

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:07-CV-01021 (PLF)
	)	
WHOLE FOODS MARKET, INC.,	)	
	)	
and	)	
	)	
WILD OATS MARKETS, INC.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS' MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF THEIR MOTION TO STRIKE  
UNTIMELY SUPPLEMENTAL EXPERT REBUTTAL REPORT**

**EXHIBIT 1**

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July 18, 2007

By Hand

Thomas H. Brock, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: Federal Trade Commission v. Whole Foods Market, Inc., et al.

Dear Tom:

Our review of the files provided with Dr. Murphy's supplemental report indicate that we have not been given all of the SAS computer files associated with the new Earth Fare study he performed. Specifically, the files we were provided must be used with Dr. Murphy's other SAS files, and when we use those files we are unable to replicate his results. It would appear that Dr. Murphy may have modified the SAS files he produced on July 9 before he performed his new Earth Fare study. Therefore, we request copies of all of the current files used by Dr. Murphy in connection with his Earth Fare study.

In addition, Dr. Murphy described at his deposition other work he has done and is continuing to do, including, but not limited to, a study of Ft. Collins and a review of Safeway data. We request copies of all of his computer files underlying that work as well.

Sincerely yours,



Alden L. Atkins

cc: Clifford H. Aronson  
Paul Denis

DC 691320v.1