UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

ST. LOUIS DIVISION

[redacted]
Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

PANERA BREAD CO., RONALD M. SHAICH, MARK E. HOOD and JEFFREY W. KIP,

Defendants.

No. 4:08cv-00120

CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC) filings by Panera Bread Co. ("Panera Bread or the "Company), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal class action on behalf of purchasers of the common stock of Panera Bread between November 1, 2005 and July 26, 2006, inclusive (the "Class Period), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act).

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act.

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b). Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

6. Plaintiff [redacted] as set forth in the accompanying certification and incorporated by reference herein, purchased the common stock of Panera Bread at artificially inflated prices during the Class Period and has been damaged thereby.

7. Defendant Panera Bread is incorporated in Delaware and maintains its headquarters at 6710 Clayton Road, Richmond Heights, MO 63117. The Company engages in the ownership and franchising of bakery-cafes in the United States.

8. (a) Defendant Ronald M. Shaich ("Shaich) is, and was at all relevant times, Chairman and Chief Executive Officer ("CEO) of Panera Bread.

(b) Defendant Mark E. Hood ("Hood) was Senior Vice President and Chief Financial Officer ("CFO) of Panera Bread until his resignation on or about May 5, 2006.

(c) Defendant Jeffrey W. Kip ("Kip) has been Senior Vice President and CFO of Panera Bread since May 5, 2006. Prior to that, Kip was Vice President of Finance and Planning.

(d) Defendants Shaich, Hood and Kip are referred to herein as the "Individual Defendants.

9. During the Class Period, the Individual Defendants, as senior executive officers and/or directors of Panera Bread, were privy to confidential and proprietary information concerning Panera Bread, its operations, finances, financial condition and present and future business prospects. The Individual Defendants also had access to material adverse non-public information concerning Panera Bread, as discussed in detail below. Because of their positions with Panera Bread, the Individual Defendants had access to non-public information about its business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or board of directors meetings and committees thereof and via reports and other

information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

10. The Individual Defendants are liable as direct participants in the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and/or directors, were "controlling persons within the meaning of Section 20(a) of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of Panera Bread's business.

11. The Individual Defendants, because of their positions with the Company, controlled and/or possessed the authority to control the contents of its reports, press releases and presentations to securities analysts and through them, to the investing public. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading, prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.

12. As senior executive officers and/or directors and as controlling persons of a publicly traded company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the NASDAQ National Market ("NASDAQ) and governed by the federal securities laws, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with respect to Panera Bread's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of Panera Bread's common stock would be

based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

13. The Individual Defendants are liable as participants in a fraudulent scheme and course of conduct that operated as a fraud or deceit on purchasers of Panera Bread's common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Panera Bread's business, operations and management and the intrinsic value of Panera Bread's securities; (ii) enabled Defendants Hood and Shaich and other Company insiders to sell 172,475 shares of their personally-held Panera Bread stock for gross proceeds in excess of $11 million; and (iii) caused plaintiff and members of the Class to purchase Panera Bread's common stock at artificially inflated prices.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all those who purchased the common stock of Panera Bread between November 1, 2005 and July 26, 2006, inclusive, and who were damaged thereby (the "Class). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

15. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Panera Bread common stock was actively traded on the NASDAQ. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Panera Bread or its transfer agent and may be notified of

the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

16. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law complained of herein.

17. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation.

18. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business and operations of Panera Bread;

(c) whether the price of Panera Bread common stock was artificially inflated during the Class Period; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

20. Defendant Panera Bread "owns and franchises 1,097 bakery-cafes under the Panera Bread® and Saint Louis Bread Co.® names.

21. The Company operates in three business segments: the Company-owned bakery-cafe operations segment, the franchise operations segment, and the fresh dough operations segment. The Company's revenues consist of sales at its bakery-cafe, franchise royalties and fees, and fresh dough sales to franchisees.

22. The Company uses "system-wide sales as a key financial metric. According to the Company's press releases:

> System-wide sales is a non-GAAP financial measure which includes sales at all Company-owned bakery-cafes and franchise-operated bakery-cafes, as reported by franchisees. Management uses system-wide sales information internally in connection with store development decisions, planning, and budgeting analyses. Management believes system-wide sales information is useful in assessing consumer acceptance of the Company's brand and facilitates an understanding of financial performance as the Company's franchisees pay royalties and contribute to advertising pools based on a percentage of their sales.

23. Throughout the Class Period, the Company highlighted its increasing system-wide sales and, as a result, continuously increased its earnings guidance. Moreover, the Company was rapidly opening new locations throughout the United States. Unbeknownst to shareholders, the Company's aggressive growth strategy was causing the Company to experience declining sales at its existing stores.

24. Prior to disclosing this adverse information, the Individual Defendants and other Company insiders sold 172,475 shares of their personally-held Panera Bread common stock for gross proceeds in excess of $11 million.

25. The Class Period begins on November 1, 2005, Panera Bread issued a press release announcing its financial results for the third quarter of 2005, the period ended October 4, 2005. For

the quarter, the Company reported earnings per diluted share of $0.37 and net income of $11,669,000. With regard to the Company's outlook, the press release stated:

> Business Outlook
>
> Fourth Quarter and Full Year 2005
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> The Company today raised its fourth quarter 2005 earnings per diluted share target to be $0.48 to $0.49. If this target is accomplished it would result in fiscal 2005 full year earnings per diluted share of $1.62 to $1.63, an increase of 30% from 2004 results. The fourth quarter target assumes fourth quarter system-wide comparable bakery-cafe sales growth of 5.25% to 5.75% which is significantly higher than the Company's prior fourth quarter 2005 comp target of 2.5% to 4.0%. The Company has raised its fourth quarter comp target based on its present expectation that comparable bakery-cafe sales for the first four week period of quarter four (4 weeks ending November 1, 2005) will be in the range of 7.7% to 8.2%. The Company expects fourth quarter system-wide average weekly sales of $39,400 to $40,400 and expects operating weeks in the range of 10,150 to 10,200. The Company expects new bakery-cafe openings in the fourth quarter will be 54 (24 company and 30 franchise), a reduction from its prior target. The Company adjusted its fourth quarter opening target as a result of delays in certain of its scheduled openings.
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> 2006
>
> The Company is today establishing its initial target for fiscal 2006 earnings per diluted share at $1.97 to $2.01. This 2006 EPS target is stated prior to implementation of SFAS No.123R, "Share Based Payment, which requires the Company to begin expensing stock options in fiscal 2006. The Company anticipates the impact of expensing options in 2006 will lower EPS by $0.12 to $0.13 in 2006, resulting in targeted EPS for 2006 in the range of $1.84 to $1.89 inclusive of option expense. The Company anticipates it will adopt SFAS 123R prospectively. The impact of option expense in prior years, as reported under SFAS 123 in the footnotes to the Company's financial statements, is estimated to be $0.15 per share in 2005, and was $0.10, $0.06, and $0.05 in 2004, 2003 and 2002, respectively.
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> The assumptions on key metrics underlying the 2006 target are new bakery-cafe development of 150 to 160 (70 to 75 company and 80 to 85 franchise), comparable bakery-cafe sales growth of 2.5% to 4.5% (equivalent to 2 year comps of approximately 10-12%), average weekly sales of $38,800 to $39,800 and operating weeks of 48,500 to 49,000.

26. On November 15, 2005, the Company issued a press release announcing that system-wide comparable bakery-cafe sales increased 8.2% for the four weeks ended November 1, 2005.

27. On December 7, 2005, the Company issued a press release announcing that system-wide comparable bakery-cafe sales increased 7.7% for the four weeks ended November 29, 2005. Moreover, the Company raised its full year 2005 earnings per diluted share target to $1.63 to $1.64. With regard to the Company's raised earnings guidance, the press release stated:

> The 7.9% increase in system-wide comparable sales for the 8 weeks ended November 29, 2005 exceeded the Company's targeted growth range of 6.8% to 7.1% for the first eight weeks of the fourth quarter. As a result, the Company today raised its full year 2005 earnings per diluted share target to be $1.63 to $1.64, representing an increase of 30% to 31% over 2004 results.
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> The Company reported its sales results earlier than in prior periods as its internal systems have become more efficient. As a result, the Company expects to report sales information on a more timely basis in 2006 compared to 2005. The calendar for 2006 reporting dates will be released when the Company reports sales for the four weeks ended December 27, 2005.

28. In response to this announcement, shares of the Company's common stock rose 2%, to close at $69.26 per share, on heavy trading volume.

29. On January 5, 2006, Panera Bread issued a press release announcing that revenue for the fourth quarter and year end of 2005, the period ended December 27, 2005, was $ 173.1 million and system-wide comparable bakery-cafe sales increased 7.2% for the four weeks ended December 27, 2005. Moreover, the Company raised its full year 2005 earnings per diluted share target to $1.64 to $1.65 per diluted share. With regard to the Company's raised earnings guidance, the press release stated:

> The 7.7% increase in system-wide comparable sales for the 12 weeks ended December 27, 2005 exceeded the Company's targeted growth range of 5.25% to 5.75% for the fourth quarter. The Company believes that comparable bakery-cafe sales growth in its final period of the year was artificially aided by the beneficial timing of the Sunday Christmas holiday.
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> The Company now expects earnings per diluted share for the twelve weeks ended December 27, 2005 of $0.50 to $0.51, resulting in fiscal year 2005 earnings per diluted share of $1.64 to $1.65, representing an increase of 31% to 32% over fiscal year 2004 results.

30. On February 1, 2006, the Company issued a press release announcing that system-wide comparable bakery-cafe sales increased 10.2% for the four weeks ended January 24, 2006.

31. On February 9, 2006, Panera Bread issued a press release announcing its financial results for the fourth quarter and year end of 2005, the period ended December 27, 2005. For the quarter, the Company reported earnings per diluted share of $0.51 compared and net income of $16.2 million. Defendant Shaich, commenting on the results, stated, in pertinent part, as follows:

> In 2005 our EPS increased 32% over 2004. Since 2001 our earnings per share has grown at a compounded rate of 39%. This half decade long record of performance is reflective of the strength of our concept and demonstrates the vitality of our growing national brand. We are excited by the quick start to 2006, and are more confident than ever of our ability to deliver a year of 26% to 28% EPS growth as we continue to develop, execute and further innovate the Panera Bread brand.

With regard to the Company's outlook, the press release stated:

> 2006 Business Outlook
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> The Company today raised its full year fiscal 2006 earnings per diluted share target to $1.91 to $1.95 (including $0.13 for option expense), an increase of 26% to 28% from comparable pro forma 2005 results (including footnote option expense of $0.13). This increase in targeted EPS is based on upward adjustments in targeted ranges on the company's key metrics. The Company today has raised its 2006 system-wide comparable sales growth target to 4.0% to 6.0% (equivalent to 2 year comps of approximately 12% to 14%). Additional assumptions on 2006 key metrics include new bakery-cafe development of 150 to 160 bakery-cafes (70 to 75 company and 80 to 85 franchise), average weekly sales of $39,200 to $40,200, and operating weeks of 48,500 to 49,000.
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> The 2006 EPS target is stated consistent with the implementation of SFAS No.123R, "Share Based Payment, which requires the Company to begin expensing stock options in fiscal 2006. The Company anticipates the impact of expensing options in 2006 will lower EPS by $0.13 in 2006 (reflected in target). The Company anticipates it will adopt SFAS 123R prospectively effective December 28, 2005. The impact of option expense in prior years, as reported under SFAS 123 in the footnotes to the Company's financial statements, was $0.13, $0.10, $0.06, and $0.05 per share in 2005, 2004, 2003, and 2002, respectively.
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> As previously disclosed, the Company will adopt a new quarterly calendar (4-5-4) in 2006 whereby each of its quarters will include 13 weeks, rather than its current calendar which has 16 weeks in the first quarter and 12 weeks in the second, third, and fourth quarters. Supplemental information presenting the Company's unaudited pro forma consolidated statements of operations and margin analysis for each of the

> quarters of fiscal 2005 conformed to the 2006 quarterly presentation is attached as Schedule II. The Company intends to show pro forma results for 2005, in addition to historical results, for quarterly comparisons in 2006.
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> The Company is today setting an earnings per diluted share target for the first quarter of 2006 (which include the 13 weeks ending March 28, 2006) of $0.45 to $0.46 (including $0.03 for option expense), an increase of 25% to 28% from pro forma comparable results for the 13 weeks ended March 29, 2005. Pro forma results for the 13 weeks ended March 29, 2005 were $0.36 per diluted share (including footnote option expense of $0.03). Actual first quarter results for 2005 (which included 16 weeks and three days) were $0.44 per diluted share.
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> The first quarter target assumes system-wide comparable sales growth of 8.0% to 9.0%, system-wide average weekly sales of $38,800 to $39,300, and system-wide operating weeks of 11,475 to 11,525. Bakery-cafe openings are expected to be 23 (9 company and 14 franchise) compared to 24 (11 company and 13 franchised) in the comparable 13 week period in 2005.

32. From November 7, 2005 to February 15, 2006, Defendant Shaich unloaded 110,675 shares of his personally held Panera Bread common stock, reaping more than $7 million in gross proceeds. Defendant Shaich sold his stock at prices between $61.65 per share and $72.19 per share and at an average of more than $66 per share.

33. On March 8, 2006, the Company issued a press release announcing that system-wide comparable bakery-cafe sales increased 7.9% for the five weeks ended February 28, 2006.

34. On April 5, 2006, Panera Bread issued a press release announcing that revenue for the first quarter of 2006, the period ended March 28, 2006, was $194 million and system-wide comparable bakery-cafe sales increased 9.3% for the four weeks ended March 28, 2006.

35. On April 13, 2005, the Company filed its Form 8-K with the SEC which contained Defendant Shaich's letter to Panera Bread shareholders sent with the Company's Annual Report. With regard to the Company's outlook, the letter to shareholders stated:

> 2006 OUTLOOK
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> For 2006, we are targeting earnings per share of $1.91 to $1.95 including the impact of expensing options, which we adopted effective December 28, 2005. If we attain these targets, we would generate EPS growth of 26% to 28% including the expensing of options in both 2005 and 2006.

> Our EPS target is based on our individual targets for key metrics. In 2006 we are targeting 150 to 160 new bakery-cafe openings (70-75 Company-owned and 80-85 franchise-operated), average weekly sales of $39,200 to $40,200, and comparable bakery-cafe sales of 4% to 6%. I am pleased to say we are off to a great start in the first quarter of 2006, with system-wide same store sales growth of 9% (8.9% for Company-owned locations and 9.1% for franchise-operated locations).

36. On April 25, 2006, Panera Bread issued a press release announcing its financial results for the first quarter of 2006, the period ended March 28, 2006. For the quarter, the Company reported net income of $15 million, or $0.47 per diluted share, and revenue of $194 million. Defendant Shaich, commenting on the results, stated, in pertinent part, as follows:

> We are pleased to be able to raise our 2006 EPS target for the second time. The strength of our first quarter 2006 comparable sales growth, confidence in our 2006 development plan and our outlook for the remainder of the year have allowed us to raise our full year earnings per diluted share target to $1.97 to $2.00, which would represent an increase of 30% to 32% from comparable 2005 results.

With regard to the Company's outlook, the press release stated:

> Business Outlook - Fiscal 2006
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> The Company today established a second quarter earnings per diluted share target of $0.44 to $0.45, an increase of 47% to 50% from comparable second quarter 2005 results ($0.30 inclusive of footnote stock option expense in 2005). The second quarter target assumes an increase in comparable bakery- cafe sales of 3.0% to 4.0%. The Company expects that comparable sales growth for the four weeks ending April 25, 2006 will be 2.6% to 3.0% and is targeting comparable sales growth for the remainder of the second quarter of 3.0% to 4.5%. It is important to note that the later Easter holiday in 2006 compared to 2005 negatively impacted sales for the four weeks ended April 25, 2006 by an estimated 1.5% to 2.0% as normal operating hours are reduced on Easter. The Company is targeting second quarter average weekly sales of $38,600 to $39,100 and expects operating weeks in the range of 11,900 to 11,950. Bakery- cafe openings in the second quarter are targeted at 40 (17 company and 23 franchise), compared to 25 (13 company and 12 franchise) in the comparable 2005 quarter.
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> The Company today raised its fiscal 2006 full year earnings per diluted share target to $1.97 to $2.00, which if achieved represents an increase of 30% to 32% from comparable 2005 results ($1.52 inclusive of footnote stock option expense in 2005). The increase in the 2006 target is a result of the strength of year to date results combined with an increase in expected full year system-wide comparable sales growth to 4.5% to 6.5%. Average weekly sales for full year 2006 are now expected to be in the range of $39,500 to $40,500 and operating weeks in the range of 48,500

> to 49,000. Bakery-cafe openings in 2006 are expected to be 150 to 160 (70 to 75 company-owned and 80 to 85 franchise-operated).

37. On May 5, 2006, the Company held an Analyst Day with analysts and investors. During the Analyst Day, the Company disclosed, among other things, that it is now targeting a long-term per-share earnings growth rate of 25% and it plans to enter the Canadian market.

38. On June 7, 2006, the Company issued a press release announcing that system-wide comparable bakery-cafe sales increased 3.0% for the five weeks ended May 30, 2006. With regard to the slowdown in system-wide comparable bakery-cafe sales, the press release stated:

> In 2006, Easter Sunday was on April 16, which occurred during the four week period ended April 25, 2006. In 2005, Easter Sunday was on March 27, which occurred in our first quarter of 2005 (the four week period ended March 29, 2005). This shift in Easter timing negatively impacted comparable bakery-cafe sales for the nine weeks ended May 30, 2006 by approximately 0.5% to 1.0% based on past holiday results, as normal bakery-cafe operating hours are reduced on Easter.

39. On July 6, 2006, Panera Bread issued a press release announcing that revenue for the second quarter of 2006, the period ended June 27, 2006, was $197 million and system-wide comparable bakery-cafe sales 3.9% for the four weeks ended June 27, 2006.

40. The statements referenced above in ¶¶25-27, 29-31, 33-39 were materially false and misleading when made because they misrepresented and failed to disclose the following adverse facts which were known to defendants or recklessly disregarded by them:

(a) that the Company was experiencing negative trends in its business which were causing it to experience rising expenses and slow growth;

(b) that the Company's store expansion strategy was causing the Company to yield a lower return on capital and experience a decline in sales per restaurant as the Company's new store openings began to cannibalize sales from existing stores; and

(c) as a result of the foregoing, defendants lacked a reasonable basis for their positive statements about the Company, its prospects and revenue growth rate.

41. On July 17, 2006, in an article entitled *Running Low on Yeast?*, *Barron's* reported, in pertinent part, as follows:

> Panera Bread, the fast-growing bakery-cafe chain, has seen the future and it's called Crispani. In May, at its first-ever meeting with Wall Street analysts, the company announced the roll-out of a flatbread pizza that it plans to sell only after 4 p.m., in a bid to draw dinnertime diners. If all goes appetizingly, expect Crispani to be on the menu in 75% of the company's 900-plus cafes by year-end.
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> Panera says the pizzas, which will cost around $8 or $9 apiece, depending on toppings, could give a 3%-to-5% lift to the annual sales of each of its outlets, which typically gross near $40,000 a week and last year generated $1.5 billion systemwide.
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> "It is a very upscale product, and the first salvo in our effort to boost unit sales during the evening, says Ron Shaich, Panera Bread's co-founder and chief executive. "It's a natural extension of our bread business.
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> Dough, in all its guises, seems to be a Panera specialty. Systemwide sales, encompassing those at 319 company-owned and 578 franchised cafes, have more than tripled in the past five years, and are expected to approach $2 billion by the end of 2006. Profits have more than quadrupled in the same span, to $52.2 million, or $1.52 a share, in 2005 (including stock-option expensing), and the company believes they could jump by 30% to 32%, to $1.97 to $2 a share, this year. Analysts are looking for profits of $2.46 a share in 2007.
>
> Not surprisingly, Panera's shares also have been on a tear, rocketing more than 435% since 2001, to a recent split-adjusted 61.25. That compares with a decline in the same period of 6% in the Standard & Poor's 500 stock index and a 60% gain in the Dow Jones Restaurants & Bars Index.
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> Yet signs are emerging that Panera's torrid growth has begun to slow. Same-store-sales gains, or sales increases at units open at least 18 months, have cascaded in recent months to the low single digits from a peak of 10.2% in January. Newer stores are doing less business, on average, than those opened before 2005. And many institutional investors, worried about contraints on the company's -- and the restaurant industry's -- growth, have been dumping the shares.
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> Panera (ticker: PNRA), which calls the St. Louis suburb of Richmond Heights, Mo., home, has lost nearly 20% of its value since hitting a high of 75.88 April 3. But the stock could fall further if recent trends persist. Short sellers are betting as much; their ranks swelled by 10.6% in the month ended June 15, to 3.6 million of the company's 30 million publicly traded shares, or 12% of the float.
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> Even after its recent selloff, Panera fetches a lofty 31 times '06 estimated earnings, almost double that of the restaurant-industry group.
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> On the basis of enterprise value (market value plus net debt) to Ebitdar (earnings before interest, taxes, depreciation, amortization and rent), notes Ivan Feinseth,

director of research with Matrix Investment Research in New York, the stock trades for a multiple of 14.6, versus an industry multiple of 9.6. Feinseth, one of three Wall Street analysts with a Sell rating on Panera, sees about 30% downside for the shares and pegs the company's "intrinsic value in the low 40s per share.

"The primary reason for our Sell rating is Panera's declining return on capital, he says. "The incremental investment into each new restaurant opened is yielding a lower and lower return. Revenue and earnings per share keep rising, driven by capital investment, but return on capital is declining. As it falls, the company's ability to create shareholder value will decline.

Feinseth calculates return on capital peaked at 13.2% in the 12 months ended March 2004, and since has deteriorated to about 12.1%. He expects it to fall to around 11% next year.

Panera is opening restaurants at a rate of about 150 a year, and expects to reach 1,000 units by fall. At least one analyst, CIBC World Markets' John Glass, thinks the company can open 3,000 to 3,500 cafes before saturating the market.

"There's much more demand than we can keep up with, says Shaich, who co-founded the Au Bon Pain cafe chain in 1981 and ran it until selling out to British investors in 1998. Shaich kept Panera, which Au Bon Pain had acquired in 1993.

Strong demand, alas, has not translated of late into the roughly 7%-to-10% monthly same-store sales-growth Panera used to see.

In early May, the company reported an increase of just 2.8% systemwide in comparable-store sales for the four weeks ended April 25, a disappointing showing it blamed, in part, on a calendar shift that placed Easter in April this year instead of March, where it fell in 2005.

A month later, Panera announced a 3% pick-up in May sales at existing units, missing Wall Street estimates of as much as 4.5%, not to mention year-ago same-store sales growth of nearly 10%.

Things improved slightly in June, when same-store sales climbed 3.9%, but that compared with a gain of 7.9% a year ago.

To be sure, Panera's management isn't entirely wrong to blame industry trends for the slump in same-store sales. Restaurant earnings generally have been hurt by a slowing economy, higher gasoline prices, greater competition, especially in the casual-dining segment, and higher costs for food and energy.

Just last week, shares of P.F. Chang's China Bistro (PFCB) tanked, dragging down other restaurant shares with them, after the company issued a profit warning and posted lower same-store sales. P.F. Chang, too, was a richly priced stock whose multiple left little room for disappointment.

Peter Siris, managing director of New York hedge fund Guerilla Capital Management, calls Panera "a great company [that] has done very well. But he notes that "it all comes down to supply and demand, and there's too much supply around. Shareholders of Panera and other restaurant stocks have been hit with a double whammy -- increasing competition and chain expansion, along with weakening demand.

So, why didn't Siris sell his Panera shares when he unloaded the rest of his retaurant-stock holdings? "If you hadn't called, I would be short, he says, laughing, an allusion to the ethical guidelines many fund managers follow to avoid trading inadvertently on insider knowledge -- such as a potential story in Barron's.

In addition to the falloff in Panera's comparable-store sales, analysts also are disturbed about another trend: a decline in unit volume, or sales per restaurant. CEO Shaich frequently spotlights Panera's average unit volume, which he says is among "the highest in the industry -- two-and-a-half times what a Starbucks [SBUX] outlet does, 5% more than a McDonald's [MCD] and 50% [more] than a Wendy's [WEN].

While that still may be true, the 139 company-run and franchised cafes Panera opened in 2005 rang up average weekly sales of $37,497 per unit in the first quarter of '06 -- below the $39,837 a week enjoyed by restaurants opened prior to '05, according to Barry Stouffer, an analyst with BB&T Capital Markets.

"Keeping average unit volumes growing in the new stores is essential to maintaining the profitability of all stores, and the overall success of the company's expansion program, says a money manager based in Hawaii who trimmed his Panera holdings by 80% earlier this year.

Declining unit volume is a common problem for fast-growing players in the restaurant business, and it is compounded by many companies' aggressive expansion plans.

That's true for Panera, too; it plans to open 150-to-160 new outlets this year. It also explains the importance of new products, which help to rev sales and earnings.

Just don't look to Crispani to reverse a decline in Panera's high-priced shares in the event sales growth continues to ebb. That would be asking a lot of pizza, even the $9 flatbread kind.

42. In response to the July 17, 2006 *Barron's* article, shares of the Company's stock fell over 4% over the next two trading days.

43. Then, on July, 26, 2006, Panera Bread issued a press release announcing its financial results for the second quarter of 2006, the period ended June 27, 2006. For the quarter, the Company

reported net income of $14 million, or $0.44 per diluted share, and revenue of $197 million.

Defendant Shaich, commenting on the results, stated, in pertinent part, as follows:

> Ron Shaich, chairman and chief executive officer commented, "We expect to meet the targets for all of our 2006 key metrics. As a result, 2006 is shaping up to be another strong year. We are extremely pleased to be in position to deliver 27% to 32% EPS growth while making investments in our business which will fuel our ability to deliver 25% EPS growth for the foreseeable future.

With regard to the Company's outlook, the press release stated:

> Business Outlook - Fiscal 2006
>
> Based on its strong operating results, the Company expects to achieve its previously established full year metrics targets. They are: full year system- wide comparable bakery-cafe sales growth of 4.5% to 6.5%; average weekly sales for full year 2006 in the range of $39,500 to $40,500; operating weeks in the range of 48,500 to 49,000; and bakery-cafe openings of 150 to 160 (70 to 75 company-owned and 80 to 85 franchise-operated). The Company is particularly pleased with the solid pace of new bakery-cafe development in 2006 after an extremely strong second quarter (43 new bakery-cafes in the second quarter of 2006 versus 25 new bakery-cafes in the comparable period of 2005).
>
> Today, the Company is projecting comparable bakery-cafe sales growth for period 7 (the four-week period ending July 25, 2006) in the range of 1.7% to 1.9%. Period 7 projected results are below recent trend, and represent two- year comp sales of 9.6% to 9.8%. This is approximately three percentage points below second quarter two-year comps. Uncertainty also exists as comp sales for the second half of the year are expected to be materially influenced by sales results of the new Crispani(R) product, currently in operational rollout.
>
> In addition, the gradual introduction of Crispani(R) is progressing more rapidly than planned, bringing certain startup expenses, such as training and initial marketing costs, forward from the fourth quarter to the third quarter. The earlier operational rollout will lead to somewhat reduced margins in the third quarter, owing to both the cost shift between quarters in the second half, and the longer period of time cafes with Crispani(R) will operate before full marketing support, which is planned to begin late in the third quarter, is initiated.
>
> In acknowledgement of this greater uncertainty relative to comp sales and Crispani(R) impact, the Company today widened its fiscal 2006 full year earnings per diluted share target to $1.93 to $2.00. If achieved, this EPS target would represent an increase of 27% to 32% from comparable 2005 results ($1.52 inclusive of footnote stock option expense in 2005).
>
> Finally, the Company today established a third quarter earnings per diluted share target of $0.34 to $0.37, an increase of 0% to 9% from comparable third quarter 2005

results ($0.34 inclusive of footnote stock option expense in 2005). This EPS target reflects incremental costs of the earlier than planned operational rollout of Crispani(R) of $0.02 to $0.04 per share. In addition, the target includes costs of $0.06-$0.08 per share for training, sampling, and local marketing expenses shifted forward from the fourth quarter to the third.

The guidance for the third quarter target assumes system-wide metrics of: comparable bakery-cafe sales growth of 3.0% to 4.0%; average weekly sales for the quarter of $38,500 to $39,000; operating weeks in the range of 12,400 to 12,450; and 39 bakery-cafe openings (16 company and 23 franchise).

44. In response to this announcement, the price of Panera Bread common stock fell $7.34 per share, or approximately 12%, to close at $51.93 per share, on extremely heavy trading volume.

45. The markets for Panera Bread common stock were open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Panera Bread's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Panera Bread's common stock relying upon the integrity of the market price of Panera Bread's common stock and market information relating to Panera Bread, and have been damaged thereby.

46. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Panera Bread's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

47. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Panera Bread's business, prospects and operations. These material misstatements

and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Panera Bread and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

Additional Scienter Allegations

48. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Panera Bread, their control over, and/or receipt and/or modification of Panera Bread's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Panera Bread, participated in the fraudulent scheme alleged herein.

49. Defendants were further motivated to engage in this course of conduct in order to allow Defendants Hood and Shaich and other Company insiders to sell 172,475 shares of their personally-held Panera Bread common stock for gross proceeds in excess of $11 million. The following chart sets forth the insider trading:

Insider	Date	Shares	Price	Proceeds
MARK BORLAND	11/10/2005	12,500	$61.00	$762,500
SCOTT DAVIS	4/28/2006	5,000	$73.45	$367,250
	4/28/2006	1,250	$73.45	$91,813
		6,250		$459,063

Insider	Date	Shares	Price	Proceeds
LARRY FRANKLIN	11/17/2005	10,000	$62.39	$623,900
MARK HOOD	11/14/2005	10,000	$62.00	$620,000
	11/21/2005	10,000	$67.89	$678,900
		20,000		$1,298,900
THOMAS KISH	11/14/2005	1,000	$62.08	$62,080
	11/29/2005	2,000	$67.22	$134,440
	5/1/2006	850	$73.80	$62,730
	6/2/2006	850	$66.00	$56,100
	7/3/2006	850	$67.38	$57,273
		5,550		$372,623
JOHN MAGUIRE	5/1/2006	7,500	$74.09	$555,675
RONALD SHAICH	11/7/2005	5,000	$61.95	$309,750
	11/14/2005	5,000	$61.65	$308,250
	11/17/2005	10,000	$64.00	$640,000
	11/21/2005	10,000	$66.25	$662,500
	11/28/2005	10,000	$67.86	$678,600
	12/6/2005	10,000	$67.90	$679,000
	12/13/2005	10,000	$69.07	$690,700
	12/21/2005	10,000	$69.51	$695,100
	12/29/2005	10,000	$66.53	$665,300
	1/4/2006	10,000	$68.54	$685,400
	1/11/2006	10,000	$64.03	$640,300
	1/19/2006	10,000	$64.03	$640,300
	2/15/2006	675	$72.19	$48,728
		110,675		$7,343,928
	Total:	**172,475**		**$11,416,589**

Loss Causation/Economic Loss

50. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the prices of Panera Bread's common stock and operated as a fraud or deceit on Class Period purchasers of Panera Bread's common stock by failing to disclose to investors that the Company was experiencing declining sales in its restaurants. When defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, the price of Panera Bread's common stock fell precipitously as the prior artificial inflation came out. As a result of their purchases of Panera Bread's common stock during the Class Period, plaintiff and the other Class members suffered economic loss, i.e., damages, under the federal securities laws.

51. By failing to disclose to investors that the Company was experiencing declining sales in its restaurants, defendants presented a misleading picture of Panera Bread's business and prospects. Defendants' false and misleading statements had the intended effect and caused Panera Bread's common stock to trade at artificially inflated levels throughout the Class Period, reaching as high as $75.18 per share on March 31, 2006.

52. As a direct result of information disclosed on July 17, 2006 and July 26, 2007, the price of Panera Bread common stock fell precipitously, falling more than 30% from its Class Period high. These drops removed the inflation from the price of Panera Bread common stock, causing real economic loss to investors who had purchased Panera Bread common stock during the Class Period.

53. The more than 16% decline in the price of Panera Bread common stock after these disclosures came to light was a direct result of the nature and extent of defendants' fraud finally being revealed to investors and the market. The timing and magnitude of the price decline in Panera Bread common stock negates any inference that the loss suffered by plaintiff and the other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the defendants' fraudulent conduct. The economic loss, *i.e.*, damages, suffered by plaintiff and the other Class members was a direct result of defendants' fraudulent scheme to artificially inflate the prices of Panera Bread common stock and the subsequent significant decline in the value of Panera Bread common stock when defendants' prior misrepresentations and other fraudulent conduct were revealed.

Applicability of Presumption of Reliance:
Fraud on the Market Doctrine

54. At all relevant times, the market for Panera Bread's common stock was an efficient market for the following reasons, among others:

(a) Panera Bread common stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) as a regulated issuer, Panera Bread filed periodic public reports with the SEC and the NASDAQ;

(c) Panera Bread regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Panera Bread was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

55. As a result of the foregoing, the market for Panera Bread common stock promptly digested current information regarding Panera Bread from all publicly available sources and reflected such information in the prices of the stock. Under these circumstances, all purchasers of Panera Bread common stock during the Class Period suffered similar injury through their purchase of Panera Bread common stock at artificially inflated prices and a presumption of reliance applies.

No Safe Harbor

56. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking

statements were made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Panera Bread who knew that those statements were false when made.

COUNT I

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants

57. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

58. During the Class Period, defendants disseminated or approved the materially false and misleading statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

59. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock during the Class Period.

60. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Panera Bread common stock. Plaintiff and the Class would not have purchased Panera Bread common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

61. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Panera Bread common stock during the Class Period.

COUNT II

**Violation of Section 20(a) of the Exchange Act
Against the Individual Defendants**

62. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

63. The Individual Defendants acted as controlling persons of Panera Bread within the meaning of Section 20(a) of the Exchange Act as alleged herein. By reason of their positions as officers and/or directors of Panera Bread, and their ownership of Panera Bread stock, the Individual Defendants had the power and authority to cause Panera Bread to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

WHEREFORE, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: January 25, 2008

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