IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

EKATERINI KOTTARAS, Individually On Behalf Of Herself And On Behalf Of All Others Similarly Situated, Plaintiff v. WHOLE FOODS MARKET, INC., Defendant.	Case No. 1:08-cv-01832-PLF

ANSWER TO COMPLAINT

Defendant Whole Foods Market, Inc. ("Whole Foods") by and through its undersigned counsel, hereby answers the plaintiff's Complaint as follows:

NATURE OF THE ACTION

1. Plaintiff Ekaterini Kottaras ("plaintiff" or "Kottaras") hereby files this antitrust class action complaint pursuant to Sections 7 and 3 of the Clayton Act and Sections 1 and 2 of the Sherman Act, on behalf of herself and on behalf of all other similarly situated consumers, who since August 28, 2007 until the date this action is resolved by the entry and upholding of a final judgment of this Court ("the Class Period") purchased produce directly from defendant the Whole Foods Market, Inc. ("defendant" or "Whole Foods") within the United States. Defendant operates a chain of grocery supermarkets that specialize in selling premium, natural, and organic produce, and is the leading grocery supermarket store in this specialty market within the United States. Until the events that give rise to this lawsuit occurred, defendant's foremost competitor in this premium, organic, and natural food market was Wild Markets, Inc., who similarly operated a rival chain of grocery supermarkets, known by their trade name, Wild Oats, that also specialized in selling premium, natural, and organic produce. The existing market rivalry between these competing grocery chain stores served to ensure that market competition constrained any of the two from charging supra-competitive prices, and assured the consumer the benefits of a market characterized by competitive forces that were free of manipulation. All that changed, however, when on February 2007, Whole Foods announced that it would be acquiring and merging with its main rival, Wild Oats. The merger was eventually consummated on August

28, 2007. As a result of that merger, competition in the premium, natural, and organic produce market has been unlawfully thwarted, and defendant Whole Foods has been able to and has acquired an unlawful monopoly in this market, and has charged consumers like plaintiff and the members of the class she seeks to represent supra-competitive prices for their premium, natural, and organic produce purchases.

ANSWER: Whole Foods admits that plaintiff purports to represent a class of persons who purchased produce from Whole Foods since August 28, 2007 but denies that the allegations have any merit or that the case can properly be certified as a class action. Whole Foods denies that it operates a chain of grocery supermarkets but admits that wholly owned subsidiaries of Whole Foods do so. Whole Foods admits that Wild Oats Markets, Inc. ("Wild Oats") operated a chain of grocery supermarkets, and that the acquisition by a wholly owned Whole Foods entity of Wild Oats was publicly announced in early 2007 and consummated on August 28, 2007. Whole Foods further admits that stores operated by wholly owned Whole Foods entities sell natural and organic produce, as did Wild Oats. Whole Foods denies the remaining allegations of Paragraph 1. The remaining allegations of Paragraph 1 also constitute legal conclusions to which no response is required. By way of further answer, Whole Foods understands "Wild Markets, Inc." to refer to "Wild Oats Markets, Inc." and will answer the Complaint accordingly.

2. Plaintiff now brings this Class Action Complaint to seek monetary, equitable, and injunctive relief for defendant's violations of the federal antitrust laws, including Sections 7 and 3 of the Clayton Act and Sections 1 and 2 of the Sherman Act. This relief is to serve as redress for the thwarting of competition experienced by consumers like plaintiff and the members of the putative class, as well as to compensate plaintiff and the putative class members for the supra-competitive prices that they have been forced to pay defendant as a direct and foreseeable consequence of defendant's antitrust violations. In addition, although the merger has been consummated, plaintiff's plea for injunctive relief is not mooted, as plaintiff's injunctive relief plea seeks to impose judicially enforceable conditions on defendant's continued implementation of the merger. The object of these conditions is to ensure that defendant's antitrust violations do not continue to cause antitrust injury to consumers like plaintiff and the members of the putative class. Although the precise contours of this injunctive relief will be best addressed after meaningful discovery has taken place, by way of illustration, such judicially enforceable conditions that could form part of the injunctive relief sought may include, without limitation, a

requirement for price controls for a certain post-merger period as well as a requirement that defendant divest certain of its stores, or otherwise provide licenses or agreements to competing entities.

ANSWER: Whole Foods admits that plaintiff purports to bring a class action seeking various forms of relief for alleged violations of the antitrust laws but denies that such relief is either warranted or appropriate. Whole Foods denies the remaining allegations of Paragraph 2. The remaining allegations of Paragraph 2 also constitute legal conclusions to which no response is required.

3. Plaintiff does not bring this class action on a clean slate. Rather, on June 5, 2007, the Federal Trade Commission ("FTC") filed a Complaint before this Court, charging defendant and the then separate entity, Wild Markets, Inc., with violations of the federal antitrust and Federal Trade Commission Acts based on the underlying merger between the two entities. As part of its Complaint, the FTC sought preliminary injunctive relief to enjoin the merger. Although this Court initially denied the FTC's plea for preliminary injunctive relief, on appeal and by an order dated July 29, 2008, the United States Court of Appeals for the District of Columbia Circuit reversed this Court's denial of the preliminary injunctive relief, after the D.C. Circuit found, *inter alia*, that this Court "committed legal error in assuming market definition must depend on marginal consumers; consequently, it underestimated the FTC's likelihood of success on the merits." After reversing this Court's order denying the FTC's plea for a preliminary injunction, the D.C. Circuit remanded the FTC's case back to this Court so that this Court could conduct an analysis of the balancing of the equities in order to determine whether a preliminary injunction should issue. The FTC's case against Whole Foods is, therefore, continuing in nature.

ANSWER: Whole Foods admits that on June 5, 2007, the Federal Trade Commission ("FTC") commenced an action in the United States District Court for the District of Columbia seeking injunctive relief. Whole Foods admits that this Court denied the FTC's request for a preliminary injunction and that, on July 29, 2008, the United States Court of Appeals for the District of Columbia Circuit issued three opinions and its judgment. The complaint and the opinions of this Court and the court of appeals are the best evidence of their contents. Whole Foods denies the

remaining allegations of Paragraph 3. The remaining allegations of Paragraph 3 also constitute legal conclusions to which no response is required.

4. While the FTC's complaint against defendant sought to represent the government's interest in enforcing the federal antitrust laws and the Federal Trade Commission Act, the FTC's complaint did not purport to directly represent any consumer purchasers as plaintiffs, nor did the FTC complaint against Whole Foods ever seek to obtain any monetary relief for such consumers. Unlike the FTC's action, therefore, the instant class action seeks to directly represent, as plaintiffs, consumer purchasers of Whole Foods during the Class Period, and seeks to obtain monetary redress for these putative class members—something that the FTC Complaint does not seek nor could accomplish.

ANSWER: Whole Foods admits that plaintiff purports to represent a class of consumers who made purchases at Whole Foods but denies that class treatment is appropriate or that plaintiff or the class is entitled to any relief. The remaining allegations of Paragraph 4 either purport to summarize the contents of the FTC complaint, which is the best evidence of its contents, or are legal conclusions to which no response is required.

PARTIES

5. Plaintiff Ekaterini Kottaras is a resident of Glendale, California in Los Angeles County. During the Class Period, plaintiff repeatedly purchased premium, organic, and/or natural produce directly from at least one of defendant's Whole Foods grocery stores. As a result of defendant's antitrust violations detailed herein, plaintiff was denied the benefits of free market competition, and was forced to and did pay defendant supra-competitive prices for her purchases made at Whole Foods.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations in the first and second sentences of Paragraph 5 regarding plaintiff's residence or actions and therefore denies these allegations. Whole Foods denies the remaining allegations of Paragraph 5.

6. Defendant Whole Foods is a corporation organized, existing, and doing business under and by virtue of the laws of Texas, with its office and principal place of business at 550 Bowie Street, Austin, Texas 78703. Established in 1980, prior to its merger with Wild Markets,

Inc., Whole Foods operated approximately 190 premium natural and organic supermarkets in more than 30 states and the District of Columbia. It is the largest operator of premium natural and organic supermarkets in the United States.

ANSWER: Whole Foods admits the allegations of the first sentence of Paragraph 6. Whole Foods denies the remaining allegations of Paragraph 6.

7. Prior to its merger with Whole Foods, Wild Markets, Inc. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1821 30th Street, Boulder, Colorado 80301. Prior to the merger with Whole Foods, Wild Markets, Inc., through its Wild Oats branded premium grocery stores, was the second largest operator of premium natural and organic supermarkets in the United States, operating numerous premium natural and organic supermarkets throughout the United States.

ANSWER: Whole Foods admits that, prior to the acquisition of Wild Oats by a wholly owned Whole Foods entity, Wild Oats Markets, Inc. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1821 30th Street, Boulder, Colorado 80301. Whole Foods denies the remaining allegations of Paragraph 7.

8. Founded in 1987, Wild Oats stores, prior to their merger with defendant Whole Foods, provided a broad selection of natural, organic, and gourmet foods, environmentally friendly products, and natural vitamins, remedies, and body care products. The Wild Market, Inc. firm was built "on the vision of enhancing the lives of our customers and our people with products and education that support health and wellbeing." As Wild Oats' then-Vice President of Marketing Laura Coblentz has described: "Wild Oats is more than a retail chain it's about a lifestyle, and that's how we market ourselves." Prior to the merger between Whole Foods and Wild Oats, Wild Oats was the primary, and in many instances, the sole competitor whose presence provided effective price-constraining competition to the operation of Whole Foods.

ANSWER: Whole Foods admits that, prior to the acquisition of Wild Oats by a wholly owned Whole Foods entity, Wild Oats stores offered natural, organic, and gourmet foods, environmentally friendly products, and natural vitamins, remedies, and body care products for sale but denies that Wild Oats provided a "broad selection" of such items on the grounds that the

phrase "broad selection" is inherently vague and ambiguous. Whole Foods admits that the second and third sentences of Paragraph 8 accurately quote passages from an article in Business Week but Whole Foods otherwise denies the allegations of the second and third sentences of Paragraph 8. Whole Foods denies the remaining allegations of Paragraph 8.

9. Consumers spent a combined total of $6.5 billion in fiscal 2006 at Whole Foods and Wild Oats, a significant portion of which was spent on produce, meat, seafood, baked goods, and prepared foods. As these figures evidence, the facts giving rise to this lawsuit and defendant's challenged activities substantially affect interstate commerce.

ANSWER: Whole Foods admits that consumers spent a combined total of $6.5 billion in fiscal 2006 at stores owned by Whole Foods entities and Wild Oats. Whole Foods denies the allegations of Paragraph 9 pertaining to the amount spent on produce, meat, seafood, baked goods, and prepared foods on the grounds that it uses the term "significant portion," which is inherently vague and ambiguous. The remaining allegations of Paragraph 9 are legal conclusions to which no response is required.

JURISDICTION AND VENUE

10. Defendant transacts business within this judicial district through, inter alia, its operation of Whole Foods stores in the District of Columbia. This Court, therefore, has personal jurisdiction over defendant. In addition because defendant transacts business and is found within this judicial district, venue is proper in this district pursuant to 15 U.S.C. § 22. Further, because the FTC's parallel complaint against defendant is already pending before this Court, venue in this district is the most convenient for the efficient administration of justice.

ANSWER: Whole Foods denies that it operates stores in the District of Columbia but admits that a wholly owned subsidiary does so. The remaining allegations of Paragraph 10 are legal conclusions to which no response is required.

11. Count I of this Complaint asserts a claim under Section 7 of the Clayton Act, 15 U.S.C. § 18, to challenge and seek redress for the allegedly unlawful merger between Whole Foods and Wild Oats. This Court, therefore, has subject matter jurisdiction over this count

pursuant to 28 U.S.C. § 1331 and Section 4 of the Clayton Act, 15 U.S.C. § 15. This Court has jurisdiction, pursuant to 15 U.S.C. §26, to enter injunctive relief for any actual or threatened violation of the antitrust laws.

ANSWER: Whole Foods admits that plaintiff purports to assert a claim under Section 7 of the Clayton Act but denies that the claim has any merit or that plaintiff is entitled to any relief. The remaining allegations of Paragraph 11 are legal conclusions to which no response is required.

12. Count II of this Complaint asserts a claim under Section 2 of the Sherman Act, 15 U.S.C. § 2 to seek redress for defendant's allegedly unlawful acquisition and/or maintenance of monopoly market power. This Court, therefore, has subject matter jurisdiction over this count pursuant to 28 U.S.C. § 1331 and Section 4 of the Clayton Act, 15 U.S.C. § 15. This Court has jurisdiction, pursuant to 15 U.S.C. §26, to enter injunctive relief for any actual or threatened violation of the antitrust laws.

ANSWER: Whole Foods admits that plaintiff purports to assert a claim under Section 2 of the Sherman Act but denies that the claim has any merit or that plaintiff is entitled to any relief. The remaining allegations of Paragraph 12 are legal conclusions to which no response is required.

13. Count III of this Complaint asserts a claim under Section 1 of the Sherman Act, 15 U.S.C. § 1 to seek redress for the allegedly unlawful agreement in restraint of trade that was entered into between then-competitors Whole Foods and Wild Markets, Inc. to merge their operations and cease competing. This Court, therefore, has subject matter jurisdiction over this count pursuant to 28 U.S.C. § 1331 and Section 4 of the Clayton Act, 15 U.S.C. § 15. This Court has jurisdiction, pursuant to 15 U.S.C. §26, to enter injunctive relief for any actual or threatened violation of the antitrust laws.

ANSWER: Whole Foods admits that plaintiff purports to assert a claim under Section 1 of the Sherman Act but denies that the claim has any merit or that plaintiff is entitled to any relief. The remaining allegations of Paragraph 13 are legal conclusions to which no response is required.

14. Count IV of this Complaint asserts a claim under Section 3 of the Clayton Act, 15 U.S.C. § 14 to seek redress for the allegedly unlawful agreement in restraint of trade involving a commodity that was entered into between then-competitors Whole Foods and Wild Markets, Inc. to merge their operations and cease competing. This Court, therefore, has subject matter jurisdiction over this count pursuant to 28 U.S.C. § 1331 and Section 4 of the Clayton Act, 15 U.S.C. § 15. This Court has jurisdiction, pursuant to 15 U.S.C. §26, to enter injunctive relief for any actual or threatened violation of the antitrust laws.

ANSWER: Whole Foods admits that plaintiff purports to assert a claim under Section 3 of the Clayton Act but denies that the claim has any merit or that plaintiff is entitled to any relief. The remaining allegations of Paragraph 14 are legal conclusions to which no response is required.

THE WHOLE FOODS—WILD OATS ACQUISITION AND MERGER

15. On February 21, 2007, Whole Foods and Wild Oats executed an agreement whereby Whole Foods proposed to acquire all of the voting securities of Wild Oats through WFMI Merger Co., a wholly-owned subsidiary of Whole Foods. The announced purchase would be effected through tender offer for all shares of Wild Oats common stock. The total cost of the acquisition was expected to be approximately $671 million in cash and assumed debt.

ANSWER: Whole Foods admits the allegations in Paragraph 15.

16. The closing of the transaction was subject to clearance under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a.

ANSWER: The allegations of Paragraph 16 are legal conclusions to which no response is required.

17. As part of the announced acquisition, defendant Whole Foods intended to and did merge Wild Oats into Whole Foods; to close Wild Oats stores; and to operate the remainder as Whole Foods stores. Thus, upon implementation of the merger, two chain stores that formerly competed vigorously against one another would cease their competition.

ANSWER: Whole Foods admits that its wholly owned subsidiary, WFMI Merger Co., has acquired Wild Oats. Whole Foods denies that it is operating former Wild Oats stores as Whole Foods stores. Whole Foods further admits that, since the acquisition of Wild Oats by a wholly owned Whole Foods entity, Wild Oats has ceased competing with Whole Foods. Whole Foods denies the remaining allegations of Paragraph 17.

18. On June 5, 2007, following a three-month investigation, the Commission determined that it had reason to believe that the Acquisition would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act because the Acquisition may

substantially lessen competition and/or tend to create a monopoly in the operation of premium natural and organic supermarkets across the United States.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 18 about what the Commission determined it had reason to believe and therefore denies these allegations. By way of further answer, the allegations of Paragraph 18 also constitute legal conclusions to which no response is required.

19. On that same day, the FTC determined that the injunctive relief would be in the public interest and authorized its staff to seek a temporary restraining order ("TRO") and preliminary injunction ("PI") in federal district court under Section 13(b) of the FTC Act. The purpose of the TRO and PI was to prevent the acquisition during the pendency of an administrative proceeding to be initiated by the Commission under Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), challenging the legality of the proposed Acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 19 about what the Commission determined or what its purpose was in filing its complaint and therefore denies these allegations. By way of further answer, the allegations of Paragraph 19 also constitute legal conclusions to which no response is required.

20. On August 16, 2007, this Court entered an Order denying the FTC's request for preliminary injunction, after it found, *inter alia*, that the evidence presented to it, as analyzed by this Court, "all lead to the conclusion that the relevant product market in this case is not premium natural and organic supermarkets ("PNOS") as argued by the FTC but, as Dr. Scheffman has said, at least all supermarkets." Having observed in its Opinion and Order that, "the definition of the relevant product market in this case is crucial. In fact, to a great extent, this case hinges on the proper definition of the relevant product market," and having found against the FTC's asserted relevant market definition, this Court denied the requested injunctive relief.

ANSWER: Whole Foods admits that this Court entered an Order on August 16, 2007 and that this Court denied the FTC's request for injunctive relief. Whole Foods refers the Court to the full text of its order and opinion, which are the best evidence of their contents.

21. The FTC appealed this Court [sic] denial of the requested injunction to the United States Court of Appeals for the District of Columbia Circuit. By Order dated July 29, 2008, the D.C. Circuit reversed this Court's denial of the FTC's request for preliminary injunction. It did so after finding that this Court erred in its analysis of the correctness of the FTC's asserted relevant market definition, and noted that this Court "committed legal error in assuming market definition must depend on marginal consumers; consequently, it underestimated the FTC's likelihood of success on the merits." Although by the time the D.C. Circuit's reversal was entered, the Whole Foods-Wild Oats [sic] had been consummated (based on this Court's now reversed August 16, 2007 Order denying the FTC's motion for preliminary injunction), the D.C. Circuit found that seeking injunctive relief to address the alleged anticompetitive harm posed by the merger was not rendered moot.

ANSWER: Whole Foods admits that the FTC appealed to the United States Court of Appeals for the District of Columbia Circuit, and that the court of appeals entered an Order dated July 29, 2008. Whole Foods refers the Court to the full text of the court's opinions, including its reissued and amended opinion, which are the best evidence of their contents. By way of further answer, Whole Foods admits that the July 29, 2008 court of appeals ruling was entered after consummation of the acquisition of Wild Oats by a wholly owned Whole Foods entity.

22. Since the consummation of the merger, Whole Foods and Wild Oats have, in fact, ceased competing against one another. Whole Foods has closed Wild Oats [sic] that prior to the merger competed against Whole Foods stores, either by being present in a geographical region where a Whole Foods store also existed, or by being present at a location where, though no Whole Foods store existed yet, the mere presence of a Wild Oats store posed a competitive constraint on Whole Foods ability to expand its presence into that region. Some Wild Oats stores that were closed by Whole Foods after the consummation of the merger were simply reopened as Whole Foods stores. Others were permanently closed by Whole Foods after the consummation of the merger. In any event, the net effect of the merger is that Wild Oats, the former main competitor to Whole Foods, no longer exists as a price-constraining competitor to Whole Foods.

ANSWER: Whole Foods admits the allegations of the first sentence of Paragraph 22. Whole Foods denies the remaining allegations of Paragraph 22.

23. In fact, from the outset, Whole Foods overriding strategy and vision for the announced merger with Wild Oats was not to enhance efficiency and competition, but rather to thwart and suppress competition and insulate Whole Foods from the price-constraining

competition posed by the presence of Wild Oats. This much was evidenced by the testimony of Whole Foods CEO, John Mackey, who at his Investigational Hearing testified that:

> [I]t [the merger] will self-evidently lessen competition in those markets that we are competing with Wild Oats in when we are going to intend to close stores. Again, isn't that true in any of the acquisitions that any of these guys do ? One of the motivations is to eliminate a competitor. I will not deny that. That is one of the reasons why we are doing this deal. That is one of the reasons we are willing to pay $18.50 for a company that has lost $60 million in the last six years. If we can't eliminate those stores then Wild Oats, frankly, isn't worth buying.

ANSWER: Whole Foods denies the allegations of Paragraph 23, other than to admit that Mr. Mackey testified at an Investigational Hearing. Whole Foods denies that plaintiff has accurately quoted the testimony. The transcript of Mr. Mackey's testimony at the Investigational Hearing is the best evidence of its contents.

24. In Los Angeles County where plaintiff made her purchases, for example, Whole Foods and Wild Oats stores co-existed and vigorously competed against one another prior to the merger. Following the merger, however, Whole Foods eliminated competition from Wild Oats. Now, Whole Foods stores in Los Angeles County are free to and do exact monopoly pricing.

ANSWER: Whole Foods admits that, prior to the acquisition of Wild Oats by a wholly owned Whole Foods entity, Whole Foods and Wild Oats stores co-existed in Los Angeles County, but Whole Foods lacks knowledge or information sufficient to admit or deny that Los Angeles County was where plaintiff made her purchases and therefore denies this allegation. Whole Foods admits that Whole Foods and Wild Oats, since the acquisition of Wild Oats by a wholly owned Whole Foods entity, no longer compete. Whole Foods denies the remaining allegations of Paragraph 24 and specifically denies that the Acquisition has caused competitive harm in any properly defined relevant market.

PREMIUM NATURAL AND ORGANIC FOODS INDUSTRY

25. "Natural foods" are foods that are minimally processed and largely or completely free of artificial ingredients, preservatives, and other non-naturally occurring substances.

ANSWER: Whole Foods denies the allegations of Paragraph 25 to the extent that Paragraph 25 purports to define an industry standard term for "natural foods."

26. "Organic foods" are foods that are produced using: agricultural practices that promote healthy ecosystems; no genetically engineered seeds or crops, sewage sludge, long-lasting pesticides or fungicides; healthy and humane livestock management practices including use of organically grown feed, ample access to fresh air and the outdoors, and no antibiotics or growth hormones; and food processing that protects the healthfulness of the organic product, including the avoidance of irradiation, genetically modified organisms, and synthetic preservatives.

ANSWER: Whole Foods denies the allegations of Paragraph 26 to the extent that Paragraph 26 purports to define the term "organic foods" in any way other than foods that meet the requirements of the United States Department of Agriculture's Organic Food Production Act of 1990.

27. Pursuant to the United States Department of Agriculture' s ("USDA's") Organic Foods Production Act of 1990 (the " Organic Rule"), all products labeled "organic" must be certified by a federally accredited certifying agency as satisfying USDA standards for organic foods. The Organic Rule further requires that retailers of products labeled "organic" use handling, storage, and other practices to protect the integrity of organically-labeled products, including: preventing commingling of organic and non-organic ("conventional") products; protecting organic products from contact with prohibited substances; and maintaining records that document adherence to the USDA requirements.

ANSWER: The allegations of Paragraph 27 are legal conclusions to which no response is required.

28. Premium natural and organic supermarkets offer a distinct set of products and services to a distinct group of customers in a distinctive way, all of which significantly distinguish premium natural and organic supermarkets from conventional supermarkets and other retailers of food and grocery items ("Retailers").

ANSWER: Whole Foods denies the allegations of Paragraph 28.

29. Premium natural and organic supermarkets are not simply outlets for natural and organic foods. In announcing its fourth quarter results for 2006, Whole Foods stated that, "Whole Foods Market is about much more than just selling 'commodity' natural and organic products. We are a lifestyle retailer and have created a unique shopping environment built around satisfying and delighting our customers."

ANSWER: Whole Foods admits that the statement quoted in Paragraph 29 was made, but denies the remaining allegations of Paragraph 29.

30. To begin with, premium natural and organic supermarkets focus on perishable products, offering a vast selection of very high quality fresh fruits and vegetables including exotic and hard-to-find items and other perishables. As Whole Foods stated in its 2006 annual report, "We believe our heavy emphasis on perishable products differentiates us from conventional supermarkets and helps us attract a broader customer base." Whole Foods' Mr. Mackey has also emphasized the importance of high quality perishable foods to Whole Foods' business model.

ANSWER: Whole Foods admits that the statement quoted in Paragraph 30 was made. Whole Foods denies the remaining allegations of Paragraph 30.

31. The core shoppers of premium natural and organic supermarkets have a preference for natural and organic products, and premium natural and organic supermarkets offer an extensive selection of natural and organic products to enable those shoppers to purchase substantially all of their food and grocery requirements during a single shopping trip.

ANSWER: Whole Foods denies the allegations of Paragraph 31.

32. Premium natural and organic supermarkets are differentiated from other retailers in that premium natural and organic supermarkets offer more amenities and service venues; higher levels of service and more knowledgeable service personnel; and special features such as in-store community centers.

ANSWER: Whole Foods denies the allegations of Paragraph 32.

33. Premium natural and organic supermarkets promote a lifestyle of health and ecological sustainability, to which a significant portion of their customers are committed. Through the blending together of these elements and others, premium natural and organic supermarkets strive to create a varied and dynamic experience for shoppers, inviting them to make the premium natural and organic supermarket a destination to which shoppers come not merely to shop, but to gather together, interact, and learn, often while enjoying shared eating and other experiences. Premium natural and organic supermarkets expend substantial resources on developing a brand identity that connotes this blend of elements, and especially the qualities of

trustworthiness (viz., that all products are natural and, when so-labeled, organic, that the store' s suppliers practice humane animal husbandry and provide humane working environments for employees, and that the store's actions are ecologically sound) and qualitative superiority to other retailers.

ANSWER: Whole Foods denies the allegations of Paragraph 33.

34. Relative to most other retailers, premium natural and organic supermarkets' products often are priced at a premium reflecting not only product quality and service, but the marketing of a lifestyle to which their customers aspire.

ANSWER: Whole Foods denies the allegations of Paragraph 34.

35. One of Wild Oats' recent 10K documents filed with the Securities and Exchange Commission noted: "Despite the increase in natural foods sales within conventional supermarkets, [Wild Oats] believe[s] that conventional supermarkets still lack the concentration on a wide variety of natural and organic products, and emphasis on service and consumer education that our stores offer.[sic]

ANSWER: Whole Foods admits that the statement quoted in Paragraph 35 was made, but denies the remaining allegations of Paragraph 35.

36. Premium natural and organic supermarkets are also very different from mass-merchandisers, such as Wal-Mart and Target.

ANSWER: Whole Foods denies the allegations of Paragraph 36.

37. Unlike other natural and organic product retailers, premium natural and organic supermarkets offer an extensive selection of natural and organic products to enable shoppers to purchase substantially all of their food and grocery requirements during a single shopping trip. As a result, premium natural and organic supermarkets are appreciably larger than other natural and organic retailers in square footage, number of products offered, inventory for each product offered, and annual dollar sales.

ANSWER: Whole Foods denies the allegations of Paragraph 37.

38. Premium natural and organic supermarkets' primary competitors are other premium natural and organic supermarkets. Shoppers with preferences for premium natural and organic supermarkets are not likely to switch to other retailers in response to a small but significant non-transitory increase in premium natural and organic supermarket prices.

ANSWER: Whole Foods denies the allegations of Paragraph 38.

RELEVANT MARKETS

39. For purposes of this Class Action Complaint, the relevant antitrust product market is the market for premium, natural, and organic supermarkets. The relevant geographic antitrust market is nationwide. Similarly, the operation of premium, natural, and organic supermarkets is a distinct line of commerce" within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Whole Foods denies the allegations of Paragraph 39. The allegations of Paragraph 39 also constitute legal conclusions to which no response is required.

40. Consumers and industry players alike recognize premium, natural, and organic supermarkets as a discrete and distinct separate relevant market with its own supply, demand, and pricing characteristics. Other purveyors of groceries, such as conventional supermarkets (i.e. Safeway) or mass merchandisers (i.e. Wal-Mart) are not seen by at least a core group of consumers as reasonable substitutes to premium, natural, and organics supermarkets, such as the ones operated by Whole Foods (and formerly operated by Wild Oats).

ANSWER: Whole Foods denies the allegations of Paragraph 40.

41. This much was recognized by Whole Foods CEO, John Mackey, who in his 2007 first quarter report to his Board, announced that:

> Safeway is continuing to roll out their "Lifestyle Stores." I don't believe these stores have had much real impact on us, though they've increased Safeway's comps a couple hundred basis points (not that much when you consider the immense amount of capital invested).

ANSWER: Whole Foods admits that Mr. Mackey made a 2007 first quarter report to the Whole Foods Board but denies that plaintiff has accurately or fully quoted from that report. Whole Foods refers the Court to the entire text of the 2007 first quarter report to the Board, which is the best evidence of its contents. Whole Foods denies the remaining allegations of Paragraph 41.

42. Likewise, as to mass merchandisers, Mr. Mackey, similarly proclaimed that:

> [D]espite the hoopla in the media, hasn't had much impact in the organic market. I doubt they will because their core customers don't want to pay the higher prices and their non-core customers don't want to shop there for various reasons.

Similarly, as one Wild Oats spokesman has noted:
Mr. Mackey has also explained that:

> Right now, I don't see much of a consumer overlap between Whole Foods and [the mass marketer]. . . . Whole Foods doesn't operate in the same markets as [the mass marketer] and it caters to a higher income shopper. I don't see [the mass marketer] as a great threat to Whole Foods right now. ... The disparity of their customer base is too great. There is very little overlap between our shoppers and [theirs]. . . . We're a specialty retailer and our customers don't focus on price first.

ANSWER: Whole Foods admits that Mr. Mackey made a 2007 first quarter report to the Whole Foods Board but denies that plaintiff has accurately or fully quoted from that report. Whole Foods refers the Court to the entire text of the 2007 first quarter report to the Board, which is the best evidence of its contents. Whole Foods denies the remaining allegations of Paragraph 42.

43. The premium, natural, and organic supermarkets comprising the relevant product market definition are also not subject to price-constraining competition from so-called upscale supermarkets that, unlike Whole Foods, do not focus exclusively on premium, natural, and organic chain store sales. This much was also recognized by Mr. Mackey [Whole Foods' CEO], who in his September 13, 2006 report to the Board stated:

> Trade Joe's continues to rapidly expand, but our new large store format has created a large comparative gap with them. TJ's is now a "fill-in" store for Whole Foods, but lacks a wide enough product selection to be considered a complete alternative to our stores.

ANSWER: Whole Foods denies the allegations in the first sentence of paragraph 43. The first sentence of Paragraph 43 also constitutes legal conclusions to which no response is required. Whole Foods admits that Mr. Mackey made a September 13, 2006 report to the Whole Foods Board but denies that plaintiff has fully or accurately quoted from that report. The September 13, 2006 report to the Board is the best evidence of its contents.

COMPETITION BETWEEN WHOLE FOODS AND WILD OATS AND DEFENDANT'S MARKET POWER

44. Prior to the consummation of their merger, Whole Foods and Wild Oats, respectively, were the largest and second largest operators of premium, natural, and organic supermarkets in the United States. Combined, they operated 301 such stores nationwide, with Whole Foods operating 191 stores to the 110 stores operated by Wild Oats. Prior to the consummation of their merger, Whole Foods and Wild Oats were the only two nationwide competitors in the relevant market. While other fringe supermarkets offering exclusively premium, natural and organic produce existed, these were primarily small outfits, whose operations were confined to either a single locale, or to a discrete geographic area, without any foreseeable plans or prospects for expansion.

ANSWER: Whole Foods denies the allegations of Paragraph 44.

45. By contrast, prior to their merger, Whole Foods and Wild Oats competed vigorously against one another on price, selection, and service. In at least 19 locales, the stores competed head-to-head. Even in regions that lacked the presence of both stores, it was the announced strategy of each to expand to compete into the territory of the other. The realistic possibility that either outfit may and could readily expand to a region where only the other was present, or to a region where neither store operated, served to pose price-constraining competition on the other.

ANSWER: Whole Foods admits that, prior to the acquisition of Wild Oats by a wholly owned Whole Foods entity, Wild Oats and Whole Foods were competitors. Whole Foods denies the allegations in the second sentence of Paragraph 45 on the grounds that it uses the term "head-to-head," which is inherently vague and ambiguous. Whole Foods denies the remaining allegations of Paragraph 45.

46. Upon information and belief, prior to the Whole Foods- Wild Oats merger, the two entities possessed in excess of a 90 percent share of the relevant market for premium, natural, and organic supermarkets. Upon information and belief, Whole Foods [sic] market share alone, was approximately 55-60 percent immediately prior to the merger, and Wild Oats' market share was approximately 30-35 percent during this same time period.

ANSWER: The allegations of Paragraph 46 are legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

47. As a result of, *inter alia*, the established presence of each, and their respective market shares, neither Whole Foods nor Wild Oats possessed monopoly market power prior to the consummation of their merger.

ANSWER: Whole Foods admits that it has never possessed monopoly power. The remaining allegations of Paragraph 47 are legal conclusions to which no response is required.

48. By contrast, upon consummation of the Whole Foods-Wild Oats merger, Whole Foods acquired a nearly 100 percent share of the relevant nationwide market for premium, natural, and organic supermarkets. That inordinately high market share, resulting solely as a result of the merger with Wild Oats, along with the existence of the high barriers to entry into this market (which are reference [sic] below), means that, as a direct, foreseeable, and natural result of the consummation of the merger, Whole Foods acquired and has been able to maintain an unlawful monopoly in the relevant market alleged herein. This monopoly market power resulted not from Whole Foods' superior business acumen, skill, or enterprise, but strictly from its unlawful agreement to cease competing and merge with its then-primary competitor, Wild Oats.

ANSWER: Whole Foods denies the allegations of Paragraph 48. The allegations of Paragraph 48 also constitute legal conclusions to which no response is required.

49. There exist high barriers to entry into the alleged relevant market for premium, natural, and organic supermarkets. First, Whole Foods sheer size and high market share act as an entry barrier to any new would-be entrant into this relevant market. To be able to effectively compete against the likes of a Whole Foods, it would be insufficient for a prospective new entrant to merely open a single or even a few stores, but rather, it would be required to make entry on a scale and size that would be significant enough to challenge Whole Foods' customer base to a sufficient degree so as to pose price-constraining competition to Whole Foods. The sheer size of investment and logistical complexity of making such a large-scale entry from scratch presents an almost insurmountable barrier to entry. This is borne out by the history within this relevant market. For example, in approximately June 2005, Earth Fare, a relatively small competitor in the premium, natural, and organic supermarket relevant market attempted to enter and compete directly against Whole Foods. The attempt was unsuccessful and short-lived. Due to its sheer size, Whole Foods was able to effectively run Earth Fare out of competition. By 2007, Earth Fare closed its store that competed against Whole Foods. Not surprisingly, the other prominent small competitor in the premium, natural, and organic supermarket relevant market, New Season, has openly declared in statements by its founder that it has no plans or desires to expand beyond its single locale in Portland, Oregon so as to compete against Whole Foods.

ANSWER: Whole Foods admits that Earth Fare and New Seasons compete against Whole Foods. Whole Foods denies the remaining allegations of Paragraph 49. The allegations of Paragraph 49 also constitute legal conclusions to which no response is required.

50. Conventional and other supermarkets as well as mass-market stores also face significant and likely insurmountable barriers to entry were they to attempt to expand so as to enter the relevant market alleged herein. Given the entirely distinct product offerings between such supermarkets or mass-market stores and the products offered at premium, natural, and organic supermarkets, attempted entry by conventional sellers like Safeway or Wal-Mart would require a complete overhaul of their long-established business operations.

ANSWER: Whole Foods denies the allegations of Paragraph 50. The allegations of Paragraph 50 also constitute legal conclusions to which no response is required.

51. The net result is that Whole Foods' inordinately high market share along with the high barriers to entry characterizing this relevant market serve to ensure that Whole Foods has and continues to have monopoly market power; that is, the power to restrict output and exclude competition.

ANSWER: Whole Foods denies the allegations of Paragraph 51. The allegations of Paragraph 51 also constitute legal conclusions to which no response is required.

ANTICOMPETITIVE EFFECTS, AND ANTITRUST INJURY SUSTAINED AND LIKELY TO BE SUSTAINED BY THE CONSUMER CLASS

52. The merger between Whole Foods and Wild Oats has caused and continues to cause antitrust injury to plaintiff and the members of the class she seeks to represent. Prior to the merger, Wild Oats and Whole Foods competed against one another and posed price-constraining competition on one another. The merger has eliminated these constraints, and has handed Whole Foods an unlawful monopoly in the relevant market. Whole Foods has exploited this unlawful monopoly by charging plaintiff and the members of the class she seeks to represent supra-competitive prices for their Whole Foods' purchases of premium, natural, and organic produce.

ANSWER: Whole Foods admits that, prior to the acquisition of Wild Oats by a wholly owned Whole Foods entity, Wild Oats and Whole Foods were competitors. Whole Foods denies the remaining allegations of Paragraph 52. The remaining allegations of Paragraph 52 also constitute legal conclusions to which no response is required.

53. Thus, as a direct, proximate, and foreseeable result of defendant's antitrust violations detailed herein, plaintiff and the members of the class she seeks to represent have paid and continue to pay supra-competitive prices for their purchases made from Whole Foods.

ANSWER: Whole Foods denies the allegations of Paragraph 53. The allegations of Paragraph 53 also constitute legal conclusions to which no response is required.

54. Unless enjoined by this Court, Whole Foods is likely to continue imparting such injury to plaintiff and members of the putative class. Further, plaintiff is a repeat shopper in the premium, natural, and organic supermarket relevant market where Whole Foods now holds an unlawful monopoly. Thus, unless Whole Foods is restrained or enjoined by this Court, plaintiff (as well as members of the putative class) is likely to continue to sustain the antitrust injury detailed herein.

ANSWER: Whole Foods denies the allegations of Paragraph 54. The allegations of Paragraph 54 also constitute legal conclusions to which no response is required.

CLASS ACTION ALLEGATIONS

55. Pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), plaintiff brings this action on behalf of herself and on behalf of all other similarly situated persons who purchased premium, natural, and organic goods from Whole Foods in the United States during the Class Period.

ANSWER: Whole Foods admits that plaintiff purports to represent a class of persons who purchased certain products from Whole Foods but denies that the allegations have any merit or that the case can properly be certified as a class action.

56. Although the precise number of the members of the putative class is not presently known to plaintiff, it is self-evident from defendant's sales figures that the number of members of the putative class is so numerous so as to make joinder impracticable.

ANSWER: The allegations of Paragraph 56 are legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

57. Plaintiff's claims are typical of the claims raised on behalf of the members of the putative class. Specifically, plaintiff like the rest of the members of the putative class allege that, as a result of defendant's antitrust violations alleged herein, they were injured in their business or property by being forced to pay supra-competitive prices for their purchases from Whole Foods during the Class Period.

ANSWER: Whole Foods admits that plaintiff purports to represent a class of persons who allegedly were injured but denies that the allegations have any merit or that the case can properly be certified as a class action. The remaining allegations of Paragraph 57 constitute legal conclusions to which no response is required.

58. Plaintiff and her counsel are adequate representatives of the interests of the putative class. Plaintiff is a member of the class she seeks to represent, as she made purchases from Whole Foods during the Class Period and continues to do so. Plaintiff's interests, therefore, are fully aligned with those of the putative class members. Plaintiff has also retained counsel experienced in complex and class action litigation, including numerous consumer antitrust class actions. Counsel retained by plaintiff, therefore, will adequately and zealously represent the interests of the absent putative class members.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 58 and therefore denies these allegations. The allegations of Paragraph 58 also constitute legal conclusions to which no response is required.

59. This action raises common issue of fact and/or law, and such common issues predominate over any issues that may affect only individual putative class members. Among the common questions of fact and/or law that are present and predominate in this case are:

a. the definition of the applicable relevant antitrust market;
b. defendant's market power within this antitrust relevant market;
c. the legality of defendant's merger with Wild Oats;
d. the extent, if any, of the anticompetitive effects proximately caused by defendant's actions;
e. the existence of any injury to business or property of the class members directly and proximately caused by defendant's actions;
f. the proper means of redress or remedy.

ANSWER: The allegations of Paragraph 59, including its subparts, constitute legal conclusions to which no response is required.

60. A class action presents a superior form of conducting this litigation over the litigation of individual claims separately. The amount of damages sustained by each individual putative class member is likely to be so small individually when compared to the cost of litigating this matter, that separate individual litigation of each class member's case would prove unfeasible. In addition, the sheer number of class members means that if each class member

were required to litigate his or her case separately, vast judicial inefficiency would result, and a significant toll would be imposed on the courts and the parties.

ANSWER: Whole Foods denies the allegations of Paragraph 60. The allegations of Paragraph 60 also constitute legal conclusions to which no response is required.

61. Litigating this case as a class action is manageable. This case is not atypical from other consumer antitrust cases that have been previously certified and successfully managed as class actions in courts across the country.

ANSWER: Whole Foods denies the allegations of Paragraph 61. The allegations of Paragraph 61 also constitute legal conclusions to which no response is required.

62. Class certification is also independently appropriate because defendant has acted and continues to act in a manner that is common to the class, thereby making injunctive and/or equitable relief the appropriate remedy, so as to prevent inconsistent rulings and obligations that may come about if this matter were litigated on an individual basis by separate class members individually.

ANSWER: The allegations of Paragraph 62 constitute legal conclusions to which no response is required.

COUNT I

(VIOLATION OF SECTION 7 OF THE CLAYTON ACT, 15 U.S.C. §18)

63. Plaintiff incorporates by reference all of the allegations of this Complaint with the same force and effect as if they had been fully restated herein.

ANSWER: Whole Foods incorporates and reavers by reference its answers to the preceding Paragraphs 1 through 62.

64. During the Class Period, plaintiff made purchases of premium, natural, and organic produce at a Whole Foods store within the United States, and paid Whole Foods money directly for those purchases.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 64 and therefore denies these allegations.

65. For purposes of this Class Action Complaint, the relevant antitrust product market is the market for premium, natural, and organic supermarkets. The relevant geographic antitrust market is nationwide. Similarly, the operation of premium, natural, and organic supermarkets is a distinct " line of commerce" within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Whole Foods denies the allegations of Paragraph 65. The allegations of Paragraph 65 also constitute legal conclusions to which no response is required.

66. The activities carried on by Whole Foods and formerly by Wild Oats in the operation of premium, natural, and organic supermarkets affects interstate commerce.

ANSWER: The allegations of Paragraph 66 are legal conclusions to which no response is required.

67. The consummation of the merger between Whole Foods and Wild Oats amounts to an acquisition within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: The allegations of Paragraph 67 are legal conclusions to which no response is required.

68. The acquisition and merger between Whole Foods and Wild Oats has had and continues to have the direct, proximate, and foreseeable result of substantially lessening competition and of tending to create and actually creating a monopoly. The acquisition and merger between Whole Foods and Wild Oats, therefore, violates Section 7 of the Clayton Act, 15 U.S.C. §18.

ANSWER: Whole Foods denies the allegations of Paragraph 68. The allegations of Paragraph 68 also constitute legal conclusions to which no response is required.

69. As a direct, proximate, and foreseeable result of the acquisition and merger between Whole Foods and Wild Oats, which violates Section 7 of the Clayton Act, plaintiff and the members of the class she seeks to represent have been injured in their business and/or property by being forced to pay supra-competitive prices for their premium, natural, and organic produce purchases from Whole Foods during the Class Period. Unless defendant is enjoined or otherwise restrained by this Court, plaintiff is likely to continue sustaining such antitrust injury.

ANSWER: Whole Foods denies the allegations of Paragraph 69. The allegations of Paragraph 69 also constitute legal conclusions to which no response is required.

70. As a direct purchaser who has paid for and continues to purchase products in the relevant market from Whole Foods, plaintiff has standing to and does seek money damages as well as equitable relief for the antitrust injury sustained by her as a direct, proximate, and foreseeable result of Whole Foods' violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

ANSWER: The allegations of Paragraph 70 are legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

COUNT II

(VIOLATION OF SECTION 2 OF THE SHERMAN ACT, 15 U.S.C. §2)

71. Plaintiff incorporates by reference all of the allegations of this Complaint with the same force and effect as if they had been fully restated herein.

ANSWER: Whole Foods incorporates and reavers by reference its answers to the preceding Paragraphs 1 through 70.

72. During the Class Period, plaintiff made purchases of premium, natural, and organic produce at a Whole Foods store within the United States, and paid Whole Foods money directly for those purchases.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 72 and therefore denies these allegations.

73. For purposes of this Class Action Complaint, the relevant antitrust product market is the market for premium, natural, and organic supermarkets. The relevant geographic antitrust market is nationwide. Similarly, the operation of premium, natural, and organic supermarkets is a distinct " line of commerce" within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Whole Foods denies the allegations of Paragraph 73. The allegations of Paragraph 73 also constitute legal conclusions to which no response is required.

74. The activities carried on by Whole Foods and formerly by Wild Oats in the operation of premium, natural, and organic supermarkets affects interstate commerce.

ANSWER: The allegations of Paragraph 74 are legal conclusions to which no response is required.

75. The consummation of the acquisition and merger between Whole Foods and Wild Oats amounts to an acquisition within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: The allegations of Paragraph 75 are legal conclusions to which no response is required.

76. As a direct, proximate, and foreseeable result of the anticompetitive merger between Whole Foods and Wild Oats, which violates Section 7 of the Clayton Act, Whole Foods was able to and did eliminate competition in the relevant market, and secured an unlawful monopoly for itself in the relevant market. The ongoing merger agreement further serves as the means by which Whole Foods is able to forestall any ongoing competition in the relevant market. Thus, Whole Foods' acquisition and maintenance of its monopoly market power within the relevant market was not brought about by superior skill, enterprise, or business acumen, but rather was a direct, proximate, and foreseeable result of its unlawful and anticompetitive merger with Wild Oats.

ANSWER: Whole Foods denies the allegations of Paragraph 76. The allegations of Paragraph 76 also constitute legal conclusions to which no response is required.

77. Defendant has exploited and continues to exploit its unlawfully acquired and maintained monopoly market power by charging plaintiff and the members of the putative class supra-competitive prices for their premium, natural, and organic produce purchases from Whole Foods during the Class Period. Defendant, therefore, has injured plaintiff and the members of the putative class in their business and/or property by causing them to overpay for their purchases, and this injury is precisely the type of injury that the antitrust laws were designed to redress.

ANSWER: Whole Foods denies the allegations of Paragraph 77. The allegations of Paragraph 77 also constitute legal conclusions to which no response is required.

78. Defendant's conduct and practice is continuing, and unless enjoined or restrained by this Court, is likely to continue inflicting antitrust injury to plaintiff and members of the putative class.

ANSWER: Whole Foods denies the allegations of Paragraph 78. The allegations of Paragraph 78 also constitute legal conclusions to which no response is required.

79. Defendant's unlawful acquisition, maintenance, and exploitation of its monopoly market power violates Section 2 of the Sherman Act, 15 U.S.C. §2.

ANSWER: Whole Foods denies the allegations of Paragraph 79. The allegations of Paragraph 79 also constitute legal conclusions to which no response is required.

80. As a direct purchaser who has paid for and continues to purchase products in the relevant market from Whole Foods, plaintiff has standing to and does seek money damages as well as equitable relief for the antitrust injury sustained by her as a direct, proximate, and foreseeable result of Whole Foods' violation of Section 2 of the Sherman Act, 15 U.S.C. §2.

ANSWER: The allegations of Paragraph 80 are legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

COUNT III

(VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. §1)

81. Plaintiff incorporates by reference all of the allegations of this Complaint with the same force and effect as if they had been fully restated herein.

ANSWER: Whole Foods incorporates and reavers by reference its answers to the preceding Paragraphs 1 through 80.

82. During the Class Period, plaintiff made purchases of premium, natural, and organic produce at a Whole Foods store within the United States, and paid Whole Foods money directly for those purchases.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 82 and therefore denies these allegations.

83. For purposes of this Class Action Complaint, the relevant antitrust product market is the market for premium, natural, and organic supermarkets. The relevant geographic antitrust market is nationwide. Similarly, the operation of premium, natural, and organic supermarkets is

a distinct " line of commerce" within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Whole Foods denies the allegations of Paragraph 83. The allegations of Paragraph 83 also constitute legal conclusions to which no response is required.

84. The activities carried on by Whole Foods and formerly by Wild Oats in the operation of premium, natural, and organic supermarkets affects interstate commerce.

ANSWER: The allegations of Paragraph 84 are legal conclusions to which no response is required.

85. The acquisition and merger agreement between Whole Foods and Wild Oats amounts to an agreement in restraint of trade within the meaning of Section 1 of the Sherman Act, 15 U.S.C. §1.

ANSWER: Whole Foods denies the allegations of Paragraph 85. The allegations of Paragraph 85 also constitute legal conclusions to which no response is required.

86. The acquisition and merger agreement between Whole Foods and Wild Oats is anticompetitive, and violates Section 1 of the Sherman Act, 15 U.S.C. § 1, because it, inter alia, unduly thwarts and forecloses competition in the relevant market.

ANSWER: Whole Foods denies the allegations of Paragraph 86. The allegations of Paragraph 86 also constitute legal conclusions to which no response is required.

87. To the extent that the Whole Foods-Wild Oats acquisition and merger agreement possesses any pro-competitive effects, these effects are outweighed by the anticompetitive harm caused by the agreement. To the extent that the Whole Foods-Wild Oats acquisition and merger agreement possesses any pro-competitive effects, these pro-competitive effects could be achieved through less restrictive means than the merger and acquisition agreement actually executed and consummated between Whole Foods and Wild Oats.

ANSWER: Whole Foods denies the allegations of Paragraph 87. The allegations of Paragraph 87 also constitute legal conclusions to which no response is required.

88. As a direct, proximate, and foreseeable result of the anticompetitive agreement in restraint of trade in violation of Section 1 of the Sherman Act, Whole Foods was able to and did thwart and eliminate competition in the relevant market, and secured an unlawful monopoly for

itself in the relevant market. The ongoing merger agreement further serves as the means by which Whole Foods is able to forestall any ongoing competition in the relevant market. Thus, Whole Foods' acquisition and maintenance of its monopoly market power within the relevant market was not brought about by superior skill, enterprise, or business acumen, but rather was a direct, proximate, and foreseeable result of its unlawful and anticompetitive merger with Wild Oats.

ANSWER: Whole Foods denies the allegations of Paragraph 88. The allegations of Paragraph 88 also constitute legal conclusions to which no response is required.

89. Defendant has exploited and continues to exploit its unlawfully acquired and maintained monopoly market power by charging plaintiff and the members of the putative class supra-competitive prices for their premium, natural, and organic produce purchases from Whole Foods during the Class Period. Defendant, therefore, has injured plaintiff and the members of the putative class in their business and/or property by causing them to overpay for their purchases, and this injury is precisely the type of injury that the antitrust laws were designed to redress.

ANSWER: Whole Foods denies the allegations of Paragraph 89. The allegations of Paragraph 89 also constitute legal conclusions to which no response is required.

90. Defendant's conduct and practice is continuing, and unless enjoined or restrained by this Court, is likely to continue inflicting antitrust injury to plaintiff and members of the putative class.

ANSWER: Whole Foods denies the allegations of Paragraph 90. The allegations of Paragraph 90 also constitute legal conclusions to which no response is required.

91. Defendant's unlawful acquisition, maintenance, and exploitation of its monopoly market power violates Section 1 of the Sherman Act, 15 U.S.C. §1.

ANSWER: Whole Foods denies the allegations of Paragraph 91. The allegations of Paragraph 91 also constitute legal conclusions to which no response is required.

92. As a direct purchaser who has paid for and continues to purchase products in the relevant market from Whole Foods, plaintiff has standing to and does seek money damages as well as equitable relief for the antitrust injury sustained by her as a direct, proximate, and foreseeable result of Whole Foods' violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

ANSWER: The allegations of Paragraph 92 are legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

COUNT IV

(VIOLATION OF SECTION 3 OF THE CLAYTON ACT, 15 U.S.C. § 14)

93. Plaintiff incorporates by reference all of the allegations of this Complaint with the same force and effect as if they had been fully restated herein.

ANSWER: Whole Foods incorporates and reavers by reference its answers to the preceding Paragraphs 1 through 92.

94. During the Class Period, plaintiff made purchases of premium, natural, and organic produce at a Whole Foods store within the United States, and paid Whole Foods money directly for those purchases.

ANSWER: Whole Foods lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 94 and therefore denies these allegations.

95. For purposes of this Class Action Complaint, the relevant antitrust product market is the market for premium, natural, and organic supermarkets. The relevant geographic antitrust market is nationwide. Similarly, the operation of premium, natural, and organic supermarkets is a distinct "line of commerce" within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Whole Foods denies the allegations of Paragraph 95. The allegations of Paragraph 95 also constitute legal conclusions to which no response is required.

96. The activities carried on by Whole Foods and formerly by Wild Oats in the operation of premium, natural, and organic supermarkets affects interstate commerce.

ANSWER: The allegations of Paragraph 96 are legal conclusions to which no response is required.

97. The acquisition and merger agreement between Whole Foods and Wild Oats amounts to an agreement in restraint of trade within the meaning of Section 1 of the Sherman

Act, 15 U.S.C. §1 and Section 3 of the Clayton Act, 15 U.S.C. § 14. The sale of premium, natural, and organic produce amounts to sales of a commodity within the meaning of Section 3 of the Clayton Act, 15 U.S.C. § 3.

ANSWER: Whole Foods denies the allegations of Paragraph 97. The allegations of Paragraph 97 also constitute legal conclusions to which no response is required.

98. The acquisition and merger agreement between Whole Foods and Wild Oats is anticompetitive, and violates Section 3 of the Clayton Act, 15 U.S.C. § 14, because it, *inter alia*, unduly thwarts and forecloses competition in the relevant market.

ANSWER: Whole Foods denies the allegations of Paragraph 98. The allegations of Paragraph 98 also constitute legal conclusions to which no response is required.

99. To the extent that the Whole Foods-Wild Oats acquisition and merger agreement possesses any pro-competitive effects, these effects are outweighed by the anticompetitive harm caused by the agreement. To the extent that the Whole Foods-Wild Oats acquisition and merger agreement possesses any pro-competitive effects, these pro-competitive effects could be achieved through less restrictive means than the merger and acquisition agreement actually executed and consummated between Whole Foods and Wild Oats.

ANSWER: Whole Foods denies the allegations of Paragraph 99. The allegations of Paragraph 99 also constitute legal conclusions to which no response is required.

100. As a direct, proximate, and foreseeable result of the anticompetitive agreement in restraint of trade in violation of Section 3 of the Clayton Act, Whole Foods was able to and did thwart and eliminate competition in the relevant market, and secured an unlawful monopoly for itself in the relevant market. The ongoing merger agreement further serves as the means by which Whole Foods is able to forestall any ongoing competition in the relevant market. Thus, Whole Foods' acquisition and maintenance of its monopoly market power within the relevant market was not brought about by superior skill, enterprise, or business acumen, but rather was a direct, proximate, and foreseeable result of its unlawful and anticompetitive merger with Wild Oats.

ANSWER: Whole Foods denies the allegations of Paragraph 100. The allegations of Paragraph 100 also constitute legal conclusions to which no response is required.

101. Defendant has exploited and continues to exploit its unlawfully acquired and maintained monopoly market power by charging plaintiff and the members of the putative class supra-competitive prices for their premium, natural, and organic produce purchases from Whole

Foods during the Class Period. Defendant, therefore, has injured plaintiff and the members of the putative class in their business and/or property by causing them to overpay for their purchases, and this injury is precisely the type of injury that the antitrust laws were designed to redress.

ANSWER: Whole Foods denies the allegations of Paragraph 101. The allegations of Paragraph 101 also constitute legal conclusions to which no response is required.

102. Defendant's conduct and practice is continuing, and unless enjoined or restrained by this Court, is likely to continue inflicting antitrust injury to plaintiff and members of the putative class.

ANSWER: Whole Foods denies the allegations of Paragraph 102. The allegations of Paragraph 102 also constitute legal conclusions to which no response is required.

103. Defendant's unlawful acquisition, maintenance, and exploitation of its monopoly market power violates Section 3 of the Clayton Act, 15 U.S.C. §14.

ANSWER: Whole Foods denies the allegations of Paragraph 103. The allegations of Paragraph 103 also constitute legal conclusions to which no response is required.

104. As a direct purchaser who has paid for and continues to purchase products in the relevant market from Whole Foods, plaintiff has standing to and does seek money damages as well as equitable relief for the antitrust injury sustained by her as a direct, proximate, and foreseeable result of Whole Foods' violation of Section 3 of the Clayton Act, 15 U.S.C. §14.

ANSWER: The allegations of Paragraph 104 are legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

AFFIRMATIVE DEFENSES

The inclusion of any ground within this section does not constitute an admission that Whole Foods bears the burden of proof on each or any of the matters, nor does it excuse complaint counsel from establishing each element of its purported claim for relief.

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

At all times, Whole Foods has acted in good faith and in furtherance of its legitimate business interests and has caused no injury to competition, the public, or the plaintiff.

Third Affirmative Defense

Plaintiff's claims and those of the purported class are barred because Whole Foods did not unreasonably restrain trade or commerce and had no purpose or intent to injure competition.

Fourth Affirmative Defense

Efficiencies and other procompetitive benefits resulting from the acquisition outweigh any and all proffered anticompetitive effects.

Fifth Affirmative Defense

The acquisition of Wild Oats by a wholly owned Whole Foods entity was lawful.

Sixth Affirmative Defense

Plaintiff and the purported class lack standing under the applicable federal laws.

Seventh Affirmative Defense

Plaintiff and the purported class have not suffered, and will not suffer, injury of the type that the antitrust laws are designed to prevent, or any other injury to a legally cognizable interest by reason of the conduct alleged in the Complaint.

Eighth Affirmative Defense

Plaintiff's claims and those of the purported class are barred by the doctrine of laches.

Ninth Affirmative Defense

Granting the relief sought is contrary to the public interest.

Tenth Affirmative Defense

Plaintiff's claims and those of the purported class are barred, in whole or in part, as a matter of law, due to lack of causation.

Eleventh Affirmative Defense

Plaintiff and the purported class failed to mitigate any damages that have allegedly been suffered.

Twelfth Affirmative Defense

Plaintiff's claims and those of the purported class are barred, in whole or in part, because plaintiff would be unjustly enriched if allowed to recover all or part of the damages alleged in the Complaint.

Thirteenth Affirmative Defense

This Court lacks personal jurisdiction over Whole Foods Market, Inc.

Fourteenth Affirmative Defense

Venue in this Court is improper.

Whole Foods reserves the right to assert any other defenses as they become known to Whole Foods.

WHEREFORE, Whole Foods respectfully requests that this Court enter judgment in its favor on each of the plaintiff's counts, dismiss the plaintiff's claims in their entirety, and award Whole Foods costs, fees, and other relief as the Court deems just and appropriate.

Respectfully submitted,

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December 31, 2008

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Answer was served this 31st day of December, 2008, by operation of the Court's Electronic Filing System on counsel for plaintiff:

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December 31, 2008