[FILE # 2 OF 3 FILES FILED ELECTRONICALLY AS PAGES 41-80
OF THE AMENDED AND SUPPLEMENTAL COMPLAINT IN:]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR A LEVEL PLAYING FIELD, L.L.C., ROBERT ELGART & SON INC., AMELIA'S AUTOMOTIVE, INC., GLO AUTO SUPPLY, INC., DIXIE DIGGS AUTO PARTS, INC., MOTOR SUPPLY CORP., TRUCK SUPPLIERS, INC., HENRY GARCIA'S ENTERPRISES, INC., CITIZENS AUTO PARTS, INC., SOUTH AUSTIN AUTO SUPPLY, INC., GIL'S AUTO PARTS, S&L AUTO SUPPLY, INC., ARCAND SALES & SERVICE, INC., HLR SHOCKS, INC., M & M AUTO PARTS, INC., A & G AUTO PARTS, INC., JOE SACKETT & SONS, INC., PELLETIER'S AUTOMOTIVE, INC., KEEN'S AUTOMOTIVE MACHINE SHOP, INC., TAYLOR AUTO SUPPLY, INC., THE BILL HEBERT CO., INC., HEBERT AUTO SUPPLY OF CONCORD, L.L.C., WESSON'S MOBIL, INC., TOWNE AUTO PARTS, INC., AUTOMOTIVE HARD PARTS, INC., B. & H. AUTO SUPPLY, INC., RITCHIE AUTO PARTS, INC., BRAINTREE AUTOMOTIVE SUPPLY, AUTO PARTS & EQUIPMENT CO., EASTERN AUTO PARTS, INC., COLUMBIA AUTO PARTS CO., INC., KNOX BROS., INC., DUSENBERY'S; AIRPORT AUTO SUPPLY, INC., CARMAC, INC., AUTOMOTIVE SUPPLY ASSOCIATES, INC., BURLINGTON COUNTY AUTO PARTS, INC., U.S.A. AUTO PARTS CORP., SPEED EQUIPMENT CORP., PEMA ASSOCIATES, INC., THE BELSHE CO., INC., PERRY'S AUTO PARTS & EQUIP. CO., INC., CHICOPEE AUTOMOTIVE WAREHOUSE, INC., LARRY A. SKILLMAN, STEWART'S INC., AUTOMOTIVE WAREHOUSE, INC. OF LAKELAND, WAL, INC., SUPERIOR MOTOR PARTS, INC., CASH AUTOMOTIVE, INC., TI MANAGEMENT CO., THE MILLER DUDLEY CO., INC. OF MD., PREVATTE AUTO SUPPLY, INC., AUTOMOTIVE PARTS WAREHOUSE, INC., ED SCHROEDER'S AUTO PARTS, INC., LACAVA & SOWERSBY, INC., OWENBY AUTO PARTS, INC., EASTON ELECTRICAL DEVICES, INC., GRAFFMAN'S, INC., PAGA, INC., ALCO AUTO PARTS CO., INC., AVENUE AUTO PARTS, INC., GEMINI OF WESTMONT, INC., CEE-KAY AUTO SUPPLY, INC., APW CO., ONE STOP AUTO PARTS, INC., GOFFSTOWN AUTO PARTS, INC., MIDWEST WAREHOUSE CORPORATION, BEST AUTO SUPPLY, INC., BACHELDERS' AUTOMOTIVE DISTRIBUTORS, INC., NORTH SHORE METALS, INC., MARTY'S AUTO SUPPLY, INC., E & S AUTO PARTS, INC., IRVING LEVINE AUTOMOTIVE DISTRIBUTORS INC., DYKE, INC., MARICLARE, INC., MADER AUTOMOTIVE CENTER, INC., SUBURBAN AUTO SUPPLY, INC., DYKE MOTOR SUPPLY CO., WEST INC., DYKE MOTOR SUPPLY CO., INC., HOFFMAN AUTO PARTS, JOYCE'S AUTOMOTIVE SUPPLY, INC., JOYCE AUTO PARTS OF MT. AIRY, INC., NATIONAL AUTO PARTS, INC. OF APPOMATTOX, CROWN AUTOMOTIVE DISTRIBUTORS, LTD., POQUOSON AUTO PARTS, STEVE'S AUTO PARTS, INC., MILLENIUM AUTOMOTIVE LOGISTICS, INC., SOUTHPORT AUTO & MARINE, INC., NAPA CLOVER AUTO PARTS, INC., RALPH A. DICKSON, JR., RALPH A. DICKSON, III, JANICE D. MERCER, WENDELL WHELCHELL,	04 CV 08450 (RO)(GWG) AMENDED AND SUPPLEMENTAL COMPLAINT (Jury Demand)

[caption continued on next page]

from the Manufacturers at such discriminatory prices. See Appendices B-1 through B-5.

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-5 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 and B-3 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.

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 Manufacturer Defendants 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 operating 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 changeover 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 actionable 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 perscns (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-