

INTERLOCUTORY, MODIFYING,
VACATING, AND MISCELLANEOUS
ORDERS

IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,
AND
WILD OATS MARKETS, INC.**

Docket No. 9324 Order, January 28, 2009

Order granting Whole Foods Market's motion to withdraw the matter from
adjudication for the purpose of considering a consent agreement.

**ORDER WITHDRAWING MATTER FROM ADJUDICATION UNTIL
FEBRUARY 5, 2009**

Respondent Whole Foods Market, Inc., has moved, pursuant to Rule 3.25(b) of the Commission Rules of Practice, to withdraw this matter from adjudication for the purpose of considering a proposed consent agreement. Respondent also requests that its motion and attachments thereto be treated as non-public. Complaint counsel have taken no position with respect to Respondent's motion. The ALJ has certified the motion to the Commission, pursuant to Rule 3.25(d).

Upon consideration of the motion, the Commission has determined to withdraw this matter from adjudication for five (5) business days. Absent another order by the Commission, this matter will revert to Part 3 adjudicative status at 12:01 a.m. on Thursday, February 5th.

With regard to Respondent's request for non-public treatment of its motion and attachments thereto, pursuant to Rule 3.25(b), Respondent's proposed Agreement Containing Consent Order and proposed Decision and Order will not be placed on the public record unless and until accepted by the Commission. We can discern no

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good reason, however, for according non-public treatment to Respondent's motion and other attachments. There is a strong presumption that the public has a right to know what is happening in the Commission's litigation, and Respondent has made no showing to justify keeping these materials off the public record. Accordingly,

IT IS ORDERED THAT Respondent's request to withdraw this matter from adjudication is **GRANTED**. This matter is withdrawn from adjudication until 12:01 a.m. on Thursday, February 5, 2009, at which time it will return to adjudicative status under Part 3 of the Commission Rules of Practice.

IT IS FURTHER ORDERED THAT Respondent's request for non-public treatment of its motion and attachments thereto is **GRANTED IN PART AND DENIED IN PART**, as follows:

1. The attachments to Respondent's motion titled Agreement Containing Consent Order and proposed Decision and Order will not be placed on the public record unless and until accepted by the Commission, and
2. Respondent's motion and remaining attachments thereto will be placed on the public record.

By the Commission.

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IN THE MATTER OF

**NATIVE ESSENCE HERB COMPANY,
MARK J. HERSHISER,
AND
MARIANNE HERSHISER**

Docket No. 9328 Order, January 29, 2009

Order granting complaint counsel's and respondents' joint motion to withdraw the matter from adjudication for the purpose of considering a consent agreement.

**ORDER WITHDRAWING MATTER FROM ADJUDICATION FOR THE
PURPOSE OF CONSIDERING A PROPOSED CONSENT AGREEMENT**

Complaint Counsel and Respondents having jointly moved that this matter be withdrawn from adjudication to enable the Commission to consider a proposed Consent Agreement, and having submitted a proposed Consent Agreement containing a proposed Order, executed by the Respondents and by Complaint Counsel and approved by the Director of the Bureau of Consumer Protection, which, if accepted by the Commission, would resolve this matter in its entirety;

IT IS ORDERED, pursuant to Rule 3.25(c) of the Commission Rules of Practice, 16 C.F.R. § 3.25(c) (2009), that this matter in its entirety be and it hereby is withdrawn from adjudication, and that all proceedings before the Administrative Law Judge be and they hereby are stayed pending a determination by the Commission with respect to the proposed Consent Agreement, pursuant to Rule 3.25(f), 16 C.F.R. § 3.25(f); and