mechanical components of the Chevrolet Cruze by keeping the water in the car’s radiator and engine

from freezing in cold temperatures and boiling in hot temperatures. It also is used to lubricate the moving parts it comes in contact with. General Motors promised and/or warranted in its advertising and marketing of the Chevrolet Cruze to potential buyers that it would operate safely and reliably. This promise turned out to be false in several material respects. In reality, the Chevrolet Cruze has a serious mechanical defect that causes antifreeze to leak from the radiator (hereinafter referred to as the “Antifreeze Leakage Defect”). The Antifreeze Leakage Defect can lead to mechanical troubles and/or can cause malodorous smell in the passenger compartment. General Motors concealed and did not fix a serious Antifreeze Leakage Defect plaguing all model year 2011 or newer Chevrolet Cruzes.

4. The Chevrolet Cruze has an Antifreeze Leakage Defect where antifreeze fumes emanate into the passenger compartment.

5. In press releases, sales literature, brochures, advertisements, and other consumer documents, General Motors has consistently promoted the Chevrolet Cruze as being “safe”, “reliable,” and, in essence, “more for your money”.

6. General Motors also received reports of antifreeze related complaints that placed General Motors on notice of the serious design and mechanical defects presented by the Antifreeze Leakage Defect.

7. On information and belief, this trend may prove to be much greater once the complaints known only to General Motors are analyzed.

8. Irrespective of whether the Antifreeze Leakage Defect is caused by design or manufacturing defect or an unknown failure in the Chevrolet Cruze, or a failure in other aspects of the mechanical system, Chevrolet Cruzes are defective.

9. Because of the Antifreeze Leakage Defect, the Chevrolet Cruze diminishes in value at a faster rate than it would without an Antifreeze Leakage Defect. Plaintiff and the proposed Class would not have purchased the Chevrolet Cruze if they knew of the Antifreeze Leakage Defect. Alternatively, had they known of the Antifreeze Leakage Defect, Plaintiff and the proposed Class would not have paid as much for the Chevrolet Cruze.

10. Despite General Motors notice of the Antifreeze Leakage Defect in Chevrolet Cruzes, General Motors did not disclose to consumers that Chevrolet Cruzes—which General Motors for years had advertised and/or warranted as “safe” and “reliable” – were in fact not as safe or reliable as a reasonable consumer expected due to the Antifreeze Leakage Defect. Rather than disclose the truth, General Motors concealed the existence of this Antifreeze Leakage Defect.

11. Consumers have been complaining about the Antifreeze Leakage Defect online at various consumer complaint websites. See, e.g., *inter alia*, <http://www.aboutautomobile.com/Complaint/2012/Chevrolet/Cruze/Engine+and+Engine+Cooling+System> and <http://www.faqs.org/car/chevrolet-cruze/engine-and-engine-cooling/>, last viewed May 15, 2013.

12. Despite years of warnings, General Motors has still failed to properly disclose, explain, or fix the underlying problems with the Chevrolet Cruze. This leaves thousands of Chevrolet Cruze owners with vehicles that have an Antifreeze Leakage Defect causing odorous fumes to emanate in the passenger compartment of the Chevrolet Cruze, causing severe economic harm to the Chevrolet Cruze owners.

13. The Chevrolet Cruze’s Antifreeze Leakage Defect is preventable. For

example, other cars in the same class of cars as the Chevrolet Cruze do not have the same Antifreeze Leakage Defect. Furthermore, General Motors has successfully produced cars that do not have an Antifreeze Leakage Defect.

14. When owners of the Chevrolet Cruze became aware of the Antifreeze Leakage Defect and notified General Motors of the problem through one of its agents, General Motors still did not correct the Antifreeze Leakage Defect. Once owners of the Chevrolet Cruze began complaining on complaint boards on websites and other public fora, the public realized that General Motors had not corrected the Antifreeze Leakage Defect, the value of Chevrolet Cruze cars diminished. Chevrolet Cruze owners were astonished and shocked to see the rapid depreciation of their Chevrolet Cruze.

15. General Motors has refused to and cannot provide an adequate repair. Because General Motors cannot provide an adequate repair, the Antifreeze Leakage Defect harms every owner of a Chevrolet Cruze because it directly affects the operation, safety, and the individual value of every Chevrolet Cruze in the marketplace.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and is a class action in which some members of the Class are citizens of states different than Defendant. See 28 U.S.C. § 1332(d)(2)(A). This Court also has personal jurisdiction over Defendant because it is authorized to do business and in fact does business in this state and District and Defendant has sufficient minimum contacts with this state and District, and/or otherwise intentionally avails itself of the markets in this state and

District through the promotion, marketing and sale of its products in this state, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

17. Venue is proper in this District under 28 U.S.C. § 1391. Defendant does substantial business in the State of Kentucky and within this District, advertises in this District, receives substantial compensation and profits from the sales of its automobiles and other goods and services in this District, and has breached contracts and warranties in this District so as to subject it to *in personam* jurisdiction in this District. The transactions between Defendant and the named Plaintiff, John Mitchell, occurred in this District.

THE PARTIES

18. Plaintiff, John Mitchell, (“Plaintiff” or “Plaintiff Mitchell”) is a resident and citizen of the State of Kentucky. In or about April of 2011, Plaintiff Mitchell purchased a 2011 Chevrolet Cruze. Plaintiff Mitchell purchased the Chevrolet Cruze because of advertisements regarding the Chevrolet Cruze’s reliability and value. In the fall of 2012, Plaintiff Mitchell’s Chevrolet Cruze began exhibiting the Antifreeze Leakage Defect. Plaintiff Mitchell notified General Motors through its agent of the Antifreeze Leakage Defect and attempted to have the Chevrolet Cruze repaired through Bachman Chevrolet in Louisville, Kentucky multiple times with no success. He brings this action in his own right and on behalf of all others similarly situated. Plaintiff Mitchell has incurred a financial loss as a result of his purchase of a Chevrolet Cruze.

19. Defendant, General Motors, is a Delaware Corporation with its principal place of business in Detroit, Michigan. General Motors designs, manufactures, markets,

distributes, and sells Chevrolet Cruzes in Kentucky and throughout the United States. General Motors distributes Chevrolet Cruzes and sells these Chevrolet Cruzes through its network of dealers. Money received from the purchase of a General Motors vehicle from a dealer flows from the dealer to General Motors. Money received by the dealer from a purchaser can be traced to General Motors.

FACTUAL BACKGROUND

20. General Motors began selling the Chevrolet Cruze in the United States in 2008. The Chevrolet Cruze is four-door, five-passenger sedan. The Chevrolet Cruze requires antifreeze to ensure that the mechanical components of the vehicle run properly. However, the Chevrolet Cruze has an Antifreeze Leakage Defect.

21. General Motors has a three (3) year/36,000 express warranty that covers the defect at issue. The warranty creates privity between itself and individual consumers who purchased the Chevrolet Cruze, like Plaintiff and the proposed Class Members, by, among other things, making its express warranty directly to and for the benefit of Plaintiff and the proposed Class, and making its warranty part of the basis of the bargain and inducement to purchase its product.

22. General Motors' express written warranty does not disclaim the implied warranty of merchantability.

23. Despite this express warranty, Defendant has known for years of the Antifreeze Leakage Defect and the smell associated with the leak. A multitude of customers, including Plaintiff Mitchell and other proposed Class Members, have complained and submitted their Chevrolet Cruzes for repair work related to this Antifreeze Leakage Defect.

24. The Antifreeze Leakage Defect is a systemic design, materials, and/or workmanship defect and not merely a manufacturing peculiarity of a select number of Defendant's Chevrolet Cruzes. The Antifreeze Leakage Defect, has, does, or will affect all members of the proposed Class, including Plaintiff Mitchell.

THE DEFECT IN PLAINTIFF MITCHELL'S CHEVROLET CRUZE

25. On or about April 2011, Plaintiff John Mitchell purchased a 2011 Chevrolet Cruze for approximately \$21,000.00 from Bachman Chevrolet in Louisville, Kentucky bearing the Vehicle Identification Number 1G1PF5593B7105141. Plaintiff Mitchell purchased the Chevrolet Cruze primarily for personal use.

26. After Plaintiff Mitchell's purchase of the Chevrolet Cruze, the Chevrolet Cruze began to consistently exhibit and suffer from the Antifreeze Leakage Defect. Plaintiff Mitchell notified Defendant of the Antifreeze Leakage Defect and returned the Chevrolet Cruze for repairs under the warranty on multiple occasions.

27. As a result of the Antifreeze Leakage Defect, Plaintiff Mitchell's use and enjoyment of his Chevrolet Cruze has been constantly and substantially impaired. Specifically, Plaintiff Mitchell has had to endure the odor caused by the Antifreeze Leakage Defect and Plaintiff's Chevrolet Cruze has significantly diminished in value because of the defect.

28. Due to this Antifreeze Leakage Defect, Plaintiff Mitchell demanded rescission in a timely manner from Defendant. Defendant has refused to honor this demand.

29. As a direct and proximate result of Defendant's conduct, Plaintiff Mitchell and the proposed Class are entitled to actual damages for the failure of

consideration in connection with and/or difference in value arising out of the variance between Defendant's Chevrolet Cruze as warranted and Defendant's Chevrolet Cruze containing the defect; the depression of resale value of the Chevrolet Cruze suffered by Plaintiff Mitchell and the proposed Class arising out of the Antifreeze Leakage Defect; sufficient funds to permit Plaintiff Mitchell and the proposed Class to obtain effective repairs for each affected Chevrolet Cruze using proper parts and adequately trained labor; a refund of all monies paid out-of-pocket by Plaintiff Mitchell and the proposed Class as compensation for all out-of-pocket expenses that Plaintiff Mitchell and the proposed Class have incurred as a result of being unable to use their Chevrolet Cruzes, including any and all alternative forms of transportation; and/or rescission of their contracts of sale and/or lease, as appropriate.

CLASS ALLEGATIONS

30. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

31. The proposed Class is defined as follows:

Any individual or entity that purchased or leased a model year 2011 or newer Chevrolet Cruze.

32. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

33. Excluded from the Class are:

- i. Defendants and any entities in which Defendants have a controlling interest;

- ii. Any entities in which Defendants' officers, directors, or employees are employed and any of the legal representatives, heirs, successors, or assigns of Defendants;
- iii. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;
- iv. Persons or entities with claims for personal injury, wrongful death, and/or emotional distress;
- v. All persons or entities that properly execute and timely file a request for exclusion from the Class;
- vi. Any attorneys representing the Plaintiff or the proposed Class; and
- vii. All governmental entities.

34. Numerosity—Fed. R. Civ. P. 23(a)(1). The proposed Class is comprised of over 100 people and possibly thousands of individuals who were Defendant's customers, the joinder of which in one action would be impracticable. Due to the nature of the trade and commerce involved, the members of the proposed Class are geographically dispersed throughout the United States and joinder of all the proposed Class members would be impracticable. The exact number or identification of the proposed Class members is presently unknown. The identity of the proposed Class members is ascertainable and can only be determined based on Defendant's records.

35. Typicality—Fed. R. Civ. P. 23(a)(3). Plaintiff asserts claims that are typical of the entire proposed Class. The claims of the representative Plaintiff are typical of the claims of the proposed Class in that the representative Plaintiff, like all proposed Class members, is a victim of General Motors' unfair and deceptive trade practices in connection with the merchandising and sale of the Chevrolet Cruze. The representative Plaintiff, like all proposed Class members, has been damaged by General Motors'

misconduct through General Motors' unfair and deceptive trade practices in luring consumers to purchase a Chevrolet Cruze based on false promises and assurances. The Chevrolet Cruze has a significant Antifreeze Leakage Defect, which has caused consumers to incur a substantial loss due to the rapid depreciation of the Chevrolet Cruze's value. Additionally, consumers will continue to incur an unfair and unconscionable financial loss. Furthermore, the factual basis of General Motors' misconduct is common to all proposed Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the proposed Class.

36. There are numerous questions of law and fact common to the proposed Class and those common questions predominate over any questions affecting only individual Class members.

37. Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3).
The questions of law and fact common to the proposed Class predominate over questions affecting only individual Class members, and include, but are not limited to, the following:

- a. Whether model year 2011 and newer Chevrolet Cruzes are manufactured with a latent Antifreeze Leakage Defect;
- b. Whether the presence of a latent Antifreeze Leakage Defect reduces the value of all model year 2011 and newer Chevrolet Cruzes;
- c. Whether General Motors had knowledge of the Antifreeze Leakage Defect;
- d. Whether General Motors concealed the Antifreeze Leakage Defect from consumer;
- e. Whether General Motors' misrepresentations and omissions

regarding the reliability of its Chevrolet Cruzes were likely to deceive a reasonable person;

- f. Whether General Motors' business practices, including the manufacture and sale of Chevrolet Cruzes with an unintended Antifreeze Leakage Defect that Defendant has failed to adequately investigate, disclose or remedy, offends established public policy and causes harm to consumers that greatly outweighs any benefits associated with those practices;
- g. Whether General Motors breached its express warranties regarding the safety and quality of its Chevrolet Cruzes;
- h. Whether General Motors breached the implied warranty of merchantability because its Chevrolet Cruzes were not fit for their ordinary purpose due to their Antifreeze Leakage Defect;
- i. Whether Defendant violated the Magnuson-Moss Warranty Act;
- j. Whether General Motors was unjustly enriched at the expense of Plaintiff and the proposed Class;
- k. Whether Plaintiff and proposed Class are entitled to damages, restitution, restitutionary disgorgement, equitable relief, and/or other relief; and
- l. The amount and nature of such relief to be awarded to Plaintiff and the proposed Class.

38. Other questions of law and fact common to the proposed Class include:

- a. The proper method or methods by which to measure damages; and
- b. The declaratory relief to which the proposed Class is entitled.

39. Plaintiff's claims are typical of the claims of the proposed Class in that they arise out of the same wrongful policies and practices and the same or substantially similar unconscionable practices of General Motors. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other Class member.

40. Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1). The Plaintiff is an adequate representative of the proposed Class because Plaintiff fits within the class

definition and Plaintiff's interest does not conflict with the interests of the members of the proposed Class Plaintiff seeks to represent. Plaintiff is committed to the vigorous prosecution of this action. Plaintiff is represented by experienced Class Counsel. Class Counsel has litigated numerous class actions, and Plaintiff's counsel intends to prosecute this action vigorously for the benefit of the entire Class. Plaintiff and Class Counsel can fairly and adequately protect the interests of all of the Members of the Class.

41. Superiority—Fed. R. Civ. P. 23(b)(3). The class action is the best available method for the efficient adjudication of this litigation because individual litigation of Class Members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiff and members of the proposed Class have suffered irreparable harm as a result of Defendant's conduct. Because of the size of each Class member's claims, no Class members could afford to seek legal redress for the wrongs identified in this Class Action Complaint. Without the class action vehicle, the proposed Class would have no reasonable remedy and would continue to suffer losses, as Defendant continues to engage in the conduct that is the subject of this Class Action Complaint, and Defendant would be permitted to retain the proceeds of its violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

42. Even if the proposed Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and

expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

COUNT I
VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT
(Ky. Rev. Stat. § 367.110, et seq.)

43. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

44. Defendant had actual knowledge or reasonably should have known of the Chevrolet Cruze Antifreeze Leakage Defect and misrepresented the safety and reliability of the Chevrolet Cruze with the intent that Plaintiff and the proposed Class members rely on such representations in the deciding whether to purchase or lease the Chevrolet Cruze.

45. Plaintiff and the proposed Class did, in fact, rely on such representations in their decision to purchase and/or lease the Chevrolet Cruze.

46. Through unfair, misleading, and/or deceptive statements, omissions, and/or false promises to Plaintiff and the proposed Class, Defendant violated the Kentucky Consumer Protection Act (“KCPA”).

47. The KCPA applies to Defendant’s transaction with Plaintiff and the proposed Class because Defendant’s unfair and/or deceptive scheme was carried out in Kentucky and affected Plaintiff.

48. Defendant also failed to advise NHSTA and/or the public about what it knew about the Antifreeze Leakage Defect in the Chevrolet Cruze.

49. Plaintiff and the proposed Class relied on Defendant's silence as to known defects in connection with its decision regarding the purchase, lease and/or ownership of the Chevrolet Cruze.

50. As a direct and proximate result of Defendant's unfair and/or deceptive conduct and violation of the KCPA, Plaintiff and the proposed Class sustained economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT II
VIOLATIONS OF STATE UNFAIR TRADE PRACTICE LAWS
(ON BEHALF OF THE STATE SUBCLASSES)

51. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

52. The allegations in this Count are, for all non-Kentucky citizens, pleaded in the alternative to the allegations in Count I of this Class Action Complaint.

53. This claim is asserted on behalf of the members of each State Subclass under their respective consumer protection statutes.

54. As redress for Defendants' repeated and ongoing violations of these consumer protection statutes, Plaintiff and the State Subclasses are entitled to, *inter alia*, damages and declaratory relief.

COUNT III
BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY

55. Plaintiff, individually and on behalf of all others similarly situated,

repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

56. Defendant impliedly warranted that its Chevrolet Cruzes were of good merchantable quality and fitness and were safe for their ordinary intended use.

57. As described above, there was an Antifreeze Leakage Defect in the Chevrolet Cruzes manufactured, distributed, and/or sold by Defendant, which Plaintiff and the proposed Class purchased, including, but not limited to, defects that caused the Chevrolet Cruze to have an Antifreeze Leakage Defect.

58. The Antifreeze Leakage Defect existed at the time the Chevrolet Cruzes left Defendant's manufacturing facilities and at the time they were sold to Plaintiff and the proposed Class. Furthermore, because of the Antifreeze Leakage Defect, Plaintiff and the proposed Class did not receive the benefit of the bargain and Plaintiff and the proposed Class' Chevrolet Cruzes suffered a diminution in value.

59. The Antifreeze Leakage Defect was the direct and proximate cause of damages to the Plaintiff and the proposed Class.

**COUNT IV
BREACH OF EXPRESS WARRANTY**

60. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

61. Defendant expressly warranted to Plaintiff and the proposed Class--- through statements and advertisements described above---that the Chevrolet Cruze was of high quality, and at a minimum would actually work, properly, safely and be free from defect.

62. Defendant breached this warranty by knowingly selling to Plaintiff and the proposed Class Chevrolet Cruzes with a dangerous defect; specifically, an Antifreeze Leakage Defect, which affected the reliability of the entire engine and the safety of the passenger compartment and caused an antifreeze smell to emanate.

63. Plaintiff and the proposed Class have been damaged as a direct and proximate result of this breach by Defendant in that the Chevrolet Cruzes purchased by Plaintiff and the proposed Class were and are worth far less than what the Plaintiff and the proposed Class paid to purchase them, which was reasonably foreseeable to Defendant.

COUNT V
VIOLATION OF MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. § 2301, et seq.)

64. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

65. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

66. Plaintiff and each of the proposed Class members are a “consumer” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

67. General Motors is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 (4)-(5).

68. Chevrolet Cruzes are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

69. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who

is damaged by the failure of a warrantor to comply with a written or implied warranty.

70. General Motors' express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Chevrolet Cruze implied warranties are covered under 15 U.S.C. § 2301(7).

71. General Motors breached these warranties as described above, but generally by:

- a. not repairing or adjusting the Chevrolet Cruze material and workmanship defects;
- b. providing the Chevrolet Cruze not in merchantable condition and which present an Antifreeze Leakage Defect and not fit for the ordinary purpose for which Chevrolet Cruzes are used;
- c. providing Chevrolet Cruzes that were not safe or reliable; and
- d. not curing defects and nonconformities in the Chevrolet Cruzes

once they were identified.

72. Plaintiff and proposed Class members have had sufficient direct dealings with either the Defendant or its agents to establish privity of contract between Plaintiff and the proposed Class members. Notwithstanding this, privity is not required in this case because Plaintiff and proposed Class members are intended third-party beneficiaries of contracts between General Motors and its dealers; specifically, they are the intended beneficiaries of General Motors' implied warranties. The dealers were not intended to be the ultimate consumers of the Chevrolet Cruzes and have no rights under the warranty agreement provided with the Chevrolet Cruze; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not

required because Plaintiff and proposed Class members' Chevrolet Cruzes are defective instrumentalities due to the aforementioned defects and nonconformities.

73. At the time of sale or lease of each Chevrolet Cruze, General Motors knew, should have known or was reckless in not knowing of its misrepresentations concerning the Chevrolet Cruze' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the Antifreeze Leakage Defect. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement – whether under the Magnuson-Moss Warranty Act or otherwise – that Plaintiff and the proposed Class resort to an informal dispute resolution procedure and/or afford General Motors a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

74. Plaintiff and the proposed Class would suffer economic hardship if they returned their Chevrolet Cruzes but did not receive the return of all payments made by them. Because General Motors is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiff and the proposed Class have not re-accepted their Chevrolet Cruze by retaining them.

75. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$5,000,000 exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

76. Plaintiff and the proposed Class seek to revoke their acceptance of the Chevrolet Cruze, or, in the alternative, seek all damages, including diminution in value of their Chevrolet Cruzes in an amount to be proven at trial.

**COUNT VI
BREACH OF CONTRACT/COMMON LAW WARRANTY**

77. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

78. To the extent General Motors' repair or adjustment commitment is deemed not to be warranty under Kentucky's Commercial Code, Plaintiff pleads in the alternative under common law warranty and contract law. General Motors limited the remedies available to Plaintiff and the proposed Class to just repairs and adjustments needed to correct the defects in materials or workmanship of any part supplied by General Motors and/or warranted the quality or nature of those services to Plaintiff and the proposed Class.

79. General Motors breached this warranty or contract obligation by providing the Chevrolet Cruze with an Antifreeze Leakage Defect and/or failing to repair the Chevrolet Cruze evidencing an Antifreeze Leakage Defect.

80. As a direct and proximate result of Defendant's breach of contract or common law warranty, Plaintiff and the proposed Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT VII
FRAUDULENT CONCEALMENT**

81. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

82. General Motors intentionally concealed the above-described Antifreeze Leakage Defect, or acted with reckless disregard for the truth, and denied Plaintiff and the proposed Class information that is highly relevant to their purchasing decision.

83. Defendant further affirmatively misrepresented to Plaintiff and the proposed Class in advertising and other forms of communication, including standard and uniform material provided with each car that the Chevrolet Cruzes they were selling had no significant defects and would perform and operate properly when driven in normal usage.

84. Defendant knew these representations were false when made.

85. The Chevrolet Cruzes purchased or leased by Plaintiff and the proposed Class were, in fact, defective, unsafe, and unreliable, because the Chevrolet Cruzes contained an Antifreeze Leakage Defect.

86. General Motors had a duty to disclose that these Chevrolet Cruzes were defective, unsafe, and/or unreliable in that the Chevrolet Cruzes contained Antifreeze Leakage Defects because Plaintiff and the proposed Class relied on General Motors' material misrepresentations that the Chevrolet Cruze he was purchasing was safe and free from defects.

87. The aforementioned concealment was material because if it had been disclosed, the Plaintiff and the proposed Class would not have bought or leased the Chevrolet Cruzes.

88. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. General Motors knew or recklessly disregarded that its representations were false because

it knew of the Antifreeze Leakage Defect. General Motors intentionally made the false statement in order to sell Chevrolet Cruzes.

89. Plaintiff and the proposed Class relied on General Motors' reputation – along with General Motors failure to disclose the Antifreeze Leakage Defect and General Motors' affirmative assurance that its Chevrolet Cruzes were safe and reliable and other similar false statements – in purchasing or leasing General Motors' Chevrolet Cruzes.

90. As a result of his reliance, Plaintiff and the proposed Class have been injured in an amount to be proven at trial, including, but not limited to, the lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their Chevrolet Cruzes.

91. Defendant's conduct was knowing, intentional, and malicious. Additionally, Defendant's conduct demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiff and the proposed Class. Plaintiff and the proposed Class are therefore entitled to an award of punitive damages.

COUNT VII UNJUST ENRICHMENT

92. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Class Action Complaint as if fully set forth herein.

93. Plaintiff and the proposed Class paid General Motors the value of a Chevrolet Cruze that is non-defective, and in exchange, General Motors provided Plaintiff and the proposed Class a Chevrolet Cruze that was, in fact, defective.

94. Furthermore, Plaintiff and the proposed Class paid General Motors the value for a Chevrolet Cruze that would not be compromised by substantial, invasive

repairs, and in return received a Chevrolet Cruze that required such repairs.

95. Plaintiff and the proposed Class, as well, paid General Motors for a Chevrolet Cruze he could operate, and in exchange, General Motors provided Plaintiff and the proposed Class a Chevrolet Cruze that could not be normally operated because of the Antifreeze Leakage Defect.

96. Accordingly, Plaintiff conferred a benefit upon General Motors and General Motors has knowingly retained such benefits from Plaintiff and proposed Class, and it would be unjust for General Motors to retain such benefits.

97. As a direct and proximate result of General Motors' unjust enrichment, Plaintiff and the proposed Class suffered and continue to suffer various damages, including, but not limited to, restitution of all amounts by which Defendant was enriched through its misconduct.

COUNT VIII
DECLARATORY JUDGMENT
KRS 418.040

98. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

99. Defendant had actual knowledge or reasonably should have known of the Chevrolet Cruze Antifreeze Leakage Defect and misrepresented the safety and reliability of the Chevrolet Cruze to Plaintiff and the proposed Class.

100. An actual and justiciable controversy exists between Defendant and Plaintiff concerning the parties' respective rights and obligations as it relates to the Chevrolet Cruze.

101. Plaintiff and the proposed Class have tangible legal interests in the instant controversy, including but not limited to:

- a. Their interest in a declaration from this Court that the Chevrolet Cruzes subject to this lawsuit contain an Antifreeze Leakage Defect;
- b. Their interest in obtaining injunctive relief so that Defendant does not in the future employ unfair and/or deceptive practices in its business dealings with consumers;
- c. Their interest in a declaration from this Court that Defendant is selling defective Chevrolet Cruzes, thereby violating Kentucky public policy, the laws of the various states, and the United States, therefore, rendering any payment above and beyond the value of a Chevrolet Cruze with an Antifreeze Leakage Defect as unconscionable; and
- d. Their interest in a declaration from this Court that Defendant is unfairly misrepresenting that the Chevrolet Cruze is free from defect; thereby violating Kentucky public policy and the public policy of various states; therefore, rendering any payment above and beyond the value of a Chevrolet Cruze with an Antifreeze Leakage Defect as unconscionable.

102. Plaintiff is therefore entitled to a declaration of rights from this Court that the Chevrolet Cruzes subject to this lawsuit contain an Antifreeze Leakage Defect and that Defendant is enjoined from in the future employing unfair and/or deceptive practices in its business dealings with consumers and enjoining Defendant from receiving payment for a Chevrolet Cruze above and beyond the value of a Chevrolet Cruze with an Antifreeze Leakage Defect.

COUNT IX
UNCONSCIONABILITY

103. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

104. Defendant's policies and practices related to the merchandising and sale of the Chevrolet Cruze are substantively and procedurally unconscionable in the following material respects, among others:

- a) Defendant is selling Chevrolet Cruzes that contain an Antifreeze Leakage Defect;
- b) Defendant is unfairly misrepresenting that the Chevrolet Cruze is free from defect;

105. Considering the great business acumen and experience of Defendant in relation to Plaintiff and the proposed Class, the great disparity in the parties' relative bargaining power, the oppressiveness of the terms, the unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar public policy concerns, these provisions are unconscionable and, therefore, unenforceable as a matter of law.

106. Plaintiff and members of the proposed Class have sustained damages as a result of Defendant's unconscionable policies and practices as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that the Plaintiff is a proper class representative, and his counsel is adequate class counsel;

B. That the Court certify the class identified above;

C. That judgment be entered against Defendant and in favor of Plaintiff and the Class on the Causes of Action in this Class Action Complaint, for injunctive and equitable relief as requested above, and for actual, compensatory, punitive,

and treble damages in an amount to be determined at trial;

D. That Declaratory Judgment be entered against Defendant finding that Defendant's conduct is in violation of the law, and enjoining Defendant from continuing in such conduct.

E. That the Court award Attorneys' fees and litigation costs against Defendant pursuant to its authority under KRS 367.220(3) and the Court's equitable power to award fees and costs;

F. That judgment be entered imposing interest on damages, litigation costs, and attorneys' fees against Defendant;

G. That the Court issue an injunction requiring General Motors to issue a recall of all Chevrolet Cruzes subject to this lawsuit and for General Motors to fix the Antifreeze Leakage Defect;

H. For all other and further relief as this Court may deem necessary and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

Dated: May 16, 2013

Respectfully submitted,

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David G. Bryant

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**ATTORNEYS FOR PLAINTIFF
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