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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 **Amanda Sue Sellers, Nadine Quate**  
11 **Francis, Thomas Benton Harang, Jr.,**  
12 **and Ian Michael Scott**, individually and on  
13 behalf of all others similarly situated,

14 *Plaintiffs,*

15 v.

16 **Kia America, Inc., Hyundai Motor**  
17 **America, Hyundai America Technical**  
18 **Center, Inc.,**

19 *Defendants.*

**Civil Action No. 8:22-cv-2065**  
**CLASS ACTION COMPLAINT**  
**DEMAND FOR JURY TRIAL**

20 Plaintiffs Amanda Sue Sellers, Nadine Quate Francis, Thomas Benton Harang, Jr.,  
21 and Ian Michael Scott (collectively, “Plaintiffs”), individually and on behalf of all those  
22 similarly situated, bring this complaint against Defendants Kia America, Inc., Hyundai  
23 Motor America, and Hyundai America Technical Center, Inc. (collectively, “Defendants”),  
24 based upon their personal knowledge as to facts specific to them and based upon the  
25 investigation of counsel, as follows:  
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**I. NATURE OF THIS ACTION**

1. Plaintiffs bring this proposed class action for damages and injunctive relief on behalf of themselves and all others nationwide who purchased or leased vehicles manufactured by Defendants (hereinafter “Class Vehicles”)<sup>1</sup> that have been stolen and/or suffered reduced economic value due to a series of defects in the vehicles that make them prone to theft.

2. The vehicles at issue suffer from several design flaws that make them easy to steal in less than ninety seconds. The most serious design flaw is the lack of engine immobilizers in the vehicles. Engine immobilizers are simple anti-theft devices that prevent vehicles from starting unless a verified code is received by a transponder module that controls the engine. Immobilizers cost manufacturers only approximately \$50 per vehicle, yet, unlike other car manufacturers, Defendants herein chose to stop including immobilizers in their vehicles years ago.<sup>2</sup>

3. As a result of these defects, the theft of Class Vehicles has skyrocketed compared to vehicles manufactured by other companies. Viral videos on TikTok and YouTube give step-by-step instructions on how to steal Class Vehicles without a key. In fact, the “Kia Challenge,” widely shared on social media platforms, dares people to break in and use a USB cord to start the cars. The videos show teens and young adults going for joy rides and, in some cases, abandoning or crashing the cars.

4. Defendants have long known or should have known of these defects from multiple sources, yet only acknowledged the defects in recent months. Defendants have still

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<sup>1</sup> Upon information and belief, the Class Vehicles at issue include 2011–2022 Kia vehicles and 2015–2022 Hyundai vehicles.

<sup>2</sup> Other defects include windows without alarms that can be easily knocked off their frames, steering columns without adequate security casings, ignition lock cylinders that can be easily removed, and exposed ignition switches that can be easily started with pliers or USB connectors.

1 failed to issue a safety recall, provide warranty coverage, or otherwise attempt to remedy the  
2 defects.

3 5. As a result, Plaintiffs and Class members have incurred damages, including,  
4 but not limited to, loss of value, loss of use of their vehicles, repair costs, and increased  
5 insurance premiums.

6 6. Plaintiffs bring this action to redress Defendants’ ongoing misconduct.  
7 Plaintiffs seek an adequate remedy for the defects, recovery of damages, repair under state  
8 consumer-protection statutes and implied warranties, and reimbursement of all expenses  
9 incurred that were caused by the defects.

10 **II. JURISDICTION AND VENUE**

11 7. This Court has subject matter jurisdiction over this action under  
12 28 U.S.C. § 1332(d)(2), as amended by the Class Action Fairness Act of 2005, because the  
13 amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and because this  
14 is a class action in which the Class members and Defendants are citizens of different states.  
15 This Court also has supplemental jurisdiction over the state law claims pursuant to 28  
16 U.S.C. § 1367.

17 8. Venue is proper in this judicial district under 28 U.S.C. § 1391 because  
18 Defendants transact substantial business in this district and because Hyundai Motor  
19 America and Kia America, Inc. are headquartered in this district. A substantial part of the  
20 events and/or omissions giving rise to the claims occurred, in part, within this district.

21 **III. PARTIES**

22 **A. Plaintiffs**

23 9. Plaintiff Amanda Sue Sellers is an Illinois citizen who lives and resides in  
24 Peoria, Illinois. Plaintiff Sellers purchased a Hyundai Veloster Base Model in 2018. Plaintiff  
25 Sellers’ factual allegations are set forth in Section V below.  
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1 10. Plaintiff Nadine Quate Francis is a Virginia citizen who lives and resides in  
2 Henrico, Virginia. Plaintiff Francis purchased a Kia Forte in August 2019. Plaintiff Francis’s  
3 factual allegations are set forth in Section V below.

4 11. Thomas Benton Harang, Jr. is a Louisiana citizen who lives and resides in New  
5 Orleans, Louisiana. Plaintiff Harang purchased a Hyundai Elantra in March 2019. Plaintiff  
6 Harang’s factual allegations are set forth in Section V below.

7 12. Ian Michael Scott is a Louisiana citizen who lives and resides in New Orleans,  
8 Louisiana. Plaintiff Scott purchased a Hyundai Sonata in December 2020. Plaintiff Scott’s  
9 factual allegations are set forth in Section V below.

10 **B. Defendants**

11 13. Defendant Kia America, Inc. is a California corporation with its principal  
12 place of business in Irvine, California.

13 14. Defendant Hyundai Motor America is a California corporation with its  
14 principal place of business in Fountain Valley, California.

15 15. Hyundai was incorporated in 1986 by its Korean parent entity, Hyundai Motor  
16 Company (“HMC”), as the latter’s first venture into the American market. When it first  
17 arrived on American soil, Hyundai sold a single model car to its new consumers: the  
18 Hyundai Excel.

19 16. Kia Motors America, Inc. was incorporated in 1992 as the American sales,  
20 marketing, and distribution arm of its parent corporation, Kia Motor Corporation  
21 (“KMC”), a Korean-based auto manufacturer. Kia Motors America, Inc. changed its name  
22 to Kia America, Inc. in 2021.

23 17. KMC filed for bankruptcy during the 1997 Asian financial crisis, and the  
24 following year it reached an agreement with HMC for the latter to acquire a 51% ownership  
25 interest in the company.

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1 18. HMC remains the majority shareholder of KMC, with its ownership stake now  
2 standing at approximately one-third of the company.

3 19. Hyundai began manufacturing vehicles in the United States in 2002, when it  
4 opened a manufacturing plant located in Montgomery, Alabama, where the company  
5 assembles a number of models, such as the Hyundai Sonata, Elantra, and Santa Fe.

6 20. Kia began manufacturing vehicles in the United States in 2010 at a  
7 manufacturing facility in West Point, Georgia, where it manufactures several of the  
8 company’s most popular models, including the Kia Optima, Sorento, and Telluride.

9 21. Hyundai America Technical Center, Inc. (“HATCI”) is the design,  
10 engineering, and development center for all Kia and Hyundai vehicles sold in the North  
11 American market.<sup>3</sup>

12 22. Because HATCI serves as the technological arm of Kia and Hyundai’s  
13 Korean-based parent corporations, virtually all Kia and Hyundai vehicles sold in the United  
14 States, including the Class Vehicles, feature the same or similar design elements throughout  
15 their respective product lines.

16 23. HATCI also serves as an “authorized representative” of both HMC and KMC  
17 in North America to ensure these manufacturers’ compliance with the National Traffic and  
18 Motor Vehicle Safety Act (the “Safety Act”); in this capacity, HATCI regularly interacts  
19 with the National Highway Traffic Safety Administration (“NHTSA”) to ensure compliance  
20 with the administration’s regulatory mandates.

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<sup>3</sup> See *About Us*, <https://hatci.com/about/> (“HATCI HQ is the nucleus for designing, planning and overall development of Hyundai and KIA vehicles tailored for the North American market.”) (last visited Sept. 14, 2022); *Our Capabilities*, <https://hatci.com/services/> (last visited Sept. 14, 2022).

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1 24. Hyundai, in conjunction with HATCI, is responsible for the manufacture,  
2 design, distribution, service, and repair of the company’s vehicles that are sold to its  
3 American consumers.

4 25. Kia, in conjunction with HATCI, is responsible for the manufacture, design,  
5 distribution, service, and repair of the company’s vehicles that are sold to its American  
6 consumers.

7 **IV. FACTUAL ALLEGATIONS**

8 **A. Auto theft is a safety risk.**

9 26. In 1966, Congress enacted the Safety Act to empower the federal government  
10 to set and administer new safety standards for motor vehicles and road traffic safety.

11 27. The Safety Act created a new federal agency, the U.S. Department of  
12 Transportation (“DOT”), and various subsidiary administrative agencies, including  
13 NHTSA, an organization whose mission is “to save lives, prevent injuries, and reduce  
14 economic costs due to road traffic crashes, through education research, safety standards,  
15 and enforcement.”<sup>4</sup>

16 28. Pursuant to its authority under the Safety Act, NHTSA has promulgated  
17 numerous Federal Motor Vehicle Safety Standards (“Safety Standards” or “FMVSS”), *see* 49  
18 C.F.R. § 571.101 *et seq.*, which the Safety Act defines as the “minimum standard for motor  
19 vehicle or motor vehicle equipment performance.”<sup>5</sup>  
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25 <sup>4</sup> *Working at NHTSA*, <https://www.nhtsa.gov/about-nhtsa/working-nhtsa> (last visited Oct. 31,  
26 2022).

27 <sup>5</sup> 49 U.S.C. § 30102(a)(10).

1           29. One of the Safety Standards that NHTSA enacted is FMVSS 114, which  
2 decreed minimum theft-protection standards that virtually all passenger vehicles in the  
3 United States are required to follow.<sup>6</sup>

4           30. FMVSS 114 was promulgated in April 1968. The Administrator’s comments  
5 supporting the need for this Safety Standard explain that “stolen cars constitute a major  
6 hazard to life and limb on the highways.”<sup>7</sup>

7           31. In reaching this conclusion, the Administrator summarized a body of  
8 evidence, which demonstrated that “cars operated by unauthorized persons are far more  
9 likely to cause unreasonable risk of accident, personal injury, and death than those which are  
10 driven by authorized individuals.”<sup>8</sup>

11           32. Indeed, after further explaining the findings of a Department of Justice study  
12 (the “1968 DOJ Study”) about the increased safety risk stolen vehicles pose, the  
13 Administrator explained that “the approximate [accident] rate for stolen cars would be  
14 some 200 times the normal accident rate for other vehicles.”<sup>9</sup>

15           33. Given the increased safety risk posed by the unauthorized use of motor  
16 vehicles, the Administrator “reject[ed] those comments on the proposed standard which  
17 questioned its validity on the ground that [FMVSS 114 was] not related to improving motor  
18 vehicle safety.”<sup>10</sup>

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24 <sup>6</sup> See 49 C.F.R. § 571.114 (“Theft protection and rollaway prevention.”).

25 <sup>7</sup> 33 Fed. Reg. 6,471 (Apr. 27, 1968).

26 <sup>8</sup> Id.

27 <sup>9</sup> Id.

28 <sup>10</sup> Id.

1 34. FMVSS 114 thus sought to curb the ease with which vehicles could be stolen  
2 by promulgating minimum standards that required “each car [ ] be equipped with a device  
3 to remind drivers to remove the key when leaving the car.”<sup>11</sup>

4 35. Certain comments rejected the utility of this proposed Safety Standard,  
5 contending that “since any locking system, no matter how it is constructed, can be defeated  
6 by persons possessing sufficient skill, equipment, and tenacity, provisions for ensuring  
7 removal of ignition keys would be futile because a thief need not make use of a key.”<sup>12</sup>

8 36. The Administrator rejected these contentions, however, by again relying on  
9 the 1968 DOJ Study, which concluded that “the large majority of car thieves are amateurs,  
10 almost half of whom are engaged in so-called ‘joy-riding.’”<sup>13</sup> This evidence, the  
11 Administrator explained, “shows that a high proportion of these thieves, most of whom are  
12 juveniles, start the cars’ engines simply by using the key which has been left in the ignition  
13 lock.”<sup>14</sup>

14 37. Thus, FMVSS 114 also required manufacturers to use “[a] large number of  
15 locking-system combinations” for the keys on each vehicle’s model line as well as “a  
16 steering or self-mobility lock.”<sup>15</sup> All told, the first iteration of FMVSS 114 read in pertinent  
17 part as follows:

18 S.4 *Requirements.*

19 S4.1 Each passenger car shall have a key-locking system that, whenever the key  
20 is removed, will prevent—

- 21 (a) Normal activation of the car’s engine or other main source of  
22 motive power; and
- (b) Either steering or self-mobility of the car, or both.

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24 <sup>11</sup> Id.

25 <sup>12</sup> Id.

26 <sup>13</sup> Id.

27 <sup>14</sup> Id.

<sup>15</sup> Id.



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S4.2 The prime means for deactivating the car’s engine or other main source of motive power shall not activate the deterrent required by S4.1(b).

S4.3 The number of different combinations of the key locking systems required by S4.1 of each manufacturer shall be at least 1,000, or a number equal to the number of passenger cars manufactured by such manufacturer, whichever is less.

S4.4 A warning to the driver shall be activated when the key required by S4.1 has been left in the locking system and the driver’s door is opened.<sup>16</sup>

38. Although FMVSS 114 has been updated to “better correlate[ ] to modern theft protection technology and reflect[ ] the agency’s interpretation of existing requirements[,]” it has not substantively changed the minimum performance requirements for antitheft equipment. Specifically, “the standard [seeks] to ensure that [a] vehicle could not be easily operated without the key, and that the vehicle operator would not forget to remove the key from the ignition system upon exiting the vehicle.”<sup>17</sup>

39. In other words, FMVSS 114 was promulgated to prevent easy cases of auto-theft, whereby unsophisticated car thieves can easily steal vehicles because either the keys are left in the vehicle’s ignition or, as is this case with the Class Vehicles, the vehicle could be easily operated without the key.

40. In its current form, FMVSS 114 requires manufacturers, including Kia and Hyundai, to outfit their vehicle lines according to the following specifications:

S4. Definitions.

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Key means a physical device or an electronic code which, when inserted into the starting system (by physical or electronic means), enables the vehicle operator to activate the engine or motor.

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<sup>16</sup> *Id.* at 6,472 (emphasis in original).

<sup>17</sup> *See* 71 Fed. Reg. 17,752, 17,753 (Apr. 7, 2006).

1 Starting system means the vehicle system used in conjunction with the key to  
2 activate the engine or motor.

3 ...

4 S5.1 Theft protection.

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

- 7 (a) The normal activation of the vehicle’s engine or motor; and
- 8 (b) Either steering, or forward self-mobility, of the vehicle, or both.<sup>18</sup>

9 41. Apart from its promulgation of FMVSS 114, NHTSA oversees other  
10 regulatory schemes to identify and combat vehicle theft in the United States, including the  
11 motor vehicle theft prevention standard, *see* 49 C.F.R. § 541.1 *et seq.*, as promulgated  
12 pursuant to its authority under the Motor Vehicle Theft Act of 1984 (the “Theft Act”),  
13 which was engrafted onto the Safety Act.<sup>19</sup>

14 42. Pursuant to the theft prevention standard, NHTSA ensures that auto  
15 manufacturers comply with the “parts–marking requirement” (“PMR”): where auto  
16 manufacturers mark major parts of passenger vehicles with non-removable labels that make  
17 these parts identifiable if stolen.<sup>20</sup> The PMR is another regulatory scheme to combat auto  
18 theft; not only do marked auto parts facilitate their tracing and recovery, but they also serve  
19 as evidence used to prosecute thieves, dealers, and chop shops connected with vehicle  
20 theft.<sup>21</sup>

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25 <sup>18</sup> 49 C.F.R. § 571.114.  
26 <sup>19</sup> *See* 69 Fed. Reg. 17,960 (Apr. 6, 2004).  
27 <sup>20</sup> *Id.*  
<sup>21</sup> *Id.* at 17,961.

1 43. Auto manufacturers can be exempt from complying with the PMR if a  
2 manufacturer installs an antitheft device as standard equipment on a given vehicle line  
3 which NHTSA determines to be at least as effective as the PMR.<sup>22</sup>

4 44. Historically, NHTSA has also published annual compilations concerning rates  
5 and trends of auto theft; in connection with compiling this data, NHTSA regularly sought  
6 comment from auto manufacturers and other interested parties regarding auto theft  
7 trends.<sup>23</sup> NHTSA's annual reports are based on information it receives from the National  
8 Crime Information Center ("NCIC"), a division of the Federal Bureau of Investigation.<sup>24</sup>

9 45. In connection with fulfilling its administrative mandate under both the Safety  
10 Act and the Theft Act, NHTSA regularly interacts with, seeks comment from, and shares  
11 information with, automotive manufacturers and their authorized representatives, including  
12 Defendants.

13 **B. Kia and Hyundai tout themselves as innovative car companies committed to**  
14 **keeping their customers safe.**

15 46. Kia and Hyundai have become a growing force in the U.S. auto market by  
16 positioning themselves as providing an incredible value proposition to U.S. consumers.  
17 They offer various lines of vehicles at cheaper prices than their competitors and claim they  
18 are nonetheless loaded with standard features and innovative design and backed by  
19 industry-leading warranties.

20 47. The brands have also staked their reputation to a critical consideration that  
21 virtually every automotive consumer holds dear: vehicle safety.

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25 <sup>22</sup> *Id.*; see also 49 C.F.R. § 543.1 *et seq.*

26 <sup>23</sup> See, e.g., 75 Fed. Reg. 11,005, 11,006 (Mar. 10, 2010).

27 <sup>24</sup> *Id.* at 11,006.

1 48. According to its website, for example, Kia works “tirelessly to ensure [its]  
2 vehicle safety features are designed to help [its] drivers handle or avoid the unexpected.”<sup>25</sup>

3 49. Similarly, in a March 2021 interview, Kia’s CEO stated that “[w]hile [Kia]  
4 continue[s] to raise the bar in terms of design, value, and technology, safety is always at the  
5 forefront.”<sup>26</sup>

6 50. Kia’s various brochures for its 2020 lineup echo its CEO’s sentiments,  
7 claiming that “[a]t Kia, the priority is always on improving all aspects of safety ... we never  
8 stop working to increase your protection.”<sup>27</sup>

9 51. Indeed, the company credits the success of its brand to its “design innovation,  
10 quality, value, advanced safety features, and new technologies.”<sup>28</sup>

11 52. In short, for more than a decade, Kia’s marketing and advertising materials—  
12 that it disseminates through various media to consumers in connection with promoting the  
13 sales of its vehicles—have consistently reiterated its ostensible commitment to innovative  
14 design, customer safety, and its stellar warranty program.

15 53. Similar to its corporate cousin, Hyundai claims that its customers are always at  
16 the forefront of the company’s thoughts. According to Hyundai, its customers are “at the  
17 heart of everything” the company does.<sup>29</sup>

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20 <sup>25</sup> *Why Kia*, <https://www.kia.com/us/en/why-kia> (last visited Sept. 14, 2022).

21 <sup>26</sup> Kia Motors America, *Kia Among Brands With Most 2021 IIHS Top Safety Pick Plus And Top Safety*  
22 *Pick Vehicles With Eight Awards*, CISION PR NEWSWIRE, <https://www.prnewswire.com/news-releases/kia-among-brands-with-most-2021-iihs-top-safety-pick-plus-and-top-safety-pick-vehicles-with-eight-awards-301238259.html> (Mar. 2, 2021).

23 <sup>27</sup> *Optima. For Taking a Bold Direction.*, DEALER EPROCESS,  
24 <https://cdn.dealereprocess.org/cdn/brochures/kia/2020-optima.pdf> (last visited October 31,  
2022).

25 <sup>28</sup> James Hope, *2012 Kia Optima and Kia Soul Ranked Highest in Class in J.D. Power and Associates*  
26 *Appeal Study*, KIA MEDIA, [https://www.kiamedia.com/us/en/media/pressreleases/3924/2012-](https://www.kiamedia.com/us/en/media/pressreleases/3924/2012-kia-optima-and-kia-soul-ranked-highest-in-class-in-jd-power-and-associates-appeal-study)  
27 [kia-optima-and-kia-soul-ranked-highest-in-class-in-jd-power-and-associates-appeal-study](https://www.kiamedia.com/us/en/media/pressreleases/3924/2012-kia-optima-and-kia-soul-ranked-highest-in-class-in-jd-power-and-associates-appeal-study) (July 25,  
2012).

1 54. Hyundai’s vehicle brochures profess that “[s]afety is a mindset,” which,  
2 according to the company, “starts with a car’s core engineering.”<sup>30</sup> As such, Hyundai  
3 maintains that it has “made huge investments into making [its] vehicles among the safest on  
4 the road.”<sup>31</sup>

5 55. Various brochures and pronouncements on Hyundai’s website, which it  
6 distributes and displays to its consumers throughout the United States, likewise reflect the  
7 company’s ostensible commitment to safety, engineering, and customer satisfaction—  
8 corporate virtues to which Hyundai credits its success.

9 56. Offerings such as this are why Hyundai has represented to the public that  
10 regardless of the vehicle a consumer buys, there is a common thread across all its vehicle  
11 lines: “value for money and low cost to own are truly characteristic of the Hyundai  
12 experience.”<sup>32</sup>

13 57. Despite their representations to the contrary, however, Defendants have  
14 knowingly flooded the market with defective vehicles equipped with purported anti-theft  
15 systems that violate both the letter and spirit of FMVSS 114; Defendants have engaged in  
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19 <sup>29</sup> James Hope, Hyundai Motor America and Kia Motors America Resolve Engine Litigation, KIA  
20 MEDIA,  
[https://www.kiamedia.com/us/en/media/pressreleases/15457/hyundai-motor-america-and-kia-](https://www.kiamedia.com/us/en/media/pressreleases/15457/hyundai-motor-america-and-kia-motors-america-resolve-engine-litigation)  
21 [motors-america-resolve-engine-litigation](https://www.kiamedia.com/us/en/media/pressreleases/15457/hyundai-motor-america-and-kia-motors-america-resolve-engine-litigation) (Oct. 10, 2019).

22 <sup>30</sup> 2013 Hyundai Sonata, DEALER EPROCESS,  
<https://cdn.dealereprocess.org/cdn/brochures/hyundai/2013-sonata.pdf> (last visited October 31,  
23 2022).

24 <sup>31</sup> 2013 Hyundai Full Line, AUTO-BROCHURES, [https://www.auto-](https://www.auto-brochures.com/makes/Hyundai/Hyundai_US%20Full_Line_2013.pdf)  
[brochures.com/makes/Hyundai/Hyundai\\_US%20Full\\_Line\\_2013.pdf](https://www.auto-brochures.com/makes/Hyundai/Hyundai_US%20Full_Line_2013.pdf) (last visited October 31,  
25 2022).

26 <sup>32</sup> Jim Trainor, *Three Hyundai Models Awarded 5–Year Cost to Own Accolade by Kelley Blue Book’s*  
27 *KBB.com*, HYUNDAI MOTOR COMPANY,  
[https://www.hyundai.com/worldwide/en/company/newsroom/three-hyundai-models-awarded-](https://www.hyundai.com/worldwide/en/company/newsroom/three-hyundai-models-awarded-5-year-cost-to-own-accolade-by-kelley-blue-book%27s-kbb.com-0000001568)  
28 [5-year-cost-to-own-accolade-by-kelley-blue-book%27s-kbb.com-0000001568](https://www.hyundai.com/worldwide/en/company/newsroom/three-hyundai-models-awarded-5-year-cost-to-own-accolade-by-kelley-blue-book%27s-kbb.com-0000001568) (Feb. 5, 2013).

1 conduct that has been catastrophic to the welfare of thousands of residents across the  
2 United States and have no intention to fix the defects.

3 **C. Data proves that immobilizers reduce theft.**

4 58. Immobilizers have been proven to deter auto theft. Indeed, a 2016 study  
5 reflects that the use of immobilizers lowered the overall rate of car thefts by 40% over a  
6 ten-year period.<sup>33</sup>

7 59. Immobilizers are an electronic security device that make it virtually impossible  
8 to start a vehicle without a key unless the vehicle’s computer has been altered.

9 60. Recognizing the value of immobilizers as an anti-theft device, countries across  
10 the globe require immobilizers to be installed as standard equipment in new vehicles. For  
11 example, the European Union has required immobilizers as a standard feature for all new  
12 vehicles since 1998, Australia since 2001, and Canada since 2007.<sup>34</sup>

13 61. In 1997, NHTSA entertained a petition to amend FMVSS 114 to follow suit  
14 and require manufacturers to install immobilizers as standard technology in all new vehicle  
15 lines.<sup>35</sup>

16 62. NHTSA ultimately denied the petition, explaining that the Safety Act’s  
17 definition of “motor vehicle safety standard” limited its discretion to impose design criteria  
18 (as opposed to performance criteria) on the manufacturers it oversees:

19 Although NHTSA is interested in actions that would reduce motor vehicle  
20 theft and provide for a safer and more effective means of deterring theft than  
21 that presently offered by steering lock systems, the definition of “motor  
22 vehicle safety standard” in the vehicle safety law, 49 U.S.C. 30102(9), provides  
that a safety standard is “a minimum standard for motor vehicle or motor

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25 <sup>33</sup> Jan C. van Ours & Ben Vollaard, *The Engine Immobilizer: A Non-Starter for Car Thieves*, 126 THE  
ECONOMIC JOURNAL 1264, 1283 (2016).

26 <sup>34</sup> *Id.* at 1265.

27 <sup>35</sup> *See* 62 Fed. Reg. 54,152, 54,153 (Oct. 17, 1997).

1 vehicle equipment performance.” This definition limits the agency’s discretion  
2 with respect to petitions that seek to specify the design of vehicles or  
3 equipment rather than their performance. This prohibits the agency from  
4 mandating specific technologies that motor vehicle manufacturers are to use to  
deter theft, as the CARS petition requests.<sup>36</sup>

5 63. Although it denied this petition, NHTSA explained that pursuant to its  
6 authority under the Theft Act: (i) manufacturers “may petition the agency for an exemption  
7 from the [PMR] if an antitheft device is installed as standard equipment on the entire  
8 vehicle line”; (ii) “[s]ome manufacturers have already developed and installed antitheft  
9 devices which utilize specific ignition keys and sophisticated electronic control modules  
10 similar to that required by the European Union [i.e., an immobilizer]”; and (iii) NHTSA had  
11 already “granted exemptions from parts marking under 49 CFR part 543 for models  
12 equipped with PASS-KEY and other antitheft devices with computer chips imbedded in the  
13 ignition key.”<sup>37</sup>

14 64. Thus, for more than 25 years, NHTSA has incentivized manufacturers to  
15 outfit their vehicles with immobilizers; technology it has repeatedly found to exceed the  
16 “minimum standard” for antitheft performance specified under FMVSS 114.<sup>38</sup>

17 65. Under the current regulatory scheme, all “passenger vehicles” and  
18 “multipurpose passenger vehicles” with a gross vehicle weight rating of 6,000 or less (i.e.,  
19 SUVs), amongst others, must either comply with the PMR or seek an exemption by  
20 establishing that they will install as a standard feature across a given model line: (i) an  
21 immobilizer that also meets the performance requirements under Canadian or EU law; or  
22 (ii) some other antitheft device that is at least as effective as the PMR in deterring theft.<sup>39</sup>

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25 <sup>36</sup> *Id.* at 54,153.

26 <sup>37</sup> *Id.*

27 <sup>38</sup> *Id.*

28 <sup>39</sup> *See* 49 C.F.R. §§ 543.6–543.7.



1 **D. The Class Vehicles have design defects that make them easy to steal.**

2 66. Although Defendants claim that their respective vehicles “meet or exceed  
3 Federal Motor Vehicle Safety Standards,”<sup>40</sup> including FMVSS 114, approximately 5,700  
4 stolen vehicles (and counting) tell a different story.

5 67. The vehicles are defective in that, among other things, Defendants  
6 manufactured and designed them without engine immobilizers.

7 68. This means that all a thief needs to do to steal one of the Defective Vehicles is  
8 remove a thin piece of plastic that covers the ignition column, exposing a fragile component  
9 that can also easily be removed. The thief can then stick a USB drive, a knife, or something  
10 that fits in the resulting hole to start the vehicle without a key or electronic signal from a  
11 key.

12 69. Once in the car, thieves can have the car running and drive away in under 1–2  
13 minutes.<sup>41</sup>

14 70. All told, these design flaws have made many Kias and Hyundais the preferred  
15 choice for auto thieves, including the Kia Boyz.

16 71. The Kia Boyz wreak havoc in metropolitan Milwaukee given the ease with  
17 which the Class Vehicles can be stolen; a problem that—as NHTSA ominously explained  
18 when it enacted FMVSS 114 more than fifty years ago—creates a marked public safety  
19 threat to anyone in the vicinity of those engaging in reckless joyriding.  
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24 <sup>40</sup> See Winnie Dortch, *Milwaukee aldermen urge Kia and Hyundai to ramp up security features on their cars*,  
25 CBS 58 WDJT-MILWAUKEE, [https://www.cbs58.com/news/milwaukee-aldermen-urge-kia-and-](https://www.cbs58.com/news/milwaukee-aldermen-urge-kia-and-hyundai-to-ramp-on-security-features-on-their-cars)  
26 [hyundai-to-ramp-on-security-features-on-their-cars](https://www.cbs58.com/news/milwaukee-aldermen-urge-kia-and-hyundai-to-ramp-on-security-features-on-their-cars) (Jun. 17, 2021, 3:58 PM) (Kia); *see also* Jenna  
27 Sachs, *Kia, Hyundai thefts expensive for victims*, FOX6 NEWS MILWAUKEE,  
<https://www.fox6now.com/news/kia-hyundai-thefts-expensive-milwaukee> (Nov. 1, 2021, 9:12  
28 PM) (Hyundai).



1 72. For instance, a video posted to an Instagram account on  
2 September 11, 2021—which was, on information and belief, filmed outside of a high  
3 school—features several stolen Kias and Hyundais drag racing on the sidewalk.<sup>42</sup>

4 73. Another video posted to Instagram on October 19, 2021, on information and  
5 belief, features a stolen Hyundai smashing into an innocent bystander’s car across the street  
6 from a playground.<sup>43</sup>

7 74. The Milwaukee police department released footage of the sixteen-year-old  
8 who killed himself and injured others following a highspeed chase in a stolen Kia on June  
9 15, 2021, which ended after he careened into oncoming traffic at an excessive speed and  
10 crashed head-on into another vehicle

11 **E. The lack of an immobilizer in the Class Vehicles has resulted in a swell of**  
12 **thefts that greatly outpace Kia and Hyundai’s market share.**

13 75. Given the ease with which Class Vehicles can be stolen, the United States has  
14 experienced a swell in reported car thefts.

15 76. For example, thefts of Kias and Hyundais in Chicago, Illinois went up more  
16 than 750% in July–August 2022 compared to the same time last year.<sup>44</sup>

17 77. In Portland, Oregon the total number of vehicles stolen decreased by 5% in  
18 the 10 weeks preceding August 26, 2022, but in that period, the number of Hyundais being  
19 stolen increased by 153% and the number of Kias being stolen increased by 269%.<sup>45</sup>

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23 <sup>41</sup> Jack Fitzgerald, *As Hyundai/Kia Thefts Grow, 2 Victims of the TikTok Trend Show Us What Happened*  
24 *to Their Cars, CAR & DRIVER* (Aug. 27, 2022),  
<https://www.caranddriver.com/news/a40979551/hyundai-kia-car-thefts-tiktok-trend-milwaukee/>.

<sup>42</sup> [https://www.instagram.com/p/CTrjrdgL-Zc/?utm\\_medium=copy\\_link](https://www.instagram.com/p/CTrjrdgL-Zc/?utm_medium=copy_link).

<sup>43</sup> [https://www.instagram.com/p/CVNh9D64B/?utm\\_medium=copy\\_link](https://www.instagram.com/p/CVNh9D64B/?utm_medium=copy_link).

<sup>44</sup> Tara Molina, *Thefts of Kias and Hyundais are skyrocketing, up 767% this summer in Cook County*, CBS  
26 CHICAGO (Aug. 11, 2022), <https://www.cbsnews.com/chicago/news/thefts-of-kias-and-hyundais-are-skyrocketing-up-767-this-summer-in-cook-county/>.

1 78. In Milwaukee, Wisconsin thefts of Kias and Hyundais increased 2,500% in  
2 January–June 2021 (2,890) compared to the same period the year before (111).<sup>46</sup> During this  
3 time, the city averaged about 16 Kia and Hyundai thefts a day.<sup>47</sup>

4 79. These thefts greatly outpace the number of thefts one would expect based on  
5 their market share. From 2010–2020, Kia’s market share stayed between 3–4%.<sup>48</sup> During  
6 the same period, Hyundai’s market share was between 3–5%.<sup>49</sup>

7 80. For instance, in Milwaukee, Hyundai and Kia thefts accounted for 20% of  
8 total car thefts in 2020, 67% of total car thefts in 2021, and 59% of total car thefts so far in  
9 2022.<sup>50</sup>

10 81. In St. Petersburg, Florida, 41% of stolen vehicles were made by Kia or  
11 Hyundai.<sup>51</sup>

12 82. In Los Angeles, California, Kia and Hyundai vehicles account for 20% of all  
13 vehicle thefts in 2022.<sup>52</sup>

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18 <sup>45</sup> Portland Police (@PortlandPolice), TWITTER (Aug. 26, 2022, 11:18 AM),  
<https://twitter.com/PortlandPolice/status/1563199199205662723>.

19 <sup>46</sup> *Thefts of Kia, Hyundai explode 2,500% in Milwaukee*, WISN 12 (June 17, 2021),  
<https://www.wisn.com/article/thefts-of-kia-hyundai-explode-2500-in-milwaukee/36756668#>.

20 <sup>47</sup> *Thefts of Kia, Hyundai explode 2,500% in Milwaukee*, WISN 12 (June 17, 2021),  
<https://www.wisn.com/article/thefts-of-kia-hyundai-explode-2500-in-milwaukee/36756668#>.

21 <sup>48</sup> *Kia U.S. Car Sales Data*, GOODCARBADCAR, <https://www.goodcarbadcar.net/kia-us-sales-figures/> (last visited Sept. 14, 2022).

22 <sup>49</sup> *Hyundai U.S. Car Sales Data*, GOODCARBADCAR, <https://www.goodcarbadcar.net/hyundai-us-sales-figures/> (last visited Sept. 14, 2022).

23 <sup>50</sup> Jack Fitzgerald, *As Hyundai/Kia Thefts Grow, 2 Victims of the TikTok Trend Show Us What Happened to Their Cars*, CAR & DRIVER (Aug. 27, 2022),  
24 <https://www.caranddriver.com/news/a40979551/hyundai-kia-car-thefts-tiktok-trend-milwaukee/>.

25 <sup>51</sup> Mary O’Connell, *St. Pete Police warn about troubling car theft trend targeting Kia, Hyundai cars*, WFTS-TV/ABC ACTION NEWS (July 28, 2022), <https://www.abcactionnews.com/news/region-pinellas/st-pete-police-warn-about-troubling-car-theft-trend-targeting-kia-hyundai-cars>.

1 83. In Denver, Colorado, Hyundais and Kias were fifth and sixth, respectively, on  
2 its list of most stolen cars.<sup>53</sup>

3 84. In Columbus, Ohio, Kias and Hyundais have accounted for 38% of vehicle  
4 thefts in 2022.<sup>54</sup>

5 85. Law enforcement from around the country have attributed the uptick in Kia  
6 and Hyundai thefts to the lack of an immobilizer and the ease with which they can be  
7 stolen.

8 86. A property crimes detective with the police department in St. Petersburg,  
9 Florida explained to one news outlet, “What the thieves are doing is they’re defeating the  
10 steering column, and they’re able to override the ignition mechanism, allowing them to steal  
11 the vehicle much more easily and without a key or a key fob....”<sup>55</sup>

12 87. The Los Angeles Police Department said that the “primary cause for the  
13 increase in vehicle thefts is that Kia and Hyundai vehicles, produced between 2010 thru  
14 2021, are not equipped with an ignition immobilizer. Therefore, these vehicle ignitions can  
15 be compromised using a USB cable.”<sup>56</sup>

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19 <sup>52</sup> Los Angeles Police Department (@LAPDHQ), TWITTER (Aug. 25, 2022, 7:00 PM),  
20 [https://twitter.com/LAPDHQ/status/1562953014838640640?s=20&t=KUPj9qzvsQnPonlCa4fb](https://twitter.com/LAPDHQ/status/1562953014838640640?s=20&t=KUPj9qzvsQnPonlCa4fbDw)  
21 Dw.

22 <sup>53</sup> ‘Ob No, This Can’t Happen Again’: Man Has 2 Kias Stolen In 1 Month, CBS COLORADO (Dec. 10,  
2020, 11:59 PM), <https://denver.cbslocal.com/2020/12/10/car-theft-kia-stolen-denver/>.

23 <sup>54</sup> Gary Gastelu, *Kias and Hyundais continue to be stolen at alarming rates, police warn*, FOX NEWS (Aug. 2,  
2022), <https://www.foxnews.com/auto/kias-hyundais-stolen-police-warn>.

24 <sup>55</sup> Mary O’Connell, *St. Pete Police warn about troubling car theft trend targeting Kia, Hyundai cars*, WFTS-  
25 TV/ABC ACTION NEWS (July 28, 2022), [https://www.abcactionnews.com/news/region-](https://www.abcactionnews.com/news/region-pinellas/st-pete-police-warn-about-troubling-car-theft-trend-targeting-kia-hyundai-cars)  
pinellas/st-pete-police-warn-about-troubling-car-theft-trend-targeting-kia-hyundai-cars.

26 <sup>56</sup> Los Angeles Police Department (@LAPDHQ), TWITTER (Aug. 25, 2022, 7:00 PM),  
27 [https://twitter.com/LAPDHQ/status/1562953014838640640?s=20&t=KUPj9qzvsQnPonlCa4fb](https://twitter.com/LAPDHQ/status/1562953014838640640?s=20&t=KUPj9qzvsQnPonlCa4fbDw)  
Dw.

1 88. Denver’s local news was also reporting about this problem in December 2020,  
2 citing Denver’s Police Commander to explain that Kias “are one of the top 10 stolen  
3 brands in Denver because they are easy to steal and easy to start.”<sup>57</sup>

4 **F. The skyrocketing thefts caused by the defects in the Class Vehicles have**  
5 **increased costs for the Class.**

6 89. The cost to repair stolen Vehicles can be substantial. The cost to repair a  
7 window and steering column on a Class Vehicle alone can exceed \$3,000.<sup>58</sup> Because cars  
8 taken on joy rides often experience further damage, the owner’s total cost to repair their  
9 vehicle often exceed \$10,000.<sup>59</sup> As noted below, Plaintiff Scott received an initial quote of  
10 \$3,200 for damage to his Defective Hyundai after it was stolen the first time, but has since  
11 received multiple supplemental estimates due to other damage. After repairing the damage,  
12 Plaintiff Scott’s Defective Hyundai was stolen a second time and has not yet been located.

13 90. Moreover, due to the alarming rate in which Class Vehicles are being stolen,  
14 Defendants’ authorized dealers and repair shops are experiencing shortages of the parts  
15 needed to repair them. Some parts are backordered up to eight weeks. As noted below,  
16 Plaintiff Sellers was unable to purchase parts to repair her car after it was stolen and  
17 damaged because the parts were out of stock.<sup>60</sup>

18 91. The rate at which these Vehicles are being stolen is so high that certain auto  
19 insurance companies are either refusing to insure these Vehicles or have raised the rates.  
20 For example, as discussed below, Plaintiff Sellers was dropped by her insurance carrier after  
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22  
23 <sup>57</sup> *Oh No, This Can’t Happen Again’: Man Has 2 Kias Stolen In 1 Month*, CBS COLORADO (Dec. 10,  
24 2020, 11:59 PM), <https://denver.cbslocal.com/2020/12/10/car-theft-kia-stolen-denver/>.

25 <sup>58</sup> James E. Causey, *Motor vehicle thefts in Milwaukee are up 152%. Auto repair businesses say the worst may*  
26 *be yet to come*, MILWAUKEE JOURNAL SENTINEL (Feb. 2, 2021),  
[https://www.jsonline.com/story/news/solutions/2021/02/03/motor-vehicle-thefts-up-152-](https://www.jsonline.com/story/news/solutions/2021/02/03/motor-vehicle-thefts-up-152-milwaukee-so-far-2021/4266701001/)  
27 [milwaukee-so-far-2021/4266701001/](https://www.jsonline.com/story/news/solutions/2021/02/03/motor-vehicle-thefts-up-152-milwaukee-so-far-2021/4266701001/).

28 <sup>59</sup> Id.

1 the theft of her Defective Hyundai. Upon finding a new insurance company, her rates  
2 increased by \$247.26 for the exact same coverage on her three vehicles. Plaintiff Francis  
3 also experienced an increase in her insurance rate after the theft of her Defective Kia. Prior  
4 to the theft, her insurance rate for a six-month period was \$841, after the theft it rose to  
5 \$977.

6 92. Other harms caused by the auto thefts include other property that is stolen or  
7 damaged in the process, and the diminution in value of the Class Vehicles being targeted.

8 93. Recognizing the gravity of the problem, Defendants have announced that all  
9 new model vehicles will be equipped with an immobilizer.<sup>61</sup> But this change offers little  
10 consolation to the thousands of consumers whose defective Vehicles were either stolen or  
11 continue to remain vulnerable to theft.

12 **G. Defendants have long known about the security benefits immobilizers offer.**

13 94. Even though the Defendants sell their vehicles in other countries with an  
14 immobilizer, Kia and Hyundai have largely refused to implement immobilizers as standard  
15 technology in virtually all of their vehicle lines in the United States except for their very  
16 high-end vehicles.

17 95. For instance, in three petitions to NHTSA in 2007, Kia and Hyundai through  
18 HATCI sought exemptions from the PMR for the following three vehicle lines: (i) the  
19 Hyundai Azera, starting with the 2008 model year; (ii) the Hyundai Genesis, starting with  
20 the 2009 model year; and (iii) the Kia Amanti, starting with the 2009 model year.<sup>62</sup> Each  
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24 <sup>60</sup> Id.

25 <sup>61</sup> Jeramey Jannene, *Two-Thirds of All Milwaukee Auto Thefts Are Kia and Hyundai Vehicles*, Urban  
Milwaukee (July 24, 2021), <https://urbanmilwaukee.com/2021/07/24/two-thirds-of-all-milwaukee-auto-thefts-are-kia-and-hyundai-vehicles/>.

26 <sup>62</sup> See 72 Fed. Reg. 39,661 (July 19, 2007) (“Azera Petition”); 73 Fed. Reg. 4,304 (Jan. 24, 2008)  
27 (“Genesis Petition”); and 75 Fed. Reg. 1,447 (Jan. 11, 2010) (“Amanti Petition”).

1 Petition “provided a description and diagram of the identity, design, and location of the  
2 components of the antitheft device” installed on the vehicles that included, amongst other  
3 features: “a passive immobilizer consisting of an EMS (engine control unit), SMARTRA  
4 (immobilizer unit), an antenna coil and a transponder.”<sup>63</sup>

5 96. Defendants successfully obtained an exemption for each vehicle line by  
6 providing conclusive data on the effectiveness of similar immobilizer technology used by  
7 other manufacturers. Defendants explained that “the GM Pass-Key and Ford SecuriLock  
8 devices contain components that are functionally and operationally similar to [their  
9 antitheft] device.”<sup>64</sup> Further, Defendants stated “the theft data from the National Crime  
10 Information Center (NCIC) show *a clear reduction in vehicle thefts* after the introduction of the  
11 GM and Ford devices.”<sup>65</sup>

12 97. Likewise, in its Petition for its Hyundai VI/Equus vehicle line dated  
13 September 11, 2009, HATCI referenced and provided an April 2006 report by JP Research,  
14 Inc., which concluded that antitheft devices were consistently much more effective in  
15 reducing thefts compared to parts marking. Specifically, the “report showed that of the 24  
16 vehicles lines studied, those with antitheft devices were 70% more effective than parts  
17 marking in deterring theft.”<sup>66</sup>

18 98. But as with Defendants’ previous Petitions, the Equus was billed as a luxury  
19 model. Thus, despite their knowledge of both the utility and ubiquity of this technology for  
20 more than fifteen years, Defendants avoided incorporating this safety measure as a standard  
21 feature into its less expensive—albeit, more widely disseminated—models.

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25 <sup>63</sup> See Azera Petition at 39,661; Genesis Petition at 4,304; and Amanti Petition at 1,448.

26 <sup>64</sup> See Azera Petition at 39,662; Genesis Petition at 4,305; Amanti Petition at 1,448.

27 <sup>65</sup> *Id.* (emphasis added)

28 <sup>66</sup> See 75 Fed. Reg. 6,253 (Feb. 8, 2010).



1           99. The ease with which the Class Vehicles may be stolen is not surprising to  
2 Defendants. Upon information and belief, Defendants have known of the unusually high  
3 rate of thefts experienced by Class Vehicles for many years, through scores of customer  
4 complaints relayed through their dealers.

5           100. Moreover, Defendants must have known how these Vehicles were being  
6 stolen because they sell replacement parts to dealerships and autobody shops around the  
7 country needed to repair the stolen Vehicles. Because the Vehicles are being stolen in the  
8 same way, Defendants would have experienced a spike in orders for the same replacement  
9 parts.

10           101. But Defendants continued to sell the Class Vehicles, flooding the market with  
11 more unsafe cars susceptible to theft. Only when the problem became too large to ignore  
12 did Defendants decide to introduce immobilizer technology to all future new vehicles going  
13 forward.

14           102. Kia and Hyundai likely refused to implement this technology as a standard  
15 feature in the Class Vehicles as a cost-saving measure to improve their profitability.

16           **V. PLAINTIFF-SPECIFIC FACTUAL ALLEGATIONS**

17           103. **Amanda Sue Sellers:** Plaintiff Sellers is an Illinois citizen who lives and  
18 resides in Peoria, Illinois. Plaintiff Sellers purchased a Hyundai Veloster Base Model in  
19 2018 (“the Defective Hyundai”).

20           104. Plaintiff Sellers bought this vehicle because she thought it would be theft  
21 resistant. In fact, the Defective Hyundai was advertised as an anti-theft vehicle; it had an  
22 anti-theft sticker on it when she bought it.

23           105. In addition to the anti-theft sticker, Plaintiff Sellers was required to sign a  
24 document agreeing to have a GPS tracker installed in the Defective Hyundai as a term of  
25 her financing as an additional anti-theft measure.

1           106. On July 16, 2022—one day after Plaintiff Sellers had completed a refinance of  
2 the vehicle—the Defective Hyundai was stolen out of her driveway in Peoria, Illinois.

3           107. On July 20, 2022, her vehicle was recovered along with two Kia vehicles.

4           108. When she arrived at the scene, she observed evidence of the crime and  
5 extensive damage to the vehicle. Evidence included the tell-tale signs of damage to the  
6 same parts of the Hyundai shown to be susceptible in the TikTok trend and a destroyed  
7 USB cord.

8           109. Specifically, her husband’s USB cord had been unplugged, broken, and thrown  
9 to the floor of the Defective Hyundai. Her license plates were also stolen.

10           110. The aftermath of the theft resulted in Plaintiff Sellers incurring numerous  
11 costs including:

12                 a. Paying to have the Defective Hyundai towed home from the recovery  
13 site.

14                 b. Paying for new license plates.

15                 c. Shortly after she made an insurance claim, her insurance provider  
16 dropped her.

17                 d. As a result of being dropped by her insurer, she had to find new  
18 insurance. Her new insurance through Progressive was significantly more expensive  
19 than the prior insurance. Specifically, under her prior insurance she paid \$250.88 per  
20 month to insure her three vehicles, and she now pays \$498.14 per month to insurer  
21 her three vehicles. This increase is not related to increased types of coverage, as both  
22 her prior and current policies had the same type of coverage.

23           111. Plaintiff Sellers’ Defective Hyundai was completely out-of-commission for  
24 approximately two weeks.

25           112. Her insurance company has not yet paid anything to fix the Defective  
26 Hyundai.



1 113. While Plaintiff Sellers has been waiting for the repair shop to get her an  
2 estimate of costs, she investigated getting the parts to try to fix it herself. However, because  
3 of the prevalence of the TikTok trend targeting Defective Hyundais, the necessary parts are  
4 out of stock.

5 114. If Plaintiff Sellers had known about the defects in the vehicle, she would not  
6 have purchased it or would have only purchased it for significantly less money.

7 115. **Nadine Quate Francis:** Plaintiff Francis is a Virginia citizen who lives and  
8 resides in Henrico, Virginia. Plaintiff Francis purchased a Kia Forte in August 2019 (“the  
9 Defective Kia”).

10 116. Plaintiff Francis bought the Defective Kia for herself because she wanted and  
11 needed a reliable vehicle.

12 117. When she bought the Defective Kia, she did not know about its security flaws;  
13 the “Kia challenge” was not trending until almost a year-and-a-half after her purchase.

14 118. Since the Kia Challenge TikTok trend became popular in May 2022, her car  
15 insurance rates have skyrocketed. For her six-month policy period that renewed in February  
16 2022—a few months before the Kia challenge was trending—she paid \$841 for her policy  
17 premium. Yet, when her policy was up for renewal in August 2022, the sixth-month  
18 premium had jumped to \$977.

19 119. If Plaintiff Francis had known about the defects in the vehicle, she would not  
20 have purchased it or would have only purchased it for significantly less money.

21 120. **Thomas Benton Harang, Jr.:** Plaintiff Harang is a Louisiana citizen who  
22 lives and resides in New Orleans, Louisiana. Plaintiff Harang purchased a Hyundai Elantra  
23 in March 2019 (“the Defective Hyundai”).

24 121. The Defective Hyundai cost approximately \$10,000. Plaintiff Harang paid a  
25 down payment of approximately \$4,000 for the Defective Hyundai.

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1           122. Approximately 2 months ago, Mr. Harang became aware of the security  
2 problems with Defective Hyundais and Kias. As a result, Mr. Harang purchased a steering  
3 column lock as a theft prevention device to protect his Defective Hyundai.

4           123. If Mr. Harang had known about the defects in the vehicle, he would not have  
5 purchased it or would have only purchased it for significantly less money.

6           124. **Ian Michael Scott:** Plaintiff Scott is a Louisiana citizen who lives and resides  
7 in New Orleans, Louisiana. Plaintiff Scott purchased a Hyundai Sonata on December 23,  
8 2020 (“the Defective Hyundai”).

9           125. Plaintiff Scott paid \$20,420.50 to purchase the Defective Hyundai—including  
10 \$9,000 in a down payment.

11           126. To pay the rest of the purchase price for the Defective Hyundai, he secured  
12 financing through Hyundai Motor Finance.

13           127. On July 25, 2022, a vehicle pulled up near Plaintiff Scott’s home. An individual  
14 got out, broke a window on the Defective Hyundai, and within approximately 15 seconds,  
15 stole and drove away in the Defective Hyundai.

16           128. The Defective Hyundai was recovered by the New Orleans Police Department  
17 on July 27, 2022, and towed to a lot, a charge that Plaintiff Scott, by and through his  
18 insurer, was responsible for paying.

19           129. On approximately September 2, 2022, Plaintiff Scott had the vehicle towed  
20 again, this time to a mechanic shop.

21           130. The damage to the Defective Hyundai was extensive. It included broken  
22 window glass, body damage to the right side, a broken transmission that needs to be  
23 replaced, damage to the undercarriage of the car, and an ignition that was ripped out and  
24 destroyed.

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1           131. Only some of this damage was initially apparent (*e.g.*, broken glass) and the  
2 original estimate was for \$3,200. However, there have been multiple supplemental estimates  
3 and claims between the body shop and Plaintiff Scott’s insurer.

4           132. Plaintiff Scott’s six-month premium with his insurer for the period starting  
5 July 5, 2022 is \$955.22. Under his policy, Plaintiff Scott had to pay a \$1,500 deductible for  
6 all these car repairs.

7           133. Additionally, the insurer only covered approximately \$900 in rental car  
8 coverage while his vehicle was being repaired. On approximately August 23, 2022, Plaintiff  
9 Scott started paying out-of-pocket for his rental car vehicle, a cost totaling approximately  
10 \$380/week.

11           134. Plaintiff Scott’s insurance renewed just before the theft, but his claim will  
12 likely lead to increased premiums when his policy renews in February 2023.

13           135. In addition, Plaintiff Scott also had all the contents stolen from his car,  
14 including a computer (approximately \$400), clothing, and other miscellaneous items.

15           136. After Plaintiff Scott’s Defective Hyundai was recovered, evidence included the  
16 tell-tale signs of damage to the same parts of the Hyundai susceptible to the TikTok  
17 trend—including ignition damage and a USB cord that did not belong to Plaintiff Scott in  
18 the Defective Hyundai.

19           137. On October 31, 2022, Plaintiff Scott’s Defective Hyundai was stolen a second  
20 time and has not been located as of the filing of this complaint.

21           138. If Plaintiff Scott had known about the defects in the vehicle, he would not  
22 have purchased it or would have only purchased it for significantly less money.

23                           **VI. CHOICE OF LAW ALLEGATIONS**

24           139. Because this Complaint is brought in California, California’s choice of law  
25 regime governs the state law allegations in this Complaint. Under California’s choice of law  
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1 rules, California law applies to the claims of all Class members, regardless of their state of  
2 residence or state of purchase.

3 140. Because two of the Defendants are headquartered—and made decisions  
4 relevant to these claims—in California, California has a more substantial connection to, and  
5 materially greater interest in, the rights, interests, and policies involved in this action than  
6 any other state. Application of California law to Defendants and the claims of all Class  
7 members would not be arbitrary or unfair.

8 141. Plaintiffs plead claims on behalf of a nationwide class because the laws for  
9 each state do not vary materially for these claims. Alternatively, Plaintiffs plead state law  
10 classes claims as indicated below. This Complaint refers to the nationwide and state classes  
11 collectively as the “Class,” unless noted otherwise.

12 **VII. CLASS ACTION ALLEGATIONS**

13 142. Plaintiffs bring this action on behalf of themselves and all others similarly  
14 situated under Fed. R. Civ. P. 23.

15 143. Subject to confirmation, clarification and/or modification based on discovery  
16 to be conducted in this action, the classes that Plaintiffs seek to represent shall be defined as  
17 follows:

18 All persons and entities nationwide that purchased or leased a Class Vehicle  
19 (the “Nationwide Class”).

20 All persons and entities that purchased or leased a Class Vehicle in the State of  
21 Illinois (the “Illinois Class”).

22 All persons and entities that purchased or leased a Class Vehicle in the State of  
23 Virginia (the “Virginia Class”).

24 All persons and entities that purchased or leased a Class Vehicle in the State of  
25 Louisiana (the “Louisiana Class”).

26 (Collectively, the “Class” unless otherwise noted.)  
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1 144. Excluded from the Class are: (1) Defendants, any entity in which Defendants  
2 have a controlling interest, and their legal representatives, officers, directors, employees,  
3 assigns and successors; (2) the Judge to whom this case is assigned and any member of the  
4 Judge's staff or immediate family; and (3) Class Counsel.

5 145. Plaintiffs seek only damages and injunctive relief on behalf of themselves and  
6 the Class members. Plaintiffs disclaim any intent or right to seek any recovery in this action  
7 for personal injuries, wrongful death, or emotional distress suffered by Plaintiffs and/or the  
8 Class members.

9 146. While the exact number of Class members is unknown to Plaintiffs at this time  
10 and can only be determined by appropriate discovery, membership in the Class is  
11 ascertainable based upon the records maintained by Defendants and governmental officials.  
12 Upon information and belief, Defendants have sold and leased many thousands of Vehicles  
13 nationwide during the relevant time period. Therefore, the Class members are so numerous  
14 that individual joinder of all Class members is impracticable under Fed. R. Civ. P. 23(a)(1).

15 147. Common questions of law and fact exist as to all Class members. These  
16 common legal and factual questions include:

- 17 a. Whether Defendants designed, advertised, sold, and placed the Class  
18 Vehicles into the stream of commerce;
- 19 b. Whether the Class Vehicles were sold with the defects described above;
- 20 c. Whether the defects in the Class Vehicles are safety and/or security  
21 defects that created a foreseeable risk of harm to Plaintiffs and the Class;
- 22 d. Whether Defendants breached implied warranties made to the Class  
23 members;
- 24 e. Whether Defendants knew about the defects and, if so, how long  
25 Defendants have known about the defects;
- 26 f. Whether Defendants concealed the defects;
- 27

1           g. Whether Defendants’ conduct violates consumer protection statutes,  
2 warranty laws, and other laws asserted herein;

3           h. Whether the Class members have suffered damages as a result of the  
4 conduct alleged herein, and if so, the measure of such damages, including diminution  
5 of value and deprivation of the benefit of the bargain; and

6           i. Whether the Class members are entitled to injunctive relief.

7           148. Plaintiffs’ claims are typical of the claims of the Class members whom they  
8 seek to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiffs and each Class member  
9 have a Vehicle with the same defects.

10           149. Plaintiffs will fairly and adequately represent and protect the interests of the  
11 Class members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs are adequate representatives  
12 because their interests do not conflict with the interests of the Class members. Further,  
13 Plaintiffs have retained counsel competent and experienced in complex class action  
14 litigation, including automotive class action litigation, and Plaintiffs intend to prosecute this  
15 action vigorously. Therefore, the interests of the Class members will be fairly and  
16 adequately protected.

17           150. A class action is appropriate under Fed. R. Civ. P. 23(b)(3) because class action  
18 is superior to any other available means for fairly and efficiently adjudicating the  
19 controversy. In this regard, the Class members’ interests in individually controlling the  
20 prosecution of separate actions are low given the magnitude, burden, and expense of  
21 individual prosecutions against large corporations such as Defendants. It is desirable to  
22 concentrate this litigation in this forum to avoid burdening the courts with individual  
23 lawsuits. Individualized litigation presents a potential for inconsistent or contradictory  
24 results and also increases the delay and expense to all parties and the court system presented  
25 by the legal and factual issues of this case. By contrast, the class action procedure here will  
26 have no management difficulties. Defendants’ records and the records available publicly will

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1 easily identify the Class members. The defects are common to all Vehicles; therefore, the  
2 same common documents and testimony will be used to prove Plaintiffs’ claims as well as  
3 the claims of the Class members. Finally, proceeding as a class action provides the benefits  
4 of single adjudication, economies of scale, and comprehensive supervision by a single court

5 151. A class action is appropriate under Fed. R. Civ. P. 23(b)(2) because, as stated  
6 above, Defendants have acted or refused to act on grounds that apply generally to the Class  
7 members, so that final injunctive relief or corresponding declaratory relief is appropriate as  
8 to all Class members.

9 **VIII. Causes of Action**

10 **A. Causes of Action Brought on Behalf of the Nationwide Class**

11 **1. Count 1—Breach of Implied Warranty (Based on California Law)**

12 152. Plaintiffs incorporate by reference all preceding allegations as though fully set  
13 forth herein.

14 153. This count is brought under California law on behalf of a Nationwide Class.

15 154. As detailed herein, Defendants designed, manufactured, distributed, and sold  
16 the Class Vehicles knowing that consumers like Plaintiffs and the Class would purchase  
17 these products from Kia and Hyundai’s authorized dealers as a means of transportation.

18 155. As merchants of the Class Vehicles, Kia and Hyundai warranted to the  
19 Plaintiffs and the Class that the Class Vehicles were fit for the ordinary purpose for which  
20 they are used.

21 156. Plaintiffs relied on this warranty to their detriment.

22 157. The Class Vehicles are not “merchantable” because they are not reasonably fit  
23 for the ordinary purpose for which they are sold, which is to provide safe, reliable  
24 transportation. To the contrary, the Class Vehicles pose a substantial safety hazard because  
25 the defects render them vulnerable to theft, making them prime targets to be used as  
26 instrumentalities through which thieves engage in reckless driving or other criminal activity.  
27



1 158. Sufficient privity of contract exists to assert this implied warranty claim.

2 159. Defendants market and advertise the sale of the Class Vehicles in various  
3 media outlets across the United States, to prospective consumers including the Plaintiffs  
4 and the Class.

5 160. Defendants advertise their authorized dealer network on their respective  
6 websites and task them with administering the promotional material and warranty  
7 information for new Class Vehicles to prospective consumers throughout the nation.  
8 Through Defendants' websites, consumers obtain information about vehicles; design  
9 specific vehicles to meet their needs; obtain information about the value of trade-in  
10 vehicles; request additional marketing materials; and request quotes for vehicles. Defendants  
11 then send these consumers to "authorized dealers" to consummate sales and leases.

12 161. Defendants control various details regarding their dealers' operations through  
13 various written agreements, such as: (i) granting each dealer a license to use their respective  
14 trademarks and intellectual property; (ii) furnishing each dealer with marketing materials to  
15 assist in the sale of their vehicles; (iii) providing training to dealership personnel to assist in  
16 their sales activities; and (iv) prohibiting their dealers from engaging in certain practices that  
17 otherwise detract from their respective brands or undermine the sale of their respective  
18 vehicles, including the Class Vehicles.

19 162. Plaintiffs purchased and/or leased their respective Vehicles from "authorized  
20 dealers" with the understanding that these dealers were acting on behalf of Defendants.

21 163. The sole and express purpose that each authorized Kia and Hyundai dealer has  
22 when it acquires the vehicles from Kia and Hyundai is to immediately re-sell them to the  
23 end-users like Plaintiffs and the Class members.

24 164. Defendants' conduct, and the conduct of their respective dealers, thus create a  
25 justifiable belief on the part of Plaintiffs and Class members that the dealers are agents of  
26 Kia and/or Hyundai, which the Plaintiffs relied on to their detriment.

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1           165. Thus, each Kia and Hyundai dealership operates as the actual and/or apparent  
2 agent of Defendants named herein, which satisfies any privity requirement.

3           166. Moreover, the purchase and/or lease agreements between the Plaintiffs and  
4 their respective dealers were entered directly and primarily for Kia and Hyundai’s benefit.

5           167. Likewise, any contract whereby Defendants’ authorized dealers acquire the  
6 Class Vehicles from Defendants to resell to the end-user is also for the express benefit of  
7 Plaintiffs and the Class. On information and belief, Defendants’ authorized dealers make  
8 little money on the actual sale or lease of new vehicles, including the Class Vehicles.

9           168. Plaintiffs and the members of the Class therefore have standing to assert  
10 implied warranty claims against Defendants by virtue of their status as intended, third-party  
11 beneficiaries of these dealership sales agreements, which further satisfies the privity  
12 requirement.

13           169. Privity thus exists between Defendants and the Plaintiffs and the Class by  
14 virtue of the express warranties provided through their purchase and/or lease agreements.

15           170. Moreover, the Magnuson–Moss Warranty Act (“MMWA”) provides that when  
16 a manufacturer offers a written warranty, it may limit the duration of an implied warranty to  
17 the duration of an express warranty, but it cannot disclaim implied warranties all together.  
18 *See* 15 U.S.C. § 2308(a) (“No supplier may disclaim or modify . . . any implied warranty to a  
19 consumer with respect to such consumer product if (1) such supplier makes any written  
20 warranty to the consumer with respect to such consumer Product. . . .”). A manufacturer  
21 should not be permitted to avoid this prohibition by claiming an ostensible lack of privity  
22 when the manufacturer itself chose its distribution model.

23           171. Imposing a rigid privity requirement in this case would permit Defendants to  
24 escape both the letter and spirit of the MMWA through their preferred distribution scheme;  
25 one in which the only parties in strict privity that can assert an implied warranty claim are  
26 Defendants’ own dealers who would never need to assert the claim in the first instance.

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1           172. Consequently, any rigid application of a state law privity requirement would  
2 violate the Supremacy Clause and be preempted. *See* U.S. Const. art. VI (“This Constitution,  
3 and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the  
4 supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing  
5 in the Constitution or Laws of any State to the Contrary notwithstanding.”).

6           173. As a direct and proximate result of Defendants’ breach of these implied  
7 warranties, Plaintiffs and the Class have suffered damages, injury in fact, and ascertainable  
8 loss in an amount to be determined at trial. These damages include, but are not limited to,  
9 overpayment for the Class Vehicles, insurance deductibles to get the stolen Class Vehicles  
10 repaired, the cost to replace other property stolen in connection with the thefts of Vehicles,  
11 the loss of use of the Vehicles, costs associated with the replacement of the totaled Class  
12 Vehicles, the diminution in value of the stolen Class Vehicles that were not totaled, and/or  
13 increased insurance premiums.

14           174. The circumstances described herein caused Defendants’ exclusive or limited  
15 remedy to fail its essential purpose, such that the Plaintiffs and the Class may seek  
16 alternative remedies. Indeed, these warranties have denied the Plaintiffs and the Class the  
17 benefit of their respective bargains, which presupposes they were (or are) able to use the  
18 Class Vehicles in a meaningful manner without the ever-present risk of them being stolen.

19           175. Further, Kia and Hyundai’s exclusion and/or limitation of consequential  
20 damages in their New Vehicle Limited Warranties is unconscionable and void for the  
21 reasons stated above.

22           176. Accordingly, the Plaintiffs and the Class are entitled to damages flowing from  
23 Defendants’ breach of their implied warranties, as well as all consequential and incidental  
24 damages resulting from this breach.

25           177. Plaintiffs and Class members have complied with all obligations under the  
26 warranty, or otherwise have been excused from performance of said obligations as a result  
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1 of Defendants’ conduct described herein. Affording Defendants a reasonable opportunity  
2 to cure the breach of written warranties therefore would be unnecessary and futile.

3 **2. Count 2—Violations of Magnuson Moss Warranty Act (15 U.S.C. §**  
4 **2301, et seq.)**

5 178. Plaintiffs incorporate by reference all preceding allegations as though fully set  
6 forth herein.

7 179. Plaintiffs bring this claim on behalf of the Nationwide Class.

8 180. Congress enacted the MMWA, 15 U.S.C. § 2301, *et seq.*, to address the  
9 widespread misuse of merchants’ express warranties and to protect consumers from  
10 deceptive warranty practices. The MMWA imposes civil liability on any “warrantor” who  
11 fails to comply with any obligation under a written or corresponding implied warranty. *Id.* §  
12 2310(d)(1).

13 181. The Class Vehicles are “consumer products” as defined in 15 U.S.C. § 2301(1).

14 182. Plaintiffs and members of the Class are “consumers” as defined in  
15 15 U.S.C. § 2301(3).

16 183. Kia and Hyundai are “suppliers” and “warrantors” as those terms are defined  
17 in 15 U.S.C. § 2301(4) & (5), respectively

18 184. In connection with the sale and/or lease of the Class Vehicles, Defendants  
19 supplied Plaintiffs and the Class with “written warranties” as that term is defined in 15  
20 U.S.C. § 2301(6).

21 185. 15 U.S.C. § 2310(d)(1) provides that “a consumer who is damaged by the  
22 failure of the supplier, warrantor, or service contractor to comply with any obligation under  
23 [the MMWA], or a written warranty, implied warranty, or service contract, may bring suit  
24 for damages and other legal and equitable relief in any court of competent jurisdiction in  
25 any state.”

1 186. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is  
2 damaged by the failure of a warrantor to comply with an implied warranty.

3 187. Defendants provided Plaintiffs and Class members with an implied warranty  
4 of merchantability in connection with the purchase or lease of their vehicles that is an  
5 “implied warranty” within the meaning of the MMWA, 15 U.S.C. § 2301(7). As a part of the  
6 implied warranty of merchantability, Defendants warranted that the Class Vehicles were fit  
7 for their ordinary purpose and would pass without objection in the trade as designed,  
8 manufactured, and marketed, and were adequately contained, packaged, and labeled.

9 188. Defendants breached their implied warranties, as described herein, and are  
10 therefore liable to Plaintiffs under 15 U.S.C. § 2310(d)(1). The defects rendered the Class  
11 Vehicles unmerchantable and unfit for their ordinary use of driving when they were sold or  
12 leased, and at all times thereafter.

13 189. Plaintiffs used their respective Class Vehicles in a manner consistent with their  
14 intended use and performed every duty required of them under the terms of the warranty,  
15 except as may have been excused or prevented by Defendants’ conduct or by operation of  
16 law.

17 190. Plaintiffs and the Class seek to recover damages resulting directly from  
18 Defendants’ breach of their implied warranties and their deceitful and unlawful conduct  
19 described herein. These damages include, but are not limited to, overpayment for the Class  
20 Vehicles, insurance deductibles to get the stolen Class Vehicles repaired, the cost to replace  
21 other property stolen in connection with the thefts of their Vehicles, the loss of use of their  
22 respective Vehicles, costs associated with the replacement of the totaled Class Vehicles,  
23 diminution in value of a stolen Class Vehicles that were not totaled, and/or increased  
24 insurance premiums.

25 191. The MMWA also permits “other legal and equitable” relief. 15 U.S.C.  
26 § 2310(d)(1). Plaintiffs seek reformation of Defendants’ respective written warranties to  
27

1 comport with their obligations under the MMWA and with consumers' reasonable  
2 expectations. Plaintiffs also seek to enjoin Defendants from acting unlawfully as alleged  
3 herein.

4 192. Finally, Plaintiffs intend to seek such an award as prevailing consumers at the  
5 conclusion of this case. The MMWA provides for an award of costs and expenses, including  
6 attorneys' fees, to prevailing consumers in the Court's discretion. 15 U.S.C. § 2310(d)(2).

7 **3. Count 3—Unjust Enrichment**

8 193. Plaintiffs incorporate by reference all preceding allegations as though fully set  
9 forth herein.

10 194. This claim is pleaded in the alternative to any contract-based claims asserted  
11 by the Plaintiffs noted above. *See* Fed. R. Civ. P. 8(d)(2). Moreover, a claim for unjust  
12 enrichment is properly brought where, as here, Defendants contend that their warranties do  
13 not cover damages stemming from the defects.

14 195. Plaintiffs bought and/or leased their Class Vehicles new, directly from a Kia  
15 or Hyundai dealership.

16 196. Every year, Defendants make millions of dollars in revenue selling and leasing  
17 new Class Vehicles through their respective dealer networks across the United States.

18 197. Plaintiffs allege upon information and belief that consumers are not permitted  
19 to buy Class Vehicles directly from Defendants, but that the proceeds flow through various  
20 dealers and/or related companies (e.g., their finance companies) back to Defendants.

21 198. Accordingly, the purchase and lease of new Class Vehicles confers a direct  
22 monetary benefit on Defendants.

23 199. Used Class Vehicle purchasers also conferred a benefit on Defendants.  
24 Defendants profit off the replacement parts needed to service and repair these Vehicles.

25 200. Further, as more used Class Vehicles stay in the stream of commerce,  
26 Defendants' brand awareness rises, which is of substantial value to vehicle manufacturers.

1 Defendants have touted their vehicles as not only reliable and durable, but also as having  
2 lower depreciation rates and ownership costs over their useful lives.<sup>67</sup>

3 201. Defendants tout these benefits to promote the sale and lease of their new cars  
4 for pecuniary benefit.

5 202. Accordingly, Plaintiffs and the Class conferred a benefit upon Defendants,  
6 whether directly, indirectly, or through one or more affiliate entities.

7 203. Defendants knew and appreciated the benefits conferred upon them through  
8 the sale of the Class Vehicles to Plaintiffs and members of the Class. Many of the Class  
9 Vehicles were financed through Kia Motor Finance or Hyundai Motor Finance.

10 204. Notably, federal law mandates that Kia and Hyundai maintain records of first-  
11 time purchasers of Class Vehicles, *see* 49 U.S.C. § 30117(b), and remain able to identify the  
12 owners of their used cars, including the owners of certain Class Vehicles, to comply with  
13 recall notification procedures under applicable law. *See id.* § 30119(d)(1)(A).

14 205. Defendants have long represented to the consuming public that the Class  
15 Vehicles are safe, reliable, and durable even though they knew of the defects. Not only did  
16 Defendants fail to equip the Class Vehicles with an industry standard anti-theft device, they  
17 failed to comply with FMVSS 114.

18 206. As a result of Defendants' wrongful conduct, unsuspecting consumers like  
19 Plaintiffs and the Class overpaid for the Class Vehicles and incurred additional costs,  
20 thereby allowing Defendants to earn more profit.

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26 <sup>67</sup> *Kia Sweeps IntelliChoice CPO Awards*,  
27 [https://www.kiamedia.com/us/en/media/pressreleases/15857/kia-sweeps-  
awards](https://www.kiamedia.com/us/en/media/pressreleases/15857/kia-sweeps-intellichoice-cpo-awards) (last visited Aug. 19, 2022)

1 207. Defendants continued to market the Class Vehicles despite knowing that they  
2 were unsafe and susceptible to theft, foisting the cost they would otherwise have been  
3 forced to bear through a voluntary recall or otherwise on Plaintiffs and the Class.

4 208. Under these circumstances, it would be unjust to allow Defendants to accept  
5 and retain the benefits identified herein without paying Plaintiffs and the Class for their  
6 value.

7 **4. Count 4—Violations of the California Consumers Legal Remedies**  
8 **Act (Cal. Civ. Code § 1750, *Et Seq.*)**

9 209. Plaintiffs incorporate by reference all preceding allegations as though fully set  
10 forth herein.

11 210. Plaintiffs bring this claim as part of the Nationwide Class.

12 211. California’s Consumers Legal Remedies Act (“CLRA”),  
13 Cal. Civ. Code § 1750, *et seq.*, proscribes “unfair methods of competition and unfair or  
14 deceptive acts or practices undertaken by any person in a transaction intended to result or  
15 which results in the sale or lease of goods or services to any consumer.”

16 212. The Class Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

17 213. Plaintiffs and the other Class members are “consumers” as defined in Cal. Civ.  
18 Code § 1761(d), and Plaintiffs, the other Class members, and Defendants are “persons” as  
19 defined in Cal. Civ. Code § 1761(c).

20 214. As alleged herein, Defendants made misleading representations and omissions  
21 concerning the benefits, performance, and safety of the Class Vehicles.

22 215. In purchasing or leasing the Class Vehicles, Plaintiffs and other Class members  
23 were deceived by Defendants’ failure to disclose their knowledge of the defects.

24 216. Defendants’ conduct as described herein was and is in violation of the CLRA.  
25 Defendants’ conduct violates at least the following enumerated CLRA provisions:



1 a. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship,  
2 approval, characteristics, uses, benefits, or quantities that they do not have.

3 b. Cal Civ. Code § 1770(a)(7): Representing that goods are of a particular  
4 standard, quality, or grade if they are of another.

5 c. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell  
6 them as advertised.

7 d. Cal Civ. Code § 1770(a)(16): Representing that goods have been  
8 supplied in accordance with a previous representation when they have not.

9 217. Defendants intentionally and knowingly misrepresented and omitted material  
10 facts regarding the Class Vehicles with an intent to mislead Plaintiffs and Class members.

11 218. In purchasing or leasing the Class Vehicles, Plaintiffs and other Class members  
12 were deceived by Defendants' failure to disclose their knowledge of the defects.

13 219. Plaintiffs and other Class members had no way of knowing Defendants'  
14 representations were false, misleading, and incomplete or knowing the true nature of the  
15 defects.

16 220. As alleged herein, Defendants engaged in a pattern of deception and public  
17 silence in the face of known defects. Plaintiffs and other Class members did not, and could  
18 not, unravel Defendants' deception on their own.

19 221. Defendants knew or should have known their conduct violated the CLRA.

20 222. Defendants owed Plaintiffs and the Class members a duty to disclose the truth  
21 about the defects because the defects created a safety hazard and Defendants:

22 a. Possessed exclusive knowledge of the defects,

23 b. Intentionally concealed the foregoing from Plaintiffs and Class  
24 members; and/or

25 c. Made incomplete representations in advertisements and on their  
26 websites, failing to warn the public of the defects.

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1           223. Defendants had a duty to disclose that the Class Vehicles were fundamentally  
2 flawed as described herein, because the defects created a safety hazard, and Plaintiffs and  
3 the other Class members relied on Defendants' material misrepresentations and omissions  
4 regarding the features of the Class Vehicles.

5           224. Defendants' conduct proximately caused injuries to Plaintiffs and the other  
6 Class members that purchased the Class Vehicles and suffered harm as alleged herein.

7           225. Plaintiffs and the other Class members were injured and suffered ascertainable  
8 loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in  
9 that Plaintiffs and the other Class members incurred costs, including overpaying for their  
10 Class Vehicles that have suffered a diminution in value.

11           226. Defendants' violations cause continuing injuries to Plaintiffs and other Class  
12 members.

13           227. Defendants' unlawful acts and practices complained of herein affect the public  
14 interest.

15           228. Defendants knew of the defects, and that the Class Vehicles were materially  
16 compromised by them.

17           229. The facts concealed and omitted by Defendants from Plaintiffs and other  
18 Class members are material in that a reasonable consumer would have considered them to  
19 be important in deciding whether to purchase a Class Vehicle or pay a lower price.

20           230. Plaintiffs' and the other Class members' injuries were proximately caused by  
21 Defendants' unlawful and deceptive business practices.

22           231. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs seek an order enjoining  
23 Defendants from engaging in the methods, acts, or practices alleged herein, including  
24 further concealment of the defects.

25           232. Plaintiffs have provided Defendants with the appropriate notice and demand  
26 pursuant to Cal. Civ. Code §§ 1780(a) and (d).

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1           233. Pursuant to Cal. Civ. Code § 1782, if Defendant does not rectify its conduct  
2 within 30 days, Plaintiffs intend to amend this Complaint to add claims under the Cal. Civ.  
3 Code for:

- 4           a. Actual damages;
- 5           b. Restitution of money to Plaintiffs and Class members, and the general  
6 public;
- 7           c. Punitive damages;
- 8           d. An additional award of up to \$5,000 to each Plaintiff and any Class  
9 member who is a “senior citizen”;
- 10          e. Attorneys’ fees and costs; and
- 11          f. Other relief that this Court deems proper.

12           **5. Count 5—Violation of California’s Unfair Competition Law (Cal.**  
13           **Bus. & Prof. Code § 17200, *Et Seq.*)**

14           234. Plaintiffs incorporate by reference all preceding allegations as though fully set  
15 forth herein.

16           235. Plaintiffs bring this claim on behalf of the Nationwide Class.

17           236. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code  
18 § 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or  
19 fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.”

20           237. Defendants’ conduct, as described herein, was and is in violation of the UCL.  
21 Defendants’ conduct violates the UCL in at least the following ways:

- 22           a. By failing to disclose the defects;
- 23           b. By selling and leasing Class Vehicles that suffer from the defects;
- 24           c. By knowingly and intentionally concealing the defects from Plaintiffs  
25 and the other Class members;

1           d. By marketing Class Vehicles as safe, convenient, and defect free, with  
2 cutting edge technology, all while knowing of the defects; and

3           e. By violating other California laws, including California consumer  
4 protection laws.

5           238. Defendants intentionally and knowingly misrepresented and omitted material  
6 facts regarding the Class Vehicles with intent to mislead Plaintiffs and the other Class  
7 members.

8           239. In purchasing or leasing the Class Vehicles, Plaintiffs and the other Class  
9 members were deceived by Defendants' failure to disclose the defects.

10           240. Plaintiffs and the other Class members reasonably relied upon Defendants'  
11 misrepresentations and omissions. They had no way of knowing that Defendants'  
12 representations were false, misleading, and incomplete. As alleged herein, Defendants  
13 engaged in a pattern of deception and public silence in the face of known defects. Plaintiffs  
14 and the other Class members did not, and could not, unravel Defendants' deception on  
15 their own.

16           241. Defendants knew or should have known that their conduct violated the UCL.

17           242. Defendants owed Plaintiffs and the other Class members a duty to disclose the  
18 truth about the defects because the defects created a safety hazard and Defendants:

19           a. Possessed exclusive knowledge of the defects;

20           b. Intentionally concealed the foregoing from Plaintiffs and the other  
21 Class members; and/or

22           c. Made incomplete representations by failing to warn the public or to  
23 publicly admit the defects.

24           243. Defendants' conduct proximately caused injuries to Plaintiffs and the other  
25 Class members that purchased the Class Vehicles and suffered harm as alleged herein.

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1           244. Plaintiffs and the other Class members were injured and suffered ascertainable  
2 loss, injury-in-fact, and/or actual damage as a proximate result of Defendants’ conduct in  
3 that Plaintiffs and the other Class members incurred costs, including overpaying for their  
4 Class Vehicles that have suffered a diminution in value.

5           245. Defendants’ violations cause continuing injuries to Plaintiffs and Class  
6 members.

7           246. Defendants’ unlawful acts and practices complained of herein affect the public  
8 interest.

9           247. Defendants’ misrepresentations and omissions alleged herein caused Plaintiffs  
10 and the other Class members to purchase their Class Vehicles. Absent those  
11 misrepresentations and omissions, Plaintiffs and the other Class members would not have  
12 purchased these Class Vehicles, would not have purchased these Class Vehicles at the prices  
13 they paid, and/or would have purchased less expensive alternative vehicles that did not  
14 contain the defects and did not fail to live up to industry standards.

15           248. Accordingly, Plaintiffs and the other Class members have suffered injury-in-  
16 fact, including lost money or property, as a result of Defendants’ misrepresentations and  
17 omissions.

18           249. Plaintiffs request that this Court enter such orders or judgments as may be  
19 necessary to restore to Plaintiffs and Class members any money Defendants acquired by  
20 unfair competition, including restitution and/or restitutionary disgorgement, as provided in  
21 Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other relief as may  
22 be appropriate.

23                   **6. Count 6—Fraud by Concealment (Based on California Law)**

24           250. Plaintiffs incorporate by reference all preceding allegations as though fully set  
25 forth herein.

26           251. Plaintiffs bring this claim on behalf of the Nationwide Class.  
27

1           252. Defendants intentionally concealed the defects.

2           253. Defendants further affirmatively misrepresented to Plaintiffs in advertising  
3 and other forms of communication, including standard and uniform material provided with  
4 each car and on their websites, that the Class Vehicles they were selling had no significant  
5 defects, were reliable, and would perform and operate properly.

6           254. Defendants knew about the defects when these representations were made.

7           255. The Class Vehicles purchased by Plaintiffs and the other Class members  
8 contained the defects.

9           256. Defendants had a duty to disclose the defects as alleged herein, because it  
10 created a safety hazard and Plaintiffs and the other Class members relied on Defendants'  
11 material representations.

12           257. As alleged herein, at all relevant times, Defendants have held out the Class  
13 Vehicles to be free from defects. Defendants touted many benefits and advantages of the  
14 Class Vehicles, but nonetheless failed to disclose important facts related to the defects. This  
15 made Defendants' other disclosures about the Class Vehicles deceptive.

16           258. The truth about the defects was known only to Defendants; Plaintiffs and the  
17 other Class members did not know of these facts and Defendants actively concealed these  
18 facts from Plaintiffs and Class members.

19           259. Plaintiffs and the other Class members reasonably relied upon Defendants'  
20 deception. They had no way of knowing that Defendants' representations were false,  
21 misleading, or incomplete. As consumers, Plaintiffs and Class members did not, and could  
22 not, unravel Defendants' deception on their own. Rather, Defendants intended to deceive  
23 Plaintiffs and Class members by concealing the true facts about the Class Vehicles.

24           260. Defendants' false representations and omissions were material to consumers  
25 because they concerned qualities of the Class Vehicles that played a significant role in their  
26 value.

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28

1           261. Defendants had a duty to disclose the defects and violations with respect to  
2 the Class Vehicles because details of the true facts were known and/or accessible only to  
3 Defendants, Defendants had exclusive knowledge as to such facts, and Defendants knew  
4 these facts were not known to or reasonably discoverable by Plaintiffs or Class members.

5           262. Defendants also had a duty to disclose because they made general affirmative  
6 representations about the technological and safety innovations included with their Vehicles,  
7 without telling consumers that the Class Vehicles had fundamental defects that would affect  
8 the safety, quality, and performance of the Class Vehicle.

9           263. Defendants' disclosures were misleading, deceptive, and incomplete because  
10 they failed to inform consumers of the additional facts regarding the defects as set forth  
11 herein. These omitted and concealed facts were material because they directly impact the  
12 value of the Class Vehicles purchased by Plaintiffs and Class members.

13           264. Defendants have still not made full and adequate disclosures and continue to  
14 defraud Plaintiffs and Class members by concealing material information regarding the  
15 defects.

16           265. Plaintiffs and Class members were unaware of the omitted material facts  
17 referenced herein, and they would not have acted as they did if they had known of the  
18 concealed and/or suppressed facts, in that they would not have purchased or paid as much  
19 for cars with faulty technology, and/or would have taken other affirmative steps in light of  
20 the information concealed from them. Plaintiffs' and Class members' actions were justified.  
21 Defendants were in exclusive control of the material facts, and such facts were not generally  
22 known to the public, Plaintiffs, or Class members.

23           266. Because of Defendants' concealment and/or suppression of the true quality of  
24 the Class Vehicles' security systems, Plaintiffs and Class members sustained damage because  
25 they own or lease Class Vehicles that are diminished in value. Had Plaintiffs and Class  
26 members been aware of the defects in the Class Vehicles, Plaintiffs and Class members  
27

1 would have paid less for their Class Vehicles or would not have purchased or leased them at  
2 all.

3 267. The value of Plaintiffs' and Class members' Class Vehicles have diminished as  
4 a result of Defendants' fraudulent concealment of the defects, which would make any  
5 reasonable consumer reluctant to purchase any of the Class Vehicles, let alone pay what  
6 otherwise would have been fair market value for the Vehicles.

7 268. Accordingly, Defendants are liable to Plaintiffs and Class members for  
8 damages in an amount to be proven at trial.

9 269. Defendants' acts were done wantonly, maliciously, oppressively, deliberately,  
10 with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and  
11 to enrich the Defendants. Defendants' conduct warrants an assessment of punitive damages  
12 in an amount sufficient to deter such conduct in the future, which amount is to be  
13 determined according to proof.

14 **7. Count 7—Breach of Implied Warranty of Merchantability (Cal.**  
15 **Com. Code § 2314)**

16 270. Plaintiffs incorporate by reference all preceding allegations as though fully set  
17 forth herein.

18 271. Plaintiffs bring this claim on behalf of the Nationwide Class.

19 272. Defendants are and were at all relevant times merchants with respect to motor  
20 vehicles under Cal. Com. Code § 2104.

21 273. A warranty that the Class Vehicles were in merchantable condition was  
22 implied by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

23 274. Defendants marketed the Class Vehicles as safe and reliable vehicles. Such  
24 representations formed the basis of the bargain in Plaintiffs' and Class members' decisions  
25 to purchase or lease the Vehicles.



1           275. Plaintiffs and other Class members purchased or leased the Class Vehicles  
2 from Defendants, through Defendants' authorized agents for retail sales, through private  
3 sellers, or were otherwise expected to be the eventual purchasers of the Class Vehicles when  
4 bought from a third party. At all relevant times, Defendants were the manufacturers,  
5 distributors, warrantors, and/or sellers of the Class Vehicles.

6           276. Defendants knew or had reason to know of the specific use for which the  
7 Class Vehicles were purchased or leased.

8           277. Because of the defects, the Class Vehicles were not in merchantable condition  
9 when sold and are not fit for the ordinary purpose of providing safe and reliable  
10 transportation.

11           278. Defendants knew about the defects, allowing Defendants to cure their breach  
12 of warranty if they chose.

13           279. Defendants' attempt to disclaim or limit the implied warranty of  
14 merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically,  
15 Defendants' warranty limitation is unenforceable because they knowingly sold or leased a  
16 defective product without informing consumers about the defects. The time limits  
17 contained in Defendants' warranty periods were also unconscionable and inadequate to  
18 protect Plaintiffs and other Class members. Among other things, Plaintiffs and other Class  
19 members had no meaningful choice in determining these time limitations, the terms of  
20 which unreasonably favored Defendants. A gross disparity in bargaining power existed  
21 between Defendants and Class members, and Defendants knew of the defects at the time  
22 of sale.

23           280. Plaintiffs and Class members have complied with all obligations under the  
24 warranty, or otherwise have been excused from performance of said obligations as a result  
25 of Defendants' conduct described herein. Affording Defendants a reasonable opportunity  
26 to cure the breach of written warranties therefore would be unnecessary and futile.

1 281. Accordingly, Defendants are liable to Plaintiffs and Class members for  
2 damages in an amount to be proven at trial.

3 **B. Claims Brought on Behalf of the Illinois Class**

4 1. **Count 8—Violation of the Illinois Consumer Fraud and Deceptive**  
5 **Business Practices Act (815 ILCS 505/1, et seq., and 720 ILCS**  
6 **295/1A)**

7 282. Plaintiff Sellers incorporates by reference the allegations contained in the  
8 preceding paragraphs of this complaint.

9 283. Plaintiff Sellers brings this claim on behalf of herself and the Illinois Class.

10 284. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois  
11 CFA”) prohibits “unfair or deceptive acts or practices, including, but not limited to, the use  
12 or employment of any deception, fraud, false pretense, tales promise, misrepresentation or  
13 the concealment, suppression or omission of any material fact, with intent that others rely  
14 upon the concealment, suppression or omission of such material fact . . . in the conduct of  
15 trade or commerce . . . whether any person has in fact been misled, deceived, or damaged  
16 thereby.” 815 ILCS 505/2.

17 285. Defendants are “persons” as that term is defined in 815 ILCS 505/1(c).

18 286. Plaintiff Sellers and the Illinois Class members are “consumers” as that term is  
19 defined in 815 ILCS 505/1(e).

20 287. Defendants violated the Illinois CFA by concealing and failing to disclose the  
21 defects. Defendants had an ongoing duty to Plaintiff Sellers and the Illinois Class to refrain  
22 from unfair and deceptive practices under the Illinois CFA in the course of their business.

23 288. Plaintiff Sellers and the Illinois Class suffered ascertainable loss and actual  
24 damages as a direct and proximate result of Defendants’ concealment, misrepresentations,  
25 and/or failure to disclose material information.

1 289. Pursuant to 815 ILCS 505/10a(a), Plaintiff Sellers and the Illinois Class seek  
2 monetary relief against Defendants in the amount of actual damages as well as punitive  
3 damages because Defendants acted with fraud and/or malice and/or were grossly negligent.

4 290. Plaintiff Sellers and the Illinois Class also seek an order enjoining Defendants'  
5 unfair and/or deceptive acts or practices, attorneys' fees, and any other just and proper  
6 relief available under 815 ILCS 505/1, *et seq.*

7 **2. Count 9—Breach of the Implied Warranty of Merchantability (810**  
8 **ILCS §§ 5/2-314 and 5/2A-212)**

9 291. Plaintiff Sellers incorporates by reference all preceding allegations as though  
10 fully set forth herein.

11 292. Plaintiff Sellers brings this claim on behalf of herself and the Illinois Class.

12 293. Defendants were at all relevant times “merchants” with respect to motor  
13 vehicles under 810 ILCS §§ 5/2-104(1) and 5/2A-103(3), and “sellers” of motor vehicles  
14 under § 5/2-103(1)(d).

15 294. The Class Vehicles are and were at all relevant times “goods” within the  
16 meaning of 810 ILCS §§ 5/2-105(1) and 5/2A-103(1)(h).

17 295. A warranty that the Class Vehicles were in merchantable condition and fit for  
18 the ordinary purpose for which vehicles are used is implied by law pursuant to 810 ILCS §§  
19 28-2-314 and 28-12-212.

20 296. These Class Vehicles, when sold and at all times thereafter, were not in  
21 merchantable condition and are not fit for the ordinary purpose for which cars are used.  
22 Specifically, the Class Vehicles are defective in that the defects rendered them unsafe,  
23 inconvenient, and imperfect such that Plaintiff Sellers and the other Illinois Class members  
24 would not have purchased the Vehicles had they known of the defects.

25 297. Defendants knew about the defects at the time of purchase, allowing them to  
26 cure their breach of warranty if they chose.

1 298. Defendants were provided notice of these issues by numerous complaints  
2 against them, including the instant Complaint; customer complaints, letters, and emails;  
3 communications from dealers and other repair facilities; and other communications from  
4 Class members.

5 299. As a direct and proximate result of Defendants’ breach of the implied  
6 warranty of merchantability, Plaintiff Sellers and the other Illinois Class members have been  
7 damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-  
8 bargain damages, restitution and/or diminution of value.

9 **C. Claims Brought on Behalf of the Virginia Class**

10 **1. Count 9—Violation of the Virginia Consumer Protection Act (Va.**  
11 **Code Ann. § 59.1-196, et seq.)**

12 300. Plaintiff Francis incorporates by reference all preceding allegations as though  
13 fully set forth herein.

14 301. Plaintiff Francis brings this claim on behalf of herself and the Virginia Class.

15 302. Defendants are “suppliers” under Va. Code Ann. § 59.1-198.

16 303. The sale of the Class Vehicles with the defects to the Class members was a  
17 “consumer transaction” within the meaning of Va. Code Ann. § 59.1-198.

18 304. The Virginia Consumer Protection Act (“Virginia CPA”) lists prohibited  
19 “practices” which include: “5. Misrepresenting that goods or services have certain  
20 characteristics”; “6. Misrepresenting that goods or services are of a particular standard,  
21 quality, grade style, or model”; “8. Advertising goods or services with intent not to sell them  
22 as advertised, or with intent not to sell at the price or upon the terms advertised”; “9.  
23 Making false or misleading statements of fact concerning the reasons for, existence of, or  
24 amounts of price reductions”; and “14. Using any other deception, fraud, or  
25 misrepresentation in connection with a consumer transaction.” Va. Code Ann. § 59.1-200.

1           305. Defendants violated the Virginia CPA by misrepresenting that the Class  
2 Vehicles had certain quantities, characteristics, uses, or benefits; misrepresenting that they  
3 were of a particular standard, quality, grade, style, or model; advertising them with intent  
4 not to sell or lease as advertised; and otherwise “using any other deception, fraud, false  
5 pretense, false promise, or misrepresentation in connection with a consumer transaction.”

6           306. In the course of their business, Defendants failed to disclose and actively  
7 concealed the dangers and risks posed by the Class Vehicles as described herein and  
8 otherwise engaged in activities with a tendency or capacity to deceive. Defendants also  
9 engaged in unlawful trade practices by employing deception, deceptive acts or practices,  
10 fraud, misrepresentations, or concealment, suppression or omission of any material fact  
11 with intent that others rely upon such concealment, suppression or omission, in connection  
12 with the sale of the Class Vehicles.

13           307. In purchasing or leasing the Class Vehicles, Plaintiff Francis and the Virginia  
14 Class members were deceived by Defendants’ failure to disclose their knowledge of the  
15 defects.

16           308. Plaintiff Francis and the Virginia Class members had no way of knowing  
17 Defendants’ representations were false, misleading, and incomplete or knowing the true  
18 nature of the defects.

19           309. Defendants knew or should have known their conduct violated the Virginia  
20 CPA.

21           310. By failing to disclose and by actively concealing the defects in the Class  
22 Vehicles, by marketing them as safe, reliable, and of high quality, and by presenting  
23 themselves as reputable manufacturers that value safety, Defendants engaged in unfair or  
24 deceptive business practices in violation of the Virginia CPA. Defendants deliberately  
25 withheld the information about the defects, in order to ensure that consumers would  
26 purchase the Class Vehicles.

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1           311. In the course of Defendants’ business, they willfully failed to disclose and  
2 actively concealed the dangerous risks posed by the serious defects discussed above.  
3 Defendants compounded the deception by repeatedly asserting that the Class Vehicles were  
4 safe, reliable, and of high quality, and by claiming to be reputable manufacturers that value  
5 safety.

6           312. Defendants’ unfair or deceptive acts or practices, including these  
7 concealments, omissions, and suppressions of material facts, had a tendency or capacity to  
8 mislead and create a false impression in consumers, and were likely to and did in fact  
9 deceive reasonable consumers, including Plaintiff Francis and the Virginia Class members,  
10 about the true safety and reliability of Class Vehicles, the quality of Defendants’ brands, and  
11 the true value of the Class Vehicles.

12           313. Defendants knew or should have known that their conduct violated the  
13 Virginia CPA.

14           314. As alleged above, Defendants made material statements about the safety and  
15 reliability of the Class Vehicles that were either false or misleading. Defendants’  
16 representations, omissions, statements, and commentary have included selling and  
17 marketing the Class Vehicles as “safe” and “reliable,” despite their knowledge of the defects  
18 or their failure to reasonably investigate them.

19           315. To protect their profits and to avoid remediation costs and a public relations  
20 nightmare, Defendants concealed the dangers and risks posed by the Class Vehicles and/or  
21 defects, and allowed unsuspecting new and used car purchasers to continue to buy/lease the  
22 Class Vehicles, and allowed them to continue driving vehicles highly prone to theft.

23           316. Defendants owed Plaintiff Francis and the Virginia Class members a duty to  
24 disclose the true safety and reliability of the Class Vehicles installed in them because  
25 Defendants:

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1 a. Possessed exclusive knowledge of the dangers and risks posed by the  
2 foregoing;

3 b. Intentionally concealed the foregoing from Plaintiff Francis and the  
4 Virginia Class members; and/or

5 c. Made incomplete representations about the safety and reliability of the  
6 foregoing generally, while purposefully withholding material facts from Plaintiff  
7 Francis and the Virginia Class members that contradicted these representations.

8 317. Because Defendants fraudulently concealed the defects in the Class Vehicles, a  
9 raft of negative publicity resulted once the defects were disclosed, and the value of the Class  
10 Vehicles has greatly diminished.

11 318. Defendants' failure to disclose and active concealment of the dangers and risks  
12 posed by the defects in Class Vehicles were material to Plaintiff Francis and the Virginia  
13 Class.

14 319. Plaintiff Francis and the Virginia Class suffered ascertainable loss caused by  
15 Defendants' misrepresentations and their failure to disclose material information. Had they  
16 been aware of the defects in the Class Vehicles, Plaintiff Francis and the Virginia Class  
17 members would have paid less for their vehicles or would not have purchased or leased  
18 them. Plaintiff Francis and the Virginia Class members did not receive the benefit of their  
19 bargain as a result of Defendants' misconduct.

20 320. Defendants' violations present a continuing risk to Plaintiff Francis and the  
21 Virginia Class, as well as to the general public. Defendants' unlawful acts and practices  
22 complained of herein affect the public interest.

23 321. As a direct and proximate result of Defendants' violations of the Virginia  
24 CPA, Plaintiff Francis and the Virginia Class have suffered injury-in-fact and/or actual  
25 damage.

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1           322. Pursuant to Va. Code Ann. § 59.1-204, Plaintiff Francis and the Virginia Class  
2 seek monetary relief against Defendants measured as the greater of (a) actual damages in an  
3 amount to be determined at trial and (b) statutory damages in the amount of \$500 for  
4 Plaintiff Francis and each Virginia Class member. Because Defendants’ conduct was  
5 committed willfully and knowingly, Plaintiff Francis is entitled to recover for herself and  
6 each Virginia Class member the greater of (a) three times actual damages or (b) \$1,000.

7           323. Plaintiff Francis and the Virginia Class also seek an order enjoining  
8 Defendants’ unfair and/or deceptive acts or practices, punitive damages, and attorneys’  
9 fees, and any other just and proper relief available under Va. Code Ann. § 59.1-204, *et seq.*

10                           **2. Count 10—Breach of the Implied Warranty of Merchantability (Va.**  
11                           **Code Ann. § 8.2-314)**

12           324. Plaintiff Francis incorporates by reference all preceding allegations as though  
13 fully set forth herein.

14           325. Plaintiff Francis brings this claim on behalf of herself and the Virginia Class.

15           326. Defendants are and were at all relevant times merchants with respect to motor  
16 vehicles within the meaning of Va. Code Ann. § 8.2-314.

17           327. A warranty that the Class Vehicles were in merchantable condition was  
18 implied by law in Class Vehicle transactions, pursuant to Va. Code Ann. § 8.2-314.

19           328. The Class Vehicles are not “merchantable” because they are not reasonably fit  
20 for the ordinary purpose for which they are sold, which is to provide safe, reliable  
21 transportation. To the contrary, the Class Vehicles pose a substantial safety hazard because  
22 the defects render them vulnerable to theft, making them prime targets to be used as  
23 instrumentalities of criminal activity, including reckless driving.

24           329. Defendants were provided notice of these issues by their own knowledge,  
25 customer complaints, numerous complaints filed against them and/or others, internal  
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1 investigations, numerous individual letters, and communications sent by consumers before  
2 or within a reasonable amount of time after the allegations of the defects became public.

3 330. As a direct and proximate result of Defendants’ breach of the warranties of  
4 merchantability, Plaintiff Francis and the Virginia Class members have been damaged in an  
5 amount to be proven at trial.

6 **D. Claims Brought on Behalf of the Louisiana Class**

7 **1. Violation of the Louisiana Unfair Trade Practices and Consumer**  
8 **Protection Law (La. Rev. Stat. § 51:1401, et seq.)**

9 331. Plaintiffs Harang and Scott incorporate by reference all preceding allegations  
10 as though fully set forth herein.

11 332. Plaintiffs Harang and Scott bring this claim on behalf of themselves and the  
12 Louisiana Class.

13 333. Plaintiffs Harang and Scott, the Louisiana Class, and Defendants are  
14 “persons” within the meaning of the La. Rev. Stat. § 51:1402(8).

15 334. Plaintiffs Harang and Scott and the Louisiana Class are “consumers” within  
16 the meaning of La. Rev. Stat. § 51:1402(1).

17 335. Defendants engaged in “trade” or “commerce” within the meaning of La. Rev.  
18 Stat. § 51:1402(9).

19 336. The Louisiana Unfair Trade Practices and Consumer Protection Law  
20 (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade  
21 or commerce.” La. Rev. Stat. § 51:1405(A). Defendants participated in misleading, false, or  
22 deceptive acts that violated the Louisiana CPL by failing to disclose and actively concealing  
23 the true safety and reliability of the Class Vehicles due to the defects.

24 337. In the course of their business, Defendants failed to disclose and actively  
25 concealed true safety and reliability of the Class Vehicles as described herein and otherwise  
26 engaged in activities with a tendency or capacity to deceive. Defendants also engaged in  
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1 unlawful trade practices by employing deception, deceptive acts or practices, fraud,  
2 misrepresentations, or concealment, suppression or omission of any material fact with  
3 intent that others rely upon such concealment, suppression or omission, in connection with  
4 the sale of the Class Vehicles.

5 338. By failing to disclose and by actively concealing the defects in the Class  
6 Vehicles, by marketing them as safe, reliable, and of high quality, and by presenting  
7 themselves as reputable manufacturers that value safety, Defendants engaged in unfair or  
8 deceptive business practices in violation of the Louisiana CPL. Defendants deliberately  
9 withheld the information about the propensity of the defects to ensure that consumers  
10 would purchase the Class Vehicles.

11 339. Defendants' unfair or deceptive acts or practices, including these  
12 concealments, omissions, and suppressions of material facts, had a tendency or capacity to  
13 mislead and create a false impression in consumers, and were likely to and did in fact  
14 deceive reasonable consumers, including Plaintiffs Harang and Scott and the Louisiana  
15 Class members, about the true safety and reliability of Class Vehicles, the quality of  
16 Defendants' brands, and the true value of the Class Vehicles.

17 340. Defendants knew or should have known that their conduct violated the  
18 Louisiana CPL.

19 341. As alleged above, Defendants made material statements about the safety and  
20 reliability of the Class Vehicles and/or the defects that were either false or misleading.  
21 Defendants' representations, omissions, statements, and commentary have included selling  
22 and marketing the Class Vehicles as "safe" and "reliable", despite their knowledge of the  
23 defects or their failure to reasonably investigate them.

24 342. To protect their profits and to avoid remediation costs and a public relations  
25 nightmare, Defendants concealed the dangers and risks posed by the Class Vehicles and/or  
26 the defects; allowed unsuspecting new and used car purchasers to continue to buy/lease the  
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1 Class Vehicles; and allowed those purchasers to continue driving dangerous and unreliable  
2 vehicles.

3 343. Defendants owed Plaintiffs Harang and Scott and the Louisiana Class  
4 members a duty to disclose the true safety and reliability of the Class Vehicles and/or the  
5 defects because Defendants:

6 a. Possessed exclusive knowledge of the dangers and risks posed by the  
7 foregoing;

8 b. Intentionally concealed the foregoing from Plaintiffs Harang and Scott  
9 and the Louisiana Class members; and/or

10 c. Made incomplete representations about the safety and reliability of the  
11 foregoing generally, while purposefully withholding material facts from Plaintiffs  
12 Harang and Scott and the Louisiana Class members that contradicted these  
13 representations.

14 344. Because Defendants fraudulently concealed the defects in the Class Vehicles, a  
15 raft of negative publicity and thefts resulted once the defects were finally disclosed, and the  
16 value of the Class Vehicles was greatly diminished.

17 345. Defendants' failure to disclose and active concealment of the dangers and risks  
18 posed by the defects in Class Vehicles were material to Plaintiffs Harang and Scott and the  
19 Louisiana Class members.

20 346. Plaintiffs Harang and Scott and the Louisiana Class members suffered  
21 ascertainable loss caused by Defendants' misrepresentations and their failure to disclose  
22 material information. Had they been aware of the defects that existed in the Class Vehicles,  
23 Plaintiffs Harang and Scott and the Louisiana Class members would have paid less for their  
24 vehicles or would not have purchased or leased the vehicles at all. Plaintiffs Harang and  
25 Scott and the Louisiana Class members did not receive the benefit of their bargain as a  
26 result of Defendants' misconduct.

1 347. Defendants’ violations present a continuing risk to Plaintiffs Harang and Scott,  
2 the Louisiana Class members, as well as to the general public. Defendants’ unlawful acts and  
3 practices complained of herein affect the public interest.

4 348. As a direct and proximate result of Defendants’ violations of the Louisiana  
5 CPL, Plaintiffs Harang and Scott and the Louisiana Class have suffered injury-in-fact  
6 and/or actual damage.

7 349. Pursuant to La. Rev. Stat. § 51:1409, Plaintiffs Harang and Scott and the  
8 Louisiana Class seek to recover actual damages in an amount to be determined at trial;  
9 treble damages for Defendants’ knowing violations of the Louisiana CPL; an order  
10 enjoining Defendants’ unfair, unlawful, and/or deceptive practices; declaratory relief;  
11 attorneys’ fees; and any other just and proper relief available under La. Rev. Stat. § 51:1409.

12 **2. Count 12—Breach of the Implied Warranty of**  
13 **Merchantability/Warranty Against Redhibitory Defects**  
14 **(La. Civ. Code Art. 2520, 2524)**

15 350. Plaintiffs Harang and Scott incorporate by reference all preceding allegations  
16 as though fully set forth herein.

17 351. Plaintiffs Harang and Scott bring this claim on behalf of themselves and the  
18 Louisiana Class.

19 352. When Plaintiffs Harang and Scott and the Louisiana Class members acquired  
20 their Class Vehicles, those vehicles had redhibitory defects within the meaning of La. Civ.  
21 Code Art. 2520, in that the Class Vehicles were rendered so inconvenient that Plaintiffs  
22 Harang and Scott and the Louisiana Class members either would not have purchased the  
23 Class Vehicles had they known of the defects, or, because the defects so diminished the  
24 usefulness and/or value of the Class Vehicles, they would have only purchased the Class  
25 Vehicles for a lesser price.  
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1           353. Notice of the defects is required under La. Civ. Code Art. 2520, since  
2 Defendants had knowledge of the defects at the time they were sold to Plaintiffs Harang  
3 and Scott and the Louisiana Class members.

4           354. Under La. Civ. Code Art. 2524, a warranty that the Class Vehicles were in  
5 merchantable condition, or fit for ordinary use, was implied by law in the transactions when  
6 Plaintiffs Harang and Scott and the Louisiana Class members purchased their Class  
7 Vehicles.

8           355. Plaintiffs Harang and Scott and the Louisiana Class members relied on this  
9 warranty to their detriment.

10           356. The Class Vehicles are not “merchantable” because they are not reasonably fit  
11 for the ordinary purpose for which they are sold, which is to provide safe, reliable  
12 transportation. To the contrary, the Class Vehicles pose a substantial safety hazard because  
13 the defects render them vulnerable to theft, making them prime targets to be used as  
14 instrumentalities of criminal activity.

15           357. Defendants were provided notice of the defects by their knowledge of the  
16 Vehicles design, customer complaints, numerous complaints filed against them and/or  
17 others, internal investigations, and numerous individual letters and communications sent by  
18 consumers before or within a reasonable amount of time after the defects became public.

19           358. As a direct and proximate result of Defendants’ breach of these implied  
20 warranties, Plaintiffs Harang and Scott and the Louisiana Class members have suffered  
21 damages, injury in fact, and ascertainable loss in an amount to be determined at trial. These  
22 damages include, but are not limited to, overpayment for the Class Vehicles, insurance  
23 deductibles to get the stolen Class Vehicles repaired, the cost to replace other property  
24 stolen in connection with the thefts of Class Vehicles, increased insurance premiums, the  
25 loss of use of the Class Vehicles, costs associated with the replacement of the totaled Class  
26 Vehicles, and/or the diminution in value of the stolen Class Vehicles that were not totaled.

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**IX. PRAYER FOR RELIEF**

359. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class members, respectfully request judgment against Defendants as follows:

- a. certifying the proposed Nationwide Class and State Law Classes;
- b. appointing Plaintiffs and their counsel to represent the Classes;
- c. ordering injunctive relief, restitution, disgorgement, and/or other appropriate relief;
- d. awarding compensatory, punitive, exemplary, and other recoverable damages;
- e. awarding reasonable attorney’s fees and expenses;
- f. awarding pre-judgment and post-judgment interest;
- g. awarding such other and further relief as this Court may deem just and proper.

**X. JURY TRIAL DEMAND**

360. Plaintiffs demand a trial by jury of all issues so triable.



1 Dated: November 10, 2022

Respectfully submitted,



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1 **CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

2 I, James A. Morris, declare as follows:

3 1. I am counsel for Plaintiffs, and I am the owner of Morris Law Firm. I make  
4 this declaration to the best of my knowledge, information, and belief of the facts stated  
5 herein.

6 2. The complaint filed in this action is filed in the proper place for trial because  
7 the Defendants transact substantial business in this district and because Hyundai Motor  
8 America and Kia America, Inc. are headquartered in this district. A substantial part of the  
9 events and/or omissions giving rise to the claims occurred, in part, within this district.

10  
11 I declare under the penalty of perjury under the laws of the State of California that  
12 the foregoing is true and correct, executed on November 10, 2022, at Burbank, California.

13  
14   
15 \_\_\_\_\_  
James A. Morris, Jr.