

ORIGINAL

FEDERAL TRADE COMMISSION
RECEIVED DOCUMENTS

Respondent asserts that the documents it seeks are directly relevant to the issues raised by the Complaint and that Respondent has no other effective means of obtaining the information sought.

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not rely on the concentration of ...

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

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publicly a document that had been redacted by blackening out text electronically in a manner which allowed the trade secret information to be viewed. Gelson's argues that it should not be required to provide information that Gelson's considers to be confidential without a protective order that prohibits the FTC from disclosing such information. Gelson's asserts that the protective order should contain an adequate disincentive that would require the disclosing party to pay a penalty for any violation of the protective order.

Respondent submits that the Protective Order in this case does adequately protect confidential documents of third parties. The Protective Order allows disclosure of confidential documents to a limited group of people and prohibits any Whole Foods employees, including inside counsel, from reviewing confidential documents subject to the Protective Order.

Respondent asserts further that Gelson's has provided no evidence that it has been

Commission agree to pay damages in the event of an inadvertent public disclosure of confidential information. Respondent also submits that, in the event the Protective Order is violated, Gelson's can raise the issue with the Commission.

The Protective Order entered by the Commission in this case allows disclosure of

confidential information into evidence, Gelson's may file a motion for *in camera* treatment for documents it feels should be withheld from the public record. *In Camera* _____

requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the

applicant's business that disclosure would result in serious competitive injury" and then