#### **OVERTON DAVID**

Form 5

February 13, 2009

# FORM 5

#### **OMB APPROVAL**

## UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

3235-0362 Number: January 31,

**OMB** 

no longer subject to Section 16. Form 4 or Form 5 obligations

Check this box if

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1.0

### ANNUAL STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

burden hours per response...

may continue. See Instruction

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, 1(b). Form 3 Holdings Section 17(a) of the Public Utility Holding Company Act of 1935 or Section

Reported 30(h) of the Investment Company Act of 1940 Form 4

Transactions Reported

**OVERTON DAVID** 

1. Name and Address of Reporting Person \* 2. Issuer Name and Ticker or Trading 5. Relationship of Reporting Person(s) to

> Symbol CHEESECAKE FACTORY INC

[CAKE]

(Check all applicable)

(Middle) 3. Statement for Issuer's Fiscal Year Ended (Last) (First)

(Month/Day/Year)

\_X\_ Director 10% Owner \_X\_\_ Officer (give title Other (specify below) below)

12/30/2008

26901 MALIBU HILLS ROAD

(Street) 4. If Amendment, Date Original

Filed(Month/Day/Year)

6. Individual or Joint/Group Reporting

(check applicable line)

Chairman and C.E.O.

**CALABASAS** HILLS, CAÂ 91301

\_X\_ Form Filed by One Reporting Person Form Filed by More than One Reporting

Issuer

(City) (State) (Zip) Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of 2. Transaction Date 2A. Deemed Security

(Instr. 3)

(Month/Day/Year) Execution Date, if

(Month/Day/Year)

3. Transaction Code

(Instr. 8)

4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)

5. Amount of Securities Beneficially Owned at end of Issuer's Fiscal Year

6. Ownership Form: Direct (D) or Indirect (I)

(Instr. 4)

7. Nature of Indirect Beneficial Ownership (Instr. 4)

Amount (D) Price

(A)

or (Instr. 3 and 4)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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**SEC 2270** (9-02)

### Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of	2.	3. Transaction Date	3A. Deemed	4.	5. Number of	6. Date Exercisable and	7. Title and An
Derivative	Conversion	(Month/Day/Year)	Execution Date, if	Transaction	Derivative	Expiration Date	Underlying Sec
Security	or Exercise		any	Code	Securities	(Month/Day/Year)	(Instr. 3 and 4)
(Inetr 3)	Drice of		(Month/Day/Vear)	(Instr 8)	Acquired (A) or		

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	Derivative Security			Disposed of (D) (Instr. 3, 4, and 5)					
					(A)	(D)	Date Exercisable	Expiration Date	Title
Employee Stock Option (right to buy)	\$ 36.87	06/06/2008	Â	D4	Â	100,000	01/04/2007(3)	01/04/2016	Common Stock
Employee Stock Option (right to buy)	\$ 32.32	06/06/2008	Â	D4	Â	37,804	01/03/2006	01/04/2016	Common Stock

# **Reporting Owners**

Reporting Owner Name / Address	Relationships						
reposing 6 mer runne, raunces	Director	10% Owner	Officer	Other			
OVERTON DAVID 26901 MALIBU HILLS ROAD CALABASAS HILLS, CA 91301	ÂΧ	Â	Chairman and C.E.O.	Â			

# **Signatures**

David Overton by Debby Zurzolo, his attorney in fact 02/13/2009

\*\*Signature of Reporting Person Date

# **Explanation of Responses:**

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- The option was canceled pursuant to The Cheesecake Factory Incorporated's stipulated settlement of certain options derivative actions.

  (1) The reporting person received \$269,290 as consideration for the cancellation, which was tendered to the Company in payment of the reporting person's obligation under the options derivative actions.
- The option was canceled pursuant to The Cheesecake Factory, Incorporated's stipulated settlement of certain options derivative actions.
- (2) The reporting person received \$124,712 as consideration for the cancellation, which was tendered to the Company in payment of the reporting person's obligation under the options derivative actions.
- (3) At the cancellation date, 40,000 of 100,000 options remained unvested. These 40,000 unvested options would have vested in increments of 20,000 on each of 1/3/2009 and 1/03/2010.

Note: File three copies of this Form, one of which must be manually signed. If space provided is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

Reporting Owners 2