

EXHIBIT 1

TO

**JOINT MEMORANDUM OF POINTS AND AUTHORITIES
OF WHOLE FOODS MARKET, INC. AND WILD OATS MARKETS, INC.
IN OPPOSITION TO PLAINTIFF'S MOTION *IN LIMINE* TO EXCLUDE THE
EXPERT REPORT AND TESTIMONY OF KELLYANNE CONWAY**

**Income division of Whole Foods Shoppers.
Analysis Page 8.**

	<u>Frequent</u>	<u>Cusp</u>
<\$30K	12%	11%
\$30-\$50K	13%	12%
\$50-\$70K	14%	13%
\$70-\$90K	11%	9%
\$90K+	28%	29%

Recalculated.

	<u>Frequent</u>	<u>Cusp</u>
<\$30K	11%	11%
\$30-\$50K	14%	12%
\$50-\$70K	13%	12%
\$70-\$90K	10%	11%
\$90K+	31%	30%

**Income division of Wild Oats Shoppers.
Analysis Page 11.**

	<u>Frequent</u>	<u>Cusp</u>
<\$30K	18%	17%
\$30-\$50K	19%	15%
\$50-\$70K	10%	16%
\$70-\$90K	12%	8%
\$90K+	21%	20%

Recalculated.

	<u>Frequent</u>	<u>Cusp</u>
<\$30K	18%	18%
\$30-\$50K	17%	16%
\$50-\$70K	11%	13%
\$70-\$90K	12%	9%
\$90K+	20%	20%

**Whole Foods Shopping Frequency.
Analysis Page 8.**

How often do you shop at Whole Foods Market?

46%	<u>TOTAL FREQUENT (NET)</u>
6%	MORE THAN ONCE A WEEK
11%	ONCE A WEEK
14%	A FEW TIMES A MONTH
15%	ONCE A MONTH
46%	<u>TOTAL CUSP (NET)</u>
28%	A FEW TIMES A YEAR
8%	ONCE A YEAR OR LESS
10%	HAVE SHOPPED THERE ONCE OR TWICE
9%	NEVER

Recalculated.

How often do you shop at Whole Foods Market?

44%	<u>TOTAL FREQUENT (NET)</u>
6%	MORE THAN ONCE A WEEK
10%	ONCE A WEEK
13%	A FEW TIMES A MONTH
15%	ONCE A MONTH
46%	<u>TOTAL CUSP (NET)</u>
28%	A FEW TIMES A YEAR
8%	ONCE A YEAR OR LESS
10%	HAVE SHOPPED THERE ONCE OR TWICE
10%	NEVER

**Wild Oats Shopping Frequency.
Analysis Page 11.**

<i>How often do you shop at Wild Oats Market?</i>	
29%	<u>TOTAL FREQUENT (NET)</u>
3%	MORE THAN ONCE A WEEK
7%	ONCE A WEEK
8%	A FEW TIMES A MONTH
11%	ONCE A MONTH
36%	<u>TOTAL CUSP (NET)</u>
18%	A FEW TIMES A YEAR
9%	ONCE A YEAR OR LESS
9%	HAVE SHOPPED THERE ONCE OR TWICE
35%	NEVER

Recalculated.

<i>How often do you shop at Wild Oats Market?</i>	
30%	<u>TOTAL FREQUENT (NET)</u>
3%	MORE THAN ONCE A WEEK
7%	ONCE A WEEK
9%	A FEW TIMES A MONTH
11%	ONCE A MONTH
39%	<u>TOTAL CUSP (NET)</u>
20%	A FEW TIMES A YEAR
9%	ONCE A YEAR OR LESS
10%	HAVE SHOPPED THERE ONCE OR TWICE
30%	NEVER

**Whole Foods Spending per Visit.
Analysis Page 8.**

- ❖ There was very little difference between shoppers in overlap and non-overlap areas with respect to dollars spent per typical trip to Whole Foods Market. The mean per trip expenditure in overlap areas was \$44.90 compared to \$48.70 among those in non-overlap area.

*How much do you typically spend on a single visit to Whole Foods Market?
(OPEN-ENDED. PRE-CODED LIST.)*

Total	Freq.	Cusp	MEAN
\$46.30	\$55.90	\$36.70	
11%	4%	18%	\$10 OR LESS
25%	22%	28%	\$11-\$25
33%	33%	33%	\$26-\$50
10%	14%	6%	\$51-\$75
9%	11%	6%	\$76-\$100
3%	4%	2%	\$101-\$125
2%	3%	1%	\$126-\$150
*	1%	*	\$151-\$175
1%	1%	*	\$176-\$200
2%	3%	1%	\$201 OR MORE
4%	3%	4%	DO NOT KNOW
1%	1%	*	REFUSED

Recalculated.

- ❖ There was very little difference between shoppers in overlap and non-overlap areas with respect to dollars spent per typical trip to Whole Foods Market. The mean per trip expenditure in overlap areas was \$43.90 compared to \$48.10 among those in non-overlap area.

*How much do you typically spend on a single visit to Whole Foods Market?
(OPEN-ENDED. PRE-CODED LIST.)*

Total	Freq.	Cusp	MEAN
\$45.70	\$55.30	\$36.00	
12%	5%	18%	\$10 OR LESS
26%	22%	30%	\$11-\$25
32%	33%	31%	\$26-\$50
11%	16%	6%	\$51-\$75
8%	10%	6%	\$76-\$100
3%	4%	2%	\$101-\$125
2%	3%	1%	\$126-\$150
*	1%	-	\$151-\$175
1%	2%	*	\$176-\$200
2%	3%	1%	\$201 OR MORE
3%	2%	4%	DO NOT KNOW
1%	*	1%	REFUSED

**Wild Oats Spending per Visit.
Analysis Page 11.**

- ❖ Wild Oats shoppers in overlap and non-overlap areas reported similar spending per typical trip to Wild Oats. Those in overlap areas spent an average of \$34.70 per trip and those in non-overlap areas spent an average of \$38.60.

How much do you typically spend on a single visit to Wild Oats Market? (OPEN-ENDED. PRE-CODED LIST.)

Total	Freq.	Cusp	MEAN
\$36.80	\$47.30	\$27.80	
18%	9%	26%	\$10 OR LESS
29%	24%	33%	\$11-\$25
28%	34%	23%	\$26-\$50
8%	11%	6%	\$51-\$75
7%	12%	2%	\$76-\$100
2%	3%	1%	\$101-\$125
1%	1%	1%	\$126-\$150
*	1%	-	\$151-\$175
1%	1%	*	\$176-\$200
*	1%	-	\$201 OR MORE
5%	3%	6%	DO NOT KNOW
1%	1%	1%	REFUSED

Recalculated.

- ❖ Wild Oats shoppers in overlap and non-overlap areas reported similar spending per typical trip to Wild Oats. Those in overlap areas spent an average of \$34.00 per trip and those in non-overlap areas spent an average of \$38.10.

How much do you typically spend on a single visit to Wild Oats Market? (OPEN-ENDED. PRE-CODED LIST.)

Total	Freq.	Cusp	MEAN
\$36.20	\$47.30	\$27.50	
19%	9%	27%	\$10 OR LESS
30%	25%	34%	\$11-\$25
27%	33%	22%	\$26-\$50
8%	11%	7%	\$51-\$75
6%	12%	2%	\$76-\$100
2%	3%	1%	\$101-\$125
1%	1%	1%	\$126-\$150
*	1%	-	\$151-\$175
1%	1%	*	\$176-\$200
*	1%	-	\$201 OR MORE
4%	3%	5%	DO NOT KNOW
1%	*	1%	REFUSED

**Whole Foods Percent of Grocery Budget.
Analysis Page 9.**

- ❖ Though a much smaller percentage, a majority of even Frequent Whole Foods shoppers qualified as “Light” shoppers when it comes to actual register sales, as 53% of them said they spend 20% or less of their grocery budget at the Whole Foods. A full 89% of Cusp shoppers met this definition.
- ❖ Only 14% of Frequent shoppers also qualified as “Heavy” shoppers, reinforcing the finding that even the most loyal and regular Whole Foods patrons still dedicate most of their food and goods dollars to other grocers.
- ❖ Whole Foods shoppers in overlap and non-overlap areas allocated very similar portions of their total grocery budgets to Whole Foods (18.3% and 20.7%, respectively).

What percentage of your total grocery budget do you spend at Whole Foods Market? (OPEN-ENDED. PRE-CODED LIST.)

19.2%	MEAN
71%	TOTAL LIGHT SHOPPERS
58%	10% OR LESS
13%	11%-20%
15%	TOTAL MODERATE SHOPPERS
8%	21%-30%
3%	31%-40%
4%	41%-50%
7%	TOTAL HEAVY SHOPPERS
2%	51%-60%
1%	61%-70%
2%	71%-80%
1%	81%-90%
1%	91%-100%

Recalculated.

- ❖ Though a much smaller percentage, a majority of even Frequent Whole Foods shoppers qualified as “Light” shoppers when it comes to actual register sales, as 55% of them said they spend 20% or less of their grocery budget at the Whole Foods. A full 90% of Cusp shoppers met this definition.
- ❖ Only 15% of Frequent shoppers also qualified as “Heavy” shoppers, reinforcing the finding that even the most loyal and regular Whole Foods patrons still dedicate most of their food and goods dollars to other grocers.
- ❖ Whole Foods shoppers in overlap and non-overlap areas allocated very similar portions of their total grocery budgets to Whole Foods (18.1% and 20.5%, respectively).

What percentage of your total grocery budget do you spend at Whole Foods Market? (OPEN-ENDED. PRE-CODED LIST.)

19.1%	MEAN
73%	TOTAL LIGHT SHOPPERS
59%	10% OR LESS
14%	11%-20%
15%	TOTAL MODERATE SHOPPERS
8%	21%-30%
3%	31%-40%
4%	41%-50%
7%	TOTAL HEAVY SHOPPERS
2%	51%-60%
1%	61%-70%
2%	71%-80%
1%	81%-90%
1%	91%-100%

**Wild Oats Percent of Grocery Budget.
Analysis Page 9.**

- ❖ Among Wild Oats Frequent shoppers, 62% spend less than 20% of their total grocery budget at the store, and 9% allocate more than half (51% or more) of their grocery dollars there, qualifying them as “Heavy” shoppers.
- ❖ Wild Oats shoppers in overlap and non-overlap areas were similar in the percent of their grocery budget allocated to Wild Oats (14.6% and 18.7%, respectively).

<i>What percentage of your total grocery budget do you spend at Wild Oats Market? (OPEN-ENDED. PRE-CODED LIST.)</i>	
16.7%	MEAN
77%	TOTAL LIGHT SHOPPERS
66%	10% OR LESS
11%	11%-20%
12%	TOTAL MODERATE SHOPPERS
7%	21%-30%
3%	31%-40%
2%	41%-50%
5%	TOTAL HEAVY SHOPPERS
1%	51%-60%
1%	61%-70%
1%	71%-80%
1%	81%-90%
1%	91%-100%

Recalculated.

- ❖ Among Wild Oats Frequent shoppers, 62% spend less than 20% of their total grocery budget at the store, and 9% allocate more than half (51% or more) of their grocery dollars there, qualifying them as “Heavy” shoppers.
- ❖ Wild Oats shoppers in overlap and non-overlap areas were similar in the percent of their grocery budget allocated to Wild Oats (14.1% and 18.4%, respectively).

<i>What percentage of your total grocery budget do you spend at Wild Oats Market? (OPEN-ENDED. PRE-CODED LIST.)</i>	
16.4%	MEAN
77%	TOTAL LIGHT SHOPPERS
67%	10% OR LESS
10%	11%-20%
10%	TOTAL MODERATE SHOPPERS
8%	21%-30%
2%	31%-40%
2%	41%-50%
5%	TOTAL HEAVY SHOPPERS
1%	51%-60%
1%	61%-70%
1%	71%-80%
1%	81%-90%
1%	91%-100%

**Cross-Shopping Among Frequent Shoppers.
Analysis Page 14.**

	Whole Foods Frequent Shoppers				Wild Oats Frequent Shoppers			
	Only at Whole Foods	Mostly at Whole Foods	Half and Half	Only/Mostly at Another Grocer	Only at Wild Oats	Mostly at Wild Oats	Half and Half	Only/Mostly at Another Grocer
Produce	11%	17%	25%	42%	9%	17%	22%	45%
Natural and Organic Foods	16%	25%	19%	22%	19%	24%	18%	22%
Dairy Products	7%	12%	19%	52%	5%	10%	15%	53%
Fresh Meat and Fish	9%	14%	17%	47%	6%	10%	14%	52%
Prepared Foods	9%	15%	13%	33%	7%	10%	14%	40%
Breads, Rolls, and Other Bakery Items	7%	14%	23%	46%	7%	10%	15%	51%
Frozen Foods	5%	7%	15%	49%	5%	6%	11%	46%

Recalculated.

	Whole Foods Frequent Shoppers				Wild Oats Frequent Shoppers			
	Only at Whole Foods	Mostly at Whole Foods	Half and Half	Only/Mostly at Another Grocer	Only at Wild Oats	Mostly at Wild Oats	Half and Half	Only/Mostly at Another Grocer
Produce	11%	16%	25%	44%	8%	15%	24%	47%
Natural and Organic Foods	16%	26%	18%	23%	20%	23%	18%	23%
Dairy Products	6%	12%	20%	53%	5%	10%	16%	55%
Fresh Meat and Fish	10%	14%	17%	50%	6%	10%	14%	53%
Prepared Foods	9%	15%	13%	33%	8%	9%	15%	39%
Breads, Rolls, and Other Bakery Items	7%	14%	24%	48%	7%	10%	16%	52%
Frozen Foods	5%	6%	14%	54%	5%	6%	11%	47%