



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

ACT III MANAGEMENT, LLC,
and RONALD M. SHAICH,

Plaintiffs/Counter-Defendants

v.

PANERA BREAD COMPANY and
PANERA HOLDINGS CORP.

Defendant/Plaintiff in
Counterclaim

and

JIM DOBSON, JAMES KYLE PHILLIPS,
KRISH GOPALAKRISHNAN, and
PANERA, LLC,

Interested parties.

PANERA, LLC,

Third-Party Plaintiff

JIM DOBSON, JAMES KYLE PHILLIPS,
KRISH GOPALAKRISHNAN, and
PANERA, LLC,

Third-Party Defendants.

C.A. 2019-0111-MTZ

DECLARATORY RELIEF
PURSUANT TO
10 *DEL. C.* §6501 *et seq.*
AND 10 *DEL.* § 341

PUBLIC VERSION--
Filed: December 15, 2020

THIRD AMENDED AND SUPPLEMENTAL VERIFIED COMPLAINT

COMES NOW, Ronald M. Shaich (“Shaich”) and Act III Management, LLC (“Act III”), by and through undersigned counsel, with this Third Amended and Supplemental Verified Complaint against Panera Bread Company and Panera Holdings Corp. (together, “Panera”) for breach of the parties’ agreements, violation of Massachusetts General Laws chapter 93A, and seeking specific performance, declaratory relief, and damages, and in support thereof states as follows:

Introductory Statement

1. Plaintiff Act III is an investment management company with a portfolio of investments in the restaurant, agricultural, and entertainment industries. Act III's principal, Shaich, founded defendant Panera Bread Company and served as its CEO for more than 30 years. Shaich commenced his current investment activities in 2014 while he still served as Panera's CEO. Shaich formally disclosed his investments and his formation of Act III to, and (where Panera considered it necessary) received official approval from, Panera's Board of Directors, which agreed that they were not competitive with Panera and therefore did not create a conflict of interest for Shaich. Panera also entered into a series of agreements with Shaich in which Panera agreed that these activities were not competitive with Panera.

2. Panera and Shaich executed a non-compete agreement in April 2017 that defined Panera's relevant competitors with a list of companies and a catch-all provision. Not only did Act III and Shaich's investments not qualify as Panera competitors either on the list or in the catch-all, but Shaich's non-compete agreement expressly provided that "[f]or the avoidance of doubt," "any activity that [Shaich] is engaged in as of the date of the Agreement shall not constitute a Competitive Activity." In January 2018, Shaich (through an entity called Tatte Act

III, LLC) purchased virtually all of Panera's holdings in a small Boston restaurant company called Tatte Bakery & Cafe. The operative agreement provided that Shaich's acquisition of Tatte would not "be deemed to be 'Competitive Activity.'" The agreement also permitted Shaich to solicit and hire Panera employees at the Director level and below, to solicit and hire two senior executives, and to hire Panera employees more broadly through general solicitations or headhunters.

3. In December 2018, after Panera had surreptitiously hired Tatte's president, Karen Kelley, Panera and Shaich agreed to a framework for "employee mobility" from Panera to entities owned and controlled by Shaich. In that agreement (the "Settlement Agreement"), Panera expressly acknowledged that Shaich and his Act III entities could solicit Panera employees for employment despite their having non-competes. In the Settlement Agreement, the parties agreed to follow a specific process for any such solicited Panera employees with a non-compete whereby Shaich would provide written notice of any anticipated hire(s) at least two weeks before the anticipated start date(s). The Settlement Agreement obligates Panera to consider in good faith whether it is reasonably necessary to restrict any such employee with an applicable non-compete agreement.

4. The agreements between Panera and Shaich make clear that neither Act III nor any of Shaich's investments is competitive with Panera. When it came

time, however, for Panera to live up to its various agreements with Shaich and Act III, it acted in bad faith and refused to do so. On February 4, 2019, Shaich informed the CEO of JAB Holding Co., Panera's owner, that Act III had offered employment to three information technology employees with Panera non-competes. On February 6, 2019, Shaich informed Panera's owner that Act III would be delivering the requisite notice under the Settlement Agreement for the three hires. Shaich delivered the notice on February 8, 2019 (the "Notice"). The Notice explained that Panera lacked a basis to enforce the non-competes and that Act III would work with Panera to effect an orderly transition.

5. Panera categorically rejected Act III's request without considering it in good faith, without determining that it was reasonably necessary to enforce the non-competes, and without determining that those non-competes were applicable to employment with Act III. Instead, within hours of receiving the Notice, senior Panera management and personnel interrogated and challenged the employees about their decision to leave Panera for Act III, defamed and disparaged Shaich and his partners to the employees and challenged Act III's ability to succeed, demanded permission to image the employees' iPhones (an action Panera has not undertaken before), threatened that their actions would lead to litigation and that Panera was preparing for such litigation, fired them on the spot, escorted them from the building, and informed them that Panera would seek to enforce its non-

competes. Panera made no attempt to negotiate terms for the employees to remain employed by Panera. Panera eventually responded to the Notice in a perfunctory, vague and legalistic fashion, and did not provide any explanation for its position. Panera excluded its owner JAB from any meaningful participation in the process, contrary to the requirements of the Settlement Agreement.

6. Panera then launched a scorched earth litigation campaign in bad faith aimed at outspending the fledgling Act III and deterring any others who would dare consider leaving Panera. JAB's CEO Olivier Goudet informed Shaich that Panera intended to litigate, and Panera's then-CEO Hurst boasted to the departing employees about how much money Panera would be willing to spend on the litigation. Hurst so stated the same day Panera received Act III's written notice, without considering it in good faith or otherwise.

7. Panera never intended to honor the free movement of labor as set forth in the Settlement Agreement. Panera's then-CEO had never even read it. Even before signing the Settlement Agreement, Panera took steps to undermine it, and this continued after the Settlement Agreement went into effect. Panera confronted employees it suspected of wanting to work for Shaich, and began monitoring their emails. Panera also made retention bonus offers to employees in part to dissuade them from leaving Panera for Act III.

8. Panera also initiated a company-wide electronic surveillance operation to identify employees who might be talking to Shaich, the details of which Panera has shrouded by improperly asserting attorney-client privilege. Panera's General Counsel Scott Blair has personally confronted and intimidated employees. Panera shut down Shaich's panerabread.com email address and demanded Shaich return his panerabread.com emails notwithstanding Panera's express agreement that Shaich could access and use that account.

9. In August 2019, Panera took its bad faith efforts to deprive Act III of the benefits of the Settlement Agreement even further. After this Court preliminarily found that Panera's non-compete did not cover Act III or any of the Act III Entities other than the Cava restaurant group, those businesses continued to avail themselves of the Settlement Agreement provisions and hired a number of people from Panera. In the wake of these hires, Panera demanded that its employees sign a new non-compete agreement specifically designed to undermine the Settlement Agreement and this Court's decision, and interfere with Shaich's ability to hire Panera employees. Indeed, Panera made no secret of the fact that this is its goal: in its email transmitting the new non-compete to employees, it specifically referenced the fact that the new non-compete now covered Act III and the Act III Entities. Among other changes, Panera's new non-compete specifically names Act III and its restaurant investments, and covers all of Shaich's other

business interests beyond the restaurant industry by prohibiting employment at “sibling” companies. Where the Settlement Agreement created a hiring process that included a two week notice period, the new non-compete creates new hiring procedures including different notice periods. In rolling out this new non-compete, Panera has threatened employees who refuse to sign with termination or the loss of financial benefits under the company’s current calendar year bonus and Long-Term Incentive Plan.

10. At the same time as Panera Bread Co. was improperly attempting to undermine the Settlement Agreement with Shaich, its affiliated company Panera Holdings Corp. was intentionally depriving Shaich of information that he needed to value his outstanding Panera stock and make decisions regarding how to handle this investment. Panera Holdings Corp. refused to provide Shaich information that he was entitled to by statute and contract, and forced Shaich into a separate litigation (the “Section 220 Litigation”) to vindicate those rights.

11. In the Section 220 Litigation, Panera admitted that Shaich was a record stockholder of 92,304 shares of Panera Holdings Corp. stock. In July 2020, seven months past the IRS deadline, Panera issued Shaich an IRS form relating to his Panera Holdings Corp. stock, for which Shaich was required to pay taxes.

12. Despite all of this, after forcing Shaich through Section 220 trial, less than 24 hours after submitting post-trial briefing, Panera Holdings Corp. carried

out Panera's long-standing threat to deprive Shaich of his stock. Panera informed Shaich via a one-paragraph letter dated September 12, 2020 (the "Share Forfeiture Notice") that its Compensation Committee had purportedly unilaterally determined that Shaich, for unspecified reasons and at an unidentified time, had "automatically forfeited" back to the Company his 92,304 shares of Panera common stock. If the Share Forfeiture Notice were valid, that would mean Shaich would have spent millions in taxes, and significant additional costs concerning stock for which he has never received and will never receive any benefit.

13. Act III and Shaich seek an order that Panera specifically perform its obligations under the Settlement Agreement and the Retirement Agreement and cease breaching the implied and express provisions of the Settlement Agreement and the Retirement Agreement. Act III also seeks a declaratory judgment (1) that the Settlement Agreement modifies and supersedes Panera's non-competes; (2) that the Settlement Agreement is valid and requires Panera to consider in good faith whether it is reasonably necessary to enforce any applicable non-compete; (3) that neither Act III nor the investments compete with Panera; (4) that the Panera non-competes of the three hires are not applicable to the offered employment and are unenforceable and it is not reasonably necessary for Panera to refuse to waive them; and (5) that Panera breached the Settlement Agreement. Shaich also seeks a declaratory judgment that the Share Forfeiture Notice is invalid, as neither

Delaware General Corporation Law, nor the common law, nor the relevant contracts granted Panera the authority to unilaterally declare the stock forfeited, and that share forfeiture is an unenforceable penalty. Act III also brings a count for Panera's breaches of the Settlement Agreement, and a count for tortious interference as Panera lacks a basis to seek to enforce these non-competes and is only doing so to impermissibly injure Shaich and Act III. Additionally, Panera has breached Shaich's Retirement Agreement by cutting off his panerabread.com email account and demanding his return of emails. Shaich also brings a count for equitable estoppel for Shaich's reasonable reliance on Panera's representations, and a count for breach of the covenant of good faith and fair dealing against Panera. Act III also brings a count for unfair and deceptive trade practices arising out of Panera's improper attempts to block Act III's ability to hire Panera employees.

14. This action will address the applicability and enforceability of Panera's non-competes generally, and specifically those of Jim Dobson, James Kyle Phillips, and Krish Gopalakrishnan. Because the litigation with Panera will address the rights of these three hires, they are "interested parties" pursuant to Rule 19(a) of the Delaware Court of Chancery Rules. Accordingly, Act III has included the three hires as "interested parties" as is expressly provided for by Rule 19(a).

The Parties

15. Plaintiff Act III is a Delaware limited liability company having its principal office at 23 Prescott Street, Brookline, Massachusetts. Act III is an assignee of Shaich pursuant to the Settlement Agreement for purposes of enforcing the requirements of the Settlement Agreement in this litigation. Act III manages a collection of investments in the restaurant, hospitality and entertainment industries.

16. Plaintiff Shaich is a resident of Massachusetts and is Act III's managing partner.

17. Defendant Panera Bread Co. is, on information and belief, a Delaware corporation with certain of its executive offices in Needham, Massachusetts. On information and belief, Panera Bread Co. is the entity that operates the "Panera" business.

18. Defendant Panera Holdings Corp is, on information and belief, a Delaware corporation with certain of its executive offices in Needham, Massachusetts. On information and belief, Panera Holdings Corp. is the holding company for Panera Bread Co.

19. Interested Party Jim Dobson ("Dobson") is an individual to whom Act III extended an offer of employment and who signed a Panera non-compete during the course of his employment at Panera. Dobson executed a consent submitting to

the personal jurisdiction of this Court with respect to this action, a copy of which was attached as Exhibit A to Act III's original complaint in this action.

20. Interested Party James Kyle Phillips ("Phillips") is an individual to whom Act III extended an offer of employment and who signed a Panera non-compete during the course of his employment at Panera. Phillips executed a consent submitting to the personal jurisdiction of this Court with respect to this action, a copy of which was attached as Exhibit A to Act III's original complaint in this action.

21. Interested Party Krish Gopalakrishnan ("Gopalakrishnan") is an individual to whom Act III extended an offer of employment and who signed a Panera non-compete during the course of his employment at Panera. Gopalakrishnan executed a consent submitting to the personal jurisdiction of this Court with respect to this action, a copy of which was attached as Exhibit A to Act III's original complaint in this action.

22. Interested Party Panera LLC is, on information and belief, a wholly owned subsidiary of Panera Bread and is a limited liability company organized under the laws of Delaware. Panera LLC is party to the non-competes that the three technology hires signed.

Jurisdiction and Venue

23. This is a civil proceeding seeking specific performance, damages, a declaration of rights, and other relief arising from Panera's breach of the Settlement Agreement and Retirement Agreement with Shaich, governing his retirement from Panera's Board of Directors.

24. Personal jurisdiction over Panera and Act III is proper because those parties are incorporated or organized in Delaware and the parties consented to the personal and exclusive jurisdiction of the Delaware courts in the Settlement Agreement. Personal jurisdiction over Panera Holdings Corp. is proper because it is incorporated in Delaware, and because it consented to the personal and exclusive jurisdiction of the Delaware courts in the Retirement Agreement. Additionally, personal jurisdiction over the Interested Parties is proper because the three individual employees expressly consented in writing to the personal jurisdiction in Delaware with respect to this action, and Panera LLC is organized under the laws of the State of Delaware.

25. This Court possesses subject matter jurisdiction pursuant to 10 Del. C. § 341.

Facts Common to All Counts

I. Shaich Founds and Builds Panera

26. Shaich is a long-time entrepreneur in the restaurant industry and was instrumental in the rise of Panera. He began his first business as a student at Clark

University in Worcester, Massachusetts, running a convenience store for students. After earning an M.B.A. from Harvard in 1978, he eventually opened Cookie Jar bakery shops in the Boston area. Shaich then merged his bakery shops with Au Bon Pain, which at the time was a fledgling bakery with only three locations.

27. Under Shaich's leadership as CEO, Au Bon Pain opened hundreds of bakery-cafes along the east coast of the United States and overseas. In 1993, Au Bon Pain acquired Saint Louis Bread Company, which was a 19-store operation that baked its own breads and sold sandwiches made from them. Shaich recognized the company's potential and recommended selling Au Bon Pain to further focus on and develop Saint Louis Bread Company. Au Bon Pain was sold in 1999 and Shaich re-branded Saint Louis Bread Company as Panera Bread. Shaich became Panera's CEO.

28. Under Shaich's leadership, Panera was a huge success. It reached the \$1 billion annual sales mark by 2003. By 2010, there were nearly 1,500 Panera bakery-café locations, and today Panera has more than 2,000 bakery-cafes, 100,000 employees and annual sales of more than \$5 billion. Panera was the best-performing restaurant stock of the past 20 years, generating annualized returns in excess of 25% over the past two decades and delivering a total shareholder return 44 times better than the S&P 500 from July 18, 1997, to July 18, 2017 (when Shaich led Panera's sale to JAB).

29. Shaich served as Panera's CEO until 2010. He returned as CEO in early 2012 and helped to re-brand Panera and further expand its growth opportunities. During his 30 years as Panera's CEO, Shaich was instrumental in the company's ventures, including its sales, marketing, operations and technology visions. He designed, implemented and intensely managed a five-year strategic plan focused on improving the customer experience and thereby growing the business.

II. Shaich Invests in Small Restaurants and Other Businesses with Panera's Assent

30. In 2014, as the five-year plan took form and began showing signs of success, Shaich started investing in businesses which reflected his personal and professional interests. There were two primary elements – first, small and/or struggling companies; and second, companies which emphasized plant-based food and the “Mediterranean diet.” In 2018, Shaich coined the term “sherpa investing” to describe his investment approach, in which he would provide evergreen, founder friendly capital along with the perspective gained from forty years as an entrepreneur. These niche investments coalesced into Act III.

31. Beginning in 2014, Shaich made his first private equity investment in a local Boston vegetarian fast food restaurant called Clover. That was followed by investments in 2015 in Cava, which among other things owned a small chain of

Mediterranean restaurants, and Life Alive, a vegan concept also limited to a handful of locations in the Boston area. Shaich formally disclosed these investments to, and (where Panera considered it necessary) received official approval from, Panera's Board of Directors, which agreed that they were not competitive with Panera and therefore did not create a conflict of interest for Shaich. Shaich likewise disclosed Act III itself to the Board. Throughout 2015, 2016 and the first quarter of 2017, Shaich ran Panera while simultaneously managing his Act III interests, without incident.

III. JAB Holding Purchases Panera, and Shaich Departs as CEO

32. Panera's continued growth and success led to its eventual sale. On or around July 18, 2017, JAB Holding Co. purchased Panera for approximately \$7.5 billion. As part of the transaction, Shaich agreed to remain as CEO while simultaneously pursuing his Act III investments. Under his leadership, Panera experienced extraordinary and consistent growth, which included generating annualized returns in excess of 25% over the last two decades of Shaich's tenure and delivering a total shareholder return 44 times better than the S&P 500 from July 18, 1997 to July 18, 2017. Far from viewing Shaich's dual roles as a conflict of interest or a competitive threat, JAB identified only additional opportunity. In the fall of 2017, Shaich and JAB considered the possibility of JAB co-investing with Act III.

33. In April 2017, Shaich executed a non-compete agreement (the “Shaich Non-Compete”). That agreement defined Panera’s relevant competitors in two ways: first by listing specifically named companies, and second by covering any “casual or fast food company with over \$2 billion in annual ‘restaurant revenue.’” Although neither Act III nor any of its investments came close to this \$2 billion threshold (even if aggregated together), or was a listed competitor, the Shaich Non-Compete further stipulated “[f]or the avoidance of doubt” that “any activity that [Shaich] is engaged in as of the date of the Agreement shall not constitute a Competitive Activity.”

34. As 2017 wore on, Shaich realized that it was time for him to step aside from active management of Panera. Shaich and JAB negotiated a series of agreements to effectuate this transition, the intent and effect of which was for Shaich (and Act III) to remain connected with Panera and JAB but not be involved in Panera’s day-to-day management. In the fall of 2017, Shaich began unofficially transferring his CEO responsibilities to Panera’s President, Blaine Hurst. Shaich’s official termination date was December 31, 2017.

35. On or around December 12, 2017, Panera entered into a Termination Agreement with Shaich. Pursuant to that agreement, Shaich stepped down as Panera’s CEO, but agreed to continue to serve as the Chairman of Panera’s Board of Directors. In connection with that appointment, Shaich purchased \$20 million

worth of Panera Holdings Corp. stock and was granted an additional \$15 million worth of restricted stock in Panera Holdings Corp. The Termination Agreement also entitled Shaich to an annual restricted stock unit award for every year of service as Board Chair, with a grant date value of \$255,000 (the “Annual RSU Award”).

IV. Panera Sells Tatte to A Shaich-Controlled Entity

36. In or around the fourth quarter of 2015, Panera had acquired a controlling interest in Tatte, which Panera described as a “five-unit, upscale bakery-café concept offering breakfast and lunch in Boston, Cambridge and Brookline, Massachusetts ... [that] appeals to high-end consumers”

37. During his time as Panera’s CEO, Shaich supervised Tatte’s business and operations. Upon stepping down as Panera’s CEO, Shaich became interested in acquiring Tatte. Tatte does not compete with Panera. Tatte currently operates just 18 locations, all in the urban markets of Boston, Brookline and Cambridge, and two locations in downtown Washington D.C., compared to the thousands of locations that Panera operates nationally. Tatte is also an “upscale” concept with restaurant-quality chefs in every café that “appeals to high end consumers,” and targets urban locations compared to Panera’s suburban focus. It specializes in Mediterranean and Israeli-based cuisine.

38. On or around January 11, 2018, Tatte Act III, LLC, an affiliate of Act III that is owned and controlled by Shaich, purchased 7,312.5 units in Tatte Holdings, LLC (the “Tatte Acquisition Agreement”), which at the time represented 90 percent of Panera’s interest in Tatte and 55.72 percent of the total interest in Tatte. Panera retained a 6% ownership interest in Tatte, but the Tatte Acquisition Agreement contemplated scenarios whereby Shaich would acquire Panera’s remaining interests.

39. The Tatte Acquisition Agreement stipulated that neither the initial sale nor any later sale of Panera’s interests in Tatte would “be deemed to be ‘Competitive Activity’ under [Shaich’s] Non-Competition Agreement.”

40. The Tatte Acquisition Agreement modified Shaich’s non-solicitation covenants by allowing him to solicit and hire Panera employees at the Director level and below; he was only prohibited from soliciting or hiring executives “holding a position of seniority equal to or greater than Vice President.” There were two exceptions to the prohibition on hiring Vice Presidents and above. First, the Tatte Acquisition Agreement permitted Shaich to hire two senior Panera executive employees. Second, Shaich could employ any Panera employees, in any number, if the hiring was via “general solicitation” including headhunters rather than targeted at Panera specifically.

V. Panera and Shaich Cooperation

41. Once Shaich was no longer Panera's CEO, he spent the majority of his time overseeing Act III's investments in Cava, Life Alive, Tatte and Clover, and made a new investment in a startup "experiential entertainment" business named Open World.

42. Throughout the first half of 2018, Shaich simultaneously served as both Panera's Chairman and Act III's managing partner without incident.

43. Panera and Shaich/Act III actively cooperated in their business affairs as was expected.

44. After Panera purchased Au Bon Pain, it sought to divest certain stores that were proximate to Panera locations. Panera offered these locations to Act III. This included stores in the Boston market, and in Washington, D.C. and Chicago. Panera ultimately subleased one location to Tatte and one location to Life Alive, at below-market rent. By this transaction, Panera welcomed a Tatte store approximately one block from a Panera store and a Life Alive store approximately 100 yards away from another Panera store. In addition, Panera asked Shaich if he was interested in employing displaced corporate personnel at Tatte or his other investments.

45. Panera permitted Shaich to conduct tastings for potential Life Alive products at Panera's test kitchen, some of which its CEO Hurst attended.

46. In late 2018, Panera's public relations firm asked Hurst if it would be a conflict for the firm to provide services to both Shaich and Panera; Hurst replied that it would not be a conflict.

47. Panera also continued to provide services to Tatte including hosting Tatte's email system; other technology services; accounting; and payroll.

48. Also during 2018, Shaich assisted Cava in its acquisition of Zoës Kitchen, a Mediterranean food chain. Although Shaich was not required to make a formal disclosure to the Board for this investment since he was no longer a Panera employee, Shaich informed both Panera and JAB about it. No one from Panera or JAB objected to, or even questioned, Shaich's involvement in the Zoës' deal, or asserted that Zoës' presence in the Cava portfolio created a conflict of interest or competitive threat.

VI. The Karen Kelley Dispute and the Accord Regarding Future Employment Disputes

49. Shaich continued to serve as Panera's Board Chairman throughout 2018. In the summer of 2018, a dispute arose between Shaich and Panera after Panera, unbeknownst to Shaich, solicited and hired the president of Tatte, a company that was previously majority owned by Panera, but whose stake was sold by Panera to Shaich.

50. Following Shaich's January 2018 acquisition of a controlling interest in Tatte, Karen Kelley ("Kelley") served as Tatte's President. Kelley had signed a non-compete modeled after the Panera non-compete and drafted by Panera's counsel.

51. Unbeknownst to Tatte, Panera's CEO met with Kelley about joining Panera in or around April 2018. Panera's then-CEO Hurst ultimately hired her without discussing it with Shaich, even though Shaich continued to serve as Panera's Chairman of the Board.

52. Shaich considered Hurst's hiring of Kelley, done behind his back while he served as Panera's Chairman of the Board, to be a vindictive act of personal animosity.

53. This was but one of many actions by Hurst seemingly designed to wound his predecessor or those who showed loyalty to him.

54. When Keith Pascal resigned from Panera, Hurst ordered the Vice President of Corporate Human Resources to backdate Pascal's termination in order to attempt to avoid paying him the contractual bonus he otherwise would have earned.

55. Kelly left Tatte to join Panera on or around August 10, 2018. At the time, Panera asserted that Kelly's Tatte non-compete was unenforceable.

56. Shaich and JAB, on behalf of Panera, spent months attempting to resolve the dispute.

57. These negotiations occurred exclusively between Shaich and JAB; Panera was not involved. However, Panera, and not JAB, was party to the final agreement.

58. The CEO of JAB, Olivier Goudet requested two things during these negotiations: (1) a general release regarding the hiring of Tatte's president and (2) Shaich's complete separation from Panera. Negotiations lasted throughout the fall of 2018, and finally culminated in two agreements executed in early December 2018.

59. The deal, memorialized in two separate documents on December 6, 2018, had multiple components. First, Shaich resigned from Panera's Board of Directors. Second, Panera conveyed to Shaich the 6% of Tatte that Panera had retained. Third, the parties agreed to certain ongoing business entanglements and obligations to each other. These included: Shaich's continued ownership of millions of dollars in Panera stock; Panera's agreement to continue providing email, technology, accounting, payroll and other services to Tatte through June 30, 2019; Shaich's perpetual right to his panerabread.com email account; and Shaich's promise to provide assistance and cooperation in the *SHCP Fair Value v. Panera* lawsuit pending before this Court.

60. The parties also agreed to what JAB's CEO and Managing Partner Goudet called "free employee mobility," including Shaich's assent to Panera's hiring of Kelley, and Panera's assent to Shaich's hiring of two specific former Panera employees, Bryan Griffith and Kat Ryder, who were employed by Act III and Tatte, respectively.

61. On or about December 6, 2018, Shaich, Tatte, Panera and the holding company that owned Tatte, Tatte Act III LLC, entered into the first of these agreements. That agreement (the "Settlement Agreement") resolved the dispute between Tatte and Panera and outlined a process that expressly contemplates that Shaich, Tatte, Act III, and other entities in which Shaich directly or indirectly owns a controlling interest (the "Act III Entities") may solicit and hire Panera employees in the future, including those with non-competition agreements.

62. The process, outlined in the Settlement Agreement, expressly contemplates that Shaich, Tatte, Act III, and other entities in which Shaich directly or indirectly owns a controlling interest (the "Act III Entities") may hire Panera employees in the future, including those with non-competition agreements.

63. Section 6 of the Settlement Agreement explicitly provides that the Act III Entities "may solicit past, current and future employees of Panera for employment with an Act III Entity." The same provision also expressly permits any Act III Entity to offer employment to past, current and future employees of

Panera. The Act III Entities are permitted to do so notwithstanding any prior non-solicitation provisions and notwithstanding any non-compete the target hire may have signed.

64. Pursuant to Section 6 of the Settlement Agreement, if the Act III Entity offers employment to a Panera employee who signed a non-competition agreement (unless otherwise excepted), the Act III Entity must provide written notice of the employment offer two weeks before the hire's start of employment with the Act III Entity.

65. The Settlement Agreement further provides that during this two-week period, Panera may: (1) negotiate terms for the employee to remain employed by Panera; or (2) decide that it will waive the terms of any applicable non-competition agreement. In doing so, Panera "shall consider in good faith whether it is reasonably necessary to restrict any such employee from accepting an offer of employment from an Act III Entity under an applicable non-competition agreement in order to protect a legitimate Panera business interest recognized under applicable law, such as the protection of its confidential and proprietary information, or its vendor and franchise relationships."

66. Prior to the conclusion of the two-week period, Panera must notify the Act III Entity of its decision in writing.

67. This process effectuated the labor mobility JAB had promised by allowing the employees to weigh their options and then decide in a professional manner whether they wanted to work for Shaich or for Panera.

68. The Settlement Agreement was executed by Panera Chief Financial Officer, Michael Bufano, on behalf of Panera. However, Mr. Bufano played no part in negotiating the agreement, and testified that he signed it because Panera's General Counsel Scott Blair told him that it was "urgent" to do so. Panera CEO Blaine Hurst never even read the agreement until after this litigation was initiated.

VII. Shaich's Retirement Agreement With Panera

69. Additionally, on or around December 6, 2018, Shaich retired as Chairman of Panera's Board and entered into a Retirement Agreement with Panera (the "Retirement Agreement"), a copy of which is attached hereto and incorporated herein as Exhibit 1.

70. Pursuant to the Retirement Agreement, Shaich retired as Chairman within a year of his being appointed chairman, walked away from the company that he had spent a lifetime building, and gave up 60,000 restricted stock units ("RSUs") that he was granted one year earlier.

71. Pursuant to the Retirement Agreement, Panera agreed that the remaining 90,000 RSUs would vest on February 14, 2019 into shares of Panera common stock.

72. The Retirement Agreement also provides that Shaich has the right to sell his stock back to Panera at various times and in various amounts at his election between 2019 and 2021.

73. The Retirement Agreement provided that Shaich could put 2,304 shares back to Panera in any window period that Panera established for selling shares between June 30, 2019 and December 31, 2020. It also stated that he “shall have the right” to put the remaining 90,000 shares back to Panera on the following schedule: (1) up to one-third in the window period set by Panera relating to its December 31, 2019 valuation date; (2) up to two-third in the window period set by Panera relating to its June 30, 2020 valuation date; and (3) any remaining shares in the window period set by Panera relating to its December 31, 2020 valuation date.

74. Panera administers an Executive Ownership Plan (the “EOP”) and Long Term Incentive Plan that provides certain terms with respect to Panera employee stock ownership. According to the EOP, Panera Holdings Corp.’s Board, or the Compensation Committee of the Board, is to establish two valuation dates each year, one in June and one in December (the “Valuation Date”).

75. Certain window periods corresponding to each Valuation Date are to be “specified in advance” by the Board or the Compensation Committee (the “Window Periods”). Unless otherwise specified, “in no event shall any Window Period extend more than 75 days after the corresponding Valuation Date.”

76. A Panera stockholder may only put shares back to Panera during a Window Period. Once a Window Period closes, a Panera stockholder must wait until the next Window Period opens to exercise put rights.

77. Shaich has the right to be notified of when the Window Periods for his put rights will open.

78. Without such notification from Panera, Shaich is unable to exercise his contractual rights to put his stock back to Panera according to the Retirement Agreement.

79. Panera has therefore denied Shaich's ability to exercise his contractual put rights.

80. The Retirement Agreement provides that Shaich maintains his put rights, including his right to sell the stock back to Panera during the Window Periods, "[n]otwithstanding the terms and conditions otherwise applicable to" his Panera stock. The Retirement Agreement prohibits Panera from clawing back Shaich's stock for alleged breaches of restrictive covenants.

81. The Retirement Agreement additionally provides Shaich with certain information rights. It requires Panera to provide Shaich with its audited financial statements for as long as he continues to hold Panera stock. It states that: "Until the date on which [Shaich] has sold all or substantially all of his shares to the Company, the Company shall provide [Shaich] with copies of the Company's

annual audited financial statements and valuation reports with respect to the Shares not later than seven (7) business days after they become available to senior management.”

82. The Retirement Agreement provides: “Delivery of any valuation report in respect of the Shares may, if requested by the issuer of such report, be conditioned on the execution by [Shaich] of a non-reliance letter in such form as is requested by such issuer.”

83. Receipt of the financial statements is not contingent upon any further agreement or action by Shaich so long as he continues to hold shares of Panera Holdings Corp. stock.

VIII. Act III Offers Employment to the Technology Employees and Panera Responds in Bad Faith

84. Less than two months later, Shaich invoked the process in the Settlement Agreement for the first time.

85. On February 3, 2019, Act III made written offers of employment to employees working in information technology roles for Panera. Three of the employees – Jim Dobson, James Kyle Phillips and Krish Gopalakrishnan (collectively, the “Technology Employees”) – had signed six-month non-competition agreements with Panera.

86. Act III offered to hire Dobson as Senior Director of Engineering, Phillips as Vice President of Product Management, and Gopalakrishnan as Vice President, Enterprise Architecture and Group Chief Technology Officer.

87. As Senior Director of Engineering, Dobson was to work with Act III's Group CIO to lead software development and to implement management's directives regarding Act III's current and future software applications for potential use in the Act III portfolio.

88. As VP, Product Management, Phillips was to work with the Act III Group CIO to implement management's directives regarding Act III's current and future technology with regard to the design and development of consumer facing technology products for Act III for potential use in the Act III portfolio.

89. As Principal Enterprise Architect and Group CTO, Gopalakrishnan was to work with the Act III Group CIO to implement management's directives regarding Act III's current and future technology, enterprise architecture and data science initiatives for potential use in the Act III portfolio. In this capacity, Gopalakrishnan would establish technology and architecture standards and practices to be adhered to in the development of new digital apps and services at Act III.

90. The Technology Employees' anticipated start date at Act III was March 1, 2019.

91. The Technology Employees possessed general information technology skills that they had developed over the course of their careers, but did not possess any Panera trade secrets.

92. Each of the Technology Employees' Panera non-competes is inapplicable and unenforceable.

93. Act III put protections in place to guard against requests for Panera information being made of the Technology Employees. Act III also required as a condition of employment that the Technology Employees certify, which they did, that they did not possess any confidential Panera information and that they would not disclose any confidential Panera information during the course of their employment at Act III.

94. Shaich went above and beyond the requirements of the Settlement Agreement in terms of providing notice. On February 5, 2019, Shaich informed Goudet that one of his entities intended to hire a number of Panera employees. Shaich pledged to Goudet his willingness to work cooperatively on a transition to minimize the impact on Panera. Goudet said, "I'm sure we can work this out."

95. On February 5, 2019, the Technology Employees gave notice to Panera that they would be leaving Panera for Act III.

96. On February 6, 2019, Shaich informed Panera's owner, JAB, through its Human Resource Partner Manuel Martinez, that its Notice under the Settlement Agreement would be issued imminently.

97. On February 8, 2019, Act III delivered its Notice to Panera under the Settlement Agreement. A copy of the Notice is attached hereto and incorporated herein as Exhibit 1.

98. Rather than assess the Notice in good faith, Panera did the opposite.

99. Panera did not negotiate terms for the employees to remain employed by Panera.

100. Nor did Panera consider at all, let alone in good faith, whether it was reasonably necessary to enforce the form non-compete agreements.

101. The non-competes were not applicable to the employment with Act III.

102. It was not reasonably necessary for Panera to enforce the non-competes.

103. Panera immediately set out to send a strong message that Panera would spare no expense and take whatever steps necessary, regardless of merit, to deter Shaich from hiring Panera employees and to deter Panera employees from leaving.

104. Goudet told Shaich, and Hurst told the Technology Employees, that Panera intended to litigate.

105. Hurst boasted to the Technology Employees about how much money Panera would be willing to spend on the litigation.

106. Hurst interrogated the Technology Employees about their decision to leave Panera and join Act III. Panera also made defamatory statements about Shaich, Pascal and the Act III Entities to the Technology Employees, including by challenging Act III's ability to succeed.

107. Panera requested to image the iPhones and other personal devices of the Technology Employees, an action Panera has never taken upon the departure of any other employee, and demanded that they sign legal documents relating to the same.

108. Panera terminated the Technology Employees, handed them legal letters threatening to enforce the non-competes in relation to their employment with Act III, and escorted them from the premises.

109. Panera also increased its efforts to determine if other employees had interest in joining Act III, and to intimidate employees from joining Act III. Panera's General Counsel Scott Blair personally confronted at least one employee. Panera implemented increased electronic surveillance of its employees, and

instituted new economic incentives to employees to undermine Shaich's ability to hire them.

110. On February 13, 2019, Shaich contacted JAB's CEO in an attempt to address any concerns that Panera had about Act III hiring the Technology Employees. He informed Shaich that Panera would be enforcing the non-competes through litigation. Contrary to the parties' agreement, Panera excluded JAB from any meaningful participation in the process.

111. On February 20, 2019, Shaich received a perfunctory response to the Notice from JAB. The letter provided that "Panera informed [JAB] that it does not waive any of the terms of the applicable post-employment restrictions contained in any agreement." It did not explain why the non-competes were applicable or enforceable, or set forth a good faith basis for why it would be reasonably necessary to prevent the Technology Employees from joining Act III.

112. On February 21, 2019, notwithstanding that Panera agreed to litigate its disputes with Shaich exclusively in Delaware and notwithstanding that the present litigation was underway in this Court, Panera filed suit and three separate arbitrations against Act III and the three Employees in Missouri.

113. Panera did so as a further part of its bad faith response to Act III's hiring of the Technology Employees.

114. The Missouri federal court dismissed Panera's case because the Settlement Agreement "has modified or superseded the [form] non-competes, such that the non-competes are no longer enforceable on their own terms."

115. As another act of bad faith, Panera took the position in this litigation that the Settlement Agreement is a "purported" contract that is not "viable or enforceable" and that "[t]he only agreements that are applicable to this dispute are the Individual Employees' Non-Compete Agreements."

116. On April 15, 2019, Panera improperly shut down Shaich's panerabread.com email address and demanded the return of the associated emails, contrary to the provisions of the Retirement Agreement.

IX. Panera's Bad Faith Conduct Increases After the Technology Employees Are Permitted to Work for Act III.

117. On May 10, 2019, this Court ruled on Panera's motion for preliminary injunction and entered an order enjoining the Technology Employees from working for the Act III Entities that were specifically listed on their non-competes, but allowing the Technology Employees to work for Act III and Act III entities not specifically listed.

118. Following this Order, Act III and some of the Act III Entities proceeded to hire a handful of Panera employees. Shaich followed the Settlement Agreement process for each hire.

119. Following these hires, Panera rolled out a new non-compete aimed at preventing Shaich from making any further hires and from enjoying the benefit of the Settlement Agreement. In rolling out this new non-compete, Panera has threatened employees who refuse to sign with termination or the loss of financial benefits under the company's current calendar year bonus and Long-Term Incentive Plan.

120. On information and belief, the new non-compete has been presented to every Panera employee at the Director level or higher, and has also been presented to some employees at the Manager level. Previous Panera non-competes were limited to employees at the Director level or higher.

121. The new non-compete includes numerous provisions that directly interfere with the Settlement Agreement. For example, the new non-compete substantively contradicts the Settlement Agreement's provision of employee mobility by expressly identifying Act III and its restaurant investments as competitors, and also covers all of the Act III Entities by virtue of a sweeping prohibition against working for entities related to the listed competitors. Panera made no secret of its intentions with respect to Act III – in its email transmitting the new non-compete, it specifically referenced the fact that the new non-compete now covered Act III and the Act III Entities.

122. The new non-compete further interferes with the procedural aspects of the Settlement Agreement. The Settlement Agreement creates a hiring process including a two week notice requirement. The new non-compete creates new processes including different and longer notice periods.

X. Panera Stonewalls Shaich's Efforts to Obtain Panera Stock Put Information Pursuant to the Retirement Agreement

123. Beginning in early 2019 and continuing through June 2020, Shaich, his financial advisor, Barry Tubman, and his attorneys made at least 17 requests to Panera seeking: (1) the restricted stock unit conversion price for tax purposes; (2) financial statements; (3) valuation reports; and (4) contractually required information relating to the timing of the Window Periods that was necessary for Shaich to put the Panera stock (collectively, "Panera Stock Put Information").

124. Despite Shaich's numerous requests over a period lasting nearly 18 months, Panera has not provided the Panera Stock Put Information to which Shaich is entitled.

125. Instead, Panera has engaged in a pattern of stonewalling, during which it has prevented Shaich from obtaining the Panera Stock Put Information.

126. Panera's withholding of the Panera Stock Put Information has deprived Shaich of his put and information rights, harming his ability to make informed investment decisions related his Panera stock.

127. Further, Panera has also denied Shaich the ability to exercise his put rights. Its refusal to provide Shaich with notice of the Window Periods has prevented him from exercising his contractual rights to put his stock back to Panera. Shaich has lost the resulting economic benefit and liquidity that could have been obtained from selling his stock. Additionally, on information and belief, the stock has significantly declined in value since the close of the last Window Period due to COVID-19.

128. Panera's efforts to deny Shaich's information rights and deny his right to put his stock began almost immediately after Act III filed its original lawsuit against Panera in February 2019 for breach of the Settlement Agreement (the "Act III Litigation").

129. On February 7, 2019, Shaich's financial advisor Barry Tubman contacted Tom Dolan, in-house counsel at Panera, with questions regarding the conversion value of Shaich's shares for the payment of estimated taxes and the timing of the Window Periods for exercising his put options. This request included, among other things, inquiries regarding: (1) the plan for tax reporting related to the conversion of Shaich's RSUs to the Panera Stock; (2) how Shaich would be notified of put offer price and the timing of the Window Periods for his Panera Stock; and (3) the number and value of Shaich's Panera Stock as of the February 14, 2019 conversion date.

130. Act III initiated the Act III Litigation on February 13, 2019. As of that date, Dolan had not responded to Tubman's email.

131. One day later, on February 14, 2019, Shaich's RSUs converted to Panera common stock. Panera documented this conversion by letter from Panera CFO Mike Bufano to Shaich. The letter did not include reference to or notice of any provision for automatic forfeiture of the stock. The same day, Dolan responded to Tubman's February 7 request, but deleted and ignored the question about the valuation of the Panera shares and the timing of the put Window Periods relevant to Shaich's stock.

132. Later that day, Tubman followed up on this inquiry. ("My first question seems to have been deleted; what are the number and value of the RSUs Ron is to receive today?"). Dolan did not respond.

133. On February 21, 2019, Tubman followed up again after not receiving a response.

134. After Tubman's additional requests for the information, Dolan responded on February 21, 2019 that the "put windows are in the retirement agreement and I should leave that to Ron's lawyer." This is not accurate. The Retirement Agreement does not provide the timing of Shaich's put windows.

135. In this correspondence, Dolan, again, failed to provide the conversion valuation information that Shaich needed to make estimated tax payments, prompting Tubman to ask for the information another time later that day.

136. Dolan then responded to Tubman's request for valuation information, stating: "The value remains \$110.64 until a new valuation is determined. We'll share that after it happens."

137. A month later, Panera had still not provided Shaich or his financial advisors with the conversion valuation for his estimated tax payments or "a new valuation" based on the December 31, 2018 valuation point as Dolan promised.

138. This prompted Tubman to send Dolan another inquiry on March 20, 2019. Dolan did not reply to this email.

139. Tubman sent Dolan another request for the information on March 26, 2019. ("Following up on my last email, have you provided the 12/31/18 valuation results to Ron? He indicated he has not received them and, per your guidance, the window ends this week."). Dolan did not reply.

140. By August 2019, nearly seven months after Tubman first requested the taxable conversion valuation and the December 31, 2018 valuation information, Panera had still not provided it, nor had it provided the stock valuation as of June 30, 2019 as required by the Retirement Agreement.

141. Tubman reached out to Dolan again on August 8, 2019, requesting the information for the seventh time. Dolan again did not respond. In addition, Panera did not provide the requested valuation information, or any audited financial statements, to Shaich or his advisors.

142. On September 10, 2019, Shaich met with Panera Deputy General Counsel Geri Haight to discuss the resolution of the parties' disputes.

143. During the September 10 meeting, Shaich personally asked Haight for the taxable conversion value and assorted other valuation information that had not been provided and the contractually required financial statements. Haight told him that Panera would provide this information if Shaich signed a non-reliance letter.

144. The next day, Panera's counsel sent Shaich's counsel a BofA Securities, Inc. non-reliance letter and conditioned Shaich's receipt of any valuation information on his execution of the letter.

145. The non-reliance letter went significantly beyond non-reliance. For example, it required Shaich to indemnify Bank of America and release "any and all claims."

146. Ultimately, Shaich determined that he could not execute the extraordinarily broad non-reliance letter because: (1) it would prohibit him from relying on the valuation in order to attest to the conversion value of his Panera Stock on his tax returns; (2) it required Shaich to agree to release and indemnify

Bank of America; and (3) the non-reliance letter was not necessary to obtain the financial statements sought by Shaich.

147. On October 10, 2019, Shaich's counsel informed Panera's counsel that Shaich would not sign the non-reliance letter and again requested the financial statements previously requested by Tubman. Panera did not respond.

148. Shaich's counsel sent follow-up requests on October 21 and November 1, 4 and 13, 2019 for the audited financial statements to which Shaich is contractually entitled. Panera did not provide a substantive response to any of these requests.

149. Additionally, Panera failed to provide Shaich a Form 1099-MISC in connection with the February 14, 2019 conversion of Shaich's RSUs to stock until July 10, 2020 notwithstanding federal law that requires that Panera Holdings Corp. provide that form to Shaich no later than January 31, 2020.

In sum, from February 2019 through the present, Panera has refused to provide: (1) information legally required by the IRS for Shaich to estimate and attest to his 2019 taxes (until it was belatedly provided on July 10, 2020); (2) financial statements to which Shaich is contractually entitled; (3) information concerning the valuation of Shaich's Panera stock; and (4) information concerning the Window Periods to enable Shaich to exercise his put rights.

XI. Panera Weaponizes Shaich's Stock in the Act III Litigation

150. While the Act III Litigation had nothing to do with Shaich's Panera Stock, Panera's posture with respect to Shaich's rights to the Panera Stock Put Information changed immediately after the Act III Litigation was filed as set forth above.

151. Following the filing of the Act III Litigation on February 13, 2019, Shaich took part in numerous meetings and phone calls with Panera. These included multiple meetings in September 2019 and March 2020. During these meetings, Panera threatened to embarrass Shaich and claw back Shaich's Panera stock if the Act III Litigation did not settle. On information and belief, Panera made this threat in an effort to intimidate Shaich into an unfair settlement and in retaliation for Shaich exercising his rights to hire and solicit Panera employees under the Settlement Agreement.

152. The Act III Litigation was underway throughout the period during which Panera withheld the Panera Stock Put Information. The parties engaged in preliminary injunction proceedings in March and April 2019. In May 2019, this Court ruled on Panera's motion for preliminary injunction and entered an order enjoining certain former Panera employees hired by Act III from working for the Act III Entities specifically listed on their non-competes, but allowing those employees to work for Act III and Act III Entities not specifically listed.

153. Following this Order, Act III and some Act III Entities proceeded to hire a number of Panera employees. Shaich and Act III followed the Settlement Agreement process for each hire.

154. In August 2019, following these hires, and while Shaich was engaged in discussions with some other potential hires from Panera, Panera rolled out a new non-compete. It specifically added Act III and all present and future Act III entities as listed competitors and prevented Shaich from making any further hires and from enjoying the benefits of the Settlement Agreement.

155. The email announcing the new non-compete specifically referenced the fact that the new non-compete now covered Act III and the Act III Entities.

156. In rolling out this new non-compete, Panera threatened employees who refuse to sign it with termination or the loss of financial benefits under the company's current calendar year bonus and Long-Term Incentive Plan.

157. Act III and Shaich amended the Complaint in the Act III Litigation to address this new violation of the Settlement Agreement. Act III notified Panera of its intention to file a motion for preliminary injunction to enjoin Panera from implementing the new non-compete. Rather than litigate the matter, Panera agreed to "press pause" on implementing the new non-compete.

158. Following this "pause," Panera continued to withhold the Panera Stock Put Information in violation of the Retirement Agreement.

159. On information and belief, Panera refused to provide the Panera Stock Put Information in order to pressure Shaich into settling the Act III Litigation on terms that would materially harm Act III and Shaich.

XII. Shaich Serves A Section 220 Demand and Panera Continues To Stonewall

160. After nearly a year had passed since Shaich's initial request for the Panera Stock Put Information, and following multiple requests for the information from Panera, and Panera's repeated snubs, on January 2, 2020, Shaich, in his capacity as an individual stockholder, sent Panera a demand to inspect certain categories of books and records pursuant to 8 *Del. C.* §220(b) (the "Demand").

161. The Demand was necessitated by Panera's refusal to provide Shaich with the Panera Stock Put Information.

162. The Demand requested several categories of documents.

163. The Demand also outlined Shaich's purposes for seeking the books and records, which included valuation of his Panera stock.

164. Panera responded on January 24, 2020 with two letters, both of which categorically denied Shaich's Demand and connected it to the Act III Litigation.

165. In those letters, Panera repeatedly tied the issue of Shaich's Panera Stock and valuation of that Stock to the Act III Litigation.

166. For example, one letter stated:

“Mr. Shaich’s tactical gamesmanship in serving this Demand runs contrary to any good faith attempt to resolve the pending litigation and disagreements. . . . JAB and Panera have held off on litigating their strong claims and enforcing their legal rights against Mr. Shaich relating to his actionable conduct in order to have what JAB and Panera thought would be productive discussions to resolve these matters. . . . But Panera’s and JAB’s patience has run out. . . . However, JAB and Panera are willing to make one last attempt to negotiate an amicable resolution of all outstanding matters, including a resolution to Mr. Shaich’s asserted ownership in Panera. From this point forward, any additional aggressive actions, including any additional adverse legal, business or public actions, will be interpreted as a rejection of this final attempt at resolution and we will move forward assertively in prosecuting Panera’s claims.”

167. The second letter stated: “In truth, Mr. Shaich seeks corporate documents to further his interests, not as a stockholder of the Company, but as a litigant against, and competitor, of the Company.”

168. The letters attacked Shaich’s character, claiming that Shaich’s stated purposes “are not his actual purposes” and groundlessly accused Shaich of making the Demand “to gain improper access to and misuse confidential Panera information,” and “to further his interest, not as a stockholder of the Company, but as a litigant against, and competitor of the Company.”

169. On February 7, 2020 Shaich responded to the January 24, 2020 letters, reiterating that the “Demand relates to Mr. Shaich’s right to value his shares” and noted that the Demand was precipitated by Panera’s refusal to provide Shaich with legally required tax information, contractually required financial statements and

valuation reports, which began in early 2019, before commencement of the Act III Litigation, and continued for more than a year.

170. Meanwhile, Panera's refusal to provide Shaich with the Panera Stock Put Information continued.

171. On January 22 and February 24, 2020, Shaich's counsel requested that Panera provide information regarding the Window Periods for Shaich to sell his stock.

172. On March 13, 18 and 19, 2020, Shaich's counsel requested valuation information needed for Shaich to complete his 2019 taxes.

173. Panera's counsel did not substantively respond to a single such request from January through March 2020.

174. After Panera continued to refuse to provide Shaich with Panera Stock Put Information, Shaich filed his Section 220 complaint on April 9, 2020 (the "Section 220 Complaint").

175. In the Section 220 Complaint, Shaich seeks seven categories of documents relevant to assessing the value of his Panera stock. These documents are readily available to Panera.

176. By mid-June 2020, Panera had still not substantively responded to any of Shaich's requests from January, February and March of 2020 to provide the put

windows and valuation information necessary for him to execute his contractual right to put his stock.

177. As a result, Shaich was deprived of the contractual right to put a portion of his stock back to Panera during the Window Period following Panera's December 31, 2019 valuation date. This resulted in Shaich losing the opportunity to put his stock at a pre-COVID-19 valuation and deprived Shaich of access to liquidity and the resulting economic benefits and opportunities to use these funds if he could have put his stock as set forth in the Retirement Agreement.

178. Shaich's counsel asked for the information yet again on June 15, 2020.

179. On June 19, 2020, after requesting numerous stays in the Act III Litigation, Panera followed through on its earlier threat by filing a 139-page counterclaim against Act III and Shaich that specifically sought rescission of Shaich's stock.

180. On July 10, 2020, Panera finally provided Shaich with *one* of the requested documents, a 1099 tax form for 2019, which was due under IRS regulations in January.

181. On information and belief, another Window Period relating to Panera's June 30, 2020 valuation was scheduled to open in August or September 2020. To date, Panera has not provided Shaich with any information concerning

this Window Period, which will be yet another denial by Panera of Shaich's ability to exercise his put rights.

XIII. Shaich's Purpose For Seeking the Panera Stock Put Information

182. Shaich's pursuit of the Panera Stock Put Information is for the purpose of valuing his personal holdings in Panera stock.

183. Shaich needed to assess the value of his Panera Stock in order to file his 2019 tax returns and determine whether to put his shares to Panera during the various Window Periods.

184. Shaich further needs information concerning the Window Periods so that he can exercise his contractual rights to put stock back to Panera.

185. Shaich has a continuing need to assess the value of his Panera Stock in order to determine whether and when to sell his shares and to assess its performance within his portfolio of investments.

186. The Section 220 litigation proceeded to trial in this Court on August 20, 2020. The Court stated that "Mr. Shaich has stated a proper valuation purpose as a stockholder. It also seems that the documents [withheld by Panera] are necessary and essential." The Court went on to find that "it seems like [Panera] has fallen short of its burden to show that Mr. Shaich's valuation purpose is pretextual and not his actual purpose. The company seems to have provided only

speculation that Shaich does not want to value his stock but rather wants this information to compete.” Section 220 Litigation Trial Tr. at 194:5-19.

187. The Court ordered further briefing in the Section 220 Litigation on issues relating to confidentiality and disclosure. The parties agreed to submit that post-trial briefing on Friday, September 11, 2020.

XIV. In the Wake of the Court’s Finding that Shaich’s Purpose For Seeking the Stock was Proper, Panera Unlawfully Unilaterally Notices Forfeiture of Shaich’s Stock

188. The post-trial briefing in the Section 220 Litigation was submitted on September 11, 2020. One day later, on Saturday, September 12, 2020, the Vice President, Controller of Panera Bread Company and Panera Holdings Corp., Mark Wooldridge, sent Shaich a letter titled “Share Forfeiture Notice.”

189. The Share Forfeiture Notice informed Shaich that the Compensation Committee of the Board of Directors of Panera Holdings Corp had determined, for unspecified reasons, that Shaich’s “violations” of the Shaich Non-Compete at an unspecified time “resulted in automatic forfeiture by you of your 92,304 fully vested shares of common stock pursuant to Section 9 of each of (i) your ‘Matching Award’ and (as defined in, and issued under the Panera Bread Company Executive Ownership Plan (the ‘EOP’) and the Panera Bread Company Long-Term Incentive Plan (the ‘LTIP’) and (ii) the Restricted Stock Unit Award made under the LTIP.”

190. The EOP includes an unlawful penalty clause that a “Matching Award Agreement may provide mechanisms” that would allow stock forfeiture. Section 9 of the Matching Award Agreement contains such a mechanism which is also an unlawful penalty clause

191. However, these provisions were superseded by the Retirement Agreement.

192. On information and belief, neither the LTIP nor any other document governing the Annual RSU Award provides for forfeiture of that award.

193. The Share Forfeiture Notice is an end-run around this Court’s authority. The Share Forfeiture Notice also undermines the outcome of the Section 220 litigation.

**COUNT I — Specific Performance of the Settlement Agreement
(By All Plaintiffs)**

194. Plaintiffs hereby repeat, replead and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 193, inclusive, of this Complaint.

195. The Settlement Agreement is valid and enforceable and it governs and specifies the relationship between Act III and Shaich, on the one hand, and Panera, on the other, regarding the hiring by the Act III Entities of Panera employees.

Act III and Shaich have substantially complied with all of the terms of the Settlement Agreement.

196. Panera breached the Settlement Agreement by (a) seeking to enforce the Technology Employees' non-competes even though they are inapplicable and unenforceable, and their enforcement is not reasonably necessary; (b) failing to consider the Notice in good faith; and (c) seeking to interfere in Act III's and Shaich's right to solicit and hire employees through intimidation, coercion and other improper means.

197. If Panera is not ordered to comply with the Settlement Agreement, both now and in the future, Plaintiffs will continue to be irreparably harmed by being prevented from hiring employees who want to work for Act III, have substantial industry knowledge and experience and can help grow the Act III's various business ventures.

198. Plaintiffs lack an adequate remedy at law. Accordingly, Plaintiffs are entitled to specific performance to enforce these rights.

199. Plaintiffs specifically request that the Court order Panera to comply with the terms of the Settlement Agreement, now and in the future, including by:

(a) requiring that Panera assess in good faith whether it is reasonably necessary to restrict any Panera employee that Act III, or any of the

other Act III Entities, may seek to hire in the future from joining Act III or any of the other Act III Entities; and

(b) ordering Panera to cease and desist from engaging in bad faith conduct toward both the Act III Entities and potential hires of the Act III Entities, including by harassing, threatening, intimidating and retaliating against potential hires of the Act III Entities and defaming the Act III Entities, their officers and employees, and their various business ventures.

**COUNT II—Declaratory Judgment Regarding The Settlement Agreement
(By All Plaintiffs)**

200. Plaintiffs hereby repeat, replead and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 199, inclusive, of this Complaint.

201. The Settlement Agreement is valid and enforceable and it governs and specifies the relationship between Act III, on the one hand, and Panera, on the other, regarding the hiring by Act III of Panera employees.

202. Act III and Shaich have substantially complied with all of the terms of the Settlement Agreement.

203. Panera breached the Settlement Agreement by (a) seeking to enforce the Technology Employees' non-competes even though they are inapplicable and unenforceable, and their enforcement is not reasonably necessary; (b) failing to

consider the Notice in good faith; and (c) seeking to interfere with Act III and Shaich in their solicitation and hiring of Panera employees.

204. Plaintiffs lack an adequate remedy at law. Plaintiffs have been and will be irreparably harmed if such breaches continue. Accordingly, Plaintiffs are entitled to declaratory relief to enforce those rights.

205. Plaintiffs specifically request that this Court issue a declaratory judgment that:

- (a) the Settlement Agreement is valid and enforceable;
- (b) Neither Act III nor any of Shaich's investments, including Tatte, Cava, Zoës, Life Alive, Farmers Business Network, Clover and Open World, is a competitor of Panera;
- (c) each of the Panera non-competes of Dobson, Phillips, and Gopalakrishnan is inapplicable and unenforceable;
- (d) it is not reasonably necessary for Panera to attempt to restrict the Technology Employees' employment at Act III;
- (e) Panera failed to act in good faith pursuant to the Settlement Agreement; and
- (f) Panera must follow the Settlement Agreement with respect to any Panera employee that any of the Act III Entities may seek to hire in the future.

COUNT III —Breach of Contract – Settlement Agreement (By all Plaintiffs)

206. Plaintiffs hereby repeat, replead and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 205, inclusive, of this Complaint.

207. The Settlement Agreement is valid and enforceable and it governs and specifies the relationship between Act III, on the one hand, and Panera, on the other, regarding the hiring by Act III of Panera employees.

208. The Settlement Agreement is governed by Delaware law, and Delaware has exclusive jurisdiction for any actions arising out of the Settlement Agreement.

209. Plaintiffs have fully performed all of their promises, performances, duties and obligations under the Settlement Agreement.

210. Panera breached the Settlement Agreement by (a) seeking to enforce the Technology Employees' non-competes even though it is not reasonably necessary for Panera to do so; (b) failing to assess the Notice in good faith; (c) bringing an action in Missouri Federal District Court for a dispute arising out of the Settlement Agreement and embarking on an unnecessary and abusive litigation campaign and a campaign of harassment and intimidation of Panera employees, including by implementing a new non-competition agreement.

211. As a direct and proximate result of Panera's breaches as set forth herein, Plaintiffs have suffered irreparable harm, along with compensatory and other damages.

**COUNT IV—Tortious Interference With Contractual Relations
(By Act III)**

212. Act III hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 211, inclusive, of this Complaint.

213. In February 2019, Act III offered employment to the Technology Employees and they accepted the offers.

214. Panera's actions and omissions as set forth herein have knowingly, intentionally and maliciously interfered with Act III's contract rights with each of the employees. In particular, Panera is threatening and prosecuting against the three interested party employees legal action, and otherwise intimidating and harassing them, defaming Shaich, Pascal and the Act III Entities, all in an effort to wrongfully interfere with and harm Act III and their contractual relationships with the Technology Employees.

215. Panera's actions as set forth herein were not privileged or justified under applicable law.

216. As a result of Panera's actions, the Technology Employees cannot perform the responsibilities set forth in their offers of employment.

217. As a direct and proximate result of Panera's interference with Act III's contractual relations as alleged herein, they have suffered direct and consequential damages, including, without limitation, damages resulting from the employees' inability to start employment, expenditures of time, money, and lost profits, and attorneys' fees and costs and other damages in an amount according to proof at trial.

**COUNT V—Breach of the Covenant of Good Faith and Fair Dealing –
Settlement Agreement (By Act III and Shaich)**

218. Plaintiffs hereby repeat, replead and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 217, inclusive, of this Complaint.

219. The Settlement Agreement is valid and enforceable and it governs and specifies the relationship between Act III, on the one hand, and Panera, on the other, regarding the hiring by Act III of Panera employees.

220. The Settlement Agreement is governed by Delaware law, and Delaware has exclusive jurisdiction for any actions arising out of the Settlement Agreement.

221. Plaintiffs have fully performed all of their promises, performances, duties and obligations under the Settlement Agreement.

222. The Settlement Agreement contains a specific, implied covenant that Panera would not take action aimed at preventing Shaich or any Act III Entity from making Panera hires.

223. By engaging in a pattern of coercion, intimidation and harassment, including by attempting to coerce its employees to sign a new non-compete in conflict with the negotiated procedure of the Settlement Agreement and designed to prevent those employees from leaving Panera to work for Act III or the Act III Entities, Panera has breached the implied covenant of good faith and fair dealing and has precluded Plaintiffs from enjoying the negotiated benefits of the Settlement Agreement. As a direct and proximate result of Panera's breach of the implied covenant of good faith and fair dealing, Plaintiffs have been harmed and will suffer irreparable harm

**COUNT VI—Specific Performance of the Retirement Agreement
(by Shaich)**

224. Plaintiffs hereby repeat, replead and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 223, inclusive, of this Complaint.

225. The Retirement Agreement is valid and enforceable and it governs and specifies the relationship between Shaich and Panera regarding, among other things, Shaich's Panera Stock and access to the Panera Stock Put Information.

226. Shaich has substantially complied with all of the terms of the Retirement Agreement.

227. Panera breached Section 2 of the Retirement Agreement by issuing a unilateral “Share Forfeiture Notice” purporting to clawback or forfeit Shaich’s Matching Award and 2018 Annual Grant.

228. Panera breached Section 3 of the Retirement Agreement by failing to provide the timing for the Window Periods applicable to Shaich’s put rights and by denying Shaich the ability to exercise his put rights.

229. Panera breached Section 5 of Retirement Agreement by refusing to provide Shaich with copies of annual audited financial statements within seven (7) days after becoming available to senior management.

230. If Panera is not ordered to comply with the Retirement Agreement, both now and in the future, Shaich will continue to be irreparably harmed.

231. Without timely access to the financial statements and valuation information that Shaich is entitled to under the Retirement Agreement, he is unable to make informed decisions related to his Panera Stock, including whether and when to exercise his put rights under the Retirement Agreement.

232. For each and every Window Period (as defined by the Agreement) that Shaich was not notified about and during which Shaich did not have access to the information he is entitled to under the Retirement Agreement, he suffers

irreparable harm based on his inability to make an informed decision regarding whether to exercise his put rights and his inability to exercise his put rights at all.

233. Panera's purported forfeiture of Shaich's shares compounds the harm caused by Panera's withholding of the put and window information when the put windows were open. Panera denied Shaich his put rights during the put windows earlier, and then afterward purported to forfeit his stock entirely, thus preventing Shaich from ever recognizing the benefit of the stock awarded him by the Retirement Agreement.

234. Shaich lacks an adequate remedy at law. Accordingly, Shaich is entitled to specific performance to enforce these rights.

235. Shaich specifically requests that the Court order Panera to comply with the terms of the Retirement Agreement, now and in the future, including by:

- (a) ordering Panera to provide Shaich with all existing financial statements and valuation reports from December 2018 through the present;
- (b) ordering Panera to provide Shaich with the dates of Window Periods and corresponding put price from the June 30, 2019 valuation through the present;
- (c) ordering Panera to provide all financial statements and notice of Window Periods and corresponding put price on an ongoing basis within seven (7) days of receipt;

(d) ordering Panera to provide the valuation reports in exchange for a limited non-reliance letter;

(e) ordering Panera to rescind the Share Forfeiture Notice and recognize Shaich's stock ownership; and

(f) ordering Panera to purchase Shaich's Panera Stock at Shaich's discretion in accordance with the contractually agreed-to Window Periods at the appropriate valuation for each respective Window Period that was previously denied to him.

COUNT VII—Declaratory Judgment Regarding The Illegal Penalty Nature of the Share Forfeiture Provision (By Shaich)

236. Shaich hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 235, inclusive, of this Complaint.

237. The share forfeiture provisions Panera apparently relies on, and Panera's unilateral "Share Forfeiture Notice," constitute illegal penalty provisions.

238. Shaich lacks an adequate remedy at law. Shaich has been and will be irreparably harmed if Panera continues to impose an illegal penalty. Accordingly, Shaich is entitled to declaratory relief to enforce his rights.

239. Shaich specifically requests that this Court issue a declaratory judgment that:

(a) Panera is not entitled to forfeiture of Shaich's shares, as such forfeiture would be an unlawful penalty;

(b) Shaich has not forfeited, and is still in possession of, the 92,304 shares of Panera Holdings Corp. common stock granted to Shaich pursuant to the Retirement Agreement.

COUNT VIII—Declaratory Judgment Regarding the Invalidity of Panera's Share Forfeiture Notice (By Shaich)

240. Shaich hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 239, inclusive, of this Complaint.

241. Panera's unilateral "Share Forfeiture Notice" was unsupported by Delaware General Corporate law, contract law or common law, and constitutes unlawful self-help. Panera has already sought the same relief from this Court in its Counterclaim against Shaich, and that claim is still pending.

242. Shaich lacks an adequate remedy at law. Shaich has been and will be irreparably harmed if such breaches continue. Shaich is entitled to declaratory relief to enforce his rights.

243. Shaich specifically requests that this Court issue a declaratory judgment that:

(a) The Share Forfeiture Notice was unsupported by Delaware General Corporate law, contract law or common law, and constitutes unlawful self-help and Panera engaged in unlawful self-help by issuing the Share Forfeiture Notice;

(b) Shaich has not forfeited, and is still in possession of, the 92,304 shares of Panera Holdings Corp. common stock granted to Shaich pursuant to the Retirement Agreement.

**COUNT IX —Breach of Contract – Retirement Agreement
(by Shaich)**

244. Shaich hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 243, inclusive, of this Complaint.

245. Shaich and Panera entered into the Retirement Agreement dated as of December 6, 2018 and the Shaich Non-Compete dated as of April 4, 2017.

246. Pursuant to Section 2 of the Retirement Agreement, Shaich owns 92,304 fully vested shares of common stock in Panera Holdings Corp.

247. Pursuant to Section 3 of the Retirement Agreement, Shaich has the right to put his shares to Panera for purchase during the Window Periods and Panera is obligated to provide notice of such Window Periods.

248. Panera breached Section 3 of the Retirement Agreement when it failed to provide Shaich with the timing of the Window Periods for the June 30, 2019 valuation and later points of valuation and Window Periods.

249. Panera has further breached the Retirement Agreement by denying Shaich the ability to exercise his contractual put rights.

250. Pursuant to Section 5 of the Retirement Agreement, Panera is required to provide Shaich with copies of financial statements as long as he remains a substantial shareholder of Panera stock, which he is.

251. Beginning in February 2019 and continuing through the present, Panera has withheld financial statements from Shaich, despite at least 17 requests from Shaich, his advisors and attorneys.

252. Panera's has breached and is continuing to breach Section 5 of the Retirement Agreement by withholding of the Panera Stock Put Information.

253. Pursuant to Section 9 of the Retirement Agreement, Panera agreed in the Retirement Agreement that Shaich would have ongoing access to his panerabread.com email address and the associated emails.

254. On February 15, 2019, Panera informed Shaich that it was terminating his panerabread.com email access effective immediately and was demanding the immediate return of the associated emails.

255. Panera's act of terminating Shaich's panerabread.com email access and demanding the immediate return of the emails constitutes a breach of Section 9 of the Retirement Agreement.

256. On September 12, 2020, Panera breached the Retirement Agreement by unilaterally declaring that Shaich had forfeited his stock.

257. As a direct and proximate result of Panera's breaches as set forth herein, Shaich has incurred damages, including but not limited to: (1) a loss of use of the financial statements in determining whether to exercise his put rights; (2) a loss of the ability to exercise his put rights during the Window Periods; (3) the diminution in value of his Panera stock between the Window Period following Panera's December 31, 2019 valuation date and the present; (4) the resulting economic benefit and liquidity that could have been obtained from selling his stock during this Window Period, which has resulted in lost economic opportunities; (5) the cost of making repeated requests to Panera for the information; and (6) the cost of pursuing the information via a books and records litigation; (7) a loss of use of his panerabread.com email account and the associated emails; (8) the cost of returning them to Panera; (9) a loss in the value of his investments and being required to fund Act III through this litigation; (10) the loss of the value of his Panera common stock, amounting to millions of dollars; (11) the cost of filing counterclaims in this litigation to secure his rights.

258. Shaich seeks specific performance of his right to: (1) his panerabread.com email account and the return of the associated emails; (2) the financial statements and Window Periods; and (3) ownership of his Panera stock. Shaich also seeks direct and consequential damages, including damages for lost economic opportunities, to be proven at trial.

**COUNT X —Breach of the Covenant of Good Faith and
Fair Dealing – Retirement Agreement (by Shaich)**

259. Plaintiffs hereby repeat, replead and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 258, inclusive, of this Complaint.

260. The Retirement Agreement is valid and enforceable and it governs and specifies the relationship between Shaich and Panera regarding, among other things, his Panera Stock and related Panera Stock Put Information.

261. Shaich has fully performed all of his promises, performances, duties and obligations under the Retirement Agreement.

262. The Retirement Agreement contains a specific, implied covenant that Panera will not take action aimed at preventing Shaich from recognizing the benefits of the Agreement and exercising his rights under the Agreement.

263. Panera acted in bad faith by engaging in a pattern of stonewalling, intimidation and coercion, including by holding financial statements and valuation

reports relevant to Shaich's Panera Stock hostage and preventing Shaich from obtaining the economic benefit of selling his Panera stock in order to coerce Shaich and Act III into settling the Act III Litigation, and seek retribution against Shaich for pursuing his rights under the Settlement Agreement. This pattern continued with the Share Forfeiture Notice, which unilaterally and without explanation purported to strip Shaich of his Panera stock.

264. As a direct and proximate result of Panera's breaches as set forth herein, Shaich has incurred damages, including but not limited to: (1) a loss of use of the financial statements in determining whether to exercise his put rights; (2) a loss of the ability to exercise his put rights during the Window Periods; (3) the diminution in value of his Panera stock between the Window Period following Panera's December 31, 2019 valuation date and the present; (4) the resulting economic benefit and liquidity that could have been obtained from selling his stock during this Window Period, which has resulted in lost economic opportunities; (5) the cost of making repeated requests to Panera for the information; (10) the loss of the value of his Panera common stock, amounting to millions of dollars; (11) the cost of filing counterclaims in this litigation to secure his rights; and (6) the cost of pursuing the information via a Section 220 books and records litigation in this Court.

**COUNT XI —Unfair and Deceptive Trade Practices Pursuant to
Mass. Gen. L. ch. 93A, § 11 (by Act III and Shaich)**

265. Plaintiffs hereby repeat, replead and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 264, inclusive, of this Complaint.

266. Act III, Shaich, and Panera are engaged in trade or commerce.

267. Panera committed unfair and deceptive acts towards Shaich and Act III when it knowingly and intentionally took steps to deprive Shaich and Act III the benefits of the Settlement Agreement, including by engaging in a pattern of coercion, intimidation and harassment, including by attempting to coerce its employees to sign a new non-compete in conflict with the negotiated procedure of the Settlement Agreement and designed to prevent those employees from leaving Panera to work for Act III or the Act III Entities. Panera's conduct meets the standard of rascality necessary for an unfair and deceptive business act practiced on sophisticated business people.

268. Panera also committed unfair and deceptive acts towards Act III when it knowingly and intentionally took steps to weaponized Shaich's stock to injure Act III, including by engaging in a pattern of coercion, intimidation and harassment, in an attempt to coerce Shaich and Act III into settling the Act III

Litigation in a manner that relinquishes Shaich's and Act III's rights under the Settlement Agreement.

269. Panera additionally committed unfair and deceptive acts toward Act III when, on information and belief, it knowingly and intentionally undertook the above acts with respect to Shaich's stock in retribution for Shaich and Act III exercising their rights under the Settlement Agreement by soliciting and hiring Panera employees and to extract a financial penalty against Act III for those hires that is not provided for in the Settlement Agreement in the form of holding and seeking rescission of the stock.

270. Panera's conduct meets the standard of rascality necessary for an unfair and deceptive business act practiced on sophisticated business people.

271. As a direct and proximate result of Panera's unfair and deceptive business practices, Plaintiffs have suffered and will continue to suffer irreparable harm, and damages, including the cost and legal fees incurred in the Act III Litigation as a result of Panera's unfair and deceptive conduct.

272. Panera's unfair and deceptive acts occurred primarily and substantially in Massachusetts, including because Panera employees based in and working in Massachusetts engaged in coercion, intimidation and harassment towards other Panera employees working in Massachusetts, and because Panera

has attempted to prevent Massachusetts-based Act III and the Massachusetts-based Act III Entities from hiring Massachusetts-based employees.

**COUNT XII —Tortious Interference With Prospective Business Relations
(by Act III)**

273. Act III hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 272, inclusive, of this Complaint.

274. Act III has the contractual right and intends in the near future to hire more Panera employees consistent with the Settlement Agreement.

275. Panera's actions and omissions as set forth herein have knowingly, intentionally and maliciously interfered with Act III's prospective relationships with these employees. In particular, Panera is intimidating and harassing its employees, including by demanding that they sign new, more restrictive non-competition agreements, all in an effort to wrongfully interfere with and harm Act III and their contractual relationships with the Technology Employees.

276. Panera's actions as set forth herein were not privileged or justified under applicable law.

277. As a direct and proximate result of Panera's interference with Act III's prospective business relations as alleged herein, it has suffered direct and consequential damages, including, without limitation, damages resulting from the

employees' inability to start employment, expenditures of time, money, and lost profits, and attorneys' fees and costs and other damages in an amount according to proof at trial.

COUNT XIII —Equitable Estoppel (by Shaich)

278. Shaich hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 277, inclusive, of this Complaint.

279. Panera made a series of representations to Shaich that Act III and his investments did not constitute competitive activity.

280. Shaich reasonably relied on those representations in investing in Act III and the investments.

281. Shaich lacked knowledge that Panera would take the position that Act III and Shaich's investments constitute competitive activity.

282. Shaich reasonably relied on Panera's representations in investing in Act III and the investments and in hiring the employees.

283. Panera also represented in the Section 220 litigation, that Shaich was a legitimate owner of Panera stock.

284. Shaich reasonably relied on that representation in choosing to incur legal fees and costs associated with the Section 220 litigation and in paying taxes in connection with the February 2019 RSU conversion.

285. Shaich has suffered damages as a result of his reasonable reliance on Panera's representations.

WHEREFORE, Act III and Shaich pray that this Honorable Court:

- (A) Enter an Order declaring that (i) the Settlement Agreement is valid and enforceable; (ii) Panera must comply with all aspects of the Settlement Agreement with respect to the Technology Employees and in the future; (iii) each of the Panera non-competes of Dobson, Phillips, and Gopalakrishnan is inapplicable and unenforceable; (iv) it is not reasonably necessary for Panera to attempt to restrict the Technology Employees' employment at Act III; (v) Panera failed to act in good faith pursuant to the Settlement Agreement; (vi) Panera breached the covenant of good faith and fair dealing implicit in the Settlement Agreement; (vii) Panera must comply with all aspects of the Retirement Agreement; (viii) Panera breached the Retirement Agreement by (a) terminating Shaich's panerabread.com email account and by demanding a return of the associated emails (b) refusing to provide financial statements (c) failing to provide the timing of the Window Periods, and (d) purporting to unilaterally declare Shaich's Panera Stock forfeited; (ix) Panera acted in bad faith in breaching the Retirement Agreement; (x) Panera breached the

covenant of good faith and fair dealing implicit in the Retirement Agreement; (xi) Shaich has the right to use of his panerabread.com email account and the associated emails; (xii) Panera engaged in unfair and deceptive trade practices in violation of Chapter 93A, § 11; (xiii) Panera is not entitled to forfeiture of Shaich's shares, as such forfeiture would be an unlawful penalty; (xiv) Panera's unilateral "Share Forfeiture Notice" was unsupported by Delaware General Corporate law, contract law or common law, and constitutes unlawful self-help; (xv) Shaich has not forfeited, and is still in possession of the 92,304 shares of Panera Holdings Corp. common stock granted to Shaich pursuant to the Retirement Agreement.

- (B) Award temporary and preliminary injunctive relief, and permanent injunctive relief, prohibiting Panera from implementing the new non-compete, and informing all employees that the requirement is rescinded and/or voided;
- (C) Enter an Order requiring Panera to comply with all aspects of the Settlement Agreement with respect to any Panera employee that Act III, or any of the other Act III Entities, may seek to hire in the future;
- (D) Enter an Order requiring Panera to comply with all aspects of the Retirement Agreement and rescind the Share Forfeiture Notice;

- (E) Enter judgment for Plaintiffs on all counts;
- (F) Award direct and consequential damages to Plaintiffs in an amount to be proven at trial, including without limitations lost economic opportunity costs on account of Panera's breach, plus multiple damages, costs, attorneys' fees, prejudgment interest beginning from the date of breach and post judgment interest; and
- (G) Award any and all other relief that this Court deems equitable and just.

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Dated: December 8, 2020

/s/ Jennifer C. Jauffret

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2020, a copy of the foregoing document was served via *File & Serve Xpress* upon the following attorneys of record:

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