ORIGINAL

Foods in connection with this matter. In addition, Trader Joe's CEO has [redacted]

investigational hearing by the FTC and a deposition by both the FTC and Whole Foods. At all times, Trader Joe's has worked diligently to provide both the FTC and Whole Foods with the information that was requested.

The only documents still in dispute are the weekly sales figures [redacted]

evidence.[3] In an effort to provide Whole Foods with information that could be relevant, Trader Joe's offered to provide "the average sales for all Trader Joe's stores within each Geographic Area for the first half of 2006, 2007, and 2008."[4] Counsel for Trader Joe's and Whole Foods discussed this and other issues relating to the Subpoena over a period of [redacted]

[redacted]

effort to ensure that Whole Foods would receive the information it requested and needed to defend itself against the FTC.

On or about December 10, 2008, counsel for Whole Foods represented to counsel for Trader Joe's that New Seasons Market ("New Seasons") had filed a motion to quash an identical

[redacted]

defense, including relevant product market(s) definition, and the Court should not compel Trader Joe's to provide it.

Evidence demonstrating the impact of opening or closing of a Whole Foods or Wild Oats store on other stores in the area could be relevant to Whole Foods' defense to the Complaint issued by the FTC. Weekly sales information, however, will not shed light on that issue because it would fail to provide more than an initial reaction to a store [redacted]

Customers also may be less likely to shop at a store that is undergoing renovations. One would

need to understand and account for all of the reasons that shopping purchases may change from

CONCLUSION

For the foregoing reasons, Whole Foods' Motion for Enforcement of Subpoena Duces Tecum Issued to Trader Joe's should be denied.

Dated: January 26, 2009

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Attorneys for Non-Party T.A.C.T Holding Company

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of	)	
WHOLE FOODS MARKET, INC.,	)	Docket No. 9324
Respondent.	)	

[PROPOSED] ORDER DENYING WHOLE FOODS MARKET, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO NON-PARTY T.A.C.T. HOLDING COMPANY

Upon due consideration of Whole Foods Market, Inc.'s Motion for Enforcement of Subpoena Duces Tecum Issued to Non-Party T.A.C.T. Holding Company, it is hereby

ORDERED that Whole Food's motion is DENIED.

IT IS SO ORDERED.

Date: _____

_____
D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2000, I served the foregoing Objections [redacted]

Motion for Enforcement of Subpoena Duces Tecum Issued to Third Party T.A.C.T. Holding Company on the following persons by the indicated method:

By Hand Delivery and Electronic Mail:

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

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

By Electronic Mail and First Class Mail: