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[FILE # 3 OF SET OF FILES FILED ELECTRONICALLY FOR 2nd AMENDED COMPLAINT including Appendices A, B1-B6 and D **:]

____ 2nd Amended Complaint Pages 61 - 84

____ 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,

-against-

AUTOZONE, INC., et al..,

Defendants.

04 CV 08450 (RJH)

** Note: Appendix C is filed separately.

129A. As to Plaintiffs' 2(d)/2(e) alternative claim, Plaintiffs have been damaged by the POS Manufacturer Defendants' failure to provide a proportionate or functionally equivalent POS program to the Plaintiffs, to the extent of the allocated per-unit cost to the Manufacturer in providing its POS program to AutoZone or the per-unit value of the benefits of such POS program as received by AutoZone.

129B. Each of the Plaintiffs wants a POS program from each of the POS Manufacturer Defendants with the same terms and conditions being provided at the same time by the POS Manufacturer Defendants to AutoZone.

130. Each of the plaintiffs described in ¶ 129 above is entitled to an award of treble damages.

131. Each of the plaintiffs described in ¶ 129 above is entitled to an award of attorneys' fees.

132. Each of the plaintiffs described in ¶ 129 above and still in business is being irreparably injured by reason of the actual and threatened POS activities of AutoZone and the POS Manufacturer Defendants dealing with AutoZone on POS terms.

133. Each of the plaintiffs described in ¶ 129 above and still in business is entitled to a preliminary and permanent injunction prohibiting AutoZone and the POS- Manufacturer Defendants named by them, respectively, from continued violation of §§ 2(a) and 2(f) of the Robinson-Patman Act by purchasing auto parts on POS terms not offered to the plaintiff.

134. The Coalition is entitled to a preliminary and permanent injunction prohibiting AutoZone and each of the POS Manufacturer Defendants from entering into and operating under any POS terms unless such terms (without any requirement of 3rd-party guarantees) are made available and offered to all of the operating plaintiffs and all of the operating members of the Coalition and the trade associations which are members of the Coalition.

## COUNT III

**[Violation of Robinson-Patman Act, §§ 2(a), 2(f) - Discriminatory Rebate or, Alternatively as to the Manufacturer Defendants, Violation of §§ 2(d), 2(e) - Discriminatory Advertising and Promotional Program]**

**(Plaintiffs v. Wal-Mart and Sam's Club and each of the Wal-Mart Manufacturer Defendants - Radio Frequency Identification Technology Development - RFID)**

135. Plaintiffs allege and reallege each of the allegations set forth in ¶¶ 1-134 above, and further allege that the activities of the Wal-Mart and Sam's Club and each of the RFID-participating Manufacturer Defendants, as alleged in ¶ 136 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) or, alternatively, §§ 2(d) and 2(f) of the Robinson-Patman Act, 15 U.S.C.A. §§ 13(d) and 13(f).

136. Starting in late 2002 and continuing up to the present, Wal-Mart and Sam's Club have ordered each or many of its suppliers, including (upon information and belief) each of Manufacturers M#01 General Motors Company (ACDelco Division), M#02 Allied Signal, M#03 ArvinMeritor, Inc./Arvin Industries, Inc., M#05 Cardone Industries USA, M#07 Dana Corporation, M#10 Ford Motor Company (as to its Motorcraft Division), M#11 Pennzoil-Quaker State Co./ SOPUS Products, Inc., M#12 Standard Motor Products, Inc., M#16 Ashland, Inc. (as to its Valvoline Division), M#17 The Armor All/STP Products Company, and M#18 Stant Manufacturing, Inc. (hereinafter, the "Wal-Mart Manufacturer Defendants"), by January 1, 2005 (for Wal-Mart's top suppliers) and by December 31, 2006 for all other suppliers to Wal-Mart and Sam's Club, to develop and start using a radio frequency identification chip and related technology ("RFID") for inclusion and use on or in each pallet of auto-parts product line shipped to any RFID-capable warehouse of Wal-Mart or Sam's Club located in Texas (1/1/05) or elsewhere (12/31/06).

137. Wal-Mart and Sam's Club have ordered each of the Wal-Mart Manufacturer Defendants to develop the RFID chip and technology at the expense

of the Wal-Mart Manufacturer Defendants, and without any cost to or reimbursement by Wal-Mart or Sam's Club.

137A. The net price of auto parts being sold by the Wal-Mart Manufacturer Defendants to Wal-Mart and Sam's Club is reduced by the proportionate amount expended currently for Wal-Mart required RFID development, as an expense being incurred pursuant to Wal-Mart requirement, for the benefit of Wal-Mart, a bookkeeping transaction requiring current expensing rather than waiting for any subsequent recognition when any RFID pallets or cases are actually shipped to Wal-Mart or Sam's Club.

137B. The auto parts being distributed by use of RFID chips are not different in grade or quality from the auto parts being distributed without RIFC chip technology, and the ultimate customer is not receiving or buying a RFID chip. The RFID chip is not a product, it is an expense incurred for Wal-Mart and Sam's Club and represents a rebate, discount or offset to Wal-Mart and Sam's Club by the Wal-Mart Manufacturer Defendant.

138. Upon information and belief, no other customer of any of the Wal-Mart Manufacturer Defendants uses any such required RFID devices, and none of the Wal-Mart Manufacturer Defendants has developed or used any comparable RFID devices prior to its activities in attempting to comply with the RFID requirements of Wal-Mart and Sam's Club.

139. Upon information and belief, the cost of development and use of the RFID devices as required by Wal-Mart and Sam's Club has amounted or will amount to $10,000,000 or more for each of the Wal-Mart Manufacturer Defendants.

140. Upon information and belief, from 95% to 100% of the costs being or to be incurred by each of the Wal-Mart Manufacturer Defendants are solely applicable to the Manufacturer's transactions with Wal-Mart and/or Sam's Club, and are not going to be of benefit with any other customers of the Wal-Mart Manufacturer Defendants.

140A. Development of RFID devices by Wal-Mart's 21,000 suppliers to Wal-Mart's standards, which are not representative of the needs of any other customers of the suppliers (including the Wal-Mart Manufacturer Defendants), will enable Wal-Mart and Sam's Club to increase their actual or threatened domination of retailing and purchasing in the United States, causing competitors in all areas, including but not limited to auto-parts product lines and the operating plaintiffs, to be driven out of business.

141. These costs being incurred by the Wal-Mart Manufacturer Defendants would not have been incurred by them but for the requirements issued by Wal-Mart and Sam's Club, and are only incurred by the Wal-Mart Manufacturer Defendants because of their desire to sell their auto-parts product lines to Wal-Mart and Sam's Club (or prevent the Manufacturers' competitors from doing so).

142. These expenditures by each of the Wal-Mart Manufacturer Defendants amount to an unlawful rebate or price reduction to Wal-Mart and Sam's Club, and a violation of §§ 2(a) and 2(f) of the Robinson-Patman Act or, in the alternative, a violation of §§ 2(d) and 2(e) of the Robinson-Patman Act.

142A. The program for RFID development is to assist in the distribution including resale of auto-parts and other inventory of Wal-Mart and Sam's Club, to increase the probability that the appropriate quantity, size, color and type of inventory is available to meet anticipated consumer demand, and increase sales and profits for Wal-Mart and Sam's Club. n

143. In the aggregate, as to all customers of Wal-Mart and Sam's Club, there will be an estimated $50 billion or more spent by Wal-Mart suppliers of all types to comply with these demands, all of which amounts to a capital contribution by such 21,000 suppliers to Wal-Mart and Sam's Club, and put them in a competitive position of market domination which will make them untouchable or further untouchable, from a competitive standpoint, by any competing auto-parts retailer, including AutoZone.

143A. Upon information and belief, Wal-Mart anticipates an $8.4 billion annual reduction of its own costs through the RFID program being imposed on Manufacturers by Wal-Mart and Sam's Club.

144. Each of the plaintiffs still in business is threatened with irreparable damages, including the destruction of its business, by reason of the RFID requirements imposed on the Wal-Mart Manufacturer Defendants and all other auto-parts Manufacturers by Wal-Mart and Sam's Club.

145. The cost of compliance with such requirements will put various auto-parts Manufacturers out of business and increase the market concentration of the remaining auto-parts Manufacturers, leaving plaintiffs with fewer suppliers and higher prices.

146. Also, the efficiencies to be derived by Wal-Mart and Sam's Club, at the Manufacturers' expense, will enable Wal-Mart and Sam's Club to reduce its expenses, lower its prices, and take away sales of auto-parts product lines from each of the operating plaintiffs, thereby threatening to put each of such plaintiffs out of business.

147. Each of the plaintiffs is entitled to a preliminary injunction and permanent injunction prohibiting Wal-Mart and Sam's Club from requiring, and each of the Wal-Mart Manufacturer Defendants (including any additional ones that may become known) from developing at their own expense, any type of RFID device to meet any standards or requirements issued by Wal-Mart of Sam's Club, unless a proportionate payment or program is made available to each of the operating plaintiffs and to each of the operating members of the seven trade associations which are members of the Coalition, and Jobber and WD members of the Coalition.

## Damages

148. Upon information and belief, each of the plaintiffs will lose sales and gross profits to Wal-Mart and Sam's Club upon implementation of the RFID program, because of the greater efficiency which this will give to Wal-Mart

and Sam's Club, enabling them to lower their prices (through this unilateral lowering of their costs) in comparison to the prices and costs of each of the operating plaintiffs.

149. By reason of the massive expenditures being incurred by the Manufacturer Defendants on behalf of Wal-Mart and Sam's Club, there is little or no chance for the direct-purchasing, still-operating plaintiffs to be able to see any significant reduction in the already high prices they are paying for the auto parts being purchased by them from the Wal-Mart Manufacturer Defendants.

150. As a result, each of the cperating plaintiffs directly purchasing auto parts from the Wal-Mart Manufacturer Defendants is being threatened with irreparable injury (i.e., being put out of business) within a year or two after RFID becomes operational, unless the alleged activities are stopped.

151. 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 Wal-Mart Manufacturer Defendant or other manufacturer selling to Wal-Mart and/or Sam's Club, upon information and belief, will suffer loss of sales, loss of gross profits, and other damages by reason of the RFID activities imposed by Wal-Mart and Sam's Club as alleged, in an amount which cannot now be ascertained, but will be proven at the time of trial.

152. Each of the operating plaintiffs is entitled to an award of treble damages.

153. Each of the operating plaintiffs is entitled to an award of attorneys' fees.

154. Each of the operating plaintiffs is being irreparably injured by reason of the actual and threatened RFID activities of Wal-Mart, Sam's Club and the Wal-Mart Manufacturer Defendants.

155. Each of the operating plaintiffs is entitled to a preliminary and permanent injunction prohibiting Wal-Mart, Sam's Club and the Wal-Mart Manufacturer Defendants from continued violation of §§ 2(a) and 2(f) of the

Robinson-Patman Act by the Manufacturer's development of RFID devices at the Manufacturer's expense for use in the Manufacturer's dealings with Wal-Mart and Sam's Club, unless a proportionate payment or program is made available to each of the operating plaintiffs and to each of the operating members of the seven trade associations which are members of the Coalition, and Jobber and WD members of the Coalition.

156. The Coalition is entitled to a preliminary and permanent injunction prohibiting Wal-Mart, Sam's Club and each of the Wal-Mart Manufacturer Defendants from requiring and/or developing RFID devices at the Manufacturer Defendants' expense for use in the manufacturer's dealings with Wal-Mart and/or Sam's Club, unless a proportionate payment or program is made available to each of the operating plaintiffs and to each of the operating members of the seven trade associations which are members of the Coalition, and Jobber and WD members of the Coalition.

## COUNT IV

### [Violation of Robinson-Patman Act, §§ 2(d) and 2(e) - Discriminatory Advertising and Promotional Programs]

### (Each Plaintiff against Each Designated Manufacturer Defendant)

157. Plaintiffs repeat and reallege each of the allegations set forth in ¶¶ 1-156 above and further allege that the activities of each of the Manufacturer Defendants constitute a violation of §§ 2(d) and 2(e) of the Robinson-Patman Act, 15 U.S.C. §§ 13(d), 13(e).

158. Upon information and belief, during the 4 years preceding the original filing of the complaint in this action on October 27, 2004, each of the Manufacturer Defendants (or Wal-Mart Manufacturer Defendants), has provided an advertising and promotional program consisting of various elements to various major-retailer competitors of each of the plaintiffs, including each of the AutoZone Defendants, Defendant Advance, Discount Auto Parts, Inc., CSK Auto,

Inc. (including Checker, Schuck's and Kragen), O'Reilly Automotive, Inc., The Pep Boys - Manny, Moe and Jack, Inc., and Keystone Automotive Operations, Inc. (or as to Wal-Mart and Sam's Club the Wal-Mart Manufacturer Defendants, defined in ¶ 136 above)(hereinafter, collectively, the "Competing Retailers"), without making a proportionate or substantially equivalent advertising and promotional program available to any of the competing WD or Jobber plaintiffs.

158A. Each element of each of the advertising and promotional programs related to auto parts being sold to the Competing Retailers, with such auto parts, of like grade and quality, being sold contemporaneously to each of the plaintiffs or the WD's reselling to the plaintiffs.

158B. Each of the Manufacturer Defendants and Wal-Mart Manufacturer Defendants offered and provided the discriminatory advertising or promotional programs to the Competing Retailers (or, as to the Wal-Mart Defendant Manufacturers to Wal-Mart and Sam's Club).

158C. The alleged discriminatory advertising and promotional programs were in connection with the sales transactions to the Competing Retailers described in Counts I and II above.

158D. The plaintiff WD's compete with the Competing Retailers directly for jobber and Do-It-Yourself (DIY) customers (where the WD's have retail stores or Jobber branches) and indirectly as to the WD's other purchases and resales, making each of the WD's a competitor of the Competing Retailers at both the retail and WD level of distribution (as set forth for each plaintiff in Appendix C).

159. The elements of the advertising and promotional program provided by each of the Manufacturer Defendants are as follows:

A. A written agreement providing a variety of discriminatory payments and other benefits to the Defendant Retailer including lower auto-parts per-unit prices, as compensation to the Defendant Retailer for the

Manufacturer's use of the Defendant Retailer's auto-parts distribution system, including the following multi-year Vendor Agreements:

(1) between AutoZone and Cardone dated 4/19/94, ArvinMeritor for Gabriel dated 5/1/00, 8/4/94, for Maremont dated 8/24/94, with ArvinMeritor dated 04/05/00; Pennzoil for Quaker State dated 7/28/92, for Pennzoil dated 11/12/92, 7/12/99 for Pennzoil; with Dana for Raybestos dated 8/21/01, 9/5/01, 1/16/02, 2/7/02; with Standard Motor Products dated 9/24/91, for G P Sorensen dated 2/8/93, for Four Seasons dated 2/10/93, for G P Sorensen dated 8/9/93, for Four Seasons dated 9/8/94, for G P Sorensen dated 10/27/97; Ashland/Valvoline agreement dated 8/27/91, 8/14/92, for Valvoline dated 4/3/96, 4/4/96, 4/1/97, 11/26/01, 3/8/01; and

(2) between Advance Stores Company, Inc. and Cardone dated 10/27/98, 11/15/96, 12/14/96; with ArvinMeritor - Gabriel/Maremont 10/16/96; with Pennzoil/Quaker State dated 2/13/97, 11/17/97, 10/30/98, 4/4/99, 1/6/00, 1/19/00, 7/14/00, 10/24/00, 5/31/01 (offers subsequently accepted); with Standard Motor Products: Factory Air/Four Seasons dated 12/6/96; Standard Ignition dated 10/7/98; 12/22/00 Standard; 10/19/01 Engine Management; 10/29/01 Wire and Cable; and with Ashland/Valvoline: 11/17/97, 1/7/01, 9/9/01;

B. Display and endcap allowances;

C. Promotional allowances, fees and discounts;

D. Advertising allowances and discounts;

E. Gathering allowances paid by the Manufacturers to AutoZone;

F. Warehouse and store changecver allowances;

G. New store and new warehouse allowances;

H. Slotting allowances for making retail shelf space available;

I. Specials, markdowns, and guaranteed profit margins for retail prices determined by the Defendant Retailer;

J. Guaranteed lowest price, guaranteed at the same time to AutoZone and Advance Auto and, upon information and belief, other defendant retailers;

K. Deferred-payment arrangements of 157 days or more as to the AutoZone Defendants and an unknown number of days as to the other Competing Retailers beyond the number of days for payment given to plaintiffs purchasing from the manufacturers, amounting to the placement of interest-free capital as an advertising and promotional program;

L. Allowances paid by Manufacturer Defendants for return of goods to the Manufacturers (a) partly as reimbursement of the return freight costs, and (b) partly as a fee or allowance to the Competing Retailer for their time spent in making and accounting for the auto-parts returns. This discriminatory return policy is part of the program for products actually sold, to enable the Competing Retailers to have more than sufficient inventory on hand for resales through excess ordering of auto parts by the Competing Retailer with the excess costs paid by the Manufacturer;

M. Payments made by Manufacturer Defendants for services not provided or in an amount in excess of the cost of the services provided by the Competing Retailers;

N. Honoring lifetime warranty programs of Competing Retailers by giving 100% (or more) refunds for products returned to a Competing Retailer, which the Competing Retailer returns to the Manufacturer Defendants for such credit; such warranty programs by the Competing Retailers are part of their promotion and advertising of the auto-parts, and connected with the resales of such products;

O. Returning "cores" (non-working auto parts) to the Manufacturer Defendant for refund or credit without justification, as a means to obtaining a reduction in prices paid by the Major Retailer; such core-return programs by the Competing Retailers are part of their promotion and advertising of the core-type auto-parts, and connected with the resales of such products;

P. Providing lengthy delays (3 to 12 months or longer) for payment to be made after delivery of the goods to the Competing Retailers which

functions as the equivalent of a capital contribution to the Competing Retailer by the Manufacturer Defendant; such payment-delay programs by the Competing Retailer are part of their advertising and promotion of the products, and connected with the resales of such products, making the payment to the Defendant Manufacturer after the auto part has been resold by the Competing Retailer;

Q. [Note: Wal-Mart's discriminatory RFID program, requiring Manufacturers to make substantial expenditures for the benefit of Wal-Mart, is described in Count III above.]

160. Upon information and belief, the cost to the Manufacturer Defendants for the advertising and promotional program given to each of the Major Retailers amounts to approximately 25% of the suggested retail price for the product line sales by the Defendant Manufacturer to the Competing Retailer, which value is not being given or made available, proportionally or functionally, by the Defendant Manufacturers to any of the plaintiffs.

161. Upon information and belief, no substantial part of the Manufacturer Defendants' promotional and advertising program for the Competing Retailers was made available to any of the plaintiffs directly or through any wholesaler or other supplier purchasing the product lines directly or indirectly from the Manufacturer Defendants.

162. The result to each of the plaintiffs is that the Manufacturer Defendants' advertising and promotional programs given to the Competing Retailers is not proportionally or functionally available to any of the WD or Jobber plaintiffs.

163. Each of the Manufacturer Defendants has violated §§ 2(d) and 2(e) of the Robinson-Patman Act by failing to make an advertising and promotional program available to any of the WD or Jobber plaintiffs on a proportionate or functionally equivalent basis in comparison to the advertising and promotional programs made available by the Manufacturer Defendants to the Competing Retailers.

164. The dollar amount of the loss to the plaintiffs is the value of the advertising and marketing programs given to the Competing Retailers by the Manufacturer Defendants, pro rated or in proportion to the plaintiff's purchases during the same period(s) from the Manufacturer Defendant.

165. The injuries suffered by plaintiffs by reason of the activities alleged above are the type of injury which the Robinson-Patman Act was enacted to prevent and are "antitrust injuries" under the Robinson-Patman Act and related provisions of the Clayton Act.

## Damages

166. By reason of the foregoing activities by the Manufacturer Defendants, each of the Jobber and WD plaintiffs has suffered the following losses:

A. Losses of auto-parts product line customers, sales, gross profit margins and gross profits through unavailability of any proportional or functionally equivalent Manufacturers' advertising and promotional programs;

B. Loss of the value or cost of the advertising and promotional program not made functionally or proportionally available by the Manufacturer Defendant to the Jobber and WD plaintiffs; and

C. Increased cost in promotional and advertising expenses to the Jobber and WD plaintiffs to sell auto parts product lines and gain and retain customers.

167. Each of the plaintiffs (other than the Coalition) has suffered damages by reason of the unlawful activities of the Manufacturer Defendants in an amount equal to approximately 20% of the plaintiff's annual sales during the Relevant Period, as will be proved with certainty by the plaintiff at the time of trial.

168. Each of the Jobber and WD plaintiffs is entitled to an award of treble damages and an award of attorneys' fees. and the Coalition is entitled to an award of attorney's fees.

169. Each of the plaintiffs (including the Coalition) is being irreparably injured by reason of the actual and threatened activities of each of the Manufacturer Defendants.

170. Each of the plaintiffs is entitled to a preliminary and permanent injunction prohibiting each of the Manufacturer Defendants (i) from continuing to violate §§ 2(d) and 2(e) of the Robinson-Patman Act, and (2) from making any advertising or promotional program available to any of the Competing Retailers, including the Competing Retailers, without offering a proportionally equal or functionally equivalent program to each of the WD and Jobber plaintiffs (and the Jobber and WD members of the Coalition or its member trade associations).

[Note: ¶¶ 171-221 are omitted because of deletion of 3 counts, to facilitate comparison of this amended complaint with the original complaint.]

## COUNT V

### [Commonlaw Fraud and Other Legal Bases Set Forth in ¶ 222A]

### (19 Plaintiffs against AutoZone Defendants, Advance, Wal-Mart and Sam's Club - Warehouse Costs in Predecessor Action)

222. The 19 Plaintiffs allege and reallege each of the allegations set forth in ¶¶ 1-170 above, and further allege that the activities of the AutoZone Defendants, Advance, Wal-Mart and Sam's Club (hereinafter, the "Warehouse Defendants") relating to certain warehouse costs incurred by the 19 Plaintiffs in the Predecessor Action amount to acticnable commonlaw fraud, as alleged below.

222A. Also, the allegations in this Count V are actionable as: (a) as unlawful interference under state law with the 19 Plaintiffs' exercise of their

First Amendment rights to petition the court for a redress of grievances against Defendants; (b) breach of a contract implied in law between parties to a lawsuit to litigate without intentionally and maliciously imposing needless costs on an adversary (herein, the 19 Plaintiffs) whose expenditures have no value to the other party (herein, the Defendants) in proving any of their defenses to the action; (c) unjust enrichment of the Defendants by their unlawful diversion of the 19 Plaintiffs' litigation assets, making it less possible for the Plaintiffs to prove their case against Defendants; and (d) violation of § 1 of the Sherman Act as a per se conspiracy to unreasonably restrain trade by conspiring to use, and using, sham litigation tactics to prevent the 19 Plaintiffs from enforcing their Robinson-Patman antitrust claims against Defendants.

223. The Predecessor Action was commenced (Eastern District, Long Island Courthouse) during February, 2000 with approximately 245 plaintiffs, which number was reduced to the 19 Plaintiffs (plus 3 others, for a total of 22) by the Stipulation in May, 2002. Document production by defendants occurred starting in mid-2002, but defendants did not either request the data processing files offered by the 19 Plaintiffs or make arrangements to inspect the plaintiffs' hard-copy files offered in place for inspection by the Warehouse Defendants. As of October, 2002, there was no trial date, and then the action was reassigned to Judge Wexler, who called a conference for November 1, 2002, and during the conference advised the counsel for all parties that (because of the age of the case) the trial would commence on or about January 21, 2003.

224. Also, during this conference and after learning about the trial date, the Warehouse Defendants sought an order to require plaintiffs to extract from the 19 Plaintiffs' files (amounting to an estimated 35,000 boxes of files) all of the documents for the purchase and resale transactions relating to auto parts manufactured by the 16 auto-parts manufacturers designated in the 19

Plaintiffs' complaint; with the 19 Plaintiffs arguing, through their counsel, that the vast number of plaintiffs' documents involved made it too costly for the 19 Plaintiffs to make the document selection being sought by the Warehouse Defendants, involving millions of dollars of costs, and that the Warehouse Defendants should take the offered data processing records instead. The Warehouse Defendants refused to review the 19 Plaintiffs' documents in place (in the plaintiffs' respective places of business through the country) and insisted that the Court order that the records be shipped into the Eastern District of New York for the Warehouse Defendants to review. The Warehouse Defendants insisted they were entitled to the hard copy documents requested and did not have to accept plaintiffs' offered data processing records instead.

225. Specifically, in the above context, the counsel for the AutoZone Defendants, Advance, Wal-Mart and Sam's Club made the following representations to Judge Wexler and to Carl E. Person, counsel for the 19 Plaintiffs (the "Representations"):

A. That the Warehouse Defendants intended to review (for purposes of asserts their alleged defenses) each of the invoices in the thousands of boxes of plaintiffs' invoices to be produced (the "Warehouse Invoices"), to identify each relevant invoice and extract from it the relevant facts for use in defending themselves in the forthcoming trial in the Predecessor Action;

B. That the Warehouse Defendants intended to hire as a team 100 paralegals or similar persons to review the plaintiffs' Warehouse Invoices;

C. That the team review by the 100 paralegals would start at 8:00 a.m. and end at 8:00 p.m. each day, including Saturdays and Sundays, for a 2-month period starting on or about November 22, 2002 and ending at the scheduled start of trial, on January 21, 2003;

D. That the team would be ready and would start as soon as the Warehouse Defendants were notified by the 19 Plaintiffs' counsel that the Warehouse Invoices had been transported into a suitable warehouse facility

located in the Eastern District of New York [such notice was given to the Warehouse Defendants' counsel on or about November 20, 2002];

E. That the team of 100 persons (plus supervisors) would need to have plaintiffs' provide an appropriate number of tables and more than 100 chairs in the warehouse or other facility selected by plaintiffs to enable them to perform their review of each of the Warehouse Invoices in the thousands of boxes.

F. That the team would need facilities to be obtained by plaintiffs suitable for such review, including light, heat and sanitation.

225A. AutoZone's counsel, Job Taylor III, Esq., made the presentation and representations to Judge Wexler on behalf of all of the Defendants, in front of and with the support and voiced approval of Lee H. Simowitz, Esq. and George A. Stamboulidis, Esq., counsel to Advance and (now-dismissed) Discount, and Scott Martin, counsel for Defendants Wal-Mart and Sam's Club.

226. Each of the Representations when made was the representation of a material fact.

227. Each of the Representations was false when made.

228. The Warehouse Defendants, through their agents and attorneys, knew that each of the Representations was false when made.

229. Each of the Representations was made by the Warehouse Defendants, through their attorneys, acting with scienter, to obtain an order from Judge Wexler (the "Warehouse Order") requiring the 19 Plaintiffs to incur a needless, huge, wasted expense and/or wind up with the 19 Plaintiffs in default for being unable to comply with the Warehouse Order, and without any intention of performing the team review (for purposes of asserting Defendants' defenses).

230. Judge Wexler and the 19 Plaintiffs, through their attorney, relied upon the Representations:

A. as to Judge Wexler: Judge Wexler made the defendant-requested Warehouse Order requiring the 19 Plaintiffs to find and rent suitable warehouse

space in the Eastern District of New York and ship the thousands of boxes of plaintiffs' Warehouse Invoices into the warehouse (and have the warehouse ready for the defendants' document-inspection team) no later than 21 days from November 1, 2002; and

B. as to the 19 Plaintiffs: The 19 Plaintiffs' counsel searched in all counties of the Eastern District for, finally found and then signed a short-term lease for a warehouse (44,000 square feet, 18 truck bays, $33,000 monthly rent) in the Eastern District of New York (Brooklyn), purchased and then transported (via tractor trailer) the required number of tables and chairs to the warehouse, hired a lighting expert, arranged for suitable lighting and heat and sanitation facilities, purchased a copier and office supplies such as coffee, tea, hot chocolate and bottled water for the promised team; and each of the 21 Jobber and WD plaintiffs packed its boxes of invoices into pallets and shipped the pallets by 53-foot tractor-trailer to the warehouse where they were received on or before the deadline of November 22, 2002; and plaintiffs' counsel maintained the warehouse with a full-time 24-hour manager/lift operator throughout the 2-month period and beyond.

231. Reliance upon the Representations by Judge Wexler and the 19 Plaintiffs and their counsel was reasonable.

232. The 19 Plaintiffs' were injured by reason of their reliance upon the Representations.

233. The 19 Plaintiffs incurred out-of-pocket expenses of $297,210.57 and used approximately 750 hours of legal time of their counsel (with a value of $225,000, at $300 per hour) in performing as required by the Warehouse Order, for a total of $525,000, in reliance upon the Warehouse Defendants' representations, in addition to the injury of losing the January trial because of the Warehouse Defendants' diversion of the 19 Plaintiffs' limited resources (both as to money, and the time of their attorney, an individual practitioner) during the 2-month period preceding trial and during the trial itself.

234. The Warehouse Defendants in fact never intended to review any of the Warehouse Invoices (for purposes of asserting any of Defendants' defenses) or, in the alternative, as a backup plan, any more than a token amount of the Warehouse Invoices, representing less than 1% of all the Warehouse Invoices (for the specific purpose of being able to present a motion to Judge Wexler that the Plaintiffs had failed to comply with the Judge's order (and not for the purpose of asserting any of Defendants' alleged defenses).

234A. Some facts supporting Plaintiffs' allegation that Defendants' had no present intention, when making their Representations to Judge Wexler, of reviewing any of the warehouse documents for use in asserting any of their defenses are: (a) Defendants moved to dismiss the action before even coming into the warehouse for their sham review; (b) upon information and belief, Defendants never interviewed or hired the 100 paralegals to review the documents; (c) Defendants made various misrepresentations to Judge Wexler in their motion to dismiss the action for alleged failure by Plaintiffs to comply with the warehouse order; (d) Defendants refused to agree to Plaintiffs' request, during trial, to permit Plaintiffs to disband the warehouse (which was costing about $35,000 in out-of-pocket expenses per month to maintain); (e) Defendants refused to accept plaintiffs' data processing records and insisted instead on having only the boxes of documents, for delivery into New York.

235. The Warehouse Invoice review expenses which the Warehouse Defendants had represented they would incur, amounted to far in excess of $10,000,000, which amount was never spent by the Warehouse Defendants, other than token costs for their sham review of about 1% of the Warehouse Invoices which occurred after the Warehouse Defendants had failed to commence their promised review and had already moved for relief complaining about the alleged adequacy of the warehouse facility.

236. The Warehouse Defendants made the Representations for the purpose of trying to obtain an order from the Court as to which the Warehouse Plaintiffs

would be unable to comply, for the purpose of trying to obtain a pretrial dismissal of the action on the basis of the 19 Plaintiffs' alleged failure to comply with the unnecessary, fraudulently-obtained Warehouse Order, and not on the merits of the case.

236A. The Warehouse Defendants had a First Amendment right of petition to defend themselves in the action, but had no right under the First Amendment to initiate proceedings in the action that were unnecessary to their defense and were intended by conspiracy among the Defendants or Defendants' attorneys to limit Plaintiffs' ability to pursue the lawsuit by forcing Plaintiffs to needlessly spend about $300,000 and consume about $225,000 in time of Plaintiffs' counsel (an individual practitioner) in setting up and running the warehouse, especially during the critical period of 6 weeks prior to the start of trial.

236B. The Defendants, upon information and belief, planned and agreed among themselves that, by obtaining the warehouse order, the 19 Plaintiffs would be unable to comply, and that Defendants could then move to dismiss the case for failure to comply with the order.

236C. The request by Defendants for the warehouse order was objectively baseless and intended to cause harm to the 19 Plaintiffs and their attorney through the use of Governmental process, as distinguished from the outcome of that process, which gave Defendants an unfair advantage in having the outcome of the lawsuit turn out in their favor, as it did.

236D. The fact that Defendants prevailed on one or more of their defenses to the lawsuit is not relevant, because the alleged sham-litigation activities by Defendants concerning the warehouse were intended to create such result, whether or not Defendants had any meritorious defenses.

237. The Warehouse Defendants are liable for the actions of their attorneys in making the Representations on behalf of the Warehouse Defendants.

238. The Warehouse Defendants, upon realizing on or before November 21, 2002 that the 19 Plaintiffs had complied with the Court's Order, then met and conspired among themselves to get out of their obligation to review the documents by making a motion on frivolous grounds claiming defects in the Warehouse or its environment which justified the Warehouse Defendants' failure to review the produced documents as promised.

239. The 19 Plaintiffs' responded to the motion explaining how the motion was frivolous, and only at such time (in late December, 2002) did the Warehouse Defendants first come into the warehouse (consisting of about 4 or 5 persons) to have a cursory look at a limited number of documents (for 5 of the plaintiffs, and without extracting any information for coding), amounting to less than 1% of all of the Warehouse Invoices.

240. As a result, the Warehouse Defendants never reviewed 99% of the Warehouse Invoices at all, or 100% of the Warehouse Invoices as represented.

241. Upon information and belief, the reason that the Warehouse Defendants did not review the Warehouse Invoices as represented is that there was no need to review any of the Warehouse Invoices because the Warehouse Defendants had already obtained the information they needed from other sources, including the auto-parts buying groups of which the 19 Plaintiffs were members, and from the 19 Plaintiffs through earlier discovery.

242. As further evidence of the Warehouse Defendants' bad faith, on or about the first day of trial, on January 22, 2003, the 19 Plaintiffs made a request of Judge Wexler to be allowed to close the warehouse and return the Warehouse Documents to the respective 21 operating plaintiffs, to stop the running expense of about $45,000 per month to operate the warehouse, which request was opposed by the Warehouse Defendants (not including Wal-Mart or Sam's Club); Judge Wexler then refused to permit closing of the warehouse during the trial; as a result the warehouse was not closed until several weeks after the end of the trial (after pickup of the invoice boxes for reshipment by tractor-

trailer to the respective 19 Plaintiffs), causing Plaintiffs additional, avoidable damages (which have already been included in ¶ 213 above). [Note: Wal-Mart and Sam's Club did not participate in the activities alleged in this paragraph, having been dropped as defendants by this time, because of the alleged warehouse activities of the Defendants.]

## Damages

243. As a result, the Warehouse Plaintiffs have suffered damages in the amount of $525,000, plus the loss of the trial and action in the Predecessor Action.

244. The 19 Plaintiffs are entitled to damages in the amount of $525,000 plus the 19 Plaintiffs' damages which they failed to recover through trial and judgment in the Predecessor Action.

245. The 19 Plaintiffs are entitled to attorney's fees in a reasonable amount.

246. Each of the 19 Plaintiffs is entitled to interest on its damages.

247. Each of the Warehouse Defendants acted willfully, and maliciously, with near criminal indifference to its civil obligations, for the purpose of injuring each of the 245 plaintiffs in the group which had initially brought suit against the Warehouse Defendants, through excessive, hardball litigation tactics.

248. Each of the 19 Plaintiffs is entitled to punitive damages against each of the Warehouse Defendants in an amount to be determined by the trier of fact.

## PRAYER

**WHEREFORE**, the plaintiffs (as identified in Appendix D) demand judgment against each of the Manufacturer Defendants and each of the Retailer Defendants (as identified in Appendix D), as follows:

1. As to Count I, that it be adjudged and decreed that the activities of each of the Manufacturer Defendants and Retailer Defendants constitute a violation of § 2(a) or § 2(f) of the Robinson-Patman Act as to each of the plaintiffs making claim against the defendant;

2. As to Count II, that it be adjudged and decreed that the activities of each of the POS-participating Manufacturer Defendants and the AutoZone Defendants constitute a violation of § 2(a) or § 2(f) of the Robinson-Patman Act as to each of the plaintiffs making claim against the defendant;

3. As to Count III, that it be adjudged and decreed that the activities of each of the RFID-participating Manufacturer Defendants and Defendants Wal-Mart and Sam's Club constitute a violation of § 2(a) or § 2(f) of the Robinson-Patman Act or, alternatively (as to the Manufacturer Defendants), § 2(d) or § 2(e), as to each of the plaintiffs making claim against the defendant;

4. As to Count IV (manufacturers' advertising and promotional programs), that it be adjudged and decreed that the activities of each of the Manufacturer Defendants constitute a violation of § 2(d) or § 2(d) of the Robinson-Patman Act as to each of the plaintiffs making claim against the defendant;

5. As to Count V, that it be adjudged and decreed that the activities of each of the AutoZone Defendants and defendant Advance constitute actionable commonlaw fraud as to each of the 19 Plaintiffs;

6. Awarding damages in favor of each plaintiff, in an amount not presently known to the plaintiffs but which will be proved with certainty at the time of trial.

7. Awarding trebled damages as to the plaintiffs in each of Counts I through IV.

8. Awarding attorneys' fees as to all plaintiffs in each of Counts I through IV, under the Clayton Act, and under New York law as to the 19 Plaintiffs named in Count V (commonlaw fraud).

9. Enjoining permanently (i) each of the Manufacturer Defendants from offering or providing discriminatory auto-parts product-line prices or auto-parts prices to any of the Retailer Defendants or other Major Retailers, and (ii) each of the Retailer Defendants from inducing and/or knowingly receiving, as the favored purchaser, discriminatory prices from any of the Manufacturer Defendants, directly or indirectly.

10. Enjoining permanently each of the Retailer Defendants from opening up any new retail stores in direct or indirect competition with any of the plaintiffs (or Jobber or WD members of the Coalition of any of the member trade associations) until such time that the Retailer Defendant proves that it is no longer inducing or knowingly receiving unlawfully low prices for the auto-parts product lines or auto parts they buy and resell in such competition with any of the plaintiff or other WD's or Jobbers.

11. Enjoining permanently each of the Manufacturer Defendants, by mandatory injunction, requiring them 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 requiring the Manufacturer Defendant to make the same terms available to each of the direct-purchasing Plaintiffs or the WD Suppliers.

12. Enjoining defendants from continuing with the additional activities described in ¶¶ 112, 112A, 112B, 112C, 126, 133, 134, 147, 155, 156 and 170 above, which injunction descriptions are incorporated by reference hereby.

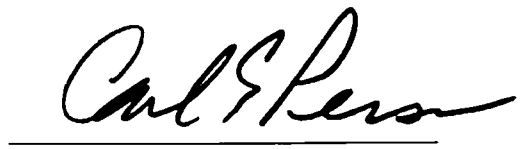
13. That each of the defendants be assessed interest (as to Count V), costs and disbursements; and

14. That plaintiffs have such other and further relief as this Court may deem just and proper.

## Jury Demand

Plaintiffs hereby demand a trial by jury of all issues properly triable to a jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: New York, New York
May 6, 2007



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