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## Panera Wins Order Blocking Exec From Moving To Papa John's

By **Bill Donahue**

Law360, New York (August 3, 2016, 2:54 PM ET) -- A federal judge sided with restaurant chain Panera and issued a temporary restraining order Wednesday barring a former IT executive from working at pizza chain Papa John's.

U.S. District Judge John A. Ross said Panera would likely win its lawsuit, filed last month, accusing former vice president Michael Nettles of violating his noncompete agreement and misappropriating trade secrets by taking a job as the chief information officer at Papa John's.

"The court is satisfied that Panera is likely to succeed on the merits of ... its request for enforcement of the confidentiality and noncompetition agreement, as well as its request for injunctive relief in order to protect the disclosure of its confidential information and trade secrets," Ross wrote.

Papa John's and Nettles argued that the companies aren't actually competitors, but the judge was unpersuaded. He cited evidence that both companies "target a so-called 'clean ingredient consumer,'" and noted that Papa John's was expressly listed as a competitor in the noncompete agreement.

As for proof of "irreparable harm," required for a TRO, the judge said Nettles would almost necessarily disclose trade secrets if he began his new role at Papa John's.

"By virtue of his position with Panera, Nettles was privy to Panera's substantial confidential and trade secret information directly affecting Panera's actual and prospective development of integrated technology systems, including ongoing business strategy," the judge said.

"His employment as a technology executive at Papa John's is likely to draw upon, as a matter of course, his experience and knowledge with regard to Panera's confidential systems and business strategy," Ross added.

That kind of assumption — that a former employee must be stopped from starting a new job because it would necessarily involve disclosing secrets — is often known as the doctrine of "inevitable disclosure." Though Missouri has not expressly adopted the somewhat controversial doctrine, Ross wrote that "the rationale underpinning such a theory" helped explain why he ruled for Panera.

The TRO requires Panera to post a \$200,000 bond to compensate Nettles in the event that eventually prevails in the lawsuit. An attorney for Nettles didn't immediately return a request for comment on Wednesday.

Nettles, a food industry veteran, spent four years as a vice president of architecture at Panera's IT department. Though he'd signed the noncompete in 2012 and resigned in 2013, he asked in June that it be waived so he could move to Papa John's. The company declined to do so, but he started at Papa John's on July 18.

Panera sued two days later, accusing Nettles of breaching his noncompete, a separate non-

disclosure agreement, and misappropriating company trade secrets. The suit said he had created a backup of his files, deleted his hard drives, and taken other suspicious steps before leaving.

Panera is represented by Jessica L. Liss and Carrie Lynne Kinsella of Jackson Lewis PC and by Bret A. Cohen and Amanda Beth Carozza of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

Nettles is represented by Jeremy Michael Brenner and William M. Corrigan Jr. of Armstrong Teasdale LLP.

Papa John's is represented by Harry W. Wellford Jr. and Andrew Cahill Johnson of Littler Mendelson PC.

The case is Panera, LLC v. Nettles et al, case number 4:16-cv-01181, in the U.S. District Court for the Eastern District of Missouri.

--Editing by Kelly Duncan.

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