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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 TOWN OF TONAWANDA,

14 Plaintiff,

15 v.

16 HYUNDAI MOTOR AMERICA AND
17 KIA AMERICA, INC.,

18 Defendants,

No. 8:23-cv-01667

**INDIVIDUAL COMPLAINT FOR
TOWN OF TONAWANDA¹**

JURY TRIAL DEMANDED

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¹ *This complaint is not intended to supersede the operative Consolidated Complaint.*

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I. INTRODUCTION

1. There is an inextricable link between preventing vehicle theft and protecting public safety. Making sure cars are not sitting ducks that are simple to steal protects both property and the public by keeping dangerous drivers in stolen vehicles off the roads. This case exposes the massive public safety consequences to cities coast to coast when two car manufacturers made the business decision not to include standard anti-theft technology in their vehicles. Despite taking some initial steps to discourage thefts, Defendants have been unable to abate the dangerous crime wave unleashed on communities nationwide—a crime wave that continues to this day.

2. The days of “hotwiring” cars with nothing more than a screwdriver are largely over. In most recent car models, the ignition key emits a radio signal that prompts a computer in the car to disengage an immobilizer device and allows the car to start and move. But recent Hyundai and Kia models are a glaring exception.

3. For all model years between 2011 and 2022, long after other carmakers adopted immobilizer technology that ensured car ignitions could not be started without their keys, Defendants Hyundai Motor Company (“HMC”), Hyundai Motor America (“HMA” and, with HMC, collectively “Hyundai”), Kia Corporation (“KC”), and Kia America, Inc. (“KA” and, with KC, collectively “Kia”) intentionally ignored industry-standard practices in the name of profit. Specifically, upon information and belief, at all relevant times, Defendants designed, manufactured, and distributed the following automobile models without engine immobilizers: Hyundai Accent, Elantra, Elantra GT, Elantra Coupe, Elantra Touring, Genesis Coupe, Kona, Palisade, Santa Fe, Santa Fe Sport, Santa Fe XL, Sonata, Tucson, Veloster, Venue, and Veracruz; and the Kia Forte, K5, Optima, Rio, Sedona, Seltos, Sorento, Soul, and Sportage. These vehicles, when

1 manufactured and sold without engine immobilizers, are referred to hereinafter as the
2 “Susceptible Vehicles.”

3 4. As a result, online videos demonstrate how easy it is to steal Hyundai and
4 Kia vehicles. In many cases, thieves use tools no more advanced than a USB cable.
5 Hyundai’s and Kia’s business decisions to reduce costs, and thereby boost profits, by
6 forgoing common anti-theft technology have resulted in a dangerous rash of thefts. This
7 vehicular crime wave has had a significant impact on law enforcement operations,
8 emergency services, and public safety in Tonawanda.

9 5. In the 1960s and 1970s, all that was needed for a successful vehicle heist was
10 a little brute force (to crack open the ignition column) and a key-shaped object to start the
11 car and drive off within seconds. Thanks to modern technology, this is no longer the case
12 for most cars.

13 6. Hyundai and Kia are unique among automobile manufacturers in failing to
14 install engine immobilizers in most of their cars. This is not because the technology is
15 somehow beyond them—in fact, Hyundai and Kia vehicles sold in the European and
16 Canadian markets incorporate vehicle immobilizers, because regulations there expressly
17 require them. In the United States, meanwhile, Hyundai and Kia have decided to trade
18 public safety for profits.

19 7. The difference between the proportion of Hyundai and Kia vehicle models
20 with immobilizers compared to all other manufacturers is staggering: for the 2015 model
21 year, for example, only **26%** of Hyundai and Kia vehicles in the United States were
22 equipped with immobilizers, compared to **96%** of vehicles from all other manufacturers.²

23
24 ² *Hyundai and Kia theft losses*, 38 HLDI Bull. 28, 2 (Dec. 2021),
<https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66->

1 8. Hyundai and Kia are aware of the well-documented benefit of immobilizer
2 technology in preventing thefts, as they opted to install engine immobilizers in their higher
3 end models, and in all of their 2023 vehicles.

4 9. Hyundai's and Kia's decisions to put profits over public safety have had
5 devastating consequences for Tonawanda and its residents. Defendants' failure to install
6 an industry-standard immobilization anti-theft device, notwithstanding decades of
7 academic literature and research supporting the deterrent effects of such technology,³ has
8 opened the floodgates to vehicle theft, crime sprees, reckless driving, and public harm.

9 10. This epidemic started in Milwaukee and spread nationwide. By June 2021,
10 the Milwaukee Police Department reported that the theft of Hyundai and Kia vehicles had
11 increased by 2,500% since the previous year, with an average of 30 cars being stolen per
12 day.⁴ This trend then spread nationwide, enabled by millions of Hyundai and Kia vehicles
13 lacking immobilizers. As explained below, the crime wave continues to this day in
14 communities coast to coast—and those communities are left to pay the price.

15 11. Vehicle theft is not only a property crime affecting vehicle owners, but it also
16 constitutes a grave threat to public safety. Vehicle theft goes hand in hand with reckless
17 driving, which in turn can result in injuries and/or death. It can result in increased violence,
18 as many car owners are unlikely to part with their vehicles willingly. It also consumes law
19

20 [081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf](https://www.hldi.com/research/bulletins/hldi_bulletin_38-28.pdf)
21 [\(emphasis added\)](#).

22 ³ Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 Colum. L. Rev. 6,
23 1193–1231 (1985), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2827&context=journals_articles.

24 ⁴ James Gilboy, *Why Milwaukee Might Sue Hyundai, Kia Over Stolen Car Epidemic*,
thedrive.com (Dec. 11, 2021, 11:15 AM), <https://www.thedrive.com/news/43454/why-milwaukee-might-sue-hyundai-kia-over-stolen-car-epidemic>.

1 enforcement and emergency resources and deprives the public of safe streets and
2 sidewalks.

3 12. The skyrocketing rate of Kia and Hyundai vehicle thefts has drastically
4 impacted city and police resources for Tonawanda. Its residents are subjected to
5 increasingly dangerous conditions on its streets, as car thieves (many of them teenagers)⁵
6 are taking advantage of Hyundai's and Kia's failures and engaging in reckless driving,
7 endangering Tonawanda's employees, residents, and property.

8 13. Defendants' conduct has created a public nuisance that could have been
9 avoided had they followed industry-wide standards and installed immobilizer devices, or
10 an equivalent anti-theft device, in all their vehicles.

11 14. Among other harms, Tonawanda has been forced to divert funds and risk
12 officer and public safety to combat the growing burden caused by increased Hyundai and
13 Kia vehicle thefts and their many associated dangers, including reckless driving.

14 II. JURISDICTION AND VENUE

15 A. Subject Matter Jurisdiction

16 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a),
17 as the amount in controversy exceeds \$75,000 and there is complete diversity between the
18 parties. The city of Tonawanda is regarded as a citizens of the State of New York for the
19 purposes of diversity jurisdiction. *Bullard v. City of Cisco, Texas*, 290 U.S. 179, 187
20 (1933). Defendants HMA and KA are citizens of the State of California, where they are

21
22 ⁵ See Mark A. Cohen & Alex R. Piquero, *New evidence on the monetary value of saving*
23 *a high-risk youth*, A. R. JOURNAL OF QUANTITATIVE CRIMINOLOGY, 25, 25–49, (2009),
24 https://www.researchgate.net/publication/225637886_New_Evidence_on_the_Monetary_Value_of_Saving_a_High_Risk_Youth.

1 headquartered and incorporated. Defendants HMC and KC are both multinational
2 automakers, headquartered in Seoul, South Korea.

3 **B. Personal Jurisdiction**

4 16. This Court has general personal jurisdiction over HMA and KA because they
5 are incorporated and headquartered in the State of California. Defendants have transacted
6 and done business in the State of California and in this judicial district.

7 17. This Court has specific jurisdiction over HMC and KC under the long-arm
8 statute of California based on (1) their forum-related activities from which this case arises;
9 (2) the forum-related activities of HMC's primary domestic subsidiary, HMA, which
10 HMC substantially controls; and (3) the forum-related activities of KC's primary domestic
11 subsidiary, KA, which KC substantially controls.

12 **1. HMC's and KC's Forum-Related Activities**

13 18. HMC is a South-Korea based company, and its substantial activities directed
14 at the United States give rise to and relate to Tonawanda's claims.

15 19. In a recent complaint to enforce its trademark rights, HMC represented that
16 it "currently designs, manufactures, markets, distributes, and sells a wide range of
17 automobile and related automobile parts to over 190 countries throughout the world,
18 including the United States, under the trademark 'Hyundai.'"⁶

19 20. HMC and KC design, manufacture, market, distribute, and sell the
20 Susceptible Vehicles under their registered trademarks "Hyundai" and "Kia,"
21 respectively. Between 2011 and 2022, when the Susceptible Vehicles were sold and
22 distributed in New York State, HMC and KC purposefully availed themselves of the
23 United States' legal protections by registering and maintaining registrations with the

24 ⁶ First Amended Complaint at 6, *Hyundai Motor Am., Inc. v. Midwest Indus. Supply Co.*,
No. 2:17-cv-3010-JCM-GWF (D. Nev. Nov. 21, 2018), ECF No. 34.

1 United States government for trademarks associated with their vehicles and parts, which
2 HMC and KC used to identify and distinguish its vehicles and parts in the United States,
3 this district, and transferor jurisdictions.

4 21. HMC and KC purposefully availed themselves of markets in the United
5 States as each company sold approximately 500 million vehicles per year in this market
6 through their respective domestic subsidiaries, HMA and KA.

7 22. HMC and KC manufactured over eight million of the Susceptible Vehicles,
8 which were delivered to HMA and KA for sale in the United States. Upon information
9 and belief, HMC and KC manufactured the majority of the Susceptible Vehicles overseas
10 in South Korea. However, HMC and KC segregated the Susceptible Vehicles intended for
11 sale in the United States and shipped those vehicles to the United States with full
12 knowledge that HMA and KA would distribute them across the country.

13 23. Rather than passively placing the Susceptible Vehicles into the stream of
14 commerce, HMC and KC intentionally targeted the distribution of the Susceptible
15 Vehicles into United States markets specifically, because engine immobilizers are not
16 expressly required by law to sell the vehicles in this country.

17 24. HMC and KC played instrumental roles in HMA's and KA's analysis and
18 decision-making processes related to the design and/or manufacture of the Susceptible
19 Vehicles lacking engine immobilizers sold in the United States.

20 25. Upon information and belief, HMC and KC both were involved in monitoring
21 vehicle thefts of the Susceptible Vehicles, as reported by their respective subsidiaries,
22 HMA and KA.

2. HMC's and KC's Control Over Their Respective Subsidiaries

26. HMC and KC exercise control over HMA and KA, respectively, through both formal and informal means.

27. Upon information and belief, HMC and KC possess the power to appoint board members to HMA and KA, respectively, and both HMC and KC have exercised this power.

28. HMC and KC purposely availed themselves of markets in the United States by regularly submitting applications to the Environmental Protection Agency to obtain certification required for the sale of their vehicles in the United States.⁷

29. HMC operates a “Global Command and Control Center” with “walls covered with television screens and computer monitors” that track “every operating line at 27 plants in the world, in real time, 24 hours a day, 365 days a year.”⁸

30. The production chief for a Hyundai plant in Alabama noted that if there is “a hiccup at any of those boards, headquarters wants to know what needs to be done about it—right now[.]”⁹

⁷ See, e.g., Letter from Hyundai America Technical Center to Director Linc Wehrly re: Request for GHG credit for High Efficiency Alternator Technology (June 10, 2019), <https://www.epa.gov/sites/default/files/2019-07/documents/kmc-off-cycle-ghg-credit-high-efficiency-alternator-2019-06-10.pdf> (writing on behalf of KC, f/k/a Kia Motors Corporation; see also Letter from Hyundai America Technical Center to Director Linc Wehrly re: Request for GHG Off-Cycle Credit for HVAC Brushless Motor Technology in 2020 Model Year and later HMC vehicles (Dec. 15, 2020), <https://www.epa.gov/system/files/documents/2022-09/hyundai-ghg-credit-pwm-hvac-blm-apl-2020-12-15.pdf>).

⁸ William J. Holstein, *Hyundai's Capabilities Play*, 70 Strategy & Bus. 62, 67–68 (Spring 2013), <https://digitaledition.strategy-business.com/publication/?m=6320&i=145911&p=70&ver=html5>.

⁹ *Id.* at 68.

1 31. Upon information and belief, KC representatives similarly monitor Kia's
2 global operations from HMC's Global Command and Control Center.

3 32. Senior South Korean executives for HMC and KC also regularly visit
4 Hyundai and Kia plants and offices throughout the United States, including HMA's and
5 KA's California headquarters, both of which are located in this district.

6 33. The common executives for HMC and HMA frequently overlap. Jose Muñoz,
7 for example, is the current Global Chief Operating Officer of HMC and serves as the
8 President and CEO of HMA. Meanwhile, Brian Latouf serves as the Global Chief Safety
9 Officer for HMC and serves as the Chief Safety Officer of HMA.

10 34. KC and KA also share executive employees. SeongKyu (Sean) Yoo serves
11 as President and CEO of KA, as well as Senior Managing Director of KC. Additionally,
12 HMC and KC have overlapping management, with Eui-Sun Chung serving as the
13 President of KC and the Executive Vice Chairman of HMC.

14 35. Last, HMC and KC control the public name and brand of HMA and KA,
15 respectively.

16 **C. Venue**

17 36. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because
18 Defendants transact substantial business in this district. Venue is also proper for HMA and
19 KA because they are headquartered here, have research and development offices here, and
20 a substantial part of the events/omissions giving rise to the claims occurred in this district.

III. PARTIES

D. Plaintiff

1. Tonawanda, New York

37. Plaintiff the Town of Tonawanda (“Tonawanda”) is a municipal corporation organized under the laws of the State of New York. Tonawanda is in Erie County and has approximately 70,000 residents. Tonawanda’s principal offices are located at 2919 Delaware Avenue, Kenmore, New York.

E. Defendants

1. Hyundai Motor Company

38. Defendant Hyundai Motor Company is a multinational automaker headquartered in Seoul, South Korea. HMC, together with Defendants Kia Corporation, Kia America, Inc., and Hyundai Motor America, comprise the Hyundai Motor Group, which designs, manufactures, and distributes the Susceptible Vehicles referenced in this Consolidated Complaint. HMC is the parent corporation of Hyundai Motor America.

2. Hyundai Motor America

39. Defendant Hyundai Motor America is an automobile designer, manufacturer, distributor, and/or servicer of new motor vehicles under the Hyundai brand doing business within the United States. HMA is incorporated and headquartered in the State of California. HMA’s principal place of business is located at 10550 Talbert Avenue, Fountain Valley, California. HMA distributes, markets, leases, warrants, and oversees regulatory compliance and warranty claims for Hyundai brand vehicles through a network of over 800 dealers throughout the United States from its headquarters in California. Defendant HMA engages in continuous and substantial business in California.

3. Kia Corporation

40. Defendant Kia Corporation is a multinational automaker headquartered in Seoul, South Korea. KC is the parent corporation of Kia America, Inc. As of December 31, 2017, Defendant KC's largest shareholder is HMC, which holds 33.88% of KC's stock.¹⁰

4. Kia America, Inc.

41. Defendant Kia America, Inc. is a manufacturer and distributor of new motor vehicles under the Kia brand and is incorporated and headquartered in the State of California. KA's principal place of business is located at 111 Peters Canyon Road, Irvine, California. KA distributes, markets, leases, warrants, and oversees regulatory compliance and warranty claims for Kia-brand vehicles through a network of over 700 dealers throughout the United States from its headquarters in California. Defendant KA engages in continuous and substantial business in California.

IV. THE KIA HYUNDAI THEFT WAVE

A. Measures to Prevent Vehicle Thefts Have Existed for Over a Century

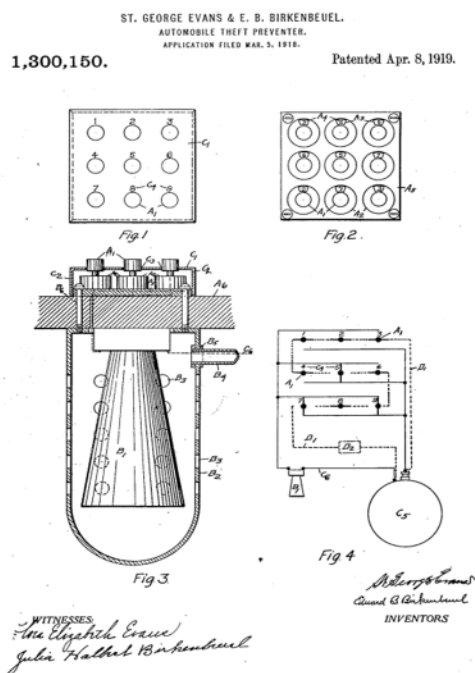
42. Since the invention of gasoline-powered automobiles at the close of the nineteenth century, consumers have needed effective ways to keep their vehicles from being stolen. Thus, efforts to prevent theft or unauthorized access to automobiles have tracked vehicle development. In 1919, St. George Evans and Edward B. Birkenbeuel invented the first electric immobilizer/vehicle security system.¹¹

¹⁰ *The Future: Kia Motors Annual Report 2017* at 11, Kia, <https://worldwide.kia.com/int/company/ir/archive/annual-report/download/B200002757/F200012579> (last visited July 25, 2023).

¹¹ U.S. Patent No. 1,300,150 (issued Apr. 8, 1919).

43. Labeled the “Automobile-Theft Preventer” the purpose of Evans and Birkenbeuel’s invention was relatively straightforward: “to provide a means for automatically signaling an attempt to move an automobile by unauthorized persons; and to provide a means for locking the electric circuit open, in which case it will be impossible to move the car by its own power.”¹²

44. Evans and Birkenbeuel's immobilizer/alarm system consisted of a three-by-three switch panel that connected to the car's battery, horn, and ignition. Upon exiting his vehicle, a driver could turn a few switches on the panel to different positions that, until released, would divert electricity to the horn instead of the ignition should an unauthorized user attempt to start the vehicle.



Sketches for Evans & Birkenbeuel's "Automobile Theft Preventer"¹³

45. The timing of the first immobilizer patent coincided with Congress's enactment of the National Motor Vehicle Theft Act, 18 U.S.C. § 2311 *et seq.*, which made

¹² *Id.* at col. 1 ll. 14–20.

¹³ *Id.* at figs. 1, 2, 3, 4.

1 the interstate transportation of stolen vehicles a federal crime. The law passed, in part, to
 2 respond to the growing number of automobile thefts around the country, especially in
 3 midwestern cities.

4 46. As time passed and technology advanced, the United States pursued further
 5 efforts to promulgate vehicle safety standards. These efforts were also fueled by the post-
 6 war rise in vehicle thefts among juveniles and young adults, “who took cars for joyriding
 7 and transportation.”¹⁴

8 47. In 1966, Congress passed the National Traffic and Motor Vehicle Safety Act
 9 (the “Safety Act”), with the aim of administering new motor vehicle and traffic safety
 10 standards.¹⁵ Administration of the Safety Act was overseen by the newly created
 11 Department of Transportation through its sub-agency: the National Highway Traffic
 12 Safety Administration, f/k/a/ the National Traffic Safety Bureau (“NHTSA”).

13 48. Pursuant to its statutory authority under the Safety Act, NHTSA promulgated
 14 numerous federal motor vehicle safety standards (“FMVSS”). Among these standards,
 15 FMVSS 114¹⁶ requires minimum theft-protection standards for nearly all passenger
 16 vehicles in the United States:

17 S1. Scope. This standard specifies vehicle performance requirements
 18 intended to reduce the incident of crashes resulting from theft and accidental
 rollaway of motor vehicles

19 S2. Purpose. The purpose of this standard is to decrease the likelihood that a
 20 vehicle is stolen, or accidentally set in motion.

21
 22 ¹⁴ Anthony Dixon & Graham Farrell, *Age-period-cohort effects in half a century of motor*
 23 *vehicle theft in the United States*, 9 Crime Sci. 17, 1, 3 (2020),
<https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00126-5>.

24 ¹⁵ National Traffic and Motor Vehicle Safety Act, Pub. L. 89–563, 80 Stat. 718 (1966).

¹⁶ Standard No. 114; Theft protection and rollaway prevention, 49 C.F.R. § 571.114
 (2010) (“FMVSS 114”).

1 S3. Application. This standard applies to all passenger cars, and to trucks and
 2 multipurpose passenger vehicles with GVWR of 4,536 kilograms (10,000
 pounds) or less.

3 . . .

S5.1 Theft Protection.

4 S5.1.1 Each vehicle must have a starting system which, whenever the key is
 removed from the starting system prevents:

- 5 (a) The normal activation of the vehicle's engine or motor; and
- 6 (b) Either steering, or forward self-mobility, of the vehicle, or both.

7 . . .

8 S5.2.2 Except as specified in S5.2.4, the vehicle must be designed such that
 9 the transmission or gear selection control cannot move from the "park"
 position, unless the key is in the starting system.¹⁷

10 49. The main motivation for creating FMVSS 114 was NHTSA's recognition
 11 "that stolen cars constitute a major hazard to life and limb on the highways. The evidence
 12 shows that cars operated by unauthorized persons are far more likely to cause
 13 unreasonable risk of accident, personal injury, and death than those which are driven by
 14 authorized individuals."¹⁸

15 50. As early as 1966, studies showed "there were an estimated 94,000 stolen cars
 16 involved in accidents"—with "18,000 of these accidents result[ing] in injury to one or
 17 more people."¹⁹ Accordingly, NHTSA recognized that "a reduction of the incidence of
 18 auto theft would make a substantial contribution to motor vehicle safety" and "protect the
 19 many innocent members of the public who are killed and injured by stolen cars each
 20 year."²⁰ To address this safety risk, which is largely tied to "car thieves who could bypass

21
 22 ¹⁷ *Id.*

23 ¹⁸ Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars, 33 Fed.
 Reg. 83, 6,471 (Apr. 27, 1968), <https://www.govinfo.gov/content/pkg/FR-1968-04-27/pdf/FR-1968-04-27.pdf#page=1>.

24 ¹⁹ *Id.*

²⁰ *Id.*

1 the ignition lock . . . the agency decided to require a device, which would prevent either
2 self-mobility or steering even if the ignition lock were bypassed.”²¹

3 51. An industry-standard engine immobilizer is the most effective way to satisfy
4 this requirement, “because it locks out the engine control module if an attempt is made to
5 start the vehicle without the correct key or to bypass the electronic ignition system.”²²
6 Defendants’ choice not to use this industry-standard anti-theft technology predictably led
7 to rampant car thefts and resulted in a threat to public safety and an ongoing public
8 nuisance.

9 52. In the late 1980s and early 1990s, vehicle theft increased dramatically in the
10 United States.²³ The most common method for stealing a car involved bypassing the
11 motor’s ignition switch, otherwise known as “hotwiring.” The graph below illustrates the
12 dramatic rise in car thefts during this time period.²⁴

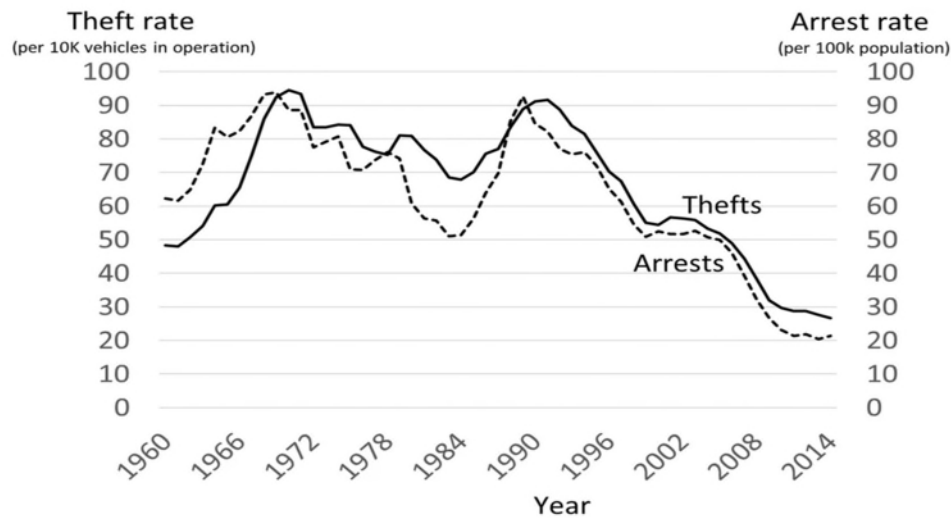
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21 ²¹ Federal Motor Vehicle Safety Standards; Theft Protection, 71 Fed. Reg. 17,753 (Apr.
19 7, 2006), <https://www.govinfo.gov/content/pkg/FR-2006-04-07/pdf/06-3358.pdf>; *see*
20 *also* Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars, 33 Fed.
21 Reg. 83, 6,471 (Apr. 27, 1968), <https://www.govinfo.gov/content/pkg/FR-1968-04-27/pdf/FR-1968-04-27.pdf#page=1>.

22 ²² Jacqueline Glassman, *Interpretation ID : GF005229-2*, NHTSA (Sept. 24, 2004),
<https://www.nhtsa.gov/interpretations/gf005229-2#:~:text=This%20responds%20to%20your%20letter,114%2C%20Theft%20Protection.>

23 ²³ Anthony Dixon & Graham Farrell, *Age-period-cohort effects in half a century of motor*
24 *vehicle theft in the United States*, 9 Crime Sci. 17, 1, 3 (2020),
<https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00126-5>.

²⁴ *Id.* at fig. 1.



Vehicle thefts per 10,000 vehicles in operation, and vehicle theft arrests per 100,000 population, 1960-2014

53. To respond to this growing problem, manufacturers began installing passive vehicle immobilizers, which were patented in 1993.²⁵ Unlike Evans and Birkenbeuel's invention nearly 75 years prior, the vehicle immobilizer would render the engine operable only "if the correct key having coded information is used[,]” rather than relying on concealed switches or memorizing keypad combinations.²⁶

54. In essence, the vehicle immobilizers of the 1990s worked by checking the “fingerprint” of a car key based on electronic codes the key sends to the vehicle. They prevented hotwiring by ensuring that a car would not start if the key was not present—whether or not the ignition switch was turned or bypassed.

55. Although the mechanism behind the vehicle immobilizer was more intricate than the original 1919 invention, the overall purpose remained the same: “to make the vehicle more difficult to steal.”²⁷

²⁵ Int'l Patent Publication No. WO 93/13968 (filed Jan. 7, 1993).

²⁶ *Id.*

²⁷ *Id.*

56. The invention proved successful and, less than five years later, the European Union mandated that all new passenger cars from 1998 onward be equipped with an electronic engine immobilizer.²⁸ Similar mandates soon followed in Australia, New Zealand, and Canada.

57. As engine immobilizers became the industry standard among manufacturers, at least one study in the Netherlands suggested that immobilizers “lowered the overall rate of car theft on average by about 40 percent during 1995-2008.”²⁹

58. By 2011, studies concluded “that good quality electronic immobilizers [have] become car theft’s killer technology” and proved to be 32.7% “more effective in reducing car theft than alarms” and 42.2% “more effective than central locking.”³⁰

59. Equally critical, academic studies support the proposition that “[f]rom the early 1990s onwards, it gradually became less easy for adolescents to begin offending as an increasing proportion of vehicles became secure” because the “young offenders did not have the skill or experience to overcome the new vehicle security technology, particularly

²⁸ Commission Directive 95/56/EC, 1995 O.J. (L286) 1 (amending Council Directive 74/61/EEC to require the installation of immobilizers and alarm systems in motor vehicles beginning in October 1998).

²⁹ Jan C. van Ours & Ben Vollaard, *The Engine Immobiliser: A Non-Starter for Car Thieves*, TILEC Discussion Paper No. 2013-001, SSRN (Jan. 14, 2013), <https://deliverypdf.ssrn.com/delivery.php?ID=127087120097029119078084107081001030022041017031027078099093024106009075127118002030001121005122042126107027087095100026018070046034013064088076022067085110020010058066038090085019017108089031127069111086113121096030001027069090090007106081078030084&EXT=pdf&INDEX=TRUE>.

³⁰ Graham Farrell *et al.*, *The Crime Drop and the Security Hypothesis*, 48(2) J. Res. Crime & Delinq. 147, 163, 169 (2011), https://www.researchgate.net/profile/Graham-Farrell/publication/255589010_The_Crime_Drop_and_the_Security_Hypothesis/links/54f3b830cf299c8d9e537d9/The-Crime-Drop-and-the-Security-Hypothesis.pdf.

1 electronic immobilizers.”³¹ As the rate of young offenders decreased due to improved
 2 vehicle security, “fewer adolescents” went on to experience “criminal career onset and
 3 continuance.”³²

4 **B. Hyundai and Kia Deviated from the Industry Standard by**
 5 **Electing Not to Include Immobilizers in the Susceptible Vehicles**

6 60. Studies by the Highway Loss Data Institute (“HLDI”) showed “that vehicle
 7 theft losses decreased significantly after factory-installed passive immobilizing antitheft
 8 devices were introduced.”³³ Specifically, HLDI studies between 1996 and 2013 all showed
 9 decreases in theft losses for vehicles with engine immobilizers studied in those years,
 10 including General Motors, BMW, Ford, and Nissan.³⁴ A 2013 HLDI study “found that
 11 thieves were sometimes targeting the older model years of a vehicle series without
 12 immobilizers, such as the Honda Civic and Honda Accord.”³⁵

13 61. Despite decades of research and findings that immobilizers significantly
 14 reduced vehicle theft and the consequential public safety risks, “only 26 percent of
 15 Hyundai and Kia” 2015 vehicle models had “passive immobilizers as standard equipment,
 16 compared with 96 percent of other manufacturers.”³⁶

17 ³¹ Anthony Dixon & Graham Farrell, *Age-period-cohort effects in half a century of motor*
 18 *vehicle theft in the United States*, 9 Crime Sci. 17, 1, 7 (2020),
 19 <https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00126-5>.

20 ³² *Id.*; see also Graham Farrell, *Forty years of declining burglary in the United States:*
 21 *Explanation and evidence relating to the security hypothesis*, 35 Sec. J. 444, 458 (2022)
 22 <https://link.springer.com/article/10.1057/s41284-021-00284-4> (arguing that “making
 23 crime more difficult to commit may be the most effective way to reduce juvenile crime
 24 and progression to adult crime”).

25 ³³ *Hyundai and Kia theft losses*, 38 HLDI Bull. 28, 1 (Dec. 2021),
 26 [https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-
 27 081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf](https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf).

28 ³⁴ *Id.* at 2.

29 ³⁵ *Id.*

30 ³⁶ *Id.* at 5.

62. The low percentage of Hyundai and Kia vehicles with immobilizers is especially concerning given that, during this same time period, Hyundai and Kia were installing immobilizers in their models for sale in the European and Canadian markets.³⁷

63. Nor are Defendants unfamiliar with the benefits of installing immobilizers in the American market. A NHTSA standard separate from FMVSS 114 requires automobile manufacturers to label parts to reduce the demand for stolen cars and chop shops (where stolen cars are disassembled so that their valuable parts can be sold).³⁸ Manufacturers can apply for exemptions from this labeling requirement based on the inclusion of anti-theft technology, because vehicles with anti-theft technology are much harder to steal in the first place and thus much less likely to be “chopped” for parts. In March of 2007, Hyundai requested an exemption from the labeling requirement for its 2008 Hyundai Azera line based on its inclusion of an immobilizer in that model. Thus, Hyundai recognized the efficacy of immobilizers in reducing vehicle theft.³⁹

64. Yet, despite knowing the unquestionable benefit of engine immobilizers, until the last year or so, Hyundai and Kia only offered immobilizers in a few more

³⁷ Hyundai first began exporting its cars to parts of Europe, the United Kingdom, and Canada between 1978 and 1984. *See Over 50 years of progress: the history of Hyundai*, Hyundai Newsroom (Apr. 6, 2019), <https://www.hyundai.news/eu/articles/press-releases/over-50-years-of-progress-the-history-of-hyundai.html>. Similarly, Kia vehicles were introduced into European and Canadian markets in the 1990s.

³⁸ Requirements for passenger motor vehicles, 49 C.F.R. § 541.5 (June 1, 2011).

³⁹ Petition for Exemption From the Vehicle Theft Prevention Standard; Hyundai-Kia America Technical Center, Inc., 72 Fed. Reg. 39,661 (July 19, 2007), <https://www.govinfo.gov/content/pkg/FR-2007-07-19/pdf/FR-2007-07-19.pdf>; *see also* Petition for Exemption From the Vehicle Theft Prevention Standard; Hyundai-Kia America Technical Center, Inc., 75 Fed. Reg. 1,447 (Jan. 11, 2010), <https://www.govinfo.gov/content/pkg/FR-2010-01-11/pdf/2010-236.pdf> (NHTSA notice granting an identical exemption for the Kia Amanti vehicle line beginning in model year 2009 based on Defendant Kia’s representation that the immobilizer installation for that specific model should substantially reduce theft rates).

expensive models, like the Azera. This decision only compounds the harms to low-income communities.⁴⁰ Consumers without resources to afford these higher end models are more likely to live in areas with higher crime rates and are likely less able to pay for alternative transportation or for the cost of repairing a recovered, but damaged, vehicle after a theft.

65. In September 2022, HLDI found that Hyundais and Kias are stolen at nearly twice the rate of other vehicles in the automobile industry. Specifically, “Hyundais and Kias without immobilizers had a vehicle theft claim rate of 2.18 per 1,000 insured vehicle years” while the remainder of the industry, combined, had a theft claim rate of 1.21.⁴¹

66. Defendants’ decision not to install the simple and highly effective immobilizer in the Susceptible Vehicles between 2011 and 2022, in contrast to the vast majority of car manufacturers that did choose to install immobilizers in nearly all of their vehicles, has, foreseeably, led to the epidemic plaguing Tonawanda.

C. The Lack of Industry Standard Anti-Theft Devices in Most Hyundai and Kia Vehicles Has Led to a Wave of Thefts

67. Kia and Hyundai chose to flout the industry standard of utilizing an engine immobilizer in the Susceptible Vehicles, which made those vehicles more susceptible to theft. As would-be car thieves learned of this susceptibility, the incidence of theft for Susceptible Vehicles increased, relative to other models, from 2015 to 2020.⁴²

⁴⁰ Tom Krisher, *Thieves key on hack that leaves Hyundai, Kia cars vulnerable*, AP News (Sept. 21, 2022, 10:21 PM), <https://apnews.com/article/social-media-milwaukee-theft-eed3be407c1b7cb725ae607b8d86bcdf> (noting that “[m]any of the vulnerable Hyundais and Kias are often bought by lower-income people” because, as stated by HLDI Senior VP Matt Moore, those cars “are relatively inexpensive vehicles when purchased new”).

⁴¹ *Id.* (“An insured vehicle year is equal to one vehicle insured for one year.”).

⁴² See NICB’s *Hot Wheels: America’s 10 Most Stolen Vehicles*, NICB (Aug. 1, 2016), <https://www.nicb.org/sites/files/2017-11/2015-Hot-Wheels-Report.pdf>; NICB’s *Hot Wheels: America’s 10 Most Stolen Vehicles*, NICB (July 12, 2017), <https://www.nicb.org/sites/files/2017-11/2016-Hot-Wheels-Report.pdf>; 2017 *Hot*

68. However, this progression became an explosion in late 2020, when a group of teenagers began posting “how-to” videos detailing how simple it was to steal Susceptible Vehicles.⁴³ That group, the “Kia Boyz,” became notorious for posting videos of youth engaging in reckless driving after stealing Kias and Hyundais.⁴⁴ As the videos detailed, a thief need only break a window, remove the plastic cowl under the steering column, and use a USB connector (such as the ubiquitous mobile phone charging cable) to turn the ignition switch and start these unsecure cars. In many instances, thieves are able to break into the Susceptible Vehicles and drive away in under one minute.

69. What followed the trending documentation of the unsecure Susceptible Vehicles was all too predictable: thefts of Kias and Hyundais skyrocketed.⁴⁵ In the first half of 2021, the number of stolen Kias and Hyundais in Milwaukee increased by more

Wheels Report, NICB (Sept. 18, 2018), <https://www.nicb.org/news/news-releases/2017-hot-wheels-report>; *NICB’s Hot Wheels: America’s 10 Most Stolen Vehicles*, NICB (Nov. 19, 2019), <https://www.nicb.org/sites/files/2020-01/2018%20Hot%20Wheels%20Report.pdf>; *NICB’s Hot Wheels: America’s Top Ten Most Stolen Vehicles*, NICB (Oct. 13, 2020), <https://www.nicb.org/HotWheels2019>; and *NICB Releases Annual ‘Hot Wheels’ Report: America’s Top Ten Most Stolen Vehicles*, NICB (Oct. 12, 2021), <https://www.nicb.org/news/news-releases/nicb-releases-annual-hot-wheels-report-americas-top-ten-most-stolen-vehicles>.

⁴³ Greg Rosalsky, *Someone stole my truck. I got a crash course on the wild black market for stolen cars*, NPR (Aug. 23, 2022, 6:30 AM), <https://www.npr.org/sections/money/2022/08/23/1118457271/someone-stole-my-truck-i-got-a-crash-course-on-the-wild-black-market-for-stolen->.

⁴⁴ Chris DiLella & Andrea Day, *TikTok challenge spurs rise in thefts of Kia, Hyundai cars*, CNBC (Sept. 9, 2022, 9:11 PM), <https://www.cnn.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html>.

⁴⁵ *Videos Show Teens How to Steal Certain Kias and Hyundais With Only a USB Cable*, *Police Warn Amid Rising Thefts*, Inside Edition (Aug. 10, 2022, 1:51 PM), <https://www.insideedition.com/videos-show-teens-how-to-steal-certain-kias-and-hyundais-with-only-a-usb-cable-police-warn-amid>.

1 than thirty and fifteen times, respectively, when compared to the same period in 2020.⁴⁶
 2 This dramatic increase was unique to Kias and Hyundais, which represented 67% of all
 3 cars stolen in that period, compared to only 6% of stolen cars in 2019.⁴⁷ This trend then
 4 spread nationwide.

5 **D. Car Thefts Imperil Public Safety**

6 70. Car thefts directly imperil public safety. By creating, facilitating, and/or
 7 otherwise contributing to a rash of car thefts, Defendants are responsible for a substantial
 8 risk to the public safety.

9 71. NHTSA promulgated FMVSS 114 to reduce the instances of car theft,
 10 because “stolen cars constitute a major hazard to life and limb on the highways.”⁴⁸ NHTSA
 11 concluded that the “evidence shows that cars operated by unauthorized persons are far
 12 more likely to cause unreasonable risk of accident, personal injury, and death than those
 13 which are driven by authorized individuals.”⁴⁹ The NHTSA Administrator concluded that
 14 “a reduction in the incidence of auto theft would make a substantial contribution to motor
 15 vehicle safety,” by reducing both injuries and deaths to would-be car thieves, and by
 16 “protect[ing] the many innocent members of the public who are killed and injured by
 17 stolen cars each year.”⁵⁰

18
 19 ⁴⁶ Sean Tucker, *Milwaukee Police Report Hyundais, Kias Stolen in Record Numbers*,
 20 Kelley Blue Book (Dec. 14, 2021, 5:27 PM), [https://www.kbb.com/car-](https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/)
[news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/](https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/).

21 ⁴⁷ Matt Posky, *Summer of Theft Creating Bad Publicity for Hyundai, Kia*, Truth About
 22 Cars (Sept. 20, 2022 2:36 PM), [https://www.thetruthaboutcars.com/cars/kia/summer-of-](https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-publicity-for-hyundai-kia-44496971)
[theft-creating-bad-publicity-for-hyundai-kia-44496971](https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-publicity-for-hyundai-kia-44496971).

23 ⁴⁸ See Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars, 33 Fed.
 24 Reg. 6,471 (Apr. 27, 1968), [https://www.govinfo.gov/content/pkg/FR-1968-04-](https://www.govinfo.gov/content/pkg/FR-1968-04-27/pdf/FR-1968-04-27.pdf#page=1)
[27/pdf/FR-1968-04-27.pdf#page=1](https://www.govinfo.gov/content/pkg/FR-1968-04-27/pdf/FR-1968-04-27.pdf#page=1).

⁴⁹ *Id.*

⁵⁰ *Id.*

72. The reverse is true as well. An *increase* in the incidence of automobile theft results in a substantial decrease in public safety. Defendants' decision to forego the installation of immobilizer devices in the Susceptible Vehicles has led to a clear rise in automobile thefts, and the concomitant threats to public safety. Stolen cars are often driven recklessly—particularly in this case, where cars are stolen for joyriding or use in the commission of other crimes, rather than for parts or resale—which poses a risk to both the operators of the stolen vehicle and any lawful drivers or pedestrians who are unfortunate enough to cross paths.

73. By creating a rash of car thefts, Defendants are responsible for a substantial risk to public safety.

74. Reckless driving impacts the comfortable enjoyment of life, health, and safety of others. Distinct from many instances of car theft, where the object is converting the stolen vehicle (either whole or in parts), the recent wave of Hyundai and Kia thefts often involves teenagers joyriding, posting videos of themselves driving recklessly, and then abandoning the stolen vehicles—often after collisions—at all hours of the day and night.

75. Social media platforms are rife with examples of this dangerous conduct. Videos posted on these platforms highlight the very real dangers of this phenomenon, including youth joyriding through school zones or through crowds of bystanders, and drivers hitting other cars and then running from the scene.⁵¹ The fact that many of the

⁵¹ See, e.g., @mixtapetrappers_, Instagram (Oct. 19, 2021), <https://www.instagram.com/p/CVNhig9D64B/?utm%20medium=copy%20link>; @monloww_, TikTok (Oct. 10, 2022), https://www.tiktok.com/@monloww_/video/7153012228067773738; @414hypehouse, Instagram (Aug. 19, 2021), <https://www.instagram.com/p/CSwsnhfAktd/>; @414hypehouse, Instagram (Sept. 10, 2021),

perpetrators are juveniles and therefore inexperienced drivers—in many cases, too young to have a driver’s license or permit—adds to the danger.

76. Police officers responding to vehicle thefts and other crimes stemming from those same thefts also face serious safety threats. In Cleveland, officers have been shot,⁵² shot at,⁵³ and stabbed⁵⁴ when responding to and/or encountering a Hyundai or Kia theft incident. In Tonawanda, a police officer stopped a driver in a stolen Kia Sportage SUV and was dragged and “thrown onto the road” when the driver of the stolen Kia attempted to flee.⁵⁵ The officer was badly injured and subsequently hospitalized.⁵⁶

77. A substantial risk to public safety also arises in the event that the would-be thief is confronted in the act. In January 2023, a Cleveland man followed a Hyundai Sonata that struck his car mirror and did not stop. The driver and passenger of the Hyundai got

<https://www.instagram.com/p/CTqCaYTANaC/>; @414hypehouse, Instagram (Oct. 20, 2021), <https://www.instagram.com/p/CVRCcU5AkwT/>.

⁵² Julia Bingel, *Cleveland police issue warrant for 17-year-old boy accused of shooting officer (body camera video)*, 19 News (Mar. 30, 2023, 8:51 AM), <https://www.cleveland19.com/2023/03/30/cleveland-police-issue-warrant-17-year-old-male-accused-shooting-officer/>.

⁵³ Ed Gallek & Peggy Gallek, *Thieves getting bolder: Police threatened, taunted, and shot by suspects in stolen KIAs*, Fox 8 (Mar. 20, 2023, 4:52 PM), <https://fox8.com/news/i-team/thieves-getting-bolder-police-threatened-taunted-and-shot-by-suspects-in-stolen-kias/>.

⁵⁴ Ed Gallek & Peggy Gallek, *Cleveland police officer stabbed in head with screwdriver*, Fox 8 (June 12, 2023, 2:12 PM), <https://fox8.com/news/cleveland-police-officer-stabbed-in-head-with-screwdriver/>; see also John H. Tucker, *Suspect charged in screwdriver assault on off-duty Cleveland police officer*, Cleveland.com (June 15, 2023, 4:34 PM), <https://www.cleveland.com/crime/2023/06/suspect-charged-in-screwdriver-assault-on-off-duty-cleveland-police-officer.html>.

⁵⁵ Stephen T. Watson, *Tonawanda officer badly injured when dragged by stolen vehicle is released from ECMC*, Buffalo News (June 5, 2023), https://buffalonews.com/news/local/crime-and-courts/tonawanda-officer-badly-injured-when-dragged-by-stolen-vehicle-is-released-from-ecmc/article_4768ae48-03d4-11ee-8593-4322704cd734.html#tracking-source=article-related-bottom.

⁵⁶ *Id.*

1 out of the vehicle with guns and began shooting at him.⁵⁷ Police found nine bullet casings
 2 in the street and bullet holes in the front window of a nearby home and in a car parked on
 3 the street.⁵⁸ About one hour later, the same Hyundai, which had been reported stolen days
 4 earlier, was involved in a drive-by shooting.⁵⁹

5 78. This risk was also tragically demonstrated in Columbus, Ohio, when a 4-
 6 year-old was killed in a hit-and-run involving a stolen Kia.⁶⁰

7 79. Car thefts and reckless driving also create a substantial risk of physical harm
 8 to pedestrian bystanders. On February 8, 2023, a stolen Hyundai involved in a high-speed
 9 chase in Baltimore crashed into another car and a 54-year-old pedestrian.⁶¹ Both cars
 10 careened into a nearby building, which collapsed on top of the vehicles and the
 11 pedestrian.⁶² The pedestrian was pronounced dead at the scene, and five occupants of the
 12 two cars were injured.⁶³

16 ⁵⁷ Cory Shaffer, *Teens Lodge stolen Hyundai in Burger King drive-thru on two wheels*
 17 *after owner confronts them*, Cleveland.com (Feb. 3, 2023, 5:03 PM),
 18 [https://www.cleveland.com/court-justice/2023/02/teens-lodge-stolen-hyundai-in-burger-](https://www.cleveland.com/court-justice/2023/02/teens-lodge-stolen-hyundai-in-burger-king-drive-thru-on-two-wheels-after-owner-confronts-them.html)
[king-drive-thru-on-two-wheels-after-owner-confronts-them.html](https://www.cleveland.com/court-justice/2023/02/teens-lodge-stolen-hyundai-in-burger-king-drive-thru-on-two-wheels-after-owner-confronts-them.html).

18 ⁵⁸ *Id.*

19 ⁵⁹ *Id.*

20 ⁶⁰ Carly D'Eon, *Man wanted in fatal hit-and-run of 4-year-old boy turns himself in*, 10
 21 WBNS (July 24, 2023, 6:04 AM), [https://www.10tv.com/article/news/local/arrest-](https://www.10tv.com/article/news/local/arrest-warrant-issued-for-man-allegedly-connected-to-fatal-hit-skip-south-franklinton/530-a8ab887d-8c43-48ea-8b4d-91ed5531a351)
[warrant-issued-for-man-allegedly-connected-to-fatal-hit-skip-south-franklinton/530-](https://www.10tv.com/article/news/local/arrest-warrant-issued-for-man-allegedly-connected-to-fatal-hit-skip-south-franklinton/530-a8ab887d-8c43-48ea-8b4d-91ed5531a351)
[a8ab887d-8c43-48ea-8b4d-91ed5531a351](https://www.10tv.com/article/news/local/arrest-warrant-issued-for-man-allegedly-connected-to-fatal-hit-skip-south-franklinton/530-a8ab887d-8c43-48ea-8b4d-91ed5531a351).

22 ⁶¹ Dan Belson, *Footage shows fatal crash into Baltimore building, collapse following*
 23 *police pursuit of stolen car*, Balt. Sun (Mar 2, 2023, 8:29 PM),
[https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-footage-](https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html)
[20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html](https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html) [<https://perma.cc/6UHA-S9GT>].

24 ⁶² *Id.*

⁶³ *Id.*



E. Car Thefts Drain Public Resources and Frustrate Public Policy

80. Tonawanda has expended significant time and resources responding to this public nuisance.

81. Additionally, the opportunity costs of expending significant police and emergency services on these thefts has deprived Tonawanda of the ability to combat other crimes or otherwise focus on community protection.⁶⁴

82. As a result of the skyrocketing rate of theft of Hyundai and Kia vehicles nationwide, some insurance companies are refusing to write policies for certain Hyundai and Kia models in major cities, thereby increasing the potential number of uninsured motorists on the road.⁶⁵

⁶⁴ John Roman *et al.*, *Cost-Benefit Analysis for Crime Prevention: Opportunity Costs, Routine Savings and Crime Externalities*, 14 *Crime Prevention Stud.* 53–92 (Jan. 2002), https://www.researchgate.net/publication/28575336_Cost-Benefit_Analysis_for_Crime_Prevention_Opportunity_Costs_Routine_Savings_and_Crime_Externalities.

⁶⁵ Peter Valdes-Dapena, *Some auto insurers are refusing to cover certain Hyundai and Kia models*, CNN (Jan. 28, 2023, 3:06 PM),

V. THE CONTINUING PUBLIC NUISANCE AND DEFENDANTS' LATE, INSUFFICIENT RESPONSE

83. The rampant thefts of Hyundai and Kia vehicles are still impacting Tonawanda, years after the rise in thefts of the Susceptible Vehicles first began.⁶⁶

84. Data from the Council on Criminal Justice shows that between 2019 and 2023 motor vehicle theft has increased an average of 104% across 30 cities in the United States.⁶⁷

85. Defendants' responses to the crises that they have created show they continue to prioritize profits over safety. Defendants have refused to implement a recall to install engine immobilizers in the Susceptible Vehicles, initially only suggesting that owners of Susceptible Vehicles use wheel locks and, for some municipalities, offering wheel locks for them to distribute.⁶⁸ Unfortunately, the wheel locks are not entirely effective; Susceptible Vehicles with wheel locks in use have still been stolen and, in some instances,

<https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-kia/index.html>; see also Robert Higgs, *Progressive, State Farm halt new car insurance policies for high theft models of Kia and Hyundai*, Cleveland.com (Jan. 31, 2023, 1:06 PM), <https://www.cleveland.com/business/2023/01/progressive-state-farm-halt-new-car-insurance-policies-for-high-theft-models-of-kia-and-hyundai.html>; see also Joe Hernandez, *Dealers still sell Hyundais and Kias vulnerable to theft, but insurance is hard to get*, NPR (May 4, 2023, 5:00 AM), <https://www.npr.org/2023/05/04/1173048646/hyundai-kia-car-theft-tiktok-insurance-dealerships> (discussing how “a dozen” insurance companies denied coverage for the new owner of 2020 Kia Forte).

⁶⁶ Tom Krisher, *Hyundai and Kia thefts keep rising despite security fix*, AP News (May 9, 2023, 7:40 AM), <https://apnews.com/article/hyundai-kia-tiktok-theft-stolen-8e0a353d24be0e7bce36e34c5e4dac51>.

⁶⁷ Ernesto Lopez *et al.*, *Crime Trends in U.S. Cities: Mid-Year 2023 Update*, Council Crim. Just. (July 2023), <https://counciloncj.org/mid-year-2023-crime-trends/>.

⁶⁸ Elliot Hughes, *Kia, Hyundai will make security feature standard on new vehicles and distribute free steering wheel locks after surge of thefts*, Milwaukee J. Sentinel (July 19, 2021, 10:16 AM), <https://www.jsonline.com/story/news/crime/2021/07/19/kia-hyundai-handing-out-free-steering-wheel-locks-through-end-year/7963950002/>.

1 used in connection with other crimes, including shootings.⁶⁹ In addition, municipalities
2 are not set up to distribute automotive parts to residents.

3 86. More recently, Hyundai and Kia have begun rolling out a “software update”
4 rather than installing immobilizers.⁷⁰ As highlighted in the multistate letter sent on behalf
5 of 18 Attorneys General, Hyundai acknowledged that some of the affected vehicles cannot
6 be updated, and Kia “confirmed that some unspecified number of affected vehicles cannot
7 receive the updates.”⁷¹

8 87. As acknowledged in the motion for preliminary approval of the class action
9 settlement in the instant litigation, only 6.9 million of the approximately 9 million
10 Susceptible Vehicles are even eligible for the update.⁷²

12 ⁶⁹ Ashley Sears, *Milwaukee woman’s Kia stolen twice, had steering wheel lock*, FOX 6
13 News Milwaukee (Sept. 28, 2021), [https://www.fox6now.com/news/milwaukee-](https://www.fox6now.com/news/milwaukee-womans-kia-stolen-twice)
14 [womans-kia-stolen-twice](https://www.fox6now.com/news/milwaukee-womans-kia-stolen-twice); see also David Rose, ‘B****, I swear, b****, I’m gonna
15 crack your phone.’ Drive-by shooting suspect says to Tacoma woman, FOX 13 Seattle
16 (Jan. 25, 2023), [https://www.q13fox.com/news/b-i-swear-b-im-gonna-crack-your-](https://www.q13fox.com/news/b-i-swear-b-im-gonna-crack-your-phone-drive-by-shooting-suspect-says-to-tacoma-woman)
17 [phone-drive-by-shooting-suspect-says-to-tacoma-woman](https://www.q13fox.com/news/b-i-swear-b-im-gonna-crack-your-phone-drive-by-shooting-suspect-says-to-tacoma-woman); and Boy, 15, fighting for his
18 life after shooting involving stolen Kia in Minneapolis, CBS News Minnesota (Apr. 6,
19 2023), [https://www.cbsnews.com/minnesota/video/boy-15-fighting-for-his-life-after-](https://www.cbsnews.com/minnesota/video/boy-15-fighting-for-his-life-after-shooting-involving-stolen-kia-in-minneapolis/)
20 [shooting-involving-stolen-kia-in-minneapolis/](https://www.cbsnews.com/minnesota/video/boy-15-fighting-for-his-life-after-shooting-involving-stolen-kia-in-minneapolis/).

21 ⁷⁰ Hyundai and Kia Launch Service Campaign to Prevent Theft of Millions of Vehicles
22 Targeted by Social Media Challenge, NHTSA (Feb. 14, 2023),
23 <https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-theft>.

24 ⁷¹ Letter from Attorneys General to Ann Carlson, Acting Administrator of the National
Highway Traffic Safety Administration (“Letter from Attorneys General to NHTSA”) at
6 (Apr. 20, 2023), [https://oag.dc.gov/sites/default/files/2023-](https://oag.dc.gov/sites/default/files/2023-04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf)
[04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf](https://oag.dc.gov/sites/default/files/2023-04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf).

⁷² Consumer Class Pls.’ Notice Mot. & Mot. Prelim. Approval Class Action Settlement at
12, *In Re: Kia Hyundai Vehicle Theft Marketing, Sales Practices, and Products Liability*
13 *Litigation*, 8:22-ml-03052-JVS-KES (C.D. Cal. July 20, 2023), ECF No. 166; see also
14 Carly Schaffner, *Kia, Hyundai anti-theft software fixes a work in progress*, Auto. News
15 (June 2, 2023, 8:00 AM), [https://www.autonews.com/regulation-safety/kia-hyundai-](https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-software-fix-needs-fixes)
16 [antitheft-software-fix-needs-fixes](https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-software-fix-needs-fixes) [<https://perma.cc/HGH7-ZHZF>] (noting that
17 Defendants estimate “there are 9 million affected vehicles between them on the road”).

1 88. In the three months immediately following Kia’s and Hyundai’s release of
 2 the software update, data gathered from the Associated Press showed “that the number of
 3 Hyundai and Kia thefts is still growing[.]”⁷³ The software update has not stopped the
 4 nuisance that the Susceptible Vehicles created and the expenses that Tonawanda has
 5 incurred and continue to incur.

6 89. The update’s efficacy has not been proven in the real world. There have been
 7 numerous reports of Kia and Hyundai vehicles being stolen after receiving the software
 8 update, and Kia and Hyundai have identified scenarios where the software logic fails.⁷⁴
 9 For vehicles not covered by the update, Defendants are offering nothing more than steering
 10 wheel locks, or rebates for already purchased wheel locks.⁷⁵ As noted by multiple
 11 Attorneys General, steering wheel locks “still would not correct the underlying safety flaw
 12 . . . and . . . would impermissibly shift the responsibility for fixing this problem from the
 13 company to the individual vehicle owners.”⁷⁶

14 90. In addition, upon information and belief, the software update can significantly
 15 inconvenience the drivers of the Susceptible Vehicles, making them less likely to seek it
 16 out. Rather than install an actual immobilizer, the software update doubles the length of

17 ⁷³ See Tom Krisher, *Hyundai and Kia thefts keep rising despite security fix*, AP News
 18 (May 9, 2023, 7:40 AM), <https://apnews.com/article/hyundai-kia-tiktok-theft-stolen-8e0a353d24be0e7bce36e34c5e4dac51>.

19 ⁷⁴ Carly Shaffner, *Kia, Hyundai anti-theft software fixes a work in progress*, Auto. News
 20 (June 2, 2023, 8:00 AM), <https://www.autonews.com/regulation-safety/kia-hyundai-anti-theft-software-fix-needs-fixes> [<https://perma.cc/HGH7-ZHZF>] (discussing a
 21 February 2023 service bulletin issued from Kia to its dealers regarding a software
 22 compatibility issue for Kia vehicles equipped with remote start accessories; another
 23 bulletin issued from Kia in late-May of 2023 acknowledged that “the problem has not
 24 been remedied”).

⁷⁵ See Zac Palmer, *Hyundai launches software update to fix some of 4 million vehicles at risk of theft*, Yahoo! (Feb. 14, 2023), <https://autos.yahoo.com/hyundai-launches-software-fix-4-155800221.html>.

⁷⁶ Letter from Attorneys General to NHTSA at 6.

1 the vehicles' theft alarm sound and adds a new logic check to the vehicles' onboard
2 computers that is intended to prevent the Engine Control Unit from allowing the engine
3 to start and run if the key fob is not used to unlock the doors. This update will interfere
4 with the usability of the Susceptible Vehicles in many everyday situations.

5 91. As noted by the Attorneys General in their letter dated April 20, 2023, there
6 are at least two other significant issues with the software update. First, "not all eligible
7 vehicles can receive the updates immediately"—approximately two million vehicles with
8 the "starting system flaw" are still awaiting eligibility for the update.⁷⁷ Meanwhile, these
9 vehicles "will remain on the road, vulnerable to theft and posing a threat to public
10 safety."⁷⁸ Second, Defendants' "voluntary service campaign" does not prompt certain
11 "regulatory requirements and oversight and instead places additional burdens on
12 individual vehicle owners."⁷⁹

13 92. Owners of the Susceptible Vehicles have already experienced issues where
14 the software update—which requires the car to be unlocked using the fob before starting,
15 failing which the alarm will sound—conflicts with after-market remote start systems that
16 they had installed, rendering the vehicles functionally inoperable. As one owner recently
17 posted: "I have the update. I also have an aftermarket remote start. The remote start will
18
19

20 ⁷⁷ *Id.* at 6–7. Additionally, media outlets report that customers are "having a difficult time
21 getting through" to customer service representatives for Hyundai and Kia to inquire
22 about the software update and their vehicle's eligibility. *See Hyundai, Kia owners*
23 *frustrated by customer call center wait times to get security upgrade*, WHIO TV 7 (Feb.
24 16, 2023, 8:47 PM), <https://www.whio.com/news/crime-and-law/hyundai-kia-owners-frustrated-by-customer-call-center-wait-times-get-security-update/SXRBN3OTHVC37OLC3735Y755ZU/>.

⁷⁸ Letter from Attorneys General to NHTSA at 7.

⁷⁹ *Id.*

1 set off my car alarm. You can turn the alarm off, but it will beep periodically and the
2 headlights flash until you turn the vehicle off.”⁸⁰

3 93. There can be no doubt that communities nationwide are suffering harmful
4 downstream consequences because of business decisions Hyundai and Kia made not to
5 include immobilizer technology in certain vehicles. And as local governments have
6 experienced nationwide when vaping products and drugs have unleashed widespread
7 harms affecting public health and safety, local communities are left paying the price for
8 others’ business decisions to boost profits.

9 94. Prior to this software update, Hyundai turned this crisis of its own making
10 into a source of revenue, selling security kits for \$170, plus the cost of installation.⁸¹
11 Defendants could have, and should have, initially included a fob-integrated engine
12 immobilizer, consistent with the industry standard. Even after the cars were sold,
13 Defendants could have implemented a mandatory recall. Instead, Hyundai chose to make
14 money from a crime wave it caused.

15 95. Because Hyundai and Kia have not implemented a mandatory recall for the
16 installation of immobilizers, millions of the Susceptible Vehicles remain on the road. A
17 recent report from CARFAX found that 4.9 million Hyundais and Kias remain susceptible
18 to theft.⁸²

21 ⁸⁰ Reddit (Feb. 15, 2023, 7:05 AM),
22 [https://web.archive.org/web/20230311080407/https://www.reddit.com/r/kia/comments/11303m4/hyundai_and_kia_release_software_update_to/?sort=new].

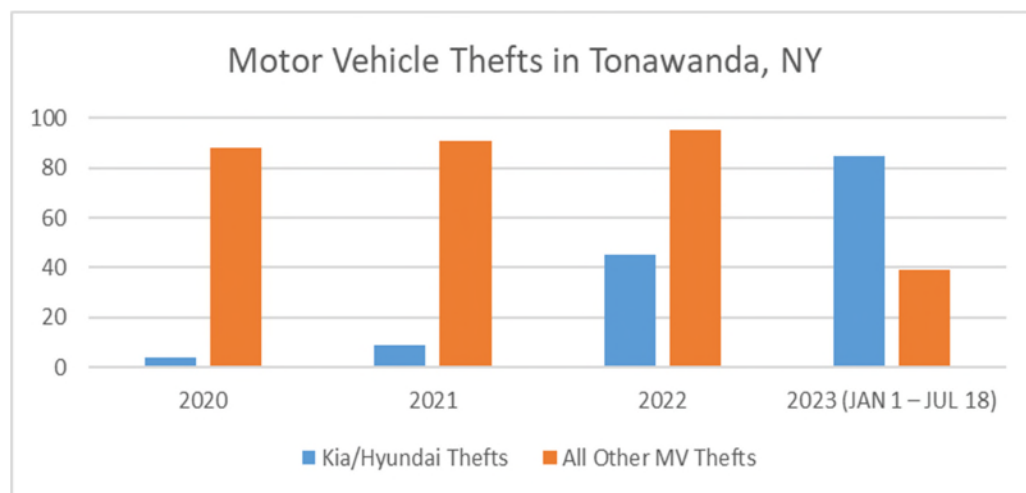
23 ⁸¹ Taryn Phaneuf, *Own a Kia or Hyundai? Here’s Why Your Insurance Rates Could Go Up*, Nerd Wallet (Jan. 26, 2023, 1:31 PM),
24 <https://www.nerdwallet.com/article/insurance/kia-hyundai-theft>.

⁸² Patrick Olsen, *Nearly 5 Million Hyundai and Kia Models Need Anti-Theft Repairs*, CARFAX Blog (July 19, 2023), <https://www.carfax.com/blog/kia-hyundai-theft-repairs>.

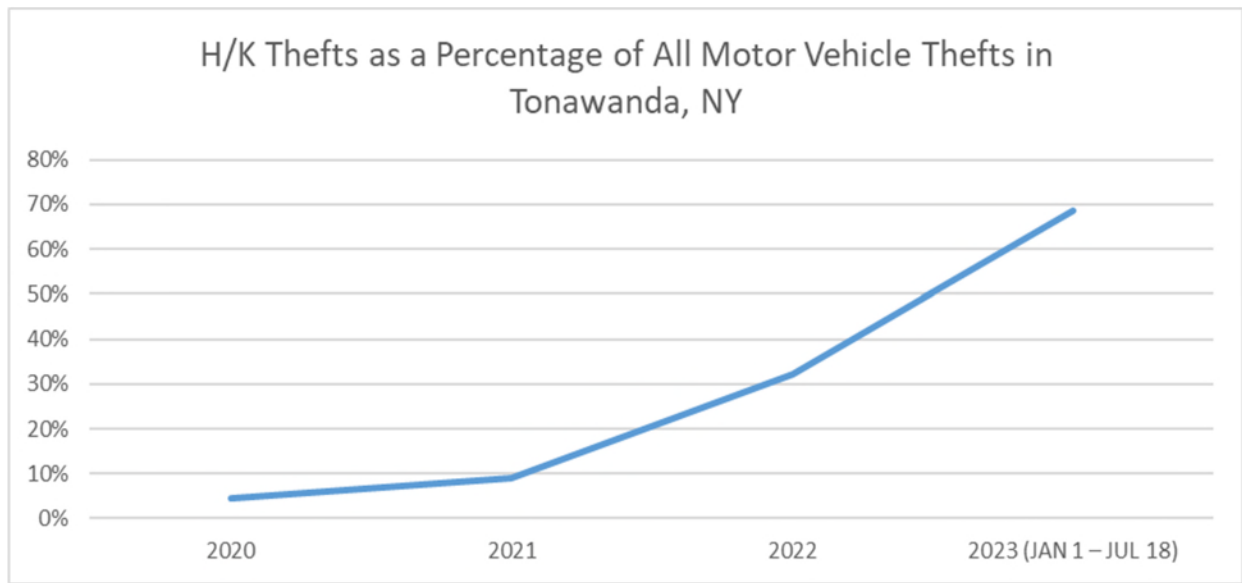
96. By electing profits over safety and deviating from the industry standard by not including engine immobilizers as a standard safety feature, Defendants have created a public nuisance that continues to this day.

VI. IMPACTS ON PLAINTIFF

1. The Town of Tonawanda has experienced a similar surge in thefts of Hyundai and Kia vehicles. In 2020, four Hyundai or Kia vehicles were stolen in Tonawanda. In 2021, nine Hyundais or Kias were stolen in Tonawanda. In 2022, the number of stolen Kias and Hyundais increased by 300% to 45. In 2023, the crisis has only worsened, and from January 1 to July 18, 2023, there have been 85 Hyundai or Kia thefts in Tonawanda—*39 times higher* than the rate of Hyundai and Kia thefts in 2020.



2. This increase in thefts is unique to Hyundai and Kia vehicles. In 2020, Hyundais and Kias accounted for 4% of all motor vehicle thefts in Tonawanda. In 2021, those makes accounted for 9% of all motor vehicle thefts. In 2022, that figure jumped to 32%, and so far in 2023 Hyundais and Kias have accounted for 69% of all motor vehicle thefts in Tonawanda.



3. As thefts of these vehicles increased, so too did the number of times officers had to pursue Hyundai and Kia vehicles, which suggests these vehicles were being used to commit other crimes or otherwise endangered the public (e.g., being driven recklessly).

4. The surge in thefts has caused law enforcement officers to spend more and more of their time responding to stolen Hyundai and Kia vehicles. Thefts of Hyundai and Kia vehicles have also led to extreme driving with disastrous consequences. On May 29, 2023, Tonawanda police officers effectuated a traffic stop when a 2019 Kia Sportage drove through a red light.⁸³ The vehicle had been stolen, and the driver sped off during the traffic stop, dragging a police officer with him. The officer was hospitalized with severe injuries and remains on medical leave.

5. In addition, the surge in Kia and Hyundai thefts has led to a dangerous driving and crashes. On June 27, 2023, a stolen Hyundai crashed into a tree outside the Town of

⁸³ Maki Becker, *Suspect in hit-and-run of Tonawanda officer has 3 other criminal cases pending*, Buffalo News (May 31, 2023), https://buffalonews.com/news/local/crime-and-courts/suspect-in-hit-and-run-of-tonawanda-officer-has-3-other-criminal-cases-pending/article_778d8954-ffd3-11ed-a268-3fd9553a9fb7.html.

1 Tonawanda water treatment plant.⁸⁴ One of the passengers was injured, and another was
2 a juvenile.

3 6. Stolen Kias and Hyundais have also been used to commit other violent crimes
4 in Tonawanda, such as a drive-by shooting with bullets fired into a house from a stolen
5 Hyundai.⁸⁵

6 VII. CAUSES OF ACTION

7 COUNT ONE — PUBLIC NUISANCE

8 97. Tonawanda incorporates each preceding paragraph as though fully set forth
9 herein.

10 98. Defendants, through their designing, manufacturing, and distributing of
11 automobiles that are dangerously susceptible to theft, have created, contributed to, and
12 maintained a public nuisance that substantially interferes with rights common to the
13 general public.

14 99. A public nuisance “consists of conduct or omissions which offend, interfere
15 with or cause damage to the public in the exercise of rights common to all, in a manner
16 such as to offend public morals, interfere with use by the public of a public place or
17 endanger or injure the property, health, safety or comfort of a considerable number of
18 persons.” *Copart Indus., Inc. v. Consol. Edison Co. of N.Y., Inc.*, 362 N.E.2d 968, 971
19 (1977) (internal citations omitted).

20
21 ⁸⁴ Emily Miller, *Buffalo man faces charges after crashing stolen Hyundai*, WIVB.com
22 (June 28, 2023, 3:39 PM), [https://www.wivb.com/news/local-news/erie-
county/tonawanda/buffalo-man-faces-charges-after-crashing-stolen-
hyundai/?utm_source=flipboard&utm_content=other](https://www.wivb.com/news/local-news/erie-county/tonawanda/buffalo-man-faces-charges-after-crashing-stolen-hyundai/?utm_source=flipboard&utm_content=other).

23 ⁸⁵ Evan Anstey, *Shots fired into Town of Tonawanda home, suspects believed to be*
24 *driving stolen Kia*, WIVB.com (June 28, 2023, 10:18 AM), [https://www.wivb.com/news/local-news/erie-county/tonawanda/shots-fired-into-town-
of-tonawanda-home-suspects-believed-to-be-driving-stolen-kia/](https://www.wivb.com/news/local-news/erie-county/tonawanda/shots-fired-into-town-of-tonawanda-home-suspects-believed-to-be-driving-stolen-kia/).

1 100. Defendants' conduct has interfered, and continues to interfere, with the use
2 by the public of public streets and sidewalks in Tonawanda, and has endangered the safety,
3 health, and comfort of the general public in Tonawanda.

4 101. In addition, Defendants' conduct has undermined law enforcement efforts to
5 deter vehicle theft and has otherwise diverted scarce law enforcement resources.

6 102. At all relevant times, Defendants have been the manufacturers, marketers,
7 and/or distributors of the Susceptible Vehicles being stolen at record rates that are, at
8 times, being used in the commission of violent crimes in the State of New York and
9 Tonawanda.

10 103. At all times relevant to this litigation, Defendants knew or had reason to know
11 of the hazards and dangers of forgoing installation of engine immobilizers in the
12 Susceptible Vehicles and specifically the increased risk of vehicle theft and public harm.
13 Defendants knew or had reason to know that the installation of engine immobilizers
14 successfully decreased the rate of car theft by as much as 40%. Defendants also knew or
15 had reason to know that the installation of immobilizers in their own vehicles has
16 considerable deterrent effects on the rate of car theft.

17 104. Defendants know that their conduct has caused an increase in vehicle theft
18 that has had and will continue to have a detrimental effect on the safety, welfare, peace,
19 comfort, and convenience of the general public in Tonawanda.

20 105. Defendants, through their business practices, contribute to a significant
21 increase in vehicle theft, reckless driving, and the use of their vehicles in the commission
22 of other crimes in Tonawanda, thus endangering the safety and health of considerable
23 numbers of Tonawanda's respective residents, depriving Tonawanda residents of the
24 peaceful use of the public streets and sidewalks, undermining law enforcement efforts,

1 increasing law enforcement costs and diverting law enforcement resources, and interfering
2 with commerce, travel, and the quality of daily life in Tonawanda.

3 106. Accordingly, Defendants each substantially interfere with rights common to
4 all and cause, contribute to, and/or maintain a public nuisance in Tonawanda.

5 107. As a result of Defendants' conduct, Tonawanda has suffered and will
6 continue to suffer economic damages, including significant expenditures for police and
7 other services. Tonawanda will continue to incur economic losses until the nuisance is
8 abated. These damages are particular to Tonawanda and are different in kind to the harms
9 suffered by New York residents at large.

10 108. Defendants' misconduct alleged in this case does not concern a discrete event
11 or discrete emergency of the sort a political subdivision would reasonably expect to occur
12 and is not part of the normal and expected costs of a local government's existence.
13 Tonawanda alleges wrongful acts which are neither discrete nor of the sort a local
14 government can reasonably expect to occur.

15 109. Tonawanda has incurred, and will continue to incur, expenditures over and
16 above it's ordinary public services due to the public nuisance created by Defendants'
17 actions.

18 110. Tonawanda requests an order providing for abatement of the public nuisance
19 that Defendants have created or assisted in the creation of, compensation for the economic
20 losses suffered as a result of the nuisance, and injunctive relief.

21 **COUNT TWO — NEGLIGENCE**

22 111. Tonawanda incorporates each preceding paragraph as though set forth fully
23 herein.
24

1 112. At all times relevant to this litigation, Defendants had a duty to act as a
2 reasonably careful person would act under the circumstances in the design, research,
3 manufacture, and distribution of Defendants' products, including the duty to take all
4 reasonable steps necessary to prevent the manufacture and/or sale of a product that was so
5 easy to steal.

6 113. Defendants owed and continue to owe Tonawanda a duty not to expose it to
7 an unreasonable risk of harm.

8 114. Defendants' duties were preexisting.

9 115. At all times relevant to this litigation, Defendants knew or, in the exercise of
10 reasonable care, should have known of the hazards and dangers of forgoing installation of
11 engine immobilizers in the Susceptible Vehicles and specifically, the increased risk of
12 vehicle theft and public harm.

13 116. Accordingly, at all times relevant to this litigation, Defendants knew or, in
14 the exercise of reasonable care, should have known that the omission of an engine
15 immobilizer in the Susceptible Vehicles could cause Tonawanda's injuries and thus
16 created a dangerous and unreasonable risk of injury to Tonawanda. Defendants were
17 therefore in the best position to protect Tonawanda against the foreseeable rise in the theft
18 of Susceptible Vehicles.

19 117. At all times relevant to this litigation, Defendants knew or had reason to know
20 that the omission of an engine immobilizer in the Susceptible Vehicles could cause the
21 Tonawanda's injuries. As alleged *supra*, nearly all cars sold in the United States by other
22 manufacturers are equipped with engine immobilizers, and, as the data throughout the
23 Consolidated Complaint demonstrates, are not subject to the epidemic of thefts and
24

1 associated harms that plague Defendants' Susceptible Vehicles. And upon information
2 and belief, Defendants use immobilizers in other markets, including Canada.

3 118. As such, Defendants, by action and inaction, breached their duty and failed
4 to exercise reasonable care, and failed to act as a reasonably prudent person and/or
5 company would act under the same circumstances in the design, research, development,
6 manufacture, testing, and distribution of their vehicles, in that Defendants manufactured
7 and produced vehicles that fell below minimum, industry-standard security measures.

8 119. Defendants are in control of the design, research, manufacture, testing, and
9 distribution of the vehicles they distributed to authorized dealerships in New York.

10 120. Defendants knew and/or should have known that it was foreseeable that
11 Tonawanda would suffer injuries as a result of Defendants' failure to exercise reasonable
12 care in the manufacturing of Defendants' vehicles, particularly given Defendants'
13 recognition as early as 2007 that engine immobilizers were an effective deterrent in
14 preventing vehicle theft.

15 121. Defendants were negligent in failing to monitor and guard against third-party
16 misconduct and enabled such misconduct.

17 122. Defendants acted unreasonably in light of the foreseeable result of their
18 conduct, and Defendants' negligence helped to and did produce, and was a factual and
19 proximate cause, of the injuries, harm, and economic losses that the Tonawanda suffered
20 and will continue to suffer.

21 123. Defendants' acts and omissions imposed an unreasonable risk of harm to
22 others separately and/or combined with the negligent and/or criminal acts of third parties.

23 124. Tonawanda's injuries, harms, and economic losses would not have occurred
24 absent Defendants' negligent conduct as described herein.

1 125. As a proximate result of Defendants' wrongful acts and omissions,
2 Tonawanda has been injured and suffered economic damages and will continue to incur
3 expenses in the future, as described herein, including but not limited to expending,
4 diverting, and increasing resources to retrieve stolen cars and/or address property damage
5 on public roads within Tonawanda.

6 126. Defendants engaged in conduct, as described above, that constituted reckless
7 disregard of the safety and health of the Tonawanda's residents, being fully aware of the
8 probable dangerous consequences of the conduct and deliberately failing to avoid those
9 consequences.

10 127. Defendants' conduct constituting reckless and conscious disregard for public
11 safety was committed and/or authorized by one or more officers, directors, or managing
12 agents of Defendants, who acted on behalf of Defendants. Additionally, or in the
13 alternative, one or more officers, directors or managing agents of Defendants knew of the
14 conduct constituting reckless disregard for public safety and adopted or approved that
15 conduct after it occurred.

16 128. Defendants' misconduct alleged in this case does not concern a discrete event
17 or discrete emergency of the sort a political subdivision would reasonably expect to occur
18 and is not part of the normal and expected costs of a local government's existence.
19 Tonawanda alleges wrongful acts which are neither discrete nor of the sort a local
20 government can reasonably expect to occur.

21 129. Tonawanda has incurred, and will continue to incur, expenditures over and
22 above its ordinary public services due to the negligence caused by Defendants' actions.

23 130. The tortious conduct of each Defendant was a substantial factor in producing
24 harm to Tonawanda.

RESPECTFULLY SUBMITTED this 7TH DAY OF SEPTEMBER, 2023.

TOWN OF TONAWANDA

KELLER ROHRBACK L.L.P.

By /s/ Michael Kooshoian

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