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10 UNITED STATES DISTRICT COURT 11 CENTRAL DISTRICT OF CALIFORNIA 12 CITY OF CLEVELAND, 13 14 Plaintiff, 15 16 v. 17 18 HYUNDAI MOTOR AMERICA and 19 KIA AMERICA, INC., 20 21 Defendants. 22 23 24 25 26	No. 2:23-cv-01713 COMPLAINT JURY TRIAL DEMANDED
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1 **I. INTRODUCTION**

2 1. There is an inextricable link between preventing vehicle theft and
3 protecting public safety. Making sure cars are not easy to steal both protects
4 property and protects the public by keeping dangerous drivers in stolen vehicles off
5 the roads. This case is a clear example of what happens to public safety when car
6 manufacturers cannot be bothered to include standard anti-theft technology in their
7 cars.
8

9
10 2. The days of “hotwiring” cars with nothing more than a screwdriver
11 are largely over: in most cars, the ignition key emits a radio signal that prompts a
12 computer to disengage an immobilizer device and allows the car to move when the
13 key is present. But recent Hyundai and Kia models are a glaring exception.
14

15
16 3. Between 2011 and 2021, long after other carmakers adopted
17 immobilizer technology that ensured car ignitions could not be started without their
18 keys, Defendants Hyundai Motor America and Kia America, Inc. (collectively,
19 “Defendants”) failed to keep up with the times. As a result, TikTok and news
20 videos teaching the relative ease with which Hyundai and Kia vehicles can be
21 stolen have gone viral. In many cases, thieves use tools no more advanced than a
22 USB cable. Hyundai and Kia’s business decisions to reduce costs, and thereby
23 boost profits, by foregoing common anti-theft technology have resulted in an
24 epidemic of thefts. This vehicular crime wave has had a significant impact on law
25
26

1 enforcement operations, emergency services, and public safety, particularly in the
2 City of Cleveland, where the police department is under considerable staffing
3 stress.
4

5 4. In the 1960s and 1970s, all that was needed for a successful vehicle
6 heist was a little brute force (to crack open the ignition column) and a key-shaped
7 object to start the car and drive off within seconds. Thanks to modern technology,
8 this is no longer the case for most cars. Hyundai and Kia are nearly unique among
9 automobile manufacturers in failing to install vehicle immobilizers in most of their
10 cars. This is not because the technology is somehow beyond them—in fact,
11 Hyundai and Kia vehicles sold in the European and Canadian markets incorporate
12 vehicle immobilizers, because regulations there expressly require them. It is only
13 in the United States that Hyundai and Kia have decided to trade public safety for
14 profits.
15
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18

19 5. The difference between the proportion of Hyundai and Kia vehicle
20 models with immobilizers compared to all other manufacturers is staggering: only
21 *26 percent* of 2015-model Hyundai and Kia vehicles in the U.S. had immobilizers,
22 compared to *96 percent* of vehicles from all other manufacturers.¹
23
24
25
26

¹ “Hyundai and Kia theft losses,” 38 HLDI BULLETIN 28 (December 2021), available at:
https://www.ihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf.

1 6. Hyundai’s and Kia’s decisions to put cost-savings and profits over
2 public safety have had devastating consequences for the City of Cleveland and its
3 residents, as in other cities. The failure of Defendants to install an industry-
4 standard anti-theft device, notwithstanding decades of academic literature and
5 research supporting the deterrent effects of such technology, has opened the
6 floodgates to vehicle theft, crime sprees, reckless driving, and public harm.
7

8
9 7. This epidemic started in Milwaukee before spreading nationwide.² By
10 June 2021, the Milwaukee Police Department reported that the theft of Hyundai
11 and Kia vehicles had increased by 2,500% since the previous year, with an average
12 of 16 cars being stolen per day.
13

14 8. The same trend is evident in Cleveland, where, for example, there
15 were 475 thefts of Hyundai and Kia vehicles in December 2022 alone.³ For
16 January 2023, data from the Cleveland Police Department reflect a 622.22%
17 increase in Hyundai and Kia vehicle thefts, compared to January 2022.⁴
18

19 9. Vehicle theft is not only a property crime affecting vehicle owners,
20 but may also present a grave threat to public safety. Vehicle theft goes hand in
21 hand with reckless driving, which in turn results in injuries and death. It results in
22
23

24
25 ² “Police warn of rise in car thefts of two particular car brands. Is yours one of them?” The
26 Cleveland Enquirer (June 28, 2022), available at:
<https://www.Cleveland.com/story/news/2022/06/28/police-report-rise-car-thefts-certain-car-brands/7762399001/>.

³ See Exh. A.

⁴ *Id.*

1 increased violence, as many car owners are unlikely to part with their vehicles
2 willingly. It consumes scarce law enforcement and emergency resources and
3 deprives the public of safe streets and sidewalks.
4

5 10. The skyrocketing rate of vehicle theft in Cleveland has drastically
6 affected city and police resources. Cleveland residents are subjected to increasingly
7 dangerous conditions on their city streets, as car thieves (many of them teenagers)
8 taking advantage of Hyundai's and Kia's failures engage in reckless driving,
9 endangering Cleveland residents and their property.
10
11

12 11. Defendants' conduct has created a public nuisance that could have
13 been avoided, had they simply followed industry-wide standards and installed
14 immobilizer devices in all their vehicles.
15

16 12. To date, Hyundai and Kia refuse to accept responsibility, forcing
17 municipalities across the country, including Cleveland, to divert funds and risk
18 officer safety to combat the rising burden caused by increased Hyundai and Kia
19 vehicle theft and reckless driving on city streets.
20

21 **II. JURISDICTION AND VENUE**

22 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
23 1332(a), as the amount in controversy exceeds \$75,000 and there is complete
24 diversity between the Parties. The City of Cleveland is a home-rule municipal
25 corporation and regarded as a citizen of the state of Ohio, for the purposes of
26

1 diversity jurisdiction. *Bullard v. City of Cisco, Texas*, 290 U.S. 179, 187 (1933).

2 Defendants are citizens of California, where they are headquartered and
3
4 incorporated.

5 14. This court has general personal jurisdiction over Defendants as they
6 are incorporated and headquartered in the state of California.
7

8 15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
9 because Defendants are citizens of California, incorporated in this State with
10 headquarters located in this district.
11

12 III. PARTIES

13 A. Plaintiff

14 16. Plaintiff, the City of Cleveland (the “City” or “Cleveland”) is a
15 municipal corporation organized and chartered pursuant to Article XVIII, Section 7
16 of the Ohio Constitution. The City has all the powers of local self-government and
17 all other powers possible for a city to have under the Constitution of the state of
18 Ohio, and the laws of the state of Ohio, which are exercised in the manner
19 prescribed by the Charter of the City of Cleveland. The City is located in
20 Cuyahoga County, Ohio, and has approximately 368,000 residents. The City’s
21 principal offices are located at City Hall, 601 Lakeside Ave E, Cleveland, Ohio,
22 44114.
23
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1 **B. Defendants**

2 17. Defendant **Hyundai Motor America** (“HMA” or “Hyundai”), is a
3 manufacturer and distributor of new motor vehicles under the Hyundai brand and
4 is incorporated and headquartered in the state of California. Its principal place of
5 business is located at 10550 Talbert Avenue, Fountain Valley, California. HMA
6 distributes, markets, leases, warrants, and oversees regulatory compliance and
7 warranty servicing of Hyundai brand vehicles through a network of over 800
8 dealers throughout the United States from its headquarters in California.
9
10

11 18. Defendant **Kia America, Inc.** (“KA” or “Kia”), is a manufacturer and
12 distributor of new motor vehicles under the Kia brand and is incorporated and
13 headquartered in the state of California. Its principal place of business is located at
14 111 Peters Canyon Road, Irvine, California. KA markets, leases, warrants, and
15 oversees regulatory compliance and warranty servicing of Kia-brand vehicles
16 through a network of over 700 dealers throughout the United States from its
17 headquarters in California.
18
19
20

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

22 **A. Without Immobilizers, Defendants’ Vehicles Are Sitting**
23 **Ducks**

24 19. As described further below, Kia and Hyundai have chosen to flout the
25 industry standard of utilizing an engine immobilizer in many of their vehicles,
26 which made those vehicles more susceptible to theft. Specifically, upon

1 information and belief, at all relevant times, Defendants designed, manufactured,
2 distributed, and sold the following automobile models (“Susceptible Vehicles”)
3 without engine immobilizers between 2011 and 2021: Hyundai Accent, Elantra,
4 Kona, Palisade, Santa Cruz, Santa Fe, Sonata, Tucson, Veloster, and Venue; and
5 the Kia Cadenza, Forte, K900, Optima, Rio, Sedona, Seltos, Sorento, Soul, and
6 Sportage. As would-be car thieves learned of this susceptibility, the incidence of
7 theft for susceptible models increased, relative to other models, from 2015 to
8 2020.⁵

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10
11
12 20. However, this progression became an explosion in late 2020, when a
13 group of teenagers began posting “how-to” videos detailing how simple it was to
14 steal susceptible Kias and Hyundais.⁶ That group, the “Kia Boyz,” became
15 notorious for posting videos of youth engaging in reckless driving after stealing
16 Kias and Hyundais.⁷ As the videos detailed, an individual need only remove the
17 plastic cowl under the steering column and use a USB cable to start these unsecure
18 cars.
19
20
21
22

23 ⁵ <https://www.nicb.org/sites/files/2017-11/2015-Hot-Wheels-Report.pdf>;
24 <https://www.nicb.org/sites/files/2017-11/2016-Hot-Wheels-Report.pdf>;
25 <https://www.nicb.org/sites/files/2017-11/2017-Hot-Wheels-Report.pdf>;
26 <https://www.nicb.org/sites/files/2017-11/2018-Hot-Wheels-Report.pdf>; and
<https://www.nicb.org/sites/files/2017-11/2019-Hot-Wheels-Report.pdf>.

⁶ <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->.

⁷ <https://www.cNBC.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html>.

1 21. What followed was all-too predictable: thefts of Kias and Hyundais
2 skyrocketed.⁸ In the first half of 2021, the number of stolen Kias and Hyundais
3 increased by more than 30 and 15 times when compared to the same period in 2020
4 in Milwaukee.⁹ This dramatic increase was unique to Kias and Hyundais, which
5 represented 66% of all cars stolen in that period, compared to only 6% of stolen
6 cars in 2019.^{10 11}

9 22. This trend then spread nationwide. By July 2022, the Cleveland Police
10 Department were seeing a considerable increase in Hyundai and Kia vehicle
11 theft.¹²

23 ⁸ <https://www.insideedition.com/videos-show-teens-how-to-steal-certain-kias-and-hyundais-with-only-a-usb-cable-police-warn-amid>.

24 ⁹ <https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/>.

25 ¹⁰ <https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-publicity-for-hyundai-kia-44496971>.

26 ¹¹ <https://urbanmilwaukee.com/2021/07/24/two-thirds-of-all-milwaukee-auto-thefts-are-kia-and-hyundai-vehicles/>.

¹² Exh. A.

Stolen Vehicles Citywide City of Cleveland

1/1/2022 To 1/30/2023

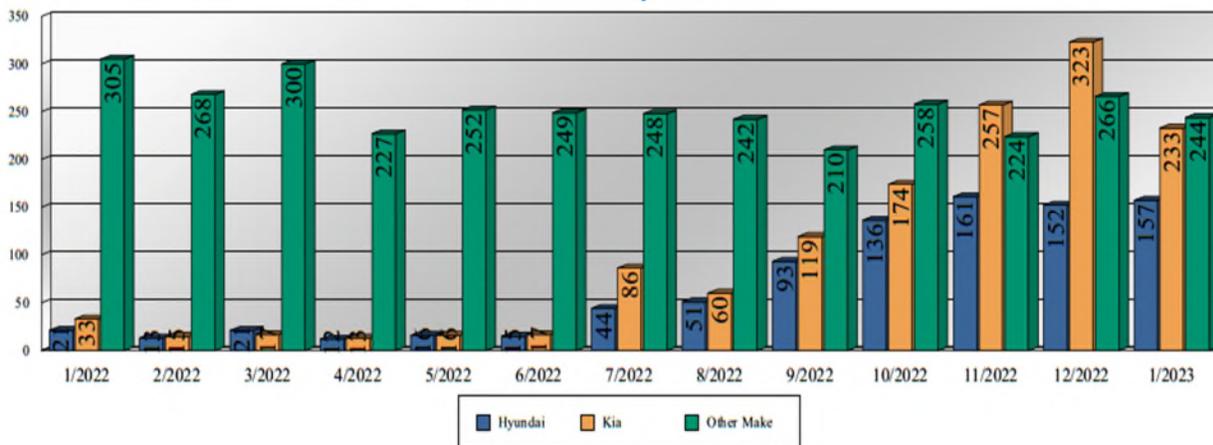


Stolen Kia & Hyundai Cars 2022 By Month



23. Between October and December, more than 1,200 Hyundai and Kia vehicles were stolen in Cleveland.¹³ For December alone, Hyundais and Kias accounted for approximately 65% of total vehicle theft in the City.

Stolen Kia & Hyundai Cars



24. The susceptibility of Defendants’ vehicles to theft enabled this spiraling epidemic. Defendants’ choice to deviate from the industry standard of

¹³ *Id.*

1 utilizing engine immobilizers, placing profits over safety, was both a proximate
2 and but-for cause of this outbreak. As a police sergeant described the problem,
3 Defendants’ cars are simply too easy to steal.¹⁴ This presents a risk not only for
4 property damage, but to public safety, as thieves often engage in reckless driving,
5 as well as other dangerous criminal conduct, including robbery and firearm thefts,
6 as Kias and Hyundais have been targeted by thieves seeking weapons (and other
7 valuables) that might have been left in patrons’ vehicles.¹⁵ In one instance, a 2017
8 Hyundai Sonata owned by the Department of Homeland Security was stolen in
9 broad daylight.¹⁶ Inside the Hyundai was a rifle, ammunition, and body armor.¹⁷

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

14 25. Car thefts imperil public safety. By creating a rash of car thefts,
15 Defendants are responsible for a substantial risk to public safety.
16

17 26. This is the conclusion drawn by the National Highway Traffic Safety
18 Administration (“NHTSA”). Operating under what was formerly known as the
19 National Traffic Safety Bureau, NHTSA promulgated Federal Motor Vehicle
20 Safety Standard 114 to reduce the instances of car theft, because “stolen cars
21
22
23

24 _____
25 ¹⁴ <https://www.tmj4.com/news/local-news/mpd-hyundai-and-kia-vehicles-too-easy-to-steal-leading-to-spike-in-car-thefts>.

26 ¹⁵ <https://www.jsonline.com/story/opinion/2021/05/21/driven-by-good-will-anonymous-donor-pays-off-milwaukee-womans-stolen-car-debt/5130896001/>.

¹⁶ <https://www.wisconsinrightnow.com/homeland-security-hyundai/>.

¹⁷ *Id.*

1 constitute a major hazard to life and limb on the highways.”¹⁸ NHTSA concluded
2 that the “evidence shows that cars operated by unauthorized persons are far more
3 likely to cause unreasonable risk of accident, personal injury, and death than those
4 which are driven by authorized individuals.”¹⁹ The NHTSA Administrator
5 concluded that “a reduction in the incidence of auto theft would make a substantial
6 contribution to motor vehicle safety,” by reducing both injuries and deaths to
7 would-be car thieves, and by “protect[ing] the many innocent members of the
8 public who are killed and injured by stolen cars each year.”²⁰

12 27. Sadly, the reverse is true as well. An *increase* in the incidence of
13 automobile theft results in a substantial decrease in public safety. Defendants’
14 pursuit of profits over theft-prevention led to a meteoric rise in automobile thefts,
15 and the concomitant threats to public safety. Car theft results in reckless driving,
16 which poses a risk to both the operators of the stolen vehicle and any lawful users
17 of the public thoroughfare who are unfortunate enough to cross paths.

20 28. Reckless driving threatens the comfortable enjoyment of life, health,
21 and safety of the public within Cleveland. This is particularly true with the current
22 crime wave. Distinct from many instances of car theft, where the object is
23 converting the stolen vehicle, the viral “Kia challenge” typically involves joyriding
24

26 ¹⁸ See 33 Fed. Reg. 6,471 (April 27, 1968).

¹⁹ *Id.*

²⁰ *Id.*

1 and then abandoning the stolen vehicles. Far from surreptitiously delivering a car
2 to a chop shop under cover of night, the social media phenomenon, made possible
3 by Defendants' unsecure vehicles, led to youth posting videos of reckless driving
4 during busy hours of the day, abandoning the vehicles after collisions.
5

6 29. Social media platforms like TikTok and Instagram are rife with
7 examples of this dangerous conduct. Videos posted on these platforms highlight
8 the very real danger from this phenomenon, including youth joyriding through
9 school zones or even through crowds of students, and drivers hitting other cars and
10 then running from the scene.²¹
11

12 30. In Cleveland, this phenomenon has already led to extreme and
13 disastrous accidents. In November 2022, police officers responded to a burglary
14 alarm at Summit Armory, a gun store, in North Cleveland. When officers arrived,
15 they found an abandoned Kia vehicle, previously reported stolen from Cleveland,
16 had crashed into the gun store.²²
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24 ²¹ See e.g., [https://www.instagram.com/p/CVNhJg9D64B/?utm%20medium=copy%20link](https://www.instagram.com/p/CVNhJg9D64B/?utm%20medium=copy%20link;);
25 <https://www.tiktok.com/@monloww/video/7153012228067773738>;
26 <https://www.instagram.com/p/CVNhJg9D64B/?utm%20medium=copy%20link>;
<https://www.instagram.com/p/CSwsnhfAktD/>; <https://www.instagram.com/p/CTqCaYTANaC/>;
and <https://www.instagram.com/p/CVRCcU5AkwT/>.

²² <https://www.wkyc.com/article/news/local/summit-county/vehicle-stolen-cleveland-found-bath-police-department/95-7f112515-2605-434d-8bb4-dfe4dc5d9344>.



11 31. The following month, a home in Cleveland sustained significant
12 damage after a stolen Hyundai Elantra crashed into the side of the house.²³ A 25-
13 year-old woman and her infant were inside the home during the crash and,
14 fortunately, neither was injured.
15



²³ <https://www.wkyc.com/article/news/local/cleveland/car-slams-into-cleveland-home-pictures/95-1198fbd5-86a0-499b-a32a-fafe1437c292>.

1
2 32. In mid-January 2023, four teenagers in a stolen Hyundai Elantra
3 attempted to elude police before crashing into a utility pole in the Parma
4 neighborhood of Cleveland.²⁴ Three of the individuals apprehended were between
5 the ages of 17 and 19. Officers also observed a Kia SUV that had been reported
6 stolen, but the driver of the car was able to get away. Prior to the police chase,
7 officers observed a group of individuals in the stolen Kia trying to steal another
8 vehicle in an apartment complex.²⁵
9
10

11
12 33. In the last week of January, alone, there were at least three other
13 stolen car police pursuits in the Greater Cleveland area, two of which ended in
14 crashes.²⁶ One of the crashes involved a stolen Kia that drove across four lanes of
15 traffic, clipping a charter bus carrying members of the Baldwin Wallace University
16 swim team, and crashing into a retaining wall.²⁷
17

18
19 34. Also in late January, a man in Cleveland reported that his Hyundai
20 was stolen. While driving his other car, a Kia Rio, the man spotted his stolen
21 Hyundai at a Burger King drive thru. When he attempted to block the Hyundai,
22 two teenagers in the stolen car rammed the man's Kia against the Burger King
23

24
25 ²⁴ <https://www.wkyc.com/article/news/local/cuyahoga-county/teenagers-crash-stolen-hyundai-cleveland/95-7ab0ff03-3d0e-475e-a26b-7521e3103aa8>.

26 ²⁵ *Id.*

²⁶ <https://www.news5cleveland.com/news/local-news/dash-cam-video-shows-wrong-way-crash-on-i-480-third-stolen-car-pursuit-in-a-week>.

²⁷ <https://fox8.com/news/baldwin-wallace-swim-team-bus-hit-by-stolen-vehicle-police/>.

1 restaurant.²⁸ Police reported that the incident was part of a three-day crime spree
2 involving two shootings within an hour of each other, which the driver of the
3 stolen Hyundai helped carry out.²⁹
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15 35. Another example of this all-too-common tragedy occurred in
16 Milwaukee in June 2021, when a sixteen-year-old was killed after he stole a Kia
17 Sportage and collided with another car.³⁰ His two twelve-year-old accomplices
18 were also seriously injured, as were three passengers in the car that he struck. The
19 images and dashcam footage³¹ of this tragedy show how the epidemic of vehicle
20 theft imperils the public.
21
22
23

24 ²⁸ <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 ²⁹ *Id.*

26 ³⁰ <https://www.wisn.com/article/teen-car-theft-suspect-killed-in-head-on-crash-5-others-injured/36741640>.

³¹ <https://www.wisn.com/article/dashcam-video-shows-fatal-crash-moments-after-police-cancel-pursuit/37955614>.

1 36. Yet another tragic example occurred in Buffalo in October 2022,
2 when a 16-year-old driving a stolen Kia caused a high-speed rollover crash that
3 killed four teenage passengers.³²
4



15 37. The act of car theft creates a substantial risk of physical harm, in the
16 event that the would-be thief is confronted in the act. In January 2023, a Cleveland
17 man reported that a Hyundai Sonata struck his car mirror and did not stop. When
18 the man followed the Hyundai, the driver and passenger of the Hyundai got out
19 with guns and began shooting at him.³³ Police found nine bullet casings in the
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21
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23
24

25 ³² “Teenage driver charged in crash of stolen car that killed 4,” Seattle Times (Nov. 22, 2022),
26 available at: <https://www.seattletimes.com/business/teenage-driver-charged-in-crash-of-stolen-car-that-killed-4/>.

³³ <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>.

1 street and bullet holes in the front window of a nearby home and in a car parked on
2 the street.³⁴

3
4 38. This risk to bystanders was also tragically demonstrated in October
5 2021 in Wisconsin, when a woman who attempted to prevent the theft of a
6 Hyundai was killed at the scene.³⁵

7
8 39. Further, the act of car theft creates a substantial risk of physical harm
9 to pedestrian bystanders. On February 8, 2023, a stolen Hyundai involved in a
10 high-speed chase in Baltimore crashed into a car and a 54-year-old pedestrian.³⁶
11
12 Both cars careened into a nearby building, which collapsed on top of the vehicles



25 ³⁴ <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 ³⁵ <https://www.cbs58.com/news/13-year-old-charged-as-adult-in-deadly-wauwatosa-hit-and-run>.

³⁶ <https://www.msn.com/en-us/news/crime/footage-shows-fatal-crash-into-baltimore-building-collapse-following-police-pursuit-of-stolen-car/ar-AA189TDg>.

1 and the pedestrian.³⁷ The pedestrian was pronounced dead at the scene, and five
2 occupants of the two cars were injured.³⁸
3

4 40. Cleveland has seen an especially high rate of Hyundai and Kia vehicle
5 thefts, has incurred costs associated with these thefts, and has been unable to abate
6 the nuisance in the absence of action by Defendants.
7

8 41. As a result of the skyrocketing rate of theft of Hyundai and Kia
9 vehicles nationwide, at least two major insurance companies are refusing to write
10 policies for certain Hyundai and Kia models in major cities including Cleveland,
11 thereby increasing the potential number of uninsured motorists on the road.³⁹
12

13 42. The amount of time spent responding to rampant thefts puts additional
14 stress on the City of Cleveland's resources. For January and February 2023, the
15 median time officers spent from the call time to clear time of a single reported
16 vehicle theft is 139 minutes, or nearly two and a half hours.⁴⁰ At the current rate of
17 calls received related to vehicle theft in 2023, the Cleveland Police Department is
18 on track to surpass the more than 2,814 vehicle theft calls it received in 2022.
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24 ³⁷ *Id.*

25 ³⁸ *Id.*

26 ³⁹ <https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-kia/index.html>; *see also* <https://www.cleveland.com/business/2023/01/progressive-state-farm-halt-new-car-insurance-policies-for-high-theft-models-of-kia-and-hyundai.html>.

⁴⁰ *See* Exh. B.

**GTMV Calls (Median) Time
From Call to Officer Clear Time**

Only GTV Calls with a Call time, Arrive Time
and Clear Time, Regardless of Disposition

1/1/2022 - 2/23/2023

By Month

	2022												2023			Total	
	1	2	3	4	5	6	7	8	9	10	11	12	Total	1	2		Total
Early 1man	137	115	126	122	118	127	133	144	127	128	134	145	132	146	140	142	134
	94	82	103	72	81	90	95	102	139	163	181	223	1425	200	125	325	1750
Early 2man	107	91	270	484	138	141	156	201	126	147	100	131	136	167	68	105	136
	11	11	4	2	13	9	16	4	15	20	16	24	145	16	7	23	168
Late 1man	140	143	139	142	113	118	145	146	129	142	130	129	134	145	129	142	135
	77	44	85	53	63	58	73	77	87	116	133	125	991	148	69	217	1208
Late 2man	88	94	124	152	142	115	145	296	94	130	125	115	124	83	119	119	124
	17	9	7	7	15	11	13	10	7	23	16	21	156	15	7	22	178
Not Patrol	125	86	63	165	160	186	156	157	96	130	120	134	125	126	101	119	121
	11	10	7	6	6	5	2	3	9	10	15	13	97	16	15	31	128
Total	135	117	132	141	123	125	142	147	124	133	130	135	132	145	127	139	133
	210	156	206	140	178	173	199	196	257	332	361	406	2814	395	223	618	3432

Lower Number = Amount of Calls

Upper Number = Minutes from Call to Clear Time

43. To date, Defendants’ responses have shown a continued prioritization of profits over safety. Both companies have refused to implement a recall to install engine immobilizers in the Susceptible Vehicles, initially only offering wheel locks for municipalities to distribute.⁴¹ Unfortunately, the wheel locks are not effective; residents who use them have still had their cars stolen, and in some instances, connected to shootings.⁴²

44. More recently, Hyundai has begun rolling out a “software update” rather than installing immobilizers.⁴³ Kia has planned a similar software update,

⁴¹ [https://www.jsonline.com/story/news/crime/2021/07/19/kia-hyundai-handing-out-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/)

⁴² <https://www.fox6now.com/news/milwaukee-womans-kia-stolen-twice.>

⁴³ <https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-theft.>

1 yet this software-only approach is too little, too late, and many susceptible vehicles
2 will not even be included in the update.⁴⁴
3

4 45. Upon information and belief, rather than install an immobilizer, the
5 software update will double the length of the theft alarm sound and add a new logic
6 check to the vehicles' on-board computers. This update is a late half-measure at
7 best and will be useless in many common scenarios such as parking and waiting
8 for a passenger to run an errand or picking up a child from after-school activities.
9 Unless the doors were recently unlocked using a key fob, the Engine Control Unit
10 will not turn on. This software-based approach is yet another example of
11 Defendants pursuing profits over safety. While less expensive than installing
12 engine immobilizers, those savings come at the expense of efficacy and usability,
13 not to mention public safety.
14
15
16

17 46. The rollout of the software update has just begun, far too late to
18 prevent the nuisance that the Susceptible Vehicles created and the expenses that
19 Cleveland has incurred and continues to incur. The update's efficacy has not been
20 tested in the real world,⁴⁵ and no one knows how many consumers will even opt in
21
22
23

24 ⁴⁴ *Id.*

25 ⁴⁵ Already, Susceptible Vehicles have been stolen after receiving the update. *See*
[https://www.reddit.com/r/Hyundai/comments/119jlts/well_it_happened_my_17_elantra_se_wa
s_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_elantra_se_was_stolen_and/?utm_source=share&utm_medium=ios_app&utm_name=iossmf). Additional
26 anecdotes suggest that the update is not reliable. *See*
[https://www.reddit.com/r/Hyundai/comments/11h0frt/alarm_tsb_computer_upgrade_my_terribl
e_experience/](https://www.reddit.com/r/Hyundai/comments/11h0frt/alarm_tsb_computer_upgrade_my_terrible_experience/).

1 to get it. But there are facial defects with this approach. Upon information and
2 belief, this update will not cover all Susceptible Vehicles—even newer models. For
3 vehicles not covered by the update, Defendants are offering nothing more than
4 wheel locks, or rebates for already purchased wheel locks.
5

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

12 “I have the update. I also have an after market remote start.
13 The remote start will set off my car alarm. You can turn
14 the alarm off, but it will beep periodically and the
15 headlights flash until you turn the vehicle off.”⁴⁶
16

17 48. Prior to this software update, Hyundai callously turned this crisis of its
18 own making into a source of revenue, selling security kits for \$170, plus the cost of
19 installation.⁴⁷ Defendants could have, and should have, initially included a fob-
20 integrated engine immobilizer, consistent with the industry standard. Even after the
21 cars were sold, Defendants could have implemented a mandatory recall. Instead,
22 Hyundai chose to make money off a crime wave it caused.
23
24
25

26 ⁴⁶https://www.reddit.com/r/kia/comments/11303m4/hyundai_and_kia_release_software_update_to/?sort=new.

1 49. By electing profits over safety and deviating from the industry
2 standard by not including engine immobilizers as a standard safety feature,
3 Defendants created and maintained a public nuisance.
4

5 **C. Measures to Prevent Vehicle Theft Have Existed for Over a**
6 **Century**

7 50. Since the dawn of gasoline-powered automobiles at the turn of the
8 nineteenth century, consumers have needed effective ways to keep their vehicles
9 from being stolen. Thus, efforts to prevent theft or unauthorized access to
10 automobiles have tracked vehicle development. In 1919, St. George Evans and E.
11 B. Birkenbeuel invented the first formation of an electric immobilizer/vehicle
12 security system.⁴⁸
13
14

15 51. Labeled the “Automobile-Theft Preventer” the purpose of Evans and
16 Birkenbeuel’s invention was relatively straightforward: “to provide a means for
17 automatically signaling an attempt to move an automobile by unauthorized
18 persons; and to provide a means for locking the electric circuit open, in which case
19 it will be impossible to move the car by its own power.”⁴⁹
20
21

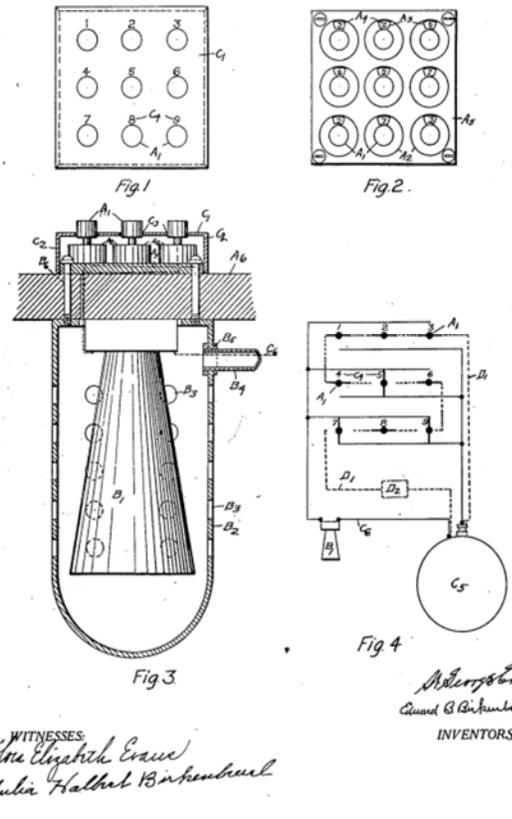
22 52. Evans and Birkenbeuel’s immobilizer/alarm system consisted of a 3x3
23 switch panel that connected to the car’s battery, horn, and ignition. Upon exiting
24 his vehicle, a driver could turn a few switches on the panel to different positions
25
26

⁴⁸ U.S. Patent No. 1,300,150 (issued Apr. 8, 1919).

⁴⁹ *Id.* at ¶¶ 14–20.

1 that, until released, would divert electricity to the horn instead of the ignition
 2 should an unauthorized user attempt to start the vehicle.
 3

4 ST. GEORGE EVANS & E. B. BIRKENBEUEL.
 5 AUTOMOBILE THEFT PREVENTER.
 APPLICATION FILED MAR. 5, 1918.
 1,300,150. Patented Apr. 8, 1919.



18
 19
 20 **Sketches for Evans & Birkenbeuel's "Automobile Theft Preventer"**

21 53. The timing of the first immobilizer patent coincided with Congress's
 22 enactment of the National Motor Vehicle Theft Act, 18 U.S.C. § 2311 *et seq.*,
 23 which made the interstate transportation of stolen vehicles a federal crime. The law
 24 passed, in part, to respond to the growing number of automobile thefts around the
 25 country, especially in midwestern cities.
 26

1 54. As time passed and technology advanced, the United States pursued
2 further efforts to promulgate vehicle safety standards.
3

4 55. In 1966, Congress passed the National Traffic and Motor Vehicle
5 Safety Act (the “Safety Act”), with the aim of administering new motor vehicle
6 and traffic safety standards.⁵⁰ Administration of the Safety Act was overseen by the
7 newly created Department of Transportation through its sub-agency: NHTSA, f/k/a
8 the National Traffic Safety Bureau.
9

10 56. Pursuant to its statutory authority under the Safety Act, NHTSA
11 promulgated numerous federal motor vehicle safety standards (“FMVSS”). Among
12 these standards, FMVSS 114⁵¹ requires minimum theft-protection standards for
13 nearly all passenger vehicles in the United States:
14
15

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

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

23 S3. *Application.* This standard applies to all passenger
24 cars, and to trucks and multipurpose passenger vehicles
25 with GVWR of 4,536 kilograms (10,000 pounds) or less.
26 . . .

 S5.1 *Theft Protection.*

⁵⁰ P.L. 89–563, 80 Stat. 718.

⁵¹ 49 C.F.R. § 571.114.

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

4 (a) The normal activation of the vehicle’s engine or
5 motor; and

6 (b) Either steering, or forward self-mobility, of the
7 vehicle, or both.

8 . . .

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

13 57. The main motivation for creating FMVSS 114 was NHTSA’s
14 recognition “that stolen cars constitute a major hazard to life and limb on the
15 highways. The evidence shows that stolen cars are far more likely to cause
16 unreasonable risk of accident, personal injury, and death than those which are
17 driven by authorized individuals.”⁵²

18 58. As early as 1966, studies showed “there were an estimated 94,000
19 stolen cars involved in accidents”—with “18,000 of these accidents result[ing] in
20 injury to one or more people.”⁵³ Accordingly, NHTSA recognized that “a reduction
21 of the incident of auto theft would make a substantial contribution to motor vehicle
22 safety” and “protect the many innocent members of the public who are killed and
23
24
25
26

⁵² 33 Fed. Reg. 83, 6471 (April 27, 1968).

⁵³ *Id.*

1 injured by stolen cars each year.”⁵⁴ To address this safety risk, which is largely tied
2 to “car thieves who could bypass the ignition lock . . . the agency decided to
3 require a device, which would prevent either self-mobility or steering even if the
4 ignition lock were bypassed.”⁵⁵

5
6 59. An engine immobilizer satisfies this requirement, “because it locks
7 out the engine control module if an attempt is made to start the vehicle without the
8 correct key or to bypass the electronic ignition system.”⁵⁶ The proposed software
9 update does not appear to satisfy this requirement—as it is not linked to an attempt
10 to start the vehicle without the correct key—and the absence of *any* system not
11 only violates this standard, it created the public nuisance of rampant car theft in
12 Cleveland.
13
14
15

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

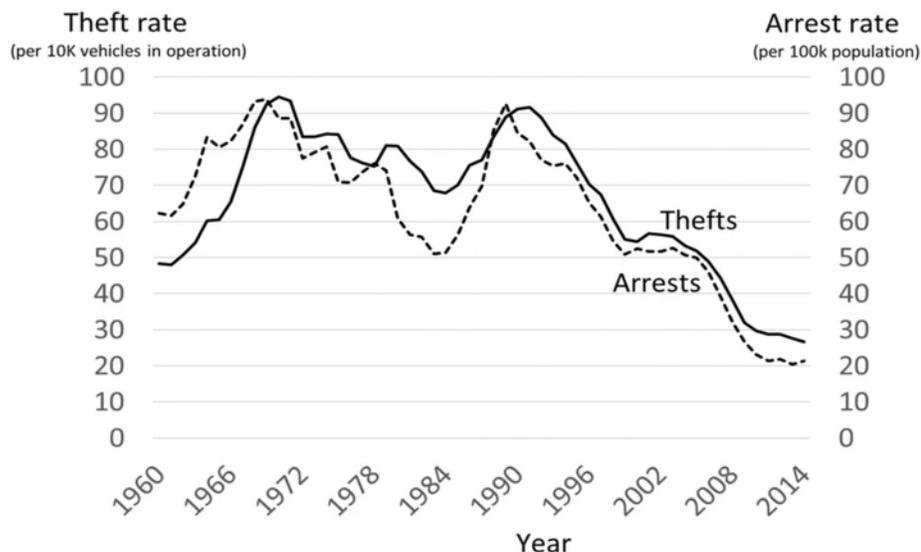
18 60. In the late 1980s and early 1990s, vehicle theft increased dramatically
19 in the United States.⁵⁷ The common method for stealing a car involved bypassing
20 the motor’s ignition switch, otherwise known as “hotwiring.”
21
22
23
24

⁵⁴ *Id.*

⁵⁵ <https://www.govinfo.gov/content/pkg/FR-2006-04-07/pdf/06-3358.pdf>; also see 33 Fed. Reg. 6,471, (Apr. 27, 1968).

⁵⁶ NHTSA Interpretation GF005229-2 (Sept. 24, 2004).

⁵⁷ 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, 1960-2014⁵⁸

61. To respond to this growing problem, manufacturers began installing passive vehicle immobilizers, which were patented no later than 1993.⁵⁹ 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.⁶⁰

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

⁵⁸ *Id.* at 2.

⁵⁹ Int’l Patent Publication No. WO 93/13968 (filed Jan. 7, 1993).

⁶⁰ *Id.*

1 63. Although the mechanism behind the vehicle immobilizer was more
2 intricate than the original 1919 invention, the overall purpose remained the same:
3 “to make the vehicle more difficult to steal.”⁶¹
4

5 64. The invention proved successful and, less than five years later, the
6 European Union mandated that all new passenger cars from 1998 onward be
7 equipped with an electronic engine immobilizer.⁶² Similar mandates soon followed
8 in Australia, New Zealand, and Canada.
9

10 65. As engine immobilizers became the industry-standard among
11 manufacturers, at least one study in the Netherlands suggested that immobilizers
12 “lowered the overall rate of car theft on average by about 40 percent during
13 1995-2008.”⁶³
14
15

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

17 66. At the turn of the 21st century, automatic engine immobilizers were
18 considered quintessential anti-theft technology by the majority of car
19 manufacturers in America, with the exception of Hyundai and Kia.
20

21 67. Studies by the Highway Loss Data Institute (“HLDI”) showed “that
22 vehicle theft losses decreased significantly after factory-installed passive
23

24 ⁶¹ *Id.*

25 ⁶² Commission Directive No. 95/96/EC, 1995 O.J. (L286) 1, (amending Council Directive
26 74/61/EEC to require the installation of immobilizers and alarm systems in motor vehicles
beginning in October 1998).

⁶³ 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 immobilizing antitheft devices were introduced.”⁶⁴ Specifically, HLDI studies
2 between 1996 and 2013 all showed decreases in theft losses for vehicles with
3 engine immobilizers studied in those years, including General Motors, BMW,
4 Ford, and Nissan.⁶⁵ A 2013 HLDI study “found that thieves were sometimes
5 targeting the older model years of a vehicle series without immobilizers, such as
6 the Honda Civic and Honda Accord.”⁶⁶
7
8

9 68. Despite decades of research and findings that immobilizers
10 significantly reduced vehicle theft and the consequential public safety risks, “only
11 26 percent of Hyundai and Kia” 2015 vehicle models had “passive immobilizers as
12 standard equipment, compared with 96 percent of other manufacturers.”⁶⁷
13
14

15 69. The staggeringly low percentage of Hyundai and Kia vehicles with
16 immobilizers is especially concerning given that, during this same time period,
17 Defendants were installing immobilizers in 100% of their models for sale in
18 European and Canadian markets, in compliance with applicable laws there.⁶⁸
19
20
21

22 ⁶⁴ “Hyundai and Kia theft losses”, 38 HLDI BULLETIN 28 (December 2021), available at:
23 [https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-
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).

24 ⁶⁵ *Id.*

25 ⁶⁶ *Id.*

26 ⁶⁷ *Id.*

⁶⁸ Hyundai first began exporting its cars to parts of Europe, the United Kingdom, and Canada between 1978 and 1984. “Over 50 years of progress: the history of Hyundai” Press Release, 04.06.2019, available at <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.

1 70. Nor are Defendants unfamiliar with the benefits of installing
2 immobilizers in the American market. In March 2007, Hyundai requested an
3 exemption from particular NHTSA vehicle theft prevention standards for its 2008
4 Hyundai Azera line “based on the installation of an antitheft device” for the vehicle
5 line that would be “at least as effective as th[e] GM and Ford [immobilizer]
6 devices” in reducing vehicle theft.⁶⁹ Yet, until the last year or so, Hyundai and Kia
7 only offered immobilizers in their premium, more expensive, model lines. This
8 decision only compounds the harms on low-income communities.⁷⁰ Those without
9 resources to afford such models are more likely to live in areas with higher crime
10 rates and are likely less able to pay for alternative transportation or for the cost of
11 repairing a recovered vehicle.
12
13
14
15

16 71. Based on the above, Defendants’ decision not to install the simple and
17 highly effective immobilizer in the Susceptible Vehicles between 2011 and 2021,
18 in contrast to all other car manufacturers having installed immobilizers in 96% of
19 their vehicles, has led to a reasonably foreseeable car theft epidemic that is
20 plaguing Cleveland.
21
22

23 ⁶⁹ 72 Fed. Reg. 138, 39,662 (July 19, 2007); *see also* 75 Fed. Reg. 1,447 (NHTSA notice
24 granting an identical exemption for the Kia Amanti vehicle line beginning in model year 2009
25 based on Defendant Kia’s representation that the immobilizer installation for that specific
26 model should substantially reduce theft rates).

⁷⁰ <https://fortune.com/2022/09/22/hyundai-kia-cars-stealing-hack-thieves/> (HLDI Senior VP Matt Moore notes that “Many of the vulnerable Hyundais and Kias are often bought by lower-income people” because those cars “are relatively inexpensive vehicles when purchased new[.]”).

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V. CAUSES OF ACTION

COUNT ONE — COMMON LAW ABSOLUTE PUBLIC NUISANCE

72. The City incorporates each preceding paragraph as though set forth fully herein.

73. A “public nuisance” is an unreasonable interference with a right common to the general public, including the rights to public health and public safety.

74. Defendants’ conduct constitutes a public nuisance and, if unabated, will continue to threaten the safety, welfare, peace, comfort, and sense of security of the City and its residents. *See* Restatement (Second) of Torts § 821B.

75. Defendants have created and maintained a public nuisance by manufacturing and distributing automobiles that are dangerously susceptible to theft, thus interfering with the public safety, health, and welfare in Cleveland. Cleveland and its residents have a common right to be free from such conduct and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property.

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

1 77. Further, Defendants’ conduct substantially interferes with the public’s
2 right to safe and reasonable access to public thoroughfares. Defendants’ conduct has
3 created an unlawful obstruction or impediment to the flow of municipal transit
4 vehicles and public traffic.
5

6 78. The public nuisance is an *absolute* public nuisance because
7 Defendants’ nuisance creating conduct was intentional and violated FMVSS 114,
8 which established specific legal requirements for the protection of others.
9

10 79. FMVSS 114 requires automobiles to have a starting system which,
11 whenever the key is removed from the starting system prevents “[e]ither steering, or
12 forward self-mobility, of the vehicle, or both” and for vehicles to be designed “such
13 that the transmission or gear selection control cannot move from the ‘park’ position,
14 unless the key is in the starting system.”
15

16 80. As alleged above, nearly all cars in the United States satisfy FMVSS
17 114 through the installation of an engine immobilizer. Defendants’ failure to include
18 an engine immobilizer, or a substitute system capable of satisfying FMVSS 114,
19 violates that law.
20

21 81. Defendants know that their conduct has caused an increase in vehicle
22 theft that has had and will continue to have a detrimental effect on the public welfare,
23 safety, peace, comfort, and convenience of Cleveland and Cleveland’s residents.
24
25
26

1 82. Defendants had initial control over the manufacturing of the
2 Susceptible Vehicles and their shipping of automobiles to Cleveland. Defendants
3 continued to maintain control over the conduct through the ability, and failure, to
4 implement a recall to remediate the susceptibility.
5

6 83. It was reasonably foreseeable that Defendants' actions and omissions
7 would result in the public nuisance and harm to Cleveland.
8

9 84. Based on Defendants' intentional and unreasonable actions and their
10 special position in understanding the decades of literature supporting the deterrent
11 effects of engine immobilizers, without Defendants' actions, vehicle theft in
12 Cleveland would not have become so widespread, and the enormous public safety
13 issues that now exist would have been averted.
14
15

16 85. The public nuisance created by Defendants' actions is substantial and
17 unreasonable. Defendants' actions have caused and continue to cause significant
18 harms to Cleveland and Cleveland's community. The harm inflicted outweighs any
19 offsetting benefit.
20

21 86. As a direct and proximate result of Defendants' conduct, Cleveland has
22 suffered and will continue to suffer economic damages, including significant
23 expenditures for police, emergency, health, prosecutions, corrections, youth
24 rehabilitative services, and other services.
25
26

1 87. As a direct and proximate result of Defendants' tortious conduct,
2 Cleveland has suffered and will continue to suffer stigma damage and damage to its
3 proprietary interests, including reduced tax revenues attributable to property value
4 declines caused by increases in property crime rates and stigma damage.
5

6 88. The nuisance created by Defendants' conduct is abatable.
7

8 89. Defendants' conduct has affected and continues to affect Cleveland's
9 community, and Cleveland will continue to incur economic losses until the nuisance
10 is abated.
11

12 90. Defendants knew or had reason to know that their conduct would create
13 a public nuisance. Defendants knew or had reason to know that their conduct was
14 interfering with the public right to public safety and/or that the interference with
15 public safety caused by easier vehicle theft was substantially certain to result from
16 their conduct. Defendants knew or had reason to know that the installation of engine
17 immobilizers successfully decreased the rate of car theft by as much as 40%.
18
19

20 91. Each Defendant is liable for creating the public nuisance because the
21 intentional and unreasonable and/or unlawful conduct of each Defendant was a
22 substantial factor in producing the public nuisance and harm to Cleveland.
23

24 92. By intentionally foregoing the installation of engine immobilizers in the
25 Susceptible Vehicles, Defendants directly facilitated the rapid increase in vehicle
26 theft and, with it, the public nuisance affecting Cleveland.

1 93. Hyundai and Kia could have avoided all this by installing engine
2 immobilizers at the time of manufacture for as little as \$200 per device.
3

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

10 95. Cleveland has incurred expenditures for special programs over and
11 above its ordinary public services.
12

13 96. Cleveland has suffered, and will continue to suffer, unique harms as
14 described above, which are different in kind and degree to the harms suffered by
15 Ohio citizens at large. These are harms that can only be suffered by Cleveland.
16

17 97. Cleveland requests an order providing for abatement of the public
18 nuisance that Defendants have created or assisted in the creation of; for
19 compensation for the economic loss suffered as a result of that nuisance; and
20 injunctive relief. Cleveland does not seek damages for death, physical injury to
21 person, emotional distress, or physical damage to property.
22
23

24 **COUNT TWO — COMMON LAW QUALIFIED PUBLIC NUISANCE**

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

1 99. Defendants have created and maintained a public nuisance by
2 manufacturing and distributing automobiles that are dangerously susceptible to theft,
3 thus interfering with the public health, welfare, and safety in Cleveland. Cleveland
4 and its residents have a common right to be free from such conduct and to be free
5 from conduct that creates a disturbance and reasonable apprehension of danger to
6 person and property.
7

8
9 100. The public nuisance is a *qualified* public nuisance because Defendants
10 negligently engaged in conduct or omissions which endanger or injure the health,
11 safety, or comfort of the public in Cleveland.
12

13 101. Defendants had a duty to exercise ordinary care and/or reasonable
14 care in the design, research, development, manufacture, testing, sale, and
15 distribution of their vehicles into the stream of commerce, including a duty to
16 exercise care to assure that the vehicles were safe and equipped with industry-
17 standard anti-theft measures.
18

19
20 102. At all times relevant to this litigation, Defendants knew or, in the
21 exercise of reasonable care, should have known of the hazards and dangers of
22 foregoing installation of engine immobilizers in the Susceptible Vehicles and
23 specifically, the increased risk of vehicle theft and public harm.
24

25 103. Accordingly, at all times relevant to this litigation, Defendants knew
26 or, in the exercise of reasonable care, should have known that the omission of an

1 engine immobilizer in the Susceptible Vehicles could cause Cleveland's injuries
2 and thus created a dangerous and unreasonable risk of injury to Cleveland.
3

4 104. As such, Defendants, by action and inaction, representation and
5 omission, breached their duty and failed to exercise reasonable care, and failed to
6 act as a reasonably prudent person and/or company would act under the same
7
8 circumstances in the design, research, development, manufacture, testing, sale, and
9 distribution of their vehicles, in that Defendants manufactured and produced
10 vehicles that fell below minimum, industry-standard security measures.
11

12 105. Each Defendant is liable for creating the public nuisance because the
13 intentional and unreasonable and/or unlawful conduct of each Defendant was a
14 substantial factor in producing the public nuisance and harm to Cleveland.
15

16 106. As a proximate result of Defendants' wrongful acts and omissions,
17 Cleveland has incurred economic damages, including significant expenditures for
18 police, emergency, health, prosecutions, corrections, youth rehabilitative services,
19 and other services. The City does not seek damages for death, physical injury to
20 person, emotional distress, or physical damage to property.
21

22 **COUNT THREE — NEGLIGENCE**
23

24 107. The City of Cleveland incorporates each preceding paragraph as
25 though set forth fully herein.
26

1 108. At all times relevant to this litigation, Defendants had a duty to act as
2 a reasonably careful person would act under the circumstances in the design,
3 research, manufacture, sale, and distribution of Defendants' products, including the
4 duty to take all reasonable steps necessary to prevent the manufacture and/or sale
5 of a product that was so unreasonably capable of being engine-activated and
6 operated without a key in the starting system.
7

8
9 109. Defendants owed Cleveland a duty to not expose the City to an
10 unreasonable risk of harm.
11

12 110. Defendants' duties were preexisting.

13 111. At all times relevant to this litigation, Defendants knew or, in the
14 exercise of reasonable care, should have known of the hazards and dangers of
15 foregoing installation of engine immobilizers in the Susceptible Vehicles and
16 specifically, the increased risk of vehicle theft and public harm.
17

18 112. Accordingly, at all times relevant to this litigation, Defendants knew
19 or, in the exercise of reasonable care, should have known that the omission of an
20 engine immobilizer in the Susceptible Vehicles could cause Cleveland's injuries
21 and thus created a dangerous and unreasonable risk of injury to Cleveland.
22

23 113. As such, Defendants, by action and inaction, representation and
24 omission, breached their duty and failed to exercise reasonable care, and failed to
25 act as a reasonably prudent person and/or company would act under the same
26

1 circumstances in the design, research, development, manufacture, testing, sale, and
2 distribution of their vehicles, in that Defendants manufactured and produced
3 vehicles that fell below minimum, industry-standard security measures.
4

5 114. Defendants are in control of the design, research, manufacture,
6 testing, and distribution of the vehicles they distributed to authorized dealerships in
7 Cleveland.
8

9 115. Defendants knew and/or should have known that it was foreseeable
10 that Cleveland would suffer injuries as a result of Defendants' failure to exercise
11 reasonable care in the manufacturing and sale of Defendants' vehicles, particularly
12 given Defendants' recognition as early as 2007 that engine immobilizers were an
13 effective deterrent in preventing vehicle theft.
14
15

16 116. Defendants were negligent in failing to monitor and guard against
17 third-party misconduct and enabled such misconduct.
18

19 117. Defendants acted unreasonably in light of what conduct could be
20 foreseen as a result of their conduct and Defendants' negligence helped to and did
21 produce, and was a factual and proximate cause, of the economic losses that
22 Cleveland has suffered, and will continue to suffer.
23

24 118. Defendants' acts and omissions imposed an unreasonable risk of harm
25 to others separately and/or combined with the negligent and/or criminal acts of
26 third parties.

1 119. Cleveland's injuries, harms, and economic losses would not have
2 occurred absent Defendants' negligent conduct as described herein.
3

4 120. As a proximate result of Defendants' wrongful acts and omissions,
5 Cleveland has been injured and suffered economic damages and will continue to
6 incur expenses in the future, as described herein, including but not limited to
7
8 expending, diverting, and increasing resources to address the consequences of
9 Defendants' conduct in Cleveland's community.
10

11 121. Defendants engaged in conduct, as described above, that constituted
12 reckless disregard of Cleveland's rights, being fully aware of the probable
13 dangerous consequences of the conduct and deliberately failing to avoid those
14 consequences.
15

16 122. Defendants' conduct, constituting reckless disregard of Cleveland's
17 rights, was committed and/or authorized by one or more officers, directors, or
18 managing agents of Defendants, who acted on behalf of Defendants. Additionally,
19 or in the alternative, one or more officers, directors or managing agents of
20 Defendants knew of the conduct constituting reckless disregard of Cleveland's
21 rights and adopted or approved that conduct after it occurred.; and/or
22
23

24 123. Defendants' conduct alleged in this case does not concern a discrete
25 event or discrete emergency of the sort a political subdivision would reasonably
26 expect to occur and is not part of the normal and expected costs of a local

1 government's existence. Cleveland alleges wrongful acts which are neither discrete
2 nor of the sort a local government can reasonably expect occur.
3

4 124. Cleveland has incurred expenditures for special programs over and
5 above its ordinary public services.

6 125. Cleveland has suffered an indivisible injury as a result of the tortious
7 conduct of Defendants.
8

9 126. The tortious conduct of each Defendant was a substantial factor in
10 producing harm to Plaintiff.
11

12 127. Defendants made conscious decisions not to warn or inform the
13 unsuspecting public, including Cleveland's community or Cleveland. Defendants'
14 willful, knowing, and reckless conduct, constituting reckless disregard of
15 Cleveland's rights, including the right to public safety, therefore warrants an award
16 of aggravated or punitive damages.
17

18 128. Cleveland is without fault, and injuries to the City and its residents
19 would not have occurred in the ordinary course of events had Defendants used due
20 care commensurate to the dangers involved in the manufacture and distribution of
21 their vehicles.
22

23 129. Cleveland asserts this Cause of Action as a common law tort claim for
24 negligence and not as a "product liability claim" as defined in R.C. § 2307.71.
25

26 Plaintiff does not seek damages for death, physical injury to person, emotional

1 distress, or physical damage to property, as defined under the Ohio Product
2 Liability Act.
3

4 **VI. PRAYER FOR RELIEF**

5 130. Entering an Order that the conduct alleged herein constitutes a public
6 nuisance under Ohio law;
7

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

9 132. 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

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

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

15 135. Awarding actual and compensatory damages;

16 136. Awarding reasonable attorneys' fees and costs of suit;

17 137. Awarding pre-judgment and post-judgment interest; and
18

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

22 **VII. JURY TRIAL DEMANDED**

23 139. Plaintiff hereby demands a trial by jury.
24
25
26

1 RESPECTFULLY SUBMITTED this 7th day of March, 2023.

2 CITY OF CLEVELAND

3 By Counsel

4 Mark D. Griffin (*pro hac vice forthcoming*)
5 Chief Legal Officer

6 By /s/ Elena N. Boop

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19 By /s/ Dean Kawamoto

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22 *forthcoming*)

23 Derek W. Loeser (*pro hac vice forthcoming*)

24 Ryan McDevitt (*pro hac vice forthcoming*)

25 Alison S. Gaffney (*pro hac vice forthcoming*)

26 Felicia J. Craick (*pro hac vice forthcoming*)

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