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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 TOWN OF AMHERST, NEW YORK,

13 Plaintiff,

14 v.

15 HYUNDAI MOTOR COMPANY,
16 HYUNDAI MOTOR AMERICA, KIA
17 CORPORATION, and KIA AMERICA,
18 INC.,

19 Defendants.

No. 8:23-cv-02034

COMPLAINT

JURY TRIAL DEMANDED

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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. Two car manufacturers made a business decision not to equip the vehicles they sell with standard anti-theft technology, leaving counties and cities across the nation to deal with massive public safety consequences. 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 most 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

1 Touring, Genesis Coupe, Kona, Palisade, Santa Fe, Santa Fe Sport, Santa Fe XL,
2 Sonata, Tucson, Veloster, Venue, and Veracruz; and the Kia Forte, K5, Optima,
3 Rio, Sedona, Seltos, Sorento, Soul, and Sportage. These vehicles, when
4 manufactured and sold without engine immobilizers, are referred to hereinafter as
5 the “Susceptible Vehicles.”

6 4. As a result, online videos demonstrate how easy it is to steal Hyundai
7 and Kia vehicles. In many cases, thieves use tools no more advanced than a USB
8 cable. Hyundai’s and Kia’s business decisions to reduce costs, and thereby boost
9 profits, by forgoing common anti-theft technology have resulted in a dangerous rash
10 of thefts. This vehicular crime wave has had a significant impact on law
11 enforcement operations, emergency services, and public safety, particularly for the
12 Town of Amherst, New York (“Plaintiff,” the “Town,” or “Amherst”).

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

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

1 7. The difference between the proportion of Hyundai and Kia vehicle
2 models with immobilizers compared to all other manufacturers is staggering: for
3 the 2015 model year, for example, only **26%** of Hyundai and Kia vehicles in the
4 United States were equipped with immobilizers, compared to **96%** of vehicles from
5 all other manufacturers.¹

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

9 9. Hyundai's and Kia's decisions to put profits over public safety have
10 had devastating consequences for Plaintiff and their residents. Defendants' failure
11 to install an industry-standard immobilization technology or other reasonable anti-
12 theft device, notwithstanding decades of academic literature and research
13 supporting the deterrent effects of such technology,² has opened the floodgates to
14 vehicle theft, reckless driving, and endangered public safety.

15 10. This epidemic started in Milwaukee and spread nationwide. By June
16 2021, the Milwaukee Police Department reported that the theft of Hyundai and Kia
17 vehicles had increased by 2,500% since the previous year, with an average of 30
18

19 ¹ *Hyundai and Kia theft losses*, 38 HLDI Bull. 28, 2 (Dec. 2021),
20 [https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-](https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf)
21 [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)
(emphasis added).

22 ² Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 Colum. L. Rev.
23 6, 1193–1231 (1985),
[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2827&context=](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2827&context=journal_articles)
[journal_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2827&context=journal_articles).

1 cars being stolen per day.³ This trend then spread nationwide, enabled by millions
2 of Hyundai and Kia vehicles lacking immobilizers or other reasonable anti-theft
3 measures. As explained below, the crime wave continues to this day in communities
4 coast to coast—and those communities are left to pay the price.

5 11. Vehicle theft is not only a property crime affecting vehicle owners, but
6 it also constitutes a grave threat to public safety. Vehicle theft goes hand in hand
7 with reckless driving, which in turn can result in injuries and/or death. It can result
8 in increased violence, as many car owners are unlikely to part with their vehicles
9 willingly. It also consumes law enforcement and emergency resources and deprives
10 the public of safe streets and sidewalks.

11 12. The skyrocketing rate of Kia and Hyundai vehicle thefts has drastically
12 impacted town and police resources for Plaintiff. Amherst's residents are subjected
13 to increasingly dangerous conditions on their streets, as car thieves (many of them
14 teenagers) are taking advantage of Hyundai's and Kia's failures and engaging in
15 reckless driving, endangering Plaintiff's employees, residents, and property.

16 13. Defendants' conduct has created a public nuisance that could have
17 been avoided had they followed industry-wide standards and installed immobilizer
18 devices or taken other reasonable measures to deter thefts of their vehicles.

19 14. Among other harms, Plaintiff has been forced to divert funds and risk
20 officer and public safety to combat the growing burden caused by increased
21

22 ³ James Gilboy, *Why Milwaukee Might Sue Hyundai, Kia Over Stolen Car*
23 *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>.

Hyundai and Kia vehicle thefts and their many associated dangers, including reckless driving.

II. JURISDICTION AND VENUE

A. Subject Matter Jurisdiction

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), as the amount in controversy exceeds \$75,000 and there is complete diversity between the parties. Amherst is regarded as a citizen of the State of New York, for the purposes of diversity jurisdiction. *Bullard v. City of Cisco*, 290 U.S. 179, 187 (1933). Defendants HMA and KA are citizens of the State of California, where they are headquartered and incorporated. Defendants HMC and KC are both multinational automakers, headquartered in Seoul, South Korea.

B. Personal Jurisdiction

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

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

1 **1. HMC’s and KC’s Forum-Related Activities**

2 18. HMC is a South Korea-based company, and its substantial activities
3 directed at the United States give rise to and relate to Plaintiff’s claims.

4 19. In a recent complaint to enforce its trademark rights, HMC represented
5 that it “currently designs, manufactures, markets, distributes, and sells a wide range
6 of automobile and related automobile parts to over 190 countries throughout the
7 world, including the United States, under the trademark ‘Hyundai.’”⁴

8 20. HMC and KC design, manufacture, market, distribute, and sell the
9 Susceptible Vehicles under their registered trademarks “Hyundai” and “Kia,”
10 respectively. Between 2011 and 2022, when the Susceptible Vehicles were sold and
11 distributed in Plaintiff’s jurisdiction, HMC and KC purposefully availed themselves
12 of the United States’ legal protections by registering and maintaining registrations
13 with the United States government for trademarks associated with their vehicles and
14 parts, which HMC and KC used to identify and distinguish their respective vehicles
15 and parts in the United States, this district, and Plaintiff’s jurisdiction.

16 21. HMC and KC purposefully availed themselves of markets in the
17 United States, including in this district and Plaintiff’s jurisdiction, as each company
18 sells approximately 500 thousand vehicles per year in this market through their
19 respective domestic subsidiaries, HMA and KA.

20 22. HMC and KC manufactured over eight million of the Susceptible
21 Vehicles, which were delivered to HMA and KA for sale in the United States. Upon
22

23 ⁴ 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), Dkt. No. 34.

1 information and belief, HMC and KC manufactured the majority of the Susceptible
2 Vehicles overseas in South Korea. However, HMC and KC segregated the
3 Susceptible Vehicles intended for sale in the United States and shipped those
4 vehicles to the United States with full knowledge and intent that HMA and KA
5 would distribute them across the country.

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

10 24. HMC and KC purposely availed themselves of markets in the United
11 States by regularly submitting applications to the Environmental Protection Agency
12 to obtain certification required for the sale of their vehicles in the United States.⁵

13 25. HMC and KC played instrumental roles in HMA's and KA's analysis
14 and decision-making processes related to the design and/or manufacture of the
15 Susceptible Vehicles without engine immobilizers.

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18
19 ⁵ See, e.g., Letter from Hyundai America Technical Center to Director Linc Wehrly
20 re: Request for GHG credit for High Efficiency Alternator Technology (June 10,
21 2019), [https://www.epa.gov/sites/default/files/2019-07/documents/kmc-off-cycle-
22 ghg-credit-high-efficiency-alternator-2019-06-10.pdf](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,
23 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](https://www.epa.gov/system/files/documents/2022-09/hyundai-ghg-credit-pwm-hvac-blm-apl-2020-12-15.pdf).

1 26. Upon information and belief, HMC and KC both were involved in
2 monitoring vehicle thefts of the Susceptible Vehicles, as reported by their respective
3 subsidiaries, HMA and KA.

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

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

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

11 29. HMC operates a “Global Command and Control Center” with “walls
12 covered with television screens and computer monitors” that track “every operating
13 line at 27 plants in the world, in real time, 24 hours a day, 365 days a year.”⁶

14 30. The production chief for a Hyundai plant in Alabama noted that if there
15 is “a hiccup at any of those boards, headquarters wants to know what needs to be
16 done about it—right now[.]”⁷

17 31. Upon information and belief, KC representatives similarly monitor
18 Kia's global operations from HMC's Global Command and Control Center.
19
20
21

22 ⁶ William J. Holstein, *Hyundai's Capabilities Play*, 70 *Strategy & Bus.* 62, 67–68
(Spring 2013), [https://digitaledition.strategy-](https://digitaledition.strategy-business.com/publication/?m=6320&i=145911&p=70&ver=html5)
23 [business.com/publication/?m=6320&i=145911&p=70&ver=html5](https://digitaledition.strategy-business.com/publication/?m=6320&i=145911&p=70&ver=html5).

⁷ *Id.* at 68.

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

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

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

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

15 **C. Venue**

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

III. PARTIES

A. Plaintiff

37. Plaintiff, the Town of Amherst, is a municipal corporation organized under the laws of the State of New York. The Town is located in Erie County, New York.

38. Amherst is the most populous suburb of Buffalo and had a population of 129,595 residents as of the 2020 Census.⁸

B. Defendants

1. Hyundai Motor Company

39. 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 Complaint. HMC is the parent corporation of Hyundai Motor America.

2. Hyundai Motor America

40. 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,

⁸ *Quick Facts, Amherst town, Erie County, New York* U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/amhersttowneriecountynewyork> (last visited Oct. 26, 2023).

1 markets, leases, warrants, and oversees regulatory compliance and warranty claims
2 for Hyundai-brand vehicles through a network of over 800 dealers throughout the
3 United States from its headquarters in California. Defendant HMA engages in
4 continuous and substantial business in California.

5 **3. Kia Corporation**

6 41. Defendant Kia Corporation is a multinational automaker
7 headquartered in Seoul, South Korea. KC is the parent corporation of Kia America,
8 Inc. As of December 31, 2017, Defendant KC's largest shareholder was HMC,
9 which holds 33.88% of KC's stock.⁹

10 **4. Kia America, Inc.**

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

22 ⁹ *The Future: Kia Motors Annual Report 2017* at 11, Kia,
23 <https://worldwide.kia.com/int/company/ir/archive/annual-report/download/B200002757/F200012579> (last visited July 25, 2023).

IV. THE KIA HYUNDAI THEFT WAVE

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

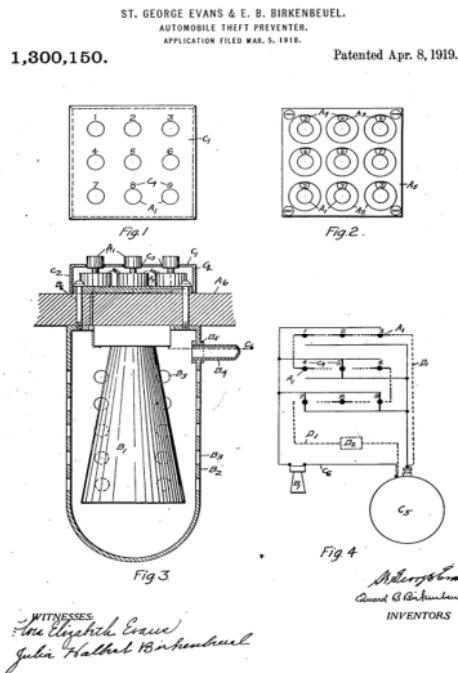
43. Since the invention of gasoline-powered automobiles at the close of the nineteenth century, consumers have needed effective ways to keep their vehicles from being stolen. Thus, efforts to prevent theft or unauthorized access to automobiles have tracked vehicle development. In 1919, St. George Evans and Edward B. Birkenbeuel invented the first electric immobilizer/vehicle security system.¹⁰

44. 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.”¹¹

45. 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.

¹⁰ U.S. Patent No. 1,300,150 (issued Apr. 8, 1919).

¹¹ *Id.* at col. 1 ll. 14–20.



Sketches for Evans & Birkenbeuel's "Automobile Theft Preventer"¹²

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

47. As time passed and technology advanced, the United States pursued further efforts to promulgate vehicle safety standards. These efforts were also fueled by the post-war rise in vehicle thefts among juveniles and young adults, "who took cars for joyriding and transportation."¹³

¹² *Id.* at figs. 1, 2, 3, 4.

¹³ Anthony Dixon & Graham Farrell, *Age-period-cohort effects in half a century of motor vehicle theft in the United States*, 9 Crime Sci. 17, 1, 3 (2020),

1 48. In 1966, Congress passed the National Traffic and Motor Vehicle
 2 Safety Act (the “Safety Act”), with the aim of administering new motor vehicle and
 3 traffic safety standards.¹⁴ Administration of the Safety Act was overseen by the
 4 newly created Department of Transportation through its sub-agency: the National
 5 Highway Traffic Safety Administration, f/k/a/ the National Traffic Safety Bureau
 6 (“NHTSA”).

7 49. Pursuant to its statutory authority under the Safety Act, NHTSA
 8 promulgated numerous federal motor vehicle safety standards (“FMVSS”). Among
 9 these standards, FMVSS 114¹⁵ requires minimum theft-protection standards for
 10 nearly all passenger vehicles in the United States:

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

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

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

19 ...

S5.1 Theft Protection.

20 [https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-](https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00126-5)
 21 [00126-5](https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00126-5).

22 ¹⁴ National Traffic and Motor Vehicle Safety Act, Pub. L. 89–563, 80 Stat. 718
 (1966).

23 ¹⁵ Standard No. 114; Theft protection and rollaway prevention, 49 C.F.R. §
 571.114 (2010) (“FMVSS 114”).

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

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

5 . . .

6 S5.2.2 Except as specified in S5.2.4, the vehicle must be
 7 designed such that the transmission or gear selection
 control cannot move from the "park" position, unless the
 8 key is in the starting system.¹⁶

9 50. The main motivation for creating FMVSS 114 was NHTSA's
 10 recognition "that stolen cars constitute a major hazard to life and limb on the
 11 highways. 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
 13 those which are driven by authorized individuals."¹⁷

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

20 ¹⁶ *Id.*

21 ¹⁷ Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars, 33
 22 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>.

23 ¹⁸ *Id.*

¹⁹ *Id.*

1 to “car thieves who could bypass the ignition lock . . . the agency decided to require
2 a device, which would prevent either self-mobility or steering even if the ignition
3 lock were bypassed.”²⁰

4 52. An industry-standard engine immobilizer is the most effective way to
5 satisfy this requirement, “because it locks out the engine control module if an
6 attempt is made to start the vehicle without the correct key or to bypass the
7 electronic ignition system.”²¹ Defendants’ choice not to use this industry-standard
8 anti-theft technology predictably led to rampant car thefts and resulted in a threat to
9 public safety and an ongoing public nuisance.

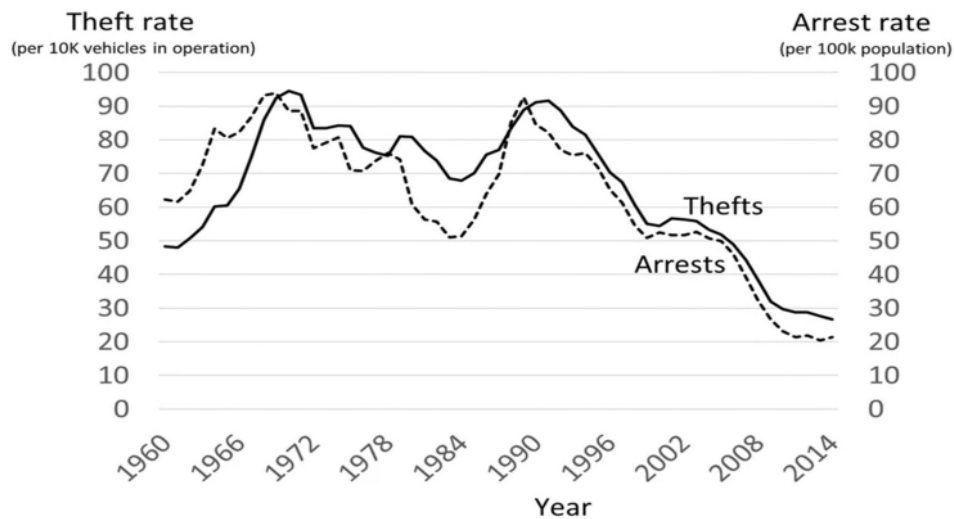
10 53. In the late 1980s and early 1990s, vehicle theft increased dramatically
11 in the United States.²² The most common method for stealing a car involved
12 bypassing the motor’s ignition switch, otherwise known as “hotwiring.” The graph
13 below illustrates the dramatic rise in car thefts during this time period.²³

14
15
16 ²⁰ Federal Motor Vehicle Safety Standards; Theft Protection, 71 Fed. Reg. 17,753
17 (Apr. 7, 2006), <https://www.govinfo.gov/content/pkg/FR-2006-04-07/pdf/06-3358.pdf>; *see also* Motor Vehicle Safety Standard No. 114; Theft Protection;
18 Passenger Cars, 33 Fed. Reg. 83, 6,471 (Apr. 27, 1968),
19 <https://www.govinfo.gov/content/pkg/FR-1968-04-27/pdf/FR-1968-04-27.pdf#page=1>.

20 ²¹ Jacqueline Glassman, *Interpretation ID : GF005229-2*, NHTSA (Sept. 24, 2004),
21 [https://www.nhtsa.gov/interpretations/gf005229-2](https://www.nhtsa.gov/interpretations/gf005229-2#:~:text=This%20responds%20to%20your%20letter,114%2C%20Theft%20Protection)
22 [2#:~:text=This%20responds%20to%20your%20letter,114%2C%20Theft%20Protection](https://www.nhtsa.gov/interpretations/gf005229-2#:~:text=This%20responds%20to%20your%20letter,114%2C%20Theft%20Protection).

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

²³ *Id.* at fig. 1.



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

54. In a precursor to the contemporary crisis, in the late 1980's to early 1990's, General Motors cars were stolen at elevated rates due to the relative ease with which a thief could bypass the ignition lock.²⁴ The ease with which those cars could be stolen spurred a trend of youths—some as young as ten years old—engaging in automobile theft and joyriding.²⁵

55. In the years that followed, General Motors, and nearly all other automotive manufacturers, adopted the anti-theft technology of passive vehicle immobilizers for cars distributed to the American market, which were patented in

²⁴ See Tim Farley, *Thieves Put GM Models At Top of List*, *Oklahoman*, (Sept. 11, 1988, 12:00 AM), <https://www.oklahoman.com/story/news/1988/09/11/thieves-put-gm-models-at-top-of-list/62639884007/>.

²⁵ See Stephen Buckley, *D.C. Police Report Increase in Car Thefts by Youngsters*, *Wash. Post* (Feb. 1, 1990), <https://www.washingtonpost.com/archive/politics/1990/02/01/dc-police-report-increase-in-car-thefts-by-youngsters/fa2c16c0-55a9-4866-8514-8f8e4abfdcf7/>.

1 1993.²⁶ Unlike Evans and Birkenbeuel’s invention nearly 75 years prior, the vehicle
2 immobilizer would render the engine operable only “if the correct key having coded
3 information is used[,]” rather than relying on concealed switches or memorizing
4 keypad combinations.²⁷

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

9 57. Although the mechanism behind the vehicle immobilizer was more
10 intricate than the original 1919 invention, the overall purpose remained the same:
11 “to make the vehicle more difficult to steal.”²⁸

12 58. The invention proved successful and, less than five years later, the
13 European Union mandated that all new passenger cars from 1998 onward be
14 equipped with an electronic engine immobilizer.²⁹ Similar mandates soon followed
15 in Australia, New Zealand, and Canada.

16 59. As engine immobilizers became the industry standard among
17 manufacturers, at least one study in the Netherlands suggested that immobilizers
18
19

20 ²⁶ Int’l Patent Publication No. WO 93/13968 (filed Jan. 7, 1993).

21 ²⁷ *Id.*

22 ²⁸ *Id.*

23 ²⁹ 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).

1 “lowered the overall rate of car theft on average by about 40 percent during
2 1995-2008.”³⁰

3 60. By 2011, studies concluded “that good quality electronic immobilizers
4 [have] bec[o]me car theft’s killer technology” and proved to be 32.7% “more
5 effective in reducing car theft than alarms” and 42.2% “more effective than central
6 locking.”³¹

7 61. Equally critical, academic studies support the proposition that “[f]rom
8 the early 1990s onwards, it gradually became less easy for adolescents to begin
9 offending as an increasing proportion of vehicles became secure” because the
10 “young offenders did not have the skill or experience to overcome the new vehicle
11 security technology, particularly electronic immobilizers.”³² As the rate of young
12
13

14 ³⁰ Jan C. van Ours & Ben Vollaard, *The Engine Immobiliser: A Non-Starter for*
15 *Car Thieves*, TILEC Discussion Paper No. 2013-001, SSRN (Jan. 14, 2013),
16 <https://deliverypdf.ssrn.com/delivery.php?ID=127087120097029119078084107081001030022041017031027078099093024106009075127118002030001121005122042126107027087095100026018070046034013064088076022067085110020010058066038090085019017108089031127069111086113121096030001027069090090007106081078030084&EXT=pdf&INDEX=TRUE>.
17

18 ³¹ Graham Farrell *et al.*, *The Crime Drop and the Security Hypothesis*, 48(2) J. Res.
19 Crime & Delinq. 147, 163, 169 (2011),
20 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.
21

22 ³² Anthony Dixon & Graham Farrell, *Age-period-cohort effects in half a century of*
23 *motor vehicle theft in the United States*, 9 Crime Sci. 17, 1, 7 (2020),
<https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00126-5>.

1 offenders decreased due to improved vehicle security, “fewer adolescents” went on
2 to experience “criminal career onset and continuance.”³³

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

5 62. Studies by the Highway Loss Data Institute (“HLDI”) showed “that
6 vehicle theft losses decreased significantly after factory-installed passive
7 immobilizing antitheft devices were introduced.”³⁴ Specifically, HLDI studies
8 between 1996 and 2013 all showed decreases in theft losses for vehicles with engine
9 immobilizers studied in those years, including General Motors, BMW, Ford, and
10 Nissan.³⁵ A 2013 HLDI study “found that thieves were sometimes targeting the
11 older model years of a vehicle series without immobilizers, such as the Honda Civic
12 and Honda Accord.”³⁶

13 63. Despite decades of research and findings that immobilizers
14 significantly reduced vehicle theft and the consequential public safety risks, “only
15 26 percent of Hyundai and Kia” 2015 vehicle models had “passive immobilizers as
16 standard equipment, compared with 96 percent of other manufacturers.”³⁷

17
18 ³³ *Id.*; see also Graham Farrell, *Forty years of declining burglary in the United*
19 *States: Explanation and evidence relating to the security hypothesis*, 35 Sec. J.
20 444, 458 (2022) <https://link.springer.com/article/10.1057/s41284-021-00284-4>
(arguing that “making crime more difficult to commit may be the most effective
way to reduce juvenile crime and progression to adult crime”).

21 ³⁴ *Hyundai and Kia theft losses*, 38 HLDI Bull. 28, 1 (Dec. 2021),
22 https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf.

23 ³⁵ *Id.* at 2.

³⁶ *Id.*

³⁷ *Id.* at 5.

1 64. The low percentage of Hyundai and Kia vehicles with immobilizers is
 2 especially concerning given that, during this same time period, Hyundai and Kia
 3 were installing immobilizers in their models for sale in the European and Canadian
 4 markets.³⁸

5 65. Nor are Defendants unfamiliar with the benefits of installing
 6 immobilizers in the American market. A NHTSA standard separate from FMVSS
 7 114 requires automobile manufacturers to label parts to reduce the demand for
 8 stolen cars and chop shops (where stolen cars are disassembled so that their valuable
 9 parts can be sold).³⁹ Manufacturers can apply for exemptions from this labeling
 10 requirement based on the inclusion of anti-theft technology, because vehicles with
 11 anti-theft technology are much harder to steal in the first place and thus much less
 12 likely to be “chopped” for parts. In March of 2007, Hyundai requested an exemption
 13 from the labeling requirement for its 2008 Hyundai Azera line based on its inclusion
 14 of an immobilizer in that model. Thus, Hyundai recognized the efficacy of
 15 immobilizers in reducing vehicle theft.⁴⁰

16 ³⁸ Hyundai first began exporting its cars to parts of Europe, the United Kingdom,
 17 and Canada between 1978 and 1984. *See Over 50 years of progress: the history of*
 18 *Hyundai*, Hyundai Newsroom (Apr. 6, 2019),
 19 [https://www.hyundai.news/eu/articles/press-releases/over-50-years-of-progress-](https://www.hyundai.news/eu/articles/press-releases/over-50-years-of-progress-the-history-of-hyundai.html)
[the-history-of-hyundai.html](https://www.hyundai.news/eu/articles/press-releases/over-50-years-of-progress-the-history-of-hyundai.html). Similarly, Kia vehicles were introduced into
 20 European and Canadian markets in the 1990s.

21 ³⁹ Requirements for passenger motor vehicles, 49 C.F.R. § 541.5 (June 1, 2011).

22 ⁴⁰ Petition for Exemption From the Vehicle Theft Prevention Standard; Hyundai-
 23 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

1 66. Yet, despite knowing the unquestionable benefit of engine
 2 immobilizers, Hyundai and Kia offered immobilizers only in a few of their more
 3 expensive models, like the Azera, until the last year or so. Their decisions have
 4 compounded the harms to low-income communities.⁴¹ Consumers without
 5 resources to afford these higher end models are more likely to live in areas with
 6 higher crime rates and are likely less able to pay for alternative transportation or for
 7 the cost of repairing a recovered, but damaged, vehicle after a theft.

8 67. In September 2022, HLDI found that Hyundais and Kias are stolen at
 9 nearly twice the rate of other vehicles in the automobile industry. Specifically,
 10 “Hyundais and Kias without immobilizers had a vehicle theft claim rate of 2.18 per
 11 1,000 insured vehicle years” while the remainder of the industry, combined, had a
 12 theft claim rate of 1.21.⁴²

13 68. Defendants’ decision not to install the simple and highly effective
 14 immobilizer or other reasonable anti-theft measure in the Susceptible Vehicles
 15 between 2011 and 2022, in contrast to the vast majority of car manufacturers that
 16 did choose to install immobilizers in nearly all of their vehicles, has, foreseeably,
 17 led to the epidemic plaguing Plaintiff.

18 notice granting an identical exemption for the Kia Amanti vehicle line beginning
 19 in model year 2009 based on Defendant Kia’s representation that the immobilizer
 installation for that specific model should substantially reduce theft rates).

20 ⁴¹ Tom Krisher, *Thieves key on hack that leaves Hyundai, Kia cars vulnerable*, AP
 21 News (Sept. 21, 2022, 10:21 PM), <https://apnews.com/article/social-media-milwaukee-theft-eed3be407c1b7cb725ae607b8d86bcdf> (noting that “[m]any of
 22 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
 23 inexpensive vehicles when purchased new”).

⁴² *Id.* (“An insured vehicle year is equal to one vehicle insured for one year.”).

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

69. Kia and Hyundai chose to flout the industry standard and sell their vehicles without any reasonable anti-theft measures, which made those vehicles more susceptible to theft. As would-be car thieves learned of Defendants' decisions, the incidence of theft for Susceptible Vehicles increased, relative to other models, from 2015 to 2020.⁴³

70. 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.⁴⁴ That group, the "Kia Boyz," became notorious for posting videos of youth engaging in reckless driving after stealing Kias and

⁴³ 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 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>.

⁴⁴ 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->

1 Hyundais.⁴⁵ As the videos detailed, a thief need only break a window, remove the
2 plastic cowl under the steering column, and use a USB connector (such as the
3 ubiquitous mobile phone charging cable) to turn the ignition switch and start these
4 unsecure cars. In many instances, thieves are able to break into the Susceptible
5 Vehicles and drive away in under one minute.

6 71. What followed the trending documentation of the unsecure Susceptible
7 Vehicles was all too predictable: thefts of Kias and Hyundais skyrocketed.⁴⁶ In the
8 first half of 2021, the number of stolen Kias and Hyundais in Milwaukee increased
9 by more than thirty and fifteen times, respectively, when compared to the same
10 period in 2020.⁴⁷ This dramatic increase was unique to Kias and Hyundais, which
11 represented 67% of all cars stolen in that period, compared to only 6% of stolen
12 cars in 2019.⁴⁸ This trend then spread nationwide.

15 ⁴⁵ Chris DiLella & Andrea Day, *TikTok challenge spurs rise in thefts of Kia,*
16 *Hyundai cars*, CNBC (Sept. 9, 2022, 9:11 PM),
17 <https://www.cnbc.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html>.

18 ⁴⁶ *Videos Show Teens How to Steal Certain Kias and Hyundais With Only a USB*
19 *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>.

20 ⁴⁷ Sean Tucker, *Milwaukee Police Report Hyundais, Kias Stolen in Record*
21 *Numbers*, Kelley Blue Book (Dec. 14, 2021, 5:27 PM), <https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/>.

22 ⁴⁸ Matt Posky, *Summer of Theft Creating Bad Publicity for Hyundai, Kia*, Truth
23 *About Cars* (Sept. 20, 2022 2:36 PM),
<https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-publicity-for-hyundai-kia-44496971>.

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

2 72. Car thefts directly imperil public safety. By creating, facilitating,
3 and/or otherwise contributing to a rash of car thefts, Defendants are responsible for
4 a substantial risk to the public safety.

5 73. NHTSA promulgated FMVSS 114 to reduce the instances of car theft,
6 because “stolen cars constitute a major hazard to life and limb on the highways.”⁴⁹
7 NHTSA concluded that the “evidence shows that cars operated by unauthorized
8 persons are far more likely to cause unreasonable risk of accident, personal injury,
9 and death than those which are driven by authorized individuals.”⁵⁰ The NHTSA
10 Administrator concluded that “a reduction in the incidence of auto theft would make
11 a substantial contribution to motor vehicle safety,” by reducing both injuries and
12 deaths to would-be car thieves, and by “protect[ing] the many innocent members of
13 the public who are killed and injured by stolen cars each year.”⁵¹

14 74. The reverse is true as well. An *increase* in the incidence of automobile
15 theft results in a substantial decrease in public safety. Defendants’ decision not to
16 equip their vehicles with reasonable anti-theft measures, such as an immobilizer,
17 has led to a clear rise in automobile thefts, and the concomitant threats to public
18 safety. Stolen cars are often driven recklessly—particularly in this case, where cars
19 are stolen for joyriding or use in the commission of other crimes, rather than for
20

21 ⁴⁹ See Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars,
22 33 Fed. Reg. 6,471 (Apr. 27, 1968), <https://www.govinfo.gov/content/pkg/FR-1968-04-27/pdf/FR-1968-04-27.pdf#page=1>.

23 ⁵⁰ *Id.*

⁵¹ *Id.*

1 parts or resale—which poses a risk to both the operators of the stolen vehicle and
2 any lawful drivers or pedestrians who are unfortunate enough to cross their paths.

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

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

11 77. Social media platforms are rife with examples of this dangerous
12 conduct. Videos posted on these platforms highlight the very real dangers of this
13 phenomenon, including youth joyriding through school zones or through crowds of
14 bystanders, and drivers hitting other cars and then running from the scene.⁵² The
15 fact that many of the perpetrators are juveniles and therefore inexperienced
16 drivers—in many cases, too young to have a driver’s license or permit—adds to the
17 danger.

18
19 ⁵² See, e.g., @mixtapetrappers_, Instagram (Oct. 19, 2021),
20 [https://www.instagram.com/p/CVNhig9D64B/?utm%20medium=copy%20link](https://www.instagram.com/p/CVNhig9D64B/?utm%20medium=copy%20link;);
21 @monloww__, TikTok (Oct. 10, 2022),
22 https://www.tiktok.com/@monloww_/video/7153012228067773738;
23 @414hypehouse, Instagram (Aug. 19, 2021),
<https://www.instagram.com/p/CSwsnhfAktd/>; @414hypehouse, Instagram (Sept.
10, 2021), <https://www.instagram.com/p/CTqCaYTANaC/>; @414hypehouse,
Instagram (Oct. 20, 2021), <https://www.instagram.com/p/CVRCCu5AkwT/>.

78. 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,⁵³ shot at,⁵⁴ and stabbed⁵⁵ 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.⁵⁶ The officer was badly injured and subsequently hospitalized.⁵⁷

79. 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

⁵³ 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/>.

⁵⁴ 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/>.

⁵⁵ 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>.

⁵⁶ 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.

⁵⁷ *Id.*

1 passenger of the Hyundai got out of the vehicle with guns and began shooting at
 2 him.⁵⁸ Police found nine bullet casings in the street and bullet holes in the front
 3 window of a nearby home and in a car parked on the street.⁵⁹ About one hour later,
 4 the same Hyundai, which had been reported stolen days earlier, was involved in a
 5 drive-by shooting.⁶⁰

6 80. This risk was also tragically demonstrated in Columbus, Ohio, when a
 7 4-year-old was killed in a hit-and-run involving a stolen Kia.⁶¹

8 81. Car thefts and reckless driving also create a substantial risk of physical
 9 harm to pedestrian bystanders. On February 8, 2023, a stolen Hyundai involved in
 10 a high-speed chase in Baltimore crashed into another car and a 54-year-old
 11 pedestrian.⁶² Both cars careened into a nearby building, which collapsed on top of
 12
 13
 14

15 ⁵⁸ Cory Shaffer, *Teens Lodge stolen Hyundai in Burger King drive-thru on two*
 16 *wheels after owner confronts them*, Cleveland.com (Feb. 3, 2023, 5:03 PM),
[https://www.cleveland.com/court-justice/2023/02/teens-lodge-stolen-hyundai-in-](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)
[burger-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).

17 ⁵⁹ *Id.*

18 ⁶⁰ *Id.*

19 ⁶¹ Carly D'Eon, *Man wanted in fatal hit-and-run of 4-year-old boy turns himself in*,
 20 10 WBNS (July 24, 2023, 6:04 AM),
[https://www.10tv.com/article/news/local/arrest-warrant-issued-for-man-allegedly-](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)
[connected-to-fatal-hit-skip-south-franklinton/530-a8ab887d-8c43-48ea-8b4d-](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)
[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).

21 ⁶² Dan Belson, *Footage shows fatal crash into Baltimore building, collapse*
 22 *following 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-](https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html)
[footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html](https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html)
 23 [<https://perma.cc/6UHA-S9GT>].

1 the vehicles and the pedestrian.⁶³ The pedestrian was pronounced dead at the scene,
 2 and five occupants of the two cars were injured.⁶⁴



12 **E. Car Thefts Drain Public Resources and Frustrate Public** 13 **Policy**

14
 15 82. Plaintiff has expended significant time and resources responding to
 16 this public nuisance.

17 83. Additionally, the police and emergency resources Plaintiff has been
 18 forced to divert to respond to these thefts leaves fewer resources for combatting
 19 other crimes and enhancing community safety.⁶⁵

20 ⁶³ *Id.*

21 ⁶⁴ *Id.*

22 ⁶⁵ John Roman *et al.*, *Cost-Benefit Analysis for Crime Prevention: Opportunity*
 23 *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_a
 nd_Crime_Externalities](https://www.researchgate.net/publication/28575336_Cost-Benefit_Analysis_for_Crime_Prevention_Opportunity_Costs_Routine_Savings_and_Crime_Externalities).

84. As a result of the skyrocketing rates 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.⁶⁶

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

85. The rampant thefts of Hyundai and Kia vehicles are still impacting municipalities nationwide, including the Town of Amherst, years after the rise in thefts of the Susceptible Vehicles first began.⁶⁷

86. 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.⁶⁸

⁶⁶ Peter Valdes-Dapena, *Some auto insurers are refusing to cover certain Hyundai and Kia models*, CNN (Jan. 28, 2023, 3:06 PM), <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).

⁶⁷ 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>.

⁶⁸ 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/>.

87. 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, including Amherst, offering wheel locks for them to distribute.⁶⁹ Unfortunately, the wheel locks are not entirely effective; Susceptible Vehicles with wheel locks in use have still been stolen and, in some instances, used in connection with other crimes, including shootings.⁷⁰ In addition, municipalities are not set up to distribute automotive parts to residents.

⁶⁹ 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/>; see also WGRZ Staff, *Amherst Police to hand out Kia wheel locks to residents*, WGRZ.com (Nov. 10, 2022, 7:20 PM), <https://www.wgrz.com/article/news/crime/amherst-police-to-hand-out-kia-wheel-locks-to-residents-tik-tok-challenge/71-c8fcfd0-acaec-4493-a6bc-1ad71989e34e>.

⁷⁰ Ashley Sears, *Milwaukee woman's Kia stolen twice, had steering wheel lock*, FOX 6 News Milwaukee (Sept. 28, 2021), <https://www.fox6now.com/news/milwaukee-womans-kia-stolen-twice>; see also David Rose, *'B****, I swear, b****, I'm gonna crack your phone:' Drive-by shooting suspect says to Tacoma woman*, FOX 13 Seattle (Jan. 25, 2023), <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 life after shooting involving stolen Kia in Minneapolis*, CBS News Minnesota (Apr. 6, 2023), <https://www.cbsnews.com/minnesota/video/boy-15-fighting-for-his-life-after-shooting-involving-stolen-kia-in-minneapolis/>.

1 88. More recently, Hyundai and Kia have begun rolling out a “software
2 update” rather than installing immobilizers.⁷¹ As highlighted in the multistate letter
3 sent on behalf of 18 Attorneys General, Hyundai acknowledged that some of the
4 affected vehicles cannot be updated, and Kia “confirmed that some unspecified
5 number of affected vehicles cannot receive the updates.”⁷²

6 89. As acknowledged in the motion for preliminary approval of the class
7 action settlement in the instant litigation, only 6.9 million of the approximately 9
8 million Susceptible Vehicles are even eligible for the update.⁷³

9 90. In the three months immediately following Kia’s and Hyundai’s
10 release of the software update, data gathered from the Associated Press showed
11 “that the number of Hyundai and Kia thefts is still growing[.]”⁷⁴ The software

12 ⁷¹ *Hyundai and Kia Launch Service Campaign to Prevent Theft of Millions of*
13 *Vehicles Targeted by Social Media Challenge*, NHTSA (Feb. 14, 2023),
14 [https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-](https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-theft)
15 [theft](https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-theft).

16 ⁷² Letter from Attorneys General to Ann Carlson, Acting Administrator of the
17 National Highway Traffic Safety Administration (“Letter from Attorneys General
18 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)
19 [04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.](https://oag.dc.gov/sites/default/files/2023-04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf)
20 [pdf](https://oag.dc.gov/sites/default/files/2023-04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf).

21 ⁷³ Consumer Class Pls.’ Amended Notice Mot. & Renewed Mot. for Prelim.
22 Approval of Class Action Settlement at 15, *In Re: Kia Hyundai Vehicle Theft*
23 *Marketing, Sales Practices, and Products Liability Litigation*, 8:22-ml-03052-
JVS-KES (C.D. Cal. Sept. 27, 2023), Dkt. No. 228; *see also* Carly Schaffner, *Kia,*
Hyundai anti-theft software fixes a work in progress, Auto. News (June 2, 2023,
8:00 AM), [https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-](https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-software-fix-needs-fixes)
[software-fix-needs-fixes](https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-software-fix-needs-fixes) [<https://perma.cc/HGH7-ZHZF>] (noting that Defendants
estimate “there are 9 million affected vehicles between them on the road”).

⁷⁴ *See* 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-](https://apnews.com/article/hyundai-kia-tiktok-theft-stolen-8e0a353d24be0e7bce36e34c5e4dac51)
[theft-stolen-8e0a353d24be0e7bce36e34c5e4dac51](https://apnews.com/article/hyundai-kia-tiktok-theft-stolen-8e0a353d24be0e7bce36e34c5e4dac51).

1 update has not stopped the nuisance that the Susceptible Vehicles created and the
2 expenses that Plaintiff has incurred and continues to incur.

3 91. The update's efficacy has not been proven in the real world. There
4 have been numerous reports of Kia and Hyundai vehicles being stolen after
5 receiving the software update, and Kia and Hyundai have identified scenarios where
6 the software logic fails.⁷⁵ For vehicles not covered by the update, Defendants are
7 offering nothing more than steering wheel locks, or rebates for already purchased
8 wheel locks.⁷⁶ As noted by multiple Attorneys General, steering wheel locks "still
9 would not correct the underlying safety flaw . . . and . . . would impermissibly shift
10 the responsibility for fixing this problem from the company to the individual vehicle
11 owners."⁷⁷

12 92. In addition, upon information and belief, the software update can
13 significantly inconvenience the drivers of the Susceptible Vehicles, making them
14 less likely to seek it out. Rather than install an actual immobilizer, the software
15 update doubles the length of the vehicles' theft alarm sound and adds a new logic
16 check to the vehicles' onboard computers that is intended to prevent the Engine

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18 ⁷⁵ Carly Shaffner, *Kia, Hyundai anti-theft software fixes a work in progress*, Auto.
19 News (June 2, 2023, 8:00 AM), [https://www.autonews.com/regulation-safety/kia-](https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-software-fix-needs-fixes)
20 [hyundai-antitheft-software-fix-needs-fixes](https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-software-fix-needs-fixes) [<https://perma.cc/HGH7-ZHZF>]
21 (discussing a February 2023 service bulletin issued from Kia to its dealers
22 regarding a software compatibility issue for Kia vehicles equipped with remote
23 start accessories; another bulletin issued from Kia in late-May of 2023
acknowledged that "the problem has not been remedied").

⁷⁶ 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>.

⁷⁷ Letter from Attorneys General to NHTSA at 6.

Control Unit from allowing the engine to start and run if the key fob is not used to unlock the doors. This update will interfere with the usability of the Susceptible Vehicles in many everyday situations.

93. As noted by the Attorneys General in their letter dated April 20, 2023, there are at least two other significant issues with the software update. First, “not all eligible vehicles can receive the updates immediately”—approximately two million vehicles with the “starting system flaw” are still awaiting eligibility for the update.⁷⁸ Meanwhile, these vehicles “will remain on the road, vulnerable to theft and posing a threat to public safety.”⁷⁹ Second, Defendants’ “voluntary service campaign” does not prompt certain “regulatory requirements and oversight and instead places additional burdens on individual vehicle owners.”⁸⁰

94. Owners of the Susceptible Vehicles have already experienced issues where the software update—which requires the car to be unlocked using the fob before starting, or else the alarm will sound—conflicts with aftermarket remote start systems that they had installed, rendering the vehicles functionally inoperable. As one owner recently posted: “I have the update. I also have an aftermarket remote

⁷⁸ *Id.* at 6–7. Additionally, media outlets report that customers are “having a difficult time getting through” to customer service representatives for Hyundai and Kia to inquire about the software update and their vehicle’s eligibility. *See Hyundai, Kia owners frustrated by customer call center wait times to get security upgrade*, WHIO TV 7 (Feb. 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/>.

⁷⁹ Letter from Attorneys General to NHTSA at 7.

⁸⁰ *Id.*

1 start. The remote start will set off my car alarm. You can turn the alarm off, but it
2 will beep periodically and the headlights flash until you turn the vehicle off.”⁸¹

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

10 96. Prior to this software update, Hyundai turned this crisis of its own
11 making into a source of revenue, selling security kits for \$170, plus the cost of
12 installation.⁸² Defendants could have, and should have, initially included a fob-
13 integrated engine immobilizer, consistent with the industry standard. Even after the
14 cars were sold, Defendants could have implemented a mandatory recall. Instead,
15 Hyundai chose to make money from a crime wave it caused.

16 97. Because Hyundai and Kia have not implemented a mandatory recall
17 for the installation of immobilizers, millions of the Susceptible Vehicles remain on
18
19

20 ⁸¹ Reddit (Feb. 15, 2023, 7:05 AM),
21 [[https://web.archive.org/web/20230311080407/https://www.reddit.com/r/kia/com](https://web.archive.org/web/20230311080407/https://www.reddit.com/r/kia/comments/11303m4/hyundai_and_kia_release_software_update_to/?sort=new)
22 [ments/11303m4/hyundai_and_kia_release_software_update_to/?sort=new](https://web.archive.org/web/20230311080407/https://www.reddit.com/r/kia/comments/11303m4/hyundai_and_kia_release_software_update_to/?sort=new)].

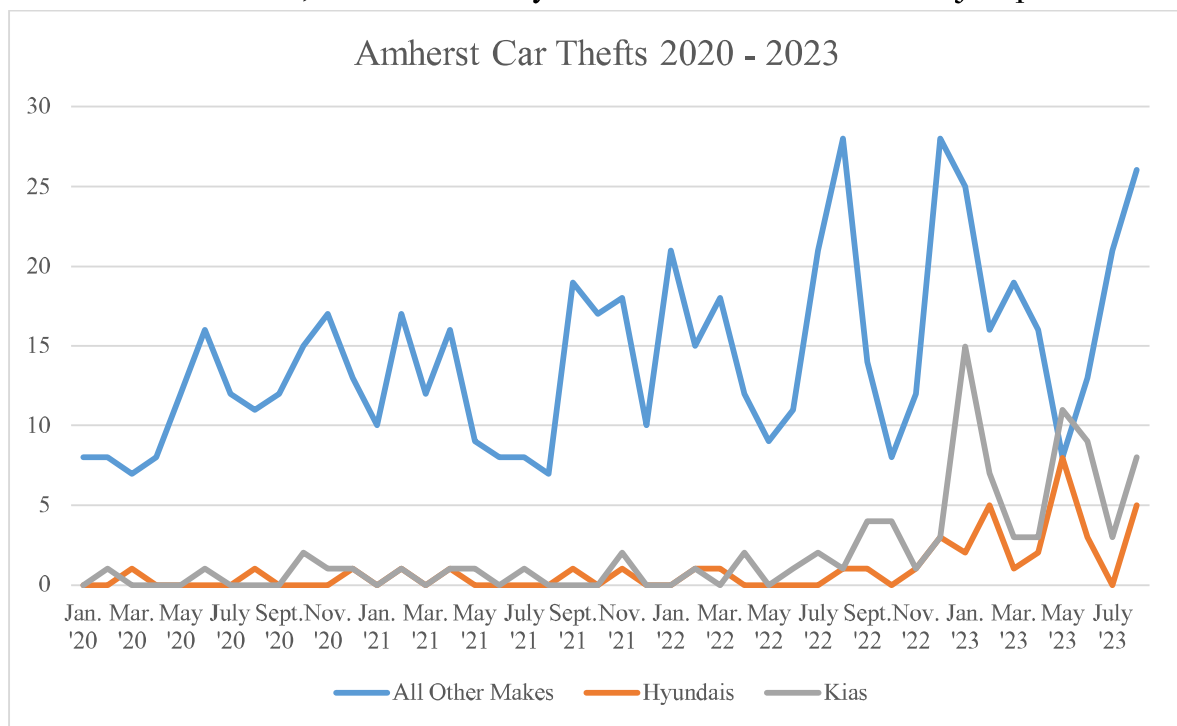
23 ⁸² Taryn Phaneuf, *Own a Kia or Hyundai? Here’s Why Your Insurance Rates Could Go Up*, Nerd Wallet (Jan. 26, 2023, 1:31 PM),
<https://www.nerdwallet.com/article/insurance/kia-hyundai-theft>.

1 the road. A recent report from CARFAX found that 4.9 million Hyundais and Kias
2 remain susceptible to theft.⁸³

3 98. By failing to equip their vehicles with reasonable anti-theft measures,
4 such as the industry-standard engine immobilizer, Defendants have elected profits
5 over safety and created a public nuisance that continues to this day.

6 VI. IMPACTS ON THE TOWN OF AMHERST

7 99. Amherst began experiencing increased rates of Hyundai and Kia
8 vehicle thefts in 2022, and rates of Hyundai and Kia theft further jumped in 2023.



19 100. From January through August of 2023, Amherst recorded 85 thefts of
20 Hyundai and Kia vehicles—a 750% increase from the 10 stolen Hyundais and Kias
21

22 ⁸³ Patrick Olsen, *Nearly 5 Million Hyundai and Kia Models Need Anti-Theft*
23 *Repairs*, CARFAX Blog (July 19, 2023), <https://www.carfax.com/blog/kia-hyundai-theft-repairs>.

1 reported for January to August of 2022, and a 1,317% increase from the 6 stolen in
2 the same period in 2021.

3 101. From 2020 to 2021, Hyundais and Kias accounted for approximately
4 6% of all vehicle thefts in Amherst. For 2022, Hyundais and Kias accounted for
5 approximately 12% of all vehicle thefts in Amherst. As of August 31, 2023,
6 Hyundais and Kias have made up approximately 37% of all motor vehicle thefts in
7 Amherst this year.

8 102. Hyundai's and Kia's response to the rising thefts in Amherst, and
9 elsewhere, has been woefully insufficient. As Town Supervisor Brian Kulpa put it,
10 "[f]or an industry leader like Kia or Hyundai to acknowledged they have problems,
11 or to know they have this issue and go this long without really rectifying it, to be
12 honest, it's embarrassing."⁸⁴

13 103. The high rate of thefts has also led to increased threats to public safety.
14 In June of 2023, Amherst police engaged in a pursuit with a stolen Hyundai Elantra.
15 During the chase, police observed a suspect "attempting to discard a loaded
16 handgun."⁸⁵ The stolen Hyundai ultimately crashed, and police arrested the three
17 young adults occupying the vehicle.⁸⁶

18
19 ⁸⁴ Brayton J. Wilson, *Kulpa: Town of Amherst 'looking at options' with pursuing*
20 *legal actions against Kia, Hyundai*, WBEN (Aug. 2, 2023, 9:30 AM),
[https://www.audacy.com/wben/news/local/kulpa-town-of-amherst-looking-at-](https://www.audacy.com/wben/news/local/kulpa-town-of-amherst-looking-at-options-with-pursuing-legal-actions-against-kia-hyundai)
21 [options-with-pursuing-legal-actions-against-kia-hyundai](https://www.audacy.com/wben/news/local/kulpa-town-of-amherst-looking-at-options-with-pursuing-legal-actions-against-kia-hyundai).

22 ⁸⁵ Tommy Gallagher, *3 people arrested following car chase in Williamsville*,
WGRZ.com (June 7, 2023, 8:53 PM),
[https://www.wgrz.com/article/news/crime/amherst-police-arrest-3-people-car-](https://www.wgrz.com/article/news/crime/amherst-police-arrest-3-people-car-chase/71-2364eae2-2469-449b-9350-9f1bc85c8b17)
23 [chase/71-2364eae2-2469-449b-9350-9f1bc85c8b17](https://www.wgrz.com/article/news/crime/amherst-police-arrest-3-people-car-chase/71-2364eae2-2469-449b-9350-9f1bc85c8b17).

⁸⁶ *Id.*

1 104. In neighboring Buffalo, this phenomenon has already had tragic
2 consequences. In October 2022, a 16-year-old driving a stolen Kia Sportage crashed
3 the vehicle near the intersection of Routes 33 and 198.⁸⁷ Five passengers were
4 ejected from the vehicle, three of whom were pronounced dead at the scene.⁸⁸
5 Another passenger later died at the hospital, and the remaining passenger and driver
6 sustained serious injuries. The four passengers who died were all between the ages
7 of 14 and 19.⁸⁹ The 16-year-old driver faces four counts of second-degree
8 manslaughter, among other charges.⁹⁰
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16 ⁸⁷ Aidan Joly & Evan Anstey, *Four teens killed in rollover crash in Buffalo, two*
17 *injured*, RochesterFirst.com (Oct. 25, 2022, 12:26 PM),
18 <https://www.rochesterfirst.com/crime/police/four-teens-killed-in-crash-at-33-and-198/>.

18 ⁸⁸ *Id.*

19 ⁸⁹ Graeme Massie, *Car crash that killed four teens is linked to 'Kia Challenge'*
20 *TikTok craze, Buffalo police say*, Independent (Oct. 25, 2022, 4:38 PM),
21 <https://www.independent.co.uk/news/world/americas/crime/buffalo-teen-crash-tiktok-kia-challenge-b2210473.html>.

22 ⁹⁰ Maki Becker, *Teen in stolen Kia crash that killed 4 must wear ankle monitor,*
23 *report to probation*, THE BUFFALO NEWS (Dec. 11, 2022),
https://buffalonews.com/news/local/crime-and-courts/teen-in-stolen-kia-crash-that-killed-4-must-wear-ankle-monitor-report-to-probation/article_030d8c44-56e8-11ed-a8c0-b77671ebf054.html.



105. Moreover, “longitudinal studies of delinquency and crime have repeatedly documented a strong link between past and future behavior.”⁹¹ “Across multiple data sources collected at different time periods and throughout the world, a consistent finding indicates that antisocial and deviant behavior that emerges early in the life course tends to continue into childhood, adolescence, and adulthood[.]”⁹² The point, to put it bluntly, is that these Susceptible Vehicles can set juveniles down a path of crime.

⁹¹ See Mark A. Cohen & Alex R. Piquero, *New Evidence on the Monetary Value of Saving a High Risk Youth*, A. R. J. Quantitative Criminology, 25(1): 25–49 (2009), https://www.researchgate.net/publication/225637886_New_Evidence_on_the_Monetary_Value_of_Saving_a_High_Risk_Youth.

⁹² *Id.*

VII. CAUSES OF ACTION

COUNT ONE — COMMON LAW PUBLIC NUISANCE

106. Plaintiff incorporates each preceding paragraph as though fully set forth herein.

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

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

109. Defendants’ conduct has interfered, and continues to interfere, with the use of public streets and sidewalks in Amherst, and has endangered the safety, health, and comfort of the general public in the Town.

110. In addition, Defendants’ conduct has undermined law enforcement efforts to deter vehicle theft and has otherwise diverted scarce law enforcement resources.

111. At all relevant times, Defendants have been the manufacturers, marketers, and/or distributors of the Susceptible Vehicles being stolen at record

1 rates that are, at times, being used in the commission of violent crimes in the State
2 of New York and the Town.

3 112. At all times relevant to this litigation, Defendants knew or had reason
4 to know of the hazards and dangers of forgoing installation of engine immobilizers
5 in the Susceptible Vehicles and specifically the increased risk of vehicle theft and
6 public harm. Defendants knew or had reason to know that the installation of engine
7 immobilizers successfully decreased the rate of car theft by as much as 40%.
8 Defendants also knew or had reason to know that the installation of immobilizers
9 in their own vehicles has considerable deterrent effects on the rate of car theft.

10 113. Defendants know that their conduct has caused an increase in vehicle
11 theft that has had and will continue to have a detrimental effect on the safety,
12 welfare, peace, comfort, and convenience of the general public in the Town.

13 114. Defendants, through their business practices, contribute to a significant
14 increase in vehicle theft, reckless driving, and the use of their vehicles in the
15 commission of other crimes in Amherst, thus endangering the safety and health of
16 considerable numbers of Amherst residents, depriving Amherst residents of the
17 peaceful use of the public streets and sidewalks, undermining law enforcement
18 efforts, increasing law enforcement costs, diverting law enforcement resources, and
19 interfering with commerce, travel, and the quality of daily life in Amherst.

20 115. Accordingly, each Defendant has substantially interfered, and
21 continues to substantially interfere, with rights common to all and causes,
22 contributes to, and/or maintains a public nuisance in Amherst.
23

1 116. As a result of Defendants' conduct, the Town has suffered and will
2 continue to suffer economic damages, including significant expenditures for police
3 and other services. The Town will continue to incur economic damages until the
4 nuisance is abated. These damages are particular to the Town and are different in
5 kind to the harms suffered by New York residents at large.

6 117. The misconduct alleged in this case does not concern a discrete event
7 or discrete emergency of the sort a political subdivision would reasonably expect to
8 occur and is not part of the normal and expected costs of a local government's
9 existence. The Town alleges wrongful acts which are neither discrete nor of the sort
10 a local government can reasonably expect to occur.

11 118. The Town of Amherst has incurred, and will continue to incur,
12 expenditures over and above its ordinary public services due to the public nuisance
13 created by Defendants' actions.

14 119. Plaintiff requests an order providing for abatement of the public
15 nuisance that Defendants have created or assisted in the creation of, compensation
16 for the economic damages suffered as a result of the nuisance, and injunctive relief.

17 **COUNT TWO — NEGLIGENCE**

18 120. Plaintiff incorporates each preceding paragraph as though set forth
19 fully herein.

20 121. At all times relevant to this litigation, Defendants had a duty to act as
21 a reasonably careful person would act under the circumstances in the design,
22 research, manufacture, and distribution of Defendants' products, including the duty
23

1 to take all reasonable steps necessary to prevent the manufacture and/or sale of a
2 product that was so easy to steal.

3 122. Defendants owed and continue to owe the Town a duty not to expose
4 the Town to an unreasonable risk of harm.

5 123. At all times relevant to this litigation, Defendants knew or, in the
6 exercise of reasonable care, should have known of the hazards and dangers of
7 failing to equip the Susceptible Vehicles with reasonable anti-theft measures, such
8 as engine immobilizers, and specifically, the increased risk of vehicle theft and
9 public harm.

10 124. Accordingly, at all times relevant to this litigation, Defendants knew
11 or, in the exercise of reasonable care, should have known that the omission of such
12 reasonable anti-theft measures in the Susceptible Vehicles could cause the Town's
13 injuries and thus create a dangerous and unreasonable risk of injury to the Town.
14 Defendants were therefore in the best position to protect the Town against the
15 foreseeable rise in the theft of Hyundai and Kia vehicles.

16 125. At all times relevant to this litigation, Defendants knew or had reason
17 to know that the omission of reasonable anti-theft measures, such as engine
18 immobilizers, in the Susceptible Vehicles could cause the Town's injuries.

19 126. Defendants, by action and inaction, breached their duty and failed to
20 exercise reasonable care, and failed to act as a reasonably prudent person and/or
21 company would act under the same circumstances in the design, research,
22 development, manufacture, testing, and distribution of the Susceptible Vehicles, in
23

1 that Defendants manufactured and produced vehicles that fell below the standards
2 for reasonable anti-theft measures.

3 127. Defendants are in control of the design, research, manufacture, testing,
4 and distribution of the vehicles they distributed to authorized dealerships in
5 Amherst.

6 128. Defendants knew and/or should have known that it was foreseeable
7 that Amherst would suffer injuries as a result of Defendants' failure to exercise
8 reasonable care in the manufacturing and sale of Defendants' vehicles, particularly
9 given Defendants' recognition as early as 2007 that engine immobilizers were an
10 effective deterrent in preventing vehicle theft.

11 129. Defendants were negligent in failing to monitor and guard against
12 third-party misconduct and enabled such misconduct.

13 130. Defendants acted unreasonably in light of the foreseeable result of
14 their conduct, and Defendants' negligence helped to and did produce, and was a
15 factual and proximate cause, of the injuries, harm, and economic damages that
16 Amherst suffered and will continue to suffer.

17 131. Defendants' acts and omissions imposed an unreasonable risk of harm
18 to others separately and/or combined with the negligent and/or criminal acts of third
19 parties.

20 132. Plaintiff's injuries, harms, and economic damages would not have
21 occurred absent Defendants' negligent conduct as described herein.

22 133. As a proximate result of Defendants' wrongful acts and omissions,
23 Amherst has been injured and suffered economic damages and will continue to

1 incur expenses in the future, as described herein, including but not limited to
2 expending, diverting, and increasing resources to retrieve stolen cars, provide
3 emergency medical services, and/or address property damage on public roads in the
4 Town's community.

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

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

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

20 137. Plaintiff has incurred, and will continue to incur, expenditures over and
21 above its ordinary public services due to the negligence caused by Defendants'
22 actions.
23

1 148. Awarding Plaintiff reasonable attorneys' fees and costs of suit;

2 149. Awarding pre-judgment and post-judgment interest; and

3 150. Awarding Plaintiff with such other and further relief as the Court
4 deems just and proper under the circumstances.

5 **IX. DEMAND FOR JURY TRIAL**

6 151. Plaintiff hereby demands a trial by jury.

7
8 RESPECTFULLY SUBMITTED this 31ST DAY OF OCTOBER, 2023.

9
10 TOWN OF AMHERST

KELLER ROHRBACK L.L.P.

11 By /s/ Martin A. Polowy

By /s/ Dean Kawamoto

12 Martin A. Polowy (*pro hac vice*
forthcoming)

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13 Town Attorney

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