

Exhibit 25 to Plaintiff's
Memorandum of Points and Authorities
in Support of Its Motion for Temporary
Restraining Order and Preliminary Injunction
(PX01327)
Cited Portions of the Exhibit are Excerpted

[PORTIONS REDACTED]

FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

In the Matter of:)
WHOLE FOODS MARKET, INC.,)
a corporation,) File No. 071-0114
and)
WILD OATS MARKETS, INC.,)
a corporation.)
-----)

Thursday, April 12, 2007

Room 6201
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

The above-entitled matter came on for
investigational hearing, pursuant to notice, at
8:08 a.m.

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 MICHAEL A. FRANCHAK, ESQ.

5 SAMUEL I. SHEINBERG, ESQ.

6 MICHAEL J. BLOOM, ESQ.

7 Federal Trade Commission

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13 ON BEHALF OF WHOLE FOODS MARKET, INC.:

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For The Record, Inc.
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1 APPEARANCES: (continued)

2

3 ON BEHALF OF WHOLE FOODS MARKET, INC.:

4 ROBERTA LANG, ESQ.

5 Whole Foods Market

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7 Austin, Texas 78703

8 (512) 542-0217

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11

12 ALSO PRESENT:

13 CHETAN I. SANGHVI, Ph.D., Economist - FTC

14 STEPHANIE REYNOLDS, Law Clerk - FTC

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1 PROCEEDINGS

2 - - - - -

3 Whereupon --

4 WALTER ROBB

5 a witness, called for examination, having been first
6 duly sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. FRANCHAK:

9 Q. Good morning, Mr. Robb.

10 A. Good morning.

11 Q. Have you given testimony before?

12 A. In court or something you mean?

13 Q. In a court, in this sort of setting?

14 A. Yes. I'm familiar with this setting, yes.

15 Q. Tell me when you have.

16 A. Let's see. In my -- in my -- I think when I got
17 divorced.

18 Q. Okay.

19 A. In 1987.

20 Q. Anything related to your business activities?

21 A. No.

22 Q. Okay.

23 A. '87.

24 Q. Hopefully this will be a more pleasant
25 experience than that.

1 A. Yeah.

2 Q. But having done this before, I'll assume you're
3 familiar with how the reporter takes testimony.

4 A. Yes, I am.

5 Q. I'll be asking questions, and if you don't
6 understand a question I ask, please, you know, let me
7 know, and I'll try to rephrase if possible.

8 A. Okay.

9 Q. The court reporter doesn't understand -- or
10 can't get head nods or head bobs or anything else like
11 that, so make sure your responses are audible. I'll try
12 to help make sure that that's the case.

13 A. Okay.

14 Q. As will several other people here obviously.

15 A. Sure.

16 Good morning.

17 MR. BLOOM: Good morning.

18 BY MR. FRANCHAK:

19 Q. If you answer a question, I'm going to assume
20 you understood it.

21 Is that fair?

22 A. Sure.

23 Q. And let's try to make sure that we let each
24 other finish our question or response before we
25 interrupt each other. I'll try to do my best.

1 A. Okay.

2 Then we're going to interrupt each other after
3 that?

4 Q. We'll try our best.

5 A. I understand. Okay. Very good.

6 When are you going to eat your muffin, though?
7 That's what I'm worried about.

8 Q. That's a good question.

9 A. Okay.

10 Q. Now would be the --

11 A. Yeah.

12 Q. -- but it's going to be hard to do with me
13 trying to ask questions.

14 MR. BLOOM: I'd help him, but I brought my own.

15 THE WITNESS: All right.

16 BY MR. FRANCHAK:

17 Q. I think I understood from the material I read
18 that you got into the grocery business shortly after you
19 left Stanford.

20 Is that correct?

21 A. Certainly.

22 I mean, I left Stanford -- I finished Stanford
23 in 1976 and I started a natural food store in 1977.

24 Q. Where was that?

25 A. It was located in Weaverville, California, which

1 is Trinity County, the north part of California.

2 MS. LANG: Mike, I know it's unusual, but is
3 there any way that we could introduce who's around the
4 table so Walter knows? I know some of us have been
5 together for a while, but --

6 MR. FRANCHAK: Sure. That's fine.

7 THE WITNESS: I met these two individuals; I
8 haven't met you (indicating).

9 MR. BLOOM: I'm Michael Bloom.

10 THE WITNESS: I'm sorry. You are?

11 MR. BLOOM: Michael Bloom.

12 THE WITNESS: You're a lawyer?

13 MR. BLOOM: I'm a lawyer.

14 THE WITNESS: Okay. Great.

15 MS. LANG: Thank you.

16 THE WITNESS: I appreciate it.

17 BY MR. FRANCHAK:

18 Q. And tell me about -- tell me about your
19 experience going forward from there.

20 A. From there?

21 Q. Uh-huh.

22 A. Okay.

23 Well, I was an entrepreneur. I borrowed
24 \$10,000 from my stepfather because my -- nobody else
25 would lend me the money, and so I did a start-up and ran

1 However, the growth rate is 2X here compared to there.

2 Q. In the U.S. I've seen, what, 2 percent?

3 A. 2-1/2 percent.

4 I mean, some people say that the natural and
5 organic industry is about \$50 billion and the organic --
6 pure organic is 15 to 18 billion dollars. It depends on
7 the numbers and it depends on how you're, you know,
8 classifying the sales, but those are rough orders of
9 magnitude.

10 Q. And which information sources have you found to
11 be the most accurate in terms of gauging organic market
12 size, organic growth in general?

13 A. Well, there's a series of them.

14 I mean, there's IFOAM, which is the
15 International Federation of Organic Agricultural
16 Movements. That's an international organization. IFOAM
17 does an annual survey of organics in the world that
18 comes out once a year, has excellent data on not only --
19 primarily on the production side.

20 There's the Natural Food Merchandiser which does
21 an annual survey. That's the trade magazine.

22 There's Progressive Grocer.

23 So there's a number of trade sources for the
24 data.

25 Q. You mentioned Safeway launched -- when they

1 launched their O label they had about 150 SKUs.

2 Is that where they currently stand?

3 A. I believe that they've indicated they're going
4 to launch another fifty or a hundred SKUs, but I haven't
5 seen evidence of that yet.

6 Q. When they launched the 150 SKUs, did they launch
7 it nationwide or --

8 A. Nationwide.

9 Q. Okay. Are there particular Safeway locations,
10 particular stores even, that are more evolved or
11 advanced in marketing natural and organic, in your
12 experience?

13 A. Well, as you know, their principal go-to-market
14 strategy in the last year and a half has been the
15 lifestyle store, which has been much publicized, where
16 they spend a ton of dough on those stores and they
17 basically remake them, lighting, flooring, aesthetics,
18 and so forth. You might say they look a little bit more
19 like Whole Foods.

20 But -- and they've been doing that sequentially
21 across the country, picking various markets I think
22 where they thought they could be successful. I think
23 they've done about 50 percent of the markets at this
24 time or 50 percent of their stores.

25 But the best lifestyle stores I have seen -- the

1 very best one is in Boulder, North Boulder, which we
2 compete against, and after that I would say
3 Northern California, which is their home market and
4 where they started the concept. I think those are the
5 best ones that I've seen so far.

6 Q. What makes the Boulder one best?

7 A. Obviously they -- I mean, that's one of our
8 stronger stores. And they seem to have given the
9 regional there a lot of permission to do some things and
10 they -- it's just the best executed lifestyle store I've
11 seen. It has the -- just is the highest-quality
12 execution.

13 Q. What does "execution" mean?

14 I've seen that everywhere. I've heard that
15 everywhere.

16 A. Yeah. Well, in the retail business, essentially
17 we use standards as a way of measuring performance. It
18 could be something as simple as but when the doors open
19 at 8:00 is the store standing tall, does every
20 department have its merchandising full and fresh, is the
21 quality of the product where it needs to be, are the
22 team members ready to go, do they have their aprons on,
23 are the check stands full, I mean, the cleanliness of
24 the floor, the straightness of the signs, does every
25 meat item have a sign.

1 A. Again, I didn't -- I didn't go inside. I didn't
2 drive around that side of -- have you been there
3 yourself? Have you seen how it is?

4 Q. Not since -- not since the -- not since you've
5 had stores here. I may have been in the location
6 before.

7 A. I didn't make an observation on that at that
8 time on that visit.

9 Q. And October to now -- did I ask that --

10 A. Well, they clearly -- they have built out the --
11 they had done what we call the TI or tenant
12 improvements. They've done the work on the inside to
13 build it out towards being a store.

14 Q. I believe using your 15 to 20 percent figure,
15 you're saving in the neighborhood of 200,000 per week
16 for every -- in sales for every week that the 29th
17 store -- Street stays closed relative to your existing
18 store.

19 Is that fair to say?

20 A. No. I don't accept the 15 to 20 percent.
21 That's a projection done by Gene, and I would argue it's
22 more on the 10 to 15 percent range. And retailers don't
23 give up market share easily, so let the battle begin.
24 We would claw it out and see what happens. But
25 15 percent is probably a reasonable number given its

1 proximity. It's only like five blocks.

2 Q. What have you --

3 A. That's an initial number, and then you have to
4 do the dance and see where it lands.

5 Q. What have you authorized in terms of preparing
6 for the opening of the 29th Street store?

7 A. What have I authorized in preparing for this
8 29th Street store.

9 If I may, I'm going to step back for a second
10 before I come back to your question.

11 Is that all right? Okay.

12 Q. Probably.

13 A. Well, I mean, you've got to look at this
14 marketplace in broader competitive terms over the last
15 two years, and we spoke at the beginning about the
16 Safeway lifestyle stores because the -- when Safeway
17 came in and took that north Safeway location and
18 remodeled it extensively, hit us for about [REDACTED] bucks
19 a week.

20 Q. Which is what? [REDACTED] percent?

21 A. Closer to [REDACTED]

22 [REDACTED] thousand bucks on a million --

23 Q. We'll figure out the math later.

24 A. Yeah.

25 And then they turned around and remodeled the

1 MS. LANG: Thanks, Mike.

2 MR. FRANCHAK: Thank you.

3 (Whereupon, the foregoing investigational
4 hearing was concluded at 3:32 p.m.)

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