

Exhibit 15 to Plaintiff's
Memorandum of Points and Authorities
in Support of Its Motion for Temporary
Restraining Order and Preliminary Injunction
(PX01338)

Cited Portions of the Exhibit are Excerpted

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FEDERAL TRADE COMMISSION

I N D E X

WITNESS:

ELISABETH GRIFFIN FOSTER

BY MS. LIU

EXAMINATION:

5

EXHIBITS	DESCRIPTION	FOR ID
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None

OTHER EXHIBITS REFERENCED

PAGE

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1 P R O C E E D I N G S

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(Mr. Bloom, Mr. Libby, Ms. Moscatelli not present.)

Whereupon--

ELISABETH GRIFFIN FOSTER

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

EXAMINATION

BY MS. LIU:

Q. Good morning. My name is Jeanne Liu, and I'm an attorney at the Federal Trade Commission. This morning I'm going to ask you some questions about your job and about Whole Foods.

Before we go any further, I would like to explain how this hearing will work. As you are aware, you were just sworn in a few seconds ago. All of my questions and your answers will be recorded by the court reporter. For the court reporter's benefit and so that the record is clear, please respond to all of my questions verbally. Gestures, nods of the head, are generally not recorded.

Is that okay?

A. Yes.

Q. Also, so that the record is clear, let's try not

1 to talk over each other. I will do my best not to
2 interrupt you when you're answering a question;
3 likewise, I would ask that you wait until I finish
4 asking a question before you begin your response.

5 Is that --

6 A. Yes.

7 Q. -- is that acceptable?

8 A. Yes.

9 Q. And if you do not understand a question, please
10 let me know, and I'll do my best to rephrase it or to
11 clarify, and if you answer a question, I'll assume that
12 means you understood the question and that you heard the
13 question, of course.

14 Is that okay?

15 A. Yes.

16 Q. If you do not know the answer to a question,
17 please just say so, and we'll move on.

18 In response to some of my questions, your
19 attorney may object, either the question calls for a
20 privileged response or exceeds the scope of the
21 investigation, those being the only two objections
22 recognized by the Commission rules.

23 If your counsel objects at any point, please
24 pause for a moment to think about the question, and in
25 most instances, you will answer the question.

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1 Do you understand these instructions?

2 A. Yes.

3 Q. And we will take periodic breaks throughout the
4 day, but if you need a break at any time, let me know,
5 and I will try to accommodate you, okay?

6 How did you prepare for this hearing today?

7 A. I met yesterday with Neil and Roberta for a few
8 hours, and we discussed some various things, but outside
9 of that, it's what I know.

10 Q. Did you review any documents at that time?

11 A. A limited number.

12 Q. And these documents you reviewed with your
13 counsel. Is that correct?

14 A. That's correct.

15 Q. Can you talk about some of the documents that
16 you -- talk about the documents that you reviewed or
17 describe them?

18 MR. IMUS: I object as privileged.

19 MS. LIU: Okay.

20 MR. IMUS: I will say that they were all
21 documents which have been produced to the FTC.

22 MS. LIU: Okay, that's acceptable.

23 BY MS. LIU:

24 Q. Please state and spell your full name for the
25 record.

1 A. Elisabeth, E L I S A B E T H, Griffin Foster,
2 and I go by Betsy.

3 Q. And where are you currently employed?

4 A. I'm sorry?

5 Q. Where are you currently employed?

6 A. Whole Foods Market.

7 Q. What is your current position?

8 A. Vice president of business development.

9 Q. And when did you obtain your current position?

10 A. 2005.

11 Q. Do you recall the month or --

12 A. August.

13 Q. When did you first begin your employment at
14 Whole Foods?

15 A. November 1994.

16 Q. What other positions have you held at Whole
17 Foods?

18 A. I was the national operations controller; I was
19 the chief information officer; and the -- we had a
20 subsidiary called wholepeople.com, I was the CFO of that
21 organization; and I was the vice president, purchasing
22 and distribution.

23 Q. Have you held any other positions?

24 A. Only my current position as VP of business
25 development.

1 A. I'm sorry, one more time?

2 Q. Who is responsible for the comp-shops or the
3 store casings of the Wild Oats stores?

4 A. That could have been regional leadership
5 members.

6 Q. Do you know who would know the answer to this?

7 A. I think Edmund would.

8 Q. Would Walter Robb be knowledgeable on this?

9 A. Possibly.

10 Q. Going up to the email at the very top from
11 Glenda Chamberlain, she wrote, "Regarding the main
12 assumptions in your model on how many stores we would
13 keep and how many would transfer volume to existing WFM
14 stores, does this new info confirm or change those
15 assumptions?"

16 Can you tell me what the main assumptions were?

17 A. In the very early stages, we had a high-level
18 model based on public information, and this then
19 provided information at a store level.

20 Q. But what were some of the -- what were the main
21 assumptions?

22 A. It would have been key assumptions in terms of
23 how many stores we would keep, close, what we thought
24 volumes were.

25 Q. And what were stores that Whole Foods planned to

1 keep as part of this main assumption?

2 A. In the early stages, we just estimated a number.

3 We had no site-specific information.

4 Q. And what was that number?

5 A. Hmm, I believe we -- I believe we were
6 estimating [REDACTED] we would keep.

7 Q. And for reference, out of how many total stores?

8 A. 110.

9 Q. And so you would close -- Whole Foods planned on
10 closing the remainder of the 110?

11 A. Or selling some of them.

12 Q. Who came up with this key assumption about
13 which -- how many stores to close and how many to keep?

14 A. Jim and I worked on the model. We had
15 discussions with the E-team on what assumptions we felt
16 were reasonable for high-level modeling purposes.

17 Q. How did you and Jim come up with these
18 assumptions?

19 A. Using the public data.

20 Q. So, as of December, the main assumptions that
21 you and Jim came up with were to keep [REDACTED] Wild Oats
22 stores and either close or sell the remainder. What are
23 the numbers today?

24 A. The numbers continue to change. Again, we don't
25 have a final plan. We believe that there are actually

1 more that we would like to keep open now.

2 We've also, since then, considered alternative
3 formats and experiments that we can try to utilize even
4 more of the locations. So, there isn't at this point a
5 definitive number, but it's -- it is above the 35.

6 Q. Is it more than 50?

7 A. Can I do math? May I borrow your pen?

8 MR. IMUS: I'm always leery about --

9 MR. FRANCHAK: Yeah, I mean -- no, I don't
10 care -- look, I don't think it's going to be relevant to
11 make this as an exhibit, but...

12 THE WITNESS: Right now, the one key assumption
13 is that we would divest Henry's and Sun Harvest, which
14 has 35 of the 110 stores, and that leaves a balance of
15 75 stores that we are still going to evaluate.

16 (Mr. Bloom present.)

17 BY MS. LIU:

18 Q. So, there are 35 stores, and these are Henry's
19 and Sun Harvest stores, that Whole Foods is planning on
20 divesting. Is that correct?

21 A. Correct, to an existing -- to an operator, but
22 they would want the brand and banner.

23 Q. And who is this operator?

24 A. We currently are negotiating an agreement,
25 contingent clearly on this deal, with a company called

1 Apollo. It's a private equity group.

2 Q. Are you involved in these negotiations?

3 A. Yes, I'm doing those.

4 Q. And who else is involved?

5 A. Jim has been involved, our bankers were involved
6 on a very limited basis, and certainly our legal team.

7 Q. Who are your bankers?

8 A. RBC Capital. They advised us on the
9 transaction.

10 Q. Since these are Wild Oats stores, are you
11 working with anyone on the Wild Oats side?

12 A. We really can't.

13 Q. So, at this time, Whole Foods plans on keeping
14 75 --

15 A. Up to 75.

16 Q. Up to. Can you tell me a little bit more about
17 what prompted the change in the key assumption for
18 keeping the 35 stores to now up to 75 Wild Oats stores?

19 A. We continue to learn more about the locations
20 and continue to think about an operating strategy, and
21 so that number continually is changing as we more
22 closely evaluate the stores, as we ultimately understand
23 what the stores' actual performance is, and as we
24 consider alternative formats.

25 Q. Can you tell me about the alternative formats

1 clearly different, and our product mix, you know, we try
2 to differentiate as well. So, it's an overall
3 experience. We believe it's something consumers
4 appreciate, enjoy and come back for.

5 Q. When you mention the outside of the stores are
6 different, how do you -- who are you comparing Whole
7 Foods with?

8 A. Any other grocer. We try to create -- we don't
9 have a cookie-cutter storefront, if you will, or a
10 cookie-cutter box and design. So, we try to design into
11 the community in a location that we're going.

12 Q. And how is Whole Foods different than other
13 supermarkets with respect to product mix?

14 A. Product mix? Well, actually, these days, we're
15 far more similar than we used to be. When I was in
16 purchasing over five years ago, we weren't talking about
17 Wal-Mart and we weren't talking about Safeway and we
18 were just starting to talk about Costco and whatnot.
19 So, there's a lot of products in our stores that are now
20 in lots of other places. So, there's a large component
21 that is now consistent as natural and organic are going
22 mainstream.

23 Clearly we do try to differentiate ourselves.
24 Obviously we offer more organic than conventional
25 supermarkets, but these days, there's almost not a

1 conventional chain you can't go in that doesn't have
2 organic items and produce, has cereals, bars, juices,
3 and a lot of them now carry natural meats. So, we
4 differentiate, back to your previous question, a lot
5 with our store and the ambiance.

6 We offer customer service, and rarely in a
7 conventional store can you find someone to help you. We
8 really try to have knowledgeable, trained staff that can
9 help you as you're shopping the store, if you're looking
10 for something or if you have a question about a product
11 or where it's from, any kind of suggestion. So, those
12 are some of the key pieces.

13 Q. With respect to fixtures, how are Whole Foods
14 stores different from the other supermarkets?

15 A. I think we -- you know, we have a lot of similar
16 fixtures in terms of shelving and racking and things of
17 that nature. We do a lot of design that may be a bit
18 unique in produce in terms of tables and how we
19 merchandise, things of that nature. Obviously we do a
20 lot more prepared foods, and the newer stores having
21 some more venues in the store, obviously being different
22 than some of the other stores, although I will add,
23 several of them are starting to, you know, try some of
24 those and copy them.

25 Q. And with respect to ambiance, how does the

1 ambiance at a Whole Foods differ from the supermarkets?

2 A. I think there is similarities and differences.
3 Obviously they're both a grocery store, their
4 foundation, but I think we have different flooring,
5 different tile. We use some different colors
6 throughout. We use a lot of lighting to try to really
7 display the products in a way that's very easy on your
8 eyes and very pleasing so you can really see what you're
9 looking at.

10 Q. You mentioned venues. Can you tell me a little
11 bit more about the venues at Whole Foods?

12 A. When we say a venue, we mean it's a -- for
13 example, a pizza station. So, we have an oven -- a
14 pizza oven in the store, so you can actually go and get
15 cooked, right there in that oven, pizza, or sushi bar
16 or -- although everyone has a sushi bar, that's a bad
17 example. Maybe -- in our new store in Lamar, where
18 we're adding more venues, we have a salad station and a
19 seafood station and a barbecue station, so -- in some of
20 our larger stores, we're actually creating mini almost
21 restaurants within the store.

22 Q. What do you mean by mini restaurants?

23 A. You can come, you can sit down, you can order
24 your food, and actually sit at that venue to have your
25 meal and be served.

1 Q. So, there are waiters?

2 A. Um-hum.

3 Q. Are there any other venues that you can think of
4 that Whole Foods has?

5 A. Again, to emphasize, every store is different.
6 We are constantly evolving and trying new things. So,
7 just because Whole Foods has it doesn't mean every store
8 has it. So, again, our new Lamar store, some of our
9 examples are we have a candy island. We have a
10 trattoria. But again, there's 189 that don't have
11 those. So, generally, based on size of the store,
12 stores will -- if they're larger, are adding some venues
13 in our newer format.

14 Q. Can you tell me what a candy island is?

15 A. It's a unique thing that we've done there. We
16 actually have a chocolate enrobing station, so you can
17 dip anything you would like dipped in chocolate. You
18 can get their -- they make a lot of barks, they make a
19 lot of truffles. So, it's just a center island, if you
20 will, with personnel that prepare a lot of candy that is
21 then for sale, chocolates, truffles.

22 MR. FRANCHAK: Is the enrobing station a
23 fountain?

24 THE WITNESS: It is a fountain. So, you can
25 just dip a strawberry or anything. You can actually

1 bring anything you personally want dipped, and they will
2 dip it for you.

3 BY MS. LIU:

4 Q. Oh, you can bring products from outside the
5 store?

6 A. Not outside the store, but within the store.

7 Q. There is something else you mentioned that you
8 have at the Lamar store other than the candy island, and
9 I didn't quite get that.

10 A. We have a trattoria, and it has a menu with
11 about roughly ten different entrees that rotate
12 seasonally that, again, you can sit down, you will be
13 waited on, that you can select from, and it's all
14 freshly made pasta and pasta entrees that they will
15 prepare and bring to you.

16 Q. Can you spell that for me, please?

17 A. Trattoria?

18 Q. Um-hum, yes.

19 A. T R A T T O R I A? Spell-check, that's really
20 important for me.

21 MR. FRANCHAK: Old spelling bee skills.

22 THE WITNESS: Wasn't good at that, phonetic.

23 BY MS. LIU:

24 Q. Are the candy island, the trattoria, only
25 offered at the Lamar store?

1 of household spend and, like you said, age, and you can
2 get the list of all of those off of our site study
3 reports that you have.

4 Q. I would like to introduce PX00171-001. This is
5 a printout off the Whole Foods web site entitled "Real
6 Estate Development."

7 A. (Document review.) Okay.

8 Q. Have you seen this particular web site before?

9 A. No, I have not.

10 Q. For the record, this was printed out on
11 Wednesday, April 4th, 2007.

12 Have you seen such a web site page discussing
13 real estate development before?

14 A. Not at Whole Foods Market.

15 Q. With respect to the middle of this document
16 where it lists several factors, I guess guidelines for
17 considering whether or not to open a new store, the
18 first one is 200,000 people or more in a 20-minute drive
19 time.

20 It would be fair to say that that is an
21 important factor for Whole Foods?

22 A. Yes.

23 Q. 40,000 to 75,000 square feet, is that also fair
24 to say --

25 A. I think that's a recommended range, but we

1 clearly have stores below that and we have stores above
2 that. So, it's not -- it isn't a hard and fast.

3 Q. In terms of locations of future Whole Foods
4 sites, would 40,000 be on the low end or could there be
5 lower?

6 A. There absolutely could be lower. I'm doing
7 deals right now with stores that are less than that.

8 Q. Is the intention for those stores to be expanded
9 at a later date or to be opened as is as a Whole Foods
10 store?

11 A. Open as is as a Whole Foods store, and we would
12 love to get more space if we could.

13 Q. The third one is the large number of
14 college-educated residents. Is that also an important
15 factor to Whole Foods?

16 A. Yes, as I said earlier.

17 Q. After having reviewed this document, is there
18 any reason for you to believe that the contents of this
19 web site are contrary to your belief in terms of what
20 Whole Foods is looking for in terms of potential real
21 estate sites?

22 A. I think this is a good general guideline for
23 people who think they have potential properties for
24 Whole Foods Market.

25 Q. Is there anything that you disagree with?

1 C E R T I F I C A T I O N O F R E P O R T E R

2 DOCKET/FILE NUMBER: 0710114

3 CASE TITLE: WHOLE FOODS and WILD OATS

4 DATE: APRIL 10, 2007

5

6 I HEREBY CERTIFY that the transcript contained
7 herein is a full and accurate transcript of the notes
8 taken by me at the hearing on the above cause before the
9 FEDERAL TRADE COMMISSION to the best of my knowledge and
10 belief.

11

12 DATED: 4/10/2007

13

14

15

16 SUSANNE BERGLING, RMR-CLR

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the transcript
21 for accuracy in spelling, hyphenation, punctuation and
22 format.

23

24

25

DIANE QUADE

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