

CHEESECAKE FACTORY INC

Form 10-Q

November 03, 2016

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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

For the quarterly period ended September 27, 2016

or

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

Commission File Number: 0-20574

**THE CHEESECAKE FACTORY INCORPORATED**

(Exact name of registrant as specified in its charter)

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**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)

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of October 26, 2016, 47,430,086 shares of the registrant's Common Stock, \$.01 par value per share, were outstanding.

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**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES**

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Table of Contents**PART I FINANCIAL INFORMATION****Item 1. Financial Statements.****THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONDENSED CONSOLIDATED BALANCE SHEETS**

(In thousands, except share data)

(Unaudited)

	September 27, 2016	December 29, 2015
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 65,845	\$ 43,854
Accounts receivable	13,950	14,159
Income taxes receivable	459	18,739
Other receivables	30,765	72,658
Inventories	35,541	34,010
Prepaid expenses	36,337	41,976
Total current assets	182,897	225,396
Property and equipment, net	902,581	892,191
Other assets:		
Intangible assets, net	22,844	21,972
Prepaid rent	43,251	46,881
Other	52,806	46,906
Total other assets	118,901	115,759
Total assets	\$ 1,204,379	\$ 1,233,346
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 38,906	\$ 47,770
Other accrued expenses	265,197	302,456
Total current liabilities	304,103	350,226
Deferred income taxes	83,088	82,524
Deferred rent	71,808	72,911
Deemed landlord financing liability	98,501	87,841
Other noncurrent liabilities	57,348	51,305
Commitments and contingencies (Note 4)		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000,000 shares authorized; none issued		
Common stock, \$.01 par value, 250,000,000 shares authorized; 94,159,461 and 93,126,667 issued at September 27, 2016 and December 29, 2015, respectively	942	931
Additional paid-in capital	754,034	710,242
Retained earnings	1,216,978	1,140,788

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Treasury stock, 46,454,382 and 44,064,322 shares at cost at September 27, 2016 and December 29, 2015, respectively	(1,382,423)	(1,263,422)
Total stockholders' equity	589,531	588,539
Total liabilities and stockholders' equity	\$ 1,204,379	\$ 1,233,346

See the accompanying notes to the condensed consolidated financial statements.

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

	<b>Thirteen Weeks Ended September 27, 2016</b>	<b>Thirteen Weeks Ended September 29, 2015</b>	<b>Thirty-Nine Weeks Ended September 27, 2016</b>	<b>Thirty-Nine Weeks Ended September 29, 2015</b>
Revenues	\$ 560,018	\$ 526,688	\$ 1,672,573	\$ 1,573,768
<b>Costs and expenses:</b>				
Cost of sales	128,838	125,605	386,544	378,840
Labor expenses	186,567	172,101	557,436	511,765
Other operating costs and expenses	134,877	128,427	396,414	375,537
General and administrative expenses	36,057	33,277	107,179	101,697
Depreciation and amortization expenses	21,634	21,317	64,559	63,652
Impairment of assets and lease terminations		6,011		6,011
Preopening costs	1,982	4,306	6,594	9,815
Total costs and expenses	509,955	491,044	1,518,726	1,447,317
Income from operations	50,063	35,644	153,847	126,451
Interest and other expense, net	(2,477)	(722)	(6,962)	(4,049)
Income before income taxes	47,586	34,922	146,885	122,402
Income tax provision	13,012	8,746	39,772	33,079
Net income	\$ 34,574	\$ 26,176	\$ 107,113	\$ 89,323
<b>Net income per share:</b>				
Basic	\$ 0.72	\$ 0.54	\$ 2.22	\$ 1.83
Diluted	\$ 0.70	\$ 0.52	\$ 2.16	\$ 1.76
<b>Weighted average shares outstanding:</b>				
Basic	47,815	48,848	48,188	48,841
Diluted	49,212	50,637	49,604	50,660
Cash dividends declared per common share	\$ 0.24	\$ 0.20	\$ 0.64	\$ 0.53

See the accompanying notes to the condensed consolidated financial statements.

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**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS EQUITY**

(In thousands)

(Unaudited)

	Shares of Common Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Total
Balance, December 29, 2015	93,127	\$ 931	\$ 710,242	\$ 1,140,788	\$ (1,263,422)	\$ 588,539
Net income				107,113		107,113
Cash dividends declared				(30,923)		(30,923)
Tax impact of stock options exercised, net of cancellations			8,450			8,450
Stock-based compensation			16,430			16,430
Common stock issued under stock-based compensation plans	1,032	11	18,912			18,923
Treasury stock purchases					(119,001)	(119,001)
Balance, September 27, 2016	94,159	\$ 942	\$ 754,034	\$ 1,216,978	\$ (1,382,423)	\$ 589,531

See the accompanying notes to the condensed consolidated financial statements.

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

	<b>Thirty-Nine Weeks Ended September 27, 2016</b>	<b>Thirty-Nine Weeks Ended September 29, 2015</b>
<b>Cash flows from operating activities:</b>		
Net income	\$ 107,113	\$ 89,323
<b>Adjustments to reconcile net income to cash provided by operating activities:</b>		
Depreciation and amortization expenses	64,559	63,652
Deferred income taxes	564	675
Impairment of assets and lease terminations		6,011
Stock-based compensation	16,177	14,549
Tax impact of stock options exercised, net of cancellations	8,450	11,647
Excess tax benefit related to stock options exercised	(8,521)	(11,660)
Other	2,945	2,072
<b>Changes in assets and liabilities:</b>		
Accounts receivable	209	4,304
Other receivables	41,893	27,323
Inventories	(1,531)	(3,487)
Prepaid expenses	5,639	(5,847)
Other assets	(2,201)	(4,537)
Accounts payable	(4,526)	(14,858)
Income taxes receivable/payable	18,280	1,352
Other accrued expenses	(32,520)	(19,433)
Cash provided by operating activities	216,530	161,086
<b>Cash flows from investing activities:</b>		
Additions to property and equipment	(70,607)	(108,593)
Additions to intangible assets	(1,294)	(1,276)
Cash used in investing activities	(71,901)	(109,869)
<b>Cash flows from financing activities:</b>		
Deemed landlord financing proceeds	2,673	3,774
Deemed landlord financing payments	(2,705)	(2,278)
Borrowings on credit facility		25,000
Repayments on credit facility		(25,000)
Proceeds from exercise of stock options	18,923	25,448
Excess tax benefit related to stock options exercised	8,521	11,660
Cash dividends paid	(31,049)	(26,207)
Treasury stock purchases	(119,001)	(92,025)
Cash used in financing activities	(122,638)	(79,628)
Net change in cash and cash equivalents	21,991	(28,411)
Cash and cash equivalents at beginning of period	43,854	58,018
Cash and cash equivalents at end of period	\$ 65,845	\$ 29,607
<b>Supplemental disclosures:</b>		
Interest paid	\$ 4,719	\$ 4,418
Income taxes paid	\$ 12,769	\$ 19,215



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Construction payable	\$	9,161	\$	11,865
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See the accompanying notes to the condensed consolidated financial statements.

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**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(Unaudited)**

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

The accompanying condensed consolidated financial statements include the accounts of The Cheesecake Factory Incorporated and its wholly owned subsidiaries (referred to herein collectively as the Company, we, us and our ) 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 unaudited financial statements presented herein 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. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been omitted pursuant to the rules of the Securities and Exchange Commission ( SEC ). The accompanying condensed 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, 2015 filed with the SEC on February 25, 2016.

The preparation of financial statements in conformity with GAAP requires us to make 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 results could differ from these estimates.

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31 for financial reporting purposes. Fiscal year 2016 consists of 53 weeks and will end on January 3, 2017. Fiscal 2015, which ended on December 29, 2015, was a 52-week year.

*Impairment of Long-Lived Assets and Lease Terminations*

We assess the potential impairment of our long-lived assets whenever events or changes in circumstances indicate the carrying value of the assets or asset group may not be recoverable. Factors considered include, but are not limited to, significant underperformance relative to historical or projected future operating results, significant changes in the manner in which an asset is being used, an expectation that an asset will be disposed of significantly before the end of its previously estimated useful life and significant negative industry or economic trends. We regularly review restaurants that are cash flow negative for the previous four quarters and those that are being considered for closure or relocation to determine if impairment testing is warranted. At any given time, we may be monitoring a small number of locations, and future impairment charges could be required if individual restaurant performance does not improve.

*Recent Accounting Pronouncements*

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In March 2016, the Financial Accounting Standards Board ( FASB ) issued guidance affecting all entities that issue share-based payment awards to their employees. This update covers such areas as the recognition of excess tax benefits and deficiencies, the classification of those excess tax benefits on the statement of cash flows, an accounting policy election for forfeitures, the amount an employer can withhold to cover income taxes and still qualify for equity classification and the classification of those taxes paid on the statement of cash flows. This guidance is effective for annual and interim periods beginning after December 15, 2016. Although early adoption is permitted, we will adopt these provisions prospectively in the first quarter of fiscal 2017. These changes will impact our tax provision, cash flows from operating activities and cash flows from financing activities. We will continue to estimate forfeitures each period, so there will be no change associated with forfeitures. Excess tax benefits and deficiencies are heavily impacted by factors outside of our control such as the number of stock options exercised and the market price of our stock. For purposes of our Fiscal 2017 Outlook in Part 1, Item 2 of this report, we estimated the implementation of this guidance to reduce our annual effective tax rate ( ETR ) by a range of 3% to 4%.

In February 2016, the FASB issued guidance that requires a lessee to recognize on the balance sheet a liability to make lease payments and a corresponding right-of-use asset. The standard also requires certain qualitative and quantitative disclosures about the amount, timing and uncertainty of cash flows arising from leases. This update is effective for annual and interim periods beginning after December 15, 2018 and requires a modified retrospective approach. Although early adoption is permitted, we will adopt these provisions in the first quarter of fiscal 2019. This guidance will have a material effect on our condensed consolidated financial statements.

In July 2015, the FASB issued guidance that requires inventory within the scope of the standard to be measured at the lower of cost or net realizable value. Previous guidance required inventory to be measured at the lower of cost or market (where market was defined as replacement cost, with a ceiling of net realizable value and floor of net realizable value less a normal profit margin). The updated guidance is effective for interim and annual reporting periods beginning after December 15, 2016, with early adoption permitted. We expect the adoption of this guidance to have no material impact on our condensed consolidated financial statements.

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In April 2015, the FASB issued guidance regarding a customer's accounting for fees paid in a cloud computing arrangement. If a cloud computing arrangement includes a software license, the customer should account for the software license element of the arrangement consistent with the acquisition of other software licenses. If a cloud computing arrangement does not include a software license, the customer should account for the arrangement as a service contract. This guidance is effective for fiscal years beginning after December 15, 2015, with early adoption permitted. Our adoption of this guidance in the first quarter of fiscal 2016 had no impact on our condensed consolidated financial statements.

In April 2015, the FASB issued updated guidance intended to simplify, and provide consistency to, the presentation of debt issuance costs. The new standard requires that debt issuance costs be presented in the balance sheet as a direct deduction from the carrying amount of the debt liability, consistent with debt discounts. In August 2015, the FASB provided additional guidance for presentation of debt issuance costs related to line-of-credit arrangements. The updated guidance is effective for interim and annual reporting periods beginning after December 15, 2015, with early adoption permitted. Our adoption of this guidance in the first quarter of fiscal 2016 had no impact on our condensed consolidated financial statements.

In February 2015, the FASB issued updated guidance that changes the analysis that a reporting entity must perform to determine whether it should consolidate certain types of legal entities. The updated guidance is effective for interim and annual reporting periods beginning after December 15, 2015, with early adoption permitted. Our adoption of this guidance in the first quarter of fiscal 2016 had no impact on our condensed consolidated financial statements.

In June 2014, the FASB issued updated guidance intended to eliminate the diversity in practice regarding share-based payment awards that include terms which provide for a performance target that affects vesting being achieved after the requisite service period. The new standard requires that a performance target which affects vesting and could be achieved after the requisite service period be treated as a performance condition that affects vesting and should not be reflected in estimating the grant-date fair value. The updated guidance is effective for interim and annual reporting periods beginning after December 15, 2015, with early adoption permitted. Our adoption of this guidance in the first quarter of fiscal 2016 had no impact on our condensed consolidated financial statements.

In May 2014, the FASB issued accounting guidance that provides a comprehensive new revenue recognition model that will supersede most of the existing revenue recognition requirements and require entities to recognize revenue at an amount that reflects the consideration to which a company expects to be entitled in exchange for transferring goods or services to a customer. In August 2015, the FASB deferred the effective date of this standard by one year with early adoption permitted no earlier than the original effective date. The guidance is now effective for us beginning in the first quarter of fiscal 2018. In March and April 2016, the FASB provided additional guidance related to implementation. This standard is not expected to have a material impact on our condensed consolidated financial statements.

**2. Inventories**

Inventories consisted of (in thousands):

September 27, 2016

December 29, 2015

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Restaurant food and supplies	\$	16,126	\$	16,127
Bakery finished goods and work in progress		13,305		12,104
Bakery raw materials and supplies		6,110		5,779
Total	\$	35,541	\$	34,010

**3. Long-Term Debt**

On December 22, 2015, we entered into a new loan agreement ( Facility ) which amended and restated in its entirety our prior loan agreement dated October 16, 2013. This Facility, which matures on December 22, 2020, provides us with revolving loan commitments totaling \$200 million, of which \$50 million may be used for issuances of letters of credit. Availability under the Facility is reduced by outstanding letters of credit, which are used to support our self-insurance programs. The Facility contains a commitment increase feature that could provide for an additional \$100 million in available credit upon our request and subject to the lenders electing to increase their commitments or by means of the addition of new lenders. Our obligations under the Facility are unsecured. Certain of our material subsidiaries have guaranteed our obligations under the Facility. At September 27, 2016, we had net availability for borrowings of \$182.7 million, based on a zero outstanding debt balance and \$17.3 million in standby letters of credit. We did not withdraw or repay any amounts under this Facility during the three quarters of fiscal 2016.

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We are subject to certain financial covenants under the Facility requiring us to maintain (i) a maximum Net Adjusted Leverage Ratio of 4.0, comprised of debt plus eight times rent minus unrestricted cash and cash equivalents in excess of \$25 million divided by EBITDAR (trailing 12-month earnings before interest, taxes, depreciation, amortization, noncash stock option expense, rent and permitted acquisition costs) and (ii) a trailing 12-month minimum EBITDAR to interest and rental expense ratio (EBITDAR Ratio) of 1.9. Our Net Adjusted Leverage and EBITDAR Ratios were 2.4 and 3.1, respectively, at September 27, 2016, and we were in compliance with the financial covenants in effect at that date. The Facility also limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on the Net Adjusted Leverage Ratio.

Borrowings under the Facility bear interest, at our option, at a rate equal to either (i) the Adjusted LIBO Rate plus a margin ranging from 1.00% to 1.75% based on our Net Adjusted Leverage Ratio or (ii) the sum of (a) the highest of (1) the rate of interest publicly announced by JP Morgan Chase Bank as its prime rate in effect, (2) the greater of the Federal Funds Effective Rate or the Overnight Bank Funding Rate, in either case plus 0.5%, and (3) the one-month Adjusted LIBO Rate plus 1.0%, plus (b) a margin ranging from 0.00% to 0.75% based on our Net Adjusted Leverage Ratio. Under the Facility, we paid certain customary loan origination fees and will pay a fee on the unused portion of the Facility ranging from 0.125% to 0.25% also based on our Net Adjusted Leverage Ratio.

#### **4. Commitments and Contingencies**

On April 11, 2013, a former restaurant hourly employee filed a class action lawsuit in the California Superior Court, Placer County, alleging that the Company violated the California Labor Code and California Business and Professions Code, by requiring employees to purchase uniforms for work (*Sikora v. The Cheesecake Factory Restaurants, Inc., et al*; Case No. SCV0032820). A similar lawsuit covering a different time period was also filed in Placer County (*Reed v. The Cheesecake Factory Restaurants, Inc. et al*; Case No. SCV27073). By stipulation the parties agreed to transfer the Reed and Sikora cases to Los Angeles County. Both cases were subsequently coordinated together in Los Angeles County by order of the Judicial Council. On November 15, 2013, the Company filed a motion to enforce judgment and to preclude the prosecution of certain claims under the California Private Attorney General Act (PAGA) and California Business and Professions Code Section 17200. On March 11, 2015, the court granted the Company's motion in Case No. SCV0032820. The parties participated in voluntary mediation on June 25, 2015 and have executed a memorandum of understanding with respect to the terms of settlement, which is subject to court approval and is intended to be a full and final resolution of the actions. On January 29, 2016, the court granted the parties' Motion for Preliminary Approval of Class Action Settlement for Case Nos. SCV0032820 and SCV27073. On June 10, 2016, the court entered the order and judgment granting final approval of the class action settlement. Final payments under the settlement agreement were made in September 2016 following the end of the claims period.

On November 26, 2014, a former restaurant hourly employee filed a class action lawsuit in the San Diego County Superior Court, alleging that the Company violated the California Labor Code and California Business and Professions Code, by failing to pay overtime, to permit required rest breaks and to provide accurate wage statements, among other claims (*Masters v. The Cheesecake Factory Restaurants, Inc., et al*; Case No. 37-2014-00040278). By stipulation, the parties agreed to transfer Case No. 37-2014-00040278 to the Orange County Superior Court. On March 2, 2015, Case No. 37-2014-00040278 was officially transferred and assigned a new Case No. 30-2015-00775529 in the Orange County Superior Court. On June 27, 2016, we gave notice to the court that Case Nos. CIV1504091 and BC603620 described below may be related. The lawsuit seeks unspecified amounts of fees, penalties and other monetary payments on behalf of the Plaintiff and other purported class members. 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 May 28, 2015, a group of current and former restaurant hourly employees filed a class action lawsuit in the U.S. District Court for the Eastern District of New York, alleging that the Company violated the Fair Labor Standards Act and New York Labor Code, by requiring employees to purchase uniforms for work and violated the State of New York's minimum wage and overtime provisions (*Guglielmo v. The Cheesecake Factory Restaurants, Inc., et al*; Case No. 2:15-CV-03117). On September 8, 2015, the Company filed its response to the complaint,

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requesting the court to compel arbitration against opt-in plaintiffs with valid arbitration agreements. On July 21, 2016, the court issued an order confirming the agreement of the parties to dismiss all class claims with prejudice and to allow the case to proceed as a collective action at a limited number of the Company's restaurants in the State of New York. The plaintiffs are seeking unspecified amounts of penalties and other monetary payments. We intend to vigorously defend this action. Based upon the current status of this matter, we have not reserved for any potential future payments.

On November 10, 2015, a current restaurant hourly employee filed a class action lawsuit in the Marin County Superior Court alleging that the Company failed to provide complete and accurate wage statements as set forth in the California Labor Code. On January 26, 2016, the plaintiff filed a First Amended Complaint. The lawsuit seeks unspecified penalties under PAGA in addition to other monetary payments (Brown v. The Cheesecake Factory Restaurants, Inc.; Case No. CIV1504091). On April 18, 2016, the court granted our motion to compel individual arbitration of plaintiff's wage statement claim and stayed the PAGA claim until completion of the individual arbitration. On June 28, 2016, we gave notice to the court that Case Nos. 30-2015-00775529 and BC603620 may be related. On September 6, 2016, the parties engaged in settlement discussion and are negotiating the terms of a final settlement agreement. The final settlement agreement will be subject to Court approval and is intended to be a full and final resolution of Case No. CIV150491. Based on the current status of this matter, we have reserved an immaterial amount in anticipation of settlement.

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On December 10, 2015, a former restaurant management employee filed a class action lawsuit in the Los Angeles County Superior Court alleging that the Company improperly classified its managerial employees, failed to pay overtime, and failed to provide accurate wage statements, in addition to other claims. The lawsuit seeks unspecified penalties under PAGA in addition to other monetary payments (Tagalagon v. The Cheesecake Factory Restaurants, Inc., Case No. BC603620). On March 23, 2016, the parties issued their joint status conference statement at which time we gave notice to the court that Case Nos. 30-2015-00775529 and CIV1504091 may be related. On April 29, 2016, the Company filed its response to the complaint. We intend to vigorously defend against this action. Based upon the current status of this matter, we have not reserved for any potential future payments.

On April 24, 2016, a class action lawsuit was filed in the United States District Court for the Eastern District of New York alleging that the Company violated the New York deceptive business practices statute by improperly calculating suggested gratuities on split payment checks (Rodriguez v. The Cheesecake Factory Restaurants, Inc., Case No. 2:16-cv-02006-JFB-AKT). The lawsuit seeks unspecified penalties in addition to other monetary payments. On September 1, 2016, the Company filed a motion to dismiss the plaintiff's complaint. On October 10, 2016, the plaintiff filed an amended complaint to limit the scope of the complaint to the State of New York only. The parties are waiting for a ruling on the Company's motion to dismiss. We intend to vigorously defend against this action. Based upon the current status of this matter, we have not reserved for any potential future payments.

Within the ordinary course of our business, we are subject to private lawsuits, government audits, administrative proceedings and other claims. These matters typically involve claims from customers, staff members and others related to operational and employment issues common to the foodservice industry. A number of these claims may exist at any given time, and some of the claims may be pled as class actions. From time to time, we are also involved in lawsuits with respect to infringements of, or challenges to, our registered trademarks and other intellectual property, both domestically and abroad. We could be affected by adverse publicity and litigation costs resulting from such allegations, regardless of whether they are valid or whether we are legally determined to be liable. At this time, we believe that the final disposition of any pending lawsuits, audits, proceedings and claims will not have a material adverse effect individually or in the aggregate 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, audits, proceedings or claims.

## **5. Stockholders' Equity**

On July 21, 2016, our Board of Directors ( Board ) declared a quarterly cash dividend of \$0.24 per share that was paid on August 23, 2016 to the stockholders of record at the close of business on August 10, 2016. Future decisions to pay, increase or decrease dividends are at the discretion of the Board and will be dependent on our operating performance, financial condition, capital expenditure requirements, limitations on cash distributions pursuant to the terms and conditions of our Facility and such other factors that the Board considers relevant.

On July 21, 2016, our Board increased the authorization to repurchase our common stock by 7.5 million shares to 56 million shares. Under this and all previous authorizations, we have cumulatively repurchased 46.5 million shares at a total cost of \$1,382.4 million through September 27, 2016, including 0.8 million shares at a cost of \$42.4 million during the third quarter of fiscal 2016. Repurchased common stock is reflected as a reduction of stockholders' equity. Our share repurchases have included repurchases under Rule 10b5-1 plans adopted from time to time by our Board in furtherance of its repurchase authorization. Repurchases made during the third quarter of fiscal 2016 were made under a Rule 10b5-1 plan that was adopted by our Board on November 3, 2015 that was effective from January 4, 2016 through June 30, 2016 and a 10b5-1 Plan approved on April 21, 2016, which is effective from July 1, 2016 through December 30, 2016.



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Our share repurchase 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. Shares may be repurchased in the open market or through privately negotiated transactions at times and prices considered appropriate by us. Purchases in the open market are made in compliance with Rule 10b-18 under the Securities Exchange Act of 1934 (the Act). 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, including dividend payments, a review of our capital structure and cost of capital, our share price and current market conditions. The timing and number of shares repurchased are also subject to legal constraints and financial covenants under our Facility that limit share repurchases based on a defined ratio. (See Note 3 for further discussion of our long-term debt.) Our objectives with regard to share repurchases are to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth.

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

	<b>Thirteen Weeks Ended September 27, 2016</b>	<b>Thirteen Weeks Ended September 29, 2015</b>	<b>Thirty-Nine Weeks Ended September 27, 2016</b>	<b>Thirty-Nine Weeks Ended September 29, 2015</b>
Labor expenses	\$ 1,494	\$ 1,638	\$ 4,458	\$ 4,740
Other operating costs and expenses	61	61	186	198
General and administrative expenses	3,318	3,173	11,533	9,611
Total stock-based compensation	4,873	4,872	16,177	14,549
Income tax benefit	1,864	1,864	6,188	5,565
Total stock-based compensation, net of taxes	\$ 3,009	\$ 3,008	\$ 9,989	\$ 8,984
Capitalized stock-based compensation (1)	\$ 104	\$ 64	\$ 253	\$ 210

(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 condensed consolidated balance sheets.

*Stock Options*

We did not issue any stock options during the third quarters of fiscal 2016 or fiscal 2015. Stock option activity during the thirty-nine weeks ended September 27, 2016 was as follows:

	<b>Shares (In thousands)</b>	<b>Weighted Average Exercise Price (Per share)</b>	<b>Weighted Average Remaining Contractual Term (In years)</b>	<b>Aggregate Intrinsic Value(1) (In thousands)</b>
Outstanding at December 29, 2015	3,066	\$ 30.00	3.6	\$ 52,416
Granted	225	50.26		
Exercised	(857)	22.06		
Forfeited or cancelled	(32)	40.96		
Outstanding at September 27, 2016	2,402	\$ 34.59	3.8	\$ 40,479
Exercisable at September 27, 2016	1,510	\$ 28.59	2.6	\$ 34,504

(1) Aggregate intrinsic value is calculated as the difference between our closing stock price at fiscal period end and the exercise price, multiplied by the number of in-the-money options and represents the pretax amount that would have been received by the option holders, had they all exercised their options on the fiscal period end date.

The total intrinsic value of options exercised during the thirteen and thirty-nine weeks ended September 27, 2016 was \$6.0 million and \$24.6 million, respectively. The total intrinsic value of options exercised during the thirteen and thirty-nine weeks ended September 29, 2015 was \$13.1 million and \$34.7 million, respectively. As of September 27, 2016, total unrecognized stock-based compensation expense related to unvested stock options was \$9.1 million, which we expect to recognize over a weighted average period of approximately 2.8 years.

*Restricted Shares and Restricted Share Units*

Restricted share and restricted share unit activity during the thirty-nine weeks ended September 27, 2016 was as follows:

	Shares (In thousands)	Weighted Average Fair Value (Per share)
Outstanding at December 29, 2015	1,891	\$ 41.31
Granted	399	50.05
Vested	(301)	33.59
Forfeited	(82)	42.81
Outstanding at September 27, 2016	1,907	\$ 44.25

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Fair value of our restricted shares and restricted share units is based on our closing stock price on the date of grant. The weighted average fair value at the grant date for restricted shares and restricted share units issued during the third quarter of fiscal 2016 and fiscal 2015 was \$50.44 and \$54.47, respectively. The fair value of shares that vested during the thirteen and thirty-nine weeks ended September 27, 2016 was \$1.4 million and \$10.1 million, respectively. The fair value of shares that vested during the thirteen and thirty-nine weeks ended September 29, 2015 was \$0.5 million and \$6.8 million, respectively. As of September 27, 2016, total unrecognized stock-based compensation expense related to unvested restricted shares and restricted share units was \$43.9 million, which we expect to recognize over a weighted average period of approximately 2.7 years.

**7. Net Income Per Share**

At both September 27, 2016 and September 29, 2015, 1.9 million shares 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 outstanding equity awards, calculated using the treasury stock method. Assumed proceeds from the in-the-money options include the windfall tax benefits, net of shortfalls, calculated under the as-if method as prescribed by FASB Accounting Standards Codification (ASC) 718, Compensation - Stock Option Compensation.

	<b>Thirteen Weeks Ended September 27, 2016</b>	<b>Thirteen Weeks Ended September 29, 2015</b>	<b>Thirty-Nine Weeks Ended September 27, 2016</b>	<b>Thirty-Nine Weeks Ended September 29, 2015</b>
	(In thousands, except per share data)			
Net income	\$ 34,574	\$ 26,176	\$ 107,113	\$ 89,323
Basic weighted average shares outstanding	47,815	48,848	48,188	48,841
Dilutive effect of equity awards	1,397	1,789	1,416	1,819
Diluted weighted average shares outstanding	49,212	50,637	49,604	50,660
Basic net income per share	\$ 0.72	\$ 0.54	\$ 2.22	\$ 1.83
Diluted net income per share	\$ 0.70	\$ 0.52	\$ 2.16	\$ 1.76

Shares of common stock equivalents of 0.9 million and 1.4 million for the thirteen and thirty-nine weeks ended September 27, 2016, respectively, and 0.7 million and 1.3 million for the thirteen and thirty-nine weeks ended September 29, 2015, respectively, were excluded from the diluted calculation due to their anti-dilutive effect.

**8. Segment Information**

For decision-making purposes, our management reviews discrete financial information for The Cheesecake Factory, Grand Lux Cafe and RockSugar Pan Asian Kitchen restaurants, our bakery division and our international licensing operations. Based on quantitative thresholds set forth in ASC 280, Segment Reporting, The Cheesecake Factory is our only business that meets the criteria of a reportable operating segment. Grand Lux Cafe, RockSugar Pan Asian Kitchen, bakery and international licensing are combined in Other. Unallocated corporate expenses,

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assets and capital expenditures are presented below as reconciling items to the amounts presented in the condensed consolidated financial statements.

Segment information is presented below (in thousands):

	Thirteen Weeks Ended September 27, 2016		Thirteen Weeks Ended September 29, 2015		Thirty-Nine Weeks Ended September 27, 2016		Thirty-Nine Weeks Ended September 29, 2015	
<b>Revenues:</b>								
The Cheesecake Factory restaurants	\$	512,040	\$	481,076	\$	1,530,274	\$	1,437,178
Other		47,978		45,612		142,299		136,590
<b>Total</b>	<b>\$</b>	<b>560,018</b>	<b>\$</b>	<b>526,688</b>	<b>\$</b>	<b>1,672,573</b>	<b>\$</b>	<b>1,573,768</b>
<b>Income/(Loss) from operations:</b>								
The Cheesecake Factory restaurants	\$	76,808	\$	67,473	\$	233,385	\$	211,466
Other (1)		6,753		(725)		19,434		10,601
Corporate		(33,498)		(31,104)		(98,972)		(95,616)
<b>Total</b>	<b>\$</b>	<b>50,063</b>	<b>\$</b>	<b>35,644</b>	<b>\$</b>	<b>153,847</b>	<b>\$</b>	<b>126,451</b>
<b>Depreciation and amortization:</b>								
The Cheesecake Factory restaurants	\$	18,381	\$	18,014	\$	54,855	\$	53,320
Other		2,057		2,315		6,200		7,321
Corporate		1,196		988		3,504		3,011
<b>Total</b>	<b>\$</b>	<b>21,634</b>	<b>\$</b>	<b>21,317</b>	<b>\$</b>	<b>64,559</b>	<b>\$</b>	<b>63,652</b>
<b>Capital expenditures:</b>								
The Cheesecake Factory restaurants	\$	25,896	\$	43,134	\$	61,968	\$	85,354
Other		3,661		3,058		7,132		12,369
Corporate		842		2,928		1,507		10,870
<b>Total</b>	<b>\$</b>	<b>30,399</b>	<b>\$</b>	<b>49,120</b>	<b>\$</b>	<b>70,607</b>	<b>\$</b>	<b>108,593</b>

	September 27, 2016		December 29, 2015	
<b>Total assets:</b>				
The Cheesecake Factory restaurants	\$	893,422	\$	934,606
Other		153,748		152,243
Corporate		157,209		146,497
<b>Total</b>	<b>\$</b>	<b>1,204,379</b>	<b>\$</b>	<b>1,233,346</b>

(1) Includes \$6.0 million incurred in the third quarter of fiscal 2015 of impairment expense related to RockSugar Pan Asian Kitchen.

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**9. Subsequent Events**

On October 20, 2016, our Board declared a quarterly cash dividend of \$0.24 per share to be paid on November 22, 2016 to the stockholders of record at the close of business on November 9, 2016.

On October 20, 2016, our Board approved the adoption of a 10b5-1 Plan, which will be effective from January 3, 2017 through June 30, 2017.

**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 presently 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. Statements set forth in or incorporated into this report regarding our expectations for growth in company-owned and licensed locations, comparable sales, diluted net earnings per share, and operating margins, our intention to repurchase stock and pay dividends, and all other statements that are not historical facts, including without limitation, statements with respect to future financial condition, results of operations, plans, objectives, performance and business of The Cheesecake Factory Incorporated and its subsidiaries, as well as statements that are preceded by, followed by or that include words or phrases such as believe, plan, will likely result, expect, intend, will continue, is anticipated, estimate, project, could, would, should and similar expressions, 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, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the Acts). These statements are based on our current expectations and involve risks and uncertainties which may cause results to differ materially from those set forth in such statements.

In connection with the safe harbor provisions of the Acts, 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, 2015.) 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 currently reasonable, any of the assumptions could be incorrect or incomplete, and there can be no assurance that 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, corrections in underlying assumptions, or changes in circumstances arising after the date that the forward-looking statement was made.



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**General**

This discussion and analysis should be read in conjunction with our interim unaudited condensed consolidated financial statements and related notes included in this Form 10-Q in Part I, Item 1, and with the following items included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2015: the audited consolidated financial statements and related notes in Part IV, Item 15; the Risk Factors included in Part I, Item 1A; and the cautionary statements included throughout the report. The inclusion of supplementary analytical and related information herein may require us to make 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.

As of November 3, 2016, we operated 205 Company-owned restaurants 192 under The Cheesecake Factory® mark, 12 under the Grand Lux Cafe® mark and one under the RockSugar Pan Asian Kitchen® mark. Internationally, 13 The Cheesecake Factory branded restaurants operated in the Middle East, Mexico and China under licensing agreements. We also operated two bakery production facilities.

The Cheesecake Factory is an upscale casual dining concept that features more than 200 menu items including appetizers, pizza, seafood, steaks, chicken, burgers, small plates, pastas, salads, sandwiches, omelettes and desserts, including approximately 50 varieties of cheesecake and other quality baked desserts. Grand Lux Cafe and RockSugar Pan Asian Kitchen are also upscale, casual dining concepts offering approximately 150 and 75 menu items, respectively. In contrast to many chain restaurant operations, substantially all of our menu items, except those desserts manufactured at our bakery production facilities, are prepared daily at our restaurants with high quality, fresh ingredients using innovative and proprietary recipes. We believe The Cheesecake Factory and Grand Lux Cafe restaurants are recognized by consumers for offering value with a large variety of freshly prepared menu items across a broad array of price points and generous food portions at moderate prices. Our restaurants distinctive, contemporary design and decor create a high energy ambiance in a casual setting. Our restaurants typically range in size from 8,000 to 12,000 interior square feet, provide full liquor service and are open seven days a week for lunch and dinner, as well as Sunday brunch.

**Overview**

Our strategy is driven by our commitment to customer satisfaction and is focused primarily on menu innovation, service and operational execution to continue to differentiate ourselves from other restaurant concepts, as well as to drive competitively strong performance that is sustainable. Financially, we are focused on prudently managing expenses at our restaurants, bakery facilities and corporate support center, and leveraging our size to make the best use of our purchasing power.

We are committed to allocating capital in a manner that we project will produce targeted returns at the unit level, in the form of fully capitalized cash return on investment, of approximately 20%. 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. Investing in new restaurant development that meets our return on investment criteria is expected to create value for our Company and supports achieving a Company-level return on invested capital of approximately 15%. It is our top capital allocation priority with a focus on opening our restaurant concepts in premier locations within both new and existing markets in the United States, and potentially new markets internationally.

Going forward, our domestic revenue growth (comprised of our annual unit growth and comparable sales growth), combined with international growth, a robust share repurchase program and our dividend provide a framework with high visibility and one that supports our financial



objective of mid-teens growth in total return to shareholders. We define total return as earnings per share growth plus our dividend yield. The following are the key performance levers that we believe will contribute to achieving these goals:

- *Growing Overall Revenue.* Our overall revenue growth is primarily driven by revenue from new restaurant openings, increases in comparable restaurant sales, royalties and bakery sales from additional licensed international locations and potential development or acquisition of other growth vehicles. Changes in comparable restaurant sales come from variations in customer traffic, as well as in check average. Our strategy is to grow customer traffic by (1) continuing to offer innovative, high quality menu items that offer customers a wide range of options in terms of flavor, price and value and (2) focusing on service and hospitality with the goal of delivering an exceptional customer experience. We are continuing our efforts on a number of initiatives intended to help us make incremental progress towards growing customer traffic, including redesigning our server training, building on the success of our gift card program, implementing a technology for mobile payment in our restaurants and delivery service through a third party vendor. Check average is impacted by menu price increases and/or changes in menu mix. Our philosophy with regard to menu pricing is to use price increases to help offset key operating cost increases in a manner that balances protecting both our margins and customer traffic levels.

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- Increasing Our Operating Margins (Income from Operations Expressed as a Percentage of Revenues).* Operating margins are subject to fluctuations in commodity costs, labor expenses, restaurant-level occupancy expenses, general and administrative expenses ( G&A ) and preopening expenses. Our objective is to gradually increase our operating margins and return to peak levels by capturing fixed cost leverage primarily from growth in international royalties, as well as increases in comparable restaurant sales. Maximizing our purchasing power as our business grows and operating our restaurants as productively as possible should help offset cost inflation, thereby supporting our margin expansion goal.

By efficiently scaling our restaurant and bakery support infrastructure and improving our internal processes, we work toward growing G&A expenses at a slower rate than revenue growth over the long term, which also should contribute to operating margin expansion. However, G&A as a percentage of revenues may vary from quarter to quarter and may increase on a year-over-year comparative basis in the near term.

- Dividends and Share Repurchases.* We have historically generated a significant amount of free cash flow, which we define as cash flow from operations less capital expenditures. We utilize substantially all of our free cash flow plus proceeds received from employee stock option exercises for dividends and share repurchases, the latter of which offsets dilution from our equity compensation program and supports our earnings per share growth.

**Results of Operations**

The following table sets forth, for the periods indicated, information from our condensed consolidated statements of income 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 any other interim period or for the full fiscal year.

	Thirteen Weeks Ended September 27, 2016	Thirteen Weeks Ended September 29, 2015	Thirty-Nine Weeks Ended September 27, 2016	Thirty-Nine Weeks Ended September 29, 2015
Revenues	100.0%	100.0%	100.0%	100.0%
Costs and expenses:				
Cost of sales	23.0	23.9	23.1	24.1
Labor expenses	33.3	32.7	33.3	32.5
Other operating costs and expenses	24.1	24.4	23.7	23.9
General and administrative expenses	6.4	6.3	6.4	6.5
Depreciation and amortization expenses	3.9	4.0	3.9	4.0
Impairment of assets and lease terminations		1.1		0.4
Preopening costs	0.4	0.8	0.4	0.6
Total costs and expenses	91.1	93.2	90.8	92.0
Income from operations	8.9	6.8	9.2	8.0
Interest and other expense, net	(0.4)	(0.2)	(0.4)	(0.2)
Income before income taxes	8.5	6.6	8.8	7.8
Income tax provision	2.3	1.6	2.4	2.1

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Net income	6.2%	5.0%	6.4%	5.7%
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**Thirteen Weeks Ended September 27, 2016 Compared to Thirteen Weeks Ended September 29, 2015**

*Revenues*

Revenues increased 6.3% to \$560.0 million for the thirteen weeks ended September 27, 2016 compared to \$526.7 million for the thirteen weeks ended September 29, 2015.

Comparable sales at The Cheesecake Factory restaurants increased by 1.7%, or \$8.0 million, from the third quarter of fiscal 2015, driven by average check growth of 3.1% (based on increases of 2.6% in menu pricing and 0.5% in mix), partially offset by a decrease in customer traffic of 1.4%. We implemented effective menu price increases of approximately 1.4% and 1.1% during the first and third quarter of fiscal 2016, respectively. Total operating weeks at The Cheesecake Factory restaurants increased 5.2% to 2,457 for the thirteen weeks ended September 27, 2016 compared to the comparable prior year period. The Cheesecake Factory average sales per restaurant operating week increased 0.7% to \$208,400 in the third quarter of fiscal 2016 compared to \$206,950 in the third quarter of fiscal 2015.

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Comparable sales at our Grand Lux Cafe restaurants increased by 3.4% from the prior year third quarter driven by both average check and customer traffic growth. We implemented effective menu price increases of approximately 1.0% and 1.1% during the second quarter of fiscal 2016 and the fourth quarter of fiscal 2015, respectively.

Restaurants become eligible to enter our comparable sales base in their 19th month of operation. At September 27, 2016, there were 12 The Cheesecake Factory restaurants and one Grand Lux Cafe not yet in our comparable sales base. International licensed locations and restaurants that are no longer in operation, including those which we have relocated, are excluded from our comparable sales calculations. Factors outside of our control, such as macroeconomic conditions, weather patterns, timing of holidays, competition 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, 2015, can impact comparable sales.

We generally update and reprint our menus twice a year. As part of these menu updates, we evaluate the need for price increases based on those operating cost increases of which we are aware or that we can reasonably expect. While menu price increases can contribute to higher 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 may impact guest traffic.

External bakery sales were \$13.3 million for the third quarter of fiscal year 2016 compared to \$11.7 million in the comparable prior year period.

*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 was 23.0% for the third quarter of fiscal 2016 compared to 23.9% for the comparable period of fiscal 2015, primarily driven by lower grocery, seafood, dairy and poultry costs.

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 sometimes can be offset by cost changes in other commodity categories. The principal commodity categories for our restaurants include general grocery items, dairy, produce, seafood, poultry, meat and bread.

We negotiate short-term and long-term agreements for some of our principal commodity, supply and equipment requirements, such as cream cheese, depending on market conditions and expected demand. Historically, we were unable to contract directly for extended periods of time for certain of our commodities such as some produce, wild-caught fresh fish and certain dairy items. During fiscal 2015, we began entering into longer-term fixed pricing agreements for additional dairy items and continue to evaluate the possibility of entering into similar arrangements for other commodities. We also periodically evaluate hedging vehicles, such as direct financial instruments, to assist us in managing our risk and variability in these categories. Although these vehicles and markets may be available to us, we may choose not to enter into contracts due to pricing volatility, excessive risk premiums, hedge inefficiencies or other factors. Additionally, the cost of commodities subject to government regulation, such as dairy and corn, can be even more susceptible to price fluctuation.

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As has been our past practice, we will carefully consider opportunities to introduce new menu items and implement selected menu price increases to help offset any expected cost increases for key commodities and other goods and services utilized by our operations. For new restaurants, cost of sales will typically be higher for a period of time after opening until our management team becomes more accustomed to predicting, managing and servicing the sales volumes at the new restaurants.

### *Labor Expenses*

As a percentage of revenues, labor expenses, which include restaurant-level labor costs and bakery direct production labor, including associated fringe benefits, were 33.3% and 32.7% in the third quarters of fiscal 2016 and 2015, respectively. This variance was driven primarily by higher hourly wage rates, due to minimum wage rates increases mandated under state and local laws, as well as increased group medical costs due to higher large claims activity and enrollment, partially offset by lower paid time off costs in the prior year third quarter due to the implementation of new laws and regulations enacted in certain states and localities.

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*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 and distribution expenses. As a percentage of revenues, other operating costs and expenses were 24.1% and 24.4% for the thirteen weeks ended September 27, 2016 and September 29, 2015, respectively. This decrease was primarily related to favorability in workers' compensation insurance expense.

*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, corporate support and bakery administrative organizations. As a percentage of revenues, G&A expenses were 6.4% and 6.3% for the third quarters of fiscal 2016 and 2015, respectively. This variance was primarily driven by a higher corporate bonus accrual in the third quarter of fiscal 2016, partially offset by the timing of corporate expenses.

*Depreciation and Amortization Expenses*

As a percentage of revenues, depreciation and amortization expenses were 3.9% and 4.0% for the thirteen weeks ended September 27, 2016 and the comparable period of last year, respectively. This decrease was primarily due to benefits from extending the depreciable life of restaurant assets in conjunction with recently extended/renewed leases and from certain restaurant assets being fully depreciated.

*Impairment of Assets and Lease Terminations*

We incurred no impairment of assets and lease terminations expense during the third quarter of fiscal 2016. In the third quarter of fiscal 2015, we recorded a \$6.0 million impairment charge against the carrying value of our RockSugar Pan Asian Kitchen restaurant.

*Preopening Costs*

Preopening costs were \$2.0 million for the thirteen weeks ended September 27, 2016 compared to \$4.3 million in the comparable period of fiscal 2015. We had no openings in the third quarter of fiscal 2016 compared to two The Cheesecake Factory restaurants in the comparable prior year period. Preopening costs include all costs to relocate and compensate restaurant management employees during the preopening period, costs to recruit and train hourly restaurant employees and wages, travel and lodging costs for our opening training team and other support staff members. Also included 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 openings and operating needs, and corporate travel and support

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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.

### *Interest and Other Expense, Net*

Interest and other expense, net increased to \$2.5 million for the third quarter of fiscal 2016 compared to \$0.7 million for the comparable period last year. This increase was primarily due to income from an insurance claim in the third quarter of fiscal 2015, as well as higher expense on asset disposals and increased interest on our deemed landlord financing liability in the third quarter of fiscal 2016. Interest expense associated with landlord construction allowances deemed to be financings in accordance with accounting guidance was \$1.2 million and \$0.8 million in the third quarters of fiscal 2016 and 2015, respectively.

### *Income Tax Provision*

Our effective income tax rate was 27.3% for the third quarter of fiscal 2016 compared to 25.0% for the comparable prior year period. This increase is primarily due to a lower proportion of employment credits, enterprise zone credits and manufacturing deduction in relation to pre-tax income, partially offset by non-taxable gains in the current fiscal quarter as compared to non-deductible losses in the comparable prior year period on our investments in variable life insurance contracts used to support our Executive Savings Plan ( ESP ), a non-qualified deferred compensation plan.

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**Thirty-Nine Weeks Ended September 27, 2016 Compared to Thirty-Nine Weeks Ended September 29, 2015**

*Revenues*

Revenues increased 6.3% to \$1,672.6 million for the thirty-nine weeks ended September 27, 2016 compared to \$1,573.8 million for the thirty-nine weeks ended September 29, 2015.

Comparable sales at The Cheesecake Factory restaurants increased by 1.2%, or \$17.5 million, from the first three quarters of fiscal 2015, driven by average check growth of 2.8% (based on increases of 2.7% in menu pricing and 0.1% in mix), partially offset by a decrease in customer traffic of 1.6%. We implemented effective menu price increases of approximately 1.4% and 1.1% during the first and third quarter of fiscal 2016, respectively. Total operating weeks at The Cheesecake Factory restaurants increased 5.7% to 7,341 for the thirty-nine weeks ended September 27, 2016 compared to the comparable prior year period. The Cheesecake Factory average sales per restaurant operating week increased 0.8% to \$208,500 in the first three quarters of fiscal 2016 compared to \$206,900 in the first three quarters of fiscal 2015.

Comparable sales at our Grand Lux Cafe restaurants increased by 2.9% from the first three quarters of fiscal 2015 driven by an increase in both average check and customer traffic.

External bakery sales were \$36.4 million for the first three quarters of fiscal 2016 compared to \$36.6 million in the comparable prior year period.

*Cost of Sales*

As a percentage of revenues, cost of sales was 23.1% for the first three quarters of fiscal 2016 compared to 24.1% for the comparable period of fiscal 2015, primarily driven by lower seafood, poultry, grocery and dairy costs.

*Labor Expenses*

As a percentage of revenues, labor expenses were 33.3% and 32.5% in the first three quarters of fiscal 2016 and 2015, respectively. This increase was primarily driven by higher hourly wage rates.

*Other Operating Costs and Expenses*



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As a percentage of revenues, other operating costs and expenses were 23.7% and 23.9% for the thirty-nine weeks ended September 27, 2016 and September 29, 2015, respectively. This variance was primarily related to decreases in workers' compensation insurance and electricity costs, partially offset by an increase in credit card fees.

### *General and Administrative Expenses*

As a percentage of revenues, G&A expenses were 6.4% and 6.5% for the first three quarters of fiscal 2016 and 2015, respectively.

### *Depreciation and Amortization Expenses*

As a percentage of revenues, depreciation and amortization expenses were 3.9% and 4.0% for the thirty-nine weeks ended September 27, 2016 and the comparable period of last year, respectively. This decrease was primarily due to benefits from extending the depreciable life of restaurant assets in conjunction with recently extended/renewed leases and from certain restaurant assets being fully depreciated.

### *Impairment of Assets and Lease Terminations*

We incurred no impairment of assets and lease terminations expense during the first three quarters of fiscal 2016. During the comparable prior year period, we recorded a \$6.0 million impairment charge against the carrying value of our RockSugar Pan Asian Kitchen restaurant.

### *Preopening Costs*

Preopening costs were \$6.6 million for the thirty-nine weeks ended September 27, 2016 compared to \$9.8 million in the comparable period of the prior year. We opened two The Cheesecake Factory restaurants in the first three quarters of fiscal 2016 compared to four The Cheesecake Factory restaurants and one Grand Lux Cafe in the comparable prior year period.

### *Interest and Other Expense, Net*

Interest and other expense, net increased to \$7.0 million for the first three quarters of fiscal 2016 compared to \$4.0 million for the comparable period last year. This variance was driven primarily by increased interest on our deemed landlord financing liability and higher expense on asset disposals in the third quarter of fiscal 2016 and income from an insurance claim in the third quarter of fiscal 2015. Interest expense included \$4.0 million and \$2.6 million in the first three quarters of fiscal 2016 and 2015, respectively, associated with landlord construction allowances deemed to be financings in accordance with accounting guidance.

Table of Contents*Income Tax Provision*

Our effective income tax rate was 27.1% for the first three quarters of fiscal 2016 compared to 27.0% for the comparable prior year period. This increase is primarily due to a lower proportion of employment credits in relation to pre-tax income and a lower manufacturing deduction in relation to pre-tax income, partially offset by non-taxable gains in the first three quarters of fiscal 2016 as compared to non-deductible losses in the comparable prior year period on our investments in variable life insurance contracts used to support our ESP.

**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 27, 2016		Thirteen Weeks Ended September 29, 2015		Thirty-Nine Weeks Ended September 27, 2016		Thirty-Nine Weeks Ended September 29, 2015	
Net income	\$	34,574	\$	26,176	\$	107,113	\$	89,323
After-tax impact from:								
Impairment of assets and lease terminations (1)				3,607				3,607
Adjusted net income	\$	34,574	\$	29,783	\$	107,113	\$	92,930
Diluted net income per share	\$	0.70	\$	0.52	\$	2.16	\$	1.76
After-tax impact from:								
Impairment of assets and lease terminations (1)				0.07				0.07
Adjusted diluted net income per share	\$	0.70	\$	0.59	\$	2.16	\$	1.83

(1) Impairment of assets and lease terminations for both the thirteen and thirty-nine weeks ended September 29, 2015 represents an impairment charge against the carrying value of our RockSugar Pan Asian Kitchen restaurant. The associated pre-tax amount was \$6.0 million. All of these charges were recorded in impairment of assets and lease terminations in the consolidated statements of income.

**Fiscal 2016 Outlook**

For the fourth quarter of fiscal 2016, we estimate diluted net income per share will be between \$0.65 and \$0.68 based on an assumed comparable restaurant sales increase of between 1.0% and 2.0% at The Cheesecake Factory restaurants. For fiscal year 2016, we estimate diluted net income per share will be between \$2.81 and \$2.84 based on an assumed increase in comparable restaurant sales at The Cheesecake Factory restaurants of between 1.0% to 1.5%. We currently expect food cost inflation for fiscal 2016 to be about flat to fiscal 2015, as we anticipate higher prices in produce to be offset by lower seafood and grocery costs. We are assuming fiscal 2016 wage inflation of approximately 5%. We expect operating margins to be positive relative to fiscal 2015 and anticipate a fiscal 2016 effective income tax rate of approximately 27%. Fiscal 2016 is a 53-week year, and our estimates include an approximate impact from the additional week of as much as \$0.08 in diluted net income per share.

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In fiscal 2016, we plan to open as many as eight new restaurants, including one Grand Lux Cafe, of which two The Cheesecake Factory restaurants opened in the first three quarters of fiscal 2016 and three opened subsequent to the end of the third quarter. In addition to these Company-owned locations, we expect as many as four restaurants to open internationally under licensing agreements, of which two opened in the first three quarters of 2016. We expect fiscal 2016 cash capital expenditures to range between \$100 million and \$105 million. We anticipate repurchasing up to \$150 million of our common stock and, together with our dividend, plan to return capital of approximately \$190 million to stockholders in 2016.

**Fiscal 2017 Outlook**

We estimate diluted net income per share for fiscal 2017 will be between \$2.95 and \$3.11 based on an assumed comparable sales increase of between 1.0% and 2.0% at The Cheesecake Factory restaurants. We currently expect commodity cost inflation of about 1.5% to 2.0% for fiscal 2017 as we anticipate higher prices in seafood to be partially offset by lower meat, poultry and dairy costs. We are assuming wage inflation of approximately 5% in fiscal 2017. We anticipate a fiscal 2017 corporate tax rate of 23% to 24%, reflecting the adoption of new accounting guidance related to stock-based compensation. (See Recent Accounting Pronouncements in Note 1 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of this change.)

In fiscal 2017, we plan to open as many as eight to nine new restaurants, including one The Cheesecake Factory relocation and our second RockSugar Pan Asian Kitchen. In addition to these Company-owned locations, we expect as many as four to five restaurants to open internationally under licensing agreements.

We expect fiscal 2017 cash capital expenditures to range between \$125 million and \$140 million and anticipate utilizing substantially all of our free cash flow, plus proceeds received from employee stock option exercises, for dividends and share repurchases.

**Liquidity and Capital Resources**

The following table presents, for the periods indicated, a summary of our key cash flows from operating, investing and financing activities (in millions):

	<b>Thirty-Nine Weeks Ended September 27, 2016</b>	<b>Thirty-Nine Weeks Ended September 29, 2015</b>
Cash provided by operating activities	\$ 216.5	\$ 161.1
Capital expenditures	\$ (70.6)	\$ (108.6)
Proceeds from exercise of stock options	\$ 18.9	\$ 25.4
Borrowings on credit facility	\$	\$ 25.0
Repayments on credit facility	\$	\$ (25.0)
Treasury stock purchases	\$ (119.0)	\$ (92.0)
Cash dividends paid	\$ (31.0)	\$ (26.2)

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During the thirty-nine weeks ended September 27, 2016, our cash and cash equivalents increased by \$22.0 million to \$65.8 million. This increase was primarily attributable to cash provided by operating activities and proceeds from exercises of employee stock options, partially offset by treasury stock purchases, dividend payments and capital expenditures.

For fiscal 2016, we currently estimate our cash outlays for capital expenditures to range between \$100 million and \$105 million, net of agreed-upon up-front cash landlord construction contributions and excluding \$13.6 million of expected non-capitalizable preopening costs for new restaurants. The amount reflected as additions to property and equipment in the condensed consolidated statements of cash flows may vary from this estimate based on the accounting treatment of each lease. Our estimate for capital expenditures for fiscal 2016 contemplates a net outlay of \$66 million to \$68 million for as many as eight restaurants expected to be opened during fiscal 2016 and estimated construction-in-progress disbursements for anticipated early fiscal 2017 openings. Expected fiscal 2016 capital expenditures also include \$27 million to \$28 million for maintenance, enhancements and capacity additions to our existing restaurants and \$7 million to \$9 million for bakery and corporate infrastructure investments.

On December 22, 2015, we entered into a new loan agreement ( Facility ) which amended and restated in its entirety our prior loan agreement dated October 16, 2013. This Facility, which matures on December 22, 2020, provides us with revolving loan commitments totaling \$200 million, of which \$50 million may be used for issuances of letters of credit. Availability under the Facility is reduced by outstanding letters of credit, which are used to support our self-insurance programs. The Facility contains a commitment increase feature that could provide for an additional \$100 million in available credit upon our request and subject to the lenders electing to increase their commitments or by means of the addition of new lenders. At September 27, 2016, we had net availability for borrowings of \$182.7 million, based on a zero outstanding debt balance and \$17.3 million in standby letters of credit. The Facility also limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio. We were in compliance with the financial covenants in effect at September 27, 2016. We did not withdraw or repay any amounts under this Facility during the first three quarters of fiscal 2016. (See Note 3 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

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On July 21, 2016, our Board increased the authorization to repurchase our common stock by 7.5 million shares to 56 million shares. Under this and all previous authorizations, we have cumulatively repurchased 46.5 million shares at a total cost of \$1,382.4 million through September 27, 2016, including 0.8 million shares at a cost of \$42.4 million during the third quarter of fiscal 2016. Our share repurchase 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. 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, including dividend payments, a review of our capital structure and cost of capital, our share price and current market conditions. Our objectives with regard to share repurchases are to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth. (See Note 5 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization and methods.)

In July 2012, our Board approved the initiation of a cash dividend to our stockholders, which is subject to quarterly Board approval. Cash dividends have been declared during every quarter since initiation. Future decisions to pay or to increase or decrease dividends are at the discretion of the Board and will be dependent on our operating performance, financial condition, capital expenditure requirements and such other factors that the Board considers relevant.

Based on our current expansion objectives, we believe that during the upcoming 12 months our cash and cash equivalents, combined with expected cash flows provided by operations, available borrowings under our Facility and expected landlord construction contributions should be sufficient in the aggregate to finance our capital allocation strategy, including capital expenditures, share repurchases, repayment of borrowings on our Facility and cash dividends, and allow us to consider additional possible capital allocation strategies, such as the development or acquisition of other growth vehicles. We continue to plan to return substantially all of our free cash flow plus proceeds received from employee stock option exercises to stockholders in the form of dividends and share repurchases.

As of September 27, 2016, 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 Condensed 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 commodity and financial markets.

We purchase food and other commodities for use in our operations, based on market prices established with our suppliers. Many of the commodities purchased by us can be subject to volatility due to market supply and demand factors outside of our control. We negotiate short-term and long-term agreements for some of our principal commodity, supply and equipment requirements, such as cream cheese,

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depending on market conditions and expected demand. Historically, we were unable to contract directly for extended periods of time for certain of our commodities such as some produce, wild-caught fresh fish and certain dairy items. During fiscal 2015, we began entering into longer-term fixed pricing agreements for additional dairy items and continue to evaluate the possibility of entering into similar agreements for other commodities. We also periodically evaluate hedging vehicles, such as direct financial instruments, to assist us in managing our risk and variability in these categories. Although these vehicles and markets may be available to us, we may choose not to enter into such contracts due to pricing volatility, excessive risk premiums, hedge inefficiencies or other factors. Where we have not contracted, commodities can be subject to unforeseen supply and cost fluctuations, which at times can be significant. Additionally, the cost of commodities subject to governmental regulation, such as dairy and corn, can be even more susceptible to price fluctuation than other products. We may have the ability to increase menu prices, or vary menu items, in response to food commodity price increases. We do not currently 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.

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 \$200 million Facility that is indexed to market rates. We had no outstanding borrowings at September 27, 2016 and December 29, 2015, and therefore, had no exposure to interest rate fluctuations on funded debt at those dates. (See Note 3 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

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We are also subject to market risk related to our investments in variable life insurance contracts used to support our Executive Savings Plan, a non-qualified deferred compensation plan, 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 directly affects net income. Based on balances at September 27, 2016 and December 29, 2015, a hypothetical 10% decline in the market value of our deferred compensation asset and related liability would not have impacted income before income taxes. However, net income would have declined by \$1.9 million at September 27, 2016 and \$1.6 million at December 29, 2015.

**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 our 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 27, 2016.

*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 27, 2016 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 4 of Notes to Condensed 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, 2015 ( 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 of our common stock during the thirteen weeks ended September 27, 2016 (in thousands, except per share amounts):

Period	Total Number of Shares Purchased (1)	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 29 August 2, 2016	287	\$ 50.43	286	10,087
August 3 August 30, 2016	278	51.65	268	9,809
August 31 September 27, 2016	267	50.73	263	9,542
Total	832		817	

(1) The total number of shares purchased includes shares withheld upon vesting of restricted share awards to satisfy tax withholding obligations.

On July 21, 2016, our Board increased the authorization to repurchase our common stock by 7.5 million shares to 56 million shares. Under this and all previous authorizations, we have cumulatively repurchased 46.5 million shares at a total cost of \$1,382.4 million through September 27, 2016, including 0.8 million shares of our common stock at a cost of \$42.4 million during the third quarter of fiscal 2016. Our share repurchase 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 5 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization and methods.)

Our Facility limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio. (See Note 3 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

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**Item 6. Exhibits**

<b>Exhibit No.</b>	<b>Item</b>	<b>Form</b>	<b>File Number</b>	<b>Incorporated by Reference from Exhibit Number</b>	<b>Filed with SEC</b>
					

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**SIGNATURES**

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

Date: November 3, 2016

**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  
*Senior Vice President, Controller and Chief  
Accounting Officer  
(Principal Accounting Officer)*