Automotive News, and calling the Open Letter the NADA's "first response" to manufacturers who made little or no compromise with the NADA.

17. In the October 30, 1989 Automotive News, the automobile industry's principal trade publication, the Open Letter appeared as a two page advertisement. It was also published in the NADA's official publication, Automotive Executive, and sent to numerous representatives of the media and major automobile manufacturers.

18. At the NADA's 1990 Annual Convention in Las Vegas, Nevada, the President of the NADA described the Open Letter and its effect upon manufacturers.

We've tried to negotiate for years—and we tried all this year. Believe me, believe me, friends, I said to each of the big, big three, "Throw a bone to a dog—give me at least one of our four priority issues I can take to our dealers at convention in Las Vegas." I couldn't come close until after our October 30th ad \* \* \* but dealers all over this nation started looking at inventory and adjusting order banks to cut expenses for their very survival. Well, all of a sudden that got noticed! You bet!

Twenty-five thousand dealerships—doing anything more or less together—is bound to come to the attention of our suppliers.
[Emphasis added.]

- 19. The NADA and its officers and directors intended the Open Letter to constitute a threat to automobile manufacturers that dealers would collectively reduce their inventories unless manufacturers adopted policies more favorable to dealers.
- B. Agreements Concerning Dealer Advertisements and Sales to Brokers
- 20. Like manufacturers, some dealers engage in sales and marketing practices that are unpopular with other dealers. Invoice advertising and selling cars to brokers are examples of dealer marketing practices that are unpopular with many dealers and the NADA.
- 21. "Invoice advertising" means advertising sponsored by a franchised dealer which reveals the dealer's invoice or cost to purchase a vehicle, or which offers to sell the vehicle to the public at a price based upon the dealer's invoice or cost to purchase the vehicle. Officers and directors of the NADA delivered numerous speeches denouncing invoice advertising because, inter alia, they believed that it has led to lower retail selling prices for new vehicles.
- 22. On several occasions between 1989 and 1994, an officer of the NADA contacted automobile manufacturers to complain about dealers who had advertised retail prices that were a

specific dollar amount over the dealer's invoice.

23. The NADA officers also communicated directly with the dealers in question and obtained their agreement not to engage in further invoice advertising. In the course of these communications, the officer referred to his position with the NADA in a way that suggested that he was acting on behalf of the NADA in making the complaints and in seeking agreement from the dealers.

24. In February 1994, the NADA members, acting through their Board of Directors, appointed a task force to study the impact of automobile manufacturers' policies on new vehicles' suggested gross margins. This report, ultimately entitled "A SPECIAL REPORT: From the NADA Task Force on Reduced New Vehicle Margins' ("Reduced Margins Task Force Report") was delivered to, among others, automobile manufacturers' dealer councils' chairmen and vice chairmen, automobile trade association executives. numerous NADA members, and representatives from major automobile manufacturers.

25. In addition to calling on all automobile manufacturers to increase their suggested gross profit margins, the NADA Reduced Margins Task Force Report included recommendations for manufacturers and dealers with respect to automobile brokers. Automobile brokers generally buy new vehicles from franchised dealers at discounted prices and resell the vehicles directly to the public in competition with franchised dealers.

26. The Reduced Margins Task Force Report included the following recommendation to automobile dealers:

Refuse to do business with brokers or buying services. They inevitably do harm to new vehicle gross margin potential.

27. The NADA later sent a memorandum and revised pages for the Reduced Margins Task Force Report that eliminated this recommendation, but not until the report had been disseminated to over 200 dealer representatives and other individuals active in the automobile industry.

## First Cause of Action

(Agreement To Boycott Manufacturers)

28. The NADA, through its officers and directors, agreed to orchestrate a group boycott of automobile manufacturers to coerce manufacturers to decrease the discounts offered to large volume buyers and to eliminate consumer rebates. Specifically, the NADA called upon its dealer members to reduce their inventories of new cars.

- 29. That agreement constituted a combination or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Serman Act, 15 U.S.C. 1.
- 30. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

## Second Cause of Action

(Agreement To Fix Inventory Levels)

31. The NADA, through its officers and directors, agreed to urge its dealer members to maintain new vehicle inventory at levels equal to 15–30 days' supply.

supply.
32. That agreement constituted a combination or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

33. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

#### Third Cause of Action

(Agreement To Restrict Advertisements)

34. The NADA, through its officers and directors, solicited and obtained agreements from member dealers not to engage in invoice advertising.

35. Those agreements constituted combinations and conspiracies in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

36. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

## Fourth Cause of Action

(Agreement To Boycott Automobile Brokers)

- 37. The NADA, through its officers and directors, agreed to urge its dealer members not to do business with automobile brokers.
- 38. That agreement constituted a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.
- 39. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

# Prayer for Relief

Wherefore, plaintiff respectfully prays for relief as follows:

- 1. That this Court adjudge and decree that the NADA has entered into unlawful contracts, combinations, or conspiracies which unreasonably restrain trade in interstate commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;
- 2. That the NADA and all persons, firms, and corporations acting on their