

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

**FILED**

FEB 22 2011

PAUL PASCHETTO, Derivatively on Behalf )  
of PANERA BREAD COMPANY, )

Plaintiff, )

vs. )

RONALD M. SHAICH, et al., )

Defendants, )

-and- )

PANERA BREAD COMPANY, a Delaware )  
corporation, )

Nominal Defendant. )

Case No. 08-SL-CC00805

Division No. 2

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement ("Stipulation"), dated February \_\_, 2011, is made and entered into by and among the following Parties,<sup>1</sup> each by and through their respective counsel of record in the above captioned shareholder derivative action (the "Derivative Action"): (i) Paul Paschetto individually and derivatively on behalf of Panera Bread Company; (ii) Ronald M. Shaich, Mark A. Borland, John M. Maguire, Scott G. Davis, Thomas C. Kish, Larry J. Franklin, Domenic Colasacco, Fred K. Foulkes, Mark E. Hood, and Thomas E. Lynch; and (iii) Panera Bread Company. This Stipulation is intended by the Parties fully, finally, and forever to compromise, resolve, discharge, and settle the Released Claims and dismiss the Derivative Action with prejudice, upon the terms and subject to the conditions set forth herein.

## **I. BACKGROUND**

On February 22, 2008, Plaintiff filed a shareholder derivative petition in the Circuit Court of St. Louis County, Missouri under the caption *Paschetto v. Shaich, et al.*, Case No. 08-SL-CC00805 (the "Petition"). Plaintiff brought derivative claims on behalf of Panera against certain of its officers and directors for alleged violations of state law, including breaches of fiduciary duties, corporate mismanagement, waste of corporate assets, and unjust enrichment. Plaintiff alleged that, between November 2005 and February 2008, at the Individual Defendants' direction, Panera: (i) improperly overstated the Company's expected growth and business prospects; (ii) continuously increased Panera's earnings guidance, while demand for Panera products was actually declining; and (iii) opened new bakery-cafe locations pursuant to an aggressive growth strategy, which resulted in the cannibalization of sales at Panera's existing bakery-cafes. Plaintiff also alleged that certain of the Individual Defendants, with non-public knowledge of these facts, sold their personally held shares of Company stock at artificially inflated prices. Plaintiff also alleged that the Individual Defendants caused substantial monetary losses to Panera and other damages, such as to the Company's reputation and goodwill.

---

<sup>1</sup> All capitalized terms are defined in Section IV.1 below, unless otherwise noted.

On July 18, 2008, Defendants moved to dismiss the Petition on the grounds that: (i) Plaintiff had not adequately pled facts demonstrating that a demand upon Panera's Board of Directors ("Board") to bring the Derivative Action would have been a futile act; and (ii) Plaintiff's causes of action were not sufficiently pled.

On August 29, 2008, Plaintiff filed an opposition to the Defendants' motion to dismiss. Plaintiff argued that the factual allegations in the Petition created a reasonable doubt that a majority of the Board was disinterested and independent for purposes of considering a demand, and that the Petition sufficiently pled facts to support each of the derivative claims against the Individual Defendants.

On September 15, 2008, after the motion to dismiss had been fully briefed, the Court heard oral argument on the motion to dismiss from the Parties and their respective counsel.

On December 14, 2009, the Court denied the Defendants' motion to dismiss, holding that the Petition adequately pled demand futility and that the allegations in the Petition were sufficient to support the claims. On January 27, 2010, Defendants filed an answer to the Petition.

After Panera answered the Petition, Plaintiff pursued discovery. On January 15, 2010, Plaintiff received Defendants' response to Plaintiff's first requests for production of documents, which were originally served on September 25, 2008. On February 17, 2010, the Parties executed a stipulation and order regarding the use of confidential materials and information, which was entered by the Court on the same date. On March 1, 2010, after counsel for the respective Parties met and conferred regarding a discovery plan, Plaintiff served a second request for production of documents upon Panera and the Individual Defendants.

On April 9, 2010, Plaintiff served Panera with deposition notices for individuals knowledgeable to testify on behalf of Panera as to various matters pertinent to Plaintiff's claims. Plaintiff also served deposition notices upon: (i) each of the Individual Defendants; (ii) former Panera employees David Burns, Kevin Blasdell, and Mark Brownstein; (iii) Price Waterhouse Coopers LLP, Panera's auditor during the relevant time period; and (iv) other individuals identified during this discovery process.

On May 17, 2010, Defendants filed a motion for summary judgment ("MSJ"), arguing that the Derivative Action should be dismissed as a result of the U.S. District Court for the Eastern District of Missouri's decision in a factually related securities class action entitled *Western Washington Laborers-Employers Pension Trust v. Panera Bread Company, et al.*, Case No. 4:08CV00120 ERW (the "Securities Class Action"). Specifically, Defendants argued that the partial granting of a summary judgment motion in the Securities Class Action finding the same statements challenged in the Derivative Action to have been proper defeated any alleged breach of fiduciary duty and eviscerated any potential damages alleged in the Derivative Action. Also on May 17, 2010, Defendants filed a motion for a protective order ("MPO") seeking to stay all discovery, including, outstanding document requests and deposition notices, pending resolution of the MSJ.

On June 7, 2010, the Parties stipulated to the withdrawal of Defendants' MSJ without prejudice while the Parties engaged in settlement negotiations and participated in a formal mediation. In connection with those negotiations, Plaintiff's counsel sent Defendants' counsel a settlement proposal containing detailed corporate governance reforms targeted at, *inter alia*, Board level oversight of the Company's growth and expansion activities. Defendants' counsel produced to Plaintiff's counsel certain confidential documents, including documents related to the Company's director and officer liability insurance policies. On July 13, 2010, the Parties and their respective counsel attended a full-day mediation session with the Honorable Daniel Weinstein (Ret.) of JAMS. The Parties were unable to reach a settlement at that time.

On July 28, 2010, Defendants re-filed the MSJ. On July 29, 2010, Plaintiff filed a response in opposition to Defendants' MSJ and moved to continue the MSJ pursuant to Missouri Supreme Court Rule 74.04(f) on the grounds that it was premature without additional discovery. Also on July 29, 2010, Plaintiff filed an opposition to the Defendants' MPO and a cross-motion to compel Defendants' production of documents responsive to Plaintiff's outstanding discovery requests.

On September 1, 2010, the Court denied Defendants' MPO and ordered the Parties to resume discovery on a truncated schedule. On September 13, 2010, the Parties submitted a joint scheduling order and the Court calendared the Derivative Action for a July 11, 2011 trial date.

Following the Court's denial of Defendants' MPO, Plaintiff moved forward with discovery. On October 12 and 21, 2010, respectively, Plaintiff served third and fourth requests for production of documents upon Panera and the Individual Defendants. On October 1, 2010, November 10, 2010, and November 29, 2010, respectively, Plaintiff served first, second, and third sets of interrogatories upon Panera.

On October 13, 2010, November 3, 2010, November 8, 2010, and November 18, 2010, Plaintiff took the depositions of the individuals designated by Panera to testify as persons knowledgeable as to certain deposition topics identified by Plaintiff. Plaintiff took the deposition of a member of the Panera Board, on November 30, 2010.

On October 18, 2010, Defendants filed a reply in support of the MSJ. On November 12, 2010, Plaintiff filed a supplemental memorandum in opposition to Defendants' MSJ. On November 19, 2010, counsel appeared before the Court to present their arguments on Defendants' MSJ.

The Parties then renewed negotiations concerning a potential resolution of the Derivative Action. After extensive negotiations, the Parties reached an agreement in principle to settle the Derivative Action upon the terms and subject to the conditions set forth in this Stipulation. The Board of Panera, in an exercise of its independent business judgment, approved the Settlement and each of its terms.

## **II. PLAINTIFF'S CLAIMS AND THE BENEFITS OF SETTLEMENT**

Plaintiff believes that the Derivative Action has substantial merit and Plaintiff's entry into the Stipulation and Settlement is not intended and shall not be construed as an admission or concession concerning the relative strength or merit of the claims alleged in the Derivative Action. However, Plaintiff and Plaintiff's counsel recognize and acknowledge the significant risk, expense, and length of continued proceedings necessary to prosecute the Derivative Action against

the Individual Defendants through trial and through possible appeals. Plaintiff's counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Derivative Action, as well as the difficulties and delays inherent in such litigation. Plaintiff's counsel also are mindful of the inherent problems of proof and possible defenses to the claims alleged in such actions. Plaintiff's counsel have conducted extensive investigation and discovery during the more than two-year prosecution of the Derivative Action, including, inter alia: (i) reviewing more than 300,000 pages of documents produced by Defendants and third parties; (ii) reviewing Panera's press releases, public statements, U.S. Securities and Exchange Commission ("SEC") filings, regulatory filings and reports, and securities analysts' reports about the Company; (iii) reviewing media reports about the Company; (iv) investigating percipient witnesses, including former Panera employees; (v) taking several fact depositions; (vi) researching and analyzing the restaurant industry; (vii) opposing a motion to dismiss and a motion for summary judgment; (viii) researching the applicable law with respect to the claims alleged in the Derivative Action and the potential defenses thereto; and (ix) negotiating this Settlement with Defendants. Based on their thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiff's counsel believe that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon Panera and its shareholders. Based upon Plaintiff's counsel's evaluation, Plaintiff has determined that the Settlement is in the best interests of Panera and its shareholders and has agreed to settle the Derivative Action upon the terms and subject to the conditions set forth herein.

### **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Individual Defendants have denied and continue to deny that they have committed, threatened, or attempted to commit, any violations of law, or breached any duty owed to Plaintiff, Panera, or its shareholders. While denying the validity of any allegations made in the Derivative Action, or any liability with respect thereto, the Individual Defendants have concluded that it is desirable that the claims be settled on the terms reflected in the Stipulation. The Individual

Defendants and Panera are entering into this Settlement because it will eliminate the uncertainty, distraction, disruption, burden, and expense of further litigation.

Neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred or attached to this Stipulation, nor any action taken to carry out this Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the Released Claims or an admission by or against the Individual Defendants of any fault, wrongdoing, or concession of liability whatsoever. The Released Persons may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff (on behalf of himself and derivatively on behalf of Panera), the Individual Defendants, and Panera, by and through their respective counsel or attorneys of record, that, subject to Court approval, the Derivative Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Derivative Action shall be dismissed with prejudice, as to all Parties, upon the terms and subject to the conditions set forth herein as follows:

##### **1. Definitions**

As used in this Stipulation, the following terms have the meanings specified below:

1.1 "Court" means the Circuit Court of St. Louis County, Missouri.

1.2 "Current Panera Shareholders" means any Persons (as defined herein) who owned Panera common stock as of the date of the execution of the Stipulation and who continue to hold their Panera common stock as of the date of the Settlement Hearing (as defined herein), excluding the Individual Defendants, the officers and directors of Panera, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which Individual Defendants have or had a controlling interest.

1.3 "Defendants" collectively refers to Panera and the Individual Defendants.

1.4 "Defendants' counsel" means collectively R. Prescott Sifton, Jr. of Husch Blackwell LLP, the Plaza in Clayton, 190 Carondelet Plaza, Suite 600, St. Louis, Missouri 63105 and Michael R. Dube of Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts, 02109, and Michael G. Bongiorno of Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Ave., New York, New York 10022.

1.5 "Defendants' Released Claims" means any and all claims, debts, rights, or causes of action or liabilities, including Unknown Claims (as defined herein), that could be asserted in any forum by Panera or any of the Released Persons or their successors and assigns against the Plaintiff, Plaintiff's counsel, or Panera which arise out of or relate in any way to the institution, prosecution, or settlement of the Derivative Action (except for any claims to enforce the Settlement).

1.6 "Derivative Action" means the shareholder derivative action pending in the Circuit Court of St. Louis County, Missouri, captioned *Paschetto v. Shaich, et al.*, Case No. 08-SL-CC00805.

1.7 "Effective Date" means the first date by which all of the events and conditions specified in paragraph 6.1 herein have been met and have occurred.

1.8 "Final" means the expiration of all time to seek appeal or other review of the Judgment, or if any appeal or other review of such Judgment is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to appeal, reargument or review by writ of certiorari or otherwise.

1.9 "Individual Defendants" means collectively, Ronald M. Shaich, Mark A. Borland, John M. Maguire, Scott G. Davis, Thomas C. Kish, Larry J. Franklin, Domenic Colasacco, Fred K. Foulkes, Mark E. Hood, and Thomas E. Lynch.

1.10 "Judgment" means the [Proposed] Final Order and Judgment to be rendered by the Court, substantially in the form of Exhibit E attached hereto.

1.11 "Panera" or the "Company" means Panera Bread Company.

1.12 "Parties" means collectively, Plaintiff, the Individual Defendants, and Panera.

1.13 "Person" means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.14 "Plaintiff" means Paul Paschetto, individually and derivatively on behalf of Panera.

1.15 "Plaintiff's counsel" means collectively Felipe J. Arroyo, Shane P. Sanders, and Alejandro E. Moreno of Robbins Umeda LLP, 600 B Street, Suite 1900, San Diego, California, 92101 and Michael J. Flannery and James J. Rosemergy of Carey Danis & Lowe, 8235 Forsyth Blvd., Suite 1100, St. Louis, Missouri, 63105.

1.16 "Related Persons" means each of Panera or the Individual Defendants' past or present subsidiaries, parents, successors and predecessors, insurers, officers, directors, agents, employees, attorneys, advisors, investment advisors, auditors, accountants, and any firm, trust, corporation, officer, director, or other individual or entity in which any Individual Defendant or Panera has a controlling interest, and the legal representatives, heirs, successors in interest, or assigns of any Individual Defendant.

1.17 "Released Claims" means any and all claims, debts, demands, rights, or causes of action or liabilities, including Unknown Claims, by or existing derivatively on behalf of Panera, against any of the Released Persons which arise out of or relate to: (i) the allegations in the Derivative Action; or (ii) the Settlement, except for any claims to enforce the Settlement.

1.18 "Released Persons" means collectively each of the Individual Defendants and each of their Related Persons.

1.19 "Settlement" shall mean the settlement documented in this Stipulation.

1.20 "Settlement Hearing" means the hearing set by the Court to consider final approval of the Settlement.

1.21 "Unknown Claims" means any of the Released Claims and any of the Defendants' Released Claims that any Party does not know or suspect exists in his, her, or its favor at the time of the Settlement including, without limitation, those claims which, if known, might have affected the decision to enter into, or not object to, this Settlement. The Parties expressly waive, relinquish, and release any and all provisions, rights, and benefits conferred by or under California Civil Code section 1542 ("§1542") or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Parties acknowledge that they may discover facts in addition to or different from those now known or believed to be true by them, with respect to the Released Claims and Defendants' Released Claims in the Settlement, as the case may be, but it is the intention of the Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish any and all Released Claims and Defendants' Released Claims known or unknown, suspect or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which do not exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts.

## **2. Terms of the Settlement**

2.1 The Parties and their respective counsel have conducted extensive negotiations and have reached agreement regarding various corporate governance issues, including certain corporate governance additions, modifications, and/or formalizations, which measures have been reviewed and agreed upon by Plaintiff's counsel. Within thirty days after Court approval of a Settlement of the Derivative Action, to settle the Derivative Action, Panera shall more formally express and/or implement and maintain in substance the corporate governance additions, modifications, and/or formalizations identified in Section I of Exhibit A (attached hereto) for a period of no less than three years. Panera shall promptly supply Plaintiff with a copy of any and all

Board resolution(s) implementing the governance provided for in this Settlement, and any and all relevant Board minutes addressing the same.

2.2 In addition to the measures outlined in Section I of Exhibit A, Defendants acknowledge that the Company adopted or changed the corporate governance measures identified in Section II of Exhibit A during the pendency of the Action.

### **3. Preliminary Approval and Notice**

3.1 Promptly after execution of the Stipulation, Plaintiff shall submit the Stipulation together with its exhibits to the Court and shall apply for entry of an order (the "Preliminary Approval Order"), substantially in the form of Exhibit B attached hereto, requesting: (i) preliminary approval of the Settlement set forth in this Stipulation; (ii) approval of the form and manner of providing notice of the Settlement to Current Panera Shareholders; and (iii) a date for the Settlement Hearing.

3.2 Notice to Current Panera Shareholders shall consist of: (i) the Summary Notice of Pendency and Proposed Settlement of Shareholder Derivative Action ("Summary Notice"), which provides a brief recitation of the terms of the Settlement and the date of the Settlement Hearing, substantially in the form attached hereto as Exhibit C; and (ii) the Notice of Pendency and Proposed Settlement of Shareholder Derivative Action ("Notice"), which includes the general terms of the Settlement set forth in the Stipulation and the date of the Settlement Hearing, substantially in the form attached hereto as Exhibit D. The Parties believe the content and manner of the notices requested constitute adequate and reasonable notice to Current Panera Shareholders pursuant to applicable law and due process.

3.3 Within ten calendar days after the entry of the Preliminary Approval Order, Panera shall post a copy of the Notice and the Stipulation on the Company website and cause a copy of the Notice to be filed with the SEC via a Form 8-K. At least seven calendar days prior to the Settlement Hearing, Panera shall file with the Court proof, by affidavit or declaration, of the posting and filing of the Notice and Stipulation as described in this paragraph.

3.4 Within ten calendar days after the filing of a copy of the Notice with the SEC, Panera shall cause the Summary Notice to be published one time in *Investor's Business Daily*. Panera (through the Individual Defendants' insurer) shall be solely responsible for the costs and expenses related to such publication. At least seven calendar days prior to the Settlement Hearing, Panera shall file with the Court proof, by affidavit or declaration, of the publication of the Summary Notice as described in this paragraph.

3.5 Within ten calendar days after entry of the Preliminary Approval Order, Plaintiff's counsel shall post copies of the Notice and Stipulation on the website of Robbins Umeda LLP. At least seven calendar days prior to the Settlement Hearing, Plaintiff's counsel shall file with the Court proof, by affidavit or declaration, of the posting of copies of the Notice and Stipulation on its website.

#### **4. Attorneys' Fees and Expenses**

4.1 In connection with the Settlement of the Derivative Action, and subject to Court approval, the Individual Defendants shall cause their insurers to pay Plaintiff's attorneys' fees and expenses in the amount of \$1.375 million. This payment shall constitute final and complete payment for Plaintiff's attorneys' fees and expenses that have been incurred or will be incurred in connection with the Derivative Action, and shall be paid to Robbins Umeda LLP within ten business days after the Court's entry of the Judgment or of a judgment substantially in the form of Exhibit E attached hereto becomes final.

#### **5. Releases**

5.1 Upon the Effective Date, Plaintiff, Panera, and Current Panera Shareholders shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims against the Released Persons; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

5.2 Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged,

extinguished, and dismissed with prejudice the Defendants' Released Claims against Plaintiff and Plaintiff's counsel; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

**6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

6.1 The Effective Date of the Settlement shall be conditioned on the occurrence of all of the following events:

- (a) entry of the Preliminary Approval Order;
- (b) Court approval of the Settlement following notice to Current Panera Shareholders and the Settlement Hearing as required by Missouri Rule of Civil Procedure 52.09;
- (c) entry of the Judgment; and
- (d) the Judgment has become Final.

6.2 If any of the conditions listed in paragraph 6.1 are not met, the Stipulation and any settlement documentation shall be null and void and of no force and effect, unless Plaintiff's counsel and Defendants' counsel mutually agree in writing to proceed with the Stipulation. In the event that any of the conditions listed in paragraph 6.1 are not met, the Parties shall be restored to their positions on the date immediately prior to the execution date of the Stipulation (and the Parties shall meet and confer in good faith to discuss the resumption and schedule of further proceedings), and the Stipulation shall not be deemed to constitute an admission of fact by any Party, and neither the existence of the Stipulation nor its contents, shall be admissible in evidence or be referred to for any purposes in the Derivative Action or in any litigation or judicial proceeding.

**7. Bankruptcy**

7.1 In the event of bankruptcy proceedings, the Parties agree to use their reasonable best efforts to obtain all necessary orders, consents, releases, and approvals for effectuation of this Stipulation in a timely and expeditious manner. By way of example only, the Parties agree to cooperate in making applications and motions to the bankruptcy court for relief from any stay, approval of the Settlement, authority to release funds, authority for Panera's insurer to disburse

insurance proceeds consistent with this Stipulation, authority to release claims and indemnify officers and directors, and authority for the Court to enter all necessary orders and judgments, and any other actions reasonably necessary to effectuate the terms of the Stipulation.

7.2 If any bankruptcy proceedings on behalf of Panera are initiated prior to the payment of Plaintiff's attorneys' fees and expenses, the Parties agree to seek an order from the bankruptcy court presiding over such bankruptcy proceedings: (i) either lifting the automatic stay for limited purposes of authorizing such payment, or finding that the payment of Plaintiff's attorneys' fees and expenses on behalf of the Individual Defendants by their insurer or insurers under their respective policies or related compromise of coverage and the releases provided pursuant to this Stipulation does not violate the automatic stay; and (ii) finding that the payment and reimbursement of Plaintiff's attorneys' fees and expenses on behalf of the Individual Defendants by their insurer or insurers under their respective policies does not constitute a preference, voidable transfer, fraudulent transfer, or similar transaction. In addition, in the event of any bankruptcy proceedings by or on behalf of Panera, the Parties agree that all dates and deadlines set forth herein will be extended for such periods of time as are necessary to obtain necessary orders, consents, releases, and approvals from the bankruptcy court to carry out the terms and conditions of the Stipulation.

## **8. Miscellaneous Provisions**

8.1 The Parties: (i) acknowledge that it is their intent to consummate the Stipulation; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 In the event that any part of the Settlement is found to be unlawful, void, unconscionable, or against public policy by a court of competent jurisdiction, any Party shall have the option to withdraw from the Settlement.

8.3 The Parties agree that neither will engage in any conduct or communications designed to disparage, deride, or malign the other Party.

8.4 The Parties agree that terms of the Settlement were negotiated in good faith by the Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. In addition, the Parties agree that during the course of the Derivative Action the Parties and their respective counsel at all times acted professionally and in compliance with Missouri Rule of Civil Procedure 55.03 and any other court rule or statute with respect to any claims or defenses in the Derivative Action. Accordingly, the Judgment in the Derivative Action will contain a finding that during the course of the litigation, the Parties and their respective counsel at all times complied with the requirements of Missouri Rule of Civil Procedure 55.03 and any other court rule or statute with respect to any claims or defenses in the Derivative Action.

8.5 The existence of or the provisions contained in the Stipulation shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Derivative Action, shall not be deemed a presumption, a concession, or admission by any of the Parties of any fault, liability, or wrongdoing as to any facts, claims, or defenses that have been or might have been alleged or asserted in the Derivative Action or with respect to any of the claims settled in this Derivative Action, or any other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Derivative Action, or in any other action or proceeding, except for any litigation or judicial proceeding arising out of or relating to the Stipulation or the Settlement whether civil, criminal, or administrative, for any purpose other than as provided expressly herein.

8.6 The exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. The Stipulation and the exhibits attached hereto represent the complete and final resolution of all disputes between the Parties with respect to the Derivative Action, constitute the entire agreement among the Parties, and supersede any and all prior negotiations, discussions, agreements, or undertakings, whether oral or written, with respect to such matters.

8.7 The Stipulation may be modified or amended only by a writing signed by the signatories hereto, subject to the Court's approval and without further notice to Current Panera Shareholders.

8.8 The Stipulation shall be deemed drafted equally by all Parties hereto.

8.9 The Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Missouri, without regard to Missouri conflict of law rules.

8.10 No representations, warranties, or inducements have been made to any of the Parties concerning the Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

8.11 Except as otherwise provided herein, each of the Parties shall bear his, her, or its own fees and costs.

8.12 Each counsel or other Person executing the Stipulation or its exhibits on behalf of any of the Parties hereby warrants that such Person has the full authority to do so.

8.13 The Stipulation shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors, and assigns.

8.14 The Stipulation may be executed in counterparts by the signatories hereto, including by facsimile, and as so executed shall constitute one agreement.

8.15 Pending the Court's determination as to final approval of the Settlement, Plaintiff and Current Panera Shareholders are and shall be deemed to be barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim against any of the Released Persons. All proceedings in the Derivative Action shall be stayed, except as provided in the Stipulation. Other than seeking approval of the Settlement or as permitted herein or as may be expressly required by the Court, Plaintiff and Plaintiff's counsel agree that Plaintiff will not take any action, take any discovery, or make any filings in the Derivative Action other than those contemplated by the Stipulation.

8.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and the Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated this 21 day of February, 2011.

DATED: February 21, 2011

ROBBINS UMEDA LLP  
FELIPE J. ARROYO  
SHANE P. SANDERS  
ALEJANDRO E. MORENO

  
\_\_\_\_\_  
FELIPE J. ARROYO

600 B Street, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 525-3990  
Facsimile: (619) 525-3991

CAREY DANIS & LOWE  
MICHAEL J. FLANNERY  
JAMES J. ROSEMERGY  
8235 Forsyth Blvd., Suite 1100  
St. Louis, MO 63105  
Telephone: (314) 725-7700  
Facsimile: (314) 721-0905

Attorneys for Plaintiff Paul Paschetto

DATED: February 22, 2011

WILMER CUTLER PICKERING  
HALE AND DORR LLP  
MICHAEL R. DUBE

  
\_\_\_\_\_  
MICHAEL R. DUBE

60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
Facsimile: (617) 526-5000

WILMER CUTLER PICKERING  
HALE AND DORR LLP

Michael G. Bongiorno  
399 Park Avenue  
New York, NY 10022  
Telephone: (212) 230-8800  
Facsimile: (212) 230-8888  
HUSCH BLACKWELL LLP  
R. PRESCOTT SIFTON, JR.  
The Plaza in Clayton  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63101  
Telephone: (314) 345-6000  
Facsimile: (314) 345-6060

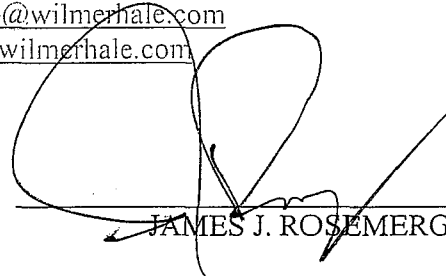
Attorneys for Individual Defendants Ronald M. Shaich, Mark A. Borland, John M. Maguire, Scott G. Davis, Thomas C. Kish, Larry J. Franklin, Domenic Colasacco, Fred K. Foulkes, Mark E. Hood, Thomas E. Lynch, and Nominal Defendant Panera Bread Company

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2011, I served a copy of the foregoing upon the following counsel of record, via hand delivery:

R. Prescott Sifton, Jr.  
The Plaza in Clayton Office Tower  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
[Scott.Sifton@huschblackwell.com](mailto:Scott.Sifton@huschblackwell.com)

Michael G. Bongiorno  
Michael R. Dube  
60 State Street  
Boston, MA 02109  
[Michael.Bongiorno@wilmerhale.com](mailto:Michael.Bongiorno@wilmerhale.com)  
[Michael.Dube@wilmerhale.com](mailto:Michael.Dube@wilmerhale.com)



JAMES J. ROSEMERGY