

**ORIGINAL**



**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

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

**Docket No. 9324**

**Public**

**WHOLE FOODS MARKET, INC.'S MEMORANDUM IN SUPPORT OF MOTIONS  
FOR ENFORCEMENT OF SUBPOENAS DUCES TECUM ISSUED TO  
ENTIRELY NON-COMPLIANT NON-PARTIES**

Respondent Whole Foods Market, Inc. ("Whole Foods") submits this memorandum in support of its motions to compel the enforcement of subpoenas duces tecum issued to the following fourteen non-parties (collectively, the "Non-Parties") who have failed to respond in any way to the subpoena:

- Ada's Natural Foods ("Ada's");
- Amazing Grace Whole Foods ("Amazing Grace");
- B&R Stores, Inc. ("B&R");
- Ball's Food Stores, Inc. ("Ball's");
- Burger's Supermarket, Inc. ("Burger's");
- HOW's Market ("HOW's");
- Jerry's Famous Deli, Inc. ("Jerry's");
- King Ranch Market ("King Ranch");
- Miles Market ("Miles");
- P&S Foods (d/b/a Shur-Sav Markets) ("P&S");

- Raley's;
- Straub's Fine Foods ("Straubs");
- ValuDiscount, Inc. (d/b/a ValuMarket) ("ValuDiscount"); and
- Zupan's Market ("Zupan's").

### **INTRODUCTION**

In October 2008, Whole Foods served a document subpoena on the fourteen Non-Parties, containing nine requests for documents that are identical to the requests served on the other 77 other non-party competitor recipients. See Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties ("Supporting Appendix"), Ex. A-1 to A-14. The return dates for the subpoenas were November 4, 2008 (B&R, Ball's, HOW's, P&S, Raley's, and ValuDiscount), November 5, 2008 (Amazing Grace, Burger's, Jerry's, Straub's, and Zupan's), and November 6, 2008 (Ada's, King Ranch, and Miles). Whole Foods also provided each of these Non-Parties with a copy of the protective order entered by the Commission that governs this proceeding. Id.

Although the return dates passed more than two months ago, none of the Non-Parties has objected to the subpoena, moved to quash, or produced documents or data. Counsel for Whole Foods has attempted to contact the Non-Parties in good faith to secure their compliance. See Supporting Appendix, Ex. B, Whole Foods Market, Inc.'s Rule 3.22(f) Statement of Jim A. Fishkin in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued to Entirely Non-Compliant Non-Parties ¶¶ 4-12; Supporting Appendix, Ex. C, Whole Foods Market, Inc.'s Rule 3.22(f) Statement of Gorav Jindal in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued to Entirely Non-Compliant Non-Parties ¶¶ 4-8. The Non-Parties have

either ignored Whole Foods or simply refused to comply. Id.

By not moving to quash or limit the subpoenas, or serving objections, the Non-Parties have waived any objections to the subpoena that they might have had. The Non-Parties should therefore be directed to produce responsive documents and data within ten days of this Court's order. See In re Matter of Evanston Northwestern Healthcare Corp., Dkt. No. 9315, 2004 WL 2380499, at \*1 (F.T.C. Sept. 22, 2004) (granting motion to compel non-party to produce documents responsive to respondent's subpoena duces tecum within ten days of Court's order). Had the Non-Parties timely objected, such objections would have been futile. The documents and data requested in the subpoenas are crucial to Whole Foods' defense in the current action, and the ALJ has already ruled that the requests are not unduly burdensome, and that the protective order adequately protects non-parties. The Non-Parties should be directed to produce documents and data responsive to the subpoena.

### **ARGUMENT**

As the subpoenaed party, each subpoena recipient carries "[t]he burden of showing that the request[s] [are] unreasonable." In re Rambus, Inc., No. 9302, 2002 FTC LEXIS 90, at \*9 (Nov. 18, 2002). Here, the Non-Parties have made no attempt whatsoever to carry their burden, and by not timely<sup>1</sup> moving to quash or otherwise objecting to the subpoena, the Non-Parties have waived their objections. See In re Lehigh Portland Cement Co., 73 F.T.C. 1252 (Apr. 6, 1958) (affirming an ALJ's denial of a non-party's motion to quash a subpoena in a Commission

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<sup>1</sup> See 16 C.F.R. § 3.34(c) ("Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of ten (10) days after service thereof or the time for compliance therewith.").

proceeding on the ground that it had not been timely filed).<sup>2</sup>

As the ALJ observed in the December 16 Order denying New Seasons' motion,

[t]he documents sought by Whole Foods are relevant to one of the central antitrust issues in this proceeding – the appropriate definition of the relevant market. The burden to New Seasons to comply is not unduly burdensome and its confidential documents will be adequately protected under the Protective Order.

Supporting Appendix, Ex. D, December 16, 2008 Order Denying New Seasons' Motion to Quash or Limit Subpoena Duces Tecum, at 7. The documents and information requested here are the same as those requests of New Seasons. All of the document and data requests contained in the subpoena are designed to elicit information that would aid Whole Foods in demonstrating that the Commission's proposed definition of the relevant market is artificially narrow. Without the information requested in the subpoena, Whole Foods cannot properly defend itself against the Commission's allegations.

Whole Foods requests that the Non-Parties be compelled to comply with the subpoena.

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<sup>2</sup> Moreover, the ALJ's prior rulings have addressed objections that the Non-Parties could have made. See Supporting Appendix, Ex. D, December 16, 2008 Order Denying New Seasons Market's Motion to Quash or Limit Subpoena Duces Tecum (rejecting a non-party's undue burden, confidentiality, and anticompetitiveness objections to an identical subpoena); Supporting Appendix, Ex. E, December 23, 2008 Order Denying Gelson's Markets' Motion for a Protective Order or in the Alternative To Quash or Limit the Subpoena (rejecting another non-party's anticompetitiveness and confidentiality objections to an identical subpoena).

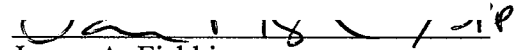
**CONCLUSION**

For the foregoing reasons, Whole Foods' motion should be granted.

Dated:

Respectfully submitted,

By:

  
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*Attorneys for Whole Foods Market, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

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The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Avenue, N.W.  
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Fort Myers, FL 33907

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_ )  
**In the Matter of** )

**Docket No. 9324**

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

**Public**

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY ADA'S NATURAL FOODS**

On October 14, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party Ada's Natural Foods ("Ada's"). While the subpoena had a return date of November 6, 2008, Ada's has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and Ada's should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of	)	Docket No. 9324
WHOLE FOODS MARKET, INC.,	)	
a corporation.	)	Public

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY ADA'S NATURAL FOODS**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Ada's Natural Foods, and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Ada's Natural Foods shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Ada's Natural Foods was served on January 14, 2009, on the following persons by the indicated method:

**By Hand Delivery and Email:**

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Federal Trade Commission  
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**By Hand Delivery and Email:**

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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**In the Matter of** )

**Docket No. 9324**

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

**Public**

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY AMAZING GRACE WHOLE FOODS**

On October 14, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party Amazing Grace Whole Foods ("Amazing Grace"). While the subpoena had a return date of November 5, 2008, Amazing Grace has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and Amazing Grace should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.



**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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**In the Matter of**

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

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**Docket No. 9324**

**Public**

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY AMAZING GRACE WHOLE FOODS**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Amazing Grace Whole Foods, and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Amazing Grace Whole Foods shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Amazing Grace Whole Foods was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

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Federal Trade Commission  
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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

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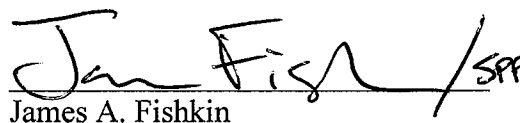
**Docket No. 9324**

**Public**

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY B&R STORES, INC.**

On October 13, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party B&R Stores, Inc. ("B&R"). While the subpoena had a return date of November 4, 2008, B&R has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and B&R should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

By:

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

<b>In the Matter of</b>	)	
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<b>WHOLE FOODS MARKET, INC.,</b>	)	
<b>a corporation.</b>	)	<b>Public</b>
	)	

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY B&R STORES, INC.**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party B&R Stores, Inc., and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. B&R Stores, Inc. shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party B&R Stores, Inc. was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

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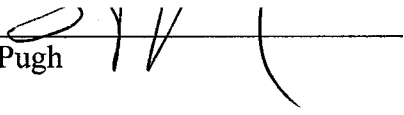
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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

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

**Docket No. 9324**

**Public**

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY BALL'S FOOD STORES, INC.**

On October 13, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party Ball's Food Stores, Inc. ("Ball's"). While the subpoena had a return date of November 4, 2008, Ball's has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and Ball's should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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In the Matter of )

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WHOLE FOODS MARKET, INC., )  
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) Public  
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**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY BALL'S FOOD STORES, INC.**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Ball's Food Stores, Inc. and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Ball's Food Stores, Inc. shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Ball's Food Stores, Inc. was served on January 14, 2009, on the following persons by the indicated method:

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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In the Matter of )

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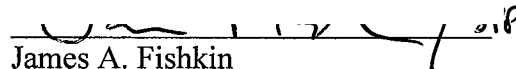
WHOLE FOODS MARKET, INC., )  
a corporation. )  
\_\_\_\_\_ )

Public

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY BURGER'S SUPERMARKET, INC.**

On October 14, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum on non-party Burger's Supermarket, Inc. ("Burger's"). While the subpoena had a return date of November 5, 2008, Burger's has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and Burger's should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

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**UNITED STATES OF AMERICA  
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**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY BURGER'S SUPERMARKET, INC.**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Burger's Supermarket, Inc., and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Burger's Supermarket, Inc. shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Burger's Supermarket, Inc. was served on January 14, 2009, on the following persons by the indicated method:

**By Hand Delivery and Email:**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**By Hand Delivery and Email:**

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

**By First Class Mail:**

John A. Burger III  
Burger's Supermarket, Inc.  
1105 Ray Avenue  
Louisville, KY 40204

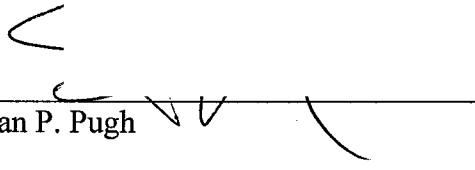
**By E-Mail:**

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Complaint Counsel

By:

  
Sean P. Pugh

DECHERT LLP  
1775 I Street, N.W.  
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Telephone: (202) 261-3300  
Facsimile: (202) 261-3333

*Attorney for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

) Docket No. 9324

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

) Public  
)

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY HOW'S MARKET**

On October 13, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party HOW's Market ("HOW's"). While the subpoena had a return date of November 4, 2008, HOW's has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and HOW's should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

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

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*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_ )  
**In the Matter of** )

**Docket No. 9324**

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

**Public**

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY HOW'S MARKET**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to HOW's Market and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. HOW's Market shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party HOW's Market was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

By Hand Delivery and Email:

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

By First Class Mail:

Mark Oerem  
HOW's Market  
3035 East Huntington Drive  
Pasadena, CA 91107

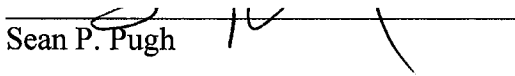
By E-Mail:

J. Robert Robertson, Esq.  
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Complaint Counsel

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*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
**In the Matter of**

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

)  
)  
)  
)  
)  
)  
**Docket No. 9324**

**Public**

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY JERRY'S FAMOUS DELI, INC.**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Jerry's Famous Deli, Inc. and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Jerry's Famous Deli, Inc. shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Jerry's Famous Deli, Inc. was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

By Hand Delivery and Email:

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

By First Class Mail:

Guy Starkman  
President  
Jerry's Famous Deli, Inc.  
12711 Ventura Boulevard, Suite 400  
Studio City, CA 91604

By E-Mail:

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Complaint Counsel

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By:

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*Attorney for Whole Foods Market, Inc.*



By: James A. Fishkin  
James A. Fishkin

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*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
**In the Matter of**

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

)  
)  
)  
)  
)  
)  
**Docket No. 9324**

**Public**

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY KING RANCH MARKET**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party King Ranch Market and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. King Ranch Market shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party King Ranch Market was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

By Hand Delivery and Email:

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

By First Class Mail:

King Ranch Market  
1570 N. Eastern Ave.  
Las Vegas, NV 89101

Alice O'Brien  
General Counsel  
King Ranch Market  
1570 N. Eastern Ave.  
Las Vegas, NV 89101

By E-Mail:

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

## Complaint Counsel

By:

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*Attorney for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

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

**Docket No. 9324**

**Public**

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY MILES MARKET, INC.**

On October 15, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party Miles Market ("Miles"). While the subpoena had a return date of November 6, 2008, Miles has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and Miles should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

By:

  
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*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	Docket No. 9324
WHOLE FOODS MARKET, INC.,	)	
a corporation.	)	Public
	)	

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY MILES MARKET, INC.**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Miles Market and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Miles Market, Inc. shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Miles Market, Inc. was served on January 14, 2009, on the following persons by the indicated method:

**By Hand Delivery and Email:**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**By Hand Delivery and Email:**

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

**By First Class Mail:**

Frank Cangemi  
Miles Farmers Market  
28560 Miles Road  
Solon, OH 44139

**By E-Mail:**

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Complaint Counsel

By:

<  
Sean P. Pugh

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Washington, D.C. 20006-2401  
Telephone: (202) 261-3300  
Facsimile: (202) 261-3333

*Attorney for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

) Docket No. 9324

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

) Public  
)

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY P&S FOODS  
(D/B/A SHUR-SAV MARKETS)**

On October 13, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party P&S Foods (d/b/a/ Shur-Sav Markets) ("P&S"). While the subpoena had a return date of November 4, 2008, P&S has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and P&S should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

By:

James A. Fishkin

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Philadelphia, PA 19104  
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*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_ )  
**In the Matter of** )

**Docket No. 9324**

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

**Public**

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY P&S FOODS (D/B/A SHUR-SAV MARKETS)**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party P&S Foods (d/b/a/ Shur-Sav Markets) and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. P&S Foods (d/b/a/ Shur-Sav Markets) shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party P&S Foods (d/b/a/ Shur-Sav Markets) was served on January 14, 2009, on the following persons by the indicated method:

**By Hand Delivery and Email:**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**By Hand Delivery and Email:**

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

**By First Class Mail:**

Peter Sarandos, Sr.  
P&S Foods (d/b/a Shur-Sav Markets)  
6633 Vernon Street  
University City, MO 63130

**By E-Mail:**

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Complaint Counsel

By:

Sean P. Pugh

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1775 I Street, N.W.  
Washington, D.C. 20006-2401  
Telephone: (202) 261-3300  
Facsimile: (202) 261-3333

*Attorney for Whole Foods Market, Inc.*



Kevin T. Kerns  
Luke A.E. Pazicky  
Evan W. Davis  
DECHERT LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104  
Telephone: (215) 994-4000  
Facsimile: (215) 994-2222

*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

Docket No. 9324

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

Public

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY RALEY'S**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Raley's and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Raley's shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Raley's was served on January 14, 2009, on the following persons by the indicated method:

**By Hand Delivery and Email:**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**By Hand Delivery and Email:**

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

**By First Class Mail:**

William J. Coyne  
President and CEO  
Raley's  
500 West Capital Avenue  
West Sacramento, CA 95605

Jennifer Crabb  
General Counsel  
Raley's  
500 West Capital Avenue  
West Sacramento, CA 95605

**By E-Mail:**


J. Robert Robertson, Esq.  
Federal Trade Commission  
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Matthew J. Reilly, Esq.  
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Federal Trade Commission

601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Complaint Counsel

By:

  
\_\_\_\_\_  
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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

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

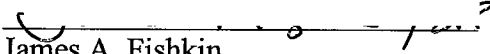
**Docket No. 9324**

**Public**

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY STRAUB'S FINE FOODS**

On October 14, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party Straub's Fine Foods ("Straub's"). While the subpoena had a return date of November 5, 2008, Straub's has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and Straub's should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

By:

  
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*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_ )  
In the Matter of )

Docket No. 9324

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

Public

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY STRAUB'S FINE FOODS**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Straub's Fine Foods and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Straub's Fine Foods shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Straub's Fine Foods was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

By Hand Delivery and Email:

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

By First Class Mail:

Jack W. Straub, Jr.  
Straub's Fine Foods  
8282 Forsyth Boulevard  
Clayton, MO 63105

By E-Mail:

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
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Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
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*Attorney for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

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

**Docket No. 9324**

**Public**

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY VALUDISCOUNT, INC.  
(D/B/A VALUMARKET)**

On October 3, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party ValuDiscount, Inc. (d/b/a ValuMarket) ("ValuDiscount"). While the subpoena had a return date of November 4, 2008, ValuDiscount has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and ValuDiscount should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

By:

  
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*Attorneys for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

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

Docket No. 9324

Public

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY VALUDISCOUNT, INC. (D/B/A VALUMARKET)**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party ValuDiscount, Inc. (d/b/a ValuMarket) and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. ValuDiscount, Inc. (d/b/a ValuMarket) shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party ValuDiscount, Inc. (d/b/a ValuMarket) was served on January 14, 2009, on the following persons by the indicated method:

By Hand Delivery and Email:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

By Hand Delivery and Email:

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

By First Class Mail:

Greg Neumann  
President  
ValuDiscount, Inc. (d/b/a ValuMarket)  
315 Whittington Parkway  
Louisville, KY 40222

By E-Mail:

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Complaint Counsel

By:

Sean P. Pugh

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Facsimile: (202) 261-3333

*Attorney for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

) Docket No. 9324

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

) Public  
)

**WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA  
DUCES TECUM ISSUED TO NON-PARTY ZUPAN'S MARKET**

On October 14, 2008, Whole Foods Market, Inc. ("Whole Foods") served a subpoena duces tecum via overnight mail delivery on non-party Zupan's Market ("Zupan's"). While the subpoena had a return date of November 5, 2008, Zupan's has failed to object, move to quash, or otherwise respond to the subpoena. Consequently, pursuant to Commission Rule of Practice 3.38(a), Whole Foods hereby moves for enforcement of the subpoena, and Zupan's should be compelled to produce whatever responsive documents and data that are in its possession. The grounds for this motion are presented in the accompanying Memorandum in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties and Appendix in Support of Motions for Enforcement of Subpoenas Duces Tecum Issued To Entirely Non-Compliant Non-Parties, which are incorporated by reference.

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

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

) Docket No. 9324

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

) Public  
)

**[PROPOSED] ORDER GRANTING WHOLE FOODS MARKET, INC.'S MOTION FOR  
ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO  
NON-PARTY ZUPAN'S MARKET**

Upon due consideration of Whole Foods Market, Inc.'s ("Whole Foods") Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Zupan's Market and any opposition thereto, it is hereby ORDERED that:

1. Whole Foods' Motion is GRANTED; and
2. Zupan's Market shall produce documents and data responsive to the subpoena no later than ten days from the date of this Order.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party Zupan's Market was served on January 14, 2009, on the following persons by the indicated method:

**By Hand Delivery and Email:**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**By Hand Delivery and Email:**

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

**By First Class Mail:**

Mike Zupan  
Zupan's Market  
7223 NE Hazell Dell Avenue  
Vancouver, WA 98665

**By E-Mail:**

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Matthew J. Reilly, Esq.  
Catharine M. Moscatelli, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Complaint Counsel

By:

<  
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*Attorney for Whole Foods Market, Inc.*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )

) Docket No. 9324

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

) Public  
)

**WHOLE FOODS MARKET, INC.'S APPENDIX IN SUPPORT OF MOTIONS FOR  
ENFORCEMENT OF SUBPOENAS DUCES TECUM ISSUED TO ENTIRELY  
NON-COMPLIANT NON-PARTIES**

# **EXHIBIT A-1**



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

Brad Engle  
Ada's Natural Foods  
4650 S Cleveland  
Fort Myers, FL 33907

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

See Attachment A, Part II, No. 1

4. MATERIAL WILL BE PRODUCED TO

James A. Fishkin

5. DATE AND TIME OF PRODUCTION OR INSPECTION

November 6, 2008 at 10:00 am

6. SUBJECT OF PROCEEDING

In the Matter of Whole Foods Market Inc., et al, Docket No. 9324

7. MATERIAL TO BE PRODUCED

See Attachment A, Part III

8. ADMINISTRATIVE LAW JUDGE

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

James A. Fishkin, Esq.  
Dechert LLP  
1775 I Street, NW  
Washington, DC 20006-2401

DATE ISSUED

October 3, 2008

SECRETARY'S SIGNATURE

Donald H. Clark

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

*in person.*

*by registered mail.*

*by leaving copy at principal office or place of business, to wit:*

.....  
.....  
.....  
.....

*on the person named herein on:*

.....  
(Month, day, and year)

.....  
(Name of person making service)

.....  
(Official title)

**ATTACHMENT A**

**DOCUMENTS TO BE PRODUCED PURSUANT TO SUBPOENA DUCES TECUM**

**I. Definitions**

For the purposes of these Requests for Documents, the following definitions apply:

A. The term "Whole Foods" shall mean Whole Foods Market, Inc., and its predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives thereof.

B. The term "Wild Oats" shall mean Wild Oats Markets, Inc., the entity acquired by Whole Foods on August 28, 2007, and its predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives thereof.

C. The terms "you" and "your" refer to the entity or person to whom this Subpoena is directed, and all predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and including all store formats, brands, and banners under which any of the foregoing operate, and all directors, officers, employees, agents and representatives thereof.

D. The terms "Commission" refers to the Federal Trade Commission and its commissioners, bureau directors, counsel, staff, and employees.

E. "Documents" as used herein shall mean every original and every non-identical copy of any original of all mechanically written, handwritten, typed or printed material, electronically stored data, microfilm, microfiche, sound recordings, films, photographs, videotapes, slides, and other physical objects or tangible things of every kind and description containing stored information, including but not limited to, transcripts, letters, correspondence, notes, memoranda, tapes, records, telegrams, electronic mail, facsimiles, periodicals, pamphlets,

brochures, circulars, advertisements, leaflets, reports, research studies, test data, working papers, drawings, maps, sketches, diagrams, blueprints, graphs, charts, diaries, logs, manuals, agreements, contracts, rough drafts, analyses, ledgers, inventories, financial information, bank records, receipts, books of account, understandings, minutes of meetings, minute books, resolutions, assignments, computer printouts, purchase orders, invoices, bills of lading, written memoranda or notes of oral communications, and any other tangible thing of whatever nature.

F. The terms "relate to," "related to," "relating to," "in relation to," and "concerning" shall mean mentioning, comprising, consisting, indicating, describing, reflecting, referring, evidencing, regarding, pertaining to, showing, discussing, connected with, memorializing or involving in any way whatsoever the subject matter of the request, including having a legal, factual or logical connection, relationship, correlation, or association with the subject matter of the request. A document may "relate to" or an individual or entity without specifically mentioning or discussing that individual or entity by name.

G. The terms "and" and "or" have both conjunctive and disjunctive meanings.

H. The terms "communication" and "communications" shall mean all meetings, interviews, conversations, conferences, discussions, correspondence, messages, telegrams, facsimiles, electronic mail, mailgrams, telephone conversations, and all oral, written and electronic expressions or other occurrences whereby thoughts, opinions, information or data are transmitted between two or more persons.

I. The term "Transaction" shall mean the acquisition of Wild Oats by Whole Foods that occurred on August 28, 2007.

J. The term "Geographic Area" shall mean the following metropolitan areas:

1. Albuquerque, NM;
2. Boston, MA;

3. Boulder, CO;
4. Hinsdale, IL (suburban Chicago);
5. Evanston, IL (suburban Chicago);
6. Cleveland, OH;
7. Colorado Springs, CO;
8. Columbus, OH
9. Denver, CO;
10. West Hartford, CT;
11. Henderson, NV;
12. Kansas City-Overland Park, KS;
13. Las Vegas, NV;
14. Los Angeles-Santa Monica-Brentwood, CA;
15. Louisville, KY;
16. Omaha, NE;
17. Pasadena, CA;
18. Phoenix, AZ;
19. Portland, ME;
20. Portland, OR;
21. St. Louis, MO;
22. Santa Fe, NM;
23. Palo Alto, CA;
24. Fairfield County, CT;
25. Miami Beach, FL;
26. Naples, FL;
27. Nashville, TN;
28. Reno, NV; and
29. Salt Lake City, UT.

## **II. Instructions**

1. Submit all documents, including information or items in the possession of your staff, employees, agents, representatives, other personnel, or anyone purporting to act on your behalf, by the date listed in Item 5 on the Subpoena Duces Tecum form, to:

James A. Fishkin  
Dechert LLP  
1775 I Street, NW  
Washington, D.C. 20016

In the alternative, under FTC Rule 3.34(b), 16 C.F.R. § 3.34(b), you must produce and permit inspection and copying of the designated books, documents (as defined in Rule 3.34(b)), or

tangible things – or to permit inspection of the premises – at the date and time specified in Item 5, at the request of Counsel listed in Item 9, on the Subpoena Duces Tecum form.

2. If an objection is made to any request herein, all documents and things responsive to the request not subject to the objection should be produced. Similarly, if any objection is made to production of a document, the portion(s) of that document not subject to the objection should be produced with the portion(s) objected to redacted and indicated clearly as such. Otherwise, no communication, document, file, or thing requested should be altered, changed, or modified in any respect. All communications, documents, and files shall be produced in full and unexpurgated form, including all attachments and enclosures either as they are kept in your ordinary course of business or organized to correspond with those requests. No communication, document, file, or thing requested should be disposed of or destroyed.

3. If you object to any request, or otherwise withhold responsive information because of the claim of privilege, work product, or other grounds:

- a. Identify the Request for Documents to which objection or claim of privilege is made;
- b. Identify every Document withheld, the author, the date of creation, and all recipients;
- c. Identify all grounds for objection or assertion of privilege, and set forth the factual basis for assertion of the objection or claim of privilege;
- d. Identify the information withheld by description of the topic or subject matter, the date of the communication, and the participants; and
- e. Identify all persons having knowledge of any facts relating to your claim of privilege.

