

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

**COMMISSIONERS:**       **Jon Leibowitz, Chairman**  
                                  **Pamela Jones Harbour**  
                                  **William E. Kovacic**  
                                  **J. Thomas Rosch**

In the Matter of	)	
	)	<b>Docket No. 9324</b>
<b>WHOLE FOODS MARKET, INC.,</b>	)	
<b>a corporation.</b>	)	<b>PUBLIC</b>
	)	
	)	

**ORDER DENYING GELSON’S MARKETS’  
MOTION TO ENFORCE PROTECTIVE ORDER**

Gelson’s Markets has filed a motion requesting that the Commission enforce the Protective Order Governing Confidential Information (“Protective Order”) – which the Commission issued in this administrative proceeding on October 10, 2008 – and “direct Whole Foods’ counsel to return all of Gelson’s documents immediately without retaining copies or summaries thereof.” The Commission has considered the arguments made by Gelson’s Markets and by Whole Foods in response. In particular, the Commission notes that paragraph 12 of the Protective Order provides that “the parties shall return documents obtained in this action to their submitters . . .” at “the conclusion of [the administrative] proceeding . . .” This administrative proceeding has not yet ended; it will end when the Commission determines to accord final approval to the Decision and Order accepted for public comment, and the Decision and Order becomes final. Accordingly,

**IT IS ORDERED THAT** Gelson’s Markets’ request that the Commission order Whole Foods and its counsel to immediately return Gelson’s confidential documents is **DENIED**; and

**IT IS FURTHER ORDERED THAT** when the Decision and Order in this matter becomes final, Whole Foods need not return any third-party documents that are subject to any outstanding discovery requests (including, but not limited to outstanding requests in *Kottaras v. Whole Foods Market, Inc.*, no. 1:08-cv-01832 (D.D.C.)), provided that Whole Foods complies with its obligations set forth in paragraph 11 of the Protective Order. At that time, pursuant to paragraph 12 of the Protective Order, Whole Foods must return all other documents obtained in this action to their submitters.

By the Commission.

Donald S. Clark  
Secretary

Issued: May 21, 2009