



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of _____

WHOLE FOODS MARKET, INC., _____
a corporation. _____

Docket No. 9324

PUBLIC

**THE KROGER CO.'S JOINDER IN
MOVING THIRD PARTIES' MOTION TO
ENFORCE PROTECTIVE ORDER**

Third party The Kroger Co. ("Kroger") hereby joins in and incorporates by reference the Motion to Enforce Protective Order ("Motion to Enforce") filed on July 2, 2009, by Ahold, U.S.A., Inc., New Seasons Market, Inc., Save Mart Supermarkets, Gelson's Markets, Safeway, Inc., Harris Teeter, Inc., and Apollo Management Holding L.P. ("Moving Third Parties") in connection with *In re Whole Foods Markets, Inc.*, Docket No. 9324. Kroger's highly confidential documents are among those documents that are the subject of the Motion to Enforce.

As noted in the Motion to Enforce Protective Order:

Whole Foods does not intend to file an opposition to this motion and, as stated in its response to an earlier motion by Gelson's Markets, not only does Whole Foods not oppose returning the documents consistent with its obligations in the District Court, Whole Foods would like to return the documents to their owners and step aside while counsel for Plaintiffs and the third parties resolve the issue of the discoverability of the documents by Plaintiffs in *Kottaras v. Whole Foods Market, Inc.*, Case No. 1:08-CV-01832-PLF (D.D.C.) ("Kottaras").

For the reasons set forth in the Motion to Enforce, Kroger respectfully requests that the Commission grant the Motion to Enforce the Protective Order and order Whole Foods to return immediately to Kroger all documents upon entry of an order permitting as much by Judge Friedman.

Respectfully submitted,

Justin S. Antonipillai /KL

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Dated: July 13, 2009

CERTIFICATE OF SERVICE

I, Danielle Garten, certify that a true and correct copy of the foregoing KROGER CO.'S JOINDER IN MOVING THIRD PARTIES' MOTION TO ENFORCE PROTECTIVE ORDER was served on counsel in this matter this 13th day of July, 2009:

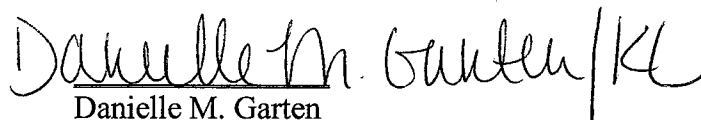
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