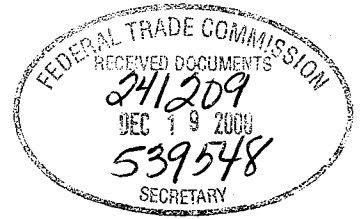


ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of )

WHOLE FOODS MARKET, INC., )  
a corporation. )

) Docket No. 9324

) PUBLIC

To: The Honorable D. Michael Chappell  
Chief Administrative Law Judge

**COMPLAINT COUNSEL'S SECOND STATUS REPORT**

Pursuant to the Scheduling Order, dated September 10, 2008, Complaint Counsel hereby files its second status report.

**Status of Complaint Counsel's and Respondent's Discovery**

Neither Respondent nor Complaint Counsel have served additional document requests or interrogatories on the opposing party since the submission of the parties' first status reports. Complaint Counsel has served two sets of requests for production and one set of interrogatories on Respondent. Respondent has served one set of requests for production of documents and one set of interrogatories on Complaint Counsel.

The parties continue to aim to conduct fact discovery expeditiously. Complaint Counsel has provided an initial response to Respondent's document requests and interrogatories and will meet and confer on any follow-up responses. Respondent continues to submit its documentary and informational responses in a rolling fashion.

The parties have engaged in constructive and cooperative dialogue throughout what has been a difficult and taxing process. At the time of this report, the parties have

not reached an impasse on the document requests or interrogatories. However, there is a possibility that the parties may not be able to resolve on their own a handful of discovery disagreements. In the event that the meet and confer discussions do not produce a resolution, the parties may be forced to request this Court to intervene.

The Scheduling Order specifies that discovery other than depositions and Rule 3.24(a)(4) discovery closes on December 19, 2008. The bulk of non-deposition discovery has been completed, and the parties have agreed to continue to finalize remaining non-deposition discovery as soon as practicable.

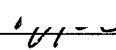
As of December 24, 2008, Complaint Counsel will have taken depositions of fifteen Whole Foods employees and three ex-Wild Oats employees. Complaint Counsel has noticed the deposition of four additional Whole Foods employees and two additional ex-Wild Oats employees. Complaint Counsel also is seeking to schedule Rule 3.34(a)(1) depositions of Whole Foods' company representatives on a number of discrete topics. Complaint Counsel may serve additional deposition notices for Whole Foods' employees or representatives or ex-Wild Oats employees during the deposition discovery period. Finally, Respondent has issued a deposition notice to Perry Odak, the former CEO of Wild Oats.

#### **Status of Nonparty Discovery**

Neither Complaint Counsel nor Respondent has issued additional document requests or interrogatories to any additional nonparties since the submission of the parties' first status reports. One deposition of a nonparty, John Downing formerly of Earth Fare, has occurred, and Respondent has issued deposition notices to three nonparty supermarket retailers to occur in January 2009.

Dated December 19, 2008

Respectfully submitted,

By:  \_\_\_\_\_

J. Robert Robertson, Esq.  
Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.

Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
(202) 326-2350  
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Complaint Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2008, I filed via hand an original and two copies of the foregoing Complaint Counsel's Second Status Report with:

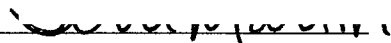
Donald S. Clark, Secretary  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Rm. H-159  
Washington, D.C. 20580

I also certify that on December 19, 2008, I delivered via hand two copies of the foregoing to:

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

I also certify that on December 19, 2008, I delivered via electronic mail one copy of the foregoing to:

Paul T. Denis, Esq.  
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By:   
Terri Martin