Exhibit 4–Public Version of the Expert Report of Kent Van Liere, Ph.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION)
600 Pennsylvania Avenue, N.W.)
Washington, D.C. 20580)
)
Plaintiff,)
)
v.)
)
)
WHOLE FOODS MARKET, INC.)
550 Bowie Street)
Austin, Texas 78703

and

WILD OATS MARKETS, INC.
1821 30th Street
Boulder, Colorado 80301

Defendants.

1. I am Kent D. Van Liere. I am a Vice President at the Denver office of NERA Economic Consulting ("NERA"). I have expertise in statistics, sampling and survey methodology and I have provided expert testimony in these areas in a wide range of cases. My business address is 370 Interlocken Boulevard, 4th Floor, Broomfield, Colorado 80021. NERA is a firm providing expert economic, financial and statistical analysis.

Assignment

2. I and NERA have been retained by the Federal Trade Commission principally to review and evaluate the survey conducted by the polling company™ , inc. and the expert opinions offered by Ms. Conway in support of Defendants Whole Foods Market, Inc. (Whole Foods) and Wild Oats Markets, Inc. (Wild Oats) in the proposed acquisition of Wild Oats by Whole Foods. I have also been asked to review the report submitted by Dr. Scheffman, to the extent that his report incorporates the results from the polling company™ , inc. survey.

Summary of Opinions

3. My overall opinion in this matter is that Ms. Conway's survey methodology and procedures are fundamentally flawed and render her data and results unreliable. In addition, it is my opinion that her survey does not provide a reliable basis to assess the issues associated with consumer perceptions of the substitutability of products and services across food retailers.[1] I explain the bases of these opinions in the sections below.

[1] My use of various terms to describe food retailers is not meant to suggest that I am rendering expert opinion on which retailers do or do not belong inside the relevant antitrust market at issue in this case.

Qualifications

4. I have an M.A. and a Ph.D. in Sociology from Washington State University. I specialized in social psychology and research methods and statistics, including survey research. From 1978 to 1985, I served as an Assistant, then Associate Professor with tenure, at the University of Tennessee where I taught classes in attitudes and opinions, survey research, research methods and statistics. I also regularly published academic research in leading journals based on data collected using surveys. From 1985 to 1995, I was a Principal and/or President of HBRS, Inc. HBRS was a survey research company that conducted surveys of consumers and businesses throughout the United States for a wide range of government, academic and business clients. HBRS was sold to Hagler Bailly, Inc. (a management consulting firm) in 1995, and I served as a Director and Senior Vice President of Hagler Bailly, Inc. from 1995 to 2000. During this period, I continued to direct the market analysis, market research, and survey research practice of Hagler Bailly, Inc. From 2000 to 2002, I served as President and CEO of Primen, a joint venture of the Electric Power Research Institute (EPRI) and the Gas Research Institute (GRI). This firm provided contract- and subscription-based information services including services based on ongoing surveys of consumers and businesses. From 2003 to 2005, I was a Principal of Freeman Sullivan/Liability Management Systems where I provided litigation support research and consulting on the application of surveys, sampling and statistics in a variety of legal cases. In Spring 2006, I joined NERA where I continue to provide ongoing su Tc (ce) Tj0 Tc (, Tc2p5j0 Tc (ongTc (a) Tj0 Tc (l) T (a) Tj-0.036 Tc 72 Tc (e) T hWbng al c (tion) Tj-0.05 Tc r871ition e t th and Tj0.022 Tc (c) Tj0 T2 Tc (j-0..028 Tc18 -41.1Tc (t5.028 T/F2 1c (f

positioning, market segmentations and communications strategies. I personally facilitated several hundred focus groups with consumers and businesses and I have directed several hundred engagements involving the design and implementation of surveys for clients. My survey experience includes all modes of survey research including mail, telephone, in-person, internet and mixed modes.

6. I have conducted qualitative and survey research on a wide range of consumer products that are sold through grocery stores and I have reviewed various forms of sales data by product for items sold through grocery stores.

7. I have reviewed the application of sampling and survey research methods in litigation for a variety of matters including trademark infringement, misrepresentative/deceptive advertising, labor disputes, construction defects, and telecom class actions. I have provided deposition testimony and testimony at trial on issues of sampling, survey research and statistical analysis.

8. I have lectured on survey research issues and on the use of surveys and statistics in litigation. I have published papers in peer-reviewed journals and monographs on a range of topics involving surveys. I am a member of the American Statistical Association and the American Association for Public Opinion Research ("AAPOR"). A copy of my current resume is attached as Appendix A to this report.

9. NERA is being compensated for my services in this matter at my usual rate of $500 per hour.

10. I continue to review materials and documents related to this case and reserve the right to supplement this expert report based on any additional work that I may be asked to do.

Documents Reviewed

11. As part of my assignment, I have reviewed the complaint filed by the FTC in this case and the expert reports of Ms. Kellyanne Conway and Dr. David Scheffman, as well as the relevant associated appendices. I have also reviewed the associated survey questionnaire and survey data provided with Ms. Conway's report. Additionally, I have reviewed a number of background documents provided by counsel including a number of market research studies by or relevant to Whole Foods and Wild Oats. A complete list of the documents reviewed by me or by members of my staff at my direction for this report is shown in Appendix B.

Background

12. I understand that Whole Foods proposes to acquire Wild Oats and that this acquisition is being challenged by the FTC on grounds that it will harm consumers.

13. It is my understanding that Dr. Scheffman and Ms. Conway designed and conducted a survey to support Dr. Scheffman's analysis and report on the effects of this proposed merger.[2]

survey was implemented using Random Digit Dialing (RDD) to zip codes that were near Whole Foods and/or Wild Oats stores (presumably within 6 miles).[3] The survey consisted of approximately 55 questions.[4] Calls were made to 427,397 randomly generated telephone numbers and surveys were completed with 1,607 respondents. The surveys were done in eight cities selected by Dr. Scheffman and LECG.[5] In each city, calling was done until a quota of 100 "Frequent" shoppers and 100 "Cusp" shoppers was completed in each city. Ms. Conway defined the number of visits to a store for the Frequent and Cusp categories prior to setting the quotas.

Ms. Conway's Survey Data are Methodologically Flawed and Consequently Are Not Reliable

15. Ms. Conway's study suffers from numewaenrv

a) The response rate to her survey is so low that her results cannot be considered reliable;

b) Her use of quota sampling renders her data unreliable for extrapolating the results of her survey to the population of Whole Foods/Wild Oats shoppers;

c) Careful review of her data and questionnaire indicate that the survey included unqualified respondents given the protocol established by Dr. Scheffman; and

d) A large portion of her questionnaire requires respondents to make mathematical calculations. There is substantial evidence in the survey research literature that appropriate methods be employed to ensure that respondents understand the questions. From her report there is nothing to suggest such methods were used. Moreover, her data suggest that many respondents did not understand or could not complete the questions accurately.

Each of these areas is discussed below.

16. <u>The Survey has an Unacceptably Low Response Rate and No Analysis of Nonresponse is Provided That Would Demonstrate That the Respondents are Representative of the Total Population of Whole Foods/Wild Oats Shoppers</u>. A key issue in evaluating the reliability of survey results is the response rate to the survey. If you draw a random sample of people to call and you talk to 100 percent of your sample, then the response rate is 100 percent and you can be confident that no sampling bias will affect your results because there is no group of people whose attitudes or opinions are unrepresented in your survey. It is almost unheard of to get a 100 percent response rate to a survey as there are always some sample members who

decline to respond or who are unable to respond for one reason or another. So an issue that arises is whether those who do not respond are different from those who respond—this is called nonresponse or selection bias. To the extent that responders are different from nonresponders, the results from the sample may be biased if they are extrapolated to the population.

17. For example, it is possible that the respondents to the Conway survey were those individuals who were easily contacted at home during the brief study period of June 22-28, 2007.[7] If the nonrespondents to the study were those with higher education levels (e.g., more likely to work longer hours, less likely to answer the phone or more likely to screen calls, etc.) then the final results would over-represent the opinions of those with lower education levels.

18. The *Reference Guide on Survey Research* establishes guidelines with regard to response rates for surveys used in litigation. Specifically, "if the response rate drops below 50 %, the survey should be regarded with significant caution as a basis for precise quantitative statements about the population. . ." [8] Additionally, this guide clearly states that determining the impact of nonresponse requires a calculation of the response rate and some analysis of the determinants of nonresponse. Ms. Conway does not perform either of these analyses. In her report she presents a calculation of the incidence rate[9] which is the number of completed surveys divided by those she contacted who were willing to take the survey and who were qualified to do so. This is not, however, the same as a response rate. The incidence rate is not an acceptable substitute for a response rate here because it cannot be taken as a measure

[7] Given the very rapid data collection period for this study, this is not an unreasonable assertion.

[8] *Reference Guide,* p. 239.

[9] Results and Analysis of Whole Foods and Wild Oats Shopper Survey, Expert Report of Kellyanne E. Conway, Esq., p. 3.

of the rate of success in obtaining data from the desired sampled population. A response rate can be understood as the number of completed surveys divided by the number of dialed phone numbers that would be eligible to complete the study. The response rate takes into account the number of people who are eligible for the study but who could not be contacted during the study period, as well as those that refused to participate. The response rate – not the incidence rate – is the appropriate measure for judging whether some form of selection bias may have affected the data.

19. There are several ways to calculate response rates and AAPOR provides various formulas.[10] [10]10ulas.
[10]10
Depending on which AAP

Cusp shoppers varies across the different cities and varies significantly from a 50/50 split. To illustrate why this causes problems for her analysis, I provide the following example: Assume that in the real population of Whole Foods shoppers there are 10 percent Frequent shoppers and 90 percent Cusp shoppers, but also assume we used quota sampling and our respondents are 50 percent Frequent and 50 percent Cusp shoppers as Ms. Conway did. Say that we want to calculate the overall average number of visits to the store per year in the population of shoppers. In my example, say that we find Frequent shoppers visit a Whole Foods store on average 24 times a year a (n) Tj-0.00.022 Tc (a) Tj-0.022 Tc (e) cc ( ) Tj0.02222 Tc (a) Tj-0.0 j-0.05cTj0 Tc (ss) Tj el o lry did. yeTj0 T2 Tc (W) j-0.0.05 Tc (y) Tj0..0208Tc (e) Tj0 T2 Tc (W) j-0.00 -27 thrre0 Tc (r) Tj-00.022 Tc (W)qu0 Tctiauyrlceovlcrp05 Tc.05 Tc (y)s-0.05 3 Tjthe eylcee

all Wild Oats shoppers. They are basically meaningless since there is no method to weight her data appropriately.[14]

22. Failure to Correct for Systematic Bias Associated with Unqualified Respondents Means the Results Cannot be Correctly Extrapolated to the Population of Whole Foods and Wild Oats Shoppers. In his report, Dr. Scheffman indicates that he purposefully selected sample cities "in order to emphasize a variety of competitive situations within a variety of geographic areas"[15] rather than choosing them randomly[16] from among the cities at issue in this litigation. In addition, he indicates that the specific areas used to sample shoppers for the survey were to be within six miles of a Wild Oats or Whole Foods store. Ms. Conway and Dr. Scheffman attempt to accomplish this by sampling from the listed zip codes within the six mile store radius and presumably matched these zip codes to appropriate telephone numbers.[17] The list of zip codes used for the study is found in Appendix A to Ms. Conway's report.

[14] This problem is exacerbated by the fact that Ms. Conway chose to use frequency of shopping as the basis for her quotas. Frequent shoppers are defined as those who shop at Whole Foods/Wild Oats once a month, a few times a month, once a week, and more than once a week. This arbitrarily combines shoppers who shop at Whole Foods/Wild Oats as few as 12 times a year with those that shop more than 100 times a year. No analysis was reported that indicates that shoppers with this range of shopping frequencies are appropriately combined into a single group and it is reasonable to expect that their opinions and behaviors may vary substantially. By grouping them in a single group for purposes of establishing quotas, Ms. Conway cannot break them back out in the correct proportions in the population. This means the data related to frequency of shopping cannot be used to make estimates for the population of things like the average number of trips per year, the average expenditures per year, or related calculations.

[15] Scheffman Report, p. 65

[16] Random sampling of cities would have been one method to avoid systematic biases associated with Dr. Scheffman's selection rules as discussed below.

[17] Once the numbers were attained the two final digits of the number were replaced with random digits to allow for listed and unlisted numbers.

23. In analyzing Ms. Conway's data, we find that almost 20 percent[18] of respondents are not in the designated zip codes. This is an excessively high proportion of respondents that are not qualified for the study, using Dr. Scheffman's original criteria, but whose responses are included in Ms. Conway's data. [19] This finding demonstrates that the sample plan was not accurately implemented and that her results are unreliable due to the actual geographic location of the respondents. Ms. Conway's own questionnaire design allowed her to validate the actual zip code of the respondent and she could have screened the unqualified respondents out of the survey, yet she does not use this information to remove respondents who should not have been part of the study.

24. We further investigated this issue. In at least one of the cities, Los Angeles, the problem appears to be extensive. Los Angeles is one of the eight cities in the study, and it is one of only 4 cities in the study2 Tc (e) Tj0 Tc (8Tc 06sn (y,) Tj0.022 Tc (a Tc (e) Tj0 Tc (x) Tj-0.036 Td th) Tj0.0 omaties cecometeeles, theree ps ce -0.036s (t) Tj0.022 Tc (a) Tj0 Tc r(g) Tj-0.028 Tc (e) Tj0 Tc (t) Tj0.0 r i cos inthe stud(. O(f th) Tj0.022 Tc (e) Tj0 Tc (200t) Tj0.022 Tc (c) Tj-0.05 Tc (o) Tj-0.836 Tc (m) Tj0 Tc aeaonle repon022 Tc (e) Tj0 Tc (-0.036nt(so(r16 pp) Tj0.022 Tc (e) Tj0 Tc rl) Tj-0.028 Tc c22 Tc (e) Tj0 T

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these respondents were within a roughly six mile radius of either a Whole Foods or a Wild Oats.[20] In total, only 40 percent of the Los Angeles respondents were approximate

recent opening of the Whole Foods store in Portland means that respondents in this city had less than five months to shop and establish purchasing patterns at this location. Not surprisingly, as shown in Table 1, Portland respondents are far more likely to report they have never shopped at Whole Foods. Specifically, 27 percent of Portland respondents have never shopped at Whole Foods compared to 6 percent of respondents in other surveyed cities which have Whole Foods stores. Again, this indicates that it would be inappropriate to combine the data from Ms. Conway's study across the cities and draw conclusions about the population of all shoppers at Whole Foods or Wild Oats.

28. Finally, Ms. Conway's screening protocol for the study is designed to include as eligible respondents people who have only shopped at Whole Foods and/or Wild Oats once or twice. This is a questionable group to include since many of these individuals may be consumers who have no intention of ever going back to one of these stores. A consumer who has visited Whole Foods or Wild Oats only once and never plans on visiting again should not be considered a part of the population relevant to Ms. Conway's study since they are not planning to shop these stores in the future. This, of course, can be determined by screening respondents to determine whether they intend to shop in these stores in the future, a step she did not take, compounding further the unreliability of her survey results.

29. <u>Ms. Conway Fails to Establish that Respondents Comprehend and can Accurately Respond to Her Questions Rendering Her Results Unreliable.</u> There is no evidence that Ms. Conway pretested her questionnaire. Standard survey practice dictates that some form of pretest should be undertaken if the researcher is going to claim that respondents understood and

were able to answer the questions posed in a meaningful way.[23] This is particularly true when the survey uses terms or questions that may be new to the respondent, or may have many different meanings to different respondents. Ms. Conway's study uses a series of terms and concepts that are important to the analysis such as; "typically," "total grocery budget," and "supermarket," that may have many different meanings that affect how respondents understand the questions. Without a pretest, there is no way to determine how these particular ideas are being understood and interpreted by survey respondents. Additionally, a pretest could provide insight as to the impact of the length of the survey on respondent concentration and the ability of respondents to handle the cognitive demands of the questions.

30. The lack of a pretest is particularly at issue in this study because Ms. Conway's survey requires that respondents make mathematical estimations that are quite complex. For example, respondents are asked to estimate how much they spend on fresh produce in a month, then what percent of that produce they purchase at Whole Foods or Wild Oats, then what percentage of the produce they buy is organic, then how much they spend on organic food in a typical month, and finally what percent of that organic produce is bought at Whole Foods/Wild Oats. To answer these questions, a respondent must first determine what a "typical month" is. Given that most consumers shop for groceries multiple times each month, the respondent must add up how many times a month she shops, how often within each of these shopping trips she buys produce, and, for each of the trips when she bought produce, how much she spent. Only then can the respondent calculate the "typical" total monthly expenditure for fresh produce. After this, the respondent is asked to take the total amount of

[23] *Reference Guide,* p. 243.

money spent and calculate what share is spent on items in Whole Foods or Wild Oats. This is even more complicated as it asks respondents to estimate the relative items and prices for the produce purchased over a month. Questions such as these place an extremely large burden on respondents and are likely to generate answers that are simply guessed as opposed to actual estimations.[24]

31. In analyzing Ms. Conway's results, it is clear that the complexity of her questions has resulted in data that are inconsistent or nonsensical. For example, as shown in Table 2A and Table 2B, anywhere from 15 percent to one quarter of all respondents are unable to accurately estimate the percent of a product category purchased at Whole Foods/Wild Oats when estimation is compared with an earlier response. For example, early in the survey, Ms. Conway asks respondents to determine how often a particular product type is purchased at Whole Foods/Wild Oats. The answer categories range from "Only at Whole Foods/Wild Oats" to "Do not purchase." Later in the survey, respondents are asked to calculate the percent of their typical monthly budget spent in the product category at Whole Foods/Wild Oats. Many of the answers to these two questions are inconsistent. Frequently, respondents underestimate the percent of their budget they spend on a particular product. For example, there are 35 respondents who say they only buy produce at Whole Foods but estimate the share of their produce budget as anything between zero and 80 percent. This table demonstrates that across a variety of questions, respondents were unable to consistently report their shopping habits.

[24] Converse, J. and Presser, S. (1990). *Survey Questions: Handcrafting the Standardized Questionnaire.* Sage University Publications: London, p. 14-17.

Ms. Conway's Survey Results do not Provide Information on Issues Related to Product and Service Substitutability

32. Both Dr. Scheffman's report and the complaint filed by the FTC indicate that the issue of whether consumers view various products and/or store venues as substitutes versus complements is an important issue in this case. For example, Dr. Scheffman explains in his report that "*the* issue is the extent to which consumers consider WFM and WO to be sufficiently close substitutes" (italics in the original).[25] I have been asked by Counsel to review the extent to which Ms. Conway's survey results address consumers' views on the substitutability of products and services between Whole Foods, Wild Oats, and other grocers. In my opinion, Ms. Conway's survey does not provide information useful for assessing the substitutability of products and services across types of grocery channels either because her questions do not address the issues precisely (e.g., product categories versus specific products) or because she has chosen to ignore them (e.g., service-related attributes of Whole Foods and Wild Oats).

33. First, in describing shoppers at Whole Foods and Wild Oats, Ms. Conway concludes in her report that "Not only do they visit many different retail grocery outlets, but they also buy the **same** or similar products at each of them."[26] Note that she specifically mentions purchasing the "same" products. However, there is no basis for her to conclude whether shoppers are buying the same or even similar products within her eight selected product categories.

[25] Scheffman Report, p. 100.

[26] Conway Report, p. 36. Emphasis added.

her earlier conclusion that the items purchased by shoppers at Whole Foods and Wild Oats are the "same" as those purchased in other stores. This contradiction highlights yet another problem with the survey, which is the ambiguity of her data, however unreliable. Put differently, because the questions were poorly and imprecisely worded, it is unlikely that the responses that were generated from the questions regarding cross shopping reveal any useful information about shoppers' views on product or service substitutability. As noted above, the resulting data could just as plausibly be interpreted to show that shoppers view other grocers as complements to Whole Foods and Wild Oats as opposed to substitutes.

36. Second, the way in which Ms. Conway constructed her cross shopping questions does not clarify whether Whole Foods shoppers are cross shopping at Wild Oats (and vice versa) in cities where both exist or whether they are cross shopping at other grocers. For example, Question 9 of Ms. Conway's survey asks respondents who shop at Whole Foods to indicate for "Fresh produce like fruits and vegetables" whether they purchase these types of products:

    1. ONLY AT WHOLE FOODS
    2. MOSTLY AT WHOLE FOODS/RARELY AT **ANOTHER GROCER**
    3. HALF THE TIME AT WHOLE FOODS/HALF THE TIME AT **ANOTHER GROCER**
    4. MOSTLY AT **ANOTHER GROCER**/RARELY AT WHOLE FOODS
    5. ONLY AT **ANOTHER GROCER**[28]
    6. DO NOT PURCHASE

    The use of the phrase "ANOTHER GROCER" in these response categories does not distinguish between Wild Oats and other grocers.[29] Thus, respondents who are shopping at

[28] Emphasis added.

"another grocer" may be saying they are buying products from Wild Oats or from other grocers or from both. This distinction is important if the purpose of the question is to measure whether cross shopping for product categories is occurring between Whole Foods and Wild Oats stores or across other grocers. The question, as aske

important categories for Whole Foods and Wild Oats. For example, a Wild Oats market

Conclusions

41. Based on my review as discussed in this report, it is my opinion that Ms. Conway's survey methodology and procedures are fundamentally flawed and render her data and results unreliable for purposes of extrapolating to the population of shoppers at Whole Foods and Wild Oats.

42. In addition, it is my opinion that her survey does not provide information useful for assessing the substitutability of products and services across types of grocery channels either because her questions do not address the issues precisely (e.g., product categories versus specific products) or because she has chosen to ignore them (e.g., service-related attributes of Whole Foods and Wild Oats).

Finally, to the extent that Dr. Scheffman's conclusions rely upon Ms. Conway's unreliable data, then in my opinion his conclusions would necessarily also be unreliable.

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness would testify competently thereto.

Dated: July 13, 2007

KENT D. VAN LIERE

Figure 1: Zip Codes of Respondents NOT Included in Select Zip Codes as Listed in Ms. Conway's Appendix A for the Los Angeles Area

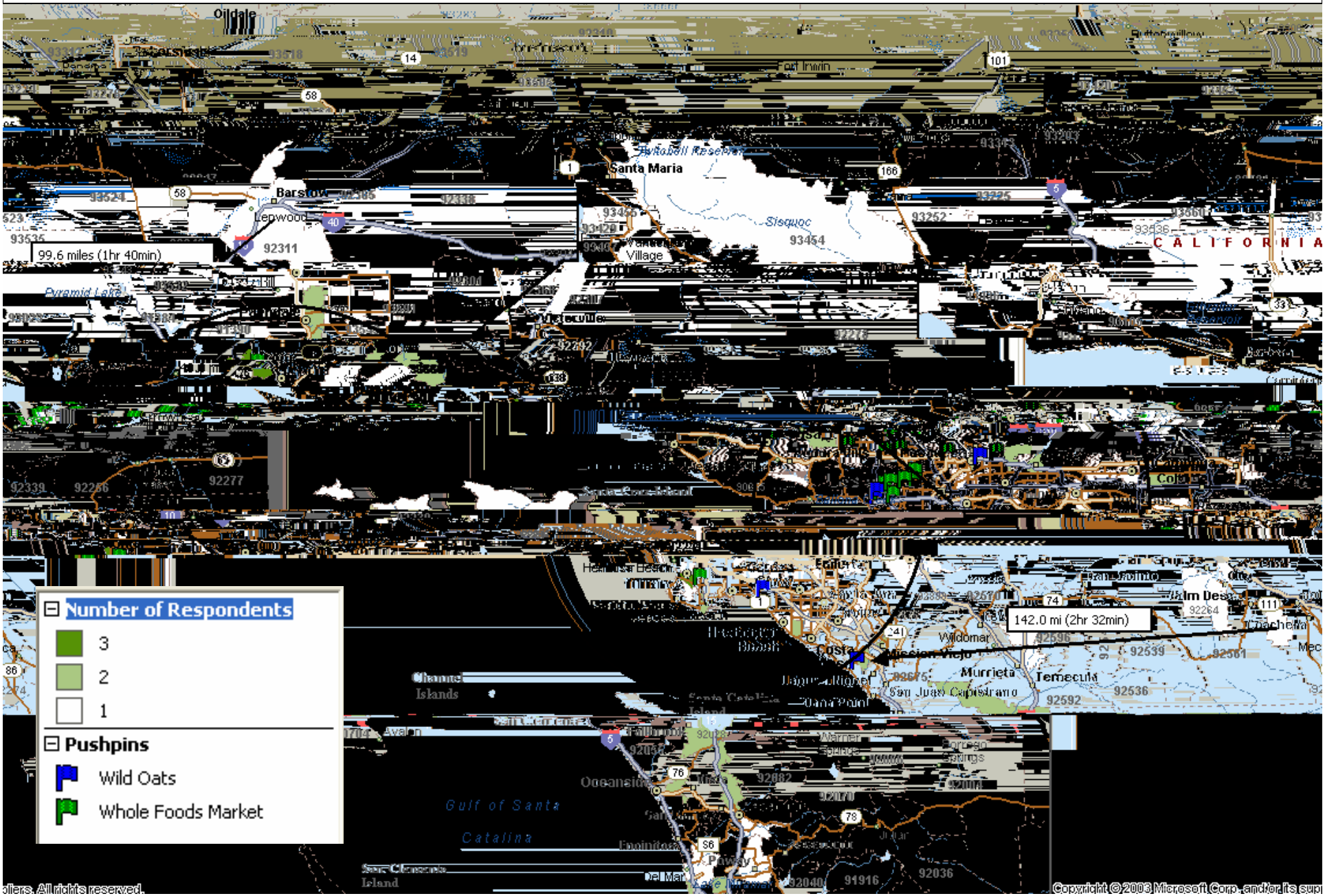

Table 1. Comparision of the Frequency of Shopping at Whole Foods for Respondents from Portland, Maine to All Respondents in All Other Cities with a Whole Foods

Frequency of Shopping at Whole Foods	Portland, Maine		All Other Markets	
More than Once a Week	3.0%	6	6.6%	66
Once a Week	7.0%	14	11.7%	117
A Few Times a Month	12.0%	24	14.2%	143
Once a Month	15.0%	30	14.4%	145
A Few Times a Year	19.0%	38	29.3%	294
Once a Year or Less	6.0%	12	7.9%	79
Have Shopped There Once or Twice	11.0%	22	10.2%	102
Never	**27.0%**	54	**5.8%**	58
Total	100.0%	200	100.0%	1,004

Table 2A. Comparison of the Frequency of Shopping for Product at Whole Foods with the Estimated Percent of Shopping for Product at Whole Foods

Product Category	Percent Purchased in Typical Month is Underestimated	Percent Purchased in Typical Month is Overestimated	Total Number of Respondents Incorrectly Estimating	Total Number of Respondents[1]	Percent of Respondents Incorrectly Estimating
Produce	23.2%	2.5%	267	1037	25.7%
Dairy	16.4%	4.7%	220	1043	21.1%
Meat and Fish	17.0%	3.0%	207	1037	20.0%
Prepared Foods	17.0%	6.7%	244	1028	23.7%

[1] This excludes respondents who answer for one or both questions "Don't Know or Refused"

Table 2B. Comparision of the Frequency of Shopping for Product at Wild Oats with the Estimated Percent of Shopping for Product at Wild Oats

Product Category	Percent Purchased in Typical Month is Underestimated	Percent Purchased in Typical Month is Overestimated	Total Number of Respondents Incorrectly Estimating	Total Number of Respondents[1]	Percent of Respondents Incorrectly Estimating
Produce	21.5%	2.4%	177	739	24.0%
Dairy	12.9%	4.2%	127	742	17.1%
Meat and Fish	13.0%	2.4%	114	739	15.4%
Prepared Foods	16.7%	3.6%	147	724	20.3%

[1] This excludes respondents who answer for one or both questions "Don't Know or Refused"

Appendix A

Kent D. Van Liere
Vice President

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- Labor: Analysis of employment records, methods for sampling records or employees, and use of surveys for purposes of estimating key facts in labor class actions including time to complete activities, exempt/nonexempt activities, and meal and rest break issues.

Energy/Environment/Water/Infrastructure

- Customer Demand—Design and analysis of customer surveys to measure preferences for a wide range of product and rate offerings including pricing or rate options, incentive programs, information programs, new service offerings.
- Value of Service/Outage Costs—Design and analysis of value of service and outage cost studies based on surveys using lost profits and willingness to pay methodologies
- Evaluation of programs and services including customer satisfaction and program impacts

Market Definition/Market Segmentation/New Products

- Analysis of consumer choice
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	Primen (a joint venture of the Electric Power Research Institute and the Gas Research Institute)
2000-2002	President and Chief Executive Officer
	Hagler Bailly, Inc. (HBIX)
1995-2000	Senior Vice President (1997-2000), Director (1995-1997)
	HBRS, Inc., Madison, WI
1985-1995	President (1992-1995), Principal (1985-1992)
	University of Wisconsin-Madison
1985	Visiting Associate Professor, Department of Rural Sociology (summer)
	University of Tennessee
1978-1985	Associate Professor (with tenure), Department of Sociology (1984-1985), Assistant Professor, Department of Sociology (1978-1984)
	Tennessee Valley Authority
1983-1984	Visiting Analyst, Strategic atj-0.022 Tc (S) Tj0 Tc0ent Strc e r gatj-0.022 Tc (S) Tj0 nt ug

trial testimony June 2005. For Damage Phase Trial: Expert declaration, September, 2006; Deposition: September 2006.)

Align Technology, Inc. vs. Orthoclear, Inc. and Orthoclear Holdings, Inc., United States District Court, Northern District of California, San Francisco/Oakland Division--Consulting rebuttal expert on survey design, sampling, survey implementation, and study design in trademark infringement and confusion analysis in a dental products area

Simpson Strong-Tie Company, Inc. vs. Pierce Gore, and The Gore Law Firm, Superior Court of California, County of Santa Clara--Consulting expert on design and analysis of a survey to measure damage to brand image from advertising by other parties.

Click Defense Inc. vs. Google, Inc., United States District Court, Northern District of California, San Jose Division--Consulting expert on sampling strategies and survey designs to estimate confusion on contract terms regarding protection from internet fraud in point per click advertising in a pre-certification class action.

Laser Vision Eye Institute of California vs Nidek, Inc., Superior Court of California, County of Alameda--Expert declaration on estim

Market Tracking: Assessing Sources and Access to Appliance Sales Data, EPRI, Palo Alto, CA: 1997. TR-108928

Performance Measurement in Utilities: A Framework for Creating Effective Management S TR-108928

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Appendix B

Documents Reviewed in connection with
Federal Trade Commission v. Whole Foods Market, Inc. and Wild Oats Markets, Inc.

- Complaint for Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act, dated 06/06/07
- Temporary Restraining Order, dated 06/07/07
- Plaintiff's Memorandum in Opposition to Defendant Whole Food Market, Inc.'s Motion for Entry of a Final Protective Order, dated 06/20/07
- Document Number: WFM-006-00005912 Nielsen document: Email from Chris Taylor to Walter Robb re: Price/Value FINAL questionnaire, dated 10/02/06
- Document Number: WFM-006-00005913 Nielsen document: Attachment: Whole Foods market Price/Value Study, dated 10/02/06
- Document Number: WFM-008-00006733 Nielsen document: Email from Tommy Navarre to wflt@wholefoods.com re: Update FT134: National Purchasing & Dist. dated 10/08/04
- Document Number: WFM-001-00000783 Hartman document: Email from Will Paradise to swln re: Customer research - Words that Sell, Tell, Fail
- Document Number: WFM-001-00000784 Hartman document: Attachment: "Sell, Tell & Fail" A Hartman Group Study of Whole Foods Market Consumer vocabulary, dated 03/01/04
- Document Number: EOAT-0030638 Answer Line 1 document: Email from Kristin Lidstrom to store directors re: Answerline Complaint Report for October 24-29, dated 11/04/05
- Document Number: EOAT-0040912 Answer Line 1 document: Email from Michelle Albert to store directors re: Answerline Report March 5-10, 2007, dated 03/20/07, EOAT 0040912-0040913
- Document Number: EOAT-0041498 Answer Line 1 document: Email from Michelle Albert to store directors re: Answerline Report Feb. 26-Mar.3, 2007, dated 03/12/07, EOAT 0041498-0041499
- Document Number: EOAT-0046200 Answer Line 1 document: Email from Michelle Albert to store directors re:Answerline Report March 5-10/2007 dated 03/20/07 EOAT 0046200-0046201
- Document Number: EOAT-0059564 Answer Line 1 document: Email from Michelle Albert to store directors re: Answerline Report Dec. 18-23, 2006 dated 01/05/07 EOAT 0059564-0059565
- Document Number: EOAT-0068112 Answer Line 1 document: Email from Michelle Albert to store directors re: Answerline Report October 16-21, 2006 dated 11/07/06 EOAT 0068112-0068113
- Document Number: EOAT-0071292 Answer Line 1 document: Email from Michelle Albert to store directors re: Answerline Report Nov. 27-Dec. 2, 2006 dated 12/20/06 EOAT 0071292-0071293
- Document Number: EOAT-0071772 Answer Line 1 document: Email from Michelle Albert to store directors re: Answerline Report November 20-25, 2006 dated 12/07/06 EOAT 0071772-0071773
- Document Number: EOAT-0242854 Answer Line 1 document: Email from Michelle Albert to store directors re: Answerlinmail f

- Document Number: EOAT-01632259 Spins document: Email from Tom Rice re: SPINS 2007 price list dated 12/14/06 EOAT 01632259
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- Document Number: EOAT-01632512 Spins document: Email from Laura Coblentz to Charlie Kingery re: Wild Oats follow up dated 09/06/06 EOAT 01632512
- Document Number: EOAT-01637192 Spins document: Email from David Brossmer re: SPINS Reports - Period 13 ending 12/30/06 dated 02/12/06 EOAT 01637192-01637196
- Document Number: EOAT-01682113 Spins document: Spreadsheet: Category and Brand Development Index 2004 EOAT 01682113-01682124
- Protective Order dated 7/9/07
- Declaration of Kellyanne E. Conway (with Appendix A-D and Exhibits) dated 7/9/07
- Expert Report of David T. Scheffman, Ph.D. (with Appendix A-G, Figures and Tables) dated 7/9/07
- Conway/"What Women Really Want" Methodology Chapter - Appendix A - Polling Methodology and Results
- Expert Report of John L. Stanton, Ph.D. (with Appendix A and B) dated 7/9/07
- Expert Report of Kevin M. Murphy, Ph.D. (with Appendix A-C and Exhibits) dated 7/9/07
- Memorandum in Support of Plaintiff's Motions for Temporary Restraining Order and Preliminary Injunction dated 6/6/07
- WF Opening Dates.xls
- Document Number: PX01332 Wild Oats Markets presentation - Project Green Space PX01332-001-025
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