
**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 July 4, 2023

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)

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

(Address of principal executive offices)

51-0340466

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

91301

(Zip Code)

(818) 871-3000

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Each Exchange on which Registered</u>
Common Stock, par value \$.01 per share	CAKE	The Nasdaq Stock Market LLC

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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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 July 31, 2023, 51,275,532 shares of the registrant's Common Stock, \$.01 par value per share, were outstanding.

THE CHEESECAKE FACTORY INCORPORATED
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PART I — FINANCIAL INFORMATION
Item 1. Financial Statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	July 4, 2023 (Unaudited)	January 3, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 91,557	\$ 114,777
Accounts and other receivables	71,366	105,511
Income taxes receivable	22,739	21,522
Inventories	60,868	55,559
Prepaid expenses	52,641	48,399
Total current assets	299,171	345,768
Property and equipment, net	770,315	746,051
Other assets:		
Intangible assets, net	251,559	251,524
Operating lease assets	1,280,758	1,268,986
Other	167,905	162,891
Total other assets	1,700,222	1,683,401
Total assets	<u>\$ 2,769,708</u>	<u>\$ 2,775,220</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 72,682	\$ 66,638
Gift card liabilities	187,483	219,808
Operating lease liabilities	142,370	139,099
Other accrued expenses	220,917	231,133
Total current liabilities	623,452	656,678
Long-term debt	469,040	468,032
Operating lease liabilities	1,228,664	1,233,497
Other noncurrent liabilities	122,649	125,010
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000,000 shares authorized; none issued and outstanding	—	—
Common stock, \$.01 par value, 250,000,000 shares authorized; 107,042,941 shares issued and 51,271,545 shares outstanding at July 4, 2023 and 106,323,117 shares issued and 51,173,597 shares outstanding at January 3, 2023	1,070	1,063
Additional paid-in capital	899,792	887,485
Retained earnings	1,213,115	1,170,078
Treasury stock inclusive of excise tax, 55,771,396 and 55,149,520 shares at cost at July 4, 2023 and January 3, 2023, respectively	(1,787,419)	(1,765,641)
Accumulated other comprehensive loss	(655)	(982)
Total stockholders' equity	325,903	292,003
Total liabilities and stockholders' equity	<u>\$ 2,769,708</u>	<u>\$ 2,775,220</u>

See the accompanying notes to the condensed consolidated financial statements

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share data)
(Unaudited)

	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Revenues	\$ 866,170	\$ 832,643	\$ 1,732,284	\$ 1,626,353
Costs and expenses:				
Food and beverage costs	201,094	204,182	407,318	392,683
Labor expenses	306,149	304,519	617,677	600,282
Other operating costs and expenses	226,996	219,200	457,925	426,835
General and administrative expenses	54,488	50,191	108,557	99,314
Depreciation and amortization expenses	23,332	22,608	46,287	44,113
Impairment of assets and lease termination (income)/expenses	(653)	106	1,589	313
Acquisition-related contingent consideration, compensation and amortization expenses	1,287	948	2,476	1,839
Preopening costs	6,006	2,947	9,058	4,711
Total costs and expenses	818,699	804,701	1,650,887	1,570,090
Income from operations	47,471	27,942	81,397	56,263
Interest and other expense, net	(2,162)	(1,130)	(4,042)	(2,591)
Income before income taxes	45,309	26,812	77,355	53,672
Income tax provision	2,634	1,156	6,630	4,853
Net income	<u>\$ 42,675</u>	<u>\$ 25,656</u>	<u>\$ 70,725</u>	<u>\$ 48,819</u>
Net income per share:				
Basic	<u>\$ 0.88</u>	<u>\$ 0.51</u>	<u>\$ 1.46</u>	<u>\$ 0.97</u>
Diluted (Note 10)	<u>\$ 0.87</u>	<u>\$ 0.50</u>	<u>\$ 1.43</u>	<u>\$ 0.96</u>
Weighted-average shares outstanding:				
Basic	48,492	50,387	48,593	50,360
Diluted	49,085	50,929	49,296	50,966

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)
(Unaudited)

	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Net income	\$ 42,675	\$ 25,656	\$ 70,725	\$ 48,819
Other comprehensive gain/(loss):				
Foreign currency translation adjustment	180	(300)	327	(45)
Other comprehensive gain/(loss)	180	(300)	327	(45)
Total comprehensive income	<u>\$ 42,855</u>	<u>\$ 25,356</u>	<u>\$ 71,052</u>	<u>\$ 48,774</u>

See the accompanying notes to the condensed consolidated financial statements

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

For the twenty-six weeks ended July 4, 2023:

	Common Stock		Additional	Retained	Treasury	Accumulated	
	Shares	Amount	Paid-in	Earnings	Stock	Other	Total
			Capital			Comprehensive	
						(Loss)/Income	
Balance, January 3, 2023	106,323	\$ 1,063	\$ 887,485	\$ 1,170,078	\$ (1,765,641)	\$ (982)	\$ 292,003
Net income	—	—	—	28,050	—	—	28,050
Foreign currency translation adjustment	—	—	—	—	—	147	147
Cash dividends declared common stock, net of forfeitures, \$0.27 per share	—	—	—	(13,929)	—	—	(13,929)
Stock-based compensation	628	6	5,938	—	—	—	5,944
Treasury stock purchases	—	—	—	—	(12,376)	—	(12,376)
Balance, April 4, 2023	106,951	\$ 1,069	\$ 893,423	\$ 1,184,199	\$ (1,778,017)	\$ (835)	\$ 299,839
Net income	—	—	—	42,675	—	—	42,675
Foreign currency translation adjustment	—	—	—	—	—	180	180
Cash dividends declared common stock, net of forfeitures, \$0.27 per share	—	—	—	(13,759)	—	—	(13,759)
Stock-based compensation	92	1	6,369	—	—	—	6,370
Treasury stock purchases, inclusive of excise tax	—	—	—	—	(9,402)	—	(9,402)
Balance, July 4, 2023	107,043	\$ 1,070	\$ 899,792	\$ 1,213,115	\$ (1,787,419)	\$ (655)	\$ 325,903

For the twenty-six weeks ended June 28, 2022:

	Common Stock		Additional	Retained	Treasury	Accumulated	Total
	Shares	Amount	Paid-in	Earnings	Stock	Other	
			Capital			Comprehensive	
						(Loss)/Income	
Balance, December 28, 2021	105,366	\$ 1,054	\$ 862,758	\$ 1,169,150	\$ (1,702,509)	\$ (287)	\$ 330,166
Net income	—	—	—	23,163	—	—	23,163
Foreign currency translation adjustment	—	—	—	—	—	255	255
Cash dividends declared common stock, net of forfeitures	—	—	—	22	—	—	22
Stock-based compensation	608	6	5,569	—	—	—	5,575
Common stock issued under stock-based compensation plans	55	0	83	—	—	—	83
Treasury stock purchases	—	—	—	—	(3,938)	—	(3,938)
Balance, March 29, 2022	106,029	\$ 1,060	\$ 868,410	\$ 1,192,335	\$ (1,706,447)	\$ (32)	\$ 355,326
Net income	—	—	—	25,656	—	—	25,656
Foreign currency translation adjustment	—	—	—	—	—	(300)	(300)
Cash dividends declared common stock, net of forfeitures, \$0.27 per share	—	—	—	(14,260)	—	—	(14,260)
Stock-based compensation	(40)	0	6,141	—	—	—	6,141
Common stock issued under stock-based compensation plans	41	0	0	—	—	—	0
Treasury stock purchases	—	—	—	—	(10,879)	—	(10,879)
Balance, June 28, 2022	106,030	\$ 1,060	\$ 874,551	\$ 1,203,731	\$ (1,717,326)	\$ (332)	\$ 361,684

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Cash flows from operating activities:		
Net income	\$ 70,725	\$ 48,819
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation and amortization expenses	46,287	44,113
Impairment of assets and lease termination (income)/expense	(768)	250
Deferred income taxes	2,469	279
Stock-based compensation	12,227	11,607
Changes in assets and liabilities:		
Accounts and other receivables	31,740	23,781
Income taxes receivable/payable	(1,216)	(3,618)
Inventories	(5,306)	(9,447)
Prepaid expenses	(4,240)	3,071
Operating lease assets/liabilities	(12,218)	(9,813)
Other assets	(7,107)	14,992
Accounts payable	627	8,937
Gift card liabilities	(32,328)	(28,887)
Other accrued expenses	624	(16,567)
Cash provided by operating activities	101,516	87,517
Cash flows from investing activities:		
Additions to property and equipment	(62,660)	(46,382)
Additions to intangible assets	(392)	(282)
Other	(156)	646
Cash used in investing activities	(63,208)	(46,018)
Cash flows from financing activities:		
Acquisition-related deferred consideration and compensation	(12,994)	(7,187)
Proceeds from exercise of stock options	—	83
Common stock dividends paid	(26,998)	(14,288)
Treasury stock purchases	(21,695)	(14,817)
Cash used in financing activities	(61,687)	(36,209)
Foreign currency translation adjustment	159	(26)
Net change in cash and cash equivalents	(23,220)	5,264
Cash and cash equivalents at beginning of period	114,777	189,627
Cash and cash equivalents at end of period	\$ 91,557	\$ 194,891
Supplemental disclosures:		
Interest paid	\$ 5,308	\$ 2,726
Income taxes paid	\$ 5,175	\$ 9,720
Construction payable	\$ 14,752	\$ 8,439

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Significant Accounting Policies

Basis of Presentation

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”) and are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). All intercompany accounts and transactions for the periods presented have been eliminated in consolidation. 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 that may be achieved 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 January 3, 2023 filed with the SEC on February 27, 2023.

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31 for financial reporting purposes. Fiscal year 2023 consists of 52 weeks and will end on January 2, 2024. Fiscal year 2022, which ended on January 3, 2023 was a 53-week year.

Use of Estimates

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.

COVID-19 Pandemic and Other Impacts to our Operating Environment

During fiscal 2022, the COVID-19 pandemic continued to affect our business during periods of accelerated case counts in which we experienced increased restaurant staff absenteeism and temporary shifts in consumer behavior, such as changes in customer traffic or the mix between on-premise and off-premise channels. Along with the COVID-19 pandemic, our operating results were impacted by geopolitical and macroeconomic events, causing supply chain challenges and significantly increased commodity and wage inflation. Some of these factors have continued to impact our operating results in fiscal 2023, contributing to significantly increased commodity and other costs. We have also encountered delays in opening new restaurants due to supply chain challenges and delays in permitting, construction, landlord readiness, and equipment availability.

The ongoing impact of geopolitical and macroeconomic events could lead to further government mandates, including but not limited to capacity restrictions, shifts in consumer behavior, wage inflation, staffing challenges, product and services cost inflation, disruptions in the supply chain and delay in new restaurant openings. For more information regarding the risks to our business relating to the COVID-19 pandemic and other geopolitical and macroeconomic events, see “Risk Factors” in Item 1A of our Annual Report on Form 10-K for the fiscal year ended January 3, 2023.

Recent Accounting Pronouncements

We reviewed all recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the consolidated financial statements.

2. Fair Value Measurements

Fair value measurements are estimated based on valuation techniques and inputs categorized as follows:

- Level 1: Quoted prices in active markets for identical assets or liabilities
- Level 2: Observable inputs other than quoted prices in active markets for identical assets and liabilities
- Level 3: Unobservable inputs in which little or no market activity exists, therefore requiring the Company to develop its own assumptions

The following tables present the components and classification of our assets and liabilities that are measured at fair value on a recurring basis (in thousands):

	July 4, 2023		
	Level 1	Level 2	Level 3
Assets/(Liabilities)			
Non-qualified deferred compensation assets	\$ 85,779	\$ —	\$ —
Non-qualified deferred compensation liabilities	(87,330)	—	—
Acquisition-related deferred consideration	—	(11,048)	—
Acquisition-related contingent consideration and compensation liabilities	—	—	(17,119)

	January 3, 2023		
	Level 1	Level 2	Level 3
Assets/(Liabilities)			
Non-qualified deferred compensation assets	\$ 78,542	\$ —	\$ —
Non-qualified deferred compensation liabilities	(78,286)	—	—
Acquisition-related deferred consideration	—	(10,751)	—
Acquisition-related contingent consideration and compensation liabilities	—	—	(28,565)

The following table presents a reconciliation of the beginning and ending amounts of the fair value of the acquisition-related contingent consideration and compensation liabilities categorized as Level 3 (in thousands):

	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Beginning balance	\$ 28,565	\$ 23,894
Payment	(12,994)	(7,187)
Change in fair value	1,548	1,057
Ending balance	<u>\$ 17,119</u>	<u>\$ 17,764</u>

The fair value of the acquisition-related contingent consideration and compensation liabilities was determined utilizing a Monte Carlo model based on estimated future revenues, margins and volatility factors, among other variables and estimates and has no minimum or maximum payment. The undiscounted range of outcomes per the Monte Carlo model utilized to determine the fair value of the acquisition-related contingent consideration and compensation liabilities at July 4, 2023 was \$0 to \$276.0 million. Results could change materially if different estimates and assumptions were used. During the first six months of fiscal 2023 and fiscal 2022, we made payments of \$13.0 million and \$7.2 million, respectively, per the Fox Restaurant Concept LLC ("FRC") acquisition agreement.

The fair values of our cash and cash equivalents, accounts and other receivables, income taxes receivable, prepaid expenses, accounts payable, income taxes payable and other accrued liabilities approximate their carrying amounts due to their short duration.

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As of July 4, 2023, we had \$345.0 million aggregate principal amount of Notes outstanding. The estimated fair value of the Notes based on a market approach as of July 4, 2023 was approximately \$290.5 million and was determined based on the estimated or actual bids and offers of the Notes in an over-the-counter market on the last business day of the reporting period. The decrease in the fair value of the Notes was primarily due to a decline in our stock price from the date of the issuance of the Notes. See Note 5 for further discussion of the Notes.

3. Inventories

Inventories consisted of (in thousands):

	July 4, 2023	January 3, 2023
Restaurant food and supplies	\$ 30,486	\$ 30,783
Bakery finished goods and work in progress	21,131	17,250
Bakery raw materials and supplies	9,251	7,526
Total	<u>\$ 60,868</u>	<u>\$ 55,559</u>

4. Gift Cards

The following tables present information related to gift cards (in thousands):

	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Gift card liabilities:				
Beginning balance	\$ 191,908	\$ 185,512	\$ 219,808	\$ 211,182
Activations	26,718	28,607	45,316	49,197
Redemptions and breakage	(31,143)	(31,824)	(77,641)	(78,084)
Ending balance	<u>\$ 187,483</u>	<u>\$ 182,295</u>	<u>\$ 187,483</u>	<u>\$ 182,295</u>
	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Gift card contract assets:				
Beginning balance	\$ 18,367	\$ 17,541	\$ 19,886	\$ 18,468
Deferrals	2,905	3,189	5,314	5,891
Amortization	(3,903)	(3,669)	(7,831)	(7,298)
Ending balance	<u>\$ 17,369</u>	<u>\$ 17,061</u>	<u>\$ 17,369</u>	<u>\$ 17,061</u>

5. Long-Term Debt

Revolving Credit Facility

On October 6, 2022, we entered into a Fourth Amended and Restated Loan Agreement (the “Loan Agreement” and the revolving credit facility provided thereunder, the “Revolver Facility”). The Loan Agreement amends and restates in its entirety our prior credit agreement. The Revolver Facility, which terminates on October 6, 2027, provides us with revolving loan commitments that total \$400 million, of which \$50 million may be used for issuances of letters of credit. The Revolver Facility contains a commitment increase feature that, subject to certain conditions precedent, could provide for an additional \$200 million in revolving loan commitments. Our obligations under the Revolver Facility are unsecured. Certain of our material subsidiaries have guaranteed our obligations under the Revolver Facility.

On October 6, 2022, we repaid the outstanding balance under the then-existing credit agreement and borrowed the same amount on the Revolver Facility. As of July 4, 2023, we had net availability for borrowings of \$238.5 million, based on a \$130.0 million outstanding debt balance and \$31.5 million in standby letters of credit under the Revolver Facility.

Under the Revolver Facility, we are subject to the following financial covenants as of the last day of each fiscal quarter: (i) a maximum ratio of net adjusted debt to EBITDAR (the “Amended Net Adjusted Leverage Ratio”) of 4.25 and (ii) a minimum ratio of EBITDAR to interest and rent expense (“EBITDAR Ratio”) of 1.90. The Amended Net Adjusted Leverage Ratio includes a rental expense multiplier of six. As of July 4, 2023, we were in compliance with all the foregoing covenants in effect at that date.

Borrowings under the Loan Agreement bear interest, at the Company’s election, at a rate equal to either: (i) the sum of (A) adjusted term SOFR (as defined in the Loan Agreement, the “Term SOFR Rate”) plus (B) a rate variable based on the Amended Net Adjusted Leverage Ratio, ranging from 1.00% to 1.75%, or (ii) the sum of (A) the highest of (x) the rate of interest last quoted by The Wall Street Journal as the prime rate in effect in the United States, (y) the greater of the rate calculated by the Federal Reserve Bank of New York as the federal funds effective rate or the rate that is published by the Federal Reserve Bank of New York as the overnight bank funding rate, in either case, plus 0.50%, and (z) the one-month Term SOFR Rate plus 1.00%, plus (B) a rate variable based on the Net Adjusted Leverage Ratio, ranging from 0.00% to 0.75%. The Company will also pay a fee variable based on the Net Adjusted Leverage Ratio, ranging from 0.125% to 0.25%, on the daily amount of unused commitments under the Loan Agreement. Letters of credit bear fees that are equivalent to the interest rate margin that is applicable to revolving loans that bear interest at the adjusted SOFR plus other customary fees charged by the issuing bank. We paid certain customary loan origination fees in conjunction with the Loan Agreement.

We are also subject to customary events of default that, if triggered, could result in acceleration of the maturity of the Revolver Facility. Subject to certain exceptions, the Revolver Facility also limits distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio, and also sets forth negative covenants that restrict indebtedness, liens, investments, sales of assets, fundamental changes and other matters.

Convertible Senior Notes

On June 15, 2021, we issued \$345.0 million aggregate principal amount of convertible senior notes due 2026 (“Notes”). The net proceeds from the sale of the Notes were approximately \$334.9 million after deducting issuance costs related to the Notes.

The Notes are senior, unsecured obligations and are (i) equal in right of payment with our existing and future senior, unsecured indebtedness; (ii) senior in right of payment to our existing and future indebtedness that is expressly subordinated to the Notes; (iii) effectively subordinated to our existing and future secured indebtedness, to the extent of the value of the collateral securing that indebtedness; and (iv) structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent we are not a holder thereof) preferred equity, if any, of our subsidiaries. The Notes were issued pursuant to, and are governed by, an indenture (the “Base Indenture”) between us and a trustee (“Trustee”), dated as of June 15, 2021, as supplemented by a first supplemental indenture (the “Supplemental Indenture,” and the Base Indenture, as supplemented by the Supplemental Indenture, the “Indenture”), dated as of June 15, 2021, between the Company and the Trustee.

The Notes accrue interest at a rate of 0.375% per annum, payable semi-annually in arrears on June 15 and December 15 of each year, beginning on December 15, 2021. The Notes will mature on June 15, 2026, unless earlier repurchased, redeemed or converted. Before February 17, 2026, noteholders will have the right to convert their Notes only upon the occurrence of certain events. From and after February 17, 2026, noteholders may convert their Notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. We will have the right to elect to settle conversions either entirely in cash or in a combination of cash and shares of our common stock. However, upon conversion of any Notes, the conversion value, which will be determined over an “Observation Period” (as defined in the Indenture) consisting of 30 trading days, will be paid in cash up to at least the principal amount of the Notes being converted. The initial conversion rate is 12.7551 shares of common stock per \$1,000 principal amount of Notes, which represents an initial conversion price of approximately \$78.40 per share of common stock. The conversion rate and conversion price will be subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a “Make-Whole Fundamental Change” (as defined in the Indenture) occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time. As of July 4, 2023, the conversion rate for the Notes was 13.2717 shares of common stock per \$1,000 principal amount of the Notes, which represents a conversion price of approximately \$75.35 per share of common stock. In connection with the cash dividend that was declared by our Board on July 27, 2023, on August 15, 2023 we will adjust the conversion rate (which is expected to increase) and the conversion price (which is expected to decrease) of the Notes in accordance with the terms.

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The Notes are redeemable, in whole or in part (subject to certain limitations described below), at our option at any time, and from time to time, on or after June 20, 2024 and on or before the 30th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of our common stock exceeds 130% of the conversion price on (i) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date we send the related redemption notice; and (ii) the trading day immediately before the date we send such notice. However, we may not redeem less than all of the outstanding Notes unless at least \$150.0 million aggregate principal amount of Notes are outstanding and not called for redemption as of the time we send the related redemption notice. In addition, calling any Note for redemption will constitute a Make-Whole Fundamental Change with respect to that Note, in which case the conversion rate applicable to the conversion of that Note will be increased in certain circumstances if it is converted after it is called for redemption.

If certain corporate events that constitute a “Fundamental Change” (as defined in the Indenture) occur, then, subject to a limited exception for certain cash mergers, noteholders may require us to repurchase their Notes at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. The definition of Fundamental Change includes certain business combination transactions involving us and certain de-listing events with respect to our common stock.

The Notes have customary provisions relating to the occurrence of “Events of Default” (as defined in the Indenture), which include the following: (i) certain payment defaults on the Notes (which, in the case of a default in the payment of interest on the Notes, will be subject to a 30-day cure period); (ii) our failure to send certain notices under the Indenture within specified periods of time; (iii) our failure to comply with certain covenants in the Indenture relating to our ability to consolidate with or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of our assets and our subsidiaries, taken as a whole, to another person; (iv) a default by us in our other obligations or agreements under the Indenture or the Notes if such default is not cured or waived within 60 days after notice is given in accordance with the Indenture; (v) certain defaults by us or any of our significant subsidiaries with respect to indebtedness for borrowed money of at least \$20,000,000; (vi) the rendering of certain judgments against us or any of our significant subsidiaries for the payment of at least \$25,000,000, where such judgments are not discharged or stayed within 60 days after the date on which the right to appeal has expired or on which all rights to appeal have been extinguished; and (vii) certain events of bankruptcy, insolvency and reorganization involving us or any of our significant subsidiaries.

If an Event of Default involving bankruptcy, insolvency or reorganization events with respect to us (and not solely with respect to a significant subsidiary of ours) occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any person. If any other Event of Default occurs and is continuing, then, the Trustee, by notice to us, or noteholders of at least 25% of the aggregate principal amount of Notes then outstanding, by notice to us and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately. However, notwithstanding the foregoing, we may elect, at our option, that the sole remedy for an Event of Default relating to certain failures by us to comply with certain reporting covenants in the Indenture consists exclusively of the right of the noteholders to receive special interest on the Notes for up to 180 days at a specified rate per annum not exceeding 0.50% on the principal amount of the Notes.

As of July 4, 2023, the Notes had a gross principal balance of \$345.0 million and a balance of \$339.0 million, net of unamortized issuance costs of \$6.0 million. Total amortization expense was \$0.5 million and \$1.0 million during thirteen and twenty-six weeks ended July 4, 2023, respectively. Total amortization expense was \$0.5 million and \$1.0 million during thirteen and twenty-six weeks ended June 28, 2022, respectively. The effective interest rate for the Notes was 0.96% as of July 4, 2023.

6. Leases

Components of lease expense were as follows (in thousands):

	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Operating	\$ 35,897	\$ 34,777	\$ 71,268	\$ 67,653
Variable	22,112	20,695	44,312	40,349
Short-term	38	27	80	54
Total	<u>\$ 58,047</u>	<u>\$ 55,499</u>	<u>\$ 115,660</u>	<u>\$ 108,056</u>

Supplemental information related to leases (in thousands):

	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows for operating leases	\$ 72,608	\$ 68,202
Right-of-use assets obtained in exchange for new operating lease liabilities	16,679	19,295

7. Commitments and Contingencies

On June 7, 2018, the California Department of Industrial Relations issued a \$4.2 million wage citation jointly against the Company and our vendor that provides janitorial services to eight of our Southern California restaurants, alleging that the janitorial vendor or its subcontractor failed to comply with various provisions of the California Labor Code (Wage Citation Case No. 35-CM-188798-16). The wage citation seeks to recover penalties and other monetary payments on behalf of the employees that worked for this vendor or its subcontractor. On June 28, 2018, we filed an appeal of the wage citation. On November 10, 2022, the parties participated in voluntary mediation and reached a tentative settlement on the wage citation. The settlement is subject to documentation and final agency approval. We have reserved an immaterial amount for settlement purposes.

On February 10, 2023, a class action complaint was filed against the Company in the United States District Court for the Southern District of California, (Lightoller vs. TCF Co. LLC., Case No. 3:23-cv-00272-AJB-NLS), alleging violations of state privacy laws. The lawsuit alleges that the Company violated state wiretapping and privacy laws by improperly tracking and/or recording the keystrokes of visitors on the Company's website without permission. A similar case was filed on the United States District Court for the District of Maryland on February 21, 2023 (Curd v. TCF CO. LLC; Civil Action No. 1:23-cv-00472-JMC). On May 10, 2023, the plaintiffs in Case Nos. 3:23-cv-00272 and 1:23-cv-00472 voluntarily dismissed their complaints against the Company without prejudice.

Within the ordinary course of our business, we are subject to private lawsuits, government audits and investigations, 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 amount of reasonably possible losses resulting from final disposition of any pending lawsuits, audits, investigations, 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. Legal costs related to such claims are expensed as incurred.

8. Stockholders' Equity

Common Stock – Dividends and Share Repurchases

On May 10, 2023, our Board declared a quarterly cash dividend of \$0.27 per share that was paid on June 6, 2023 to the stockholders of record of each share of our common stock at the close of business on May 24, 2023. 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, limitations on cash distributions pursuant to the terms and conditions of the Loan Agreement and applicable law, and such other factors that the Board considers relevant. (See Notes 5 and 12 for further discussion of our long-term debt and dividends declared subsequent to July 4, 2023, respectively.)

Under authorization by our Board to repurchase up to 61.0 million shares of our common stock, we have cumulatively repurchased 55.8 million shares at a total cost of \$1,787.3 million, excluding excise tax, through July 4, 2023, with 0.3 million shares and 0.6 million shares repurchased at a cost of \$9.3 million and \$21.7 million, excluding excise tax during the thirteen and twenty-six weeks ended July 4, 2023, respectively. Our objectives with regard to share repurchases have been to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth.

Our share repurchase program 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. Share repurchases may be made from time to time in open market purchases, privately-negotiated transactions, accelerated share repurchase programs, issuer self-tender offers or otherwise. Future decisions to repurchase shares are at the discretion of the Board and are based on several factors, including current and forecasted operating cash flows, capital needs associated with new restaurant development and maintenance of existing locations, dividend payments, debt levels and cost of borrowing, obligations associated with the FRC acquisition agreement, our share price and current market conditions. The timing and number of shares repurchased are also subject to legal constraints and covenants under the Loan Agreement that limit share repurchases based on a defined ratio. (See Note 5 for further discussion of our long-term debt.)

9. Stock-Based Compensation

We maintain stock-based incentive plans under which incentive stock options, non-qualified stock options, stock appreciation rights, restricted shares and restricted share units may be granted to staff members, consultants and non-employee directors.

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

	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Labor expenses	\$ 2,426	\$ 2,194	\$ 4,788	\$ 4,384
Other operating costs and expenses	76	74	151	150
General and administrative expenses	3,823	3,821	7,288	7,073
Total stock-based compensation	6,325	6,089	12,227	11,607
Income tax benefit	1,579	1,495	3,053	2,850
Total stock-based compensation, net of taxes	\$ 4,746	\$ 4,594	\$ 9,174	\$ 8,757
Capitalized stock-based compensation ⁽¹⁾	\$ 45	\$ 52	\$ 87	\$ 109

- (1) It is our policy to capitalize the portion of stock-based compensation costs for our internal development department that relates to capitalizable activities such as the design and construction of new restaurants, remodeling existing locations and equipment installation. Capitalized stock-based compensation is included in property and equipment, net on the condensed consolidated balance sheets.

Stock Options

We did not issue any stock options during the second quarters of fiscal 2023 and fiscal 2022. Stock option activity during the twenty-six weeks ended July 4, 2023 was as follows:

	Shares (In thousands)	Weighted- Average Exercise Price (Per share)	Weighted- Average Remaining Contractual Term (In years)	Aggregate Intrinsic Value ⁽¹⁾ (In thousands)
Outstanding at January 3, 2023	1,685	\$ 46.11	4.2	\$ 0
Granted	40	40.42		
Exercised	—	—		
Forfeited or cancelled	(175)	48.01		
Outstanding at July 4, 2023	<u>1,550</u>	\$ 45.75	4.3	\$ 0
Exercisable at July 4, 2023	1,198	\$ 47.12	3.6	\$ 0

- (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 pre-tax amount that would have been received by the option holders, had they all exercised their options on the fiscal period-end date.

There were no options exercised during the thirteen and twenty-six weeks ended July 4, 2023. There were no options exercised during the second quarter of fiscal 2022. The total intrinsic value of options exercised during the twenty-six weeks ended June 28, 2022 was \$4.9 million. As of July 4, 2023, total unrecognized stock-based compensation expense related to unvested stock options was \$2.3 million, which we expect to recognize over a weighted-average period of approximately 1.8 years.

Restricted Shares and Restricted Share Units

Restricted share and restricted share unit activity during the twenty-six weeks ended July 4, 2023 was as follows:

	Shares (In thousands)	Weighted- Average Fair Value (Per share)
Outstanding at January 3, 2023	2,512	\$ 41.93
Granted	783	39.02
Vested	(386)	42.88
Forfeited	(61)	39.60
Outstanding at July 4, 2023	<u>2,848</u>	\$ 41.05

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 for restricted shares and restricted share units issued during the second quarter of fiscal 2023 and 2022 was \$33.84 and \$30.49, respectively. The fair value of shares that vested during the thirteen and twenty-six weeks ended July 4, 2023 was \$1.4 million and \$16.6 million, respectively. The fair value of shares that vested during the thirteen and twenty-six weeks ended June 28, 2022 was \$2.1 million and \$14.5 million, respectively. As of July 4, 2023, total unrecognized stock-based compensation expense related to unvested restricted shares and restricted share units was \$63.6 million, which we expect to recognize over a weighted-average period of approximately 3.2 years.

10. Net Income Per Share

Basic net income per share is computed by dividing net income by the weighted-average number of common shares outstanding during the period, reduced by unvested restricted stock awards. As of July 4, 2023 and June 28, 2022, 2.8 million and 2.4 million shares, respectively, of restricted stock and restricted stock units issued were unvested and, therefore, excluded from the calculation of basic earnings per share for the fiscal periods ended on those dates.

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Diluted net income per share is computed by dividing net income by the weighted-average number of common stock equivalents outstanding for the period. Common stock equivalents for the Notes are determined by application of the if-converted method, and common stock equivalents for outstanding stock options, restricted stock and restricted stock units are determined by the application of the treasury stock method.

	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
	(In thousands, except per share data)			
Net income	\$ 42,675	\$ 25,656	\$ 70,725	\$ 48,819
Basic weighted-average shares outstanding	48,492	50,387	48,593	50,360
Dilutive effect of equity awards ⁽¹⁾	593	542	703	606
Diluted weighted-average shares outstanding	49,085	50,929	49,296	50,966
Basic net income per share	\$ 0.88	\$ 0.51	\$ 1.46	\$ 0.97
Diluted net income per share	\$ 0.87	\$ 0.50	\$ 1.43	\$ 0.96

- (1) Shares of common stock equivalents related to outstanding stock options, restricted stock and restricted stock units of 2.6 million and 3.1 million for July 4, 2023 and June 28, 2022, respectively, were excluded from the diluted calculation due to their anti-dilutive effect. No shares of common stock equivalents related to the Notes were included in the diluted calculation due to their anti-dilutive effect.

11. Segment Information

Our operating segments, the businesses for which our management reviews discrete financial information for decision-making purposes, are comprised of The Cheesecake Factory, North Italia, Flower Child, the other FRC brands and our bakery division. Based on quantitative thresholds set forth in Accounting Standards Codification (“ASC”) 280, “Segment Reporting,” The Cheesecake Factory, North Italia and the other FRC brands are the only businesses that meet the criteria of a reportable operating segment. The remaining operating segments (Flower Child and our bakery division) along with our businesses that do not qualify as operating segments are combined in Other. Unallocated corporate expenses, capital expenditures and assets are also combined in Other.

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Segment information is presented below (in thousands):

	Thirteen Weeks Ended July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Revenues:				
The Cheesecake Factory restaurants	\$ 652,481	\$ 640,858	\$ 1,308,481	\$ 1,250,674
North Italia	65,934	56,238	129,237	108,995
Other FRC	65,728	60,020	134,368	118,852
Other	82,027	75,527	160,198	147,832
Total	<u>\$ 866,170</u>	<u>\$ 832,643</u>	<u>\$ 1,732,284</u>	<u>\$ 1,626,353</u>
Income from operations:				
The Cheesecake Factory restaurants	\$ 85,677	\$ 64,327	\$ 164,073	\$ 127,771
North Italia	6,627	5,048	11,233	8,726
Other FRC	6,079	6,793	14,790	14,122
Other	(50,912)	(48,226)	(108,699)	(94,356)
Total	<u>\$ 47,471</u>	<u>\$ 27,942</u>	<u>\$ 81,397</u>	<u>\$ 56,263</u>
Depreciation and amortization:				
The Cheesecake Factory restaurants	\$ 16,235	\$ 16,275	\$ 32,244	\$ 31,862
North Italia	1,668	1,222	3,135	2,520
Other FRC	1,809	1,470	3,736	3,051
Other	3,620	3,641	7,172	6,680
Total	<u>\$ 23,332</u>	<u>\$ 22,608</u>	<u>\$ 46,287</u>	<u>\$ 44,113</u>
Impairment of assets and lease termination (income)/expenses:				
The Cheesecake Factory restaurants	\$ 38	\$ 106	\$ 131	\$ (59)
North Italia	—	—	—	—
Other FRC	—	—	55	—
Other	(691)	—	1,403	372
Total	<u>\$ (653)</u>	<u>\$ 106</u>	<u>\$ 1,589</u>	<u>\$ 313</u>
Preopening costs:				
The Cheesecake Factory restaurants	\$ 3,091	\$ 1,372	\$ 4,539	\$ 2,406
North Italia	618	1,004	1,064	1,414
Other FRC	1,999	284	2,720	273
Other	298	287	735	618
Total	<u>\$ 6,006</u>	<u>\$ 2,947</u>	<u>\$ 9,058</u>	<u>\$ 4,711</u>
Capital expenditures:				
The Cheesecake Factory restaurants	\$ 8,543	\$ 8,324	\$ 31,756	\$ 28,921
North Italia	6,879	4,825	13,010	7,829
Other FRC	6,005	1,983	11,170	5,839
Other	3,271	2,157	6,724	3,793
Total	<u>\$ 24,698</u>	<u>\$ 17,289</u>	<u>\$ 62,660</u>	<u>\$ 46,382</u>
			July 4, 2023	January 3, 2023
Total assets:				
The Cheesecake Factory restaurants		\$	1,568,359	\$ 1,625,073
North Italia			320,658	306,642
Other FRC			324,404	301,618
Other			556,287	541,887
Total		<u>\$</u>	<u>2,769,708</u>	<u>\$ 2,775,220</u>

12. Subsequent Events

On July 27, 2023, our Board declared a quarterly cash dividend of \$0.27 per share to be paid on August 29, 2023 to the stockholders of record of each share of our common stock at the close of business on August 16, 2023.

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 we have filed or may file with the Securities and Exchange Commission ("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. These statements 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 (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (together with the Securities Act, the "Acts"). This includes, without limitation, statements regarding corporate social responsibility ("CSR") and in our CSR report, the effects of geopolitical and macroeconomic factors on our financial condition and our results of operations, financial guidance and projections as well as expectations of our future financial condition, results of operations, sales, target growth rates, cash flows, quarterly dividends, corporate strategy, plans, targets, goals, objectives, performance, growth potential, competitive position and business, and statements regarding our ability to: leverage our competitive strengths, including developing and investing in new restaurant concepts and expanding The Cheesecake Factory® brand to other retail opportunities; maintain our aggregate sales volumes; deliver comparable sales growth; provide a differentiated experience to customers; outperform the casual dining industry and increase our market share; leverage sales increases and manage flow through; manage cost pressures, including, increasing wage rates and insurance costs, and stabilize margins; grow earnings; remain relevant to consumers; attract and retain qualified management and other staff; increase shareholder value; find suitable sites and manage increasing construction costs; profitably expand our concepts domestically and in Canada, and work with our licensees to expand our concept internationally; support the growth of North Italia and other FRC restaurants; and utilize our capital effectively. These forward-looking statements may be affected by various factors including: economic, public health and political conditions that impact consumer confidence and spending, including rising interest rates, periods of heightened inflation and market instability, and armed conflicts; supply chain disruptions; demonstrations, political unrest, potential damage to or closure of our restaurants and potential reputational damage to us or any of our brands; pandemic and related containment measures, including the potential for quarantines or restriction on in-person dining; acceptance and success of The Cheesecake Factory in international markets; acceptance and success of North Italia and the FRC concepts; the risks of doing business abroad through Company-owned restaurants and/or licensees; foreign exchange rates, tariffs and cross border taxation; changes in unemployment rates; changes in laws impacting our business, increases in minimum wages and benefit costs; the economic health of our landlords and other tenants in retail centers in which our restaurants are located, and our ability to successfully manage our lease arrangements with landlords; the economic health of suppliers, licensees, vendors and other third parties providing goods or services to us; the timing of our new unit development; compliance with debt covenants; strategic capital allocation decisions including with respect to share repurchases or dividends; the ability to achieve projected financial results; the resolution of uncertain tax positions with the Internal Revenue Service and the impact of tax reform legislation; changes in laws impacting our business; adverse weather conditions in regions in which our restaurants are located; factors that are under the control of government agencies, landlords and other third parties; the risks, costs and uncertainties associated with opening new restaurants; and other risks and uncertainties detailed from time to time in our filings with the SEC. Such forward-looking statements include all other statements that are not historical facts, 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," "may," "could," "would," "should" and similar expressions. 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 January 3, 2023.) 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, and we undertake no obligation to publicly update or revise any forward-looking statements or to make any other forward-looking statements, whether as a result of new information, future events or otherwise, unless required to do so by law.

The below discussion and analysis, which contains forward-looking statements, should be read in conjunction with our interim unaudited condensed consolidated financial statements and related notes in Part I, Item 1 of this report and with the following items included in our Annual Report on Form 10-K for the fiscal year ended January 3, 2023: the audited consolidated financial statements and related notes in Part IV, Item 15; the “Risk Factors” included in Part I, Item 1A; the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in Part II, Item 7; and the cautionary statements included throughout this Form 10-Q. 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.

COVID-19 Pandemic and Other Impacts to our Operating Environment

During fiscal 2022, the COVID-19 pandemic continued to affect our business during periods of accelerated case counts in which we experienced increased restaurant staff absenteeism and temporary shifts in consumer behavior, such as changes in customer traffic or the mix between on-premise and off-premise channels. Along with the COVID-19 pandemic, our operating results were impacted by geopolitical and macroeconomic events, causing supply chain challenges and significantly increased commodity and wage inflation. Some of these factors have continued to impact our operating results in fiscal 2023, contributing to significantly increased commodity and other costs. We have also encountered delays in opening new restaurants due to supply chain challenges and delays in permitting, construction, landlord readiness, and equipment availability.

The ongoing impact of geopolitical and macroeconomic events could lead to further government mandates, including but not limited to capacity restrictions, shifts in consumer behavior, wage inflation, staffing challenges, product and services cost inflation, disruptions in the supply chain and delay in new restaurant openings. For more information regarding the risks to our business relating to the COVID-19 pandemic and other geopolitical and macroeconomic events, see “Risk Factors” in Item 1A of our Annual Report on Form 10-K for the fiscal year ended January 3, 2023.

General

The Cheesecake Factory Incorporated is a leader in experiential dining. We are culinary forward and relentlessly focused on hospitality. We currently own and operate 321 restaurants throughout the United States and Canada under brands including The Cheesecake Factory® (211 locations), North Italia® (33 locations), Flower Child® (31 locations) and a collection of other FRC brands (37 locations). Internationally, 30 The Cheesecake Factory® restaurants operate under licensing agreements. Our bakery division operates two facilities that produce quality cheesecakes and other baked products for our restaurants, international licensees and third-party bakery customers.

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.

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Investing in new Company-owned restaurant development is our top long-term capital allocation priority, with a focus on opening our concepts in premier locations within both new and existing markets. We plan to continue expanding The Cheesecake Factory and North Italia concepts, and in addition, our FRC subsidiary serves as an incubation engine, creating additional concepts for potential future growth. For The Cheesecake Factory concept, we target an average cash-on-cash return on investment of approximately 20% to 25% at the unit level, calculated by dividing restaurant-level profit (earnings before interest, taxes, depreciation and amortization and preopening costs) by our cash investment. We target an average cash-on-cash return on investment of approximately 35% for the North Italia concept and 25% to 30% for the FRC concepts. 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 support achieving mid-teens Company-level return on invested capital.

Our overall revenue growth is primarily driven by revenues from new restaurant openings and increases in comparable restaurant sales.

For The Cheesecake Factory concept, our strategy is to increase comparable restaurant sales by growing average check and maintaining customer traffic through (1) continuing to offer innovative, high quality menu items that offer customers a wide range of options in terms of flavor, price and value, (2) focusing on service and hospitality with the goal of delivering an exceptional customer experience and (3) continuing to provide our customers with convenient options for off-premise dining, as we believe there is opportunity for a longer-term elevation of our off-premise mix compared to pre-COVID-19 pandemic levels. We are continuing our efforts on a number of initiatives, including menu innovation, a greater focus on increasing customer throughput in our restaurants, leveraging our gift card program, working with a third party to provide delivery services for our restaurants, increasing customer awareness of our online ordering capabilities, augmenting our marketing programs including the nationwide launch of a guest rewards program, enhancing our training programs and leveraging our customer satisfaction measurement platform.

Average check variations are driven by menu price increases and/or changes in menu mix. We generally update The Cheesecake Factory menus twice each year, and our philosophy is to use price increases to help offset key operating cost increases in a manner that balances supporting both our margin objectives and customer traffic levels. Prior to fiscal 2022, we targeted menu price increases of approximately 2% to 3% annually, utilizing a market-based strategy to help mitigate cost pressure in higher-wage geographies. In the first quarter of fiscal 2022, we started implementing menu price increases above our historical levels, including an incremental price increase in the fourth quarter of fiscal 2022, to offset significant inflationary cost pressures. Future near-term pricing actions may also be at levels above historical norms to keep pace with any significant cost increases. In addition, on a regular basis, we carefully consider opportunities to adjust our menu offerings or ingredients to help manage product availability and cost.

Margins are subject to fluctuations in commodity costs, labor, restaurant-level occupancy expenses, general and administrative (“G&A”) expenses and preopening expenses. Our objective is to recapture our pre-COVID-19 pandemic margins and longer-term to drive margin expansion, by leveraging incremental sales to increase restaurant-level margins at The Cheesecake Factory concept, leveraging our bakery operations, international and consumer packaged goods royalty revenue streams and G&A expense over time, and optimizing our restaurant portfolio.

We plan to employ a balanced capital allocation strategy comprised of investing in new restaurants that are expected to meet our targeted returns, repaying borrowings under our Revolving Facility and returning capital to shareholders through our dividend and share repurchase programs, the latter of which offsets dilution from our equity compensation program and supports our earnings per share growth. Future decisions to pay or to increase or decrease dividends or to repurchase shares are at the discretion of the Board and will be dependent on a number of factors, including limitations pursuant to the terms and conditions of the Loan Agreement and applicable law.

Longer-term, we believe our domestic revenue growth (comprised of our targeted annual unit growth of 7%, in aggregate across concepts, and comparable sales growth), combined with margin expansion, planned debt repayments and an anticipated capital return program will support our long-term financial objective of 13% to 14% total return to shareholders, on average. We define our total return as earnings per share growth plus our dividend yield.

Results of Operations

The following table presents, 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 July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Revenues	100.0 %	100.0 %	100.0 %	100.0 %
Costs and expenses:				
Food and beverage costs	23.2	24.5	23.5	24.1
Labor expenses	35.3	36.6	35.7	36.9
Other operating costs and expenses	26.2	26.3	26.4	26.3
General and administrative expenses	6.4	6.0	6.3	6.1
Depreciation and amortization expenses	2.7	2.7	2.7	2.7
Impairment of assets and lease termination (income)/expenses	(0.1)	—	0.1	0.0
Acquisition-related contingent consideration, compensation and amortization expenses	0.1	0.1	0.1	0.1
Preopening costs	0.7	0.4	0.5	0.3
Total costs and expenses	94.5	96.6	95.3	96.5
Income from operations	5.5	3.4	4.7	3.5
Interest and other expense, net	(0.3)	(0.2)	(0.2)	(0.2)
Income before income taxes	5.2	3.2	4.5	3.3
Income tax provision	0.3	0.1	0.4	0.3
Net income	4.9 %	3.1 %	4.1 %	3.0 %

Thirteen Weeks Ended July 4, 2023 Compared to Thirteen Weeks Ended June 28, 2022

Revenues

Revenues increased 4.0% to \$866.2 million for the fiscal quarter ended July 4, 2023 compared to \$832.6 million for the comparable prior year period, primarily due to an increase in comparable restaurant sales, as well as additional revenue related to new restaurant openings.

The Cheesecake Factory average sales per restaurant operating week increased 0.7% to \$238,654 in the second quarter of fiscal 2023 from \$237,004 in the second quarter of fiscal 2022. Total operating weeks at The Cheesecake Factory restaurants increased 1.1% to 2,734 in the second quarter of fiscal 2023 compared to 2,704 in the prior year. The Cheesecake Factory comparable sales increased by 1.5%, or \$9.6 million, from the second quarter of fiscal 2022 and increased 14.1% from the second quarter of fiscal 2019 on an operating week basis. The increase from fiscal 2022 was primarily driven by an increase in average check of 5.2% (based on an increase of 10.6% in menu pricing, partially offset by 5.4% negative impact from mix), partially offset by decreased customer traffic of 3.7%. We implemented effective menu price increases of approximately 4.25%, 2.8% and 3.5% in the third and fourth quarters of fiscal 2022 and the first quarter of fiscal 2023, respectively. We are in the process of implementing approximately a 2.0% price increase in the third quarter of fiscal 2023. Sales through the off-premise channel comprised approximately 22% of our restaurant sales during the second quarter of fiscal 2023 as compared to 25% in the second quarter of fiscal 2022. However, off-premise sales mix remained elevated versus the pre-pandemic level of 16% during the second quarter of fiscal 2019. We account for each off-premise order as one customer for traffic measurement purposes. Therefore, average check is generally higher for off-premise orders as most are for more than one customer. In turn, the lower mix of sales in the off-premise channel during the second quarter of fiscal 2023 compared to the prior year second quarter comprised approximately 1% of the negative change in mix with a positive correlative impact to traffic. In addition, both traffic and mix declined relative to the higher traffic levels and incident rates associated with the post pandemic surge that benefited our second quarter of fiscal 2022. However, incident rates remained elevated versus the pre-pandemic level.

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North Italia average sales per restaurant operating week increased 3.3% to \$153,692 in the second quarter of fiscal 2023 from \$148,778 in the second quarter of fiscal 2022. Total operating weeks at North Italia increased 13.5% to 429 in the second quarter of fiscal 2023 compared to 378 in the prior year. North Italia comparable sales increased approximately 8% from the second quarter of fiscal 2022 and increased approximately 30% from the second quarter of fiscal 2019 on an operating week basis. The increase from fiscal 2022 was primarily driven by an increase in average check of 6.4% (based on an increase of 8.2% in menu pricing, partially offset by a 1.8% negative impact from mix), as well as increased customer traffic of 1.6%. We implemented effective menu price increases of approximately 4.25% and 4.00% in the fourth quarter of fiscal 2022 and the second quarter of fiscal 2023, respectively.

Restaurants become eligible to enter the comparable sales base in their 19th month of operation. As of July 4, 2023, there were four The Cheesecake Factory restaurants and four North Italia restaurants not yet in the comparable sales base. International licensed locations and restaurants that are no longer in operation, including those which we have relocated, are excluded from comparable sales calculations.

Food and Beverage Costs

Food and beverage costs consist of raw materials and ingredients used in the food and beverage products sold in our restaurants and to our third-party customers. As a percentage of revenues, food and beverage costs were 23.2% and 24.5% in the second quarters of fiscal 2023 and 2022, respectively, primarily due to menu pricing leverage that were slightly in excess of inflation across most categories (1.3%), partially offset by favorable dairy pricing in the second quarter of fiscal 2022 (0.2%).

Labor Expenses

As a percentage of revenues, labor expenses, which include restaurant-level labor costs and bakery production labor, including associated fringe benefits, were 35.3% and 36.6% in the second quarters of fiscal 2023 and 2022, respectively. This decrease was primarily due to menu pricing leverage in excess of wage rate inflation (1.3%), partially offset by increased manager staffing levels (0.2%).

Other Operating Costs and Expenses

Other operating costs and expenses consist of all other restaurant-level operating costs, the major components of which are occupancy expenses (rent, common area expenses, insurance, licenses, taxes and utilities), dining room and to-go supplies, repairs and maintenance, janitorial expenses, credit card processing fees, marketing including delivery commissions, and incentive compensation, as well as bakery production overhead. As a percentage of revenues, other operating costs and expenses were 26.2% and 26.3% in the second quarters of fiscal 2023 and 2022, respectively. This variance was primarily driven by lower workers compensation insurance costs due to higher claim activity in the second quarter of fiscal 2022 (0.2%), lower off-premise costs due to sales mix and lower supply costs (0.2%), partially offset by launch cost related to our Rewards program (0.2%).

G&A Expenses

G&A expenses consist of the restaurant management recruiting and training program, restaurant field supervision, corporate support and bakery administrative organizations, as well as gift card commissions to third-party distributors. As a percentage of revenues, G&A expenses were 6.4% and 6.0% in second quarters of fiscal 2023 and 2022, respectively. This variance was primarily driven by increased staffing levels (0.2%).

Preopening Costs

Preopening costs were \$6.0 million and \$2.9 million in the second quarters of fiscal 2023 and 2022, respectively. We opened one The Cheesecake Factory and two Other FRC locations in the second quarter of fiscal 2023 compared to one North Italia restaurant and one Flower Child location in the comparable prior year period. The second quarter of fiscal 2023 was negatively impacted by delays in the timing of new restaurant openings that resulted in additional cost. Restaurant-level preopening costs include all costs to relocate and compensate restaurant management staff members during the preopening period, costs to recruit and train hourly restaurant staff members, and wages, travel and lodging costs for our opening training team and other support staff members. 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. Preopening costs can fluctuate significantly from period to period based on the number, mix and timing of restaurant openings and the specific preopening costs incurred for each restaurant.

Interest and Other Expense, Net

Interest and other expense, net was \$2.2 million and \$1.1 million for the second quarters of fiscal 2023 and 2022, respectively. This increase was primarily due to higher interest on our Revolver Facility (\$1.6 million).

Income Tax Provision

Our effective income tax rate was 5.8% and 4.3% for the second quarters of fiscal 2023 and 2022, respectively. The increase was primarily due to a lower proportion of employment credits in relation to income before income taxes in the second quarter of fiscal 2023 (9.4%), partially offset by non-taxable gains in the second quarter of fiscal 2023 as compared to non-deductible losses in the comparable prior year period on our investments in variable life insurance contracts used to support our non-qualified deferred compensation plan (6.7%), a lower proportion of state tax expense in relation to income before taxes (0.7%) and a lower proportion of tax shortfall related to equity compensation in relation to income before taxes (0.2%) in the second quarter of fiscal 2023.

Twenty-Six Weeks Ended July 4, 2023 Compared to Twenty-Six Weeks Ended June 28, 2022

Revenues

Revenues increased 6.5% to \$1,732.3 million for the first six months of 2023 compared to \$1,626.4 million for the comparable prior year period, primarily due to an increase in comparable restaurant sales, as well as additional revenue related to new restaurant openings.

The Cheesecake Factory average sales per restaurant operating week increased 3.4% to \$239,167 in the first six months of fiscal 2023 from \$231,264 in the first six months of fiscal 2022. Total operating weeks at The Cheesecake Factory restaurants increased 1.2% to 5,471 in the first six months of fiscal 2023 compared to 5,408 in the prior year. Because our strong sales week between Christmas and New Year's Day was captured as the 53rd week of fiscal 2022, that high-volume week was replaced with an average sales week in the first quarter of 2023. This negatively impacted revenues by approximately \$10 million in the first quarter of fiscal 2023. The Cheesecake Factory comparable sales increased by 3.6%, or \$44.0 million, from the first six months of fiscal 2022 and increased 14.5% from the first six months of fiscal 2019 on an operating week basis. The increase from fiscal 2022 was primarily driven by an increase in average check of 5.0% (based on an increase of 10.5% in menu pricing, partially offset by 5.5% negative impact from mix), partially offset by decreased customer traffic of 1.4%. Sales through the off-premise channel comprised approximately 22% of our restaurant sales during the first six months of fiscal 2023 as compared to 26% in the first six months of fiscal 2022. However, off-premise sales mix remains elevated versus the pre-pandemic level of 16% during the first six months of fiscal 2019.

North Italia average sales per restaurant operating week increased 4.3% to \$150,626 in the first six months of fiscal 2023 from \$144,365 in the first six months of fiscal 2022. Total operating weeks at North Italia increased 13.6% to 858 in the first six months of fiscal 2023 compared to 755 in the prior year. North Italia comparable sales increased approximately 8% from the first six months of fiscal 2022 and increased approximately 30% from the first six months of fiscal 2019 on an operating week basis. The increase from fiscal 2022 was primarily driven by an increase in average check of 5.6% (based on an increase of 8.0% in menu pricing, partially offset by a 2.4% negative impact from mix), as well as increased customer traffic of 2.4%.

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Food and Beverage Costs

As a percentage of revenues, food and beverage costs were 23.5% and 24.1% in the first six months of fiscal 2023 and 2022, respectively, primarily due to menu price increases slightly in excess of inflation across most categories (0.9%), partially offset by favorable dairy pricing in fiscal 2022 (0.3%).

Labor Expenses

As a percentage of revenues, labor expenses were 35.7% and 36.9% in the first six months of fiscal 2023 and 2022, respectively. This decrease was primarily due to menu pricing leverage in excess of wage rate inflation (1.1%) and a decline in group medical insurance costs due to lower claim activity (0.2%) in the first quarter of fiscal 2023.

Other Operating Costs and Expenses

As a percentage of revenues, other operating costs and expenses were 26.4% and 26.3% in the first six months of fiscal 2023 and 2022, respectively. This variance was primarily driven by launch costs related to our Rewards program (0.2%).

G&A Expenses

As a percentage of revenues, G&A expenses were 6.4 % and 6.1% in the first six months of fiscal 2023 and 2022, respectively. This variance was primarily driven by increases across several categories.

Preopening Costs

Preopening costs were \$9.1 million and \$4.7 million in the first six months of fiscal 2023 and 2022, respectively. We opened one The Cheesecake Factory, one Flower Child and three Other FRC location in the first half of fiscal 2023 compared to one North Italia and one Flower Child location in the comparable prior year period. The first six months of fiscal 2023 was negatively impacted by delays in the timing of new restaurant openings that resulted in additional cost.

Interest and Other Expense, Net

Interest and other expense, net was \$4.0 million and \$2.6 million for the first six months of fiscal 2023 and 2022, respectively. This increase was primarily due to higher interest on our Revolver Facility (\$2.8 million).

Income Tax Provision

Our effective income tax rate was 8.6% and 9.0% for the first six months of fiscal 2023 and 2022, respectively. The decrease was primarily due to non-taxable gains in the first six months of fiscal 2023 as compared to non-deductible losses in the comparable prior year period on our investments in variable life insurance contracts used to support our non-qualified deferred compensation plan (4.0%), partially offset by a lower proportion of employment credits in relation to income before income taxes in the first six months of fiscal 2023 (3.6%).

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 use these non-GAAP financial measures for financial and operational decision-making and as a means to evaluate period-to-period comparisons. 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.

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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 July 4, 2023	Thirteen Weeks Ended June 28, 2022	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Net income	\$ 42,675	\$ 25,656	\$ 70,725	\$ 48,819
Impairment of assets and lease termination (income)/expenses	(653)	106	1,589	313
Acquisition-related contingent consideration, compensation and amortization expenses	1,287	948	2,476	1,839
Tax effect of adjustments ⁽¹⁾	(165)	(275)	(1,057)	(559)
Adjusted net income	<u>\$ 43,144</u>	<u>\$ 26,435</u>	<u>\$ 73,733</u>	<u>\$ 50,412</u>
Diluted net income per share	\$ 0.87	\$ 0.50	\$ 1.43	\$ 0.96
Impairment of assets and lease termination (income)/expenses	(0.01)	0.00	0.03	0.01
Acquisition-related contingent consideration, compensation and amortization expenses	0.03	0.02	0.05	0.04
Tax effect of adjustments ⁽¹⁾	(0.00)	(0.01)	(0.02)	(0.01)
Adjusted diluted net income per share ⁽²⁾	<u>\$ 0.88</u>	<u>\$ 0.52</u>	<u>\$ 1.50</u>	<u>\$ 0.99</u>

(1) Based on the federal statutory rate and an estimated blended state tax rate, the tax effect on all adjustments assumes a 26% tax rate.

(2) Adjusted net income per share may not add due to rounding.

Fiscal 2023 Outlook

Based on recent trends and assuming no material operating or consumer disruptions, we anticipate total revenue for fiscal 2023 to be approximately \$3.5 billion.

During fiscal 2023, we currently estimate total inflation across our commodities, total labor (factoring in the latest trends in wage rates and channel mix, as well as in other components such as payroll taxes and benefits) and other operating costs and expenses to be in the mid-single digit range. However, there remains measurable risk associated with cost fluctuations driven by the current environment. We estimate preopening costs of approximately \$26 million. Based on these factors, we expect fiscal 2023 net income margin of approximately 4%.

We plan to open as many as 20 new restaurants in fiscal 2023, including as many as six The Cheesecake Factory restaurants, five North Italia restaurants and as many as nine restaurants within our FRC business, which includes three Flower Child locations. In recent years, we have encountered delays in opening new restaurants due to supply chain challenges, as well as to longer lead times in obtaining licenses and permits. We anticipate approximately \$160 million to \$170 million in cash capital expenditures to support this level of unit development, as well as required maintenance on our restaurants.

Total revenues for the third quarter of fiscal 2023 are expected to be approximately \$835 million to \$855 million. We anticipate commodity inflation to be in the low-single digit range and expect labor inflation to be in the mid-single digit range. Based on these factors, we expect third quarter fiscal 2023 net income margin of approximately 2.75% at the mid-point of the estimated revenue range.

Liquidity and Capital Resources

Our corporate financial objectives are to maintain a sufficiently strong and conservative balance sheet to support our operating initiatives and unit growth while maintaining financial flexibility to provide the financial resources necessary to protect and enhance the competitiveness of our restaurant and bakery brands and to provide a prudent level of financial capacity to manage the risks and uncertainties of conducting our business operations under various economic and industry cycles. Typically, cash flows generated from operating activities are our principal source of liquidity, which we use to finance our restaurant expansion plans,

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ongoing maintenance of our restaurants and bakery facilities and investment in our corporate and information technology infrastructures.

Similar to many restaurant and retail chain store operations, we utilize operating lease arrangements for all of our restaurant locations. Accordingly, our lease arrangements reduce, to some extent, our capacity to utilize funded indebtedness in our capital structure. We are not limited to the use of lease arrangements as our only method of opening new restaurants. However, we believe our operating lease arrangements continue to provide appropriate leverage for our capital structure in a financially efficient manner.

During the first six months of fiscal 2023, our cash and cash equivalents decreased by \$23.2 million to \$91.6 million. The following table presents, for the periods indicated, a summary of our key cash flows from operating, investing and financing activities (in millions):

	Twenty-Six Weeks Ended July 4, 2023	Twenty-Six Weeks Ended June 28, 2022
Cash provided by operating activities	\$ 101.5	\$ 87.5
Additions to property and equipment	(62.7)	(46.4)
Acquisition-related deferred consideration and compensation	(13.0)	(7.2)
Common stock dividends paid	(27.0)	(14.3)
Treasury stock purchases, inclusive of excise tax	(21.7)	(14.8)

Cash Provided by Operating Activities

Cash flows from operations increased by \$14.0 million from the first six months of fiscal 2022 primarily due to higher net income and lower incentive compensation paid in the first six months of fiscal 2023 compared to the first six months of fiscal 2022. These factors were partially offset by timing of accounts payable disbursements in relation to the fiscal 2022 versus 2021 year-end dates and the sales tax liabilities due to increased sales at fiscal 2022 year end. Typically, our requirement for working capital has not been significant since our restaurant customers pay for their food and beverage purchases in cash or cash equivalents at the time of sale, and we are able to sell many of our restaurant inventory items before payment is due to the suppliers of such items.

Property and Equipment

Capital expenditures for new restaurants, including locations under development, were \$37.8 million and \$21.7 million for the first six months of fiscal 2023 and 2022, respectively. Capital expenditures also included \$22.0 million and \$22.4 million for our existing restaurants and \$2.9 million and \$2.3 million for bakery and corporate capacity and infrastructure investments in the first six months of fiscal 2023 and 2022, respectively.

We opened five restaurants in the first six months of fiscal 2023 comprised of one The Cheesecake Factory, one Flower Child and three Other FRC locations compared to one North Italia and one Flower Child location in the first six months of fiscal 2022. We expect to open as many as 20 new restaurants in fiscal 2023 across our portfolio of concepts. We anticipate approximately \$160 million to \$170 million in capital expenditures to support this level of unit development, as well as required maintenance on our restaurants.

Acquisition-Related Deferred Consideration and Compensation

During the six months of fiscal 2023 and 2022, we made payments of \$13.0 million and \$7.2 million, respectively, for contingent consideration and compensation related to the FRC acquisition.

Convertible Senior Notes

On June 15, 2021, we issued \$345.0 million in aggregate principal amount of convertible senior notes (“Notes”), which will mature on June 15, 2026, unless earlier repurchased, redeemed or converted. The net proceeds from the sale of the Notes were approximately \$334.9 million after deducting issuance costs related to the Notes. As of July 4, 2023, the conversion rate for the Notes was 13.2717 shares of common stock per \$1,000 principal amount of the Notes, which represents a conversion price of approximately \$75.35 per share of common stock. In connection with the cash dividend that was declared by our Board on July 27, 2023, on August 15, 2023 we will adjust the conversion rate (which is expected to increase) and the conversion price (which is expected to decrease) of the Notes in accordance with the terms. (See Note 5 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of the Notes.)

Credit Facility

On October 6, 2022, we entered into a Fourth Amended and Restated Loan Agreement (the “Loan Agreement” and the revolving credit facility provided thereunder, the “Revolver Facility”). The Loan Agreement amends and restates in its entirety our prior credit agreement. The Revolver Facility, which terminates on October 6, 2027, provides us with revolving loan commitments that total \$400 million, of which \$50 million may be used for issuances of letters of credit. The Revolver Facility contains a commitment increase feature that, subject to certain conditions precedent, could provide for an additional \$200 million in revolving loan commitments. Our obligations under the Revolver Facility are unsecured. Certain of our material subsidiaries have guaranteed our obligations under the Revolver Facility. As of July 4, 2023, we had net availability for borrowings of \$238.5 million, based on a \$130.0 million outstanding debt balance and \$31.5 million in standby letters of credit under the Revolver Facility.

Under the Revolver Facility, we are subject to financial covenants, as well as to customary events of default that, if triggered, could result in acceleration of the maturity of the Revolver Facility. Subject to certain exceptions, the Revolver Facility also limits distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio, and also sets forth negative covenants that restrict indebtedness, liens, investments, sales of assets, fundamental changes and other matters. (See Note 5 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

Common Stock Dividends

Common stock dividends of \$27.0 million and \$14.3 million were paid in the first six months of fiscal 2023 and 2022, respectively. This increase is primarily due to the resumption of our quarterly dividend in the second quarter of fiscal 2022 after the suspension that began in fiscal 2020 due to the impact of COVID-19 on our business and in conjunction with the terms of our Amended Credit Agreement. As further discussed in Note 12 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report, in July 2023, our Board declared a quarterly dividend to be paid in August 2023. 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, limitations on cash distributions pursuant to the terms and conditions of the Loan Agreement and applicable law, and other such factors that the Board considers relevant.

Share Repurchases

Under authorization by our Board to repurchase up to 61.0 million shares of our common stock, we have cumulatively repurchased 55.8 million shares at a total cost of \$1,787.3 million, excluding excise tax, through July 4, 2023. We repurchased 0.6 million shares at a cost of \$21.7 million, excluding excise tax, during the first six months of fiscal 2023 compared to 0.5 million shares at a cost of \$14.8 million during the comparable fiscal 2022 period. This increase is primarily due to the resumption of our share repurchase program in the second quarter of fiscal 2022. The remaining variance represents the change in repurchases made to satisfy tax withholding obligations on vested restricted share awards.

Our objectives with regard to share repurchases have been to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth. Our share repurchase program 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. Future decisions to repurchase shares are at the discretion of the Board and are based on several factors, including current and forecasted operating cash flows, capital needs associated with new restaurant development and maintenance of existing locations, dividend payments, debt levels and cost of borrowing, obligations associated with the FRC acquisition, 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 Loan Agreement that limit share repurchases based on a defined ratio. (See Note 8 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization.)

Cash Flow Outlook

We believe that our cash and cash equivalents, combined with expected cash flows provided by operations and available borrowings under the Revolving Facility, will provide us with adequate liquidity for the next 12 months and the foreseeable future.

As of July 4, 2023, 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.

Critical Accounting Estimates

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. Our critical accounting estimates have not changed materially from those previously reported in our Annual Report on Form 10-K for the fiscal year ended January 3, 2023.

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 and should be read in conjunction with our interim unaudited condensed consolidated financial statements and related notes in Part I, Item 1 of this report and with the following items in our Annual Report on Form 10-K for the fiscal year ended January 3, 2023: the audited consolidated financial statements and related notes in Part IV, Item 15; the “Risk Factors” in Part I, Item 1A; the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7; and the cautionary statements included throughout the report. Actual results may differ materially from the following discussion based on general conditions in the commodity and financial markets.

The cost of products and services used in our operations is subject to volatility due to the relative availability of labor and distribution, weather, natural disasters, inventory levels and other supply and/or demand impacting events such as geopolitical events, economic conditions or other unforeseen circumstances. Climate change may further exacerbate a number of these factors. During fiscal 2021, we began to experience certain supply shortages and transportation delays largely attributable to impacts of the COVID-19 pandemic. These shortages continued in fiscal 2022 and were exacerbated by geopolitical unrest. The aggregate impact of these and other factors contributed to significant cost inflation. While we have seen improvements in many of these areas, the absolute level of commodity costs has remained elevated contributing to ongoing inflation above historical levels.

We attempt to negotiate short-term and long-term agreements for some of our principal commodity, supply and equipment requirements, such as certain dairy products and poultry, depending on market conditions and expected demand. While we are in the process of contracting for certain key food and non-food supplies for fiscal 2023, these efforts may not be successful or yield our intended benefits. We continue to evaluate the possibility of entering into similar arrangements for other commodities and periodically evaluate hedging vehicles, such as direct financial instruments, to assist us in managing risk and variability associated with such commodities. As of July 4, 2023, we had no hedging contracts in place. Commodities not subject to fixed price and volume agreements can be subject to unforeseen supply and cost fluctuations, which at times may be significant.

Commodities for which we have not entered into contracts can be subject to unforeseen supply and cost fluctuations, which at times may be significant. Additionally, the cost of commodities subject to governmental regulation, such as dairy and corn, can be especially susceptible to price fluctuation. Goods we purchase on the international market may be subject to even greater fluctuations in cost and availability, which could result from a variety of factors, including the value of the U.S. dollar relative to other currencies, international trade disputes, tariffs, geopolitical unrest and varying global demand. We may not have the ability to increase menu prices or vary menu items in response to food commodity price increases. For second quarter of both fiscal 2023 and 2022, a hypothetical increase of 1% in food costs would have negatively impacted cost of sales by \$2.0 million.

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 Loan Agreement that is indexed to market rates. Based on outstanding borrowings at both July 4, 2023 and January 3, 2023, a hypothetical 1% rise in interest rates would have increased interest expense by \$1.3 million, on an annual basis. (See Note 5 of Notes to Condensed 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 non-qualified plans to the extent these investments are not equivalent to the related liability. In addition, because changes in these investments are not taxable, gains and losses result in tax benefit and tax expense, respectively, and directly affect net income through the income tax provision. Based on balances at July 4, 2023 and January 3, 2023, 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, under such a scenario, net income would have declined by \$2.0 million at both July 4, 2023 and January 3, 2023.

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 information 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 July 4, 2023.

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 July 4, 2023 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 7 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 January 3, 2023 (“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 table presents our purchases of our common stock during the fiscal quarter ended July 4, 2023 (in thousands, except per share data):

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share ⁽²⁾	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
April 5 — May 9, 2023	221	\$ 33.18	221	5,284
May 10 — June 6, 2023	6	32.99	—	5,278
June 7 — July 4, 2023	53	33.50	49	5,225
Total	280		270	

(1) The total number of shares purchased includes 10,683 shares withheld upon vesting of restricted share awards to satisfy tax withholding obligations.

(2) The dollar value of shares repurchased excludes excise tax due under the Inflation Reduction Act of 2022.

Under authorization by our Board to repurchase up to 61.0 million shares of our common stock, we have cumulatively repurchased 55.8 million shares at a total cost of \$1,787.3 million, excluding excise tax, through July 4, 2023 with 0.3 million shares repurchased at a cost of \$9.3 million, excluding excise tax, during the second quarter of fiscal 2023. Our share repurchase program 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. The timing and number of shares repurchased are subject to legal constraints and financial covenants under our Loan Agreement that limit share repurchases based on a defined ratio. (See Note 8 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization.)

Item 5. Other information.

During the fiscal quarter ended July 4, 2023, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or a “non-Rule 10b5-1 trading arrangement” (in each case, as defined in Item 408 of Regulation S-K).

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Item 6. Exhibits

Exhibit No.	Item	Form	File Number	Incorporated by Reference from Exhibit Number	Filed with SEC
3.1	Restated Certificate of Incorporation of The Cheesecake Factory Incorporated	10-Q	000-20574	3.2	8/6/18
3.2	Certificate of Designations of The Cheesecake Factory Incorporated, dated April 20, 2020	8-K	000-20574	3.1	4/20/20
3.3	Bylaws of The Cheesecake Factory Incorporated, amended and restated on October 26, 2022	8-K	000-20574	3.1	11/1/22
10.1	Amended Employment Agreement for David Overton, dates as of April 5, 2023	—	—	—	Filed herewith
31.1	Rule 13a-14(a)/15d-14(a) Certification of the Principal Executive Officer	—	—	—	Filed herewith
31.2	Rule 13a-14(a)/15d-14(a) Certification of the Principal Financial Officer	—	—	—	Filed herewith
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 of the Principal Executive Officer	—	—	—	Filed herewith
32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 of the Principal Financial Officer	—	—	—	Filed herewith
101.1	The following materials from The Cheesecake Factory Incorporated's Quarterly Report on Form 10-Q for the quarter ended July 4, 2023, formatted in Inline eXtensible Business Reporting Language (iXBRL): (i) condensed consolidated balance sheets, (ii) condensed consolidated statements of income, (iii) condensed consolidated statements of comprehensive income, (iv) condensed consolidated statement of stockholders' equity, (v) condensed consolidated statements of cash flows, and (vi) the notes to the condensed consolidated financial statements	—	—	—	Filed herewith
104.1	The cover page of The Cheesecake Factory Incorporated's Quarterly Report on Form 10-Q for the quarter ended July 4, 2023, formatted in iXBRL (included with Exhibit 101.1)	—	—	—	Filed herewith

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: August 7, 2023

THE CHEESECAKE FACTORY INCORPORATED

By: /s/ DAVID OVERTON

David Overton

Chairman of the Board and Chief Executive Officer

(Principal Executive Officer)

By: /s/ MATTHEW E. CLARK

Matthew E. Clark

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the “ **Agreement** ”) is entered into and effective as of April 5, 2023 (“ **Effective Date** ”), between THE CHEESECAKE FACTORY INCORPORATED (the “ **Company** ”) and DAVID M. OVERTON (the “ **Executive** ”). Effective as of the Effective Date, this Agreement amends and restates in its entirety that certain Employment Agreement, dated as of April 1, 2017, as amended as of February 15, 2018, between the Company and the Executive (the “ **Prior Agreement** ”).

WHEREAS, the Compensation Committee (the “ **Compensation Committee** ”) of the Board of Directors (the “ **Board** ”) of the Company has approved and recommended to the Board that the Company enter into this Agreement with the Executive;

WHEREAS, the Board has approved and authorized the entry into this Agreement with the Executive;

WHEREAS, from and after the Effective Date, the Company and the Executive mutually desire to amend and restate the Prior Agreement and to continue executive’s employment with the Company, upon the terms and conditions set forth in this Agreement;

WHEREAS, all capitalized terms used, but not otherwise defined, herein shall have the meaning set forth in Section 12 of this Agreement; and

WHEREAS, the parties desire to enter into this Agreement which shall entirely replace and supersede the Prior Agreement and set forth the terms and conditions for the employment relationship between the Executive and the Company.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained and intending to be legally bound hereby, the Company and the Executive hereby agree as follows:

1. Employment. During the Term of this Agreement, the Executive shall be employed as Chief Executive Officer (“ **CEO** ”) of the Company and, so long as the Executive remains CEO and a member of the Board, shall be the Chairman of the Board unless otherwise required by law, regulations or the rules of the Company’s principal securities exchange. As Chairman of the Board, the Executive shall have all rights and duties set forth in the Company’s Certificate of Incorporation and By-laws and will, among other things, work in collaboration with the Lead Director of the Board to establish the agendas for the Board meetings. As CEO, the Executive shall have all rights and duties set forth in the Company’s Certificate of Incorporation and By-Laws and, subject to the oversight of the Board, shall have general supervision, direction and control of the business and the officers, employees and agents of the Company, including development and implementation of the Company’s strategic plans and policies, short- and long-term growth, operations, financial and capital expenditure decisions, reporting structure and organization, budgeting and financial performance, and communications and relations with investors, other Board members, customers, and other outside Company business interests. The Executive shall devote substantially all his time, attention and energies to the business and affairs of the Company and the subsidiaries. The Company acknowledges that the Executive is a member of the Board and that such membership constitutes an integral part of the Executive’s duties hereunder. The Executive’s offices shall be at the corporate headquarters of the Company, currently located in Calabasas Hills, California.

2. Term. The initial “ **Term of this Agreement** ” or “ **Term** ” shall commence on Effective Date and end on the first anniversary of such date. On such first anniversary date, and on each subsequent annual anniversary date thereafter, the Term of this Agreement shall be automatically extended for one additional year unless, not less than ninety (90) days prior to any such anniversary date, either the Company or the Executive shall give notice not to extend this Agreement. Upon the expiration of the Term of this Agreement as a result of such notice by either party not to extend the Term, the employment of the Executive will thereafter continue on an at-will basis subject to the ability of either party to terminate such employment relationship at any time. A notice by either party not to further extend the Term of this Agreement shall not be treated as a termination by the Company without Cause or a Constructive Termination by the Executive, in and of itself and absent other factors giving rise to a without Cause termination or a Constructive Termination, nor shall any such notice of non-extension give rise to the payment of any

benefits under Section 14 hereof unless payments under such Section 14 otherwise would have been due irrespective of such notice of non-extension. "The Term of this Agreement" shall mean, for purposes of this Agreement, such initial one-year term and subsequent extensions, if any.

3. Salary. Subject to the further provisions of this Agreement, the Company shall pay the Executive a base salary at an initial annualized rate equal to \$995,000 effective as of March 3, 2016 ("Salary"). The Executive's Salary may be increased at such times, if any, and in such amounts as determined by the Compensation Committee in its discretion. The Compensation Committee will review the Salary on an annual basis. Any increase in Salary shall not serve to limit or reduce any other obligation of the Company hereunder. The Salary shall be payable by the Company to the Executive not less frequently than monthly. Participation in deferred compensation, discretionary or performance bonus, retirement, stock option and other employee benefit plans and in fringe benefits shall not reduce the annual rate of Salary.

4. Bonus. During the Term, the Executive shall be eligible to be a participant in the Company's 2015 Amended and Restated Annual Performance Incentive Plan (or any modified or replacement plan providing for bonus incentives to executive officers) (the "Incentive Plan") subject to the terms, conditions and limitations of the Incentive Plan. During the Term of this Agreement, the Executive also shall be eligible for other discretionary bonus awards, as determined in the sole discretion of the Compensation Committee.

5. Participation in Employee Benefit Plans. During the Term, the Executive shall be entitled to participate equitably with other executive officers commensurate with Executive's position with the Company, in any plan of the Company relating to pension, thrift, profit sharing, life insurance, disability income insurance, medical coverage, education, or other retirement or employee benefits that the Company has adopted or may adopt for the benefit of its executive officers, subject to the terms, conditions and limitations of any such plan.

6. Equity Compensation.

(a) Prior Grants. All Awards that were granted to the Executive prior to the Effective Date shall continue to remain outstanding and governed by the terms and conditions of the applicable award agreement evidencing the grant of such Award and equity compensation plan. By way of clarification, all references to a "Constructive Termination" or to a termination by the Executive "for Good Reason" in such award agreements shall mean and include a "Constructive Termination" as defined in this Agreement.

(b) Consideration for Future Grants. During the Term, the Executive shall be eligible for future grants of Awards or other equity incentives under the Company's equity incentive plans at levels commensurate with the Executive's position with the Company. All such Awards and their terms and conditions shall be in the discretion of the Compensation Committee, subject to the terms, conditions and limitations of any such plans.

7. Fringe Benefits. During the Term, the Executive shall be entitled to receive all other fringe benefits, which are now or may be provided to the Company's executive officers. To the extent that the level of any such benefits is based upon seniority, level of services or compensation levels, the Company shall make an appropriate and proportionate adjustment to the Executive's benefits.

8. Vacation. During the Term, the Executive shall be entitled to an annual paid vacation in accordance with the Company's general administrative policy.

9. Business Expenses. During the Term, the Executive shall be entitled to incur and be reimbursed for all reasonable business expenses. The Company agrees that it will reimburse the Executive for all such expenses upon the presentation by the Executive, from time to time, of an itemized account of such expenditures setting forth the date, the purposes for which incurred, and the amounts thereof, together with such receipts showing payments in conformity with the Company's established policies. Reimbursement shall be made within a reasonable period after the Executive's submission of an itemized account in accordance with the Company's established policies; *provided, however*, such reimbursements are in all cases subject to the 409A Reimbursement Conditions (as defined in Section 21).

10. Code Section 280G. In the event that it is determined that any payment or distribution of any type to or for the benefit of the Executive (whether under this Agreement or otherwise) made by the Company, by any of its affiliates, by any person who acquires ownership or effective control of the Company or ownership of a substantial portion of the Company's assets (within the meaning of Section 280G of the Code and the Regulations thereunder) or by any affiliate of such person, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (the "**Total Payments**"), would either be subject to the excise tax imposed by Section 4999 of the Code (or nondeductible by the Company under Code Section 280G) or any interest or penalties with respect to such excise tax (such excise tax or nondeductibility, together with any such interest or penalties, are collectively referred to as the "**Excise Tax**"), then such payments or distributions shall be payable either in (x) full or (y) as to such lesser amount which would result in no portion of such payments or distributions being subject to the Excise Tax, and the Executive shall receive the greater, on an after-tax basis, of (x) or (y). If a reduction in the Total Payments constituting "parachute payments" is necessary so that no portion of such Total Payments is subject to the Excise Tax, then the reduction shall occur in a manner intended to maximize the Executive's after-tax retained value and if necessary to comply with Section 409A (as defined below) and shall be effected in the following order: (1) reduction of cash payments for which the full amount is treated as a parachute payment; (2) cancellation of accelerated vesting (or, if necessary, payment) of cash awards for which the full amount is not treated as a parachute payment; (3) cancellation of any accelerated vesting of Awards; and (4) reduction of any continued employee benefits. In selecting the Awards (if any) for which accelerated vesting will be reduced under clause (3) of the preceding sentence, Awards shall be selected in a manner that maximizes the after-tax aggregate amount of Total Payments provided to the Executive, provided that if (and only if) necessary in order to avoid the imposition of an additional tax under Section 409A of the Code, Awards instead shall be selected in the reverse order of the date of grant. For the avoidance of doubt, for purposes of measuring an Award's value to the Executive when performing the foregoing comparison between (x) and (y), such Award's value shall equal the then aggregate fair market value of the vested shares underlying the Award (after taking into consideration any applicable accelerated vesting) less any aggregate exercise price less applicable taxes. Also, if two or more Awards are granted on the same date, each Award will be reduced on a pro-rata basis, giving effect to maximizing the after-tax aggregate amount of Total Payments to Executive as required above. In no event shall the Executive have any discretion with respect to the ordering of payment reductions. In no event will the Company be required to gross up any payment or benefit to the Executive to avoid the effects of the Excise Tax or to pay any regular or excise taxes arising from the application of the Excise Tax. All mathematical determinations and all determinations of whether any of the Total Payments are "parachute payments" (within the meaning of Section 280G of the Code) that are required to be made under this Section 10, shall be made by a nationally recognized independent audit firm selected by the Company (the "**Accountants**"), who shall provide their determination, together with detailed supporting calculations regarding the amount of any relevant matters, both to the Company and to the Executive. Notwithstanding the foregoing, the Accountants shall not be an audit firm that is rendering services as an auditor or in any other accounting or audit capacity to the entity (or entities) that is acquiring the Company in the relevant transaction that is triggering the Code Section 280G analysis under this Section 10. Determinations shall be made by the Accountants using reasonable good faith interpretations of the Code. As expressly permitted by Q/A #32 of the Code Section 280G regulations, with respect to performing any present value calculations that are required in connection with this section, the Executive and the Company each affirmatively elect to utilize the applicable federal rates ("**AFR**") that are in effect as of the Effective Date, and the Accountants shall therefore use such AFRs in their determinations and calculations. The Company shall pay the fees and costs of the Accountants which are incurred in connection with this section.

11. Indemnity. The Company shall indemnify and hold the Executive harmless from any cost, expense or liability arising out of or relating to any acts or decisions made by the Executive on behalf of or in the course of performing services for the Company to the same extent the Company indemnifies and holds harmless other executive officers and directors of the Company and in accordance with the Company's Certificate of Incorporation, By-laws and established policies. During the Term, the Company agrees to seek to maintain director and officer liability insurance. The Company agrees to seek to maintain such insurance for a period of at least 36 months following the Date of Termination. In the event that the Company does not maintain a director and officer liability policy covering former directors and officers during such 36-month period, the Company agrees to seek to obtain and maintain "tail" coverage for director and officer liability with respect to former directors and officers for a period of up to 36 months after the Date of Termination. This indemnification provision is in addition to, and does not supersede, any other agreement of indemnification provided by the Company to the Executive.

12. Certain Terms Defined. For purposes of this Agreement:

(a) “**Awards**” shall mean any stock options, stock appreciation rights, restricted stock, stock units, performance units, performance shares, and/or so called “phantom” equity, granted to the Executive under any employee equity compensation plan.

(b) “**Cause**” means termination upon: (1) the willful failure by the Executive to substantially perform his duties with the Company (other than any such failure resulting from his incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to him by the Board, which demand specifically identifies the manner in which the Board believes that he has not substantially performed his duties; (2) the Executive’s willful misconduct that is demonstrably and materially injurious to the Company, monetarily or otherwise; or (3) the Executive’s commission of such acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude as would prevent the effective performance of his duties. No act, or failure to act, on the Executive’s part shall be deemed “willful” unless done, or omitted to be done, by him in bad faith and done or omitted to be done without the reasonable belief that his action or omission was in the best interest of the Company. Notwithstanding the foregoing, the Executive shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to him a copy of a resolution duly adopted by the affirmative vote of a majority of the members of the Board at a meeting of such members (after reasonable notice to him and an opportunity for him, together with his counsel, to be heard before such members of the Board), finding that he has engaged in the conduct set forth above in this subsection (b) and specifying the particulars thereof in detail.

(c) A “**Change in Control**” occurs if:

(i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rule 13(d)(3) under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding voting securities (“**Voting Securities**”); or

(ii) a merger or consolidation of the Company with any other corporation (or other entity), other than:

(1) a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 80% of the combined voting power of the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation;

(2) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person acquires more than 20% of the combined voting power of the Company’s then outstanding Voting Securities; or

(3) a merger or consolidation which would result in the directors of the Company (who were directors immediately prior thereto) continuing to constitute at least 50% of all directors of the surviving entity after such merger or consolidation. The term “**surviving entity**” shall mean only an entity in which all the Company’s stockholders immediately before such merger or consolidation (determined without taking into account any stockholders properly exercising appraisal or similar rights) become stockholders by the terms of such merger or consolidation, and the phrase “**directors of the Company (who were directors immediately prior thereto)**” shall include only individuals who were directors of the Company at the beginning of the 24 consecutive month period preceding the date of such merger or consolidation;

(iii) the consummation of a complete liquidation or sale or disposition of all or substantially all of the Company’s assets; or

(iv) during any period of 24 consecutive months, individuals, who at the beginning of such period constitute the Board, and any new director whose election by the Board, or whose nomination for

election by the Company's stockholders, was approved by a vote of at least one-half (1/2) of the directors then in office (other than in connection with a contested election), cease for any reason to constitute at least a majority of the Board.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

Notwithstanding the foregoing, if a Change in Control constitutes a payment event with respect to any Award (or any portion of an Award) or amount that provides for the deferral of compensation that is subject to Section 409A, to the extent required to avoid the imposition of additional taxes under Section 409A, the transaction or event described in subsection (i), (ii), (iii) or (iv) with respect to such Award or amount shall only constitute a Change in Control for purposes of the payment timing of such Award or amount if such transaction also constitutes a "change in control event," as defined in Treasury Regulation Section 1.409A-3(i)(5).

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Constructive Termination" means, subject to the Executive providing the Notice of Termination and the Company's failure to cure as described below, the occurrence of one or more of the following events without the Executive's written consent: (i) a relocation of the Executive's principal business office to a location which is in excess of a fifty (50) mile-radius from the Executive's principal business office as of the Effective Date; (ii) a material diminution in the Executive's title, authority, duties or responsibilities relative to the Executive's title, authority, duties or responsibilities in effect immediately prior to such reduction; (iii) a decrease in the Executive's Salary or a material diminution in and/or discontinuation of any benefit plan or program, or level of participation in any such plan or program, from that in which the Executive is currently participating, which decrease or discontinuation does not apply to all executive officers, or a failure to include the Executive in any new benefit plan or program offered to all other executive officers; or (iv) upon a Change in Control, if (1) all or any portion of the Executive's Awards are not assumed by the surviving entity and (2) the Executive's Awards that are not assumed are not fully accelerated and exercisable as of immediately before the consummation of the Change in Control. For purposes of this Agreement, the Executive may resign the Executive's employment from the Company due to the Constructive Termination within one hundred (100) days after the date that any of the events shown above in clauses (i) through (iv) has first occurred without the Executive's written consent. Failure to timely resign employment means that the Executive will be deemed to have consented to and irrevocably waived the potential Constructive Termination event (but not any other subsequent Constructive Termination event). The Executive's resignation due to a Constructive Termination event can only be effective if the Company has not cured or remedied the Constructive Termination event within thirty (30) days after its receipt of a Notice of Termination from the Executive stating the Executive's belief that a Constructive Termination event exists. Such Notice of Termination must be provided to the Company within sixty (60) days of the purported Constructive Termination event and shall describe in detail the basis and underlying facts supporting the Executive's belief that a Constructive Termination event has occurred. Failure to timely provide such Notice of Termination to the Company means that the Executive will be deemed to have consented to and irrevocably waived the potential Constructive Termination event. If the Company does timely cure or remedy the Constructive Termination event, then the Executive may either resign employment without it being due to a Constructive Termination or the Executive may continue to remain employed subject to the terms of this Agreement. The Company's receipt of a Notice of Termination by the Executive of a Constructive Termination shall not be deemed to constitute the Company's acknowledgement, agreement or admission that a Constructive Termination has occurred. If the initial existence of a Constructive Termination event occurs during the Term, then even if the Term ends before the Executive is able to resign his employment due to a Constructive Termination, the Executive shall still be eligible to obtain the benefits provided for a Constructive Termination provided the Executive had provided the Notice of Termination before the Term ended and further provided the foregoing Constructive Termination process is completed.

(f) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(g) “**Permanent Disability**” shall be deemed to occur for the Executive if a physical or mental condition occurs and persists which, in the written opinion of a licensed physician selected or approved by the Compensation Committee in good faith, has rendered the Executive unable to perform the Executive’s duties hereunder for a period of 90 days or more and, in the written opinion of such physician, the condition will continue for an indefinite period of not less than an additional 90-day period, rendering the Executive unable to return to the Executive’s duties. To the extent the Executive’s Permanent Disability results in any payment hereunder subject to the requirements of Section 409A(a) of the Code, such payment shall be further conditioned on the Executive’s Permanent Disability also constituting a “disability” within the meaning of Regulations Section 1.409A-3(i)(4).

(h) “**Regulations**” means the official Treasury Department interpretation of the Internal Revenue Code.

(i) “**Separation from Service**” means a separation from service as that term is used in Code Section 409A(a)(2) (i) and the Regulations thereunder.

13. Termination.

(a) Death or Permanent Disability. This Agreement and the Executive’s employment hereunder shall terminate automatically upon the Executive’s death or Permanent Disability.

(b) Termination by the Company. The Company may terminate this Agreement and the Executive’s employment hereunder for Cause in accordance with Section 12(b) or without cause at any time by delivery to the Executive of a Notice of Termination.

(c) Termination by Executive. The Executive may terminate this Agreement and the Executive’s employment hereunder as a result of Constructive Termination in accordance with Section 12(e) or other than as a result of a Constructive Termination at any time by delivery to the Company of a Notice of Termination.

(d) Notice of Termination. Any termination of the Executive’s employment by the Company with or without Cause, due to Executive’s Permanent Disability or by the Executive due to or without a Constructive Termination shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 22. In the event of the Executive’s termination of employment due to a Constructive Termination, the Executive shall provide the Notice of Termination as provided in Section 12(e). For purposes of this Agreement, a “**Notice of Termination**” means a written notice which (i) indicates the specific termination provision in this Agreement relied upon; (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provision so indicated; and (iii) specifies the Date of Termination (defined below).

(f) Date of Termination. “**Date of Termination**” means the date of the termination of the Executive’s employment with the Company. The Date of Termination is the date of actual receipt of a Notice of Termination given under Section 22 below or any later date specified therein (but not more than 15 days after the giving of the Notice of Termination except that it may be thirty (30) days in the case of a Constructive Termination), as the case may be; *provided, however*, that (i) if the Executive’s employment is terminated by the Company for any reason other than because of the Executive’s death or as a result of the Executive sustaining a Permanent Disability, the Date of Termination shall be the date specified in the Notice of Termination which may be the date on which the Company gives notice to the Executive of such termination; (ii) if the Executive’s employment is terminated due to Permanent Disability, the Date of Termination is the date of actual receipt of a Notice of Termination; and (iii) if the Executive’s employment is terminated due to the Executive’s death, the Date of Termination shall be the date of death.

14. Certain Benefits Upon Termination.

(a) Termination by the Company Without Cause or Resignation Due to Constructive Termination. If during the Term (y) the Executive’s employment with the Company is terminated by the Company without Cause, or (z) the Executive voluntarily resigns his employment due to a Constructive Termination in accordance with Section 12(e), then, in either case, in addition to the Accrued Obligations (as defined below), and

subject to and conditioned upon Executive's timely execution and non-revocation of a general release of claims substantially in the form attached hereto as Exhibit A (the "**Release**"), and the Executive's continued compliance with the provisions of Section 20 below, then the Company shall pay or provide the Executive with the following:

- (i) the Company shall pay the Executive an amount in cash equal to twenty-four (24) months' of the Executive's then-current Salary, which shall be payable in substantially equal installments on the same schedule as corresponds to the regular Company payroll dates in effect on the Executive's Date of Termination (with such payment to be treated as a separate payments for purposes of Section 409A of the Code) for a period beginning on the Date of Termination and ending on the [24-month] anniversary of the Date of Termination (the "**Continuation Period**");
- (ii) the Company shall, at the Company's expense, continue to provide the Executive with a car during the Continuation Period at the comparable level provided to the Executive immediately prior to the Date of Termination;
- (iii) the Company shall pay the Executive a performance achievement bonus under the Company's Incentive Plan (or any bonus plan for executive officers that is in addition to or in lieu of such plan) for the fiscal year in which the Date of Termination occurs that is proportionately adjusted to take into account the period of actual service of the Executive during the Company's fiscal year in which the Date of Termination occurs, *provided* that the Compensation Committee certifies in writing that the performance incentive target(s) for that fiscal year has been achieved and *provided* further that payment of such bonus shall be made at the same time it would have been made had the Executive remained employed but not later than March 15th of the calendar year immediately following the calendar year in which the Date of Termination occurred;
- (iv) during the Continuation Period, the Company shall at its expense continue on behalf of the Executive and his dependents and beneficiaries, the life insurance, disability, medical, dental and hospitalization benefits provided (x) to the Executive at any time during the 90-day period prior to the Date of Termination or (y) to other similarly situated Executives who continue in the employ of the Company during the Continuation Period; and
- (v) all installments of the Executive's Awards that are held by the Executive and scheduled to vest, or to become exercisable, or to be subject to lapse of restrictions, at any time within twenty-four (24) months after the Date of Termination shall become exercisable, and vest, and any restriction shall lapse, as of the Date of Termination, subject in each case to expiration or termination as set forth in the applicable Award plan or agreement; *provided, however*, that any vesting, exercisability or lapse of restriction on any Award which is contingent upon satisfaction of a Company performance-based condition or performance goal under the Award shall continue to be subject to such performance-based condition or performance goal and will only be deemed satisfied and vested if and when (if ever) such Company performance-based condition or performance goal is actually achieved pursuant to the Award's terms.

The coverage and benefits (including deductibles and costs) provided in this Section 14(a) during the Continuation Period shall be no less favorable to the Executive and his dependents and beneficiaries than the most favorable of such coverages and benefits during any of the periods referred to in clauses (x) and (y) of subsection (iv) above. The Company's obligations hereunder with respect to the foregoing benefits shall be limited to the extent that the Executive obtains any such benefits pursuant to a subsequent employer's benefit plans, in which case the Company may reduce the coverage of any benefits it is required to provide the Executive hereunder so long as the aggregate coverages and benefits of the combined benefit plans is no less favorable to the Executive than the coverages and benefits required to be provided hereunder. This Section 14(a) shall not be interpreted so as to limit any benefits to which the Executive, his dependents or beneficiaries may be entitled under any of the Company's employee benefit plans, programs or practices following the Date of Termination.

During the period of the Continuation Period in which the Executive and his dependents and beneficiaries are eligible to receive continued benefits under the Company's group plans in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (" **COBRA** "), the Company shall pay the portion of the Executive's premium payments necessary to satisfy the requirements of this Section 14(a) with respect to medical, dental and hospitalization benefits. Notwithstanding the foregoing, if the Company determines that the payment of foregoing additional benefits would result in a violation of the nondiscrimination rules of Code Section 105(h)(2) or any statute or regulation of similar effect (including, but not limited to, the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing such Company-paid benefits, the Company, in its sole discretion, may elect to instead pay the Executive on the first day of each month of the Continuation Period, a fully taxable cash payment equal to both the Executive's and the Company's portions of the benefits premiums for that month, subject to applicable tax withholdings, for the remainder of the Continuation Period.

With respect to any period during the Continuation Period in which the Executive or his dependents and beneficiaries cease to be eligible for COBRA coverage, and with respect to life insurance and disability benefits for the remainder of the Continuation Period for which the Company cannot make direct premium payments for such benefits in accordance with the requirements of Section 409A or otherwise (if any), the Executive (or his dependents and beneficiaries, as applicable) shall each month pay to the Company, insofar as permitted by such benefit plans, on an after-tax basis, an amount equal to the full premium cost of medical, dental, hospitalization, life insurance and disability benefits coverage. Within 30 days of each such payment, subject to the 409A Reimbursement Conditions, the Company shall pay to the Executive (or his dependents and beneficiaries, as applicable) in cash (less required withholding) an amount equal to full premium cost of medical, dental, hospitalization, life insurance and disability benefits coverage.

(b) Accrued Obligations. Upon any termination of the Executive's employment, then in addition to the payments that may be provided in Section 14(a) (if any), the Company shall pay the Executive (i) all accrued but unpaid Salary, (ii) bonus and amounts due under the Company's Incentive Plan or any other bonus or incentive plan then in effect in accordance with the terms and conditions of such plans, and (iii) all accrued but unpaid or unused vacation, sick pay and expense reimbursement benefit (collectively, the "**Accrued Obligations**"). The Accrued Obligations described in clauses (i) and (iii) of the preceding sentence shall be paid within thirty days after the date of termination (or such earlier date as may be required by applicable law) and the Accrued Obligations described in clause (ii) of the preceding sentence shall be paid in accordance with the terms of the governing plan or program.

(c) In the event the Executive is entitled hereunder to any payments or benefits set forth in Section 14(a), the Executive shall have no obligation to notify Company of employment subsequent to the Executive's termination or to offset (except to the extent required by Section 14(a)) the Company's obligation by payments due to such employment and shall have no duty to mitigate.

(d) Except in the case of a termination for Cause, with respect to the Executive's vested Awards which either were vested prior to the Date of Termination, or for which vesting is accelerated pursuant to Section 14(a), the Executive (or the Executive's estate, if the Executive has died) shall have the right to exercise such vested Awards for a period of 36 months from the later of (i) the date of Separation from Service or (ii) if vesting of such Award is Company performance-based, the date of vesting or lapse of restriction on such Award due to Company achievement of such performance (subject in all cases to the earlier expiration or termination of the applicable Award). The rights of the Executive under this Section 14 shall not be exclusive of any other rights to which the Executive may be entitled under any bonus, retirement, Award, or employee benefit plan of the Company.

15. Emeritus Period. Following Separation from Service and continuing during his lifetime (the "**Emeritus Period**"), the Executive shall have the title of "Founder" of the Company. If the Executive was not terminated for Cause, the Executive shall also have the title of "Chairman Emeritus" during the Emeritus Period. During the Emeritus Period, the Executive shall receive no monetary compensation unless otherwise agreed to by the Company and the Executive, but the Company, provided that the Executive was not terminated for Cause, shall insofar as feasible provide to the Executive, for a period of up to ten (10) years, an office in the Company's executive suite and the assistance of a secretary, until such time as the Executive obtains employment, full or part-time, with a person other than the Company; provided, however that if Executive is in "competition" with the

Company during any time period that Executive is being provided such office and/or the assistance of a secretary (competition shall be defined herein as engaging in any conduct which violates Sections 20(a) or (c) or in the event such section(s) are not then effective, would violate such section(s) if such section(s) were then effective), the Company may in its discretion terminate the provision of an office and/or the assistance of a secretary. During any period that the Executive is being provided with an office and/or the assistance of a secretary, the Executive shall promote the brand, business and reputation of the Company. To the extent necessary to comply with Section 409A, in no event shall any such services provided by the Executive during the Emeritus Period equal or exceed 20% of the average level of bona fide services performed by the Executive during the 36-month period preceding the Date of Termination. If the Executive was not terminated for Cause, the Executive shall also have for himself unlimited dining privileges at all restaurant concepts of the Company during the Emeritus Period.

16. Founder's Retirement Benefit.

(a) In addition to all amounts otherwise payable under this Agreement, the Company shall pay to the Executive (or to The David Overton 2018 Revocable Trust, for the benefit of the Executive) a retirement benefit in the annual amount of six hundred and fifty thousand dollars (\$650,000) for a period of ten (10) years (the “ **Founder's Retirement Benefit** ”) payable in equal monthly installments.

(b) Payment of the Founder's Retirement Benefit shall be made to The David Overton 2018 Revocable Trust (unless the Executive provides advance written notice to the Company that the Founder's Retirement Benefit shall instead be paid to the Executive), and shall commence on the first regular Company payroll date occurring after the date that is six (6) months and one day after the Executive's Separation from Service. The first such installment shall be equal to \$325,000 and thereafter monthly installments of 1/12 of \$650,000 shall be paid. The Founder's Retirement Benefit shall be payable from the general, unrestricted assets of the Company, and the Executive shall be an unsecured general creditor of the Company. Each payment of the Founder's Retirement Benefit is a separate payment for purposes of Section 409A. The Company's obligations hereunder are an unfunded, unsecured promise to pay benefits in the future, and the Executive shall have no right or interest in any specific assets of the Company by virtue of this obligation. No trust shall be construed to have been created by this Section 16, nor shall any fiduciary relationship be construed to exist between the Company and the Executive. If the Company, in its sole discretion, elects to fund its obligations to pay the Founder's Retirement Benefit through the purchase of one or more insurance policies, the Executive shall have no rights in such policy or policies, or the proceeds thereof. The Company shall be the sole owner and beneficiary of said policy or policies, and shall hold all incidents of ownership. The Founder's Retirement Benefit is nontransferable, and the Executive shall not assign, transfer, or otherwise encumber any payments made hereunder except for a properly executed written beneficiary designation. The Company shall have the right to deduct and pay over from all Founder's Retirement Benefit payments hereunder any federal, state, local or employment taxes which it deems are required by law to be withheld with respect to such payments.

17. Fees and Expenses. Subject to compliance with the 409A Reimbursement Conditions, the Company shall pay all reasonable legal fees and related expenses (including the costs of experts, evidence and counsel) incurred by the Executive as they become due as a result of (a) the Executive's termination of employment (including all such fees and expenses, if any, incurred in contesting or disputing any such termination or employment), or (b) the Executive seeking to obtain or enforce any right or benefit provided by this Agreement or by any other plan or arrangement maintained by the Company under which the Executive is or may be entitled to receive benefits. In the event the Company is the prevailing party in any such proceeding, except for fees and costs of arbitration and any type of costs that are unique to arbitration, the Company shall be awarded the legal fees and related expenses it has incurred on behalf of the Executive pursuant to this Section 17.

18. No Set Off, Interest. Except as provided herein, the Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any circumstances, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which the Company may have against the Executive or others. All amounts provided herein shall include, in each case, interest, compounded quarterly, on the total unpaid amount determined to be payable under this Agreement, such interest to be calculated on the basis of the prime commercial lending rate announced by Bank of America National Trust and Savings Association in effect from time to time during the period of such nonpayment.

19. Assignment.

(a) This Agreement is personal to each of the parties hereto. No party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other party hereto, except that this Agreement shall be binding upon and inure to the benefit of any successor corporation to the Company.

(b) The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, “ **Company** ” shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes this Agreement by operation of law, or otherwise.

(c) This Agreement shall inure to the benefit of and be enforceable by the Executive and his personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

20. Restrictions.

(a) Confidential Information. During the Term of this Agreement and thereafter, the Executive shall not, except as may be required to perform his duties hereunder or as required by applicable law, disclose to others for use, whether directly or indirectly, any Confidential Information regarding the Company. For purposes of this Agreement, “**Confidential Information**” shall mean information about the Company, its subsidiaries and affiliates, and their respective clients and customers that is not available to the general public and that was learned by the Executive in the course of his employment by the Company, including (without limitation) any data, formulae, information, proprietary knowledge, trade secrets and client and customer lists and all papers, resumes, records and the documents containing such Confidential Information. The Executive acknowledges that such Confidential Information is specialized, unique in nature and of great value to the Company, and that such information gives the Company a competitive advantage. Upon the termination of his employment, the Executive will promptly deliver to the Company all documents (and all copies thereof) containing any Confidential Information. Nothing in this Agreement prohibits the Executive from reporting possible violations of federal law or regulation to any governmental agency or entity, including, but not limited to, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. The Executive does not need the prior authorization of the Company or its legal department to make any such reports or disclosures and the Executive is not required to notify the Company that the Executive has made any such reports or disclosures.

(b) Noncompetition. The Executive agrees that during the Term of this Agreement, he will not, directly or indirectly, without the prior written consent of the Company, provide consultative service with or without pay, own, manage, operate, join, control, participate in, or be connected as a stockholder, partner, or otherwise with any business, individual, partner, firm, corporation, or other entity which is then in competition with the Company or any present affiliate of the Company; provided, however, that the “beneficial ownership” by the Executive, either individually or as a member of a “group,” as such terms are used in Regulation 13D of the Exchange Act, of not more than 1% of the voting stock of any publicly held corporation shall not be a violation of this Section 20(b). Notwithstanding the foregoing, the Executive, subject to prior written consent by the Board, which consent shall not be unreasonably withheld, may be a member of the board of directors of one or more other restaurant companies provided that such other company or companies is/are not a significant or direct competitor of the Company and provided further that the Executive’s acceptance of any other directorship position while a director of the Company is not in violation of applicable laws or the Company’s policies or procedures concerning the board of director positions. It is further expressly agreed that the Company will or would suffer irreparable injury if the Executive were to compete with the Company or any subsidiary or affiliate of the Company in violation of this Agreement and that the Company would by reason of such competition be entitled to injunctive relief in a court of appropriate jurisdiction, and the Executive further consents and stipulates to the entry of such injunctive relief in such a court prohibiting the Executive from competing with the Company or any subsidiary or affiliate of the Company in violation of this Agreement.

(c) Right to Company Materials. The Executive agrees that all styles, designs, recipes, lists, materials, books, files, reports, correspondence, records, and other documents (“ **Company Materials** ”) used, prepared, or made available to the Executive, shall be and shall remain the property of the Company. Upon the

termination of his employment or the expiration of this Agreement, all Company Materials shall be returned immediately to the Company, and the Executive shall not make or retain any copies thereof.

(d) Antisolicitation. The Executive promises and agrees that during the Term of this Agreement, and for a period of two (2) years thereafter, he will not use any trade secrets or confidential information belonging to the Company to influence or attempt to influence customers, franchisees, landlords, or suppliers of the Company or any of its subsidiaries or affiliates, either directly or indirectly, to divert their business to any individual, partnership, firm, corporation or other entity then in competition with the business of the Company, or any subsidiary or affiliate of the Company.

(e) Certain Exceptions. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall prohibit either party (or either party's attorney(s)) from (A) (i) filing a charge with, reporting possible violations of federal law or regulation to, participating in any investigation by, or cooperating with the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice or any other securities regulatory agency, self-regulatory authority or federal, state or local regulatory authority (collectively, "**Government Agencies**"), or making other disclosures that are protected under the whistleblower provisions of applicable law or regulation, (ii) communicating directly with, cooperating with, or providing information (including trade secrets) in confidence to any Government Agencies for the purpose of reporting or investigating a suspected violation of law, or from providing such information to such party's attorney(s) or in a sealed complaint or other document filed in a lawsuit or other governmental proceeding, and/or (iii) receiving an award for information provided to any Government Agency, in each case, without notifying or seeking permission from the other party, (B) exercising any rights such party may have under Section 7 of the U.S. National Labor Relations Act, such as the right to engage in concerted activity, including collective action or discussion concerning wages or working conditions, or (C) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that such party has reason to believe is unlawful. Pursuant to 18 USC Section 1833(b), (i) the Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (y) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the trade secret to the Executive's attorney and use the trade secret in the court proceeding if the Executive: (x) files any document containing the trade secret under seal; and (y) does not disclose the trade secret, except pursuant to court order. Further, nothing in this Agreement is intended to or shall preclude either party from providing truthful testimony in response to a valid subpoena, court order, regulatory request or other judicial, administrative or legal process or otherwise as required by law. If the Executive is required to provide testimony, then unless otherwise directed or requested by a Government Agency or law enforcement, the Executive shall notify the Company as soon as reasonably practicable after receiving any such request of the anticipated testimony.

21. Code Section 409A. The parties agree that all provisions of this Agreement are intended to meet, and to operate in accordance with, in all material respects, the requirements of Section 409A of the Code, its Regulations, and any guidance from the Department of Treasury or Internal Revenue Service thereunder including any such guidance issued after the Effective Date (collectively, "**Section 409A**"). Where ambiguity or uncertainty exists, this Agreement shall be interpreted in a manner which would qualify any compensation payable hereunder to satisfy the requirements for exception to or exclusion from Section 409A and the taxes imposed thereunder. Each payment to the Executive made pursuant to any provision of this Agreement or otherwise shall be considered a separate payment and not one of a series of payments for purposes of Section 409A. To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A. To the extent any nonqualified deferred compensation payment to the Executive could be paid in one or more of the Executive's taxable years depending upon the Executive completing certain employment-related actions, then any such payments will commence or occur in the later taxable year to the extent required by Section 409A. In the event either party reasonably determines that any item payable by the Company to the Executive pursuant to this Agreement that is not subject to a substantial risk of forfeiture would not meet, or is reasonably likely not to meet, the requirements of

Section 409A, or to qualify as exempt from Section 409A, such party shall notify the other in writing. Any such notice shall specify in reasonable detail the basis and reasons for such party's determination. The parties agree to negotiate in good faith the terms and conditions of an amendment to this Agreement to avoid the inclusion of such item in a tax year before the Executive's actual receipt of such item of income; *provided, however*, nothing in this Section 21 shall be construed or interpreted to require the Company to increase any amounts payable to the Executive pursuant to this Agreement or to consent to any amendment that would materially and adversely change the Company's financial accounting or tax treatment of the payments to the Executive under this Agreement and in no event shall the Company, its affiliates or any of their respective officers, directors or advisors be liable for any taxes, interest or penalties imposed under Section 409A or any corresponding provision of state or local law. All payments of nonqualified deferred compensation subject to Section 409A to be made upon a termination of employment under this Agreement may only be made upon the Executive's Separation from Service. Notwithstanding anything to the contrary, if the Executive is a "specified employee" on the date of the Executive's Separation from Service, then to the extent needed to comply with Section 409A any nonqualified deferred compensation payable to the Executive on account of the Executive's Separation from Service under this Agreement or otherwise shall not be paid during the first six months after the Executive's Separation from Service and shall instead be paid on the earlier of (a) the first business day of the seventh month after the date of the Executive's Separation from Service and (b) ten business days after the Company's receives written notification of the Executive's death. To the extent that any reimbursement of any business expense or in-kind benefits provided under this Agreement are deemed to constitute taxable compensation to the Executive to which Treasury Regulation Section 1.409A-3(i)(1)(iv) would apply, (a) such amounts shall be reimbursed or provided no later than December 31 of the year following the year in which the expense was incurred; (b) such amounts reimbursed or provided in one year shall not affect the expenses or in-kind benefits eligible for reimbursement or payment in any subsequent year; and (c) the Executive's right to such reimbursement or payment of any such amounts shall not be subject to liquidation or exchange for any other benefit ("**409A Reimbursement Conditions**").

22. Notice. For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below, or to such other addresses as either party may have furnished to the other in writing in accordance herewith, except that notice of a change of address shall be effective only upon actual receipt:

Company: The Cheesecake Factory Incorporated
26901 Malibu Hills Road
Calabasas Hills, California 91301

With a copy
to: The Secretary of the Company

Executive: At the Executive's most recent address in the records of the Company.

23. Amendments or Additions. No amendment or additions to this Agreement shall be binding unless in writing and signed by both parties hereto.

24. Section Headings. The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.

25. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

26. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together will constitute one and the same instrument.

27. Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a panel of three arbitrators in Los Angeles, California, in

accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction.

28. Miscellaneous. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and such officer as may be specifically designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. The Prior Agreement is hereby terminated as of immediately before the Effective Date. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without regard to its conflicts of law principles. All references to sections of the Exchange Act or the Code and any rules or regulations thereunder shall be deemed also to refer to any successor provisions to such sections. All references to the Compensation Committee shall be deemed also to refer to any committee of the Board however designated that performs similar functions.

Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, state or local law. The provisions of this Agreement that may be reasonably interpreted as surviving termination of this Agreement, including Sections 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 27, shall continue in effect after termination and/or expiration of this Agreement.

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IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on the Effective Date.

COMPANY:

THE CHEESECAKE FACTORY INCORPORATED,
a Delaware corporation

By:

Name Scarlett May

Its: EVP, General Counsel & Secretary

EXECUTIVE :

DAVID OVERTON

Exhibit A
Form of General Release

RELEASE

1. Parties. This Release ("Release") is entered into by and between David M. Overton (the "Executive"), on the one hand, and The Cheesecake Factory Incorporated ("the Company"), on the other hand. The term "Party" or "Parties" as used herein shall refer to the Executive, the Company or both, as may be appropriate.

2. Recitals. The Company and the Executive are parties to the Executive's amended and restated employment agreement dated April 5, 2023 (the "Agreement"). As consideration for the payment of severance and other benefits through the Continuation Period (as defined in the Agreement), the Executive has agreed to sign this Release. All capitalized terms used, but not otherwise defined, herein shall have the meaning set forth in the Agreement.

3. Release. The Executive for himself, and for his spouse, heirs, legal representatives and assigns (hereinafter collectively referred to as, "Releasors"), completely releases and forever discharges the Company and all their respective past and present subsidiaries, affiliates, employee benefit and health and welfare plans, representatives, employees, attorneys, accountants, officers, directors, shareholders, heirs, agents, predecessors, successors, and assigns (hereafter collectively referred to as "Releasees") from any and all claims, rights, demands, judgments, and causes of action of any kind, nature and character, known or unknown, suspected or unsuspected, including, without limitation, any and all claims for attorneys' fees and costs (collectively, "Claims"), which the Releasors may now have, or have ever had, against Releasees, arising out of or resulting from the Executive's employment with the Company, or from the termination of that employment, and/or from any other dealings of any kind or nature between the Executive, on the one hand, and the Company, on the other, and which have transpired prior to the date this Release is executed and becomes effective.

This Release completely releases Releasees with respect to any and all Claims, including, but not limited to, breach of contract or agreement, oral or written, whether express or implied in fact or law, wrongful discharge, constructive discharge, breach of the covenant of good faith and fair dealing, intentional or negligent infliction of emotional distress, negligent hiring, supervision, training or retention, fraud, misrepresentation, defamation, violation of privacy, tortious discharge, interference with prospective economic advantage, defamation, failure to pay wages due or other monies owed (including, without limitation, under any employee equity or bonus plan, or with respect to any other benefits, incentives, or vacation pay), and including all Claims under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.; Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000 et seq.; Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the False Claims Act, 31 U.S.C. § 3729 et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act, as amended, 29 U.S.C. § 2101 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 215 et seq.; the Immigration Reform and Control Act, 8 U.S.C. § 1324b, the Fair Credit Reporting Act, 15 U.S.C. §§1681, et seq., the Genetic Information Non-Discrimination Act, 42 U.S.C. §§ 2000ff, et. seq., the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, et seq.; the California Fair Employment and Housing Act, as amended, Cal. Lab. Code § 12940 et seq.; the California Equal Pay Law, as amended, Cal. Lab. Code §§ 1197.5(a), 1199.5; the Moore-Brown-Roberti Family Rights Act of 1991, as amended, Cal. Gov't Code §§ 12945.2, 19702.3; California Labor Code §§ 1101, 1102, 69 Ops. Cal. Atty. Gen. 80 (1986); California Labor Code §§ 1102.5(a), (b); the California WARN Act, Cal. Lab. Code § 1400 et seq.; the California False Claims Act, Cal. Gov't Code § 12650 et seq.; the California Labor Code or any other state, federal, or local law concerning any other form of discrimination and/or harassment on the basis of race, ancestry, sex, sexual orientation, religion, age, national origin, disability, medical condition or marital status, or any other terms of employment and further, any and all Claims referred to, resulting from or arising out of the Executive's employment with the Company.

This Release does not release, nor is it intended to release any claim that as a matter of law cannot be released by the Executive. Any such claim that cannot lawfully be waived is hereby exempt from this Release.

4. Consideration.

4.1 As good and valuable consideration for this Release, the Company agrees to pay to the Executive the severance and other benefits through the Continuation Period (as defined in the Agreement) less applicable government withholdings payable in accordance with Section 14 of the Agreement.

4.2 The Executive acknowledges that, upon the receipt of the payments above in the manner set forth in Paragraph 6 below, and made pursuant to the terms of this Release, the Executive has received full payment for all forms of compensation, which the Executive is owed or believes he is owed by the Company.

The Executive acknowledges that, upon the receipt of the payments set forth in Paragraph 6 below, and made pursuant to the terms of this Release, the Executive has received full payment for all forms of compensation, which reimbursements and other consideration (other than future employee plan benefit payments, if any, per the terms and conditions of any such plan) the Executive is owed or believes the Executive is owed by the Company.

5. Waiver of Unknown Claims. This is a full and final Release covering all unsuspected, unknown, undisclosed, and unanticipated Claims which may have arisen, or may arise from any act or omission prior to the date of execution of this Release, and which arises out of or is related, directly or indirectly, to the Executive's employment with the Company. Therefore, the Executive waives any and all rights or benefits that the Executive may now have, or in the future may have, under applicable law, including but not limited to California Civil Code Section 1542, which provides as follows:

“a general release does not extend to claims, which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

6. Confidentiality. The Executive agrees that he will not publicize or disclose or cause or knowingly permit or authorize the publicizing or disclose the basis for any Claims or allegations which were or could have been made against the Company which concern and are within the scope of this Release, to any person, firm, organization or entity of any and every type, public or private, for any reason, at any time, without the prior written consent of the Company unless compelled to do so by law. The Executive is permitted, however, to make confidential disclosures, as required, to the his accountants, attorneys, or to governmental taxing authorities. However, any unauthorized disclosure by his accountants or attorneys will be deemed to be a breach of this Release by the Executive. In response to inquiries from third parties concerning the status of any dispute the Executive may have with the Company, he and his attorneys, if any, will state only that any matter has been resolved to the mutual satisfaction of all concerned. Nothing in this Release shall prevent the Executive from (i) communicating directly with, cooperating with, or providing information to, or receiving financial awards from, any federal, state or local government agency, including without limitation the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, or the U.S. National Labor Relations Board, without notifying or seeking permission from the Company, (ii) exercising any rights the Executive may have under Section 7 of the U.S. National Labor Relations Act, such as the right to engage in concerted activity, including collective action or discussion concerning wages or working conditions, or (iii) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that the Executive has reason to believe is unlawful. The Executive acknowledges receipt of the following notice of immunity rights under the U.S. Defend Trade Secrets Act, which states: “(1) An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (2) an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose a trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal, and (B) does not disclose a trade secret, except pursuant to court order.”

7. Rights Under the ADEA and Older Workers Benefit Protection Act. Without limiting the scope of the foregoing release of Claims in any way, the Executive certifies that this Release constitutes a knowing and voluntary waiver of any and all rights or claims that exist or that the Executive has or may claim to have under the ADEA. This release does not govern any rights or claims that might arise under the ADEA after the date this Agreement is signed by the Executive. The Executive acknowledges that:

The consideration provided in exchange for this Release is in addition to any consideration that the Executive would otherwise be entitled to receive;

The Executive has been and is hereby advised in writing that the Executive has the right to and should consult with an attorney prior to signing this Release;

The Executive is hereby granted a period of least twenty-one (21) days from the date of the Executive's receipt of this Release within which to consider it;

To the extent that the Executive signs this Release before the expiration of the twenty-one (21) day period, the Executive acknowledges that the Executive had sufficient time to consider this Release with counsel and that the Executive expressly, voluntarily and knowingly waives the balance of the twenty-one (21) day period. The Executive further agrees that any changes, whether or not material, to this Release shall not restart the running of the twenty-one (21) day period; and

The Executive has the right to revoke this Release at any time within the seven (7)-day period following the date on which the Executive executes the Release, and the Executive understands that the Release shall not become effective or enforceable until the calendar day immediately following the expiration of the seven (7)-day revocation period. The Executive further understands that this Release will be null and void in its entirety if the Executive exercises the Executive's right to revoke it.

To revoke this Release, the Executive must send a written letter by certified mail with facsimile copy to stating that this Release is revoked:

Scarlett May
EVP, General Counsel & Secretary
The Cheesecake Factory Incorporated
26901 Malibu Hills Road
Calabasas Hills, California 91301
(818) 871-8325

8. No Transfer of Claims. The Executive represents that he has not assigned or transferred or purported to assign or transfer to any person or entity, any Claim or any portion thereof.

9. Governing Law. This Release is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of that state, except that parole evidence shall not be admissible to vary or modify any of the terms of this Release. The language of all parts of this Release shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

10. Severability. Should any provisions of this Release be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Release.

11. Miscellaneous.

11.1 The Executive represents that he is currently unaware of any Claim that he may have against the Releasees which has not been released in this Release.

11.2 This Release shall be binding upon the Executive and upon all other Releasors and shall inure to the benefit of the Company and the other Releasees.

11.3 The Executive represents that he was advised to consult with an attorney of his own choosing prior to executing this Release, and that he has read this Release, that he is fully aware of its contents and legal effect, and that he has freely and voluntarily entered it, without coercion, intimidation or threat of retaliation.

11.4 The Executive understands and acknowledges that this Release does not release any Claims that he cannot lawfully release.

11.5 This Release covers not only any and all Claims the Executive ever had, now has or may claim to have against any Releasees, but it also covers any Claim for a monetary recovery asserted on the Executive's behalf by any other person or entity including, without limitation, any government agency, and the Executive waives the right to any such monetary recovery.

11.6 In the event it shall be necessary for any Party to institute legal action to enforce any of the terms and conditions or provisions in this Release, or for any breach thereof, the prevailing Party in such action shall be entitled to costs and reasonable attorneys' fees.

11.7 Except as provided in Section 11.6, each Party agrees that they shall be responsible for their own respective fees and costs, including, without limitation, attorney and accountant fees and costs, if any, incurred in connection with any matter covered by this Release.

11.8 This Release may be executed in counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one Release.

12. Entire Agreement. Except as provided herein, this Release sets forth the entire agreement between the Parties, and fully supersedes any and all prior agreements or understandings, which pertain to the subject matter hereof.

13. Modification - Waiver. No amendment, modification, waiver or termination of this Release shall be binding unless executed in writing by the Parties to be bound thereby. No delay or omission on the part of either Party in exercising any right under this Release shall operate as a waiver of any such right or any other right.

PLEASE READ CAREFULLY. THIS RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. THE EXECUTIVE HAS READ AND FULLY CONSIDERED THIS RELEASE AND IS DESIROUS OF ENTERING INTO SUCH RELEASE.

Executed on _____, 202__

By: _____
David M. Overton

THE CHEESECAKE FACTORY INCORPORATED
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

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 the 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.

Date: August 7, 2023

/s/ DAVID OVERTON

David Overton
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

THE CHEESECAKE FACTORY INCORPORATED
CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Matthew E. Clark, 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 the 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.

Date: August 7, 2023

/s/ MATTHEW E. CLARK

Matthew E. Clark

*Executive Vice President and Chief Financial Officer
(Principal Financial Officer)*

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 July 4, 2023 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.

August 7, 2023

/s/ DAVID OVERTON

David Overton

Chairman of the Board and Chief Executive Officer

Pursuant to Securities and Exchange Commission Release 33-8238, dated June 5, 2003, this certification is being furnished and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or incorporated by reference in any registration statement of the Company filed under the Securities Act of 1933, as amended.

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 July 4, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthew E. Clark, 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.

August 7, 2023

/s/ MATTHEW E. CLARK

Matthew E. Clark

Executive Vice President and Chief Financial Officer

Pursuant to Securities and Exchange Commission Release 33-8238, dated June 5, 2003, this certification is being furnished and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or incorporated by reference in any registration statement of the Company filed under the Securities Act of 1933, as amended.
