

CHEESECAKE FACTORY INC (CAKE)

10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filed on 11/04/2010

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

- 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

- 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)

51-0340466

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

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

(Address of principal executive offices)

91301

(Zip Code)

(818) 871-3000

(Registrant's telephone number, including area code)

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

Smaller reporting company

(Do not check if a 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.

[Table of Contents](#)

**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES
INDEX**

	Page Number
<u>PART I.</u>	
<u>FINANCIAL INFORMATION</u>	
<u>Item 1.</u>	
<u>Financial Statements:</u>	
<u>Consolidated Balance Sheets</u>	1
<u>Consolidated Statements of Operations</u>	2
<u>Consolidated Statement of Stockholders' Equity</u>	3
<u>Consolidated Statements of Cash Flows</u>	4
<u>Notes to Consolidated Financial Statements</u>	5
<u>Item 2.</u>	12
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	
<u>Item 3.</u>	21
<u>Quantitative and Qualitative Disclosures About Market Risk</u>	
<u>Item 4.</u>	22
<u>Controls and Procedures</u>	
<u>PART II.</u>	
<u>OTHER INFORMATION</u>	
<u>Item 1.</u>	22
<u>Legal Proceedings</u>	
<u>Item 1A.</u>	22
<u>Risk Factors</u>	
<u>Item 2.</u>	22
<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	
<u>Item 5.</u>	23
<u>Other Information</u>	
<u>Item 6.</u>	24
<u>Exhibits</u>	
<u>Signatures</u>	26

[Table of Contents](#)**PART I. FINANCIAL INFORMATION**
Item 1. Financial Statements**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES**
CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

	September 28, 2010	December 29, 2009
ASSETS		
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
LIABILITIES AND STOCKHOLDERS' EQUITY		
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)
Treasury stock, 25,168,961 and 23,100,079 shares at cost at September 28, 2010 and December 29, 2009, respectively	(557,362)	(506,208)
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.

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

	Thirteen Weeks Ended September 28, 2010	Thirteen Weeks Ended September 29, 2009	Thirty-Nine Weeks Ended September 28, 2010	Thirty-Nine Weeks Ended September 29, 2009
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.

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

	Shares of Common Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income/(Loss)	Treasury 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 financial instrument	—	—	—	—	41	—	41
Loss reclassified into income due to cancellation of derivative financial instrument	—	—	—	—	4,578	—	4,578
Total comprehensive income							64,467
Issuance of common stock from stock options exercised	652	6	12,843	—	—	—	12,849
Tax impact of stock options exercised, net of cancellations	—	—	(24)	—	—	—	(24)
Stock-based compensation	—	—	9,623	—	—	—	9,623
Issuance of restricted 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.

THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF CASH FLOWS****(In thousands)****(Unaudited)**

	Thirty-Nine Weeks Ended September 28, 2010	Thirty-Nine Weeks Ended September 29, 2009
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
Income taxes paid	\$ 22,935	\$ 5,404

See the accompanying notes to the consolidated financial statements.

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

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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[Table of Contents](#)

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
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) Recognized in AOCI on Derivative		Location of Gain/(Loss) Reclassified from AOCI into Income	Gain/(Loss) Reclassified from AOCI into Income	
	September 28, 2010	September 29, 2009		September 28, 2010	September 29, 2009
Interest rate contracts	\$ —	\$ (395)	Interest expense	\$ —	\$ (3,500)

[Table of Contents](#)

	Gain/(Loss) Recognized in AOCI on Derivative Thirty-Nine Weeks Ended		Location of Gain/(Loss) Reclassified from AOCI into Income	Gain/(Loss) Reclassified from AOCI into Income Thirty-Nine Weeks Ended	
	September 28, 2010	September 29, 2009		September 28, 2010	September 29, 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 in Active Markets	Other Observable Inputs	Significant Unobservable 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.

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.

[Table of Contents](#)

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 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.

[Table of Contents](#)

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 ("10b5-1Plan") 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 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 Ended September 28, 2010	Thirteen Weeks Ended September 29, 2009	Thirty-Nine Weeks Ended September 28, 2010	Thirty-Nine Weeks Ended September 29, 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

- (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.

[Table of Contents](#)

Stock Options

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 (In thousands)	Weighted Average Exercise Price (Per share)	Weighted Average Remaining Contractual Term (In years)	Aggregate Intrinsic Value (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 (In thousands)	Weighted Average Fair Value (Per share)
Outstanding at December 29, 2009	623	\$ 16.32
Granted	107	22.94
Vested	(171)	25.35
Forfeited	(11)	10.36
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."

	Thirteen Weeks Ended September 28, 2010		Thirteen Weeks Ended September 29, 2009		Thirty-Nine Weeks Ended September 28, 2010		Thirty-Nine Weeks Ended September 29, 2009	
	(In thousands, except per share data)							
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):

	Thirteen Weeks Ended September 28, 2010		Thirteen Weeks Ended September 29, 2009		Thirty-Nine Weeks Ended September 28, 2010		Thirty-Nine Weeks Ended September 29, 2009	
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
Loss reclassified into income due to 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.

[Table of Contents](#)

Segment information is presented below (in thousands):

	Thirteen Weeks Ended September 28, 2010		Thirteen Weeks Ended September 29, 2009		Thirty-Nine Weeks Ended September 28, 2010		Thirty-Nine Weeks Ended 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
Total assets:								
		September 28, 2010			December 29, 2009			
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," and similar expressions 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

[Table of Contents](#)

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.

[Table of Contents](#)

- *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 Weeks Ended September 28, 2010	Thirteen Weeks Ended September 29, 2009	Thirty-Nine Weeks Ended September 28, 2010	Thirty-Nine Weeks Ended 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.

[Table of Contents](#)

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

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.

[Table of Contents](#)

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

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.

[Table of Contents](#)

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% 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.

[Table of Contents](#)

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):

	Thirteen Weeks Ended September 28, 2010	Thirteen Weeks Ended September 29, 2009	Thirty-Nine Weeks Ended September 28, 2010	Thirty-Nine Weeks Ended September 29, 2009
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
Realization of investment in variable life insurance contract	—	—	—	(0.01)
Adjusted net income per share	\$ 0.37	\$ 0.29	\$ 1.06	\$ 0.78

- (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.

[Table of Contents](#)**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
		Thirty-Nine Weeks Ended September 28, 2010		Thirty-Nine Weeks Ended 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)	\$	¾

(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

[Table of Contents](#)

\$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

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

[Table of Contents](#)

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 of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the 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	

[Table of Contents](#)

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.

[Table of Contents](#)

Item 6. Exhibits

Exhibit No.	Item	Form	File Number	Incorporated by reference from Exhibit Number	Filed with SEC
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 2002	—	—	—	Filed herewith

[Table of Contents](#)

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

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

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)

EXHIBIT 10.1

**The Cheesecake Factory Incorporated
2010 Stock Incentive Plan**

**NOTICE OF GRANT AND STOCK OPTION AGREEMENT
AND/OR RESTRICTED STOCK GRANT AGREEMENT**

Notice is hereby given of the following Option Grant to purchase Shares and/or Award of Restricted Shares of The Cheesecake Factory Incorporated, a Delaware corporation ("Company"), pursuant to the 2010 Stock Incentive Plan ("Plan"). In consideration of the promises and of the mutual agreements contained in this Notice of Grant and Stock Option Agreement and/or Restricted Stock Grant Agreement ("Agreement"), the parties hereto agree as follows:

Section 1. Definitions. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed thereto in the Plan. Otherwise, as used in this Agreement, the following terms shall have the following respective meanings:

Award	The Options to purchase stock and/or Restricted Shares granted in accordance with this Agreement
Code	The Internal Revenue Code of 1986, as amended.
Company	The Cheesecake Factory Incorporated, a Delaware corporation.
Grant Date	[date]
Participant	[name]
Holdback Shares	Shares of common stock issued upon exercise of the Option granted pursuant to the Plan and this Agreement equal to 33% of the shares received upon exercise of this Option, net of the tax effects of such exercise to the Participant.
No. of Restricted Shares Awarded	[] shares
No. of Non-Statutory Option Shares Granted	[] shares
Option	The option to purchase shares of the Company's Common Stock granted to Participant pursuant to the Plan and this Agreement. The Option is not intended to constitute an "incentive stock option" as that term is used in Code section 422.
Option Exercise Price	[\$[]] per share
Option Expiration Date	[date]
QDRO	A domestic relations order as defined in Code section 414(p)(1)(B).
Restricted Shares	The shares of the Company's Common Stock awarded to Participant pursuant to the Plan and this Agreement.
Option Vesting Date	[date] as to [number] Option Shares
	[date] as to [number] Option Shares
	[date] as to [number] Option Shares
	[date] as to [number] Option Shares
	[date] as to [number] Option Shares
Restricted Shares	[date] as to [number] Restricted Shares
Vesting Date	[date] as to [number] Restricted Shares
	[date] as to [number] Restricted Shares

Section 2. Designation of Award. Subject to the terms and conditions of the Plan and this Agreement, the Company grants to Participant the Option to purchase the number of Option Shares shown above and/or grants to Participant the number of Restricted Shares shown above.

Section 3. Interpretation. The terms and provisions of the Plan are hereby incorporated into this Agreement as if set forth herein in their entirety. Participant hereby agrees to be bound by the terms of the Plan and this Agreement and acknowledges that the Option is, and/or Restricted Shares are, granted subject to and in accordance with the Plan and this Agreement. In the event of a conflict between any provision of this Agreement and the Plan, the provisions of the Plan shall control. By execution below,

Participant acknowledges receipt of a copy of the 2010 Stock Incentive Plan Summary and Prospectus. A copy of the Plan is available, without charge, upon request to the Company's Stock Plan Administrator.

Section 4. Exercise of Option; Sale of Shares. (a) This Option is exercisable during its term in accordance with the Option vesting dates set out in this Agreement and the applicable provisions of the Plan and this Agreement. This Option is exercisable in a manner and pursuant to such procedures as the Committee may determine. No Shares shall be issued pursuant to the exercise of this Option unless such issuance and exercise complies with applicable laws. Assuming such compliance, for income tax purposes, the Shares shall be considered transferred to the Participant on the date the Option is exercised with respect to such Shares. Notwithstanding anything to the contrary in this Agreement or anywhere else, the Option shall not be exercisable after the Option Expiration Date.

(b) Payment of the aggregate Exercise Price and any applicable tax withholding obligation shall be by any of the following, or a combination thereof, at the election of the Participant: (i) cash; or (ii) check; or (iii) consideration received by the Company using a Cashless Exercise; or (iv) with the Committee's consent, consideration received by the Company through a Net Exercise; or (v) with the Committee's consent, surrender of other Shares, provided that such Shares in the case of Shares acquired from the Company, have been vested and owned by the Participant for more than six (6) months on the date of surrender. Utilization of the methods described in clauses (iii), (iv) and (v) shall in all cases be subject to the Company's Special Trading Policy and Procedures and the Addendum thereto.

(c) The sale of Shares received from the exercise of the Option may at the Company's discretion be delayed in order to restrict sale of the Shares received from the exercise of an Option during any period in which trading in the Company's securities is restricted under the Company's Special Trading Policy and Procedures or otherwise as required under applicable securities' laws.

(d) The sale of Shares received from the exercise of an Option may at the Company's discretion be delayed if in the Company's judgment trading market conditions would be adversely impacted by the exercise and sale of such Shares. The Company may also at its discretion place any reasonable restrictions or conditions on the sale of Shares received upon exercise of the Option as it believes would be in the best interests of the trading market for the Company's securities.

Section 5. Termination of Option. (a) The term of the Option shall commence on the Date of Grant and expire on the earlier of (i) the Option Expiration Date set forth above, (ii) the eight (8) year anniversary of the Date of Grant; or (iii) if Participant's Service is terminated, and such termination of Service occurs by reason of (A) death or Disability, twelve (12) months from the death or Disability Termination Date; (B) Retirement, twelve (12) months from the Retirement Termination Date, *provided, however*, that such twelve (12) month period shall instead be thirty-six (36) months if the Participant has completed at least twenty (20) continuous years of Service as of the Termination Date; or (C) other than for Retirement, death or Disability, or Cause, three (3) months from the Termination Date. Notwithstanding the above, if Participant's termination of Service occurs by reason of Cause, neither the Participant nor the Participant's estate nor such other person who may then hold the Option shall be entitled to exercise such Option on or after the Termination Date.

(b) In accordance with Plan section 4(g), to the extent that during the entire last two (2) weeks prior to the termination of a vested, in-the-money Option due to the Participant's termination of Service for any reason other than by the Company for Cause, a sale of Shares underlying such Option would violate Section 16(b) of the Exchange Act or would otherwise be prohibited by Company policy or applicable law or regulations, then such Options shall instead remain exercisable for two (2) weeks after the first business day that all such prohibitions to sale are no longer applicable (subject in all cases to the term of the Option as set forth in Section 5 above).

(c) Notwithstanding anything to the contrary in this Agreement or anywhere else, the Option shall not be exercisable after the Option Expiration Date.

Section 6. Restricted Shares and Forfeiture. The unvested portion of the Restricted Shares is subject to forfeiture. Except as provided in this Agreement, in order to vest in and not forfeit the Restricted Shares, the Participant must remain in Service until the applicable Restricted Shares Vesting Date (as such date may be accelerated pursuant to Section 7 below) and until the Restricted Shares Vesting Date the Participant may not transfer (within the meaning described in Section 8) any unvested Restricted Shares ("Restrictions").

Section 7. Vesting Date; Lapse of Restrictions.

Except as otherwise provided in the Plan or this Agreement, the Option Vesting Date and/or the Restricted Shares Vesting Date shall occur as follows:

(a) The Option, or portion thereof, shall be exercisable on an applicable Option Vesting Date (as such date may be accelerated pursuant to this Section 7 below) *provided* the Participant is in Service and in good standing on the applicable Vesting Date. Notwithstanding the foregoing, in the event of Participant's death or Disability, the portion of the Option that would have otherwise vested during the period beginning on the date of such death or the Termination Date due to such Disability and ending on the date that is twenty-four (24) months thereafter shall vest as of the date of the Participant's death or the Termination Date due to such Disability.

(b) The Restrictions on the Restricted Shares shall lapse on the Restricted Shares Vesting Date; *provided, however*, that except as provided in this Section 7 below (or Plan Sections 3(b)(iv) or 12)) in no event shall the Restrictions on Restricted Shares lapse prior to one (1) year from the Date of Grant. Notwithstanding the foregoing, and in accordance with Plan Section 3(b)(iv), in the event of Participant's death or Disability, the Restrictions that would have otherwise lapsed during the period beginning on the date of such death or Termination Date due to such Disability and ending on the date that is twenty-four (24) months thereafter shall lapse as of the date of the Participant's death or the Termination Date due to such Disability.

(c) In the event that a Change in Control occurs and there is no assumption or continuation of some or all outstanding Awards pursuant to Plan Section 12(a), then as to those Awards that are not assumed or continued under Plan Section 12(a), the Option shall fully vest and become exercisable with respect to all Option Shares issued hereunder and the Restrictions on the Restricted Shares awarded hereunder shall lapse and the Restricted Shares shall become fully vested, as of immediately before such Change in Control. Pursuant to Plan Section 12(b), Participant shall be given written notice at least thirty (30) days prior to the consummation of such Change in Control that the Awards that are not assumed or continued under Plan Section 12(a) will be canceled as of the Change in Control. In the event a Change in Control occurs and (i) the acquiring entity assumes or continues some or all outstanding Awards pursuant to Plan Section 12(a), (ii) within eighteen (18) months thereafter an event occurs which constitutes a "Constructive Termination" (as defined under Participant's written employment agreement with the Company, if any), and (iii) Participant terminates from Service, then with respect to the Awards issued hereunder that are so assumed or continued, the Option shall fully vest and become exercisable, and the Restrictions on the Restricted Shares shall lapse and the Restricted Shares shall become fully vested, only as to those Awards that would have otherwise vested during the period beginning on the Termination Date and ending on the date that is twenty-four (24) months thereafter had such termination from Service not occurred.

(d) The provisions of this Section 7 are subject to the specific terms of any written employment agreement between the Participant and the Company, which agreement may provide for the acceleration of the Vesting Date of Options or the removal of Restrictions and acceleration of the Restricted Shares Vesting Date upon the occurrence of specified events. If the conditions under such employment agreement occur for the acceleration of the Vesting Date of Options or the removal of Restrictions and acceleration of the Restricted Shares Vesting Date, then notwithstanding anything to the contrary in this Agreement, the Option shall become exercisable and fully vested with respect to all Option Shares granted hereunder and the Restrictions on the Restricted Shares awarded hereunder shall lapse and the Restricted Shares shall become fully vested as of the date required under such employment agreement, except in no event shall acceleration of any Restricted Shares result in the lapse of the Restrictions prior to one (1) year from the Date of Grant (except as permitted under Plan sections 3(b)(iv) or 12)).

Section 8. Restrictions on Transfer.

(a) The Option may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of, alienated or encumbered (collectively, a "Transfer") in any way by Participant, either voluntarily or involuntarily, and may be exercised during the lifetime of Participant only by Participant, or in the event of Participant's legal incapacity, by Participant's guardian or legal representative acting in a fiduciary capacity on behalf of Participant under state law. If Participant dies, the Option shall thereafter be exercisable as provided above and in the Plan. The Option shall not be subject to execution, attachment or similar process other than pursuant to a QDRO.

(b) Prior to the time that the Restrictions have lapsed with respect to Restricted Shares, neither the Restricted Shares, nor any interest therein, or amount payable in respect thereof may be Transferred in any way, either voluntarily or involuntarily. The Transfer restrictions in the preceding sentence shall not apply to: (i) transfers to the Company; (ii) transfers by will or the laws of descent and distribution; or (iii) transfers pursuant to a QDRO. Upon and after the time any Restrictions shall have lapsed, Participant shall be permitted to transfer the Shares as to which the Restrictions have lapsed subject to applicable securities law requirements, the Company's Special Trading Policy and Procedures, and any other applicable laws or regulations.

(c) The Holdback Shares or any interest therein or amount payable in respect thereof may not be Transferred in any way, either voluntary or involuntary, before the earlier of (i) nine (9) months from the date of exercise of the Option for which such Shares were issued, or (ii) the Participant's termination of employment as an officer appointed by the Board or as a member of the Board, (whichever shall occur later) for any reason including death, Disability, illness, resignation, Retirement, or other reason ("Holdback Period"). Participant shall be entitled to dividends and any voting rights with respect to Holdback Shares even though the Holdback Period has not lapsed.

(d) If the Board makes any adjustment pursuant to Section 11 of the Plan and the Holdback Period has not lapsed as to the Holdback Shares prior to such adjustment, the remaining time period of Holdback Period shall be applicable to any additional Shares resulting from such adjustment.

(e) Any attempted Transfer of the Option or Restricted Shares or Holdback Shares contrary to the provisions hereof, and the levy of any execution, attachment or similar process upon the Option or Restricted Shares or Holdback Shares, except pursuant to a QDRO, shall be null and void and without effect.

Section 9. Award Subject to Clawback Policy. In accordance with Section 13(d) of the Plan, the Company may (i) cause the cancellation of all or any portion of this Award, (ii) require reimbursement of all or any portion of this Award by the Participant and (iii) effect any other right of recoupment of equity or other compensation provided under the Plan or otherwise in accordance with Company policies and/or applicable law (each, a "Clawback Policy") in effect as of the Date of Grant of this Award.

Section 10. Designation of Beneficiary. Participant may designate one or more beneficiaries with respect to this Award or any Awards made under the Plan by timely filing the prescribed beneficiary designation form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time prior to the Participant's death. If no beneficiary was designated or if no designated beneficiary survives the Participant, then after a Participant's death any vested portion of the Award shall be transferred or distributed to the Participant's estate.

Section 11. Stock Certificates For Restricted Shares.

(a) If Restricted Shares are awarded under this Agreement, the Company shall issue such Restricted Shares subject to this grant either: (i) in certificate form as provided below; or (ii) in book entry form, registered in the name of Participant with notations regarding the applicable restrictions on transfer imposed under this Agreement.

Any certificates representing Restricted Shares that may be delivered to Participant by the Company prior to the lapse of the Restrictions shall be promptly redelivered to the Company to be held by the Company until the Restrictions on such Shares shall have lapsed and the Shares shall thereby have become transferable or the Shares represented thereby have been forfeited hereunder. Such certificates shall bear the following legend:

"The ownership of this certificate and the shares of stock evidenced hereby and any interest therein is subject to substantial restrictions on transfer under an Agreement entered into between the registered owner and The Cheesecake Factory Incorporated. A copy of such Agreement is on file in the office of the Secretary of The Cheesecake Factory Incorporated."

(b) After the lapse of the Restrictions with respect to any of the Restricted Shares, the Company shall, as applicable, either remove the notations on any of the Restricted Shares issued in book entry form as to which the Restrictions have lapsed or deliver to Participant a certificate or certificates evidencing the number of Restricted Shares as to which the Restrictions have lapsed. Participant (or the beneficiary or personal representative of Participant in the event of Participant's death or Disability, as the case may be) shall deliver to the Company any representations or other documents or assurances required in accordance with the Plan. The Shares so delivered shall no longer be Restricted Shares.

(c) If Restricted Shares are awarded under this Agreement, concurrently with the execution and delivery of this Agreement, Participant shall deliver to the Company an executed Stock Power and Assignment Separate from Certificate in the form attached hereto as Exhibit A, in blank, with respect to such Shares. Participant, by acceptance of the grant of Restricted Shares, shall be deemed to appoint, and does so appoint by execution of this Agreement, the Company and each of its authorized representatives as Participant's attorney(s) in fact to effect any transfer of forfeited Shares (or Shares otherwise reacquired or withheld by the Company hereunder) to the Company as may be required pursuant to the Plan or this Agreement and to execute such documents as the Company or such representatives deem necessary or advisable in connection with any such transfer.

Section 12. Stock Certificates For Holdback Shares.

(a) If Holdback Shares are issued under this Agreement, the Company shall issue the Holdback Shares either: (i) in certificate form as provided below; or (ii) in book entry form, registered in the name of Participant with notations regarding the applicable restrictions on transfer imposed under this Agreement.

Any certificates representing Shares of Holdback Shares that may be issued to Participant by the Company prior to the lapse of the Holdback Period shall be promptly redelivered to the Company to be held by the Company until the Holdback Period on such Shares shall have lapsed and the Shares shall thereby have become transferable. Such certificates shall bear the following legend:

"The ownership of this certificate and the shares of stock evidenced hereby and any interest therein is subject to substantial restrictions on transfer under an Agreement entered into between the registered owner and The Cheesecake Factory Incorporated. A copy of such Agreement is on file in the office of the Secretary of The Cheesecake Factory Incorporated."

(b) After the lapse of the Holdback Period with respect to any of the Holdback Shares, the Company shall, as applicable, either remove the notations on any of the Holdback Shares issued in book entry form as to which the Holdback Period have lapsed or deliver to Participant a certificate or certificates evidencing the number of Holdback Shares as to which the Holdback Period have lapsed. Participant (or the beneficiary or personal representative of Participant in the event of Participant's death or Disability, as the case may be) shall deliver to the Company any representations or other documents or assurances required in accordance with the Plan. The Shares so delivered shall no longer be Holdback Shares.

Section 13. Dividend and Voting Rights For Restricted Shares. After the Date of Grant, Participant shall be entitled to voting rights with respect to the Restricted Shares even though the Restrictions have not lapsed, provided that such rights shall terminate immediately as to any Restricted Shares that are forfeited pursuant to this Agreement. If any dividends are declared and paid on Shares, then such dividends (whether in the form of cash or Shares) shall be subject to the same vesting conditions and restrictions as the Restricted Shares with respect to which the dividends were paid and Participant shall not be entitled to receive any such dividends until the Restrictions have lapsed. If the Board makes any adjustment pursuant to Section 11 of the Plan and the Restrictions have not lapsed as to the Restricted Shares prior to such adjustment, the Restrictions and forfeiture provisions of this Agreement shall be applicable to any additional Shares resulting from such adjustment to the same extent as the Restrictions and forfeiture provisions of this Agreement and forfeiture provisions of this Agreement applicable to the Restricted Shares to which the additional Shares relate.

Section 14. No Tax or Other Advice from Company. The Company has not provided any tax, legal or financial advice to Participant, and the Company has not made any recommendations regarding Participant's participation in the Plan or Participant's acquisition or sale of the underlying Shares. Participant is hereby advised to consult with Participant's own personal tax, legal and financial advisors regarding Participant's participation in the Plan before taking any action related to the Plan or this Agreement.

Section 15. Tax Withholding. The Company in its discretion shall be entitled to require a cash payment by or on behalf of Participant and/or deduct from other compensation payable to Participant any sums required by federal, state, local or foreign tax law or regulation to be withheld with respect to the lapsing of any Restrictions. If Participant makes the election permitted by Section 83(b) of the Code to include in such Participant's gross income in the year of transfer the amounts specified in Section 83(b) of the Code, then Participant shall notify the Company of such election within 10 days after filing the notice of the election with the Internal Revenue Service. PARTICIPANT ACKNOWLEDGES THAT IT IS PARTICIPANT'S SOLE RESPONSIBILITY, AND NOT THE COMPANY'S, TO FILE A TIMELY ELECTION UNDER CODE SECTION 83(B), EVEN IF PARTICIPANT REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON PARTICIPANT'S BEHALF. MOREOVER, PARTICIPANT IS RELYING SOLELY ON PARTICIPANT'S OWN ADVISORS WITH RESPECT TO THE DECISION AS TO WHETHER OR NOT TO FILE A CODE SECTION 83(B) ELECTION.

Section 16. Notices. All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given and delivered if personally delivered or if sent by nationally-recognized overnight courier, by telecopy, or by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

(a) if to the Company:

The Cheesecake Factory Incorporated
26901 Malibu Hills Road
Calabasas Hills, California 91301
Attention: General Counsel

If to the Company, to exercise an Option:

The Cheesecake Factory Incorporated
26901 Malibu Hills Road
Calabasas Hills, California 91301
Attn: Stock Plan Administrator

(b) if to Participant:

The last address set forth in the Company's records

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such notice or communication shall be deemed to have been received (i) in the case of personal delivery, on the date of such delivery (or if such date is not a business day, on the next business day after the date of delivery), (ii) in the case of nationally recognized overnight courier, on the next business day after the date sent, (iii) in the case of telecopy transmission, when received (or if not sent on a business day, on the next business day after the date sent), and (iv) in the case of mailing, on the third business day following that date on which the piece of mail containing such communication is posted.

Section 17. Waiver of Breach. The waiver by either party of a breach of any provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any other or subsequent breach.

Section 18. Participant's Undertaking. Participant hereby agrees to take whatever additional actions and execute whatever additional documents the Company may in its reasonable judgment deem necessary or advisable in order to carry out or affect one or more of the obligations or restrictions imposed on Participant pursuant to the express provisions of this Agreement and the Plan.

Section 19. Modification of Rights. The rights of Participant are subject to modification and termination in certain events as provided in this Agreement and the Plan.

Section 20. Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF DELAWARE WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

Section 21. Resolution of Disputes.

(a) Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement or the Plan shall be settled by binding arbitration held in Los Angeles, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, except as specifically otherwise provided in this Section 20. This Section 20 shall be construed and enforced in accordance with the Federal Arbitration Act, notwithstanding any other choice of law provision in this Agreement. Notwithstanding the foregoing:

Any party hereto may, in its discretion, apply to a court of competent jurisdiction for equitable relief. Such an application shall not be deemed a waiver of the right to compel arbitration pursuant to this Section.

(b) Arbitrators. The panel to be appointed shall consist of three neutral arbitrators: one selected by the Company, one selected by the Participant, and one selected by the designees of the Company and Participant.

(c) Procedures. The arbitrator(s) shall allow such discovery as the arbitrator(s) determine appropriate under the circumstances and shall resolve the dispute as expeditiously as practicable, and if reasonably practicable, within one hundred twenty (120) days after the selection of the arbitrator(s). The arbitrator(s) shall give the parties written notice of the decision, with the reasons therefor set out, and shall have thirty (30) days thereafter to reconsider and modify such decision if any party so requests within ten (10) days after the decision.

(d) Authority. The arbitrator(s) shall have authority to award relief under legal or equitable principles, including interim or preliminary relief, and to allocate responsibility for the costs of the arbitration and to award recovery of attorneys' fees and expenses in such manner as is determined to be appropriate by the arbitrator(s).

(e) Entry of Judgment. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having in personam and subject matter jurisdiction. Company and Participant hereby submit to the in personam jurisdiction of the Federal and State courts in Los Angeles, California, for the purpose of confirming any such award and entering judgment thereon.

(f) Confidentiality. All proceedings under this Section 20, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties and by the arbitrators.

(g) Continued Performance. The fact that the dispute resolution procedures specified in this Section 20 shall have been or may be invoked shall not excuse any party from performing its obligations under this Agreement and during the pendency of any such procedure all parties shall continue to perform their respective obligations in good faith.

(h) Tolling. All applicable statutes of limitation shall be tolled while the procedures specified in this Section 20 are pending. The parties will take such action, if any, required to effectuate such tolling.

(i) Confidentiality. All proceedings under this Section, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties and by the arbitrators.

Section 22. No Employment Commitment by Company; No Effect on Employment Agreements. Nothing in this Agreement or the Plan constitutes an employment commitment by the Company, affects Participant's status under any employment agreement between the Company and Participant, confers upon Participant any right to remain employed by the Company or any subsidiary, interferes in any way with the right of the Company or any subsidiary at any time to terminate such employment, or affects the right of the Company or any subsidiary to increase or decrease Participant's compensation or other benefits. The preceding sentence is subject, however, to the terms of any written employment agreement between Participant and the Company (which may not be modified by any oral agreement). Notwithstanding anything to the contrary in this Agreement, in the event of a conflict between this Agreement and any written employment agreement between Participant and the Company, the written employment agreement shall control provided, however, that if this Agreement provides for earlier vesting schedules, or for the earlier acceleration of vesting of any Option or lapse of Restrictions with respect to Restricted Shares upon the occurrence of specified events, than this Agreement shall control as to such earlier vesting schedule or earlier acceleration of vesting or lapse of Restrictions upon the occurrence such specified events.

Section 23. Counterparts. This Agreement may be executed in one or more counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts together shall constitute but one agreement.

Section 24. Entire Agreement. This Agreement and the Plan (and the other writings referred to herein) constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior written or oral negotiations, commitments, representations and agreements with respect thereto.

Section 25. Severability. If any provision of this Agreement is found to be invalid or unenforceable, the invalidity or unenforceability shall not affect the validity of the remaining provisions hereof. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 26. Compliance with Section 409A of the Code. The Option and/or the Restricted Shares awarded under this Agreement, as the case may be, are intended in all respects not to subject the Participant to taxation under Section 409A of the Code. To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation, any such regulations or guidance that may be issued after the Date of Grant so that neither the Option nor any Restricted Shares will be subject to Code Section 409A. In the event that the Company determines that any amounts will be taxable to Participant under Section 409A of the Code and related Department of Treasury guidance, the Company may, in its sole and absolute discretion, adopt such amendments to this Agreement (having prospective or retroactive effect), and/or take such other actions, as the Company determines to be necessary or appropriate to avoid the application of Section 409A of the Code to such Option or Restricted Shares. No such amendment or other action shall be adopted or taken that will cause the Option and/or the Restricted Shares to be subject to Section 409A.

THE CHEESECAKE FACTORY INCORPORATED,
a Delaware corporation

By:
Name and title:
Its Authorized Officer

BY EXECUTION BELOW I ACCEPT ALL TERMS AND CONDITIONS OF THE NOTICE OF GRANT AND THE OTHER DOCUMENTS REFERENCED HEREIN

PARTICIPANT:

(Signature)

(Print Name)

Address for Notice:

(Please execute and return this Notice of Grant to the Company's Stock Plan Administrator at the address above; keep a copy for your records)

Attachments:

- Exhibit A – Stock Power (Attached only if Restricted Shares are awarded)
- 2010 Stock Incentive Plan Summary and Prospectus
- Special Trading Policy and Procedures
- Addendum To Special Trading Policy and Procedures for Section 16 Persons
- SEC Filing List (prospectus supplement)
- Designation of Beneficiary(ies) Form

EXHIBIT A

STOCK POWER AND

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ (_____) shares of the Common Stock, \$0.01 par value per share, of The Cheesecake Factory Incorporated, a Delaware corporation (the "Company"), standing in the name of _____ on the books of the Company represented by Certificate No. _____ herewith and does hereby irrevocably constitute and appoint _____ attorney to transfer the said stock on the books of the Company with full power of substitution in the premises.

Dated

Printed Name

EXHIBIT 10.2

THE CHEESECAKE FACTORY INCORPORATED

ANNUAL MANAGEMENT PERFORMANCE INCENTIVE PLAN

I. STATEMENT OF PURPOSE

The purposes of this discretionary annual bonus Plan are to:

- a) challenge selected employees who are not Covered Employees ("Eligible Participants") to make decisions and to take actions to advance the Company to meet its goals;
- b) retain and motivate Eligible Participants;
- c) focus management's attention on setting and achieving clearly defined and attainable corporate and business unit performance objectives; and
- d) provide incentive compensation that is based on performance.

II. DEFINITIONS

The following terms, when used herein, shall have the meanings indicated in this Section unless different meanings are clearly required by the context of the Plan.

2.1 **Award:** "Award" means any discretionary bonus, award, or other compensation granted to a Participant under the terms of this Plan.

2.2 **Base Salary:** "Base Salary" means the aggregate annualized base salary of a Participant received (or to be received) from the Company and all of its subsidiaries with respect to a Fiscal Year exclusive of any commissions or other actual or imputed income from any Company-provided benefits or perquisites, other bonuses or incentive awards by the Company and calculated prior to any reductions for salary deferrals pursuant to any deferred compensation plan or contributions qualifying under Section 401(k) of the Code.

2.3 **Board:** "Board" means the Board of Directors of the Company.

2.4 **Code:** "Code" means the Internal Revenue Code of 1986, as amended.

2.5 **Committee:** "Committee" means a committee of one or more Board members selected by the Board or by the Board's Compensation Committee. If no such committee is affirmatively selected then the Board's Compensation Committee shall serve as the Committee. To the extent permitted under the Company's corporate governance policies and charters, the Committee may delegate limited administrative authority under this Plan to authorized Company officers.

2.6 **Company:** "Company" means The Cheesecake Factory Incorporated, a Delaware corporation, and any related or successor organization that adopts this Plan.

2.7 **Covered Employee:** "Covered Employee" means an individual whose compensation is subject to the limitations based on the dollar amount set forth in Code Section 162(m)(1).

2.8 **Disability:** "Disability" means, except as may otherwise be provided in a Participant employment agreement or applicable Award agreement (and in such case the employment agreement or Award agreement shall govern as to the definition of Disability), that the Participant is classified as disabled under a long-term disability policy of the Company or, if no such policy applies, the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

2.9 **Effective Date:** "Effective Date" means December 31, 2010

2.10 **Employee:** "Employee" means a common law employee of the Company or of any subsidiary or affiliate of the Company.

2.11 **Fiscal Year:** "Fiscal Year" means the annual fiscal accounting period adopted by the Company for tax purposes.

2.12 **Participant:** "Participant" means any Employee who has been selected by the Committee to become a Participant in the Plan under Section III hereof.

2.13 **Performance Achievement Bonus:** "Performance Achievement Bonus" means, subject to the terms and conditions set forth in the Plan, a discretionary bonus amount that is equal to a stated percentage of a Participant's Base Salary (or equal to some other amount determined by the Committee) which may be awarded as an Award to a Participant as a result of achievement of the Performance Incentive Target(s) established for the Participant by the Committee as set forth in Section 4.1.

2.14 **Performance Incentive Target:** "Performance Incentive Target" means one or more objective performance targets established for a Participant for a Fiscal Year which may be described in terms of Company-wide objectives and/or objectives that are related to the performance of the individual Participant or the Company or any Company parent, subsidiary, affiliate, division, department or function within the Company or entity in which the Participant is employed, and such targets may be applied either individually, alternatively or in any combination, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years' results or to a designated comparison group, in each case as specified by the Committee. Any Performance Incentive Target applicable to Awards may include without limitation one or more of the following target objectives: (i) return on equity, (ii) earnings per share, (iii) net income, (iv) earnings per share growth, (v) return on invested capital, (vi) return on assets, (vii) economic value added, (viii) earnings before interest and taxes (EBIT), (ix) revenue growth, (x) gross margin return on inventory investment, (xi) fair market value or price of the Company's shares (including, but not limited to, growth measures and total stockholder return), (xii) operating profit, (xiii) consolidated income from operations, (xiv) cash flow (including, but not limited to, cash flow from operations and free cash flow), (xv) cash flow return on investments (which equals net cash flow divided by total capital), (xvi) internal rate of return, (xvii) net present value, (xviii) costs or expenses, (xix) market share, (xx) guest satisfaction, (xxi) corporate transactions including without limitation mergers, acquisitions, dispositions and/or joint ventures, (xxii) product development, (xxiii) capital expenditures, (xxiv) earnings before interest, taxes, depreciation and amortization (EBITDA), and/or (xxv) revenues.

2.15 **Plan:** "Plan" means The Cheesecake Factory Incorporated Annual Management Performance Incentive Plan, as described herein, and all subsequent amendments thereto.

2.16 **Regulations:** "Regulations" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended, and other formal guidance issued by the Internal Revenue Service.

2.17 **Separation from Service:** "Separation from Service" means a "separation from service" as defined under Code Section 409A and the Regulations.

III. PARTICIPATION

3.1 **Eligibility:** Each Fiscal Year, the Committee, in its sole discretion but subject to the next sentence herein, shall affirmatively designate those Employees who shall be eligible to receive an Award under the Plan for that Fiscal Year, which designation may be made by reference to the Employees position within the Company. Eligible Participants may not include Employees of the Company (or Company subsidiary) who are Covered Employees with respect to such Fiscal Year.

3.2 **Participation:** Each eligible Employee shall become a Participant in the Plan as of the date designated by the Committee in its discretion.

IV. INCENTIVE AWARDS

4.1 **Performance Achievement Bonus:** The Committee shall establish the specific Performance Incentive Target for a Participant for a Fiscal Year which must be achieved in order to earn a Performance Achievement Bonus (or designated portion thereof) and any applicable formula for computing the Performance Achievement Bonus (or designated portion thereof) if such Performance Incentive Target is achieved. All Performance Achievement Bonus amounts shall be determined by the Committee. Notwithstanding achievement or failure to achieve the Performance Incentive Targets, the Committee shall at all times have

reserved for itself the discretionary ability to adjust (or eliminate) at any time and for any reason the amount of a Performance Achievement Bonus for any or all Participants unless the Committee has expressly relinquished such rights in writing.

4.2 **Committee Certification:** The Committee shall determine whether the Performance Incentive Target is achieved, and, if so, the Committee shall certify prior to the payment of any Performance Achievement Bonus (or designated portion thereof) for such Fiscal Year, the degree to which a Performance Achievement Bonus will be paid with respect to each Participant.

4.3 **Modification of Performance Incentive Target and Formula:** After the Committee has established and approved the Performance Incentive Target(s) which must be achieved in order for the Performance Achievement Bonus (or designated portion thereof) to be earned and the formula for computing the Performance Achievement Bonus (or designated portion thereof), with respect to a Fiscal Year, the Committee may nevertheless at any time modify such Performance Incentive Target(s) or formula for computing the Performance Achievement Bonus with respect to such Fiscal Year in its sole discretion, including, without limitation, for the reasons provided in Section 5.4 below.

4.4 **Form and Timing of Bonus:** Each Performance Achievement Bonus shall be payable to the Participant in cash and such payment date shall occur following the end of the applicable Fiscal Year, as soon as administratively feasible. Payment of any Participant's Performance Achievement Bonus is conditioned upon such Participant remaining an Employee in good standing through the date of payment.

V. ADMINISTRATION

5.1 **Administration by the Committee:** The Plan shall be administered by the Committee. The Committee has the authority to interpret the Plan, the terms of any document relating to any Award and may adopt such rules and regulations for carrying out the terms and purposes of the Plan and may take such other actions in the administration of the Plan as it deems advisable. The interpretation and construction by the Committee of any provision of the Plan, any document evidencing an Award, and any rule or regulation or decision or determination adopted by the Committee shall be final and binding on all persons and shall be afforded the maximum deference provided by applicable law. The Committee may, as a condition of an Award, require that a Participant execute and deliver to the Company applicable documents or agreements evidencing such Award. To the maximum extent permitted by applicable law, each member of the Committee, and of the Board, and any persons (including without limitation employees and officers) who are delegated by the Board or Committee to perform administrative functions in connection with this Plan, shall be indemnified and held harmless by the Company against and from (i) any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or any Award agreement and (ii) from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any power that the Company may have to indemnify them or hold them harmless.

5.2 **Pro-Rata Awards:** The Committee shall have the authority to grant a Performance Achievement Bonus that is proportionately or otherwise adjusted based on and consistent with the Performance Incentive Targets to take into account the period of actual service of a Participant that became eligible to join the Plan after the beginning of the Fiscal Year.

5.3 **Unforeseen Circumstances or Change in Control:** In the event of a Participant's Separation from Service by reason of death, Disability, normal retirement, early retirement with the consent of the Company or leave of absence approved by the Company, or in the event of hardship or other special circumstances of a Participant, or in the event of a change in control of the Company, or for any other reason, the Committee may in its sole discretion take any action that it deems to be equitable under the circumstances or in the best interests of the Company.

5.4 **Adjustments:** The Committee may adjust the evaluation of performance under a Performance Incentive Target(s) to remove the effects of certain events including without limitation the following:

- i) asset write-downs or discontinued operations,
- ii) litigation or claim judgments or settlements,

- iii) material changes in or provisions under tax law, accounting principles or other such laws or provisions affecting reported results,
- iv) reorganizations or restructuring programs or divestitures or acquisitions, and/or
- v) extraordinary non-recurring items as described in applicable accounting principles and/or items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence.

5.5 **Amendment or Termination of Plan:** The Plan may be amended or terminated in whole or in part by the Board in its sole discretion, and any such action may include reducing or eliminating any future payments under this Plan notwithstanding any prior achievement of Performance Incentive Targets.

VI. MISCELLANEOUS

6.1 **Assignability:** No Participant shall have the right to pledge, assign or otherwise dispose of any unpaid portion of any Award.

6.2 **Expenses:** Except as otherwise provided under the provisions of the Plan, all costs and expenses in connection with the administration of the Plan shall be paid by the Company.

6.3 **Gender:** The masculine pronoun wherever used includes the feminine pronoun.

6.4 **Governing Laws:** The Plan shall be construed, administered and enforced according to the laws of the United States and the laws of the State of Delaware to the extent the latter are not preempted by the former.

6.5 **No Guarantee of Employment:** Nothing in this Plan shall be construed as giving any Employee an agreement or understanding, express or implied, that the Company or any subsidiary shall continue to employ any individual, whether or not a Participant in the Plan.

6.6 **No Right to Award:** Unless otherwise expressly set forth in any employment agreement signed by the Company and a Participant, a Participant shall not have any right to any Award hereunder until such Award has been paid to such Participant and participation in the Plan in one Fiscal Year does not connote any right to become a Participant in the Plan in any future Fiscal Year.

6.7 **Payment of Taxes:** The Company shall have the right to withhold from any payment to a Participant under this Plan, in cash, all federal, state, city or other taxes as shall be required pursuant to any statute or governmental regulations or ruling. In connection with such withholding, the Company may make any arrangement consistent with this Plan, as it may deem appropriate. The Company and its Employees (or members of the Board or Committee) shall not be liable to a Participant or other persons as to any unexpected or adverse tax consequence or any tax consequence expected, but not realized, by any Participant or other person due to the grant, receipt, exercise or settlement of any Award granted hereunder.

6.8 **Section Headings:** The headings of this Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

6.9 **Severability:** In the event any provision of this Plan shall be considered illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted therein.

6.10 **Term of Plan:** This Plan shall remain in effect from the Effective Date until terminated or amended by the Board.

6.11 **Code Section 409A:** Notwithstanding anything in the Plan to the contrary, the Plan and Awards granted hereunder are not intended to be nonqualified deferred compensation and therefore are intended to be exempt from the requirements of Code Section 409A and shall be interpreted in a manner consistent with such intention. However, notwithstanding such intention, if upon a Participant's Separation from Service, such Participant is then a "specified employee" (as defined in Code Section 409A), then solely to the extent necessary to comply with Code Section 409A and avoid the imposition of taxes under Code Section 409A, the Company shall defer payment of "nonqualified deferred compensation" subject to Code Section 409A payable as a result of and within six (6) months following such Separation from Service under this Plan until the earlier of (i) the first business

day of the seventh month following Participant's Separation from Service, or (ii) ten (10) days after the Company receives written confirmation of Participant's death. Any such delayed payments shall be made without interest.

6.12 **Non-Exclusive:** The adoption of this Plan by the Board (i) does not create any limitation on the power of the Committee or the Board to adopt other cash or equity-based compensation programs outside of this Plan and (ii) shall not be construed as creating any limitations on the power of the Board or the Committee to adopt such other incentive arrangements as either may deem desirable, including, without limitation, cash or equity-based compensation arrangements, either tied to performance or otherwise, and any such other arrangements as may be either generally applicable or applicable only in specific cases.

6.13 **Clawback Policy:** The Committee may (i) cause the cancellation of any Award, (ii) require reimbursement of any Award by a Participant and (iii) effect any other right of recoupment of equity or other compensation provided under this Plan or otherwise in accordance with Company policies and/or applicable law (each, a "Clawback Policy"), in each case with respect to the Clawback Policy that was in effect as of the date of grant for a particular Award. In addition, the Committee may require that a Participant repay to the Company certain previously paid compensation, whether provided under this Plan or an Award Agreement or otherwise, in accordance with the Clawback Policy.

VII. EXECUTION OF PLAN

IN WITNESS WHEREOF, the Company has hereunder caused its name to be signed by its duly authorized officers this ____ day of September, 2010.

THE CHEESECAKE FACTORY INCORPORATED,
a Delaware corporation

By:

David Overton
Chairman of the Board,
Chief Executive Officer and President

EXHIBIT 31.1

THE CHEESECAKE FACTORY INCORPORATED CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, David Overton, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Cheesecake Factory Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 4, 2010

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

EXHIBIT 31.2

THE CHEESECAKE FACTORY INCORPORATED CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, W. Douglas Benn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Cheesecake Factory Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 4, 2010

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

EXHIBIT 32.1

THE CHEESECAKE FACTORY INCORPORATED

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of The Cheesecake Factory Incorporated (the "Company") on Form 10-Q for the period ended September 28, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David Overton, Chairman of the Board and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 4, 2010

/s/ DAVID OVERTON
David Overton
Chairman of the Board and Chief Executive Officer

EXHIBIT 32.2

THE CHEESECAKE FACTORY INCORPORATED

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of The Cheesecake Factory Incorporated (the "Company") on Form 10-Q for the period ended September 28, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, W. Douglas Benn, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 4, 2010

/s/ W. DOUGLAS BENN
W. Douglas Benn
Executive Vice President and Chief Financial Officer