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[FILE # 2 OF SET OF FILES FILED ELECTRONICALLY FOR 2nd AMENDED COMPLAINT including Appendices A, B1-B6 and D **:]

✔ 2nd Amended Complaint Pages 27 - 61

____ Appendix A

____ Appendix B-___ through B-_____

____ Appendix B6 (Pages _____ - _____)

____ Appendix D (Pages _____ - _____)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

COALITION FOR A LEVEL PLAYING FIELD, L.L.C., et al.,	
Plaintiffs,	04 CV 08450 (RJH)
-against-	
AUTOZONE, INC., et al...	
Defendants.	

** Note: Appendix C is filed separately.

M. "**Program Buying Group**" refers to an organization which buys auto parts Lines and Parts at discounts reflecting the combined purchasing power of the group's jobber membership, to obtain lower product-line prices through such combination that the jobbers could each obtain for itself as a stand-alone jobber, and through such group the jobber members participate in certain advertising and promotional allowance programs of the Manufacturers from whom the group purchases are made.

N. "**Retailer Defendants**" or "**Defendant Retailers**" refers to each of the AutoZone Defendants, Advance, Wal-Mart and Sam's Club, as alleged in ¶¶ 7-26A above.

O. "**Stipulation**" refers to the Stipulation Amended the Second Amended Complaint and Dismissing Certain Parties and Issues dated May 16, 2002.

P. "**Warehouse Distributor**" or "**WD**" refers to independent companies which make most of their purchases of auto parts Lines and Parts, as wholesalers, from Manufacturers, in what is known in the industry as a "3-Step Distribution" (manufacturer to WD to jobber to end user) or "2-Step Distribution" (manufacturer to WD to end user); the WD resells the product lines, as the "2nd step" of the 3-Step or 2-Step Distribution.

Q. "**WD**" refers to a Warehouse Distributor or wholesaler, which purchases most or all of its auto parts and auto-parts lines directly from the manufacturers.

R. "**WD Supplier**" refers to a WD that purchases directly from the manufacturers and resells or supplies these directly-purchased auto parts and auto-parts lines to an indirect-purchasing Plaintiff, usually a jobber/retailer.

Distribution of Auto Parts Lines and Parts in the Aftermarket

74. The Manufacturers of the auto-parts Lines and Parts for the aftermarket described in ¶ 65 above, including the Manufacturer Defendants,

distribute their Lines and Parts throughout the United States in the following ways:

A. By direct sale of Lines and Parts to the Major Retailers, including the Retailer Defendants, and other large retail chains, which resell the Lines and Parts to automobile, van and light truck owners and users; companies which service or repair automobiles, vans and light trucks; some independent jobbers of auto-parts Lines and Parts; such resales by the Major Retailers are made from their retail stores, from their regional or local warehouses, or through Internet websites.

B. By direct sale of Lines and Parts to independent "Warehouse Distributors" or "WD's" which generally resell the goods in a 3-Step Distribution to Jobbers, who resell as the "3rd step" to end users such as automobile, van and light truck owners and users and companies which service or repair automobiles, vans and light trucks), or in a 2-Step Distribution (to WD's which resell (through their own retailer or jobber stores) directly to the end user such as automobile, van and light truck owners and users and companies which service or repair automobiles, vans and light trucks); generally speaking, the Warehouse Distributors resell (in a 3-Step system) to approximately 100 to 1,000 Jobbers. The Jobbers resell to hundreds or thousands of owners/users and companies which repair or service automobiles, vans and light trucks, which charge the ultimate customer for the installed auto part.

75. A person (often called a "Do-it-Yourselfer") needing an auto part for his automobile, van or light truck has the option of purchasing it:

A. from a nearby retail outlet of a Major Retailer;

B. from a nearby retail outlet of a Jobber or 2-Step WD; or

C. from a nearby automobile, van or light truck repair or service business (such as a gas station, muffler chain store, lube chain store, Firestone service center); or

D. from the parts department of a new-car dealer.

76. Because of the substantial discounts and other benefits given by the Manufacturers to the Major Retailers, many small jobbers joined forces by combining into "Program Buying Groups" or more limited-purpose "buying groups" to pool their purchasing power and obtain lower auto-part Lines and Parts prices than they were paying as stand-alone jobbers; program buying groups such as NAPA and CarQuest formed and enabled their members to buy at improved Lines and Parts prices and receive some (but far from all of the) benefits from Manufacturers' advertising and promotional allowance programs, but still paid substantially more than the Lines and Parts prices being paid by the Major Retailers.

77. When auto-parts Lines and Parts of a specific Manufacturer are being sold by competing stores (such as the Major Retailers' retail stores in competition with independent jobbers), the store with the lower price for Parts and Lines obtains a disproportionate share of the business, and takes this business away from the store which is selling to end users at a higher price.

78. The Major Retailers buy auto-parts Lines and Parts from the Manufacturers at substantially lower prices than paid by the plaintiffs or their WD suppliers who buy the auto-part Lines and Parts at the same time from the same Manufacturer (see attached Appendices B-1 through B-6), with the predictable result that the Major Retailers offer and sell these Lines and Parts at lower prices than the plaintiffs, and often at prices lower than the Line and Part price being paid by the plaintiffs or their suppliers to the same Manufacturer for the same Lines and Parts at the same time.

79. The result is that the Major Retailers are able to and do take away business from the plaintiffs, by selling at the jobber level of distribution at a substantially lower price than the plaintiffs are able to sell for at the same jobber level of distribution, and the Major Retailers have the added advantage of a substantially higher profit margin (see Appendices B-2 and B-3) with which to provide such things as a better location, larger display

space, larger selection of auto parts Lines and Parts, more advertising and promotion, and free parking.

80. Upon information and belief, the Manufacturer Defendants are selling to the Major Retailers, including the Retailer Defendants, below the Manufacturers' variable cost, and the Manufacturer Defendants have to and do charge substantially higher prices to plaintiffs or their WD suppliers and others who are not Major Retailers to be able to obtain any significant gross profits and any net profits from their manufacturing businesses. See Appendix B-1 for instances in which the Defendant Retailer's retail price is lower than the Plaintiff's cost at the same time from the same manufacturer for the same product.

81. Upon information and belief, the Manufacturer Defendants have to keep increasing their Line and Part prices to the plaintiffs (or their WD suppliers) to be able to find some areas of gross profitability to their business, which increases the price of the Manufacturer Defendant's auto-part Lines and Parts to all consumers, even those who are buying from the Major Retailers.

81A. Also, upon information and belief, each of the Manufacturer Defendants has suffered financial losses in its dealings with each of the Retailer Defendants, and such dealings have caused at least 35 U.S. auto-parts manufacturers to file for bankruptcy since January 1, 2004. There was only one such filing during 2003. [Source: *Business Week*, 10/10/05, p. 40]

82. When a purchase is made at a retail store of a Major Retailer, such sale is taken away from a nearby independent jobber, who then (in 3-Step Distribution) does not buy that item from its 3-Step Wholesaler (i.e., the warehouse distributor or "WD"), causing an identifiable and non-duplicative loss at each level of the plaintiffs' distribution system.

83. The Major Retailers, including the Retailer Defendants, would not be able to compete, or compete as successfully, with the plaintiffs if the Line

and Part prices paid by the Major Retailers, including the Retailer Defendants, were the same as that paid to the Manufacturer by the Warehouse Distributor for the same Lines and Parts.

84. The plaintiffs provide service which is superior to the service generally provided by the Major Retailers, but the price difference in purchasing the same Lines and Parts is too great for the plaintiffs to overcome. The Major Retailers' lower prices, and better location, larger customer display areas, greater selection, more costly advertising and promotion, and free parking (all paid for with part of the unlawful price advantage) overwhelm plaintiffs, which would not be the case if the Major Retailers and plaintiffs' Warehouse Distributors started out with a level playing field, paying the same Manufacturer the same price for the same auto-part Lines and Parts.

85. Plaintiffs allege that the activities of each of the Retailer Defendants and each of the Manufacturer Defendants make it liable to the plaintiffs for violations of § 2(a) or § 2(f) of the Robinson-Patman Act.

86. During the Relevant Period, plaintiffs (directly or indirectly, to the extent they have been in business) and the Major Retailers, including each of the Retailer Defendants (directly) have been purchasing, at the same time, the same auto-part Lines and Parts for the aftermarket (as defined in ¶ 65 and ¶ 70 above), which purchases by plaintiffs are of like grade and quality as the purchases by the Retailer Defendants from the same Manufacturers, including each of the Manufacturer Defendants.

87. During the Relevant Period, each of the respective plaintiffs (to the extent they have remained in business) has been in actual competition with each of the Retailer Defendants identified for such plaintiff in ¶ 6 above. The plaintiffs no longer in business are listed in Appendix A hereto.

88. The auto-parts Lines and Parts sales by the Manufacturers, including each of the Manufacturer Defendants, to the plaintiffs (directly or indirectly) and to the Retailer Defendants were and are being made in commerce

on an interstate basis, with such Lines and Parts having been sold for use, consumption, or resale within the United States or the District of Columbia, and where the effect of such discrimination in Line and Part price may be substantially to lessen competition or tend to create a monopoly or submarket monopolies in the auto parts Line and Parts aftermarket, or to injure, destroy, or prevent competition with the Retailer Defendants who either grant or knowingly receive the benefit of such discrimination, or with customers of the plaintiffs or Retailer Defendants. Apprcximately 50% of the plaintiffs have been driven out of business, with many mcre failures to come. See Appendix A hereto.

89. The sales by the Manufacturer Defendants to the plaintiff WD's and to the WD's of the other plaintiffs have been made at Line and Parts prices that are substantially higher than the prices for the same Lines and Parts, which are goods of like grade and quality, purchased at the same time by the Major Retailers (including the Retailer Defendants) from the same Manufacturers (including the Manufacturer Defendants).

89A. Wal-Mart and Sam's Club have systematically violated the Robinson-Patman Act since approximately 1981 by activities (including use of chargeback clerks, penalties, deductions, withholding payment improperly for subsequent compromise and settlement, imposing costs on manufacturers) that has resulted in lower costs of product (including auto parts) for Wal-Mart than its competitors are paying for the same products, and this strategy of violating the Robinson-Patman Act to drive competitors out of business has been adopted and used successfully by AutoZone and Advance, which are admittedly attempting to emulate Wal-Mart's activities, but limited to auto parts.

89B. The effect of Wal-Mart's practices has been to drive competitors out of business throughout the United States, and establish Wal-Mart as a local monopoly in many of the thousands of communities in which Wal-Mart has one or more places of business.

89C. Because local businesses have been driven out of business, local newspapers have lost many of their advertisers and are being threatened with extinction. This is presently occurring with the nation's second largest chain of newspapers, the Knight-Ridder chain of 32 daily U.S. newspapers.

89D. Violations of the Robinson-Patman Act by Wal-Mart and Sam's Club have enabled Wal-Mart, through its illegally-obtained size, to move hundreds of thousands of U.S. jobs to China and other foreign countries, eliminate medical coverage for more than one million U.S. workers, force more than 1 million employees to seek public assistance to meet their healthcare needs, drive many hundreds of thousands of small retail, jobber, wholesaler and manufacturing businesses in the U.S. out of business, and transfer the value of such destroyed businesses and eliminated jobs to Wal-Mart and its shareholders.

89E. Advance and AutoZone are attempting to do the same, as is necessary if they are to compete with Wal-Mart on equal terms.

89F. The activities of the defendants in violating the Robinson-Patman Act in fact is destroying competition in the United States, resulting in fewer choices, the destruction of companies such as plaintiffs that provided better service to its customers, the destruction of jobs without any equivalent job being created by the Defendant Retailers, and a steady deterioration of the nation's economy in its present direction toward third-world status if the defendants' activities are not stopped.

90. Each of the Retailer Defendants, upon information and belief, employs most if not all of the following techniques to obtain discounts, fees, allowances and other payments and benefits from the Manufacturer Defendants and thereby obtain lower Line and Parts prices for their purchases than paid by plaintiff WD's (or the WD Suppliers) to the same Manufacturer Defendants, at the same time, for the same auto-parts Lines and Parts:

A. Early buy allowances;

B. Defective merchandise allowances;

C. Obsolescence allowances;

D. Back haul allowances;

E. Volume discounts given to the Major Retailers (including each of the Retailer Defendants) by the Manufacturer Defendants and not made available to the plaintiffs;

F. Volume discounts given to the Major Retailers (including each of the Retailer Defendants) by the Manufacturer Defendants not made available to the plaintiffs for comparable purchases of the same Lines and Parts;

G. By permitting deferred payments on goods sold to defendants beyond and unrelated to credit terms awarded on the basis of defendants' or any other purchasers' credit rating, which amounts to the placement of interest-free capital with the defendants by the manufacturers.

H. Free trucks paid for by several Manufacturers to each defendant upon the opening up by the defendant of each new retail store;

I. Private brands of goods of equal grade and quality to the Manufacturers' branded goods at a price substantially lower than the branded goods and not made available to the plaintiffs at any price, or not made available to the plaintiffs at the same price per unit;

J. Deductions without justification from invoices sent by the Manufacturers to the defendants for goods sold to the defendants, representing cancellation of such invoices to the extent of the deductions and resulting free goods for the defendants;

K. Rebates and other payments made by the Manufacturers to the defendants representing a return of all or part of the purchase price paid by the defendants for goods of the Manufacturer, without return of the goods; and

L. Other fees and allowances paid by the Manufacturers to the defendants and not paid to the plaintiffs at all, or in a proportionate amount.

91. Upon information and belief, each of the Retailer Defendants has induced or has been knowingly receiving the discriminatory discounts, fees, rebates, free inventory and other payments from the Manufacturer Defendants as alleged in ¶¶ 90-A through 90-L above, for reasons including:

A. The Defendant Retailer's review of a competitor's purchasing and resale records prior to making a decision to acquire or not acquire the competitor;

B. The Defendant Retailer's access to and due-diligence review of a competitor's records immediately prior to acquisition and from time to time after the acquisition;

C. The Defendant Retailer's receipt and review of the 22 Plaintiffs' records during discovery in the Predecessor Action;

D. The Defendant Retailer's receipt and review of the affidavits, declarations, exhibits thereto, deposition transcripts, expert reports, and trial transcripts and trial exhibits in the Predecessor Action;

E. The Defendant Retailer's receipt and review of the Joint Record on Appeal and Appellants' Brief on Appeal in the Predecessor Action;

F. The Defendant Retailer's profit margin in comparison to the profit margins of the Plaintiffs in the Predecessor Action;

G. The Plaintiffs' pleadings in the predecessor Action;

H. *Aftermarket News* and *Green Sheet* news reports and discussions about discriminatory pricing practices in the auto-parts aftermarket and the adverse effect upon independent WD and jobber competitors;

I. Discussions with auto-parts manufacturers in which the Defendant Retailer is told that it has the lowest price of all competitors;

J. Negotiations by the Defendant Retailer without regard to whether the ultimate price is substantially lower than any plaintiff's direct purchasing price or any direct-purchasing price of any competitor for that matter;

K. The filing of bankruptcy by one auto-parts manufacturer during 2003 and the filing of bankruptcy by 34 auto-parts manufacturers from January 1, 2004 to the present;

L. The financial difficulties of auto-parts manufacturers that have not yet filed for bankruptcy;

M. The demands made upon the auto-parts manufacturers by the Defendant Retailer for lower and lower auto-parts prices without any goods of like grade and quality being offered by a competing manufacturer at the same price at the same time;

N. The failure of the Defendant Retailer and a manufacturer to take into account the additional costs to service the Defendant Retailer to meet the terms and conditions spelled out in the written agreement between manufacturer and Retailer Defendant;

O. Defendant AutoZone's efforts at coercing auto-parts manufacturers to supply auto parts to AutoZone on onerous terms spelled out in AutoZone's "pay on scan" industry-wide demand, and its rejection by 80% of the auto-parts manufacturers with whom AutoZone has been doing business;

P. Failure of the Defendant Retailers to purchase auto parts using the Blue Sheet price lists published by the auto-parts manufacturers, and instead to demand and obtain special agreements providing a variety of prices and other benefits not made available to plaintiffs or other independent competitors;

Q. The ever-increasing percentage of business failures of independent auto-parts jobbers and WD's and ever-decreasing number of them remaining in business;

R. The number of plaintiffs that have gone out of business (see Appendix A hereto);

S. The constantly increasing number of stores of the Defendant Retailers without any significant increase in the overall auto-parts aftermarket

to warrant such increase, except to take customers away from the plaintiffs and other independent auto-parts jobbers, retailers and WD's;

T. The ever-increasing market share of the Defendant Retailers;

U. Defendant Retailers offering parts at jobber and retail prices equal to or lower than the prices paid to the same manufacturers for the same parts by the direct-buying Plaintiff WD's;

V. Failure by the Defendant Retailers to reflect in their SEC-filed financial statements their actual cost of parts after all discounts, fees and allowances, thereby resulting in a falsified, overstatement of their auto-parts inventory cost; this misleads competitors, regulators and consumers into thinking that the Defendant Retailer's profits are derived from some efficiency other than illegally low cost of auto Parts and auto-parts Lines;

W. Representations by auto-parts manufacturers that the Defendant Retailer is getting the lowest price, and that nobody else is getting that low price;

X. An awareness that the manufacturer is selling below cost to the Defendant Retailer, and that the manufacturer is losing money in its dealings with the Defendant Retailer;

Y. Upon information and belief, Defendant Retailers rely upon meeting competition representations by manufacturers without justification and without sufficient receipt of documentation or retention of records to accept or justify the representation;

Z. There is no offer or proposal by a competing manufacturer as to which an accepted offer of a manufacturer was a legitimate meeting-competition response;

AA. Defendant Retailers fail to keep adequate records or copies of documents to support any claimed meeting-competition transaction;

BB. The written agreement between a Defendant Retailer and a manufacturer is so lengthy and complex that the only way a meeting competition

analysis can be made properly is if each of various financially-material terms of the agreement are quantified in value or worth, with a calculated total dollar amount then used to compare the overall agreement with any agreements offered by competing manufacturers; this has not been done by any of the defendants, upon information and belief;

CC. Upon information and belief, no manufacturer has ever provided a copy of an agreement with any major auto-parts retailer to any of the Defendant Retailers or other auto-parts competitor;

DD. Defendant Retailers' failure to change their purchasing practices after learning that they are receiving substantially lower prices than the plaintiffs and that such lower prices are not justified under the Robinson-Patman Act;

EE. Defendant Retailers' willful misapplication and improper reliance on the meeting competition defense.

FF. AutoZone's determination that auto-parts competitors it acquired (e.g., Chief and Auto Palace) had been paying substantially higher prices for auto parts (at least 40-45% higher and not taking all discriminatory elements into account) for the same parts at the same time than AutoZone paid to the same manufacturers, followed by AutoZone's demand that the manufacturers pay (or "refund") 100% of the discriminatory overcharges to AutoZone, which substantially all of them did, as a further discriminatory rebate;

GG. AutoZone's own determination, described in the preceding paragraph, that 100% of the difference in invoice prices (which is part of the overall overcharge), without attempting to calculate a higher per-unit cost for the acquired company based on its lower volumes of purchases, and without taking into account various off-invoice discounts, fees, allowances and other benefits received by AutoZone and not by the acquired company);

HH. Defendant Retailers' failure to state in their financial statements that some or all of the manufacturers' discounts, fees, allowances

and other items of value were received by the Defendant Retailers in violation of the Robinson-Patman Act;

II. Defendants' ever-increasing profit margins when adjusting for the value of benefits not including in the present profit margin calculations, such as the value of not paying for inventory (auto parts) until 6 to 12 months after the retailers' receipt, in contrast to the same manufacturers requiring that the WD Plaintiffs and the suppliers to the Jobber Plaintiffs pay for the same parts within 30 days;

JJ. Defendant Retailers are operating at an annual operating loss equal to several times the Defendant Retailers' reported net earnings if the dollar amount of discounts, fees and allowances received in violation of the Robinson-Patman Act were deducted from gross sales of auto parts (or added to cost of auto parts) and footnoted as non-recurrent income, under existing industry and SEC accounting rules;

KK. Solicitation of bids by the Defendant Retailers from near-bankrupt auto-parts manufacturers does not meet valid "meeting competition" requirements because the manufacturer in such a situation is willing to enter into almost any agreement to stave off bankruptcy for a while longer, knowing that the agreement can be terminated in bankruptcy; and the retailers never had any intention of accepting such proposal from a manufacturer nearing bankruptcy, and were only using the "offer" to drive down their existing supplier's or other already selected supplier to an illegally low price;

LL. Even if meeting-competition requirements have been met, Defendant Retailers take additional discounts, fees and allowances and other benefits of value in ways not set forth under any of the terms in the written agreement (e.g., AutoZone agreement requiring payment in 87 days but AutoZone taking up to one year to pay; deductions taken by the Defendant Retailers from amounts required to be paid to the manufacturer under the agreement, return of non-defective goods for credit; improperly imposing penalties on the

manufacturers or unreasonably high penalties in the aggregate; and in the case of Wal-Mart and Sam's Club imposing RFID costs on the manufacturers);

MM. Deliberately understating the Defendant Retailers' profit margins on auto-parts sales in their SEC-filed financial statements to make it appear that they are paying more for parts than they are actually paying, to cover up their Robinson-Patman Act violations;

NN. Defendant Retailers' ability to raise auto-parts prices to jobbers and retail customers after driving independent competitors out of business in the area in which the AutoZone or Advance opens up a new store; and

OO. The shopping activities of the Defendant Retailers alerts them to the plaintiffs' resale prices to installers and other end-user customers, which prices enable the Defendant Retailers to estimate the plaintiffs' cost of parts, particularly when the plaintiffs' profit margins are known to the Defendant Retailers (through the Predecessor Action and industry reports).

92. The activities of the Retailer Defendants and the Manufacturer Defendants adversely effect competition in the relevant product and geographic markets as described in ¶¶ 65 and 70-71 above and are lessening competition, tending to monopolize, and injuring consumers, competition, and even auto-parts manufacturers in the auto-parts Line and Parts aftermarket.

92A. This is evidenced in part by the allegations in Appendix A and in ¶ 91 above subparagraphs H, K, L, M, N, O, P, Q, R, S, T, U, V, X, BB, CC, DD, EE, HH, II, JJ, LL, MM and NN, and ¶¶ 92B and 92C below.

92B. The sales of auto parts by each of the Manufacturers to each of the Plaintiffs at the prices alleged while selling the parts of like grade and quality (basically, identical parts) at about the same time to each of the Defendant Retailers at substantially (about 50%) lower prices than the prices paid by the direct-purchasing Plaintiffs and WD Suppliers, as alleged, resulted in an adverse effect upon competition as to each Plaintiff buying such parts

from the Manufacturers at such discriminatory prices. See Appendices B-1 through B-6.

92C. Each of the Plaintiffs has been injured by the practices alleged, and approximately 50% of them (as listed in Appendix A hereto) have been driven out of business or were forced into selling their businesses at a loss. Each of the other Plaintiffs still in business is unable to compete with the Defendant Retailers, which are methodically putting their independent competitors out of business throughout the United States, resulting in less competition and higher auto-parts prices for consumers and installers in the long run.

92D. Each of the parts ordered by each Plaintiff or Plaintiff's WD supplier is ordered by the Manufacturer's part number, and the same is true as to each part ordered by each of the Defendant Retailers from each of the Manufacturers, so that any part sent to a Plaintiff or Defendant Retailer was interchangeable and could have been sent to the other when ordering the same part number from the Manufacturer.

92E. Exceptions to this involve private brand parts, which appear to be sold by the Manufacturers to the Defendant Retailers (e.g., oil products sold to Wal-Mart and Sam's Club and resold by them under Wal-Mart private-brand names) using different part numbers, but with a conversion table that enables the Defendant Retailer and Manufacturer to know the equivalent branded part being purchased by the Plaintiff or Defendant Retailer.

92F. There are no physical differences between the parts sold under the same parts number by any of the Manufacturers to the Plaintiffs and Major Retailers. Thus, there is no differing effect of the two parts bearing the same Manufacturer's part number upon consumer differences.

92G. A list of some of the parts being sold at discriminatory prices to the Plaintiffs by the Manufacturers with part numbers are set forth in Appendices B-1 through B-6 hereto. These differences in prices are representative of all sales of the same Lines and Parts by the Manufacturers to

the Defendant Retailers on one hand, and to the direct-purchasing Plaintiffs and WD Suppliers on the other.

92H. The product lines being sold by each Manufacturer to the identified Plaintiffs and Defendant Retailers are identical, consisting of a list of identified parts with part numbers. The price paid by each of the Defendant Retailers when purchasing parts from the line is not established for any specific part, but instead is dependent upon the total amount of purchases the Defendant Retailer makes from the overall line. This failure to put a price on a specific part, and instead to set the price in relation to other parts purchased from the line makes the product line the "product" or "good" being sold, so that the Plaintiff and competing Defendant describe and measure their purchases of the "product" by adding up their respective purchases from the overall line, rather than looking at each part in the line having a different part number.

92I. A Manufacturer's product line can consist of all or part of the products being sold under one or more brand names by the Manufacturer, and is defined by the parts brought together under a pricing system (and listed in the manufacturer's catalog or "Blue Sheet") with the overall per-unit price calculated by reference to all of the customer's purchases from the product line over a period of time, such as one year.

92J. Because of the vast number of automobile manufacturers, years, models, and features, a manufacturer of replacement auto parts may have to manufacture hundreds of variations of a single part, and does so with a product line that is advertised, with the customer or installer knowing that he/she can find the correct part within the advertised line. The advertising, pricing and marketing of related parts by line makes the product line a "goods of like grade and quality". The Manufacturer is unable economically to, and therefore does not, advertise or market a single part from within an auto-parts product line,

and the prospective customer does not look for the advertised part, but looks instead to purchase from an advertised product line.

92K. The competition for sale of auto parts (such as an air filter) is by the advertising of a product line of filters or air filters, to attract all car owners to the product line from which the auto owner understands he can probably find the right air filter for his vehicle. It is the product line of filters or air filters of one manufacturer that competes with the filters or air filter product line of another manufacturer, not the individual air filters between 2 competing lines (such as for a 1999 Chevrolet Suburban 8 cylinder 4x4 vehicle).

92L. Auto parts that need to be marketed together in competition with similar lines of other manufacturers define the competitive product, similar to competing brands of cigarettes, with the products within a product line defining the competitive product. "Related" products restricts a product line to make it competitive and marketable.

93. The Retailer Defendants induced and/or knowingly received the favorable, discriminatory prices, as shown by the information disclosed by the 19 Plaintiffs during pre-trial discovery and trial in the Predecessor Action. See ¶¶ 91-A through 91-OO above.

Auto-Parts Line and Auto-Parts Pricing by the Manufacturer Defendants

94. Each of the Major Retailers, including the Retailer Defendants, upon information and belief, purchases its auto-parts Lines and Parts from the Manufacturer Defendants at a price for the Lines and Parts that is not set forth in writing and which can be determined only by calculating all elements of auto-parts Line and Parts prices (set forth in the subparagraphs of ¶ 90 above) and then calculating the percentage by which the Retailer Defendant or other Major Retailer has obtained a discount on its Line and Part purchases from the Manufacturer Defendant's published suggested jobber Line and Parts price list

(called the "Blue Sheet"). The price paid by the direct-purchasing Plaintiffs or WD's purchasing for the other Plaintiffs herein is based on the Manufacturers' Blue Sheet, and can be calculated by reference to the Blue Sheet and a specified part, unlike the price paid by each of the Defendant Retailers, which requires analysis and valuation of various provisions and practices under a Vendor Agreement with many terms having financial impact on the price of a part.

95. Upon information and belief, the net price per auto-part Line unit or Part actually paid by each of the Major Retailers, including the Retailer Defendants, as the calculation is described in the preceding paragraph, is below the Manufacturer Defendant's variable cost of manufacturing the auto-parts Line or Part, with no (actually, a negative) contribution to overhead.

96. Upon information and belief and with few exceptions, the lowest Line or Part price paid by any of the Major Retailers, including the Retailer Defendants, is paid by (i) Wal-Mart and Sam's Club as to the auto-parts Lines and Parts purchased by them, and (ii) the AutoZone Defendants as to all other auto-parts Lines and Parts (if they are purchasing from a specific Manufacturer Defendant). This is so in spite of Advance's slightly-higher reported profit margin for 2004 (46.8% in comparison to AutoZone's reported 46.1%).

97. The product-line and part prices paid to the Manufacturer Defendants by the Retailer Defendants is approximately 50% to 40% less than the prices paid by the direct-purchasing Plaintiffs or WD Suppliers, with Wal-Mart, Sam's Club, the AutoZone Defendants and Advance getting the 50% to 45% discount and the other Major Retailers getting the 45% to 40% discount from the price to the direct-purchasing Plaintiffs and WD Suppliers.

98. Specific part prices being paid by each of the Major Retailers, including the Defendant Retailers, is alleged in Appendix B-2, but does not include additional discriminatory price components resulting from components excluded from the Defendant Retailer's reported profit margin.

99. Plaintiffs, to the extent that they are buying the same auto-parts Lines and Parts from the same Manufacturer Defendants are paying, at the same time, 80% to 100% more for their purchase of auto-parts Line and Parts (i.e., goods) of like grade and quality (i.e., the same Parts and Lines), and doing so in interstate commerce. Representative plaintiffs' prices for the same parts are set forth in Appendices B-1, B-3 and B-6 hereto.

100. The Major Retailers, including the Retailer Defendants, are reselling these purchased auto-parts Lines and Parts to "Do-it-Yourselfers" (consumers), installers and others at a gross profit margin ranging from about 40% to 50%. See Appendices B-2, B-3 and B-5.

101. Direct-purchasing Plaintiff and WD Suppliers, on the other hand, selling the same product lines through their own retailer/jobbing outlets, are forced by this competition to sell the same auto-parts product lines and auto parts at substantially higher prices, at a gross profit margin ranging from about 25% to 35%, due to the higher prices paid by the direct-purchasing Plaintiffs and WD Suppliers to purchase the same auto-parts Lines and Parts from the same Manufacturer Defendants, at the same time.

102. The direct-purchasing Plaintiffs and WD Suppliers resell the auto-parts Lines and Parts to plaintiff retailer/jobbers and other independent retailer/jobbers, which then resell the auto-parts Lines and Parts at prices approximately 30% to 100% higher than the resale prices of the Defendant Retailers, and with substantially lower profit margins than the Defendant Retailers.

103. Omit.

104. Because of this cost difference, retailer/jobbers are forced into offering their auto-parts Lines and auto parts to the same end-user customers at resale prices providing a profit margin of about 25% to 35%, which is insufficient for them to remain in business. The direct-purchasing 2-step WD's need to make at least a 40% gross profit margin on their auto-parts Lines and

Parts to remain in business in effective competition with the Defendant Retailers, which are enjoying profit margins of about 40% to 47%. 3-Step WD Plaintiffs need the same price to be able to allocate the appropriate profit margin to jobbers, to enable them to compete with the Defendant Retailers at the retailer/jobber level of distribution.

104A. AutoZone has a profit margin on sales of 46.1% for fiscal 2004 and ever-increasing profits, in spite of selling its Lines and Parts at prices substantially lower than the retail prices being charged for the same Lines and Parts by competing Jobbers and 2-step WD's. This can occur only because AutoZone is paying substantially less for its Lines and Parts than the Plaintiffs or Plaintiffs' WD suppliers. Advance's profit margin has increased in 2004 to 46.8%.

105. By reason of the difference in prices charged by the Manufacturer Defendants to the Major Retailers, including the Retailer Defendants, on one hand, and the plaintiff WD's and other WD's (on the other hand), the WD's are unable to engage in profitable business (with full compensation to the working owners and officers), as a WD or jobber, and the independent jobbers to whom the WD's sell are also unable to compete (directly or otherwise) with the Major Retailers, including the Retailer Defendants; and the plaintiffs (both WD's and jobbers) are losing customers and sales to the Major Retailers, including the Retailer Defendants, and are being driven out of business as a result of the differences in price at which the Manufacturer Defendants are selling their auto-parts Lines and Parts.

105A. Each of the WD Plaintiffs in three-step distribution competes directly with the Retailer Defendants located in the geographic area (identified and described in Appendix C) for sales to the same customers (i.e., end users such as gas stations and DIY customers, as tertiary level competition), and each of the Jobber Plaintiffs competes directly with the Retailer Defendants identified in Appendix C for sales to the same customers (i.e., end users and

DIY customers). By reason of the tertiary level competition, each of the WD Plaintiffs also competes with the Retailer Defendants at the WD level (as to purchasing of auto parts and for end-user customers), and indirectly as to end-user customers of the WD's jobber/retailer customers.

106. The difference in price charged by the Manufacturer Defendants results in the Major Retailers taking away the customers and sales from plaintiffs and converting such customers and sales to the benefit of the Major Retailers, resulting in the predictable and systematic destruction of plaintiffs' businesses.

106A. Each of the Retailer Defendants and Manufacturer Defendants (other than Cardone and Affinia) is a public company, or a wholly-owned subsidiary of a public company, required to disclose material facts about its relationship with its most significant customers and suppliers.

106B. At some time or times during the Covered Period, Wal-Mart, Sam's Club, the AutoZone Defendants and Advance have been the largest and most significant customers of each of the Manufacturer Defendants or predecessors.

106C. During all or part of the Covered Period, each of the Manufacturer Defendants (or predecessors) has been selling to each of the Retailer Defendants (during the period set forth in Appendix B-4) at a price per unit for auto parts (or at a product-line price for auto parts) which is less than the manufacturer's variable cost for the auto parts and has been losing money on these sales to such customers.

106D. By reason of the below-cost sales by each of the Manufacturer Defendants to the Retailer Defendants, the Manufacturer Defendants have been financing and paying for the thousands of new stores opened up by the Retailer Defendants, which new stores and their lower retail prices have caused approximately 50% (or more than 13,000) of the Manufacturer Defendants' profitable auto-parts customers to be driven out of business, thereby steadily increasing the percentage of unprofitable business for each of the Manufacturer

Defendants. Approximately 50% of the Plaintiffs are now out of business. See Appendix A.

106E. Each of the Manufacturer Defendants is economically coerced by the purchasing power of each of the Retailer Defendants to sell to the Defendant Retailers in spite of the lack of profitability of such business dealings for fear of losing market share to a competing manufacturer, and with the hope that an industry solution to this problem of below-cost sales will occur before the manufacturer is also driven out of business. To this end, the Manufacturer participates by providing and pretending to believe in the bona fides of meeting-competition proposals that fail to justify the reliance placed on them, never analyzing more than a few basic elements of cost, but disregarding elements that are worth approximately 50% of the value of the agreement.

106F. Each of the Retailer Defendants fails to disclose in its financial statements that its income is derived mainly from the discriminatorily-low price it pays on its auto-part Lines and Parts purchases and that if such discriminatory price were increased (to eliminate the discriminatory amount) the Retailer Defendant would be operating at a substantial loss during each of the years from inception to the present. Upon information and belief, the amount of such unreported loss is equal to about 40% of the of the Defendant Retailer's sales of auto Parts and auto-parts Lines.

106G. Each of the Retailer Defendants and Manufacturer Defendants has failed to disclose in its financial statements the possibility of liability to plaintiffs and others for alleged violation of §§ 2(a) and 2(f) of the Robinson-Patman Act.

106H. Each of the defendants has failed to set up and/or enforce procedures in defendant's audit committee required by the Sarbanes-Oxley Act or elsewhere for discovering the facts alleged in ¶¶ 106A through 106G above.

106I. Each of the defendants (a) has failed to calculate the actual price it pays or receives for auto part Lines and Parts and (b) is aware that it

does not know the price at which it purchases auto part Lines and Parts (as to the Defendant Retailers) or sells auto part Lines and Parts to the Defendant Retailers (as to the Manufacturer Defendants).

106J-1. Each of the Defendants is disqualified as a matter of law from asserting any defenses as to cost justification, meeting competition, reasonably proportionate availability, functional discount, or other defense requiring knowledge, disclosure or communication of price information by reason of the Defendant's failure to calculate or know the price at which it buys or resells auto-part Lines and Parts, and by unjustified reliance upon meeting-competition proposals and documents that are not bona fide, and none of the Retailer Defendants has any defense of cost justification, meeting competition, reasonably proportionate availability or functional discount.

106J-2. At the same time, each of the Defendant Retailers is aware that, at whatever price it is purchasing Lines and Parts, the per-unit price is substantially lower than the per-unit price being paid at the same time for the same Lines and Parts by each of the Plaintiffs. The Defendant Retailers induced such price differences and knowingly received the discriminatory prices.

106J-3. The facts provided to each Defendant Retailer through discovery and trial in the Predecessor Action, including Plaintiffs' costs, resale prices and markups, and the Defendant Retailer's own costs, resale prices and markup, put each of the Defendant Retailers on notice that each of the Plaintiffs is paying about 80% to 100% more per unit, at the same time, for the same auto-part Lines and Parts than the Defendant Retailer.

106J-4. None of the Defendant Retailers has any defense to Plaintiffs' claims of violation of §§ 2(a)/2(f) of the Robinson-Patman Act of the type available to the Manufacturer in defending any of Plaintiffs within § 2(a) claim.

106K. Each of the Defendant Retailers has knowledge of the absence of any selling manufacturer defenses for the following reasons:

1. Each of the Defendant Manufacturers and Defendant Retailers is aware that the size of the purchase orders by the members of each of the auto-parts buying groups to which the direct-purchasing Plaintiffs and WD Suppliers belong exceed any purchase volume needed to obtain the full benefit of all cost justification discounts of the Manufacturer;

2. The Defendant Manufacturers do not price their auto parts or auto parts lines when selling to any of the Defendant Retailers or to any of the member of the buying groups based on any failure to meet cost-justification levels;

3. Defendant Manufacturers' prices to the Defendant Retailers are established by an alleged attempt by the Manufacturer to have the price be considered equal to the price solicited by the Defendant Retailer from other auto-parts manufacturers, solely for use in creating a meeting competition defense, but that such efforts are not bona fide cost justification or meeting-competition documents or proposals, and the Manufacturer Defendants have no cost justification or meeting competition or functional discount defense at all as a result;

4. Also, see ¶¶ 91-A through 91-OO above for additional facts showing that each of the Defendant Manufacturers has no bona fide meeting-competition, cost-justification defense, or functional-discount defense, and that this is known to each of the Defendant Retailers as the companies which initiated and disseminated the meritless meeting-competition proposals knowing that they were not to be accepted, that the manufacturer often was financially incapable to complete the one-sided agreement, and that they were not properly analyzed or valued to determine if they actually met and justified the terms or value of another proposal.

5. The Defendant Retailer knows that neither it nor any Manufacturer has evaluated any proposed agreement of another manufacturer, and that no Manufacturer has seen the agreement or proposed agreement of any other

Manufacturer to be able to make any analysis or comparison needed to develop a legitimate meeting-competition agreement;

6. The Defendant Retailer knows that the price it has obtained from each of its Manufacturers that competitors cannot remain in business unless they obtain a comparable price, and that manufacturers and competitors are being driven out of business at such price level while the Defendant Retailers are prospering with ever-increasing profit margins and increased market share;

7. Defendant Retailers are aware that they are not "efficient" in comparison to the Plaintiffs and that the only thing that keeps the Defendant Retailer in business is buying goods at illegally low prices that do not have any legitimate cost-justification, meeting-competition or functional discount defense;

8. Defendant Retailers are aware that as part of their inefficiency they spend substantially more per part to resell the part, disregarding for this purpose the cost of the part, and that this is possible only because of the illegally low price at which the part is purchased, enabling the Defendant Retailers to have more money per part than the Plaintiffs for the resale of such part (thereby enabling more expensive locations, larger stores, lower prices and larger selection of auto parts - items that are paid for by the lower cost of goods, rather than expenses and "business efficiency" which justify Defendant Retailers receiving a lower price than the Plaintiffs).

106L. Plaintiffs are entitled to a judgment as to liability against each of the defendants for violation of §§ 2(a)/2(f) of the Robinson-Patman Act by reason of the facts alleged in ¶¶ 106A through 106K above.

106M. Each of the defendants is in continuing violation of the Sarbanes-Oxley Act by reason of the facts alleged in ¶¶ 106A through 106I above.

Damages

107. The following losses were suffered by each of the WD and Jobber plaintiffs:

A. Losses of gross profit margin incurred on sales actually made, in which the auto-parts Lines and Parts were purchased at a higher price than paid by the Retailer Defendants for the same Lines and Parts;

B. Losses of gross profit margin which were incurred when plaintiffs reduced their profit margins on sales being made to compete with the lower Line and Parts prices of the Retailer Defendants, and to try to maintain market share or dollar volume of sales;

C. Losses of gross profit margin as to lost sales of the auto-part Lines and Parts being sold to plaintiffs at unfavorable, discriminatory prices, causing plaintiffs to decrease their purchases of such Lines and Parts;

D. Losses of gross profit margin on sales of other goods and services to present or former customers of the plaintiffs who started buying, in whole or in part, from one or more of the Retailer Defendants or other Major Retailers; and

E. Other losses suffered by plaintiffs as a consequence of the unlawful price discrimination, including increased (above-normal) inventory costs, reduced (below-normal) inventory turnover, higher interest expenses, costs in locating and purchasing price-competitive Lines and Parts of different Manufacturers, increased advertising and promotional expenses, and other increased operating costs.

108. Each of the plaintiffs has suffered damages by reason of the unlawful price discrimination activities of the Retailer Defendants and the Manufacturer Defendants, as will be proved with certainty by each plaintiff, respectively, at the time of trial. At this time, the plaintiffs do not know the amounts of their respective damages.

109. Each of the WD and jobber plaintiffs is entitled to an award of treble damages.

110. Each of the plaintiffs (including the Coalition) is entitled to an award of attorneys' fees.

Injunctive Relief

111. Each of the plaintiffs not out of business is being irreparably injured by reason of the actual and threatened activities of the Retailer Defendants and the Manufacturer Defendants. Already, about 50% of the Plaintiffs that filed the Predecessor Action in 2000 have gone out of business. See Appendix A hereto.

112. Each of the plaintiffs (including the Coalition) is entitled to a preliminary and permanent injunction prohibiting each of the Retailer Defendants and Manufacturer Defendants named by them, respectively, from continued violation of §§ 2(a) and 2(f) of the Robinson-Patman Act, and from opening up (or participating in the opening up) of any more retail stores by the Retailer Defendant to compete with any of the plaintiffs (or members of the Coalition or any of its trade-association members) unless the Retailer Defendant has ceased purchasing its auto-parts product lines at favored prices from the Manufacturer Defendant in violation of § 2(a) and §2(f) of the Robinson-Patman Act.

112A. Defendants' respective failures to comply with the Sarbanes-Oxley Act with respect to reporting and treatment of the illegal discriminatory prices given by the Manufacturer Defendants to the Retailer Defendants is responsible in part for perpetuation of the illegal activities alleged, and Plaintiffs are entitled to a preliminary and permanent injunction prohibiting each of the publicly-traded Defendants from continued violation of the Sarbanes-Oxley Act.

112B. Plaintiffs are entitled to a permanent injunction prohibiting each of the publicly-traded defendants from (i) failing to disclose the dollar

amount of discriminatory prices received from (or provided by) each of the Manufacturers, (ii) failing to disclose that discriminatory prices are causing the Manufacturer Defendants to lose their independent customers such as Plaintiffs with the resulting increase in percentage of sales being made to non-profitable, Major Retailer customers.

112C. Plaintiffs are also entitled to a permanent injunction requiring each of the Manufacturer Defendants to publish and adhere to a price list for each functional level of distribution, and to disclose upon request by any Plaintiff customer a copy of the Manufacturer's entire agreement, including all amendments, with any of the Major Retailers, and make the same terms available to each of the direct-purchasing Plaintiffs or the WD Suppliers.

COUNT II

[Violation of Robinson-Patman Act, §§ 2(a), 2(f) - AutoZone's Pay on Scan Program with the Manufacturer Defendants]

(against AutoZone Defendants and Certain Manufacturer Defendants - Pay on Scan Program)

113. Plaintiffs allege and reallege each of the allegations set forth in ¶¶ 1-112 above, and further allege that the activities of the AutoZone Defendants and each of "POS Manufacturer Defendants", as alleged in ¶ 115 below, amount to a violation of §§ 2(a) and 2(f) of the Robinson-Patman Act, 15 U.S.C.A. §§ 13(a) and 13(f) and, alternatively, §§ 2(d) and 2(e) of the Robinson-Patman Act, 15 U.S.C.A. §§ 13(d) and 13(e).

114. Starting in late 2002 and continuing up to the present, AutoZone has initiated communications and negotiations with each of the Manufacturer Defendants and other Manufacturers to change the way in which the AutoZone Defendants (hereinafter, "AutoZone") purchase auto-parts product lines from them.

114A. Plaintiffs first heard about AutoZone's POS initiatives approximately one week before the start of trial in January 2002, and had no

fact or expert discovery as to AutoZone's POS activities or the perceived impact of POS on Manufacturers, and there were no POS allegations in the complaint in the original action; trial testimony revealed that AutoZone directed all Manufacturers to attend a meeting in late 2001 or early 2002 to receive AutoZone's demands for a POS program, all of which activities by the Manufacturers and AutoZone resulting in POS agreements have been kept secret from the industry and the Plaintiffs.

115. These changes which AutoZone is demanding, and in some instances have been able to implement in whole or in part with some but apparently not all of the Manufacturer Defendants (hereinafter, the "POS Manufacturer Defendants") include:

A. Refund to AutoZone for unsold auto-parts product lines (originally purchased by AutoZone from the POS Manufacturer Defendant) remaining in AutoZone's inventory as of a specified date;

B. Supplying of auto parts to AutoZone by the POS Manufacturer Defendant without requirement of any payment until approximately 90-98 days after a part has been sold by AutoZone and the sale scanned at an AutoZone cash register or checkout station, and then only for such auto part that was actually sold by AutoZone;

C. Not paying at any time for any parts delivered by the POS Manufacturer Defendant to AutoZone which has been stolen by a customer or AutoZone employee or resold by AutoZone itself in a way which bypasses the point of sale scanning system, or has been misplaced, lost, destroyed by fire or accident, or has become obsolete, whether or not AutoZone has received payment for such part from a third party insurance carrier or otherwise;

D. Title to the part is supposed to pass, according to the Pay on Scan ("POS") agreement between AutoZone and each POS Manufacturer Defendant, only an instant before the part is sold and scanned by AutoZone;

E. The purpose of this momentarily recognition of title by AutoZone is to ensure that AutoZone can claim the full amount of the sale in AutoZone's financial statements, instead of merely a commission on the sale; and

F. The POS Manufacturer Defendant provides financing to AutoZone by guaranteeing or otherwise being responsible for repayment of the borrowed amount to the lending institution.

115A. Upon information and belief, each of the POS Manufacturer Defendants is aware that it has a POS agreement with AutoZone and that it is a defendant in this Count II of the within complaint.

115B. AutoZone induced each of the POS Manufacturer Defendants to enter into its POS agreement with AutoZone, with the full awareness from each of the POS Manufacturer Defendants that no other auto-parts WD or Jobber had any POS agreement with the Manufacturer; and upon information and belief AutoZone knows that the POS Manufacturer Defendants have provided AutoZone with exclusivity of POS arrangements, to the exclusion of each of the Plaintiffs.

115C. The purchase and sale transactions alleged in Count I support the 2(a)/2(f) claims in this Count II.

115D. The substance of the POS transactions with AutoZone is (i) to extend the existing discriminatory terms for AutoZone's purchase of fast-moving parts to the slower moving parts; (ii) to avoid any consignment accounting by AutoZone; (iii) to convey title to AutoZone for the purpose of avoiding any characterization of consignment to the transaction; (iv) to defer payment on ordered parts to a period beyond the resale of the part; (v) to enable AutoZone to determine the resale price of the parts; and (vi) to ensure that AutoZone is the owner of the parts from a property tax standpoint in the appropriate states.

115E. The price at which purchases its parts under the POS programs requires discovery to ascertain, starting with the basic per-unit POS price, the value of the deferral in payment, the cost to the POS Manufacturer Defendant of the parts return feature, the guaranty feature, AutoZone not paying for

inventory shrinkage and broken parts, and AutoZone being able to return purchased parts at any time, even after they are obsolete and non-returnable if held by one of the Plaintiffs.

115F. None of the Plaintiffs is making claims as to any "spot" purchases by them from any of the Manufacturers; each of the Plaintiffs purchasing directly from one of the POS Manufacturer Defendants is purchasing under a long-term agreement, but an agreement which is less favorable to the Plaintiffs than the Manufacturer's long-term agreement (with POS terms and conditions) with AutoZone, especially by allowing payment by AutoZone after it receives money from its customer on AutoZone's resale of the part to its customer (while Plaintiffs are required to pay generally within 30 days, whether the part has been resold or not).

116. Starting in 2002 or before, and continuing up to the present, AutoZone has determined that it cannot afford to purchase most of the slower-moving auto parts within product lines (called the "B", "C" and "X" parts by the Manufacturers) because, under the terms of purchase agreement with the POS-Manufacturer Defendants, AutoZone would have to pay for these slower-moving parts before AutoZone could expect the parts to be resold, unlike AutoZone's payment arrangements for the faster-moving parts in the auto-parts product lines.

117. As a result, AutoZone did not stock most of the slower-moving parts within the Manufacturer Defendants auto-parts product lines, and had to order such parts when needed from the Manufacturer Defendants or from independent auto-parts wholesalers including some of the plaintiffs.

118. As a result of AutoZone's POS program, as being implemented by AutoZone, AutoZone is able to carry the slower-moving parts with the product lines without payment therefor, whereas plaintiffs are still being required by the same POS Manufacturer Defendants to pay for such parts, usually within 30 days after receipt.

119. This discriminatory payment system for auto parts threatens to destroy the only competitive advantage which plaintiffs have over AutoZone (which is the more complete stocking of slower-moving parts within the auto-parts product lines).

120. AutoZone and the POS Manufacturer Defendants refuse to announce the extent to which they are already engaged in POS transactions, which prevents the plaintiffs from identifying (other than by the definitional phrase "POS Manufacturer Defendants") the Manufacturer Defendants that are party defendants in this Count II.

121. Auto-parts trade publications have stated that AutoZone has announced that it has already started to purchase some auto parts product lines from some Manufacturers on POS terms.

122. Upon information and belief, none of the Manufacturer Defendants wants to sell auto parts to AutoZone on such POS terms but, because of the market power of AutoZone with respect to the purchasing of auto parts, various Manufacturers (including, upon information and belief, all or some of the POS Manufacturer Defendants) have agreed to and have started to supply auto-parts product lines to AutoZone under POS terms.

123. The effect of POS is to enable AutoZone to obtain its inventory of auto parts without payment, and thereby permits dramatic expansion of AutoZone through the opening up of new stores throughout the United States without regard to the cost of inventory, which will drive all of the plaintiffs and other independent auto parts wholesalers, jobbers and retailers out of business, as well as the Manufacturers who succumb to AutoZone's marketplace domination and sell auto-parts product lines to AutoZone under POS terms.

124. Upon information and belief, AutoZone and manufacturer Dana are winding up their business relationship primarily because of AutoZone's demands to purchase auto parts from Dana at product-line prices which are below Dana's

variable cost for such product lines, whether or not taking POS into account, as well as the substantially added costs and capital requirements of POS.

125. Each of the plaintiffs still in business is threatened with irreparable damages, including the destruction of its business, by reason of AutoZone's POS dealings with the POS Manufacturer Defendants and other Manufacturers supplying auto-parts product lines to AutoZone.

126. Each of the plaintiffs is entitled to a preliminary injunction and permanent injunction prohibiting AutoZone from (a) operating under any POS agreements with any of the POS Manufacturer Defendants and (b) negotiating any POS terms with any Manufacturers, entering into any agreements including any POS terms with any Manufacturers, and holding any unpaid inventory under any POS arrangements, unless and to the extent that the same POS Manufacturer Defendant or other Manufacturer offers the same POS terms for the same auto-parts product lines to each of the plaintiffs without any requirement of third-party guarantees.

2(d)/2(d) Alternative Allegations

126A. As an alternative allegation to 2(f)/2(a) liability of AutoZone and the POS Manufacturer Defendants, Plaintiffs allege that the POS program is a promotional program of the POS Manufacturer Defendants that is being used to resell the Manufacturer's auto parts to end users and jobbers by giving AutoZone (i) a larger, more complete inventory of auto parts and lines, (ii) lower per-unit costs to enable AutoZone to offer even lower prices than would otherwise exist in absence of the POS program, (iii) financing to enable AutoZone to increase its number of retail stores, and (iv) a higher profit margin on sales to enable AutoZone to obtain capital for additional expansion costs - all to the injury of Plaintiffs and competition which up to this complaint has not been offered any POS terms or conditions of any type, whether comparable or proportionate to the terms and conditions given to AutoZone.

Damages

127. Upon information and belief, each of the plaintiffs is losing sales by reason of AutoZone's POS dealings with the POS Manufacturer Defendants and other Manufacturers.

128. POS transactions enable AutoZone to order and stock auto parts without regard to carrying costs, which provides AutoZone with a competitive advantage, financed by the POS Manufacturer Defendants, which plaintiffs cannot overcome, and which will put each of the operating plaintiffs out of business within a few months or a year or so after significant implementation of POS by AutoZone.

129. Each of the plaintiffs in business during any part of 2003 to the present and purchasing the same line of auto parts directly from any POS Manufacturer Defendant or other Manufacturer selling to AutoZone on POS terms, upon information and belief, has suffered loss of sales, loss of gross profits, and other damages by reason of AutoZone's POS activities as alleged, in an amount which cannot now be ascertained, but will be proven at the time of trial.