

1 Dean Kawamoto, CSB # 232032
2 dkawamoto@kellerrohrback.com
3 KELLER ROHRBACK L.L.P.
4 1201 Third Avenue, Suite 3200
5 Seattle, WA 98101
6 Telephone: (206) 623-1900
7 Fax: (206) 623-3384

8 *Counsel for Plaintiff City of Buffalo*

9 (additional counsel listed below)

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 CITY OF BUFFALO,

13 Plaintiff,

14 v.

15 HYUNDAI MOTOR AMERICA and
16 KIA AMERICA, INC.,

17 Defendants.

No. 8:23-cv-00572

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 easy to steal both protects property and protects the public by keeping dangerous drivers in stolen vehicles off the roads. This case is a clear example of what happens to public safety when car manufacturers chose not to include standard anti-theft technology in their cars.

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

3. Between 2011 and 2021, long after other carmakers adopted immobilizer technology that ensured car ignitions could not be started without their keys, Hyundai and Kia failed to keep up with the times. As a result, TikTok and news videos teaching the relative ease with which Hyundai and Kia vehicles can be stolen have gone viral. In many cases, thieves use tools no more advanced than a USB cable. Hyundai’s and Kia’s business decisions to reduce costs, and thereby boost profits, by foregoing common anti-theft technology have resulted in an epidemic of thefts. This vehicular crime wave has had a significant impact on law enforcement operations, emergency services, and public safety, particularly in the City of Buffalo, where the police department is under considerable staffing stress.

1 4. In the 1960s and 1970s, all that was needed for a successful vehicle
2 heist was a little brute force (to crack open the ignition column) and a key-shaped
3 object to start the car and drive off within seconds. Thanks to modern technology,
4 this is no longer the case for most cars. Hyundai and Kia are nearly unique among
5 automobile manufacturers in failing to install vehicle immobilizers in most of their
6 cars. This is not because the technology is somehow beyond them—in fact, Hyundai
7 and Kia vehicles sold in the European and Canadian markets incorporate vehicle
8 immobilizers, because regulations there expressly require them. It is only in the
9 United States that Hyundai and Kia have decided to trade public safety for profits.
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13 5. The difference between the proportion of Hyundai and Kia vehicle
14 models with immobilizers compared to all other manufacturers is staggering: only
15 26% of 2015-model Hyundai and Kia vehicles in the U.S. had immobilizers,
16 compared to 96% of vehicles from all other manufacturers.¹
17

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19 6. Hyundai’s and Kia’s decision to put cost-savings and profits over
20 public safety has had devastating consequences for the City of Buffalo and its
21 residents, as it has in other cities. The failure of Defendants to install an industry-
22 standard anti-theft device, notwithstanding decades of academic literature and
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26 ¹ “Hyundai and Kia theft losses,” 38 HLDI BULLETIN 28 (December 2021),
https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf.

1 research supporting the deterrent effects of such technology, has opened the
2 floodgates to vehicle theft, crime sprees, reckless driving, and public harm.

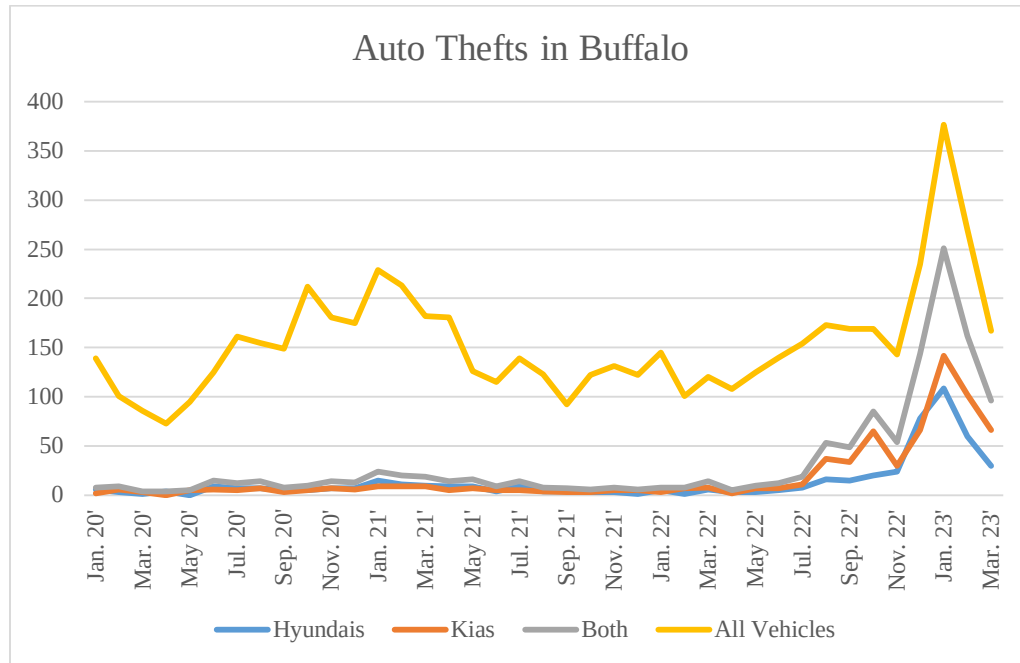
3
4 7. This epidemic started in Milwaukee before spreading nationwide. By
5 June 2021, the Milwaukee Police Department reported that the theft of Hyundai and
6 Kia vehicles had increased by 2,500% since the previous year, with an average of
7 16 cars being stolen per day.²

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9 8. The same trend is evident in Buffalo, where the police reported a
10 2,000% increase in theft of Kia and Hyundai vehicles in January 2023, compared to
11 January 2022.³ An estimated 275 Kias were stolen in Buffalo in 2022, compared to
12 69 stolen Kias in 2021 and 55 stolen Kias in 2020.⁴

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16 ² James Gilboy, *News, Why Milwaukee Might Sue Hyundai, Kia Over Stolen Car*
17 *Epidemic*, THEDRIVE.COM (Dec. 11, 2021, 11:15 AM),
18 <https://www.thedrive.com/news/43454/why-milwaukee-might-sue-hyundai-kia-over-stolen-car-epidemic>.

19 ³ Brianne Roesser, *Politics, Schumer calls on Kia, Hyundai to fix surge in thefts*,
20 SPECTRUM NEWS 1 (Feb. 27, 2023, 9:48 PM),
21 <https://spectrumlocalnews.com/nys/buffalo/news/2023/02/27/sen--schumer-calls-on-kia--hyundai-to-fix-surge-in-thefts>.

22 ⁴ Press Release, Senator Charles E. Schumer, *Schumer: Dangerous & Infuriating*
23 *Surge of Kia, Hyundai Car Thefts in Upstate NY is Out of Control – 350+ Stolen*
24 *in Buffalo This Year Alone and Hundreds More across Upstate NY – Senator*
25 *Calls on Feds to Get Involved and Demands Kia, Hyundai to Give Upstate*
26 *Communities the Help They Need Now* (Feb. 27, 2023) (Sen. Schumer Press
Release”), https://www.schumer.senate.gov/newsroom/press-releases/schumer-dangerous-and-infuriating-surge-of-kia-hyundai-car-thefts-in-upstate-ny-is-out-of-control_350-stolen-in-buffalo-this-year-alone-and-hundreds-more-across-upstate-ny--senator-calls-on-feds-to-get-involved-and-demands-kia-hyundai-to-give-upstate-communities-the-help-they-need-now.



9. Theft rates of Kias and Hyundais are projected to continue skyrocketing: in the first three months of 2023 alone, 509 Kias and Hyundais were stolen in Buffalo.⁵

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

⁵ *Id.*

1 11. The skyrocketing rate of vehicle theft in Buffalo has drastically
2 impacted city and police resources. Buffalo residents are subjected to the
3 increasingly dangerous conditions on their city streets, as car thieves (many of them
4 teenagers) taking advantage of Hyundai's and Kia's failures engage in reckless
5 driving, endangering Buffalo residents and their property.
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8 12. Defendants' conduct has created a public nuisance that could have been
9 avoided had they simply followed industry-wide standards and installed immobilizer
10 devices, or an equivalent anti-theft device, in all their vehicles.
11

12 13. To date, Hyundai and Kia refuse to accept responsibility, forcing
13 municipalities across the country, including Buffalo, to divert funds and risk officer
14 safety to combat the rising burden caused by increased Hyundai and Kia vehicle
15 theft and reckless driving on city streets.
16

17 **II. JURISDICTION AND VENUE**

18 14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
19 1332(a), as the amount in controversy exceeds \$75,000 and there is complete
20 diversity between the Parties. The City of Buffalo is regarded as a citizen of the state
21 of New York, for the purposes of diversity jurisdiction. *Bullard v. City of Cisco,*
22 *Texas*, 290 U.S. 179, 187 (1933). Defendants are citizens of California, where they
23 are headquartered and incorporated.
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1 19. Defendant **Kia America, Inc.** (“Kia”), is a manufacturer and distributor
2 of new motor vehicles under the Kia brand and is incorporated and headquartered in
3 the state of California. Its principal place of business is located at 111 Peters Canyon
4 Road, Irvine, California. Kia markets, leases, warrants, and oversees regulatory
5 compliance and warranty servicing of Kia-brand vehicles through a network of over
6 700 dealers throughout the United States from its headquarters in California.
7

8 **IV. THE KIA HYUNDAI THEFT WAVE**

9 **A. Without Immobilizers, Defendants’ Vehicles Are Sitting** 10 **Ducks**

11 20. As described further below, Kia and Hyundai have chosen to flout the
12 industry standard of utilizing an engine immobilizer in many of their vehicles, which
13 made those vehicles more susceptible to theft. Specifically, upon information and
14 belief, at all relevant times, Defendants designed, manufactured, and distributed the
15 following automobile models (“Susceptible Vehicles”) without engine immobilizers
16 between 2011 and 2021: Hyundai Accent, Elantra, Kona, Palisade, Santa Cruz, Santa
17 Fe, Sonata, Tucson, Veloster, and Venue; and the Kia Cadenza, Forte, K900,
18 Optima, Rio, Sedona, Seltos, Sorento, Soul, and Sportage. As would-be car thieves
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1 learned of this susceptibility, the incidence of theft for susceptible models increased,
2 relative to other models, from 2015 to 2020.⁶
3

4 21. However, this progression became an explosion in late 2020, when a
5 group of teenagers began posting “how-to” videos detailing how simple it was to
6 steal susceptible Kias and Hyundais.⁷ That group, the “Kia Boyz,” became notorious
7 for posting videos of youth engaging in reckless driving after stealing Kias and
8 Hyundais.⁸ As the videos detailed, a thief need only remove the plastic cowl under
9 the steering column and use a USB cable to start these unsecure cars.
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15 ⁶ See *NICB’s Hot Wheels: America’s 10 Most Stolen Vehicles*, NICB (Aug. 1,
16 2016), <https://www.nicb.org/sites/files/2017-11/2015-Hot-Wheels-Report.pdf>;
17 *NICB’s Hot Wheels: America’s 10 Most Stolen Vehicles*, NICB (July 12, 2017),
18 <https://www.nicb.org/sites/files/2017-11/2016-Hot-Wheels-Report.pdf>; *America’s*
19 *10 Most Stolen Vehicles*, NICB (Sept. 18, 2018),
20 <https://www.nicb.org/news/news-releases/2017-hot-wheels-report>; *America’s 10*
21 *Most Stolen Vehicles*, NICB (Nov. 19, 2019),
22 <https://www.nicb.org/sites/files/2020-01/2018%20Hot%20Wheels%20Report.pdf>;
23 *America’s 10 Most Stolen Vehicles*, NICB (Oct. 13, 2020),
24 <https://www.nicb.org/HotWheels2019>; and *America’s 10 Most Stolen Vehicles*,
25 NICB (Oct. 12, 2021), <https://www.nicb.org/news/news-releases/nicb-releases-annual-hot-wheels-report-americas-top-ten-most-stolen-vehicles>.

26 ⁷ Greg Rosalsky, *Planet Money*, *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->

⁸ Chris DiLella & Andrea Day, *Autos, TikTok challenge spurs rise in thefts of Kia, Hyundai cars*, CNBC (Sept. 9, 2022, 9:11 PM),
<https://www.cnbc.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html>.

1 22. What followed was all-too predictable: thefts of Kias and Hyundais
2 skyrocketed.⁹ In the first half of 2021, the number of stolen Kias and Hyundais
3 increased by more than 30 and 15 times, respectively, when compared to the same
4 period in 2020 in Milwaukee.¹⁰ This dramatic increase was unique to Kias and
5 Hyundais, which represented 66% of all cars stolen in that period, compared to only
6 6% of stolen cars in 2019.¹¹ This trend then spread nationwide.
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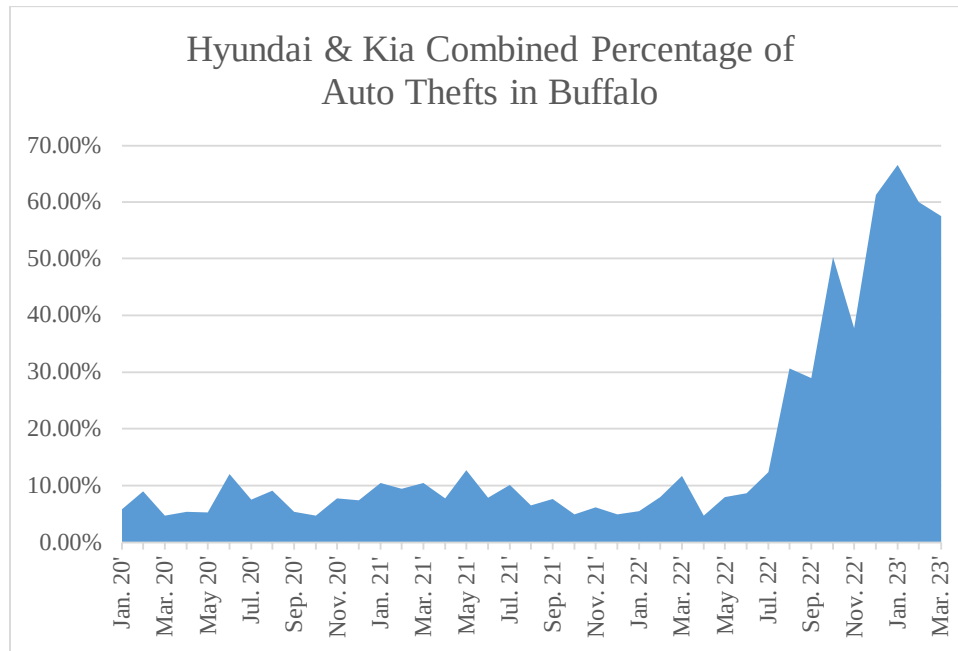
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9 23. In a press conference held by the City of Buffalo and U.S. Senator
10 Chuck Schumer, the Buffalo Police Department reported that theft of Hyundai
11 vehicles in January 2023 had increased 2,667% compared to January 2022; for theft
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18 ⁹ *Investigative, Videos Show Teens How to Steal Certain Kias and Hyundais With*
19 *Only a USB Cable, Police Warn Amid Rising Thefts*, INSIDE EDITION (Aug. 10,
20 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>.

21 ¹⁰ Sean Tucker, *General, Milwaukee Police Report Hyundais, Kias Stolen in*
22 *Record Numbers*, KELLEY BLUE BOOK (Dec. 14, 2021, 5:27 PM),
23 <https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/>.

24 ¹¹ Matt Posky, *News Blog, Summer of Theft Creating Bad Publicity for Hyundai,*
25 *Kia*, THE TRUTH ABOUT CARS (Sept. 20, 2022 2:36 PM),
26 <https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-publicity-for-hyundai-kia-44496971>; Jeramey Jannene, *Two-Thirds of All Milwaukee Auto Thefts Are Kia and Hyundai Vehicles*, URBAN MILWAUKEE (July 24, 2021, 4:29 PM), <https://urbanmilwaukee.com/2021/07/24/two-thirds-of-all-milwaukee-auto-thefts-are-kia-and-hyundai-vehicles/>.

of Kia vehicles, that increase was 2,270%.¹² The thefts of Hyundai and Kia vehicles accounted for nearly 67% of all vehicle theft in Buffalo for January 2023 alone.



24. The susceptibility of Defendants' vehicles to theft enabled this spiraling epidemic. Defendants' choice to deviate from the industry standard of utilizing engine immobilizers, placing profits over people and safety, was both a proximate and but-for cause of this outbreak. As a police sergeant described the problem, Defendants' cars are simply too easy to steal.¹³ This presents a risk not only for property damage, but to public safety, as thieves often engage in reckless driving, as

¹² WGRZ-TV, *Sen. Schumer calls for Kia and Hyundai action as theft of their cars continues*, YouTube (Feb. 27, 2023), <https://www.youtube.com/watch?v=orxMdO84kos>.

¹³ Rebecca Klopff, *MPD: Hyundai and Kia vehicles too easy to steal, leading to spike in car thefts*, TMJ 4 (Feb. 3, 2021, 4:40 PM), <https://www.tmj4.com/news/local-news/mpd-hyundai-and-kia-vehicles-too-easy-to-steal-leading-to-spike-in-car-thefts>.

1 well as other dangerous criminal conduct, including robbery and firearm thefts.
 2 Specifically, Kias and Hyundais have been targeted by thieves seeking weapons (and
 3 other valuables) that might have been left in patrons' vehicles.¹⁴

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

6 25. Car thefts imperil public safety. By creating a rash of car thefts,
 7 Defendants are responsible for a substantial risk to the public safety.

8 26. This is the conclusion drawn by the National Highway Traffic Safety
 9 Administration ("NHTSA"). Operating under what was formerly known as the
 10 National Traffic Safety Bureau, NHTSA promulgated Federal Motor Vehicle Safety
 11 Standard 114 to reduce the instances of car theft, because "stolen cars constitute a
 12 major hazard to life and limb on the highways."¹⁵ NHTSA concluded that the
 13 "evidence shows that cars operated by unauthorized persons are far more likely to
 14 cause unreasonable risk of accident, personal injury, and death than those which are
 15 driven by authorized individuals."¹⁶ The NHTSA Administrator concluded that "a
 16 reduction in the incidence of auto theft would make a substantial contribution to
 17 motor vehicle safety," by reducing both injuries and deaths to would-be car thieves,
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23 ¹⁴ In one instance, a 2017 Hyundai Sonata owned by the Department of Homeland
 24 Security was stolen in broad daylight. See Jim Piwowarczyk, *Department of*
 25 *Homeland Security Hyundai Stolen in Milwaukee, Contained Rifle & Body*
 26 *Armor*, WISCONSIN RIGHT NOW (Apr. 17, 2022),
<https://www.wisconsinrightnow.com/homeland-security-hyundai/>.

¹⁵ See 33 Fed. Reg. 6,471 (Apr. 27, 1968).

¹⁶ *Id.*

1 and by “protect[ing] the many innocent members of the public who are killed and
2 injured by stolen cars each year.”¹⁷
3

4 27. Sadly, the reverse is true as well. An *increase* in the incidence of
5 automobile theft results in a substantial decrease in public safety. Defendants’
6 pursuit of profits over theft-prevention led to a meteoric rise in automobile thefts,
7 and the concomitant threats to public safety. Car theft results in reckless driving,
8 which poses a risk to both the operators of the stolen vehicle and any lawful users of
9 the public thoroughfare who are unfortunate enough to cross paths.
10
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12 28. Reckless driving impacts the comfortable enjoyment of life, health, and
13 safety of others within Buffalo. This is particularly true with the current crime wave.
14 Distinct from many instances of car theft, where the object is converting the stolen
15 vehicle, the viral recent wave of Hyundai and Kia thefts often involves teenagers joy
16 riding, posting videos of themselves driving recklessly, and then abandoning the
17 stolen vehicles—often after collisions—during busy hours of the day.
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20 29. Social media platforms like TikTok and Instagram are rife with
21 examples of this dangerous conduct. Videos posted on these platforms highlight the
22 very real danger from this phenomenon, including youth joyriding through school
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¹⁷ *Id.*

1 zones or even through crowds of students, and drivers hitting other cars and then
 2 running from the scene.¹⁸
 3

4 30. The public safety threat associated with juveniles recklessly driving
 5 these stolen Kia and Hyundai vehicles continues to plague Buffalo. Between
 6 September 2022 and January 2023, 14 of the 28 suspects arrested for Kia thefts in
 7 Buffalo were juveniles.¹⁹
 8

9 31. In Buffalo, this phenomenon has already led to extreme and devastating
 10 accidents. In October 2022, a 16-year-old individual driving a stolen Kia Sportage
 11 crashed the vehicle near the intersection of Routes 33 and 198.²⁰ All five passengers
 12 were ejected from the vehicle, three of whom were pronounced dead at the scene.²¹
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16 ¹⁸ See e.g., @mixtapetrappers_, Instagram (Oct. 19, 2021),
 17 <https://www.instagram.com/p/CVNHjg9D64B/?utm%20medium=copy%20link>;
 18 @monloww_, TikTok (Oct. 10, 2022),
 19 https://www.tiktok.com/@monloww_/video/7153012228067773738; ;
 20 @414hypehouse, Instagram (Aug. 19, 2021),
 21 <https://www.instagram.com/p/CSwsnhfAkd/>; @414hypehouse, Instagram (Sept.
 22 10, 2021), <https://www.instagram.com/p/CTqCaYTANaC/>; and @414hypehouse,
 23 Instagram (Oct. 20, 2021), <https://www.instagram.com/p/CVRCcU5AkwT/>.

24 ¹⁹ Maki Becker, *Obviously it's a real problem: Kias and Hyundais continue to be*
 25 *stolen at record rates*, THE BUFFALO NEWS (Mar. 1, 2023),
 26 https://buffalonews.com/news/local/crime-and-courts/obviously-its-a-real-problem-kias-and-hyundais-continue-to-be-stolen-at-record-rates/article_8d344822-a3dc-11ed-a5f4-6b02ad34c92c.html.

²⁰ Aidan Joly & Evan Anstey, *Regional News, Four teens killed in rollover crash in Buffalo, two injured*, ROCHESTERFIRST.COM (Oct. 25, 2022, 12:26 PM),
<https://www.rochesterfirst.com/crime/police/four-teens-killed-in-crash-at-33-and-198/>.

²¹ *Id.*

1 Another passenger later died at the hospital, and the remaining passenger and driver
2 sustained serious injuries. The four passengers who died were all between the ages
3 of 14 and 19.²² The 16-year-old driver faces four counts of second-degree
4 manslaughter, among other charges.²³



16 32. Another example of this all-too-common tragedy occurred in
17 Milwaukee in June 2021, when a sixteen-year-old was killed after he stole a Kia
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21 ²² Graeme Massie, *US Crime News*, *Car crash that killed four teens is linked to*
22 *‘Kia Challenge’ TikTok craze, Buffalo police say*, THE INDEPENDENT (Oct. 25,
23 2022, 9: 38 PM),
24 [https://www.independent.co.uk/news/world/americas/crime/buffalo-teen-crash-](https://www.independent.co.uk/news/world/americas/crime/buffalo-teen-crash-tiktok-kia-challenge-b2210473.html)
[tiktok-kia-challenge-b2210473.html](https://www.independent.co.uk/news/world/americas/crime/buffalo-teen-crash-tiktok-kia-challenge-b2210473.html).

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

1 Sportage and collided with another car.²⁴ His two twelve-year-old accomplices were
2 also seriously injured, as were three passengers in the car that he struck. The images
3 and dashcam footage²⁵ of this tragedy show how the epidemic of vehicle theft
4 imperils the public.
5



18 33. In electing profits over safety and in deviating from industry norms by
19 not including engine immobilizers as a standard safety feature, Defendants created
20 and maintained a public nuisance.
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23 ²⁴ *Teen driving stolen car killed in head-on crash, 5 others injured*, WISN (June
24 16, 2021, 5:32 PM), [https://www.wisn.com/article/teen-car-theft-suspect-killed-](https://www.wisn.com/article/teen-car-theft-suspect-killed-in-head-on-crash-5-others-injured/36741640)
25 [in-head-on-crash-5-others-injured/36741640](https://www.wisn.com/article/teen-car-theft-suspect-killed-in-head-on-crash-5-others-injured/36741640).

26 ²⁵ *Caroline Reinwald, Dashcam video shows fatal crash moments after police cancel pursuit*, WISN (Oct. 13, 2021, 11:00 PM),
[https://www.wisn.com/article/dashcam-video-shows-fatal-crash-moments-after-](https://www.wisn.com/article/dashcam-video-shows-fatal-crash-moments-after-police-cancel-pursuit/37955614)
[police-cancel-pursuit/37955614](https://www.wisn.com/article/dashcam-video-shows-fatal-crash-moments-after-police-cancel-pursuit/37955614).

1 34. A substantial risk to public safety also arises in the event that the would-
2 be thief is confronted in the act. In January 2023, a Cleveland man followed a
3 Hyundai Sonata that struck his car mirror and did not stop. The driver and passenger
4 of the Hyundai got out with guns and began shooting at him.²⁶ Police found nine
5 bullet casings in the street and bullet holes in the front window of a nearby home
6 and in a car parked on the street.²⁷ About one hour later, the same Hyundai, which
7 had been reported stolen days earlier, was involved in a drive-by shooting.²⁸

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10 35. This risk was also tragically demonstrated in Wauwatosa, Wisconsin,
11 when a woman who attempted to prevent the theft of a Hyundai was killed at the
12 scene.²⁹

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14 36. Car thefts and reckless driving also create a substantial risk of physical
15 harm to pedestrian bystanders. On February 8, 2023, a stolen Hyundai involved in a
16 high-speed chase in Baltimore crashed into another car and a 54-year-old
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21 ²⁶ Cory Shaffer, *Courts and Justice, Teens Lodge stolen Hyundai in Burger King*
22 *drive-thru on two wheels after owner confronts them*, CLEVELAND.COM, (Feb. 3,
23 2023, 5:03 PM), [https://www.cleveland.com/court-justice/2023/02/teens-lodge-](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)
24 [stolen-hyundai-in-burger-king-drive-thru-on-two-wheels-after-owner-confronts-](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)
25 [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).

26 ²⁷ *Id.*

²⁸ *Id.*

²⁹ Michael Fiore, *13-year-old charged as adult in deadly Wauwatosa hit-and-run*, CBS 58 (Oct. 20, 2021, 10:06 PM), [https://www.cbs58.com/news/13-year-old-](https://www.cbs58.com/news/13-year-old-charged-as-adult-in-deadly-wauwatosa-hit-and-run)
[charged-as-adult-in-deadly-wauwatosa-hit-and-run](https://www.cbs58.com/news/13-year-old-charged-as-adult-in-deadly-wauwatosa-hit-and-run).

1 pedestrian.³⁰ Both cars careened into a nearby building, which collapsed on top of
2 the vehicles and the pedestrian.³¹ The pedestrian was pronounced dead at the scene,
3 and five occupants of the two cars were injured.³²



14 37. Buffalo has experienced an especially high rate of Hyundai and Kia
15 vehicle thefts and has been forced to respond, incurring significant costs, including
16 expending extra police time and resources taking reports and collecting evidence;
17 providing emergency and medical services; processing, prosecuting, and
18 rehabilitating offenders; and educating the public about this nuisance. These are
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24 ³⁰ Dan Belson, *Crime, Footage shows fatal crash into Baltimore building, collapse*
25 *following police pursuit of stolen car*, THE BALTIMORE SUN (Mar 2, 2023, 8:29
26 PM), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html>.

³¹ *Id.*

³² *Id.*

1 costs incurred above and beyond the normal policing costs, attributable to the public
2 nuisance created and maintained by Defendants.

3
4 38. As a result of the skyrocketing rate of theft of Hyundai and Kia vehicles
5 nationwide, at least two major insurance companies are refusing to write policies for
6 certain Hyundai and Kia models in major cities, thereby increasing the potential
7 number of uninsured motorists on the road.³³

8
9 39. To date, Defendants' responses have shown a continued prioritization
10 of profits over safety. Both companies have refused to implement a recall to install
11 engine immobilizers in the Susceptible Vehicles, initially only offering wheel locks
12 for municipalities to distribute.³⁴ Unfortunately, the wheel locks are not effective;
13 residents who use them have still had their cars stolen, and in some instances,
14 connected to shootings.³⁵
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20 ³³ Peter Valdes-Dapena, *CNN Business, Some auto insurers are refusing to cover*
21 *certain Hyundai and Kia models*, CNN (Jan. 28, 2023, 3:06 PM),
22 [https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-](https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-kia/index.html)
23 [kia/index.html](https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-kia/index.html).

24 ³⁴ Elliot Hughes, *Kia, Hyundai will make security feature standard on new vehicles*
25 *and distribute free steering wheel locks after surge of thefts*, MILWAUKEE
26 JOURNAL SENTINEL (July 19, 2021, 10:16 AM),
[https://www.jsonline.com/story/news/crime/2021/07/19/kia-hyundai-handing-out-](https://www.jsonline.com/story/news/crime/2021/07/19/kia-hyundai-handing-out-free-steering-wheel-locks-through-end-year/7963950002/)
[free-steering-wheel-locks-through-end-year/7963950002/](https://www.jsonline.com/story/news/crime/2021/07/19/kia-hyundai-handing-out-free-steering-wheel-locks-through-end-year/7963950002/).

³⁵ Ashley Sears, *Crime and Public Safety, Milwaukee woman's Kia stolen twice,*
had steering wheel lock, FOX6NOW.COM (Sept. 28, 2021),
<https://www.fox6now.com/news/milwaukee-womans-kia-stolen-twice>.

1 40. More recently, Hyundai has begun rolling out a “software update”
2 rather than installing immobilizers.³⁶ Kia has planned a similar software update, yet
3 this software-only approach is too little, too late, and many of the Susceptible
4 Vehicles will not even be included in the update.³⁷

5
6 41. Upon information and belief, rather than install an immobilizer, the
7 software update will double the length of the theft alarm sound and add a new logic
8 check to the vehicles’ on-board computers. This update is a late half-measure at best
9 and will be useless in many common scenarios such as parking and waiting to pick
10 up a child from after-school activities. Unless the doors were recently unlocked
11 using a key fob, the Engine Control Unit will not turn on. This software-based
12 approach is yet another example of Defendants pursuing profits over safety. While
13 less expensive than installing engine immobilizers, those savings come at the
14 expense of efficacy and usability, not to mention public safety.
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19 42. The rollout of the software update has just begun, far too late to prevent
20 the nuisance that the Susceptible Vehicles created and the expenses that Buffalo has
21 incurred and continues to incur. The update’s efficacy has not been tested in the real
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25 ³⁶ *News, Hyundai and Kia Launch Service Campaign to Prevent Theft of Millions*
26 *of Vehicles Targeted by Social Media Challenge*, NHTSA (Feb. 14, 2023),
<https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-theft>.

³⁷ *Id.*

1 world,³⁸ and no one knows how many consumers will even opt in to get it. But there
 2 are facial defects with this approach. Upon information and belief, this update will
 3 not cover all Susceptible Vehicles—even newer models. For vehicles not covered
 4 by the update, Defendants are offering nothing more than wheel locks, or rebates for
 5 already purchased wheel locks.
 6

7
 8 43. What’s more, the work-around substantially reduces the usability of the
 9 vehicles. This logic could be triggered by letting a passenger out of a car to run an
 10 errand and then starting the car again. In addition, owners of the Susceptible Vehicle
 11 have already experienced issues with after-market remote start systems, rendering
 12 the vehicles functionally inoperable. As one owner recently posted:
 13

14 “I have the update. I also have an after market remote start.
 15 The remote start will set off my car alarm. You can turn
 16 the alarm off, but it will beep periodically and the
 17 headlights flash until you turn the vehicle off.”³⁹

18 ³⁸ Already, Susceptible Vehicles have been stolen after receiving the update. See
 19 Michelle Nicks, Cleveland woman devastated after new anti-theft device on her
 20 Hyundai fails to stop thieves from causing damage, CLEVELAND19.com
 21 (March 17, 2023, 8:07 PM), [https://www.cleveland19.com/2023/03/18/cleveland-
 22 woman-devastated-after-new-anti-theft-device-her-hyundai-fails-stop-thieves-
 23 causing-damage/](https://www.cleveland19.com/2023/03/18/cleveland-woman-devastated-after-new-anti-theft-device-her-hyundai-fails-stop-thieves-causing-damage/). Additional anecdotes suggest that the update is not reliable. See
 24 Jsmith4523, Reddit (Feb. 22, 2023, 4:52 PM),
 25 [https://www.reddit.com/r/Hyundai/comments/119jlts/well_it_happened_my_17_e
 26 lantra_se_was_stolen_and/?utm_source=share&utm_medium=ios_app&utm_name=iossmf](https://www.reddit.com/r/Hyundai/comments/119jlts/well_it_happened_my_17_e_lantra_se_was_stolen_and/?utm_source=share&utm_medium=ios_app&utm_name=iossmf);
 MaximumLongjumping31, Reddit (Mar. 3, 2023, 5:12 AM),
https://www.reddit.com/r/Hyundai/comments/11h0frt/alarm_tsb_computer_upgrade_my_terrible_experience/.

³⁹ Fungiinterezt, Reddit (Feb. 15, 2023, 7:05 AM),
https://www.reddit.com/r/kia/comments/11303m4/hyundai_and_kia_release_software_update_to/?sort=new.

1
2 44. Prior to this software update, Hyundai callously turned this crisis of its
3 own making into a source of revenue, selling security kits for \$170, plus the cost of
4 installation.⁴⁰ Defendants could have, and should have, initially included a fob-
5 integrated engine immobilizer, consistent with the industry standard. Even after the
6 cars were sold, Defendants could have implemented a mandatory recall. Instead,
7 Hyundai chose to make money off of a crime wave it caused.
8
9

10 45. By electing profits over safety and deviating from the industry standard
11 by not including engine immobilizers as a standard safety feature, Defendants
12 created and maintained a public nuisance.
13

14 **C. Measures to Prevent Vehicle Theft Have Existed for Over a**
15 **Century**

16 46. Since the dawn of gasoline-powered automobiles at the turn of the
17 nineteenth century, consumers have needed effective ways to keep their vehicles
18 from being stolen. Thus, efforts to prevent theft or unauthorized access to
19 automobiles have tracked vehicle development. In 1919, St. George Evans and E. B.
20 Birkenbeuel invented the first formation of an electric immobilizer/vehicle security
21 system.⁴¹
22
23
24

25 ⁴⁰ Taryn Phaneuf, *Insurance, Own a Kia or Hyundai? Here's Why Your Insurance*
26 *Rates Could Go Up*, NERD WALLET (Jan. 26, 2023),
<https://www.nerdwallet.com/article/insurance/kia-hyundai-theft>.

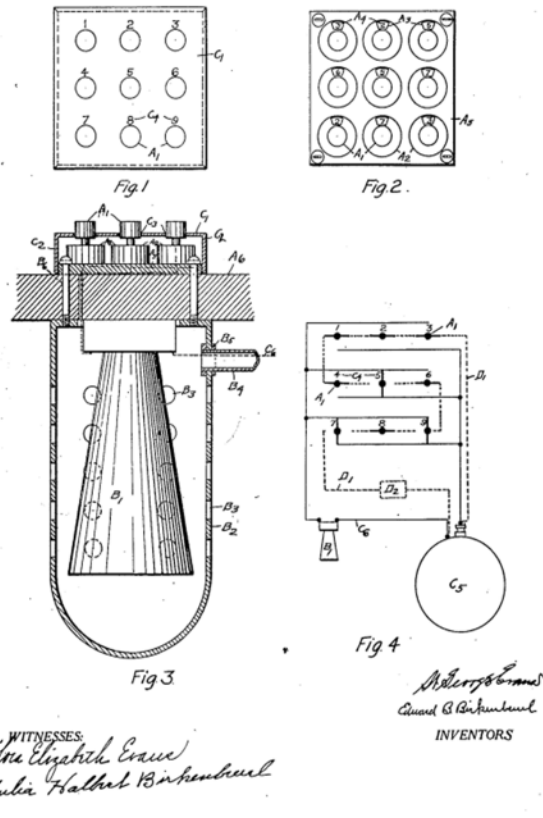
⁴¹ U.S. Patent No. 1,300,150 (issued Apr. 8, 1919).

1 47. Labeled the “Automobile-Theft Preventer” the purpose of Evans and
2 Birkenbeuel’s invention was relatively straightforward: “to provide a means for
3 automatically signaling an attempt to move an automobile by unauthorized persons;
4 and to provide a means for locking the electric circuit open, in which case it will be
5 impossible to move the car by its own power.”⁴²
6
7

8 48. Evans and Birkenbeuel’s immobilizer/alarm system consisted of a 3x3
9 switch panel that connected to the car’s battery, horn, and ignition. Upon exiting his
10 vehicle, a driver could turn a few switches on the panel to different positions that
11 until released would divert electricity to the horn instead of the ignition should an
12 unauthorized user attempt to start the vehicle.
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⁴² *Id.* at ¶¶ 14–20.

ST. GEORGE EVANS & E. B. BIRKENBEUEL.
 AUTOMOBILE THEFT PREVENTER.
 APPLICATION FILED MAR. 5, 1919.
 1,300,150. Patented Apr. 8, 1919.



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

49. 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.

50. As time passed and technology advanced, the United States pursued further efforts to promulgate vehicle safety standards.

1 51. 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.⁴³ Administration of the Safety Act was overseen by the
 4 newly created Department of Transportation through its sub-agency: NHTSA, f/k/a/
 5 the National Traffic Safety Bureau.
 6

7
 8 52. Pursuant to its statutory authority under the Safety Act, NHTSA
 9 promulgated numerous federal motor vehicle safety standards (“FMVSS”). Among
 10 these standards, FMVSS 114⁴⁴ requires minimum theft-protection standards for
 11 nearly all passenger vehicles in the United States:
 12

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

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

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

23 ...

24 S5.1 *Theft Protection*.

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

⁴³ P.L. 89–563, 80 Stat. 718.

⁴⁴ 49 C.F.R. § 571.114.

1 (a) The normal activation of the vehicle's engine or
2 motor; and

3 (b) Either steering, or forward self-mobility, of the
4 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
8 control cannot move from the "park" position, unless the
key is in the starting system.

9 53. 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 stolen cars are far more likely to cause
12 unreasonable risk of accident, personal injury, and death than those which are driven
13 by authorized individuals."⁴⁵

14
15
16 54. As early as 1966, studies showed "there were an estimated 94,000
17 stolen cars involved in accidents"—with "18,000 of these accidents result[ing] in
18 injury to one or more people."⁴⁶ Accordingly, NHTSA recognized that "a reduction
19 of the incident of auto theft would make a substantial contribution to motor vehicle
20 safety" and "protect the many innocent members of the public who are killed and
21 injured by stolen cars each year."⁴⁷ To address this safety risk, which is largely tied
22 to "car thieves who could bypass the ignition lock . . . the agency decided to require
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26 ⁴⁵ 33 Fed. Reg. 6471 (April 27, 1968).

⁴⁶ *Id.*

⁴⁷ *Id.*

1 a device, which would prevent either self-mobility or steering even if the ignition
2 lock were bypassed.”⁴⁸

3
4 55. An engine immobilizer satisfies this requirement, “because it locks out
5 the engine control module if an attempt is made to start the vehicle without the
6 correct key or to bypass the electronic ignition system.”⁴⁹ The proposed software
7 update does not appear to satisfy this requirement—as it is not linked to an attempt
8 to start the vehicle without the correct key—and the absence of *any* system not only
9 violates this standard, it created the public nuisance of rampant car theft in Buffalo.
10
11

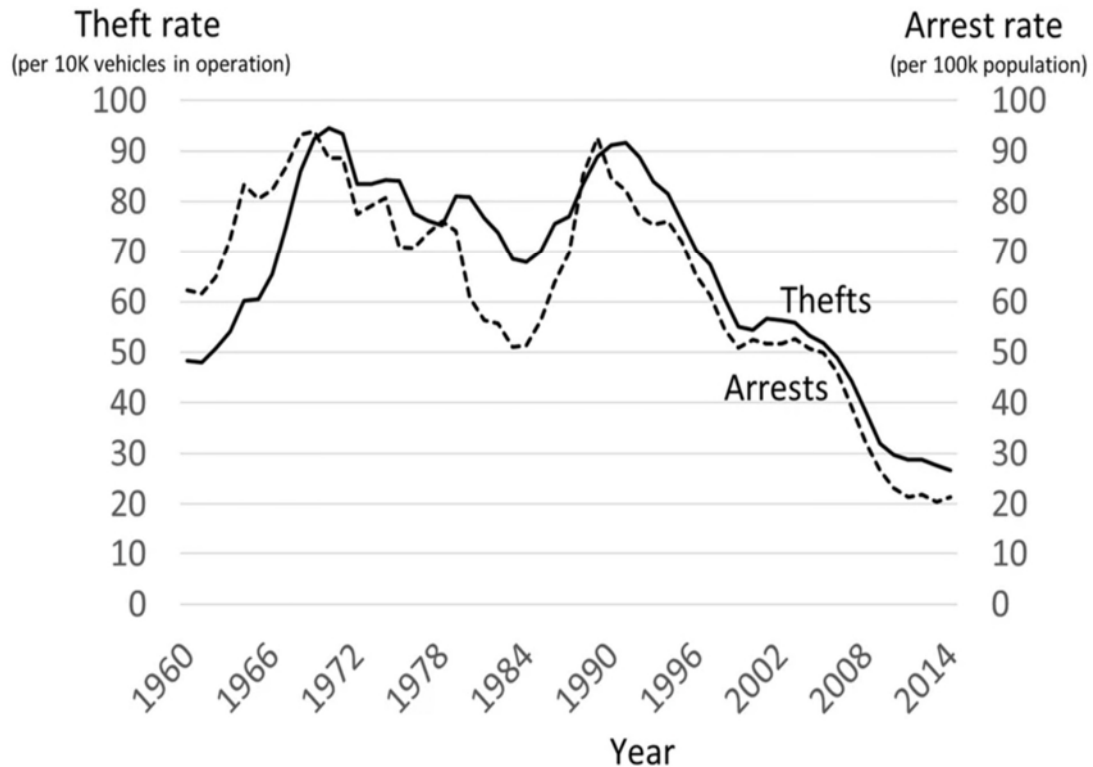
12 **D. The Widespread Adoption of Modern Engine Immobilizers**
13 **as an Even More Effective Vehicle Theft Deterrent**

14 56. In the late 1980s and early 1990s, vehicle theft increased dramatically
15 in the United States.⁵⁰ The common method for stealing a car involved bypassing
16 the motor’s ignition switch, otherwise known as “hotwiring.”
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25 ⁴⁸ 71 Fed. Reg. 17,753 (Apr. 7, 2006), <https://www.govinfo.gov/content/pkg/FR-2006-04-07/pdf/06-3358.pdf>; see also 33 Fed. Reg. 6,471 (Apr. 27, 1968).

26 ⁴⁹ NHTSA Interpretation GF005229-2 (Sept. 24, 2004).

⁵⁰ Anthony Dixon & Graham Farrell, *Age-period-cohort effects in half a century of motor vehicle theft in the United States*, 9 CRIME SCIENCE 17, 1, 3 (2020).



Vehicle thefts per 10,000 vehicles in operation, and vehicle theft arrests per 100,000 population, 1960-2014⁵¹

57. To respond to this growing problem, manufacturers began installing passive vehicle immobilizers, which were patented no later than 1993.⁵² 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.⁵³

⁵¹ *Id.* at 2.

⁵² Int'l Patent Publication No. WO 93/13968 (filed Jan. 7, 1993).

⁵³ *Id.*

1 58. In essence, the vehicle immobilizers of the 1990s worked by checking
2 the “fingerprint” of a car key based on electronic codes the key sends to the vehicle.
3

4 59. Although the mechanism behind the vehicle immobilizer was more
5 intricate than the original 1919 invention, the overall purpose remained the same:
6 “to make the vehicle more difficult to steal.”⁵⁴
7

8 60. The invention proved successful and, less than five years later, the
9 European Union mandated that all new passenger cars from 1998 onward be
10 equipped with an electronic engine immobilizer.⁵⁵ Similar mandates soon followed
11 in Australia, New Zealand, and Canada.
12

13 61. As engine immobilizers became the industry-standard among
14 manufacturers, at least one study in the Netherlands suggested that immobilizers
15 “lowered the overall rate of car theft on average by about 40 percent during
16 1995-2008.”⁵⁶
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24 ⁵⁴ *Id.*

25 ⁵⁵ Commission Directive No. 95/96/EC, 1995 O.J. (L286) 1, (amending Council
26 Directive 74/61/EEC to require the installation of immobilizers and alarm
systems in motor vehicles beginning in October 1998).

⁵⁶ Jan C. van Ours & Ben Vollaard, *The Engine Immobiliser: A Non-Starter for
Car Thieves*, 126 THE ECONOMIC JOURNAL 593, 1264, 1283 (June 2013).

1 **E. Defendants’ Deviation from the Industry Standard**

2 62. At the turn of the 21st century, automatic engine immobilizers were
3 considered quintessential anti-theft technology by the majority of car manufacturers
4 in America, with the exception of Hyundai and Kia.
5

6 63. Studies by the Highway Loss Data Institute (“HLDI”) showed “that
7 vehicle theft losses decreased significantly after factory-installed passive
8 immobilizing antitheft devices were introduced.”⁵⁷ Specifically, HLDI studies
9 between 1996 and 2013 all showed decreases in theft losses for vehicles with engine
10 immobilizers studied in those years, including General Motors, BMW, Ford, and
11 Nissan.⁵⁸ A 2013 HLDI study “found that thieves were sometimes targeting the older
12 model years of a vehicle series without immobilizers, such as the Honda Civic and
13 Honda Accord.”⁵⁹
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16

17 64. Despite decades of research and findings that immobilizers
18 significantly reduced vehicle theft and the consequential public safety risks, “only
19 26 percent of Hyundai and Kia” 2015 vehicle models had “passive immobilizers as
20 standard equipment, compared with 96 percent of other manufacturers.”⁶⁰
21
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24 ⁵⁷ *Hyundai and Kia theft losses*, 38 HLDI BULLETIN 28 (December 2021),
25 https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf.

26 ⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

1 65. The staggeringly low percentage of Hyundai and Kia vehicles with
 2 immobilizers is especially concerning given that, during this same time period,
 3 Defendants were installing immobilizers in 100% of their models for sale in
 4 European and Canadian markets, in compliance with applicable laws there.⁶¹

6 66. Nor are Defendants unfamiliar with the benefits of installing
 7 immobilizers in the American market. In March 2007, Hyundai requested an
 8 exemption from particular NHTSA vehicle theft prevention standards for its 2008
 9 Hyundai Azera line “based on the installation of an antitheft device” for the vehicle
 10 line that would be “at least as effective as th[e] GM and Ford [immobilizer] devices”
 11 in reducing vehicle theft.⁶² Yet, until the last year or so, Hyundai and Kia only
 12 offered immobilizers in their premium, more expensive, model lines. This decision
 13 only compounds the harms on low-income communities.⁶³ Those without resources
 14
 15
 16
 17

18 ⁶¹ Hyundai first began exporting its cars to parts of Europe, the United Kingdom,
 19 and Canada between 1978 and 1984. *See Press Release, Over 50 years of*
 20 *progress: the history of Hyundai* HYUNDAI.NEWS (Apr. 6, 2019),
 21 [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
 European and Canadian markets in the 1990s.

22 ⁶² 72 Fed. Reg. 39,662 (July 19, 2007); *see also* 75 Fed. Reg. 1,447 (Jan. 11, 2010)
 23 (NHTSA notice granting an identical exemption for the Kia Amanti vehicle line
 24 beginning in model year 2009 based on Defendants’ representation that the
 25 immobilizer installation for that specific model should substantially reduce theft
 rates).

26 ⁶³ Tom Krisher, *Thieves key on hack that leaves Hyundai, Kia cars vulnerable*, AP
 News (Sept. 21, 2022), [https://apnews.com/article/social-media-milwaukee-theft-](https://apnews.com/article/social-media-milwaukee-theft-eed3be407c1b7cb725ae607b8d86bcdf)
[ecd3be407c1b7cb725ae607b8d86bcdf](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

1 to afford such models are more likely to live in areas with higher crime rates and are
 2 likely less able to pay for alternative transportation or for the cost of repairing a
 3 recovered vehicle.
 4

5 67. In September 2022, the HLDI found that Hyundais and Kias are stolen
 6 at nearly twice the rate of other vehicles in the automobile industry. Specifically,
 7 “Hyundais and Kias without immobilizers had a vehicle theft claim rate of 2.18 per
 8 1,000 insured vehicle years” while the remainder of the industry, *combined*, had a
 9 theft claim rate of 1.21.⁶⁴
 10
 11

12 68. Based on the above, Defendants’ decision not to install the simple and
 13 highly effective immobilizer in the Susceptible Vehicles between 2011 and 2021, in
 14 contrast to the approximately 96% of all other car manufacturers that did install an
 15 immobilizer, has led to a reasonably foreseeable car theft epidemic that is plaguing
 16 Buffalo.
 17

18 **V. CAUSES OF ACTION**

19 **COUNT ONE — COMMON LAW PUBLIC NUISANCE**

20 69. The City of Buffalo incorporates each preceding paragraph as though
 21 fully set forth herein.
 22
 23
 24
 25

26 by HLDI Senior VP Matt Moore, those cars “are relatively inexpensive vehicles when purchased new”).

⁶⁴ *Id.* An insured vehicle year is equal to one vehicle insured for one year.

1 70. Defendants—through their designing, manufacturing, and distributing
2 of automobiles that are dangerously susceptible to theft—have created, contributed
3 to, and maintained a public nuisance that substantially interferes with rights common
4 the general public.
5

6 71. Buffalo and its residents have a common right to be free from such
7 conduct that interferes with the peaceful use of public streets, sidewalks, commerce,
8 travel, and the quality of daily life. Moreover, the nuisance endangers the safety of
9 the general public in the City of Buffalo.
10

11 72. Defendants have endangered and harmed the public, undermined law
12 enforcement efforts to deter vehicle theft, and otherwise diverted scarce law
13 enforcement resources.
14

15 73. At all relevant times, Defendants, have been the manufacturers,
16 marketers, and/or distributors of the Susceptible Vehicles being stolen at record rates
17 that are, at times, being used in the commission of other violent crimes in the State
18 of New York and the City of Buffalo.
19

20 74. At all times relevant to this litigation, Defendants knew or had reason
21 to know of the hazards and dangers of foregoing installation of engine immobilizers
22 in the Susceptible Vehicles and specifically, the increased risk of vehicle theft and
23 public harm. Defendants knew or had reason to know that the installation of engine
24 immobilizers successfully decreased the rate of car theft by as much as 40%.
25
26

1 Defendants also knew or had reason to know that the installation of immobilizers in
2 their own vehicles has considerably deterrent effects on the rate of car theft.

3
4 75. Defendants know that their conduct has caused an increase in vehicle
5 theft that has had and will continue to have a detrimental effect on the safety, welfare,
6 peace, comfort, and convenience of the general public in Buffalo.

7
8 76. Defendants' conduct has directly caused a severe disruption of public
9 order and safety. Defendants' conduct is ongoing and continues to produce
10 permanent and long-lasting damage.

11
12 77. Further, Defendants' conduct substantially interferes with the public's
13 right to safe and reasonable access to public thoroughfares.

14
15 78. Defendants' conduct has affected and continues to affect a substantial
16 number of people within Buffalo's community and is likely to continue causing
17 significant harm.

18
19 79. The nuisance created by Defendants' conduct is abatable.

20
21 80. By intentionally foregoing the installation of engine immobilizers in the
22 Susceptible Vehicles, Defendants directly facilitated the rapid increase in vehicle
23 theft and, with it, the public nuisance affecting Buffalo.

24
25 81. Hyundai and Kia could have avoided all this by installing engine
26 immobilizers at the time of manufacture for as little as \$200 per device.

1 82. As a direct and proximate result of Defendants' conduct, Buffalo has
2 suffered and will continue to suffer economic damages, including significant
3 expenditures for police, emergency, health, and other services. Buffalo will continue
4 to incur economic losses until the nuisance is abated. These damages are particular
5 to the City and are different in kind to the harms suffered by New York residents at
6 large.
7

8
9 83. Defendants' misconduct alleged in this case does not concern a discrete
10 event or discrete emergency of the sort a political subdivision would reasonably
11 expect to occur and is not part of the normal and expected costs of a local
12 government's existence. Buffalo alleges wrongful acts which are neither discrete nor
13 of the sort a local government can reasonably expect to occur.
14
15

16 84. Buffalo has incurred, and will continue to incur, expenditures over and
17 above its ordinary public services.
18

19 85. Buffalo requests an order providing for abatement of the public
20 nuisance that Defendants have created or assisted in the creation of; for
21 compensation for the economic losses suffered as a result of the nuisance; and
22 injunctive relief.
23

24 **COUNT TWO — NEGLIGENCE**

25 86. The City of Buffalo incorporates each preceding paragraph as though
26 set forth fully herein.

1 87. 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
5 was so unreasonably easy to steal.
6

7
8 88. Defendants owed Buffalo a duty to not expose the City to an
9 unreasonable risk of harm. Defendants' duties were preexisting.
10

11 89. At all times relevant to this litigation, Defendants knew or, in the
12 exercise of reasonable care, should have known of the hazards and dangers of
13 foregoing installation of engine immobilizers in the Susceptible Vehicles and
14 specifically, the increased risk of vehicle theft and public harm.
15

16 90. Accordingly, at all times relevant to this litigation, Defendants knew or,
17 in the exercise of reasonable care, should have known that the omission of an engine
18 immobilizer in the Susceptible Vehicles could cause Buffalo's injuries and thus
19 created a dangerous and unreasonable risk of injury to Buffalo. Defendants were
20 therefore in the best position to protect Buffalo against the foreseeable rise in the
21 theft of Hyundai and Kia vehicles.
22

23
24 91. At all times relevant to this litigation, Defendants knew or had reason
25 to know that the omission of an engine immobilizer in the Susceptible Vehicles
26 could cause Buffalo's injuries, as FMVSS 114 requires automobiles to have a

1 starting system which, whenever the key is removed from the starting system,
2 prevents “[e]ither steering, or forward self-mobility, of the vehicle, or both” and for
3 vehicles to be designed “such that the transmission or gear selection control cannot
4 move from the ‘park’ position, unless the key is in the starting system.” As alleged
5 *supra*, most carmakers in the United States satisfy FMVSS 114 through the use of
6 an engine immobilizer.
7
8

9 92. As such, Defendants, by action and inaction, breached their duty and
10 failed to exercise reasonable care, and failed to act as a reasonably prudent person
11 and/or company would act under the same circumstances in the design, research,
12 development, manufacture, testing, and distribution of their vehicles, in that
13 Defendants manufactured and produced vehicles that fell below minimum, industry-
14 standard security measures.
15
16

17 93. Defendants are in control of the design, research, manufacture, testing,
18 and distribution of the vehicles they distributed to authorized dealerships in Buffalo.
19

20 94. Defendants knew and/or should have known that it was foreseeable that
21 Buffalo would suffer injuries as a result of Defendants’ failure to exercise reasonable
22 care in the manufacturing and sale of Defendants’ vehicles, particularly given
23 Defendants’ recognition as early as 2007 that engine immobilizers were an effective
24 deterrent in preventing vehicle theft.
25
26

1 95. Defendants were negligent in failing to monitor and guard against third-
2 party misconduct and enabled such misconduct.
3

4 96. Defendants acted unreasonably in light of what conduct could be
5 foreseen as a result of their conduct and Defendants' negligence helped to and did
6 produce, and was a factual and proximate cause, of the injuries, harm, and economic
7 losses that Buffalo suffered, and will continue to suffer.
8

9 97. Defendants acts and omissions imposed an unreasonable risk of harm
10 to others separately and/or combined with the negligent and/or criminal acts of third
11 parties.
12

13 98. Buffalo's injuries, harms, and economic losses would not have
14 occurred absent Defendants' negligent conduct as described herein.
15

16 99. As a proximate result of Defendants' wrongful acts and omissions,
17 Buffalo has been injured and suffered economic damages and will continue to incur
18 expenses in the future, as described herein, including but not limited to expending,
19 diverting, and increasing resources to retrieve stolen cars, provide emergency
20 medical services, and/or address property damage on public roads in Buffalo's
21 community.
22
23

24 100. Defendants engaged in conduct, as described above, that constituted
25 reckless disregard of Buffalo's rights, being fully aware of the probable dangerous
26 consequences of the conduct and deliberately failing to avoid those consequences.

1 101. Defendants' conduct constituting reckless disregard of Buffalo's rights,
2 was committed and/or authorized by one or more officers, directors, or managing
3 agents of Defendants, who acted on behalf of Defendants. Additionally, or in the
4 alternative, one or more officers, directors or managing agents of Defendants knew
5 of the conduct constituting reckless disregard of Buffalo's rights and adopted or
6 approved that conduct after it occurred.
7

8
9 102. Defendants' misconduct alleged in this case does not concern a discrete
10 event or discrete emergency of the sort a political subdivision would reasonably
11 expect to occur and is not part of the normal and expected costs of a local
12 government's existence. Buffalo alleges wrongful acts which are neither discrete nor
13 of the sort a local government can reasonably expect to occur.
14
15

16 103. Buffalo has incurred, and will continue to incur, expenditures over and
17 above its ordinary public services.
18

19 104. The tortious conduct of each Defendant was a substantial factor in
20 producing harm to Buffalo.

21 105. Defendants' willful, knowing, and reckless conduct, constituting
22 reckless disregard of Buffalo's rights, including the right to public safety, therefore
23 warrants an award of aggravated or punitive damages.
24

25 106. Buffalo is without fault and injuries to the City and its residents would
26 not have occurred in the ordinary course of events had Defendants used due care

1 commensurate to the dangers involved in the manufacturing and distribution of their
2 vehicles.

3
4 **VI. PRAYER FOR RELIEF**

5 107. Entering an Order that the conduct alleged herein constitutes a public
6 nuisance under New York law;

7
8 108. Entering an Order that Defendants are jointly and severally liable;

9 109. Entering an Order requiring Defendants to abate the public nuisance
10 described herein and to deter and/or prevent the resumption of such nuisance;

11
12 110. Enjoining Defendants from engaging in further actions causing or
13 contributing to the public nuisance as described herein;

14 111. Awarding equitable relief to fund automobile theft prevention;

15 112. Awarding actual and compensatory damages;

16 113. Awarding punitive damages;

17 114. Awarding reasonable attorneys' fees and costs of suit;

18 115. Awarding pre-judgment and post-judgment interest; and

19 116. Such other and further relief as the Court deems just and proper under
20 the circumstances.
21
22

23
24 **VII. JURY TRIAL DEMANDED**

25 117. Plaintiff hereby demands a trial by jury.
26

1 RESPECTFULLY SUBMITTED this 30th day of March, 2023.

2
3 CITY OF BUFFALO
4 By Counsel

5 Cavette A. Chambers (*pro hac vice*
6 *forthcoming*)
7 Corporation Counsel

8 By /s/ Cavette A. Chambers
9 65 Niagara Square
10 City Hall
11 Buffalo, New York 14242
12 Telephone: (716) 851-4334
13 Fax: (716) 851-4105
14 *cchambers@buffalony.gov*

15 Trial Counsel for City of Buffalo

16 KELLER ROHRBACK L.L.P.

17 By /s/ Dean Kawamoto
18 Dean Kawamoto, CSB #232032
19 Gretchen Freeman Cappio (*pro hac vice*
20 *forthcoming*)
21 Derek W. Loeser (*pro hac vice forthcoming*)
22 Ryan McDevitt (*pro hac vice forthcoming*)
23 Alison S. Gaffney (*pro hac vice*
24 *forthcoming*)
25 Garrett Heilman (*pro hac vice forthcoming*)
26 Zachary Gussin (*pro hac vice forthcoming*)
Kylie N. Fisher (*pro hac vice forthcoming*)
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Fax: (206) 623-3385
dkawamoto@kellerrohrback.com
gcappio@kellerrohrback.com

dloeser@kellerrohrback.com
rmcdevitt@kellerrohrback.com
agaffney@kellerrohrback.com
gheilman@kellerrohrback.com
zgussin@kellerrohrback.com
kfisher@kellerrohrback.com

Counsel for Plaintiff City of Buffalo