

CHEESECAKE FACTORY INC

Form 10-Q

November 04, 2010

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# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM 10-Q

**x** **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended September 28, 2010**

**or**

**o** **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**Commission File Number: 0-20574**

## THE CHEESECAKE FACTORY INCORPORATED

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation or organization)

**26901 Malibu Hills Road  
Calabasas Hills, California**

(Address of principal executive offices)

**51-0340466**

(I.R.S. Employer  
Identification No.)

**91301**

(Zip Code)

**(818) 871-3000**

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(Registrant's telephone number, including area code)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐  
(Do not check if a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

As of October 29, 2010, 59,259,358 shares of the registrant's Common Stock, \$.01 par value, were outstanding.

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THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES

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|                                                                                                                                                          | September 28,<br>2010<br>(unaudited) | December 29,<br>2009 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|----------------------|
| <b>ASSETS</b>                                                                                                                                            |                                      |                      |
| Current assets:                                                                                                                                          |                                      |                      |
| Cash and cash equivalents                                                                                                                                | \$ 59,794                            | \$ 73,715            |
| Accounts receivable                                                                                                                                      | 9,744                                | 11,352               |
| Income tax receivable                                                                                                                                    | 5,874                                | 1,875                |
| Other receivables                                                                                                                                        | 16,371                               | 27,475               |
| Inventories                                                                                                                                              | 29,924                               | 22,202               |
| Prepaid expenses                                                                                                                                         | 23,232                               | 27,871               |
| Deferred income taxes                                                                                                                                    | 8,257                                | 7,737                |
| Total current assets                                                                                                                                     | 153,196                              | 172,227              |
| Property and equipment, net                                                                                                                              | 761,422                              | 788,402              |
| Other assets:                                                                                                                                            |                                      |                      |
| Trademarks                                                                                                                                               | 4,451                                | 4,338                |
| Prepaid rent                                                                                                                                             | 51,387                               | 54,243               |
| Other                                                                                                                                                    | 30,256                               | 27,541               |
| Total other assets                                                                                                                                       | 86,094                               | 86,122               |
| Total assets                                                                                                                                             | \$ 1,000,712                         | \$ 1,046,751         |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                                                                              |                                      |                      |
| Current liabilities:                                                                                                                                     |                                      |                      |
| Accounts payable                                                                                                                                         | \$ 29,450                            | \$ 33,948            |
| Other accrued expenses                                                                                                                                   | 143,612                              | 166,513              |
| Total current liabilities                                                                                                                                | 173,062                              | 200,461              |
| Deferred income taxes                                                                                                                                    | 93,045                               | 87,048               |
| Deferred rent                                                                                                                                            | 66,418                               | 64,209               |
| Deemed landlord financing liability                                                                                                                      | 50,879                               | 51,802               |
| Long-term debt                                                                                                                                           | 40,000                               | 100,000              |
| Other noncurrent liabilities                                                                                                                             | 25,433                               | 27,118               |
| Commitments and contingencies                                                                                                                            |                                      |                      |
| Stockholders' equity:                                                                                                                                    |                                      |                      |
| Preferred stock, \$.01 par value, 5,000,000 shares authorized; none issued                                                                               | —                                    | —                    |
| Junior participating cumulative preferred stock, \$.01 par value, 150,000 shares authorized; none issued                                                 | —                                    | —                    |
| Common stock, \$.01 par value, 250,000,000 shares authorized; 84,126,026 and 83,377,092 issued at September 28, 2010 and December 29, 2009, respectively | 841                                  | 834                  |
| Additional paid-in capital                                                                                                                               | 409,004                              | 386,562              |
| Retained earnings                                                                                                                                        | 699,392                              | 639,544              |
| Accumulated other comprehensive loss                                                                                                                     | —                                    | (4,619)              |
|                                                                                                                                                          | (557,362)                            | (506,208)            |

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Treasury stock, 25,168,961 and 23,100,079 shares at cost at September 28, 2010 and December 29, 2009, respectively

|                                            |    |           |    |           |
|--------------------------------------------|----|-----------|----|-----------|
| Total stockholders' equity                 |    | 551,875   |    | 516,113   |
| Total liabilities and stockholders' equity | \$ | 1,000,712 | \$ | 1,046,751 |

See the accompanying notes to the consolidated financial statements.

Table of Contents**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF OPERATIONS****(In thousands, except per share data)****(Unaudited)**

|                                        | <b>Thirteen<br/>Weeks Ended<br/>September 28, 2010</b> | <b>Thirteen<br/>Weeks Ended<br/>September 29, 2009</b> | <b>Thirty-Nine<br/>Weeks Ended<br/>September 28, 2010</b> | <b>Thirty-Nine<br/>Weeks Ended<br/>September 29, 2009</b> |
|----------------------------------------|--------------------------------------------------------|--------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------|
| Revenues                               | \$ 418,352                                             | \$ 400,640                                             | \$ 1,242,694                                              | \$ 1,201,378                                              |
| Costs and expenses:                    |                                                        |                                                        |                                                           |                                                           |
| Cost of sales                          | 102,073                                                | 95,777                                                 | 303,428                                                   | 293,147                                                   |
| Labor expenses                         | 137,268                                                | 131,987                                                | 408,475                                                   | 400,370                                                   |
| Other operating costs and expenses     | 104,208                                                | 102,341                                                | 303,910                                                   | 303,354                                                   |
| General and administrative expenses    | 23,957                                                 | 23,917                                                 | 71,147                                                    | 71,402                                                    |
| Depreciation and amortization expenses | 17,902                                                 | 18,688                                                 | 54,083                                                    | 56,046                                                    |
| Preopening costs                       | 1,535                                                  | 594                                                    | 4,270                                                     | 2,783                                                     |
| Total costs and expenses               | 386,943                                                | 373,304                                                | 1,145,313                                                 | 1,127,102                                                 |
| Income from operations                 | 31,409                                                 | 27,336                                                 | 97,381                                                    | 74,276                                                    |
| Interest expense                       | (1,748)                                                | (5,594)                                                | (15,304)                                                  | (18,083)                                                  |
| Interest income                        | 20                                                     | 40                                                     | 188                                                       | 349                                                       |
| Other (expense)/income, net            | (391)                                                  | 236                                                    | 146                                                       | 691                                                       |
| Income before income taxes             | 29,290                                                 | 22,018                                                 | 82,411                                                    | 57,233                                                    |
| Income tax provision                   | 7,337                                                  | 5,760                                                  | 22,563                                                    | 14,387                                                    |
| Net income                             | \$ 21,953                                              | \$ 16,258                                              | \$ 59,848                                                 | \$ 42,846                                                 |
| Net income per share:                  |                                                        |                                                        |                                                           |                                                           |
| Basic                                  | \$ 0.38                                                | \$ 0.27                                                | \$ 1.01                                                   | \$ 0.72                                                   |
| Diluted                                | \$ 0.37                                                | \$ 0.27                                                | \$ 0.99                                                   | \$ 0.71                                                   |
| Weighted average shares outstanding:   |                                                        |                                                        |                                                           |                                                           |
| Basic                                  | 58,427                                                 | 59,359                                                 | 59,057                                                    | 59,337                                                    |
| Diluted                                | 59,743                                                 | 60,328                                                 | 60,453                                                    | 60,224                                                    |

See the accompanying notes to the consolidated financial statements.

Table of Contents**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY****(In thousands)****(Unaudited)**

|                                                                                            | Shares of<br>Common<br>Stock | Common<br>Stock | Additional<br>Paid-in<br>Capital | Retained<br>Earnings | Accumulated<br>Other<br>Comprehensive<br>Income/(Loss) | Treasury<br>Stock | Total      |
|--------------------------------------------------------------------------------------------|------------------------------|-----------------|----------------------------------|----------------------|--------------------------------------------------------|-------------------|------------|
| Balance, December 29, 2009                                                                 | 83,377                       | \$ 834          | \$ 386,562                       | \$ 639,544           | \$ (4,619)                                             | \$ (506,208)      | \$ 516,113 |
| Comprehensive income:                                                                      |                              |                 |                                  |                      |                                                        |                   |            |
| Net income                                                                                 |                              |                 |                                  | 59,848               |                                                        |                   | 59,848     |
| Net unrealized loss on derivative<br>financial instrument                                  |                              |                 |                                  |                      | 41                                                     |                   | 41         |
| Loss reclassified into<br>income due to cancellation of<br>derivative financial instrument |                              |                 |                                  |                      | 4,578                                                  |                   | 4,578      |
| Total comprehensive<br>income                                                              |                              |                 |                                  |                      |                                                        |                   | 64,467     |
| Issuance of common<br>stock from stock<br>options exercised                                | 652                          | 6               | 12,843                           |                      |                                                        |                   | 12,849     |
| Tax impact of stock<br>options exercised, net<br>of cancellations                          |                              |                 | (24)                             |                      |                                                        |                   | (24)       |
| Stock-based compensation                                                                   |                              |                 | 9,623                            |                      |                                                        |                   | 9,623      |
| Issuance of restricted<br>stock, net of forfeitures                                        | 97                           | 1               |                                  |                      |                                                        |                   | 1          |
| Purchase of treasury stock                                                                 |                              |                 |                                  |                      |                                                        | (51,154)          | (51,154)   |
| Balance, September 28, 2010                                                                | 84,126                       | \$ 841          | \$ 409,004                       | \$ 699,392           | \$                                                     | \$ (557,362)      | \$ 551,875 |

See the accompanying notes to the consolidated financial statements.

[Table of Contents](#)**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF CASH FLOWS****(In thousands)****(Unaudited)**

|                                                                               | <b>Thirty-Nine<br/>Weeks Ended<br/>September 28, 2010</b> | <b>Thirty-Nine<br/>Weeks Ended<br/>September 29, 2009</b> |
|-------------------------------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------|
| Cash flows from operating activities:                                         |                                                           |                                                           |
| Net income                                                                    | \$ 59,848                                                 | \$ 42,846                                                 |
| Adjustments to reconcile net income to cash provided by operating activities: |                                                           |                                                           |
| Depreciation and amortization                                                 | 54,083                                                    | 56,046                                                    |
| Realized loss on derivative financial instrument                              | 7,376                                                     | 5,264                                                     |
| Deferred income taxes                                                         | (430)                                                     | (2,800)                                                   |
| Stock-based compensation                                                      | 9,473                                                     | 10,483                                                    |
| Tax impact of stock options exercised, net of cancellations                   | (24)                                                      | (872)                                                     |
| Excess tax benefit related to stock options exercised                         | (1,934)                                                   | (277)                                                     |
| Other                                                                         | (467)                                                     | 1,601                                                     |
| Changes in assets and liabilities:                                            |                                                           |                                                           |
| Accounts receivable                                                           | 1,608                                                     | 2,111                                                     |
| Other receivables                                                             | 11,104                                                    | 17,319                                                    |
| Inventories                                                                   | (7,722)                                                   | (5,558)                                                   |
| Prepaid expenses                                                              | 4,639                                                     | 229                                                       |
| Other assets                                                                  | (266)                                                     | 4,646                                                     |
| Accounts payable                                                              | (4,498)                                                   | (10,273)                                                  |
| Income taxes payable                                                          | (3,999)                                                   | 24,726                                                    |
| Termination of derivative financial instrument                                | (7,376)                                                   | (5,264)                                                   |
| Other accrued expenses                                                        | (11,119)                                                  | 6,256                                                     |
| Cash provided by operating activities                                         | 110,296                                                   | 146,483                                                   |
| Cash flows from investing activities:                                         |                                                           |                                                           |
| Additions to property and equipment                                           | (29,415)                                                  | (24,449)                                                  |
| Sales of available-for-sale securities                                        |                                                           | 1,000                                                     |
| Cash used in investing activities                                             | (29,415)                                                  | (23,449)                                                  |
| Cash flows from financing activities:                                         |                                                           |                                                           |
| Deemed landlord financing proceeds                                            | 2,707                                                     | 3,860                                                     |
| Deemed landlord financing payments                                            | (1,138)                                                   | (1,067)                                                   |
| Proceeds from exercise of employee stock options                              | 12,849                                                    | 832                                                       |
| Excess tax benefit related to stock options exercised                         | 1,934                                                     | 277                                                       |
| Repayment on credit facility                                                  | (60,000)                                                  | (125,000)                                                 |
| Purchase of treasury stock                                                    | (51,154)                                                  |                                                           |
| Cash used in financing activities                                             | (94,802)                                                  | (121,098)                                                 |
| Net change in cash and cash equivalents                                       | (13,921)                                                  | 1,936                                                     |
| Cash and cash equivalents at beginning of period                              | 73,715                                                    | 80,365                                                    |
| Cash and cash equivalents at end of period                                    | \$ 59,794                                                 | \$ 82,301                                                 |
| Supplemental disclosures:                                                     |                                                           |                                                           |
| Interest paid                                                                 | \$ 15,981                                                 | \$ 16,227                                                 |

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|                   |    |        |    |       |
|-------------------|----|--------|----|-------|
| Income taxes paid | \$ | 22,935 | \$ | 5,404 |
|-------------------|----|--------|----|-------|

See the accompanying notes to the consolidated financial statements.

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**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(Unaudited)**

**1. Basis of Presentation and Significant Accounting Policies**

The accompanying consolidated financial statements include the accounts of The Cheesecake Factory Incorporated (referred to herein as the Company, we, us and our ) and its wholly owned subsidiaries prepared in accordance with accounting principles generally accepted in the United States of America ( GAAP ) and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The financial statements presented herein have not been audited by an independent registered public accounting firm, but include all material adjustments (consisting of normal recurring adjustments) which are, in the opinion of management, necessary for the fair statement of the financial condition, results of operations and cash flows for the period. However, these results are not necessarily indicative of results for any other interim period or for the full fiscal year. The preparation of financial statements in conformity with GAAP requires us to make certain estimates and assumptions for the reporting periods covered by the financial statements. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent liabilities. Actual amounts could differ from these estimates.

Certain information and footnote disclosures normally included in financial statements in accordance with GAAP have been omitted pursuant to the rules of the Securities and Exchange Commission ( SEC ). The accompanying consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2009 filed with the SEC on February 26, 2010.

Certain reclassifications have been made to prior year amounts to conform to the current year presentation.

*Fair Value of Financial Instruments*

For cash and cash equivalents, the carrying amount approximates fair value because of the short maturity of these instruments. The fair value of our long-term debt and deemed landlord financing liabilities are determined using current applicable rates for similar instruments as of the balance sheet date. During the second quarter of fiscal 2010, we performed a review of market conditions and the borrowing rates currently available to us for facilities with similar terms and maturities. Based on this analysis, we believe the carrying value of our long-term debt approximates fair value. The fair value of our deemed landlord financing liabilities at September 28, 2010 is \$50.7 million versus a carrying value of \$52.5 million.

*Recent Accounting Pronouncements*

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In October 2009, the Financial Accounting Standards Board issued guidance on revenue arrangements with multiple deliverables effective for us in fiscal 2011, although early adoption is permitted. The guidance revises the criteria for measuring and allocating consideration to each component of a multiple element arrangement. The guidance requires companies to allocate revenue using the relative selling price of each deliverable, which must be estimated if the company does not have either a history of selling the deliverable on a stand alone basis or third-party evidence of selling price. For our company, this guidance will only impact the pattern of revenue recognition for our marketing programs that include multiple elements. As the timing and content of future promotions is not determinable at this time, we are unable to estimate the impact of this guidance on our financial statements.

### 2. Inventories

Inventories consisted of (in thousands):

|                                   | September 28, 2010 |        | December 29, 2009 |        |
|-----------------------------------|--------------------|--------|-------------------|--------|
| Restaurant food and supplies      | \$                 | 12,342 | \$                | 12,619 |
| Bakery finished goods             |                    | 12,641 |                   | 5,530  |
| Bakery raw materials and supplies |                    | 4,941  |                   | 4,053  |
| Total                             | \$                 | 29,924 | \$                | 22,202 |

### 3. Long-Term Debt

Long-term debt consisted of (in thousands):

|                 | September 28, 2010 |        | December 29, 2009 |         |
|-----------------|--------------------|--------|-------------------|---------|
| Credit facility | \$                 | 40,000 | \$                | 100,000 |

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In April 2007, we entered into a five-year revolving credit facility ( Facility ) with a maximum available borrowing commitment of \$200 million. In March 2008, we amended the Facility to increase the maximum available borrowing commitment to \$300 million. In January 2009, we entered into a second amendment, which reset our financial covenants and pricing, and also limited cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a liquidity threshold. Borrowings under the amended Facility bear interest at a floating rate based on the London Interbank Offering Rate (LIBOR) plus a spread ranging from 2.50% to 2.75%, depending on our ratio of debt to trailing 12-month earnings before interest, taxes, depreciation, amortization and noncash stock option expense ( EBITDA ), as defined in the agreement. In addition, we pay a commitment fee ranging from 0.40% to 0.45%, also depending on our ratio of debt to EBITDA, calculated on the average unused portion of the Facility. The Facility restricts unsecured borrowings to \$15 million and includes a pledge of our outstanding equity interests in The Cheesecake Factory Bakery Incorporated and The Cheesecake Factory Assets Co. LLC, which had carrying values of \$86.5 million and \$69.6 million, respectively, at September 28, 2010.

We are obligated to maintain certain financial covenants, which include a maximum debt to EBITDA ratio of 1.75 as of the fiscal quarter ending March 31, 2009 or 1.50 as of the end of any fiscal quarter thereafter, as well as a minimum EBITDAR (EBITDA plus rental expense), as defined in the Facility, to interest and rental expense ratio of 1.90 as of any of the fiscal quarters ending March 31, 2009 through September 28, 2010 or 2.00 as of the end of any fiscal quarter thereafter. At September 28, 2010, our EBITDA and EBITDAR ratios were 0.19 and 2.49, respectively. Therefore, we were in compliance with the financial covenants in effect under the Facility at that date.

Availability under the Facility is reduced by outstanding standby letters of credit, which are used to support our self-insurance programs. As of September 28, 2010, we had net availability for borrowings of \$244 million, based on outstanding debt of \$40 million and \$16 million in standby letters of credit. Since we have the contractual ability to maintain the outstanding balance on our Facility, the debt is classified as long-term on our consolidated balance sheets.

## **4. Derivative Financial Instruments**

At December 29, 2009, we held one zero-cost interest rate collar that hedged interest rate variability on the \$100 million outstanding balance on our Facility as of that date. This instrument consisted of a combination of a purchased cap option with a three-month LIBOR cap rate of 5.35% and a sold floor option with a three-month LIBOR floor rate of 4.69%, and had a maturity date of April 3, 2012. During the second quarter of fiscal 2010, we unwound this collar at a cost of \$7.4 million. See Note 3 for further discussion of our credit facility.

This derivative qualified for hedge accounting as a cash flow hedge and, accordingly, was recognized at fair value as either an asset or liability on the consolidated balance sheets. Changes in fair value were recorded in accumulated other comprehensive income ( AOCI ) and subsequently reclassified into earnings when the related interest expense on the underlying borrowing was recognized. We do not hold any derivative financial instruments for trading or speculative purposes.

The fair value and balance sheet locations of our derivative are as follows (in thousands):

|                         | Balance Sheet Location | Fair Value of Liability Derivatives |                   |
|-------------------------|------------------------|-------------------------------------|-------------------|
|                         |                        | September 28, 2010                  | December 29, 2009 |
| Interest rate contracts | Other accrued expenses | \$                                  | \$ 4,299          |

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|                         |                              |    |    |       |
|-------------------------|------------------------------|----|----|-------|
| Interest rate contracts | Other noncurrent liabilities |    |    | 3,945 |
| Total                   |                              | \$ | \$ | 8,244 |

We had no derivative financial instruments in asset positions as of September 28, 2010 or December 29, 2009. The fair value of our derivative financial instruments is estimated using the net present value of a series of cash flows on both the cap and floor components of the interest rate collars. These cash flows are based on yield curves which take into account the contractual terms of the derivatives, including the period to maturity and market-based parameters such as interest rates and volatility. We incorporated nonperformance risk by adjusting the present value of each liability position utilizing an estimation of our credit risk.

The effects of derivative instruments on our consolidated statements of operations are as follows (in thousands):

|                         | Gain/(Loss)<br>Recognized in AOCI on<br>Derivative<br>Thirteen Weeks Ended |                       | Location of Gain/(Loss)<br>Reclassified from AOCI<br>into Income | Gain/(Loss)<br>Reclassified from<br>AOCI into Income<br>Thirteen Weeks Ended |                       |
|-------------------------|----------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------|------------------------------------------------------------------------------|-----------------------|
|                         | September 28,<br>2010                                                      | September 29,<br>2009 |                                                                  | September 28,<br>2010                                                        | September 29,<br>2009 |
| Interest rate contracts | \$                                                                         | \$ (395)              | Interest expense                                                 | \$                                                                           | \$ (3,500)            |

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|                         | Gain/(Loss)<br>Recognized in AOCI on<br>Derivative |                       | Location of Gain/(Loss)<br>Reclassified from AOCI<br>into Income | Gain/(Loss)<br>Reclassified from<br>AOCI into Income |                       |
|-------------------------|----------------------------------------------------|-----------------------|------------------------------------------------------------------|------------------------------------------------------|-----------------------|
|                         | Thirty-Nine Weeks Ended<br>September 28,<br>2010   | September 29,<br>2009 |                                                                  | Thirty-Nine Weeks Ended<br>September 28,<br>2010     | September 29,<br>2009 |
| Interest rate contracts | \$ 41                                              | \$ 238                | Interest expense                                                 | \$ (9,638)                                           | \$ (9,002)            |

**5. Fair Value Measurement**

The following table presents our financial assets and liabilities that were accounted for at fair value as of September 28, 2010 (in thousands):

|                                     | Fair Value Measurements Using         |                                              |                                       |
|-------------------------------------|---------------------------------------|----------------------------------------------|---------------------------------------|
|                                     | Quoted Prices<br>in Active<br>Markets | Significant<br>Other<br>Observable<br>Inputs | Significant<br>Unobservable<br>Inputs |
| Assets:                             |                                       |                                              |                                       |
| Cash invested in money market funds | \$ 16                                 | \$                                           | \$                                    |

For assets that are measured using quoted prices in active markets, fair value is the published market price per unit multiplied by the number of units held without consideration of transaction costs. At September 28, 2010, we had less than \$0.1 million of cash invested in tax-exempt money market funds compared to \$25.2 million as of December 29, 2009. These funds purchase only first-tier securities, and we have not experienced any losses in these accounts. Therefore, we believe we are not exposed to significant risk on these investments.

**6. Commitments and Contingencies**

The Internal Revenue Service ( IRS ) audited our tax returns for fiscal years 2003 through 2006 with respect to the deductibility, under the provisions of Internal Revenue Code Section 162(m), of certain compensation in excess of \$1 million per year paid to three current executive officers and one former executive officer resulting from their respective exercises of stock options later determined to be misdated (the 162(m) Dispute ). In May 2008, the IRS issued a Notice of Proposed Adjustment to us disallowing the deduction of approximately \$5.1 million of compensation expense with respect to the exercise of stock options by such executive officers. We believe that such stock option compensation qualifies as performance-based compensation that is not subject to the limitations on deductibility under Internal Revenue Code Section 162(m). We received a Statutory Notice of Deficiency from the IRS for fiscal 2005 only and petitioned for redetermination of this notice with the United States Tax Court. In May 2010, we conducted a settlement conference with the IRS Office of Appeals resulting in an agreement to resolve the 162(m) Dispute as to tax year 2005 only. That agreement was approved by the United States Tax Court in August 2010 (Docket No. 23591-09). This court order resolved the 162(m) Dispute as to tax year 2005, and because the 162(m) Dispute as to tax year 2006 consisted solely of a reduction to tax credits carried over from tax year 2005 resulting from the IRS Notice of Deficiency, such court order also resolved the 162(m) Dispute as to tax year 2006. In October 2010, we filed a complaint with the United States District Court for the refund of income taxes with respect to tax years 2003 and 2004, including interest and penalties. While we believe that all stock option compensation in the as yet unresolved years of the 162(m) Dispute qualifies as performance-based compensation under Internal Revenue Code Section 162(m) and is not subject to the limitations on deductibility, we have reserved \$1.3 million for estimated taxes, interest and penalties due through September 28, 2010.

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On August 10, 2010, the Equal Employment Opportunity Commission (EEOC) for the Cleveland Field Office issued a determination letter in EEOC Charge 532-2009-1050 in favor of the Charging Party and a class of 15 unidentified employees, alleging that we subjected them to a hostile work environment based on national origin and/or race in violation of Title VII of the Civil Rights Act of 1964 (Title VII). The EEOC is seeking payment of alleged actual damages incurred by the claimants as well as compensatory and/or punitive monetary costs and remedial actions. The parties failed to reach a conciliated settlement in September 2010 and, to date, no further action has been taken by the EEOC with respect to Charge No. 532-2009-1050. We intend to vigorously defend against this Charge. Based upon the current status of this matter, we have not reserved for any potential future payments.

On May 10, 2010, three current hourly restaurant employees in the State of California filed a class action lawsuit in the California Superior Court, Placer County, against us alleging violations of the California Labor Code by requiring employees to purchase uniforms and other work tools to perform their jobs, among other claims (Reed v. The Cheesecake Factory Restaurants, Inc. et al; Case No. S CV 27073). In October 2010, we gave notice to the respective courts in Case No. S CV 27073 and Case No. BC360426 that such cases may be related. The lawsuit seeks unspecified amounts of penalties and other monetary payments on behalf of the respective plaintiffs and other purported class members. The plaintiffs also seek attorneys' fees. We intend to vigorously defend this action. Based on the current status of this matter, we have not reserved for any potential future payments.

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On November 18, 2009, one former hourly restaurant employee in the State of Illinois filed a lawsuit in the U.S. District Court for the Northern District of Illinois (Morales v. The Cheesecake Factory, Inc.; Case No. 09 CV 7005) against us alleging violations of the Fair Labor Standards Act and Illinois Minimum Wage Law for alleged failure to pay overtime and minimum wages, among other claims. This lawsuit seeks unspecified amounts of penalties and other monetary payments on behalf of the respective plaintiff and other purported class members. The plaintiff also seeks attorneys' fees. On June 11, 2010, the Plaintiff filed a motion for conditional class certification. We filed our response to the motion on July 12, 2010. No hearing date has been set by the Court. We intend to vigorously defend this action. Based on the current status of this matter, we have not reserved for any potential future payments.

On August 5, 2009, two former hourly restaurant employees in the State of California filed a class action lawsuit in the Los Angeles County Superior Court (Luque v. The Cheesecake Factory Restaurants, Inc.; Case No. BC415640) against us alleging violations of California's wage and hour laws with respect to alleged failure to pay proper vacation wages at termination, failure to furnish wage statements, and violations of the California Business and Professions Code, among other claims. This lawsuit seeks unspecified amounts of penalties and other monetary payments on behalf of the respective plaintiffs and other purported class members. The plaintiffs also seek attorneys' fees. The plaintiffs' deadline for filing their motion for class certification was June 11, 2010, and they failed to timely file. On October 12, 2010, the parties conditionally settled Case No. BC415640 for a nominal amount. The final settlement agreement is subject to court approval. Based on the current status of this matter, we have not reserved for any potential future payments.

On January 20, 2009, one former hourly restaurant employee in the State of California filed a lawsuit in the San Diego County Superior Court (Giradin v. The Cheesecake Factory, Inc.; Case No. 37-2009-00081696-CU-OE-CTL) against us alleging violations of California's wage and hour laws with respect to alleged failure to pay proper wages, failure to furnish accurate wage statements and violations of the California reporting time laws, among other claims. This lawsuit seeks unspecified amounts of penalties and other monetary payments on behalf of the respective plaintiff and other purported class members. The plaintiff also seeks attorneys' fees. On January 8, 2010, the plaintiff filed a First Amended Complaint naming a new class representative and asserting additional claims under the California Labor Code Private Attorneys General Act of 2004. We filed a demurer to the First Amended Complaint on February 22, 2010. On April 23, 2010, the Court granted our motion and dismissed the plaintiff's complaint. If an appeal is filed, or the case is not otherwise fully dismissed, we intend to vigorously defend this action. Based on the current status of this matter, we have not reserved for any potential future payments.

On July 2, 2008, the Equal Employment Opportunity Commission (EEOC) for the Cleveland Field Office issued determination letters in Charges 532-2006-01040, -01030, -01042 in favor of three former employees alleging that we engaged in a pattern and practice of sex discrimination, and in the case of one claimant, racial discrimination, in violation of Title VII of the Civil Rights Act of 1964 (Title VII). The determination alleges that our actions resulted in females as a class being denied entry and progression into upper ranks of management at our restaurants. We deny these allegations. The EEOC is seeking payment of alleged actual damages incurred by the claimants as well as compensatory and/or punitive monetary costs and remedial actions. The parties failed to reach a conciliated settlement in 2008 and, to date, no further action has been taken by the EEOC with respect to these charges. On July 30, 2008, the EEOC Cleveland District Office also filed a Commissioner's Charge 532-2008-01856 alleging we violated Title VII for failing or refusing to select females for management positions in our restaurants because of their sex. This Charge arises out of the facts alleged in EEOC Charges 532-2006-01040, -01030, -01042. The EEOC is currently conducting its investigation into this Commissioner's Charge. While we are cooperating with the EEOC's investigation, we deny these allegations and intend to vigorously defend against these charges. Based upon the current status of these matters, we have not reserved for any potential future payments.

On January 9, 2007, two former hourly restaurant employees in the State of California filed a lawsuit in the Los Angeles County Superior Court against us alleging violations of California's wage and hour laws with respect to alleged failure to pay proper wages, improper payroll deductions, and violations of the California meal and break period laws, among other claims (Guardado v. The Cheesecake Factory Restaurants, Inc. et al; Case No. BC360426). This case was previously stayed by the parties through December 2008, pending the California Supreme Court's decision to review Brinker Restaurant Corp. v. Superior Court of San Diego County (No. S166350, 2008). Subsequently, the parties entered into mediation proceedings that, to date, have not been successful. On February 23, 2009, an additional lawsuit with similar allegations was filed by another hourly restaurant employee in Santa Clara County Superior Court (Benitez v. The Cheesecake Factory

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Restaurants, Inc., et al; Case No. 109CV135687). In April, 2009, we gave notice to the respective courts in Case No. 109CV135687 and Case No. BC360426 that such cases may be related matters. In March, 2010, we settled Case No. 109CV135687 for a nominal amount. On March 30, 2010, the Court set a trial date in Case No. BC360426. On June 1, 2010, the plaintiffs in Case No. BC360426 filed their motion for class certification, and on July 6, 2010, the Court denied such motion. A notice of appeal was subsequently filed by the plaintiffs in Case No. BC360426 on August 3, 2010.

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We intend to vigorously defend against this action. On July 28, 2010, a lawsuit was filed against us in the Santa Clara County Superior Court (Rusteen v. The Cheesecake Factory Restaurants, Inc. et al; Case No. 1-10-CV-178233) claiming similar and additional allegations to those asserted in Case No. BC360426 including, among other things, violations of California's wage and hour laws with respect to alleged failure to pay the plaintiff overtime, reporting time pay and minimum wages, allow proper meal breaks or rest periods, and provide adequate pay statements. In October 2010, we gave notice to the respective courts in Case No. 1-10-CV-178233 and Case No. BC360426 that such cases may be related. The plaintiff in Case No. 1-10-CV-178233 seeks unspecified amounts of penalties and other monetary payments on behalf of himself and other purported class members. The plaintiffs also seek attorneys' fees. Based on the current status of this matter, we have not reserved for any potential future payments.

On August 29, 2006, five present and former hourly restaurant employees in the States of Tennessee, Texas and Arizona filed a lawsuit in the U.S. District Court for the Middle District of Tennessee against us alleging violations of the Fair Labor Standards Act with respect to alleged minimum wage violations, improper payroll deductions and requiring work off the clock, among other claims (Smith v. The Cheesecake Factory Restaurants, Inc. et al; Case No. 3:06-0829). The lawsuit seeks unspecified amounts of penalties and other monetary payments on behalf of the plaintiffs and other purported class members. The plaintiffs also seek attorneys' fees. On February 4, 2010, the Court granted our motion to compel arbitration and issued an order dismissing all individual defendants in the case. The plaintiffs filed their demand for arbitration on April 19, 2010. On July 16, 2010, we filed a Motion to Appoint Arbitrators for the individual plaintiffs with the U.S. District Court. We intend to vigorously defend this action. Based on the current status of this matter, we have not reserved for any potential future payments.

We are also subject to other private lawsuits, administrative proceedings and claims that arise in the ordinary course of our business. These claims typically involve claims from guests, staff members and others related to operational issues common to the foodservice industry. A number of these claims may exist at any given time and some of the employee claims may be pled as class actions. We could be affected by adverse publicity and litigation costs resulting from such allegations, regardless of whether these allegations are valid or whether we are determined to be liable. From time to time, we are also involved in lawsuits with respect to infringements of, or challenges to, our registered trademarks. At this time, we believe that the final disposition of these lawsuits, proceedings and claims will not have a material adverse effect on our financial position, results of operations or liquidity. It is possible, however, that our future results of operations for a particular quarter or fiscal year could be impacted by changes in circumstances relating to lawsuits, proceedings or claims.

## **7. Stockholders' Equity**

We have an outstanding authorization from our Board of Directors to repurchase up to 31 million shares of our common stock. Under this authorization, we have cumulatively repurchased a total of 25.2 million shares at a total cost of \$557.4 million through September 28, 2010; we repurchased 2.1 million of these shares at a total cost of \$51.2 million during the first three quarters of fiscal 2010. The authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time.

In October 2008, we suspended our share repurchase program in order to maintain maximum flexibility in our capital decisions in light of the unprecedented crisis in the global financial markets and the indeterminate future impact it could have on the overall economy and on our business. In February 2010, our Board of Directors reinstated our stock repurchase program and approved the adoption of a trading plan under Rule 10b5-1 ( "10b5-1 Plan") under the Securities Exchange Act of 1934, as amended from time to time ( "Act"), which became effective in March 2010. In addition, we may also make purchases in the open market in compliance with Rule 10b-18 under the Act.

The timing and number of shares repurchased pursuant to the share repurchase authorization are subject to a number of factors, including current market conditions, legal constraints, available cash or other sources of funding and financial covenants under our credit facility that limit share

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repurchases based on a liquidity threshold. Shares may be repurchased in the open market or through privately negotiated transactions at times and prices considered appropriate by us. We make the determination to repurchase shares based on several factors, including an evaluation of current and future capital needs associated with new restaurant development, current and forecasted cash flows, a review of our capital structure and cost of capital, and our share price.

### 8. Stock-Based Compensation

The following table presents information related to stock-based compensation (in thousands):

|                                          | Thirteen Weeks<br>Ended September 28,<br>2010 |    | Thirteen Weeks<br>Ended September 29,<br>2009 |    | Thirty-Nine Weeks<br>Ended September 28,<br>2010 |    | Thirty-Nine Weeks<br>Ended September 29,<br>2009 |
|------------------------------------------|-----------------------------------------------|----|-----------------------------------------------|----|--------------------------------------------------|----|--------------------------------------------------|
| Stock-based compensation expense         | \$ 2,891                                      | \$ | 3,417                                         | \$ | 9,473                                            | \$ | 10,483                                           |
| Income tax benefit                       | 1,096                                         |    | 907                                           |    | 3,593                                            |    | 2,631                                            |
| Capitalized stock-based compensation (1) | 19                                            |    | 83                                            |    | 151                                              |    | 359                                              |

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(1) It is our policy to capitalize the portion of stock-based compensation costs for our internal development and construction, legal, and facilities departments that relates to capitalizable activities such as the design and construction of new restaurants, remodeling existing locations, lease, intellectual property and liquor license acquisition activities and equipment installation. Capitalized stock-based compensation is included in property and equipment, net and other assets on the consolidated balance sheets.

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The weighted average fair value at the grant date for options issued during the third quarter of fiscal 2010 and 2009 was \$9.93 and \$8.08 per option, respectively. The fair value of options at the grant date was estimated utilizing the Black-Scholes valuation model with the following weighted average assumptions for the third quarter of fiscal 2010 and 2009, respectively: (a) no dividend yield on our stock, (b) expected stock price volatility of 43.8% and 49.4%, (c) a risk-free interest rate of 1.7% and 2.5%, and (d) an expected option term of 5.8 and 5.4 years.

Stock option activity during the thirty-nine weeks ended September 28, 2010 was as follows:

|                                   | Shares<br>(In thousands) | Weighted<br>Average<br>Exercise Price<br>(Per share) | Weighted<br>Average<br>Remaining<br>Contractual<br>Term<br>(In years) | Aggregate<br>Intrinsic Value<br>(In thousands) |
|-----------------------------------|--------------------------|------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------------------|
| Outstanding at December 29, 2009  | 10,254                   | \$ 22.40                                             |                                                                       |                                                |
| Granted                           | 624                      | \$ 22.90                                             |                                                                       |                                                |
| Exercised                         | (652)                    | \$ 19.71                                             |                                                                       |                                                |
| Cancelled                         | (341)                    | \$ 23.68                                             |                                                                       |                                                |
| Outstanding at September 28, 2010 | 9,885                    | \$ 22.56                                             | 5.4                                                                   | \$ 53,555                                      |
| Exercisable at September 28, 2010 | 4,769                    | \$ 26.37                                             | 3.9                                                                   | \$ 11,541                                      |

The total intrinsic value of options exercised for the thirteen and thirty-nine weeks ended September 28, 2010 was \$0.4 million and \$4.3 million, respectively. The total intrinsic value of options exercised for the thirteen and thirty-nine weeks ended September 29, 2009 was \$0.3 million and \$0.5 million, respectively. As of September 28, 2010, the total unrecognized stock-based compensation expense related to nonvested stock options was \$19.7 million, which we expect to recognize over a weighted average period of approximately 2.8 years.

*Restricted Shares*

Restricted share activity during the thirty-nine weeks ended September 28, 2010 was as follows:

|                                  | Shares<br>(In thousands) | Weighted<br>Average<br>Fair Value<br>(Per share) |
|----------------------------------|--------------------------|--------------------------------------------------|
| Outstanding at December 29, 2009 | 623                      | \$ 16.32                                         |
| Granted                          | 107                      | 22.94                                            |
| Vested                           | (171)                    | 25.35                                            |
| Forfeited                        | (11)                     | 10.36                                            |

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|                                   |     |    |       |
|-----------------------------------|-----|----|-------|
| Outstanding at September 28, 2010 | 548 | \$ | 14.91 |
|-----------------------------------|-----|----|-------|

Fair value of our restricted shares is based on our closing stock price on the date of grant. There were no restricted shares granted in either the third quarter of fiscal 2010 or 2009. The fair value of shares that vested during the thirteen weeks and thirty-nine weeks ended September 28, 2010 was \$0.6 million and \$4.4 million, respectively. No restricted shares vested during the first three quarters of fiscal 2009. As of September 28, 2010, total unrecognized stock-based compensation expense related to nonvested restricted shares was \$4.9 million, which we expect to recognize over a weighted average period of approximately 3.3 years.

Table of Contents**9. Net Income Per Share**

At September 28, 2010 and September 29, 2009, 0.5 million and 0.8 million shares, respectively, of restricted stock issued to employees were unvested, and therefore excluded from the calculation of basic earnings per share for the fiscal quarters ended on those dates. Diluted net income per share includes the dilutive effect of both outstanding stock options and restricted shares, calculated using the treasury stock method. Assumed proceeds from in-the-money options include windfall tax benefits, net of shortfalls, calculated under the as-if method as prescribed by Financial Accounting Standards Codification 718, Compensation Stock Option Compensation.

|                                                        | <b>Thirteen<br/>Weeks Ended<br/>September 28, 2010</b> | <b>Thirteen<br/>Weeks Ended<br/>September 29, 2009</b> | <b>Thirty-Nine<br/>Weeks Ended<br/>September 28, 2010</b> | <b>Thirty-Nine<br/>Weeks Ended<br/>September 29, 2009</b> |
|--------------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------|
|                                                        | <b>(In thousands, except per share data)</b>           |                                                        |                                                           |                                                           |
| Net income                                             | \$ 21,953                                              | \$ 16,258                                              | \$ 59,848                                                 | \$ 42,846                                                 |
| Basic weighted average shares outstanding              | 58,427                                                 | 59,359                                                 | 59,057                                                    | 59,337                                                    |
| Dilutive effect of stock options and restricted shares | 1,316                                                  | 969                                                    | 1,396                                                     | 887                                                       |
| Diluted weighted average shares outstanding            | 59,743                                                 | 60,328                                                 | 60,453                                                    | 60,224                                                    |
| Basic net income per share                             | \$ 0.38                                                | \$ 0.27                                                | \$ 1.01                                                   | \$ 0.72                                                   |
| Diluted net income per share                           | \$ 0.37                                                | \$ 0.27                                                | \$ 0.99                                                   | \$ 0.71                                                   |

Shares of common stock equivalents of 5.4 million and 5.8 million for the thirteen and thirty-nine weeks ended September 28, 2010 and 8.3 million and 9.1 million for the thirteen and thirty-nine weeks ended September 29, 2009, respectively, were not included in the diluted calculation due to their anti-dilutive effect.

**10. Comprehensive Income**

Comprehensive income consisted of (in thousands):

|                                                            | <b>Thirteen<br/>Weeks Ended<br/>September 28, 2010</b> | <b>Thirteen<br/>Weeks Ended<br/>September 29, 2009</b> | <b>Thirty-Nine<br/>Weeks Ended<br/>September 28, 2010</b> | <b>Thirty-Nine<br/>Weeks Ended<br/>September 29, 2009</b> |
|------------------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------|
| Net income                                                 | \$ 21,953                                              | \$ 16,258                                              | \$ 59,848                                                 | \$ 42,846                                                 |
| Net unrealized gain on available-for-sale securities       |                                                        |                                                        |                                                           | 1                                                         |
| Unrealized (loss)/gain on derivative financial instruments |                                                        | (395)                                                  | 41                                                        | 238                                                       |

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|                                                                              |    |        |    |        |    |        |    |        |
|------------------------------------------------------------------------------|----|--------|----|--------|----|--------|----|--------|
| Loss reclassified into income due to<br>cancellation of financial instrument |    |        |    | 1,237  |    | 4,578  |    | 3,368  |
| Total                                                                        | \$ | 21,953 | \$ | 17,100 | \$ | 64,467 | \$ | 46,453 |

## 11. Segment Information

We operate in two business segments, restaurants and bakery. Restaurants consist of The Cheesecake Factory®, Grand Lux Cafe® and RockSugar Pan Asian Kitchen®. The bakery segment produces baked desserts and other products for our restaurants and for other foodservice operators, retailers and distributors. Bakery sales to the restaurants are recorded at prices similar to third-party national accounts. Unallocated corporate expenses, which include all stock-based compensation, assets and capital expenditures, are presented below as reconciling items to the amounts presented in the consolidated financial statements.

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Segment information is presented below (in thousands):

|                                | Thirteen<br>Weeks Ended<br>September 28, 2010 |          | Thirteen<br>Weeks Ended<br>September 29, 2009 |          | Thirty-Nine<br>Weeks Ended<br>September 28, 2010 |           | Thirty-Nine<br>Weeks Ended<br>September 29, 2009 |           |
|--------------------------------|-----------------------------------------------|----------|-----------------------------------------------|----------|--------------------------------------------------|-----------|--------------------------------------------------|-----------|
| Revenue:                       |                                               |          |                                               |          |                                                  |           |                                                  |           |
| Restaurants                    | \$                                            | 403,025  | \$                                            | 386,546  | \$                                               | 1,201,494 | \$                                               | 1,159,787 |
| Bakery                         |                                               | 30,306   |                                               | 27,877   |                                                  | 82,836    |                                                  | 79,417    |
| Intercompany bakery sales      |                                               | (14,979) |                                               | (13,783) |                                                  | (41,636)  |                                                  | (37,826)  |
| Total                          | \$                                            | 418,352  | \$                                            | 400,640  | \$                                               | 1,242,694 | \$                                               | 1,201,378 |
| Income from operations:        |                                               |          |                                               |          |                                                  |           |                                                  |           |
| Restaurants                    | \$                                            | 52,349   | \$                                            | 47,545   | \$                                               | 160,076   | \$                                               | 136,075   |
| Bakery                         |                                               | 2,437    |                                               | 3,797    |                                                  | 7,171     |                                                  | 9,909     |
| Corporate                      |                                               | (23,377) |                                               | (24,006) |                                                  | (69,866)  |                                                  | (71,708)  |
| Total                          | \$                                            | 31,409   | \$                                            | 27,336   | \$                                               | 97,381    | \$                                               | 74,276    |
| Depreciation and amortization: |                                               |          |                                               |          |                                                  |           |                                                  |           |
| Restaurants                    | \$                                            | 15,837   | \$                                            | 16,301   | \$                                               | 47,839    | \$                                               | 48,914    |
| Bakery                         |                                               | 776      |                                               | 770      |                                                  | 2,315     |                                                  | 2,293     |
| Corporate                      |                                               | 1,289    |                                               | 1,617    |                                                  | 3,929     |                                                  | 4,839     |
| Total                          | \$                                            | 17,902   | \$                                            | 18,688   | \$                                               | 54,083    | \$                                               | 56,046    |
| Capital expenditures:          |                                               |          |                                               |          |                                                  |           |                                                  |           |
| Restaurants                    | \$                                            | 10,439   | \$                                            | 6,117    | \$                                               | 26,826    | \$                                               | 21,185    |
| Bakery                         |                                               | 244      |                                               | 784      |                                                  | 599       |                                                  | 1,259     |
| Corporate                      |                                               | 867      |                                               | 464      |                                                  | 1,990     |                                                  | 2,005     |
| Total                          | \$                                            | 11,550   | \$                                            | 7,365    | \$                                               | 29,415    | \$                                               | 24,449    |
|                                |                                               |          |                                               |          |                                                  |           |                                                  |           |
|                                |                                               |          |                                               |          | September 28, 2010                               |           | December 29, 2009                                |           |
| Total assets:                  |                                               |          |                                               |          |                                                  |           |                                                  |           |
| Restaurants                    |                                               |          |                                               | \$       |                                                  | 851,730   | \$                                               | 881,545   |
| Bakery                         |                                               |          |                                               |          |                                                  | 58,354    |                                                  | 53,607    |
| Corporate                      |                                               |          |                                               |          |                                                  | 90,628    |                                                  | 111,599   |
| Total                          |                                               |          |                                               | \$       |                                                  | 1,000,712 | \$                                               | 1,046,751 |

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### Forward-Looking Statements

Certain information included in this Form 10-Q and other materials filed or to be filed by us with the SEC, as well as information included in oral or written statements made by us or on our behalf, may contain forward-looking statements about our current and expected performance trends, growth plans, business goals and other matters. These statements may be contained in our filings with the SEC, in our press releases, in other written communications, and in oral statements made by or with the approval of one of our authorized officers. Words or phrases such as believe, plan, will likely result, expect, intend, will continue, is anticipated, estimate, project, may, could, would, should, are intended to identify forward-looking statements. These statements, and any other statements that are not historical facts, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as codified in Section 27A of the Securities Act of 1933.

and Section 21E of the Act.

In connection with the safe harbor provisions of the Act, we have identified and are disclosing important factors, risks and uncertainties that could cause our actual results to differ materially from those projected in forward-looking statements made by us, or on our behalf (see Part II, Item 1A of this report, Risk Factors, and Part I, Item 1A, Risk Factors, included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2009). These cautionary statements are to be used as a reference in connection with any forward-looking statements. The factors, risks and uncertainties identified in these cautionary statements are in addition to those contained in any other cautionary statements, written or oral, which may be made or otherwise addressed in connection with a forward-looking statement or contained in any of our subsequent filings with the SEC. Because of these factors, risks and uncertainties, we caution against placing undue reliance on forward-looking statements. Although we believe that the assumptions underlying forward-looking statements are reasonable, any of the assumptions could be incorrect, and there can be no assurance that

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forward-looking statements will prove to be accurate. Forward-looking statements speak only as of the date on which they are made. Except as may be required by law, we do not undertake any obligation to modify or revise any forward-looking statement to take into account or otherwise reflect subsequent events or circumstances arising after the date that the forward-looking statement was made.

## **General**

This discussion and analysis should be read in conjunction with our interim unaudited consolidated financial statements and related notes included in this Form 10-Q and the audited consolidated financial statements and related notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2009. The inclusion of supplementary analytical and related information herein may require us to make appropriate estimates and assumptions to enable us to fairly present, in all material respects, our analysis of trends and expectations with respect to our results of operations and financial position taken as a whole.

As of November 4, 2010, we operated 163 upscale, casual, full-service dining restaurants: 149 under The Cheesecake Factory® mark, 13 under the Grand Lux Cafe® mark and one under the RockSugar Pan Asian Kitchen® mark. We also operated two bakery production facilities and licensed two limited menu bakery cafes under The Cheesecake Factory Bakery Cafe® mark to another foodservice operator.

The Cheesecake Factory is an upscale casual dining concept that offers more than 200 menu items including appetizers, pizza, seafood, steaks, chicken, burgers, pasta, specialty items, salads, sandwiches, omelets and desserts, including approximately 40 varieties of cheesecake and other baked desserts. Grand Lux Cafe and RockSugar Pan Asian Kitchen are also upscale casual dining concepts offering approximately 200 and 80 menu items, respectively. In contrast to many chain restaurant operations, substantially all of our menu items (except certain desserts manufactured at our bakery production facilities) are prepared on the restaurant premises using high quality, fresh ingredients based on innovative and proprietary recipes. We believe our restaurants are recognized by consumers for offering value with generous food portions at moderate prices. Our restaurants' distinctive, contemporary design and decor create a high-energy ambiance in a casual setting. Our restaurants currently range in size from 5,400 to 21,000 interior square feet, provide full liquor service and are generally open seven days a week for lunch and dinner, as well as Sunday brunch.

## **Overview**

In addition to being highly competitive, the restaurant industry is affected by changes in consumer tastes and discretionary spending patterns; changes in general economic conditions; public safety conditions; demographic trends; weather conditions; the cost and availability of food products, labor and energy; purchasing power; and government regulations. Accordingly, as part of our strategy, we must constantly evolve and refine the critical elements of our restaurant concepts to protect our competitiveness and to maintain and enhance the strength of our brands.

Our strategy is driven by our commitment to guest satisfaction and is focused primarily on menu innovation and operational execution to continue to differentiate ourselves from other restaurant concepts, as well as drive competitively strong performance that is sustainable. Financially, we are focused on prudently managing expenses at our restaurants, bakery facilities and corporate support center. We are also committed to allocating capital in a manner that will maximize profitability and returns. Investing in our restaurants is our top capital allocation priority with a focus on continuing to develop our concepts in premier locations within both existing and new markets. Near-term, we plan to deploy our excess capital on hand to either reduce the outstanding balance on our credit facility, repurchase some of our outstanding shares, or a

combination of both.

In evaluating and assessing the performance of our business, we believe the following are key performance indicators that should be taken into consideration:

- *Comparable Restaurant Sales and Overall Revenue Growth.* Changes in comparable restaurant sales come from variations in guest traffic, as well as changes in check average (as a result of menu price increases and/or changes in menu mix). Our strategy is to grow guest traffic by continuing to offer innovative, high-quality menu items that offer guests a wide range of options in terms of flavor, price and value. In addition, we plan to continue focusing on service and hospitality with the goal of delivering an exceptional guest experience. Our philosophy with regard to menu pricing is to use price increases to help offset key operating costs in a manner that balances protecting both our margins and guest traffic levels. Prior to the economic downturn, menu mix generally had a neutral effect on our average check, allowing us to retain the impact of our menu price increases. As the economy strengthens, we would expect this pattern to resume as guests focus less on check management.

Comparable restaurant sales growth, in addition to revenue from new restaurant openings and increases in third-party bakery sales, drive our overall revenue growth.

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- *Income from Operations Expressed as a Percentage of Revenues ( Operating Margins ).* Operating margins are subject to fluctuations in commodity costs, labor, restaurant-level occupancy expenses, general and administrative expenses, and preopening expenses. Our objective is to gradually increase our operating margins by capturing fixed cost leverage from comparable restaurant sales increases; maximizing our purchasing power as our business grows; and operating our restaurants as productively as possible by retaining the efficiencies we gained through cost management initiatives that have been implemented.

In addition, by efficiently scaling our restaurant and bakery support infrastructure and improving our internal processes, we strive to grow general and administrative expenses at a slower rate than revenue growth over the long-term, which should also contribute to operating margin expansion.

- *Return on Investment.* Return on investment measures our ability to make the best decisions regarding our allocation of capital. Returns are affected by the cost to build restaurants, the level of revenues that each restaurant can deliver and our ability to maximize the profitability of restaurants through operational execution and strict cost management. Our objective is to deploy capital in a manner that will maximize our return on investment.

## Results of Operations

The following table sets forth, for the periods indicated, our consolidated statements of operations expressed as percentages of revenues. The results of operations for the interim periods presented are not necessarily indicative of the results to be expected for the full fiscal year.

|                                        | Thirteen<br>Weeks Ended<br>September 28, 2010 | Thirteen<br>Weeks Ended<br>September 29, 2009 | Thirty-Nine<br>Weeks Ended<br>September 28, 2010 | Thirty-Nine<br>Weeks Ended<br>September 29, 2009 |
|----------------------------------------|-----------------------------------------------|-----------------------------------------------|--------------------------------------------------|--------------------------------------------------|
| Revenues                               | 100.0%                                        | 100.0%                                        | 100.0%                                           | 100.0%                                           |
| Costs and expenses:                    |                                               |                                               |                                                  |                                                  |
| Cost of sales                          | 24.4                                          | 23.9                                          | 24.4                                             | 24.4                                             |
| Labor expenses                         | 32.8                                          | 32.9                                          | 32.9                                             | 33.3                                             |
| Other operating costs and expenses     | 24.9                                          | 25.5                                          | 24.5                                             | 25.3                                             |
| General and administrative expenses    | 5.7                                           | 6.0                                           | 5.7                                              | 5.9                                              |
| Depreciation and amortization expenses | 4.3                                           | 4.7                                           | 4.4                                              | 4.7                                              |
| Preopening costs                       | 0.4                                           | 0.2                                           | 0.3                                              | 0.2                                              |
| Total costs and expenses               | 92.5                                          | 93.2                                          | 92.2                                             | 93.8                                             |
| Income from operations                 | 7.5                                           | 6.8                                           | 7.8                                              | 6.2                                              |
| Interest expense                       | (0.4)                                         | (1.4)                                         | (1.2)                                            | (1.5)                                            |
| Interest income                        |                                               |                                               |                                                  |                                                  |
| Other (expense)/income, net            | (0.1)                                         | 0.1                                           |                                                  | 0.1                                              |
| Income before income taxes             | 7.0                                           | 5.5                                           | 6.6                                              | 4.8                                              |
| Income tax provision                   | 1.8                                           | 1.4                                           | 1.8                                              | 1.2                                              |
| Net income                             | 5.2%                                          | 4.1%                                          | 4.8%                                             | 3.6%                                             |

## Thirteen Weeks Ended September 28, 2010 Compared to Thirteen Weeks Ended September 29, 2009

*Revenues*

Revenues increased 4.4% to \$418.4 million for the thirteen weeks ended September 28, 2010 compared to \$400.6 million for the thirteen weeks ended September 29, 2009.

Restaurant sales increased 4.3% to \$403.0 million compared to \$386.5 million in the prior year third quarter. This increase consisted of a \$10.6 million increase in The Cheesecake Factory and Grand Lux Cafe comparable restaurant sales and a \$5.9 million increase from restaurants not in the comparable sales base. Comparable sales at The Cheesecake Factory and Grand Lux Cafe restaurants increased by 2.8% from the third quarter of fiscal 2009 to the third quarter of fiscal 2010. At September 28, 2010, there were three The Cheesecake Factory restaurants not included in the comparable sales base. The Cheesecake Factory and Grand Lux Cafe restaurants become eligible to enter our comparable sales calculations in their 19th month of operation.

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Comparable sales at The Cheesecake Factory restaurants increased 2.9% from the prior year third quarter driven entirely by improved guest traffic. We implemented effective menu price increases of approximately 0.6% and 0.7% during the first and third quarter of fiscal 2010, respectively. On a weighted average basis, based on the timing of our menu roll outs within each quarter, The Cheesecake Factory menu included a 1.3% increase in pricing for the thirteen weeks ended September 28, 2010. This increase in menu pricing was offset by menu mix shifts due to ongoing check management by guests, particularly with regard to their purchase of non-alcoholic beverages.

Comparable sales at our Grand Lux Cafe restaurants increased 1.4% from the prior year third quarter, also driven by improved guest traffic. We implemented an effective menu price increase of approximately 0.6% in the fourth quarter of 2009; we did not implement any price increases during the first three quarters of fiscal 2010. On a weighted average basis, based on the timing of our menu roll outs within each quarter, the Grand Lux Cafe menu included a 0.6% increase in pricing for the thirteen weeks ended September 28, 2010. This menu pricing was offset by menu mix shifts due to ongoing check management by guests, particularly with regard to their purchase of non-alcoholic beverages.

We generally update and reprint the menus in our restaurants twice a year. As part of these menu updates, we evaluate the need for price increases based on those operating cost and expense increases of which we are aware or that we can reasonably expect. While menu price increases can facilitate increased comparable restaurant sales in addition to offsetting margin pressure, we carefully consider all potential price increases in light of the extent to which we believe they will be accepted by our restaurant guests.

Additionally, other factors outside of our control, such as general economic conditions, inclement weather, timing of holidays, and competitive and other factors, including those referenced in Part I, Item 1A, Risk Factors, of our Annual Report on Form 10-K for the year ended December 29, 2009, can impact comparable sales.

Total restaurant operating weeks increased 1.5% to 2,111 for the thirteen weeks ended September 28, 2010 due to the opening of three new restaurants during the trailing 15-month period. In addition, average sales per restaurant operating week increased 2.7% to \$190,900 compared to the third quarter of fiscal 2009 due principally to the improvement in guest traffic.

Bakery sales to other foodservice operators, retailers and distributors increased 8.5% to \$15.3 million for the thirteen weeks ended September 28, 2010 compared to \$14.1 million for the comparable period of last year due primarily to increases in warehouse club and national account sales.

We strive to develop and maintain long-term, growing relationships with our bakery customers, based largely on our 37-year reputation for producing high quality and creative baked desserts. However, it is difficult to predict the timing of bakery product shipments and contribution margins on a quarterly basis, as the purchasing plans of our large-account customers may fluctuate. Due to the highly competitive nature of the bakery business, we are unable to enter into long-term contracts with our large-account bakery customers, who may discontinue purchasing our products without advance notice at any time for any reason.

*Cost of Sales*

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Cost of sales consists of food, beverage, retail and bakery production supply costs incurred in conjunction with our restaurant and bakery revenues, and excludes depreciation, which is captured separately in depreciation and amortization expenses.

As a percentage of revenues, cost of sales increased to 24.4% in the third quarter of fiscal 2010 compared to 23.9% in the comparable period of last year. This increase was due primarily to increased dairy and cheese costs, partially mitigated by pricing leverage on other commodity costs and savings from our cost of sales initiatives.

Our restaurant menus are among the most diversified in the foodservice industry and, accordingly, are not overly dependent on a few select commodities. Changes in costs for one commodity are often, but not always, counterbalanced by cost changes in other commodity categories. The principal commodity categories for our restaurants include produce, poultry, meat, fish and seafood, cheese, other fresh dairy products, bread and general grocery items.

Currently we are able to contract for the majority of the food commodities used in our operations for periods of up to one year. We are currently not able to contract for some commodities, such as fish, dairy and certain produce products, for periods longer than 30 days in most cases. As a result, these commodities can be subject to unforeseen supply and cost fluctuations due principally to weather, fuel costs and agricultural conditions. Cream cheese is the most significant commodity used in our bakery products. We have contracted for a majority of our fiscal 2010 cream cheese requirements and also purchase cream cheese on the spot market as necessary to supplement our contracted amounts.

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As has been our past practice, we will carefully consider opportunities to introduce new menu items and implement selected menu price increases to help offset expected cost increases for key commodities and other goods and services utilized by our operations. While we have been successful in the past in reacting to inflation and other changes in the costs of key operating resources by gradually increasing prices for our menu items, coupled with more efficient purchasing practices, varying menu mix, productivity improvements and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future.

We have taken steps to qualify multiple suppliers and enter into agreements for some of the key commodities used in our restaurant and bakery operations. However, there can be no assurance that future supplies and costs for these commodities will not fluctuate due to weather or other market conditions outside of our control. For new restaurants, cost of sales will typically be higher during the first 90 to 120 days of operations until our management team becomes more accustomed to optimally predicting, managing and servicing the sales volumes at the new restaurant.

### *Labor Expenses*

As a percentage of revenues, labor expenses, which include restaurant-level labor costs and bakery direct production labor, including associated fringe benefits, decreased to 32.8% in the third quarter of fiscal 2010 compared to 32.9% in the comparable period of last year. This improvement was primarily due to overall productivity gains as a result of our operational initiatives and leverage from positive comparable sales, partially offset by additional labor incurred in our bakery operations to ramp up production to meet increased demand. Stock-based compensation included in labor was \$1.2 million in the third quarter of fiscal 2010 compared to \$1.4 million in the third quarter of fiscal 2009.

### *Other Operating Costs and Expenses*

Other operating costs and expenses consist of restaurant-level occupancy expenses (rent, common area expenses, insurance, licenses, taxes and utilities), other operating expenses (excluding food costs and labor expenses, which are reported separately) and bakery production overhead, selling and distribution expenses. As a percentage of revenues, other operating costs and expenses decreased to 24.9% for the thirteen weeks ended September 28, 2010 from 25.5% for the comparable period of last year. This decrease was primarily due to savings from our cost management initiatives, leverage of fixed costs due to positive comparable sales and favorable experience related to our self-insured workers compensation and general liability plans.

### *General and Administrative Expenses*

General and administrative ( G&A ) expenses consist of the restaurant management recruiting and training program, as well as the restaurant field supervision, bakery administrative, and corporate support organizations. As a percentage of revenues, G&A expenses decreased to 5.7% for the thirteen weeks ended September 28, 2010 versus 6.0% for the comparable period of fiscal 2009. The majority of this decline was due to leverage from our positive comparable sales. The amount of stock-based compensation included in G&A expenses declined to \$1.7 million in the third quarter of fiscal 2010 from \$1.9 million in the comparable period of fiscal 2009.

### *Depreciation and Amortization Expenses*

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As a percentage of revenues, depreciation and amortization decreased to 4.3% for the thirteen weeks ended September 28, 2010 compared to 4.7% for the same period of last year. The decrease is primarily attributable to leverage from positive comparable sales, as well as lower depreciation expense resulting from the impairment charge we recorded in the fourth quarter of fiscal 2009.

### *Preopening Costs*

Preopening costs were \$1.5 million for the thirteen weeks ended September 28, 2010 compared to \$0.6 million in the comparable period of the prior year. We incurred preopening costs to open one The Cheesecake Factory restaurant in the third quarter of fiscal 2010 compared to no restaurant openings during the third quarter of fiscal 2009.

Preopening costs include all costs to relocate and compensate restaurant management employees during the preopening period; costs to recruit and train hourly restaurant employees; wages, travel and lodging costs for our opening training team and other support employees; and straight-line minimum base rent during the build-out and in-restaurant training periods. Also included in preopening costs are expenses for maintaining a roster of trained managers for pending openings; the associated temporary housing and other costs necessary to relocate managers in alignment with future restaurant opening and operating needs; and corporate travel and support activities. Preopening costs can fluctuate significantly from period to period, based on the number and timing of restaurant openings and the specific preopening costs incurred for each restaurant.

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*Interest Expense, Interest Income and Other (Expense)/Income, Net*

Interest expense decreased to \$1.7 million for the third quarter of fiscal 2010 compared to \$5.6 million for the comparable period last year, due primarily to \$2.0 million incurred to unwind an interest rate collar in the third quarter of fiscal 2009, as well as to lower interest expense in the third quarter of fiscal 2010 due to lower average outstanding debt balances during this period as compared to the prior year. Interest expense also included \$0.7 million and \$1.0 million for the third quarter of fiscal 2010 and fiscal 2009, respectively, associated with landlord construction allowances deemed to be financing in accordance with accounting guidance.

We had less than \$0.1 million interest income in both the third quarter of fiscal 2010 and fiscal 2009.

We recorded net other expense of \$0.4 million for the thirteen weeks ended September 28, 2010 compared to net other income of \$0.2 million for the comparable prior year period. This variance primarily relates to losses on disposals of fixed assets recorded in the third quarter of fiscal 2010, changes in the value of our investments in variable life insurance contracts used to support our Executive Savings Plan (ESP), a non-qualified deferred compensation plan, and reductions of other miscellaneous income items compared to the third quarter of fiscal 2009.

*Income Tax Provision*

Our effective income tax rate was 25.0% for the third quarter of fiscal 2010 compared to 26.2% for the comparable prior year period. This decrease was attributable to the favorable resolution, in the third quarter of fiscal 2010, of our 162(m) Dispute as to tax year 2005, which benefited tax expense by \$0.7 million. See Note 6 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of this matter. The impact of the settlement was partially offset by a lower proportion of employment-related tax credits in relation to pretax income, as well as lower non-taxable gains on our investments in variable life insurance contracts used to support our ESP in the third quarter of fiscal 2010 compared to the comparable prior year period.

**Thirty-Nine Weeks Ended September 28, 2010 Compared to Thirty-Nine Weeks Ended September 29, 2009**

*Revenues*

Revenues increased 3.4% to \$1,242.7 million for the thirty-nine weeks ended September 28, 2010 compared to \$1,201.4 million in revenues reported for the thirty-nine weeks ended September 29, 2009.

Restaurant sales increased 3.6% to \$1,201.5 million compared to \$1,159.8 million for the same period of the prior year. This increase consisted of a \$27.0 million increase in The Cheesecake Factory and Grand Lux Cafe comparable restaurant sales and a \$14.7 million increase from restaurants not in the comparable sales base. Comparable sales at The Cheesecake Factory and Grand Lux Cafe restaurants increased by 2.4%

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from the first three quarters of fiscal 2009.

Comparable sales at The Cheesecake Factory restaurants increased 2.4% from the first three quarters of fiscal 2009, primarily driven by improved guest traffic. We implemented effective menu price increases of approximately 0.6% and 0.7% during the first and third quarter of fiscal 2010, respectively. On a weighted average basis, based on the timing of our menu roll outs within each quarter, The Cheesecake Factory menu included a 1.4% increase in pricing for the thirty-nine weeks ended September 28, 2010. The increased traffic and menu pricing was partially offset by menu mix shifts due to ongoing check management by guests, particularly with regard to their purchase of non-alcoholic beverages.

Comparable sales at our Grand Lux Cafe restaurants increased 2.1% in the first three quarters of fiscal 2010 as compared to the prior year, also driven by improved guest traffic. We implemented an effective menu price increase of approximately 0.6% in the fourth quarter of 2009; we did not implement any price increases during the first three quarters of fiscal 2010. On a weighted average basis, based on the timing of our menu roll outs within each quarter, the Grand Lux Cafe menu included a 0.7% increase in pricing for the thirty-nine weeks ended September 28, 2010. This increased traffic and menu pricing was partially offset by menu mix shifts due to ongoing check management by guests, particularly with regard to their purchase of non-alcoholic beverages.

Total restaurant operating weeks increased 1.2% to 6,307 for the thirty-nine weeks ended September 28, 2010 due to the opening of three new restaurants during the trailing 15-month period. In addition, average sales per restaurant operating week increased 2.4% to \$190,500 compared to the first three quarters of fiscal 2009 due principally to the improvement in guest traffic.

Bakery sales decreased 0.9% to \$41.2 million for the thirty-nine weeks ended September 28, 2010 compared to \$41.6 million for the comparable period of last year. This decrease is due primarily to lower sales to warehouse clubs, partially offset by higher national account sales.

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*Cost of Sales*

As a percentage of revenues, cost of sales was 24.4% for both the thirty-nine weeks ended September 28, 2010 and September 29, 2009. Pricing leverage on commodity costs and savings associated with our cost of sales initiatives, including the development of new menu items with lower food costs, negotiation of more favorable pricing for commodities and improvements in our supply chain, were offset by cost pressures from certain commodities, primarily dairy and cheese.

*Labor Expenses*

As a percentage of revenues, labor expenses for the thirty-nine weeks ended September 28, 2010 decreased to 32.9% compared to 33.3% in the comparable period of last year. This improvement was primarily due to overall productivity gains as a result of our operational initiatives and leverage from positive comparable sales. Stock-based compensation included in labor was \$3.8 million for the first three quarters of fiscal 2010 compared to \$4.3 million in the first three quarters of fiscal 2009.

*Other Operating Costs and Expenses*

As a percentage of revenues, other operating costs and expenses decreased to 24.5% for thirty-nine weeks ended September 28, 2010 from 25.3% for the comparable period of last year. This decrease was primarily due to savings from our cost management initiatives, leverage of fixed costs due to positive comparable sales and favorable experience related to our self-insured workers' compensation and general liability plans.

*General and Administrative Expenses*

As a percentage of revenues, G&A expenses decreased to 5.7% for the thirty-nine weeks ended September 28, 2010 versus 5.9% for the comparable period of fiscal 2009. This decrease was primarily due to a charge in the second quarter of fiscal 2009 resulting from a change in the amount and structure of the founder's retirement benefit contained in the employment agreement with our Chief Executive Officer. G&A expenses included \$5.5 million and \$6.0 million of stock-based compensation expense in the first three quarters of fiscal 2010 and fiscal 2009, respectively.

*Depreciation and Amortization Expenses*

As a percentage of revenues, depreciation and amortization decreased to 4.4% for the thirty-nine weeks ended September 28, 2010 compared to 4.7% for the same period of last year. The decrease is primarily attributable to lower depreciation expense resulting from the impairment charge we recorded in the fourth quarter of fiscal 2009, as well as leverage from positive comparable sales.

*Preopening Costs*

Preopening costs increased to \$4.3 million for the thirty-nine weeks ended September 28, 2010 compared to \$2.8 million in the comparable period of the prior year. We incurred preopening costs to open three The Cheesecake Factory restaurants in the first three quarters of fiscal 2010 compared to opening one The Cheesecake Factory restaurant during the first three quarters of fiscal 2009. In addition, preopening costs were incurred in both years for restaurant openings in progress and for maintaining a roster of trained managers for pending openings, and the associated temporary housing and other costs necessary to relocate managers in alignment with future restaurant opening and operating needs.

*Interest Expense, Interest Income and Other (Expense)/Income, Net*

Interest expense decreased to \$15.3 million for the first three quarters of fiscal 2010 compared to \$18.1 million for the comparable period last year, due to lesser interest expense based on lower average outstanding debt balances during the first three quarters of fiscal 2010 as compared to the prior year. This decline was partially offset by \$7.4 million incurred to unwind an interest rate collar during the first three quarters of fiscal 2010 compared to \$5.3 million for the comparable prior year period. Interest expense also included \$2.7 million and \$2.8 million for the first three quarters of fiscal 2010 and fiscal 2009, respectively, associated with landlord construction allowances deemed to be financing in accordance with accounting guidance.

Interest income was \$0.2 million for the thirty-nine weeks ended September 28, 2010 compared to \$0.3 million for the comparable period last year.

We recorded net other income of \$0.1 million for the thirty-nine weeks ended September 28, 2010 compared to \$0.7 million for the thirty-nine weeks ended September 29, 2009. This decrease was primarily attributable to changes in the value of our investments in variable life insurance contracts used to support our ESP for the first three quarters of fiscal 2010 compared to the comparable prior year period.

Table of Contents*Income Tax Provision*

Our effective income tax rate was 27.4% for the first three quarters of fiscal 2010 compared to 25.1% for the comparable prior year period. This increase was attributable to a lower proportion of employment-related tax credits in relation to pretax income, as well as lower non-taxable gains on our investments in variable life insurance contracts used to support our ESP, partially offset by the favorable resolution, in the third quarter of fiscal 2010, of our 162(m) Dispute as to tax year 2005, as described in Note 6 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report.

**Non-GAAP Measures**

Adjusted net income and adjusted diluted net income per share are supplemental measures of our performance that are not required by or presented in accordance with GAAP. These non-GAAP measures may not be comparable to similarly titled measures used by other companies and should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

We calculate these non-GAAP measures by eliminating from net income and diluted net income per share the impact of items we do not consider indicative of our ongoing operations. We believe these adjusted measures provide additional information to facilitate the comparison of our past and present financial results. We utilize results that both include and exclude the identified items in evaluating business performance. However, our inclusion of these adjusted measures should not be construed as an indication that our future results will be unaffected by unusual or infrequent items. In the future, we may incur expenses or generate income similar to the adjusted items.

Following is a reconciliation from net income and diluted net income per share to the corresponding adjusted measures (in thousands, except per share data):

|                                                                   | <b>Thirteen<br/>Weeks Ended<br/>September 28, 2010</b> |        | <b>Thirteen<br/>Weeks Ended<br/>September 29, 2009</b> |        | <b>Thirty-Nine<br/>Weeks Ended<br/>September 28, 2010</b> |        | <b>Thirty-Nine<br/>Weeks Ended<br/>September 29, 2009</b> |        |
|-------------------------------------------------------------------|--------------------------------------------------------|--------|--------------------------------------------------------|--------|-----------------------------------------------------------|--------|-----------------------------------------------------------|--------|
| Net income                                                        | \$                                                     | 21,953 | \$                                                     | 16,258 | \$                                                        | 59,848 | \$                                                        | 42,846 |
| After-tax impact from:                                            |                                                        |        |                                                        |        |                                                           |        |                                                           |        |
| Unwinding of interest rate collars (1)                            |                                                        |        |                                                        | 1,208  |                                                           | 4,426  |                                                           | 3,158  |
| Chairman and CEO employment agreement (2)                         |                                                        |        |                                                        |        |                                                           |        |                                                           | 1,530  |
| Realization of investment in variable life insurance contract (3) |                                                        |        |                                                        |        |                                                           |        |                                                           | (668)  |
| Adjusted net income                                               | \$                                                     | 21,953 | \$                                                     | 17,466 | \$                                                        | 64,274 | \$                                                        | 46,866 |
| Diluted net income per share (4)                                  | \$                                                     | 0.37   | \$                                                     | 0.27   | \$                                                        | 0.99   | \$                                                        | 0.71   |
| After-tax impact from:                                            |                                                        |        |                                                        |        |                                                           |        |                                                           |        |
| Unwinding of interest rate collars                                |                                                        |        |                                                        | 0.02   |                                                           | 0.07   |                                                           | 0.05   |
| Chairman and CEO employment agreement                             |                                                        |        |                                                        |        |                                                           |        |                                                           | 0.03   |
|                                                                   |                                                        |        |                                                        |        |                                                           |        |                                                           | (0.01) |

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Realization of investment in variable life  
insurance contract

|                               |    |      |    |      |    |      |    |      |
|-------------------------------|----|------|----|------|----|------|----|------|
| Adjusted net income per share | \$ | 0.37 | \$ | 0.29 | \$ | 1.06 | \$ | 0.78 |
|-------------------------------|----|------|----|------|----|------|----|------|

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(1) Represents costs to unwind derivative instruments in conjunction with reducing the outstanding balance on our revolving credit facility. The pre-tax amounts associated with this item are \$7,376 in the thirty-nine weeks ended September 28, 2010, and \$2,014 and \$5,264 in the thirteen and thirty-nine weeks ended September 29, 2009, respectively. These charges were recorded in interest expense.

(2) Represents a charge resulting from a change in the amount and structure of the retirement benefit contained in the employment agreement with our Chief Executive Officer. The pre-tax amount associated with this item was \$2,550 and was recorded in general and administrative expenses.

(3) Represents the realization of proceeds from one of our variable life insurance contracts used to support our ESP. This item is non-taxable and was recorded in other income, net.

(4) Diluted net income per share amounts may vary slightly from quarter to quarter due to rounding.

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**Fiscal 2010 Outlook**

In fiscal 2010, we plan to open three new The Cheesecake Factory restaurants. Two of the new locations opened in the first quarter and the final one opened in the third quarter. We estimate adjusted diluted earnings per share for fiscal 2010 will be between \$1.39 and \$1.42 based on the assumption that comparable restaurant sales will be in a range of between 2.0% and 2.5%. Adjusted diluted earnings per share excludes the \$0.07 per share charge incurred in the second quarter of fiscal 2010 to unwind a derivative instrument. See the preceding Non-GAAP Measures section for the reconciliation of diluted earnings per share to adjusted diluted earnings per share.

We expect cash capital expenditures in fiscal 2010 to range between \$40 million and \$45 million, of which approximately \$15 million to \$17 million will be used to fund new restaurant openings for the current and upcoming fiscal years, approximately \$21 million to \$23 million will be used for maintenance and capacity addition expenditures to our existing restaurants and \$4 million to \$5 million for bakery and corporate infrastructure investments. We expect to generate free cash flow, defined as cash flow provided by operating activities less capital expenditures, of approximately \$125 million to \$130 million and plan to utilize a majority of our free cash flow to reduce the outstanding balance on our credit facility, repurchase outstanding shares of our common stock, or a combination of both.

**Fiscal 2011 Outlook**

In fiscal 2011, we plan to open as many as six to nine new restaurants, including one Grand Lux Cafe. We estimate adjusted diluted earnings per share for fiscal 2011 will be between \$1.55 and \$1.70 based on the assumption that comparable restaurant sales will be in a range of between 1.0% and 3.0%. We expect cash capital expenditures in fiscal 2011 to range between \$70 million and \$90 million. We also plan to continue paying down our debt balance and repurchasing outstanding shares of our common stock.

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31st for financial reporting purposes. Fiscal year 2010 consists of 52 weeks. Fiscal 2011 will be a 53-week year; the impact from the additional week is incorporated into these estimates.

**Liquidity and Capital Resources**

The following tables present, for the periods indicated, a summary of our key liquidity measurements (dollar amounts in millions):

|                                                                                       | September 28, 2010 |        | December 29, 2009 |        |
|---------------------------------------------------------------------------------------|--------------------|--------|-------------------|--------|
| Cash on hand                                                                          | \$                 | 59.8   | \$                | 73.7   |
| Net working capital                                                                   | \$                 | (19.9) | \$                | (28.2) |
| Current ratio                                                                         |                    | 0.9:1  |                   | 0.9:1  |
| Long-term debt and deemed landlord financing liability, including current portion (1) | \$                 | 92.5   | \$                | 153.3  |

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|                                       | Thirty-Nine<br>Weeks Ended<br>September 28, 2010 |        | Thirty-Nine<br>Weeks Ended<br>September 29, 2009 |         |
|---------------------------------------|--------------------------------------------------|--------|--------------------------------------------------|---------|
| Cash provided by operating activities | \$                                               | 110.3  | \$                                               | 146.5   |
| Capital expenditures                  | \$                                               | (29.4) | \$                                               | (24.4)  |
| Repayment on credit facility          | \$                                               | (60.0) | \$                                               | (125.0) |
| Purchase of treasury stock            | \$                                               | (51.2) | \$                                               | —       |

(1) Landlord construction allowances related to restaurant locations for which we are deemed, for accounting purposes only, to have an ownership interest are reflected in our balance sheets as deemed landlord financing. This liability is amortized over the lease term based on the rent payments designated in the lease agreement.

During the thirty-nine weeks ended September 28, 2010, our cash on hand decreased by \$13.9 million to \$59.8 million from the period ended December 29, 2009. This decrease was primarily attributable to repayments on our credit facility, treasury stock purchases and capital expenditures, partially offset by cash provided by operating activities and proceeds from the exercise of employee stock options.

For fiscal 2010, we currently estimate our cash outlays for capital expenditures to range between \$40 million and \$45 million, net of agreed-upon up-front cash landlord construction contributions and excluding \$5 million of expected noncapitalizable preopening costs for new restaurants. Our estimate for capital expenditures for fiscal 2010 contemplates a net outlay of \$15 million to

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\$17 million for three The Cheesecake Factory restaurants to be opened during fiscal 2010 and estimated construction-in-progress disbursements for anticipated fiscal 2011 openings. We opened two of these locations during the first quarter of fiscal 2010 and one in the third quarter of fiscal 2010. Expected capital expenditures for fiscal 2010 also include approximately \$21 million to \$23 million for maintenance and capacity addition expenditures to our existing restaurants and \$4 million to \$5 million for bakery and corporate infrastructure investments.

At September 28, 2010, we had \$40 million of borrowings outstanding under our \$300 million Facility. Availability under the Facility is reduced by outstanding standby letters of credit, which are used to support our self-insurance programs. As of September 28, 2010, we had net availability for borrowings of \$244 million, based on outstanding debt of \$40 million and \$16 million in standby letters of credit. See Note 3 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.

At December 29, 2009, we held one zero-cost interest rate collar that hedged interest rate variability on the \$100 million outstanding balance on our Facility. This instrument consisted of a combination of a purchased cap option with a three-month LIBOR cap rate of 5.35% and a sold floor option with a three-month LIBOR floor rate of 4.69%, and had a maturity date of April 3, 2012. During the second quarter of fiscal 2010, we unwound this collar at a cost of \$7.4 million. See Notes 3 and 4 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our credit facility and derivative financial instruments, respectively.

We have an outstanding authorization from our Board of Directors to repurchase up to 31 million shares of our common stock. Under this authorization, we have cumulatively repurchased a total of 25.2 million shares at a total cost of \$557.4 million through September 28, 2010; we repurchased 2.1 million of these shares at a total cost of \$51.2 million during the first three quarters of fiscal 2010. The authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. See Note 7 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our share repurchases.

Based on our current expansion objectives, we believe that our cash and cash equivalents, combined with expected cash flows provided by operations, available borrowings under our credit facility and expected landlord construction contributions should be sufficient in the aggregate to finance our planned capital expenditures and other operating activities during the upcoming twelve months.

As of September 28, 2010, we had no financing transactions, arrangements or other relationships with any unconsolidated entities or related parties. Additionally, we had no financing arrangements involving synthetic leases or trading activities involving commodity contracts.

**Recent Accounting Pronouncements**

See Note 1 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for a summary of new accounting standards.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

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The following discussion of market risks contains forward-looking statements. Actual results may differ materially from the following discussion based on general conditions in the financial and commodity markets.

We are exposed to market risk from interest rate changes on our funded debt. This exposure relates to the component of the interest rate on our \$300 million Facility that is indexed to three-month LIBOR. At September 28, 2010, we had \$40 million in debt outstanding under the Facility. A hypothetical 1% interest rate change would have a \$0.4 million impact on annual interest expense. See Note 4 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.

We are also subject to market risk related to our investments in variable life insurance contracts used to support our ESP, to the extent these investments are not equivalent to the related liability. In addition, because changes in these investments are not taxable, the full impact of gains or losses affects net income. Based on balances at September 28, 2010, a hypothetical 10% decline in the market value of our deferred compensation assets and related liabilities would not impact income before income taxes; however, net income would decrease by \$0.8 million.

We purchase food and other commodities for use in our operations based on market prices established with our suppliers. Many of the commodities we purchase can be subject to volatility due to market supply and demand factors outside of our control. To manage this risk in part, we attempt to enter into fixed price purchase commitments, with terms typically up to one year, for many of

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our commodity requirements. However, we are currently unable to contract for some commodities such as many fish, produce and dairy items (except for cream cheese used in our bakery operations) for periods longer than 30 days. Dairy costs can also fluctuate due to government regulation. Substantially all of our food and supplies are available from several sources, which helps to diversify our overall commodity cost risk. In addition, we may have the ability to increase menu prices, or vary menu items, in response to food commodity price increases. Some of our commodity purchase arrangements may contain contractual features that limit the price paid by establishing certain price floors or caps. We do not use financial instruments to hedge commodity prices, since our purchase arrangements with suppliers, to the extent that we can enter into such arrangements, help control the ultimate cost that we pay.

**Item 4. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures*

We have established and maintain disclosure controls and procedures that are designed to ensure that material information relating to the Company and our subsidiaries required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only a reasonable assurance of achieving the desired control objectives, and management was necessarily required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. We carried out an evaluation under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of September 28, 2010.

*Changes in Internal Control over Financial Reporting*

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during the fiscal quarter ended September 28, 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

See Note 6 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report.

**Item 1A. Risk Factors**

A description of the risk factors associated with our business is contained in Part I, Item 1A, Risk Factors, of our Annual Report on Form 10-K for the fiscal year ended December 29, 2009 (the Annual Report), and there have been no material changes thereto since the filing of our Annual Report. These cautionary statements are to be used as a reference in connection with any forward-looking statements. The factors, risks and uncertainties identified in these cautionary statements are in addition to those contained in any other cautionary statements, written or oral, which may be made or otherwise addressed in connection with a forward-looking statement or contained in any of our subsequent filings with the SEC.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

The following provides information regarding our purchase during the thirteen weeks ended September 28, 2010 of our common stock:

| Period      |                    | Total Number<br>of<br>Shares<br>Purchased | Average<br>Price Paid<br>per Share | Total Number of Shares<br>Purchased as Part of<br>Publicly Announced<br>Plans or Programs | Maximum Number of<br>Shares that May Yet Be<br>Purchased Under the<br>Plans or Programs |
|-------------|--------------------|-------------------------------------------|------------------------------------|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| June 30     | August 3, 2010     | 355,542                                   | \$ 23.40                           | 355,542                                                                                   | 6,383,471                                                                               |
| August 4    | August 31, 2010    | 410,790                                   | 22.84                              | 410,790                                                                                   | 5,972,681                                                                               |
| September 1 | September 28, 2010 | 145,392                                   | 24.09                              | 145,392                                                                                   | 5,827,289                                                                               |
| Total       |                    | 911,724                                   |                                    | 911,724                                                                                   |                                                                                         |

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We have an outstanding authorization from our Board of Directors to repurchase up to 31 million shares of our common stock. Under this authorization, we have cumulatively repurchased a total of 25.2 million shares at a total cost of \$557.4 million through September 28, 2010; we repurchased 2.1 million of these shares at a total cost of \$51.2 million during the first three quarters of fiscal 2010. The authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. See Note 7 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our share repurchases.

Our Facility limits our cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a liquidity threshold. See Note 3 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our credit facility.

**Item 5. Other Information**

On June 2, 2010, the shareholders of the Company approved the Company's 2010 Stock Incentive Plan ( 2010 Stock Plan ) and 2010 Amended and Restated Annual Performance Incentive Plan ( 2010 PIP), copies of which are attached as Exhibits 10.1 and 10.2, respectively, to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended June 29, 2010, as filed with the SEC on August 5, 2010. The 2010 Stock Plan permits the discretionary award of incentive stock options, nonstatutory stock options, restricted stock, stock units and stock appreciation rights. The 2010 PIP permits the discretionary award of cash incentive compensation to employees who are covered employees under Section 162(m) of the Internal Revenue Code, based on achievement of specified goals and objectives.

On September 2, 2010, the Compensation Committee of the Board of Directors approved the Company's Annual Management Performance Incentive Plan ( Annual MPIP ), a copy of which is attached as Exhibit 10.2 to this Quarterly Report on Form 10-Q for the quarter ended September 28, 2010. The Annual MPIP permits the discretionary award of cash incentive compensation to those employees who are not covered employees under Section 162(m) of the Internal Revenue Code. Mr. Benn, the Company's Chief Financial Officer and a Named Executive Officer, is eligible to participate in the Annual MPIP.

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### Item 6. Exhibits

| <b>Exhibit No.</b> | <b>Item</b>                                                                                                                                      | <b>Form</b>              | <b>File Number</b> | <b>Incorporated by reference from Exhibit Number</b> | <b>Filed with SEC</b> |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------|------------------------------------------------------|-----------------------|
| Exhibit 2.1        | Form of Reorganization Agreement                                                                                                                 | Amend. No. 1 to Form S-1 | 333-47936          | 2.1                                                  | 8/17/92               |
| Exhibit 3.1        | Certificate of Incorporation                                                                                                                     | 10-Q                     | 000-20574          | 3.1                                                  | 7/26/05               |
| Exhibit 3.2        | Certificate of Designation of Series A Junior Participating Cumulative Preferred Stock, \$.01 Par Value                                          | 10-Q                     | 000-20574          | 3.2                                                  | 7/26/05               |
| Exhibit 3.3        | Certificate of Amendment of Certificate of Incorporation                                                                                         | 10-Q                     | 000-20574          | 3.3                                                  | 7/26/05               |
| Exhibit 3.4        | Amendments to Certificate of Incorporation                                                                                                       | 8-K                      | 000-20574          | 3.1                                                  | 5/28/08               |
| Exhibit 3.6        | Amended and Restated Bylaws, as of May 20, 2009                                                                                                  | 8-K                      | 000-20574          | 3.8                                                  | 5/27/09               |
| Exhibit 4.1        | Form of Rights Agreement dated as of August 4, 1998 between The Cheesecake Factory Incorporated and U.S. Stock Transfer Corporation              | Form 8-A                 | 000-20574          | 1                                                    | 8/19/08               |
| Exhibit 4.2        | Amendment No. 1 to Rights Agreement dated as of November 4, 2003 between The Cheesecake Factory Incorporated and U.S. Stock Transfer Corporation | Amend. No. 1 to Form 8-A | 000-20574          | 2                                                    | 11/13/03              |
| Exhibit 4.3        | Amendment No. 2 to Rights Agreement dated as of August 1, 2008 between The Cheesecake Factory Incorporated and Computershare Trust Company       | Amend. No. 2 to Form 8-A | 000-20574          | 3                                                    | 8/1/08                |
| Exhibit 10.1       | Form of Grant Agreement for Executive Officers under 2010 Stock Incentive Plan*                                                                  |                          |                    |                                                      | Filed herewith        |
| Exhibit 10.2       | Annual Management Performance Incentive Plan effective December 31, 2010*                                                                        |                          |                    |                                                      | Filed herewith        |
| Exhibit 31.1       | Rule 13a-14(a) Certification of Principal Executive Officer                                                                                      |                          |                    |                                                      | Filed herewith        |
| Exhibit 31.2       | Rule 13a-14(a) Certification of Principal Financial Officer                                                                                      |                          |                    |                                                      | Filed herewith        |
| Exhibit 32.1       | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of                                |                          |                    |                                                      | Filed herewith        |

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|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Exhibit 32.2 | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002                                                                                                                                                                                                                                                                                                                                                                         | Filed herewith |
| Exhibit 101  | XBRL (Extensible Business Reporting Language) The following materials from The Cheesecake Factory Incorporated's Quarterly Report on Form 10-Q for the quarter ended September 28, 2010, formatted in Extensive Business Reporting Language (XBRL), (i) consolidated balance sheets, (ii) consolidated statements of operations, (iii) consolidated statement of stockholders' equity, (iv) consolidated statements of cash flows, and (v) the notes to the consolidated financial statements. | Filed herewith |

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\*Management contract or compensatory plan or arrangement required to be filed as an exhibit.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 4, 2010

**THE CHEESECAKE FACTORY INCORPORATED**

By: /s/ DAVID OVERTON  
David Overton  
*Chairman of the Board and Chief Executive Officer*  
*(Principal Executive Officer)*

By: /s/ W. DOUGLAS BENN  
W. Douglas Benn  
*Executive Vice President and Chief Financial Officer*  
*(Principal Financial Officer)*

By: /s/ CHERYL M. SLOMANN  
Cheryl M. Slomann  
*Vice President, Controller and Chief Accounting Officer*  
*(Principal Accounting Officer)*