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ORIGINAL

BEFORE THE UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of
WHOLE FOODS MARKET, INC.
a corporation.

Docket No. 9324
PUBLIC
DECLARATION OF BRIAN ROHTER

I, Brian Rohter, under penalty of perjury, do hereby declare:

1. I am over the age of 18 years and have personal knowledge of the matters set forth herein.
2. I am the Chief Executive Officer of New Seasons Markets. New Seasons Markets has nine stores in the Portland (Oregon) metropolitan area. Our management team includes more than 300 people. Those range from executives such as myself to store managers, department managers, human resources managers, merchandising managers, and so forth.
3. Each of those people on the management team has their own New Seasons email account and much of their work is done by email, both within the company and with outside vendors and the like.


1 4. The period preceding Thanksgiving is the busiest week to ten days of the
2 year for our business, and the month of December is the busiest month of the year for New
3 Seasons. For New Seasons to divert employees to respond to the Whole Foods subpoena during
4 this period of the year or even to allow outsiders to have access to New Seasons' computer
5 system in order to conduct the kind of search necessary to comply with the Whole Foods
6 subpoena would be extremely disruptive to our business and would result in substantial financial
7 losses to the company at a time when economic conditions are already extremely difficult. New
8 Seasons could not carry on its normal business during the holiday season if it was required to
9 comply with the document requests set forth in the Whole Foods subpoena.

10 5. New Seasons is a private company. None of its stock is publicly held and
11 it is not subject to any of the reporting requirements of public companies.

12 6. New Seasons diligently guards its confidential information, which would
13 include sales and cost figures, market surveys, marketing plans, growth and expansion plans, and
14 assessments of competitors. Our computer system is password protected and we restrict certain
15 types of information about the company to a small number of management employees. Because
16 of the highly competitive nature of the grocery business, inside information regarding any market
17 surveys, marketing plans, growth and expansion plans and assessments of competitors that may
18 be created by New Seasons Market would be extremely valuable to a competitor, and the
19 disclosure of this information to anyone in the industry would enable a knowledgeable person or
20 company to construct a business plan that would be damaging, if not fatal, to New Seasons'
21 business. New Seasons does not release this highly confidential information to anyone outside
22 of the company except as contractually required (subject to confidentiality agreements), and
23 severely restricts access to it even within the company.

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Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on this 21st day of November, 2008 at Portland, Oregon.



BRIAN ROHTER

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a copy of the foregoing **DECLARATION OF BRIAN ROHTER** on:

3 James A. Fishkin
4 Dechert, LLP
5 17551 I Street, N.W.
6 Washington, DC 20006-2401

J. Robert Robertson
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

7 Of Attorneys for Whole Foods Market, Inc.

Of Attorneys for Federal Trade Commission

8 Matthew J. Reilly
9 Catharine M. Moscatelli
10 Federal Trade Commission
11 601 New Jersey Avenue, N.W.
12 Washington, DC 20001

13 Of Attorneys for Federal Trade Commission

14 by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said attorney's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

15 by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said attorney's last-known address on the date set forth below;

16 by faxing a copy thereof to said attorney at his/her last-known facsimile number on the date set forth below; or

17 by electronically mailed notice on the date set forth below.

18 Dated this 24 day of November, 2008.

19 **DAVIS WRIGHT TREMAINE LLP**

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21 Ronald G. London, DCB #456284
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