
**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 March 31, 2020

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	Nasdaq Global Select Market

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 June 15, 2020, 45,462,133 shares of the registrant's Common Stock, \$.01 par value per share, were outstanding.

EXPLANATORY NOTE

As previously disclosed in the Current Report on Form 8-K filed by The Cheesecake Factory Incorporated (the “Company”) with the Securities and Exchange Commission (the “SEC”) on May 5, 2020, the Company was unable to file this Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 (the “Quarterly Report”) by the original deadline of May 11, 2020 due to the outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic.

These considerable developments triggered the need to perform impairment assessments of the Company’s long-lived assets, goodwill and other intangible assets and a revaluation of contingent consideration associated with the acquisition of Fox Restaurant Concepts LLC. Future changes in estimates could further impact the carrying value of these items.

On March 4, 2020, the SEC issued an order (Release No. 34-88318) under Section 36 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) granting exemptions from specified provisions of the Exchange Act and certain rules thereunder, as amended by Release No. 34-88465 issued on March 25, 2020 (collectively, the “Order”). In light of the significant impact of the COVID-19 pandemic, the Company was unable to complete the analyses described above in time to file its Quarterly Report by the original filing deadline without unreasonable effort or expense. Accordingly, the Company relied on the Order to postpone the filing of this Quarterly Report to provide it with additional time to finalize these assessments as well as prepare additional required disclosures related to the COVID-19 pandemic.

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 data)
(Unaudited)

	March 31, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 81,023	\$ 58,416
Accounts receivable	22,862	25,619
Income taxes receivable	49,179	4,626
Other receivables	27,283	64,683
Inventories	47,822	47,225
Prepaid expenses	42,489	43,946
Total current assets	270,658	244,515
Property and equipment, net	818,283	831,599
Other assets:		
Intangible assets, net	254,401	437,207
Operating lease assets	1,257,428	1,240,976
Other	75,012	86,296
Total other assets	1,586,841	1,764,479
Total assets	<u>\$ 2,675,782</u>	<u>\$ 2,840,593</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 55,894	\$ 61,946
Gift card liabilities	161,215	187,978
Operating lease liabilities	123,189	128,081
Other accrued expenses	166,828	236,582
Total current liabilities	507,126	614,587
Deferred income taxes	23,838	33,847
Long-term debt	380,000	290,000
Operating lease liabilities	1,217,582	1,189,869
Other noncurrent liabilities	128,265	140,548
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000,000 shares authorized; none issued	—	—
Common stock, \$.01 par value, 250,000,000 shares authorized; 98,452,351 and 97,685,178 shares issued at March 31, 2020 and December 31, 2019, respectively	985	977
Additional paid-in capital	861,641	855,989
Retained earnings	1,255,794	1,408,333
Treasury stock, 52,991,015 and 52,916,434 shares at cost at March 31, 2020 and December 31, 2019, respectively	(1,695,708)	(1,693,122)
Accumulated other comprehensive loss	(3,741)	(435)
Total stockholders' equity	418,971	571,742
Total liabilities and stockholders' equity	<u>\$ 2,675,782</u>	<u>\$ 2,840,593</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 March 31, 2020	Thirteen Weeks Ended April 2, 2019
Revenues	\$ 615,106	\$ 599,481
Costs and expenses:		
Cost of sales	140,905	136,187
Labor expenses	236,982	217,310
Other operating costs and expenses	167,970	153,221
General and administrative expenses	43,960	39,123
Depreciation and amortization expenses	23,562	21,362
Impairment of assets and lease terminations	191,896	—
Acquisition-related costs	1,236	—
Acquisition-related contingent consideration, compensation and amortization	(4,466)	—
Preopening costs	3,119	2,130
Total costs and expenses	805,164	569,333
(Loss)/income from operations	(190,058)	30,148
Loss on investment in unconsolidated affiliates	—	(1,450)
Interest and other income/(expense), net	(1,518)	2
(Loss)/Income before income taxes	(191,576)	28,700
Income tax (benefit)/provision	(55,413)	1,716
Net (loss)/income	\$ (136,163)	\$ 26,984
Net (loss)/income per share:		
Basic	\$ (3.11)	\$ 0.61
Diluted	\$ (3.11)	\$ 0.60
Weighted average shares outstanding:		
Basic	43,773	44,255
Diluted	43,773	44,984

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 March 31, 2020	Thirteen Weeks Ended April 2, 2019
Net (loss)/income	\$ (136,163)	\$ 26,984
Other comprehensive (loss)/gain:		
Foreign currency translation adjustment	(936)	239
Unrealized loss on derivative, net of tax	(2,370)	—
Other comprehensive (loss)/gain	<u>(3,306)</u>	<u>239</u>
Total comprehensive (loss)/income	<u>\$ (139,469)</u>	<u>\$ 27,223</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 thirteen weeks ended March 31, 2020:

	Shares of Common Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Total
Balance, December 31, 2019	97,685	\$ 977	\$ 855,989	\$ 1,408,333	\$ (1,693,122)	\$ (435)	\$ 571,742
Net loss	—	—	—	(136,163)	—	—	(136,163)
Foreign currency translation adjustment	—	—	—	—	—	(936)	(936)
Change in derivative, net of tax	—	—	—	—	—	(2,370)	(2,370)
Cash dividends declared Common stock, \$0.36 per share	—	—	—	(16,376)	—	—	(16,376)
Stock-based compensation	566	6	5,541	—	—	—	5,547
Common stock issued under stock-based compensation plans	203	2	111	—	—	—	113
Treasury stock purchases	—	—	—	—	(2,586)	—	(2,586)
Balance, March 31, 2020	<u>98,454</u>	<u>\$ 985</u>	<u>\$ 861,641</u>	<u>\$ 1,255,794</u>	<u>\$ (1,695,708)</u>	<u>\$ (3,741)</u>	<u>\$ 418,971</u>

For the thirteen weeks ended April 2, 2019:

	Shares of Common Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Total
Balance, January 1, 2019	96,622	\$ 967	\$ 828,676	\$ 1,384,494	\$ (1,642,140)	\$ (938)	\$ 571,059
Cumulative effect of adopting the pronouncement related to lease accounting, net of tax	—	—	—	(41,466)	—	—	(41,466)
Balance, January 1, 2019, as adjusted	96,622	967	828,676	1,343,028	(1,642,140)	(938)	529,593
Net income	—	—	—	26,984	—	—	26,984
Foreign currency translation adjustment	—	—	—	—	—	239	239
Cash dividends declared Common stock, \$0.33 per share	—	—	—	(14,952)	—	—	(14,952)
Stock-based compensation	350	3	5,907	—	—	—	5,910
Common stock issued under stock-based compensation plans	412	4	5,537	—	—	—	5,541
Treasury stock purchases	—	—	—	—	(11,071)	—	(11,071)
Balance, April 2, 2019	<u>97,384</u>	<u>\$ 974</u>	<u>\$ 840,120</u>	<u>\$ 1,355,060</u>	<u>\$ (1,653,211)</u>	<u>\$ (699)</u>	<u>\$ 542,244</u>

See the accompanying notes to the condensed consolidated financial statements.

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

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Cash flows from operating activities:		
Net (loss)/income	\$ (136,163)	\$ 26,984
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation and amortization expenses	23,562	21,362
Impairment of assets and lease terminations	191,571	—
Deferred income taxes	(11,231)	1,792
Stock-based compensation	5,507	5,847
Loss from investments in unconsolidated affiliates	—	1,450
Changes in assets and liabilities:		
Accounts and other receivable	38,312	43,295
Income taxes receivable/payable	(44,553)	(681)
Inventories	(605)	(3,142)
Prepaid expenses	1,452	(10,621)
Operating lease assets/liabilities	1,851	1,130
Other assets	13,279	(5,896)
Accounts payable	(3,464)	(11,623)
Gift card liabilities	(26,753)	(26,594)
Other accrued expenses	(85,745)	(9,787)
Cash (used in)/provided by operating activities	(32,980)	33,516
Cash flows from investing activities:		
Additions to property and equipment	(15,775)	(13,351)
Additions to intangible assets	(128)	(96)
Investments in unconsolidated affiliates	—	(3,000)
Loans made to unconsolidated affiliates	—	(11,000)
Cash used in investing activities	(15,903)	(27,447)
Cash flows from financing activities:		
Borrowings on credit facility	90,000	20,000
Repayments on credit facility	—	(10,000)
Proceeds from exercise of stock options	113	5,541
Cash dividends paid	(15,791)	(14,628)
Treasury stock purchases	(2,586)	(11,071)
Cash provided by/(used in) financing activities	71,736	(10,158)
Foreign currency translation adjustment	(246)	40
Net change in cash and cash equivalents	22,607	(4,049)
Cash and cash equivalents at beginning of period	58,416	26,578
Cash and cash equivalents at end of period	\$ 81,023	\$ 22,529
Supplemental disclosures:		
Interest paid	\$ 253	\$ 316
Income taxes paid	\$ 352	\$ 566
Construction payable	\$ 3,945	\$ 2,670

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 December 31, 2019 filed with the SEC on March 11, 2020 (“fiscal 2019 10-K”).

On October 2, 2019, we completed the acquisition of North Italia and the remaining business of Fox Restaurant Concepts LLC, including Flower Child and all other FRC brands (the “Acquisitions”). The results of operations, financial position and cash flows of the acquired businesses are included in our consolidated financial statements as of the acquisition date.

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31 for financial reporting purposes. Fiscal 2020 consists of 52 weeks and will end on December 29, 2020. Fiscal 2019, which ended on December 31, 2019, was also a 52-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

The Company is subject to risks and uncertainties as a result of the outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic which was declared a National Public Health Emergency on March 13, 2020. We have experienced significant disruptions to our business due to suggested and mandated social distancing and shelter-in-place orders, which resulted in the temporary closure of a number of restaurants across our portfolio, while the remaining locations shifted to an off-premise only operating model on an interim basis. In late April 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms. As of June 22, 2020, we have reopened dining rooms in 194 locations across our concepts, however we will be operating under capacity restrictions for some time as social distancing protocols remain in place. As of March 31, 2020 and June 22, 2020 respectively, 33 and 19 of our restaurants were temporarily closed and 261 and 81 restaurants were operating in an off-premise only model.

In response to the pandemic, the Company and its Board of Directors implemented the following measures to preserve liquidity and enhance financial flexibility:

- Eliminated non-essential capital expenditures and expenses;
- Suspended new unit development;
- Reduced board, executive and corporate support staff compensation;
- Furloughed approximately 41,000 hourly staff members;

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- Engaged in discussions with our landlords regarding ongoing rent obligations, including the potential deferral, abatement and/or restructuring of rent otherwise payable during the period of the COVID-19 pandemic related closure;
- Increased borrowings under our revolving credit facility;
- Raised additional equity capital; and
- Suspended the dividend on our common stock and share repurchases.

We cannot predict how long the COVID-19 pandemic will last or whether it will reoccur, what additional restrictions may be enacted, to what extent we can maintain off-premise sales volumes or if individuals will be comfortable returning to our dining rooms during or following social distancing protocols, and what long-lasting effects the COVID-19 pandemic may have on the restaurants industry as a whole. The extent of the reopening process, along with the potential impact of the COVID-19 pandemic on consumer spending behavior, will determine the significance of the impact to our operating results and financial position.

In addition, these considerable developments have triggered the need to perform impairment assessments of our long-lived assets, goodwill and other intangible assets and a revaluation of contingent consideration associated with the acquisition of Fox Restaurant Concepts LLC. Future changes in estimates could further impact the carrying value of these items. (See Notes 3 and 4 for further discussion of impairment of long-lived and intangible assets, respectively. See Note 8 for further discussion of the revaluation of contingent consideration.)

See “Risk Factors” included in Part II, Item 1A for further discussion of risks associated with the COVID-19 pandemic.

Derivative Financial Instruments

We recognize derivative financial instruments on the balance sheet at fair value under a Level 2 categorization. Our only derivative is an interest rate swap which is designated as a cash flow hedge. Therefore, the effective portion of the changes in fair value are recognized in accumulated other comprehensive income until the hedged item is recognized in earnings, and the ineffective portion of changes in the fair value are immediately recognized in earnings as interest expense. We classify cash inflows and outflows from derivatives within operating activities on the consolidated statements of cash flows. See Note 7 for further discussion of this interest rate swap.

Recent Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board (“FASB”) issued ASU 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement. The update eliminates, adds and modifies certain disclosure requirements for fair value measurements. We adopted this standard as of the beginning of fiscal 2020 and such adoption did not have a significant impact on our consolidated financial statements.

2. Inventories

Inventories consisted of (in thousands):

	March 31, 2020	December 31, 2019
Restaurant food and supplies	\$ 23,131	\$ 25,057
Bakery finished goods and work in progress	18,247	16,000
Bakery raw materials and supplies	6,444	6,168
Total	<u>\$ 47,822</u>	<u>\$ 47,225</u>

3. Impairment of Long-Lived Assets

We assess the potential impairment of our long-lived assets on an annual basis or whenever events or changes in circumstances indicate the carrying value of the assets or asset group may not be recoverable. Due to the significant impact of the COVID-19 pandemic on our operations, we determined it was necessary to perform an interim test of our long-lived assets during the first quarter of fiscal 2020. Based on the results of these assessments, we recorded \$8.9 million of expense primarily related to the impairment of one The Cheesecake Factory, one North Italia, two Other FRC and four Other restaurants. These amounts are recorded in impairment of assets and lease terminations on the consolidated statements of income.

4. Intangible Assets, net

The following table presents the components of our intangible assets, net (in thousands):

	March 31, 2020	December 31, 2019
Indefinite-lived intangible assets:		
Goodwill	\$ 1,451	\$ 78,355
Trade names and trademarks	233,567	337,027
Transferable alcoholic beverage licenses	8,545	8,575
Total indefinite-lived intangible assets	243,563	423,957
Definite-lived intangible assets, net:		
Licensing agreements	7,627	10,060
Non-transferable alcoholic beverage licenses	3,211	3,190
Total definite-lived intangible assets	10,838	13,250
Total intangible assets, net	\$ 254,401	\$ 437,207

During the first quarter of fiscal 2020, we finalized our purchase accounting for the Acquisitions, increasing goodwill by \$2.5 million with an offsetting decrease in trade names and trademarks.

Goodwill and other indefinite-lived intangible assets are tested for impairment annually as of the first day of our fiscal fourth quarter or on an interim basis if events or changes in circumstances between annual tests indicate a potential impairment. Definite-lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable based on estimated undiscounted future cash flows.

Due to the decrease in our stock price coupled with the dining room closures related to the COVID-19 pandemic and significant decline to the equity value of our peers and overall U.S. stock market, we determined it was necessary to perform an interim assessment of our indefinite and definite-lived intangible assets during the first quarter of fiscal 2020. For the goodwill impairment test, the estimated fair value of the reporting units was determined using a blend of the income and market capitalization approaches. For the income approach, we performed a discounted cash flow analysis. The fair value of the other indefinite-lived assets was estimated using the relief from royalty method. There were a number of estimates and significant judgments made by management in performing these evaluations, such as future unit growth, average unit volumes, cash flows and discount rates. Accordingly, actual results could vary significantly from such estimates. Based on the results of these assessments, we recorded impairment expense of \$79.4 million, \$101.0 million and \$2.3 million related to goodwill, trade names and trademarks, and licensing agreements, respectively. More than half of the total impairment amount was driven by the impact on our market capitalization, with the balance related to lower future cash flow estimates. The reduced projections stemmed primarily from our decision to delay fiscal 2020 unit development, thereby moving our expected unit growth trajectory out by one year. The cash flow estimates assumed that average unit volumes and margins would substantially return to pre-COVID-19 levels by mid-fiscal 2021.

5. Gift Cards

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

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Gift card liabilities:		
Beginning balance	\$ 187,978	\$ 172,336
Activations	17,340	20,373
Redemptions and breakage	(44,103)	(46,964)
Ending balance	\$ 161,215	\$ 145,745

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Gift card contract assets: ⁽¹⁾		
Beginning balance	\$ 23,172	\$ 23,388
Deferrals	2,203	2,596
Amortization	(4,690)	(4,711)
Ending balance	<u>\$ 20,685</u>	<u>\$ 21,273</u>

(1) Included in prepaid expenses on the condensed consolidated balance sheets.

6. Leases

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

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Operating	\$ 33,041	\$ 26,427
Variable	15,828	16,335
Short-term	129	77
Total	<u>\$ 48,998</u>	<u>\$ 42,839</u>

Supplemental information related to leases (in thousands, except percentages):

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 30,760	\$ 24,213
Right-of-use assets obtained in exchange for new operating lease liabilities	14,929	5,768

7. Long-Term Debt

On July 30, 2019, we entered into a Third Amended and Restated Loan Agreement (the "Facility"), which amends and restates in its entirety our prior Second Amended and Restated Loan Agreement dated as of December 22, 2015. The Facility, which terminates on July 30, 2024, provides us with revolving loan commitments that total \$400 million (of which \$40 million may be used for issuances of letters of credit). The Facility contains a commitment increase feature that could provide for an additional \$200 million in available credit upon our request and subject to the participating lenders electing to increase their commitments or new lenders being added to the Facility. At March 31, 2020, we had net availability for borrowings of \$0.6 million, based on a \$380.0 million outstanding debt balance and \$19.4 million in standby letters of credit. During the first quarter of fiscal 2020, we increased our borrowings under the Facility to bolster our cash position and enhance financial flexibility given the impact of the COVID-19 pandemic on our operations.

At March 31, 2020, we were subject to certain financial covenants under the Facility requiring us to maintain (i) a maximum "Net Adjusted Leverage Ratio" of 4.75 and (ii) a minimum ratio of EBITDAR to interest and rent expense of 1.9 ("EBITDAR Ratio"), as well as customary events of default that, if triggered, could result in acceleration of the maturity of the Facility. The Facility also limits cash 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.

At March 31, 2020, borrowings under the Facility bore interest, at our option, at a rate equal to either: (i) the adjusted LIBO Rate (as customarily defined) (the “Adjusted LIBO Rate”) plus a margin that is based on our net adjusted leverage ratio, or (ii) the sum of (a) the highest of (1) the rate of interest last quoted by The Wall Street Journal as the prime rate in effect in the United States, (2) the greater of the rate calculated by the Federal Reserve Bank of New York as the effective federal funds rate or the rate that is published by the Federal Reserve Bank of New York as an overnight bank funding rate, in either case plus 0.5%, and (3) the one-month Adjusted LIBO Rate plus 1.0%, plus (b) a margin that is based on our net adjusted leverage ratio. Letters of credit issued under the Facility bear fees that are equivalent to the interest rate margin that is applicable to revolving loans that bear interest at the adjusted LIBO Rate plus other customary fees charged by the issuing bank. Under the Facility, we paid certain customary loan origination fees and will pay an unused fee on the unused portion of the Facility that is also based on our Net Adjusted Leverage Ratio. Our Net Adjusted Leverage and EBITDAR Ratios were 4.3 and 2.3, respectively, at March 31, 2020, and we were in compliance with all covenants in effect at that date.

Our obligations under the Facility are unsecured. Certain of our material subsidiaries have guaranteed our obligations under the Facility. The Facility will be used for our general corporate purposes, including for the issuance of standby letters of credit to support our self-insurance programs, and to fund dividends, stock repurchases and permitted acquisitions.

As further discussed in Note 15, on May 1, 2020, we amended the Facility to provide additional financial flexibility, including relief of certain of the covenants discussed above.

On March 13, 2020, we entered into an interest rate swap agreement to manage our exposure to interest rate movements on our Facility. The agreement became effective on April 1, 2020 and matures on April 1, 2025. The interest rate swap entitles us to receive a variable rate of interest based on the one-month LIBO rate in exchange for the payment of a fixed interest rate of 0.802%. The notional amount of the swap agreement is \$280.0 million through March 31, 2023 and \$140.0 million from April 1, 2023 through April 1, 2025. The differences between the variable LIBO rate and the interest rate swap rate are settled monthly. We did not make any payments to settle the interest rate swap during the three months ended March 31, 2020. At March 31, 2020, the fair value of our interest rate swap was a liability of \$3.1 million and was included in long-term other liabilities in the condensed consolidated balance sheet. Changes in the valuation of the interest rate swap were included as a component of other comprehensive income and will be reclassified to earnings as realized.

We classified this interest rate swap within Level 2 of the valuation hierarchy described in Note 8. Our counterparty under this arrangement provided monthly statements of the market values of these instruments based on significant inputs that were observable or could be derived principally from, or corroborated by, observable market data for substantially the full term of the asset or liability. The impact on the derivative liabilities for the Company’s and the counterparty’s non-performance risk to the derivative trades was considered when measuring the fair value of derivative liabilities.

8. 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

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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):

	March 31, 2020		
	Level 1	Level 2	Level 3
Assets (Liabilities)			
Non-qualified deferred compensation assets	\$ 63,836	\$ —	\$ —
Non-qualified deferred compensation liabilities	(64,679)	—	—
Interest rate swap	—	(3,141)	—
Acquisition-related deferred consideration	—	(55,405)	—
Acquisition-related contingent consideration and compensation liabilities	—	—	(7,280)

	December 31, 2019		
	Level 1	Level 2	Level 3
Assets (Liabilities)			
Non-qualified deferred compensation assets	\$ 77,228	\$ —	\$ —
Non-qualified deferred compensation liabilities	(76,255)	—	—
Acquisition-related deferred consideration	—	(53,933)	—
Acquisition-related contingent consideration and compensation liabilities	—	—	(13,218)

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 was \$ 0 to \$ 35.6 million. Results could change materially if different estimates and assumptions were used. 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):

Balance, December 31, 2019	\$ 13,218
Change in fair value	(5,938)
Balance, March 31, 2020	<u>\$ 7,280</u>

The significant change in the fair value of the contingent consideration during the first quarter of fiscal 2020 related to the impact of the COVID-19 pandemic on the estimated cash flows used in the valuation, primarily stemming from the delay of future new restaurant openings.

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

9. 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 June 11, 2020, the DLSE postponed the hearing on the Company's appeal due to safety concerns related to the COVID-19 pandemic. It is not possible at this time to reasonably estimate the outcome of or any potential liability from this matter and, accordingly, we have not reserved for any potential future payments.

On June 22, 2018, the Internal Revenue Service issued a Notice of Deficiency in which they disallowed \$8.0 million of our §199 Domestic Production Activities Deduction for tax years 2010, 2011 and 2012. On September 11, 2018 we petitioned the United States Tax Court for a redetermination of the deficiency. The tax court has assigned docket number 18150-18 to our case. We intend to vigorously defend our position in litigation and based on our analysis of the law, regulations and relevant facts, we have not reserved for any potential future payments.

Within the ordinary course of our business, we are subject to private lawsuits, government audits, administrative proceedings and other claims. These matters typically involve claims from customers, staff members and others related to operational and employment issues common to the foodservice industry. A number of these claims may exist at any given time, and some of the claims may be pled as class actions. From time to time, we are also involved in lawsuits with respect to infringements of, or challenges to, our registered trademarks and other intellectual property, both domestically and abroad. We could be affected by adverse publicity and litigation costs resulting from such allegations, regardless of whether they are valid or whether we are legally determined to be liable.

At this time, we believe that the amount of reasonably possible losses resulting from final disposition of any pending lawsuits, audits, proceedings and claims will not have a material adverse effect individually or in the aggregate on our financial position, results of operations or liquidity. It is possible, however, that our future results of operations for a particular quarter or fiscal year could be impacted by changes in circumstances relating to lawsuits, audits, proceedings or claims. Legal costs related to such claims are expensed as incurred.

10. Stockholders' Equity

On February 18, 2020, our Board of Directors ("Board") approved a quarterly cash dividend of \$0.36 per share that was paid on March 20, 2020 to the stockholders of record at the close of business on March 9, 2020. 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 Facility and applicable law, and such other factors that our Board considers relevant.

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 53.0 million shares at a total cost of \$1,695.7 million through March 31, 2020, including 0.1 million shares at a cost of \$2.6 million repurchased during the first quarter of fiscal 2020. Our objectives regarding share repurchases are to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. Shares may be repurchased in the open market or through privately negotiated transactions at times and prices considered appropriate by us. We make the determination to repurchase shares 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 Acquisitions, our share price and current market conditions. The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the Facility that limit share repurchases based on a defined ratio.

To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of our Facility, as amended on May 1, 2020, our Board of Directors suspended the quarterly dividend on our common stock, as well as share repurchases. (See Notes 7 and 15 for further discussion of our Facility.) As further discussed in Note 15, to increase our liquidity given the impact of the COVID-19 pandemic on our operations, we sold 200,000 shares of Series A Convertible Preferred Stock on April 20, 2020 for an aggregate purchase price of \$200 million.

11. Stock-Based Compensation

On April 5, 2017, our Board approved an amendment to our 2010 Stock Incentive Plan to increase the number of shares of common stock reserved for grant under the plan to 12.7 million shares from 9.2 million shares. This amendment was approved by our stockholders at our annual meeting held on June 8, 2017. On April 4, 2019, our Board adopted The Cheesecake Factory Incorporated Stock Incentive Plan. This plan was approved by our stockholders at our annual meeting held on May 30, 2019. The maximum number of shares of common stock available for grant under this plan is 4.8 million shares plus 1.8 million shares, which, as of May 30, 2019, were available for issuance under our 2010 Stock Incentive Plan plus 1.9 million shares which may become available for issuance under The Cheesecake Factory Incorporated Stock Incentive Plan due to forfeiture or lapse of awards under our 2010 Stock Incentive Plan following May 30, 2019. Approximately 4.8 million of these shares were available for grant as of March 31, 2020.

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

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Labor expenses	\$ 1,966	\$ 1,720
Other operating costs and expenses	70	69
General and administrative expenses	3,471	4,058
Total stock-based compensation	5,507	5,847
Income tax benefit	1,353	1,438
Total stock-based compensation, net of taxes	\$ 4,154	\$ 4,409
Capitalized stock-based compensation ⁽¹⁾	\$ 40	\$ 63

- (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

The weighted-average fair value at the grant date for options issued during the first quarter of fiscal 2020 and 2019 was \$6.66 and \$9.90 per share, respectively. The fair value of options was estimated utilizing the Black-Scholes valuation model with the following weighted-average assumptions for the first quarter of fiscal 2020 and 2019, respectively: (a) an expected option term of 6.9 years in both periods, (b) expected stock price volatility of 25.7% and 26.3%, (c) a risk-free interest rate of 1.5% and 2.6%, and (d) a dividend yield on our stock of 3.6% and 2.9%.

Stock option activity during the thirteen weeks ended March 31, 2020 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 December 31, 2019	1,829	\$ 47.32	4.3	\$ 844
Granted	654	40.16		
Exercised	(4)	29.79		
Forfeited or cancelled	—	—		
Outstanding at March 31, 2020	2,479	\$ 45.46	5.5	\$ 10,687
Exercisable at March 31, 2020	1,239	\$ 46.79	3.0	\$ 6,380

- (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.

The total intrinsic value of options exercised during the thirteen weeks ended March 31, 2020 and April 2, 2019 was \$35.6 million and \$3.4 million, respectively. As of March 31, 2020, total unrecognized stock-based compensation expense related to unvested stock options was \$10.5 million, which we expect to recognize over a weighted-average period of approximately 4.0 years.

Restricted Shares and Restricted Share Units

Restricted share and restricted share unit activity during the thirteen weeks ended March 31, 2020 was as follows:

	Shares (In thousands)	Weighted Average Fair Value (Per share)
Outstanding at December 31, 2019	1,764	\$ 47.76
Granted	579	40.01
Vested	(208)	51.38
Forfeited	(70)	55.70
Outstanding at March 31, 2020	<u>2,065</u>	<u>\$ 44.96</u>

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 first quarter of fiscal 2020 and 2019 was \$40.01 and \$46.03, respectively. The fair value of shares that vested during the first quarter of fiscal 2020 and 2019 was \$10.4 million and \$11.1 million, respectively. As of March 31, 2020, total unrecognized stock-based compensation expense related to unvested restricted shares and restricted share units was \$47.3 million, which we expect to recognize over a weighted-average period of approximately 3.4 years.

12. Income Taxes

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law. Intended to provide economic relief to those impacted by the COVID-19 pandemic, the CARES Act includes provisions allowing for the carryback of net operating losses generated in fiscal years 2018, 2019 and 2020 and technical amendments regarding the expensing of qualified improvement property (“QIP”). As a result of the CARES Act, we expect to carry back our anticipated fiscal 2020 loss and reduce taxes payable for accelerated depreciation on QIP placed in service during fiscal 2018 and 2019. We expect to file carryback claims during fiscal 2021, and we estimate that these claims will generate cash refunds of approximately \$36 million.

Our effective income tax rate was 28.9% and 6.0% for the first quarters of fiscal 2020 and 2019, respectively. The increase resulted primarily from a lower proportion of employment credits in relation to pre-tax (loss)/income and a benefit arising from the expected carryback of our anticipated fiscal 2020 loss to prior years when the federal statutory rate was 35%. Without the carryback provisions of the CARES Act, we would expect the fiscal 2020 loss to provide a tax benefit at the statutory rate of 21%. The 14% rate benefit is reflected primarily in the annual effective tax rate, although the portion representing prior year temporary differences that are estimated to reverse in fiscal 2020 and become part of the fiscal 2020 loss carryback was recognized as a discrete item in the first quarter of fiscal 2020.

We expect to have federal credit carryforwards of approximately \$30 million at the end of fiscal 2020 compared to \$14.3 million at December 31, 2019. This increase was driven primarily by our fiscal 2020 loss. We assess the available evidence to estimate if sufficient future taxable income will be generated to use these carryforwards, which have a 20-year carryforward period and are utilized on a first-in, first-out basis. Based on this evaluation, we concluded that no valuation allowance is required. This assessment could change if estimates of future taxable income during the carryforward period are revised.

As a result of the goodwill impairment discussed in Note 4, we recorded a deferred tax asset of \$17.2 million in the first quarter of fiscal 2020.

13. Net (Loss)/Income Per Share

Basic net income per share is computed by dividing net income available to common stockholders by the weighted average number of common shares outstanding during the period, reduced by unvested restricted stock awards. As of March 31, 2020 and April 2, 2019, 2.1 million shares and 1.8 million shares, respectively, of restricted stock issued to staff members were unvested and, therefore, excluded from the calculation of basic earnings per share for the fiscal periods ended on those dates. Diluted net income per share includes the dilutive effect of outstanding equity awards, calculated using the treasury stock method. Shares of common stock equivalents of 3.8 million and 2.0 million as of March 31, 2020 and April 2, 2019, respectively, were excluded from the diluted calculation due to their anti-dilutive effect.

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
	(In thousands, except per share data)	
Net (loss)/income	\$ (136,163)	\$ 26,984
Basic weighted average shares outstanding	43,773	44,255
Dilutive effect of equity awards	—	729
Diluted weighted average shares outstanding	43,773	44,984
Basic net (loss)/income per share	\$ (3.11)	\$ 0.61
Diluted net (loss)/income per share	\$ (3.11)	\$ 0.60

14. 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, our bakery division and Grand Lux Cafe. Based on quantitative thresholds set forth in FASB 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, including Flower Child, along with our businesses that don't qualify as operating segments are combined in Other. Unallocated corporate expenses, capital expenditures and assets, which were previously classified in a separate Corporate line, are also combined in Other. In addition, gift card costs, which were previously classified in The Cheesecake Factory restaurants reportable segment, are combined in Other. Corresponding prior year balances were reclassified to conform to the current year presentation.

Segment information is presented below (in thousands):

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Revenues:		
The Cheesecake Factory restaurants	\$ 488,471	\$ 548,633
North Italia	30,512	—
Other FRC	35,583	—
Other	60,540	50,848
Total	<u>\$ 615,106</u>	<u>\$ 599,481</u>
Income/(loss) from operations: ⁽¹⁾		
The Cheesecake Factory restaurants	\$ 39,324	\$ 65,939
North Italia	(72,086)	—
Other FRC	(69,964)	—
Other	(87,332)	(35,791)
Total	<u>\$ (190,058)</u>	<u>\$ 30,148</u>
Depreciation and amortization:		
The Cheesecake Factory restaurants	\$ 17,277	\$ 17,608
North Italia	965	—
Other FRC	1,201	—
Other	4,119	3,754
Total	<u>\$ 23,562</u>	<u>\$ 21,362</u>
Preopening costs:		
The Cheesecake Factory restaurants	\$ 1,414	\$ 1,481
North Italia	953	—
Other FRC	(159)	—
Other	911	649
Total	<u>\$ 3,119</u>	<u>\$ 2,130</u>
Capital expenditures:		
The Cheesecake Factory restaurants	\$ 8,598	\$ 11,892
North Italia	2,964	—
Other FRC	1,104	—
Other	3,109	1,459
Total	<u>\$ 15,775</u>	<u>\$ 13,351</u>

	March 31, 2020	December 31, 2019
Total assets: ⁽¹⁾		
The Cheesecake Factory restaurants	\$ 1,638,660	\$ 1,701,418
North Italia	254,939	297,840
Other FRC	271,700	310,414
Other	510,483	530,921
Total	<u>\$ 2,675,782</u>	<u>\$ 2,840,593</u>

- (1) During the first quarter of fiscal 2020, we recorded impairment of assets and lease terminations expense of \$0.6 million for The Cheesecake Factory restaurants, \$71.5 million for North Italia, \$72.9 million for Other FRC and \$46.8 million for Other (See Note 3 and 4 for further discussion of these charges.)

15. Subsequent Events

On May 1, 2020 (the “Effective Date”), we entered into a First Amendment (the “Amendment”) to the Facility (as amended by the Amendment, the “Amended Facility”). The Amended Facility provides for, among other things, (i) a covenant relief period (the “Covenant Relief Period”) from the Effective Date until we demonstrate compliance with our financial covenants as of the quarter ending on or after June 29, 2021, during which we are not required to comply with financial covenants requiring maintenance of a maximum ratio of net adjusted debt to EBITDAR (the “Net Adjusted Leverage Ratio”) of 4.75 to 1.00 and a minimum ratio of EBITDAR to interest and rent expense of 1.90 to 1.00 (the “EBITDAR to Interest and Rental Expense Ratio”), (ii) a substitution of the Net Adjusted Leverage Ratio and EBITDAR to Interest and Rental Expense Ratio covenants with a liquidity covenant for the calendar month ending May 31, 2020 and continuing through the calendar month ending February 28, 2021 that requires our liquidity to be at least \$65,000,000 at the end of each calendar month (with liquidity being the sum of (a) unrestricted cash and cash equivalents and (b) the unused portion of the revolving facility) (and solely for the fiscal quarter ending March 30, 2021, we can meet either (x) both the Net Adjusted Leverage Ratio test and the EBITDAR to Interest and Rental Expense Ratio test or (y) meet the minimum liquidity test), with the minimum liquidity covenant to be tested again from the calendar month ending April 30, 2021 until we demonstrate compliance with the Net Adjusted Leverage Ratio and EBITDAR to Interest and Rental Expense Ratio for a fiscal quarter ending on or after March 30, 2021, (iii) a lowered amount of permitted increases to revolving loan commitments under the Amended Facility during the Covenant Relief Period from \$200,000,000 to \$125,000,000, (iv) a limit on capital expenditures not to exceed \$90,000,000 during the Covenant Relief Period, and (v) increased limitations on our ability to make restricted payments, incur debt, and consummate acquisitions during the Covenant Relief Period.

Borrowings under the Amended Facility during the Covenant Relief Period bear interest, at our option, at a rate equal to either: (i) the adjusted LIBO Rate (as customarily defined, the “Adjusted LIBO Rate”) plus 2.5%, or (ii) the sum of (a) the highest of (1) the rate of interest last quoted by The Wall Street Journal as the prime rate in effect in the United States, (2) the greater of the rate calculated by the Federal Reserve Bank of New York as the effective federal funds rate or the rate that is published by the Federal Reserve Bank of New York as an overnight bank funding rate, in either case plus 0.5%, and (3) the one-month Adjusted LIBO Rate plus 1.0%, plus (b) 1.50%. We will also pay a fee of 0.40% on the daily amount of unused commitments under the Amended Facility.

On April 20, 2020, to increase our liquidity given the impact of the COVID-19 pandemic on our operations, we sold 200,000 shares of Series A Convertible Preferred Stock for an aggregate purchase price of \$200 million. In connection with the closing, we paid a commitment fee of \$2 million to the purchaser. The convertible preferred stock ranks senior to our common stock with respect to dividends and distributions on liquidation, winding-up and dissolution. The holders are entitled to dividends on the purchase price, without giving effect to any commitment fee, plus all accrued and unpaid dividends at the rate of 9.5% per annum, payable in cash or, at our option, paid-in-kind. The holders are also entitled to participate in dividends declared or paid on our common stock on an as-converted basis.

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

Forward-Looking Statements

Certain information included in this Form 10-Q and other materials filed or to be filed by us with the 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, the effects of the COVID-19 pandemic on our financial condition and our results of operation, financial guidance and projections and statements with respect to the acquisition of North Italia and Fox Restaurant Concepts LLC (“FRC”) and expectations regarding accelerated and diversified revenue growth as a result of the acquisition of North Italia and FRC, as well as expectations of our future financial condition, results of operations, cash flows, plans, targets, goals, objectives, performance, growth potential, competitive position and business; and our ability to: leverage our competitive strengths, including investing in or acquiring new restaurant concepts and expanding The Cheesecake Factory® brand to other retail opportunities; 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, insurance costs and legal expenses, and stabilize margins; grow earnings; remain relevant to consumers; attract and retain qualified management and other staff; manage risks associated with the magnitude and complexity of regulations in the jurisdictions where our restaurants are located; 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; operate Social Monk Asian Kitchen; and utilize our capital effectively and continue to increase cash dividends and repurchase our shares. These forward-looking statements may be affected by factors outside of our control including: the rapidly evolving nature of the COVID-19 pandemic and related containment measures, including the potential for a complete shutdown of our restaurants, international licensee restaurants and our bakery operations; economic, public health and political conditions that impact consumer confidence and spending, including the impact of the COVID-19 pandemic and other health epidemics or pandemics on the global economy; changes in laws impacting our business, including laws and regulations related to the COVID-19 pandemic impacting restaurant operations and customer access to off- and on-premise dining, and increases in minimum wages and benefit costs; the economic health of our landlords and other tenants in retail centers in which its restaurants are located, and our ability to successfully continue its lease arrangements with landlords; unanticipated costs that may arise in connection with a return to normal course of business, including potential negative impacts from furlough actions; the economic health of suppliers, licensees, vendors and other third parties providing goods or services to us; the timing of the resumption of our new unit development; compliance with debt covenants; strategic capital allocation decisions including share repurchases and dividends; the ability to achieve projected financial results; economic and political conditions that impact consumer confidence and spending; impact of tax reform legislation; acceptance and success of The Cheesecake Factory in international markets; acceptance and success of North Italia and the FRC concepts, Social Monk Asian Kitchen and other 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, including increases in minimum wages and benefit costs; 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 risk, 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 December 31, 2019.) 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.

COVID-19 Pandemic

This 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 December 31, 2019: 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.

The Company is subject to risks and uncertainties as a result of the outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic which was declared a National Public Health Emergency on March 13, 2020. We have experienced significant disruptions to our business due to suggested and mandated social distancing and shelter-in-place orders, which resulted in the temporary closure of a number of restaurants across our portfolio, while the remaining locations shifted to an off-premise only operating model on an interim basis. In late April 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms. As of June 22, 2020, we have reopened dining rooms in 194 locations across our concepts, however we will be operating under capacity restrictions for some time as social distancing protocols remain in place. As of March 31, 2020 and June 22, 2020 respectively, 33 and 19 of our restaurants were temporarily closed and 261 and 81 restaurants were operating in an off-premise only model.

In response to the pandemic, the Company and its Board of Directors implemented the following measures to preserve liquidity and enhance financial flexibility:

- Eliminated non-essential capital expenditures and expenses;
- Suspended new unit development;
- Reduced board, executive and corporate support staff compensation;
- Furloughed approximately 41,000 hourly staff members;
- Engaged in discussions with our landlords regarding ongoing rent obligations, including the potential deferral, abatement and/or restructuring of rent otherwise payable during the period of the COVID-19 pandemic related closure;
- Increased borrowings under our revolving credit facility;
- Raised additional equity capital; and
- Suspended the dividend on our common stock and share repurchases.

We cannot predict how long the COVID-19 pandemic will last or whether it will reoccur, what additional restrictions may be enacted, to what extent we can maintain off-premise sales volumes or if individuals will be comfortable returning to our dining rooms during or following social distancing protocols, and what long-lasting effects the COVID-19 pandemic may have on the restaurants industry as a whole. The extent of the reopening process, along with the potential impact of the COVID-19 pandemic on consumer spending behavior, will determine the significance of the impact to our operating results and financial position.

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In addition, these considerable developments have triggered the need to perform impairment assessments of our long-lived assets, goodwill and other intangible assets and a revaluation of contingent consideration associated with the acquisition of Fox Restaurant Concepts LLC. Future changes in estimates could further impact the carrying value of these items. (See Notes 3 and 4 of Notes to Condensed Consolidated Financial Statements in Part 1, Item 1 of this report for further discussion of impairment of long-lived and intangible assets, respectively. See Note 9 of Notes to Condensed Consolidated Financial Statements in Part 1, Item 1 of this report for further discussion of the revaluation of contingent consideration.)

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 294 restaurants throughout the United States and Canada under brands including The Cheesecake Factory®, North Italia® and a collection within the FRC subsidiary. As of March 31, 2020 and June 22, 2020 respectively, 33 and 19 of our restaurants were temporarily closed and 261 and 81 locations were operating in an off-premise only model due to the COVID-19 pandemic. Internationally, 26 The Cheesecake Factory® restaurants operate under licensing agreements. As of March 31, 2020 and June 22, 2020 respectively, six and one were temporarily closed. 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.

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. For The Cheesecake Factory concept, we target an average cash-on-cash return on investment of approximately 20% to 25% at the unit level. We target an average cash-on-cash return on investment of about 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. Due to the COVID-19 pandemic, we have suspended new unit development until more clarity on the restaurant industry operating environment emerges. We currently have 7 locations under development. However, we are monitoring operating conditions in their respective markets to determine when to move forward with these new unit openings.

Our overall revenue growth is primarily driven by revenues from new restaurant openings and increases in comparable restaurant sales. Changes in comparable restaurant sales come from variations in customer traffic, as well as in average check.

For The Cheesecake Factory concept, our strategy is to increase comparable restaurant sales by growing average check and stabilizing 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. We are continuing our efforts on a number of initiatives, including a greater focus on increasing customer throughput in our restaurants, leveraging the success of 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, enhancing our training programs and leveraging our customer satisfaction measurement platform.

Average check is driven by menu price increases and/or changes in menu mix. We generally update The Cheesecake Factory restaurant menus twice a year, and our philosophy is to use price increases to help offset key operating cost increases in a manner that balances protecting both our margins and customer traffic levels. We plan to continue targeting menu price increases of approximately 2% to 3% annually, utilizing a market-based strategy to help mitigate cost pressure in higher-wage geographies, and expect near-term increases to be at the higher end of this range.

On October 2, 2019, we completed the acquisitions of North Italia and FRC, including Flower Child (the “Acquisitions”), which we expect will accelerate and diversify our revenue growth once the restaurant operating environment stabilizes following the COVID-19 pandemic.

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 margins, and longer-term to drive margin expansion, by maintaining flat 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.

When the restaurant industry operating environment normalizes from the COVID-19 impact, we expect the Company to return to positive cash flow generation. At that point, we plan to maintain a balanced capital allocation strategy, comprised of: investing in new restaurants that are expected to meet our targeted returns, repaying borrowings under our \$400 million unsecured revolving credit facility (the “Facility”) and reinstating our dividend and share repurchase program, the latter of which offsets dilution from our equity compensation program and supports our earnings per share growth. To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of our Facility as amended by a First Amendment (the “Amendment”), dated May 1, 2020, to the Facility (the Facility, as amended by the Amendment, the “Amended Facility”), our Board of Directors suspended the quarterly dividend on our common stock, as well as share repurchases. Our ability to declare dividends and repurchase shares in the future will be subject to financial covenants under the Amended Facility, among other factors.

Longer-term, we believe our domestic revenue growth (comprised of our annual unit growth and comparable sales growth), combined with international expansion, planned debt repayment 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 March 31, 2020	Thirteen Weeks Ended April 2, 2019
Revenues	100.0 %	100.0 %
Costs and expenses:		
Cost of sales	22.9	22.7
Labor expenses	38.6	36.2
Other operating costs and expenses	27.3	25.6
General and administrative expenses	7.1	6.5
Depreciation and amortization expenses	3.8	3.6
Impairment of assets and lease terminations	31.2	—
Acquisition-related costs	0.2	—
Acquisition-related contingent consideration and amortization	(0.7)	—
Preopening costs	0.5	0.4
Total costs and expenses	130.9	95.0
(Loss)/income from operations	(30.9)	5.0
Loss on investments in unconsolidated affiliates	—	(0.2)
Interest and other expense, net	(0.2)	0.0
(Loss)/income before income taxes	(31.1)	4.8
Income tax (benefit)/provision	(9.0)	0.3
Net (loss)/income	(22.1)%	4.5 %

Thirteen Weeks Ended March 31, 2020 Compared to Thirteen Weeks Ended April 2, 2019

Revenues

Revenues increased 2.6% to \$615.1 million for the thirteen weeks ended March 31, 2020 compared to \$599.5 million for the thirteen weeks ended April 2, 2019, primarily due to additional revenue related to the acquired restaurants and new restaurant openings, partially offset by a decline in comparable restaurant sales, reflecting the March 2020 impact of the COVID-19 pandemic.

Revenue contribution from the acquired concepts in the first quarter of fiscal 2020 totaled \$84.1 million. The Cheesecake Factory comparable sales declined by 12.9%, or \$68.8 million, from the first quarter of fiscal 2019, reflecting 3.3% growth through February, offset by a 46.4% decline in March due to the impact of the COVID-19 pandemic. The Cheesecake Factory comparable sales decline was driven by a decline in customer traffic of 18%, partially offset by average check growth of 5.1% (based on an increase of 3.2% in menu pricing and a 1.9% positive change in mix). We implemented effective menu price increases of approximately 1.5% and 1.6% in the first quarter of fiscal 2020 and third quarter of fiscal 2019, respectively. The Cheesecake Factory average sales per restaurant operating week decreased 13.0% to \$182,674 in the first quarter of fiscal 2020 from \$209,963 in the first quarter of fiscal 2019. Total operating weeks at The Cheesecake Factory restaurants increased 2.3% to 2,674 in the first quarter of fiscal 2020 compared to 2,613 in the prior year. North Italia comparable sales declined approximately 12% during the first quarter of fiscal 2020, reflecting 5% growth through February, offset by a 48% decline in March due to the impact of the COVID-19 pandemic. North Italia average sales per restaurant operating week for the first quarter of fiscal 2020 was \$105,214 based on 290 operating weeks.

The Cheesecake Factory restaurants become eligible to enter the comparable sales base in their 19th month of operation. At March 31, 2020, there were eight The Cheesecake Factory 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. North Italia restaurants become eligible to enter the comparable sales base in their 13th month of operations. At March 31, 2020 there were 10 North Italia restaurants not yet in the comparable sales base.

External bakery sales were \$13.8 million for the first quarter of fiscal 2020 compared to \$12.9 million in the comparable prior year period.

Cost of Sales

Cost of sales consists of food, beverage, retail and bakery production supply costs incurred in conjunction with our restaurant and bakery revenues, and excludes depreciation, which is captured separately in depreciation and amortization expenses. As a percentage of revenues, cost of sales was 22.9% for the first quarter of fiscal 2020 compared to 22.7% for the comparable period of fiscal 2019. Higher produce costs were partially offset by a slight change in mix associated with the Acquisitions.

Labor Expenses

As a percentage of revenues, labor expenses, which include restaurant-level labor costs and bakery direct production labor, including associated fringe benefits, were 38.6% and 36.2% in the first quarters of fiscal 2020 and 2019, respectively. This variance was primarily due to costs associated with the COVID-19 pandemic, including maintaining our full restaurant management team in the reduced sales environment, as well as higher group medical insurance costs reflecting both higher large claims activity and the costs associated with healthcare benefits for our furloughed staff members.

Other Operating Costs and Expenses

Other operating costs and expenses consist of restaurant-level occupancy expenses (rent, common area expenses, insurance, licenses, taxes and utilities), other operating expenses (excluding food costs and labor expenses, which are reported separately) and bakery production overhead and distribution expenses. As a percentage of revenues, other operating costs and expenses were 27.3% and 25.6% for the thirteen weeks ended March 31, 2020 and April 2, 2019, respectively. This variance was primarily driven by sales deleverage, partially offset by lower restaurant incentive compensation costs.

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 7.1% and 6.5% for the first quarters of fiscal 2020 and 2019, respectively. This variance was primarily due to sales deleverage, partially offset by lower corporate incentive compensation costs.

Depreciation and Amortization Expenses

As a percentage of revenues, depreciation and amortization expenses were 3.8% and 3.6% for the first quarters of fiscal 2020 and 2019, respectively.

Impairment of Assets and Lease Terminations

In the first quarter of fiscal 2020, we recorded \$191.9 million of impairment of assets and lease termination expense primarily related to goodwill, trade names, trademarks and licensing agreements associated with the Acquisitions, as well as to long-lived assets for one The Cheesecake Factory, one North Italia, two Other FRC and four Other restaurants. See Notes 3 and 4 of Notes Condensed Consolidated Financial Statements in Part 1, Item 1 of this report for further discussion of our long-lived and intangible assets, respectively. We recorded no impairment of assets and lease terminations expense in the first quarter of fiscal 2019.

Acquisition-Related Costs

In the first quarter of fiscal 2020, we recorded \$1.2 million of costs to effect and integrate the Acquisitions.

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Acquisition-Related Contingent Consideration, Compensation and Amortization

In the first quarter of fiscal 2020, we recorded a benefit of \$4.5 million in acquisition-related contingent consideration, compensation and amortization, reflecting a \$6.0 million decrease in the fair value of the contingent consideration and compensation liabilities related to impact of the COVID-19 pandemic, partially offset by an increase of \$1.5 million in the deferred consideration liability.

Preopening Costs

Preopening costs were \$3.1 million for the thirteen weeks ended March 31, 2020 compared to \$2.1 million in the comparable period of fiscal 2019. We opened one North Italia and one Flower Child in the first quarter of fiscal 2020 compared to one Social Monk Asian Kitchen in the comparable prior year period. 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 are expenses for maintaining a roster of trained managers for pending openings, the associated temporary housing and other costs necessary to relocate managers in alignment with future restaurant opening and operating needs, and corporate travel and support activities. Preopening costs can fluctuate significantly from period to period based on the number and timing of restaurant openings and the specific preopening costs incurred for each restaurant.

Loss on Investment in Unconsolidated Affiliates

Loss on investment in unconsolidated affiliates, which represented our share of pre-acquisition losses incurred by North Italia and Flower Child was \$1.5 million in the first quarter of fiscal 2019. There was no corresponding amount for the first quarter of fiscal 2020 as we acquired the outstanding equity interests in these concepts in the fourth quarter of fiscal 2019.

Interest and Other Income/(Expense), Net

Interest and other income/(expense), net was \$1.5 million of expense for the first quarter of fiscal 2020 compared to \$1,651 of income for the comparable prior year period. This variance was primarily due to increased borrowings on our Facility to effect the Acquisition.

Income Tax (Benefit)/Provision

Our effective income tax rate was 28.9% and 6.0% for the first quarters of fiscal 2020 and 2019, respectively. The increase resulted primarily from a lower proportion of employment credits in relation to pre-tax (loss)/income and a benefit arising from the expected carryback of our anticipated fiscal 2020 loss to prior years when the federal statutory rate was 35%. Without the carryback provisions of the CARES Act, we would expect the fiscal 2020 loss to provide a tax benefit at the statutory rate of 21%. The 14% rate benefit is reflected primarily in the annual effective tax rate, although the portion representing prior year temporary differences that are estimated to reverse in fiscal 2020 and become part of the fiscal 2020 loss carryback was recognized as a discrete item in the first quarter of fiscal 2020.

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 (loss)/income and diluted net (loss)/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 (loss)/income and diluted net (loss)/income per share to the corresponding adjusted measures (in thousands, except per share data):

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Net (loss)/income	\$ (136,163)	\$ 26,984
COVID-19 related costs ⁽¹⁾	3,290	—
Impairment of assets and lease terminations ⁽²⁾	191,896	—
Loss on investments in unconsolidated affiliates ⁽³⁾	—	1,450
Acquisition-related costs ⁽⁴⁾	1,236	—
Acquisition-related contingent consideration, compensation and amortization expenses ⁽⁵⁾	(4,466)	—
Tax effect of adjustments ⁽⁶⁾	(49,908)	(377)
Adjusted net income	<u>\$ 5,885</u>	<u>\$ 28,057</u>
Diluted net (loss)/income per share	\$ (3.11)	\$ 0.60
COVID-19 related costs ⁽¹⁾	0.07	—
Impairment of assets and lease terminations ⁽²⁾	4.38	—
Loss on investments in unconsolidated affiliates ⁽³⁾	—	0.03
Acquisition-related costs ⁽⁴⁾	0.03	—
Acquisition-related contingent consideration, compensation and amortization expenses ⁽⁵⁾	(0.10)	—
Tax effect of adjustments ⁽⁶⁾	(1.14)	(0.01)
Adjusted diluted net income per share ⁽⁷⁾	<u>\$ 0.13</u>	<u>\$ 0.62</u>

- (1) Represents incremental costs associated with the COVID-19 pandemic primarily related to healthcare and meal benefits for furloughed staff members. These costs were recorded in labor expenses and other operating costs and expenses on the consolidated statements of income.
- (2) Primarily represents impairment of goodwill, trade names, trademarks and licensing agreements associated with the Acquisitions, as well as impairment of long-lived assets for one The Cheesecake Factory, one North Italia, two Other FRC and four Other restaurants.
- (3) Represents our share of pre-acquisition losses incurred by North Italia and Flower Child.
- (4) Represents costs incurred to effect and integrate the Acquisitions.
- (5) Represents changes in the fair value of the acquisition-related deferred consideration and contingent consideration and compensation liabilities, as well as amortization of definite-lived licensing agreements.
- (6) Based on the federal statutory rate and an estimated blended state tax rate, the tax effect on all adjustments assumes a 26% tax rate.
- (7) Adjusted diluted net income per share may not add due to rounding.

Liquidity and Capital Resources

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

	Thirteen Weeks Ended March 31, 2020	Thirteen Weeks Ended April 2, 2019
Cash (used in)/provided by operating activities	\$ (33.0)	\$ 33.5
Additions to property and equipment	\$ (15.8)	\$ (13.4)
Growth capital provided to unconsolidated affiliates	\$ —	\$ (14.0)
Net borrowings on credit facility	\$ 90.0	\$ 10.0
Proceeds from exercise of stock options	\$ 0.0	\$ 5.5
Cash dividends paid	\$ (15.8)	\$ (14.6)
Treasury stock purchases	\$ (2.6)	\$ (11.1)

During the thirteen weeks ended March 31, 2020, our cash and cash equivalents increased by \$22.6 million to \$81.0 million. This increase was primarily attributable to borrowings on the Amended Facility, partially offset by cash used in operating activities, additions to property and equipment and dividend payments.

Cash flows from operations decreased by \$66.5 million from the first quarter of fiscal 2020 primarily due the impact of the COVID-19 pandemic. 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. However, as previously discussed, all of our restaurants temporarily closed their dining rooms due to the COVID-19 pandemic, and we may not be able to generate sufficient cash to cover all of our operations until they can reopen at full capacity. In addition, we cannot predict how quickly our guests will return to our restaurants once such restrictions have been lifted or the impact this will have on consumer spending habits.

Capital expenditures were \$15.8 million and \$13.4 million in the first quarter of fiscal 2020 and 2019, respectively. Due to the COVID-19 pandemic, we have suspended new unit development until more clarity on the restaurant industry operating environment emerges. We currently have 7 locations under development. However, we are monitoring operating conditions in their respective markets to determine when to move forward with these new unit openings. We currently estimate cash capital expenditures to be approximately \$5 million per quarter for the remainder of fiscal 2020 for necessary maintenance on our existing restaurants.

As of March 31, 2020, we maintained the Facility, a \$400 million unsecured revolving credit facility, \$40 million of which could be used for issuances of letters of credit. The Facility, which terminates on July 30, 2024, contains a commitment increase feature that could provide for an additional \$200 million in available credit upon our request and the satisfaction of certain conditions. Certain of our material subsidiaries have guaranteed our obligations under the Facility. During the first quarter of fiscal 2020, we increased our borrowings under the Facility to bolster our cash position and enhance financial flexibility. At March 31, 2020, we had net availability for borrowings of \$0.6 million, based on a \$380.0 million outstanding debt balance and \$19.4 million in standby letters of credit. The Facility limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio. As of March 31, 2020, we were in compliance with the covenants set forth in the Facility. (See Note 7 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.) As further discussed in Note 15 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report, on May 1, 2020, we amended the Facility to provide additional financial flexibility.

In fiscal 2012, our Board approved the initiation of a cash dividend to our stockholders, which is subject to quarterly Board approval. 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 Facility and applicable law, and other such factors that the Board considers relevant.

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 53.0 million shares at a total cost of \$1,695.7 million through March 31, 2020, including 0.1 million shares at a cost of \$2.6 million repurchased during the first quarter of fiscal 2020. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. We make the determination to repurchase shares based on several factors, including 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 Acquisitions, our share price and current market conditions. The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the Facility that limit share repurchases based on a defined ratio. Our objectives regarding share repurchases are to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth. (See Note 10 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization and methods.)

To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of our Facility, as amended on May 1, 2020, our Board of Directors suspended the quarterly dividend on our common stock, as well as share repurchases. (See Notes 7 and 15 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our Facility.) In addition, as further discussed in Note 15 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report, to increase our liquidity given the impact of the COVID-19 pandemic on our operations, we sold 200,000 shares of Series A Convertible Preferred Stock on April 20, 2020 for an aggregate purchase price of \$200 million.

The Acquisitions included a provision for contingent consideration which is payable on October 2, 2024 and is based on achievement of revenue and profitability targets for the FRC brands other than North Italia and Flower Child, with considerations made in the event we undergo a change in control or divest any FRC brand (other than North Italia and Flower Child). We are also required to provide financing to FRC in an amount sufficient to support achievement of these targets during the five years ending October 2, 2024.

As of March 31, 2020, 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.

Based on our current projections, we believe that during the upcoming 12 months our cash and cash equivalents, combined with expected cash flows provided by operations, anticipated cash refunds from our net operating loss carryback claims and available borrowings under the Amended Facility, should be sufficient in the aggregate to meet our short-term obligations. See Note 12 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for discussion of our income taxes.

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 included 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 December 31, 2019: 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 the report. Actual results may differ materially from the following discussion based on general conditions in the commodity and financial markets.

We purchase food and other commodities for use in our operations based on market prices established with our suppliers. Many of the commodities purchased by us can be subject to volatility due to market supply and demand factors outside of our control. We mitigate the risk of supply shortages and obtain competitive prices by utilizing multiple qualified suppliers for substantially all of our ingredients and supplies. We 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. We continue to evaluate the possibility of entering into similar arrangements for other commodities and also periodically evaluate hedging vehicles, such as direct financial instruments, to assist us in managing risk and variability associated with such commodities. Although these vehicles may be available to us, as of March 31, 2020, we had chosen not to enter into any hedging contracts due to pricing volatility, excessive risk premiums, hedge inefficiencies or other factors. 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. Commodities 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 and varying global demand. We may or may not have the ability to increase menu prices or vary menu items in response to food commodity price increases. For both the first quarters of fiscal 2020 and 2019, a hypothetical increase of 1% in food costs would have negatively impacted cost of sales by \$1.4 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 the Facility that is indexed to market rates. Based on outstanding borrowings at March 31, 2020 and December 31, 2019, a hypothetical 1% rise in interest rates would have increased interest expense by \$3.8 million and \$2.9 million, respectively, on an annual basis. (See Note 7 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 executive deferred compensation plan to the extent these investments are not equivalent to the related liability. In addition, because changes in these investments are not taxable, 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 March 31, 2020 and December 31, 2019, 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 scenario, net income would have declined by \$1.5 million and \$1.9 million at March 31, 2020 and December 31, 2019, respectively.

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 March 31, 2020.

Changes in Internal Control over Financial Reporting

We acquired North Italia and the remaining business of Fox Restaurant Concepts on October 2, 2019. We have not fully evaluated any changes in internal control over financial reporting associated with the acquisition and therefore any material changes that may result from these acquisitions have not been disclosed in this report. We intend to disclose all material changes resulting from these acquisitions within or prior to the time of our first annual assessment of internal control over financial reporting that is required to include these entities.

There have been no other 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 March 31, 2020 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 9 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report.

Item 1A. Risk Factors.

A description of the risk factors associated with our business is contained in Part I, Item 1A, “Risk Factors,” of our Annual Report on Form 10-K for the fiscal year ended December 1, 2019 (“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.

In light of the evolving COVID-19 pandemic, we are supplementing the risk factors disclosed in our Annual Report as follows:

Risks Related to Our Financial Performance

The outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic have significantly disrupted and will continue to disrupt our business, which has and could continue to materially adversely affect our financial condition and operating results for an extended period of time.

The outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic, as well as our responses to the outbreak, have significantly disrupted and will continue to disrupt our business. In the United States and other regions, social distancing restrictions have been enacted and in many areas individuals are restricted from non-essential movements outside of their homes. In response to the COVID-19 pandemic and these changing conditions, we have temporarily closed a number of restaurants across our portfolio with the remaining locations shifted to an off-premise only operating model on an interim basis. In late April 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms, however we will be operating under capacity restrictions for some time as social distancing protocols remain in place. Additionally, an outbreak or perceived outbreak of the COVID-19 pandemic connected to one or more of our restaurants could cause negative publicity directed at any of our brands and cause customers to avoid our restaurants. We cannot predict how long the pandemic will last or whether it will reoccur, what additional restrictions may be enacted, to what extent we can maintain off-premise sales volumes or if individuals will be comfortable returning to our dining rooms during or following social distancing protocols. Similarly, we cannot predict the effects the COVID-19 pandemic will have on the restaurant industry as a whole or the share of customer traffic to our restaurants compared to other restaurants or outlets. Any of these changes could materially adversely affect our financial performance.

Our restaurant operations could be further disrupted if any of our restaurant staff members is diagnosed with COVID-19, which has occurred at some of our restaurants, requiring the quarantine of some or all of a restaurant’s staff members and the temporary closure of the restaurant. If a significant percentage of our workforce is unable to work, due to COVID-19 illness, quarantine, limitations on travel or other government restrictions in connection with the COVID-19 pandemic, our operations may be negatively impacted, potentially materially adversely affecting our liquidity, financial condition or results of operations. Our suppliers could be similarly adversely impacted by the COVID-19 pandemic, and we could face shortages of food items or other supplies at our restaurants and our operations and sales could be adversely impacted by such supply interruptions. In addition, we furloughed approximately 41,000 staff members, and although some have returned to work, we may need to implement additional furloughs depending on future events. Staff members who are furloughed might seek and find other employment, which could materially adversely affect our ability to properly staff and reopen our restaurants with experienced staff members when the business interruptions caused by the COVID-19 pandemic abate or end.

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In addition, while we have taken actions to manage our liquidity position in response to the COVID-19 pandemic, we may need to seek additional sources of liquidity. The COVID-19 pandemic is adversely affecting the availability of liquidity generally in the credit markets, and there can be no guarantee that additional liquidity will be available on favorable terms, or at all, especially the longer the COVID-19 pandemic lasts or if it were to reoccur. To this end, on May 1, 2020, we entered into an amendment to our Facility that, among other changes, provides for net adjusted leverage ratio and EBITDAR to interest and rent expense coverage ratio covenant relief through the first quarter of fiscal 2021. Following the end of the covenant relief period, a material increase in our level of debt could cause our net adjusted leverage ratio and EBITDAR to interest and rent expense coverage ratios to exceed the maximum levels permitted under the covenants in the Amended Facility. To increase our liquidity given the impact of COVID-19 on our operations, we also sold 200,000 shares of Series A Convertible Preferred Stock on April 20, 2020 for an aggregate purchase price of \$200 million. See Note 15 of Notes to Condensed Consolidated Financial Statements in Part 1, Item 1 of this report for further discussion of these events.

The impact of COVID-19 on our business has resulted in the impairment of certain of our long-lived assets, goodwill and other intangible assets and a revaluation of contingent consideration associated with the acquisition of Fox Restaurant Concepts LLC. Future changes in estimates could further impact the carrying value of these items.

Our efforts to address our rent obligations during the COVID-19 pandemic are ongoing and our ability to obtain rent concessions will vary by landlord. While we continue to engage in discussions with our landlords, certain of our landlords have alleged that we are in default of our leases with them. If we are unable to reach an agreement with these landlords, we may face eviction proceedings, which could be expensive to litigate and may jeopardize our ability to continue operations at the impacted restaurant. The COVID-19 pandemic has also adversely affected our ability to open new restaurants, and we have paused nearly all construction of new restaurants and certain remodeling projects at existing restaurants. These changes may materially adversely affect our ability to grow our business, particularly if these construction pauses are in place for a significant amount of time.

The impact global and domestic economic conditions have on consumer discretionary spending could materially adversely affect our financial performance.

Dining out is a discretionary expenditure that historically has been influenced by domestic and global economic conditions. The outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic have led to a national and global economic downturn. Consumer discretionary spending has weakened. Reduced discretionary spending could influence off-premise dining, customer traffic in our restaurants when it resumes and average check amount, which in turn could have a material impact on our financial performance.

Global and domestic conditions, including as a result of COVID-19, that have an effect on consumer discretionary spending include, but may not be limited to: unemployment, general and industry-specific inflation, consumer confidence, consumer purchasing and saving habits, credit conditions, stock market performance, home values, population growth, household incomes and tax policy. Material changes to governmental policy related to domestic and international fiscal concerns, and/or changes in central bank policies with respect to monetary policy, also could affect consumer discretionary spending. Any of these additional factors affecting consumer discretionary spending may further influence customer traffic in our restaurants and average check amount, thus potentially having a further material impact on our financial performance.

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

The following table presents our purchases of our common stock during the thirteen weeks ended March 31, 2020 (in thousands, except per share data):

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
January 1 — February 4, 2020	—	\$ —	—	3,080
February 5 — March 3, 2020	58	35.60	—	3,022
March 4 — March 31, 2020	17	31.52	—	3,005
Total	75		—	

- (1) The total number of shares purchased includes 74,581 shares withheld upon vesting of restricted share awards to satisfy tax withholding obligations.

Under the July 21, 2016 authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 53.0 million shares at a total cost of \$1,695.7 million through March 31, 2020, including 0.1 million shares at a cost of \$2.6 million during the first quarter of fiscal 2020. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. (See Note 10 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization and methods.) The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the Facility that limit share repurchases based on a defined ratio. To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of our Amended Facility, we suspended share repurchases. (See Notes 7 and 15 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our Amended Facility.)

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Item 6. Exhibits

Exhibit No.	Item	Form	File Number	Incorporated by Reference from Exhibit Number	Filed with SEC
2.1	Purchase Agreement, dated as of November 14, 2016, as amended by Amendment & Option Exercise Agreement, dated as of July 30, 2019, by and among The Cheesecake Factory Incorporated and the other Parties thereto*	10-Q	000-20574	2.1	11/8/19
2.2	First Amendment to Option Exercise Agreement and Second Amendment to Purchase Agreement and Operating Agreement, dated as of October 2, 2019, by and among The Cheesecake Factory Incorporated and the other Parties thereto*	10-Q	000-20574	2.2	11/8/19
2.3	Membership Interest Purchase Agreement, dated as of July 30, 2019, by and among The Cheesecake Factory Restaurants, Inc., Fox Restaurant Concepts LLC, the Sellers party thereto, SWF Posse LLC, as Seller's representative, and, solely for limited purposes set forth therein, The Cheesecake Factory Incorporated*†	10-Q	000-20574	2.3	11/8/19
2.4	First Amendment to Membership Interest Purchase Agreement, dated as of October 2, 2019, by and among The Cheesecake Factory Restaurants, Inc., Fox Restaurant Concepts LLC, and SWF Posse LLC, as Seller's representative*	10-Q	000-20574	2.4	11/8/19
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 May 20, 2009)	8-K	000-20574	3.8	5/27/09
10.1	Form of Notice of Grant and Stock Unit Grant Agreement for Directors under The Cheesecake Factory Incorporated Stock Incentive Plan#	—	—	—	Filed herewith
10.2	Indemnification Agreement, dated as of April 20, 2020, between The Cheesecake Factory Incorporated and Paul D. Ginsberg#	—	—	—	Filed herewith
10.3	Subscription Agreement, dated April 20, 2020, by and between The Cheesecake Factory Incorporated and RC Cake Holdings LLC	8-K	000-20574	10.1	4/20/20
10.4	Registration Rights Agreement, dated April 20, 2020, by and between The Cheesecake Factory Incorporated and RC Cake Holdings LLC	8-K	000-20574	10.2	4/20/20
10.5	Acknowledgement and Support Agreement, dated April 20, 2020, by and between David Overton and RC Cake Holdings LLC	8-K	000-20574	10.3	4/20/20
10.6	First Amendment, dated as of May 1, 2020, to the Third Amended and Restated Loan Agreement, dated as of July 30, 2019, between The Cheesecake Factory Incorporated, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders from time to time party thereto	8-K	000-20574	10.1	5/5/20
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 March 31, 2020, 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 March 31, 2020, formatted in iXBRL (included with Exhibit 101.1)	—	—	—	Filed herewith

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*The schedules (or similar attachments) to this exhibit have been omitted from this filing pursuant to Item 601(a)(5) of Regulation S-K. The Company will furnish copies of any such schedules or similar attachments) to the SEC upon request.

† Certain confidential information contained in this agreement has been omitted because it (i) is not material and (ii) would be competitively harmful if publicly disclosed.

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

SIGNATURES

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

Date: June 22, 2020

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)



**The Cheesecake Factory Incorporated
Stock Incentive Plan**

**NOTICE OF GRANT AND
STOCK UNIT GRANT AGREEMENT**

Notice is hereby given of the following Award of Stock Units of The Cheesecake Factory Incorporated, a Delaware corporation (“Company”), pursuant to the Stock Incentive Plan (“Plan”). In consideration of the promises and of the mutual agreements contained in this Notice of Grant and Stock Unit Grant Agreement (“Agreement”), the parties hereto agree as follows:

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

Award	The Stock Units granted in accordance with this Agreement
Code	The Internal Revenue Code of 1986, as amended
Company	The Cheesecake Factory Incorporated, a Delaware corporation
Grant Date	[date]
Participant	[name]
Stock Unit	A bookkeeping entry representing a commitment by the Company to issue one (1) share of the Company’s common stock (“Share”), as awarded under the Plan and as further described in Section 10 of the Plan
Number of Stock Units Awarded	[] Stock Units
Vesting	The Stock Units shall be fully vested and nonforfeitable as of the Grant Date.

Section 2. Designation of Award. Subject to the terms and conditions of the Plan and this Agreement, the Company grants to Participant the number of fully vested Stock Units shown above.

Section 3. Interpretation. The terms and provisions of the Plan are hereby incorporated into this Agreement as if set forth herein in their entirety. Participant hereby agrees to be bound by the terms of the Plan and this Agreement and acknowledges that the Award is granted subject to and in accordance with the Plan and this Agreement. In the event of a conflict between any provision of this Agreement and the Plan, the provisions of the Plan shall control. By execution below, Participant acknowledges receipt of a copy of the Stock Incentive Plan Summary and Prospectus. A copy of the Plan is available, without charge, upon request from the Company’s Stock Plan Administrator.

Section 4. Other Terms and Conditions of Stock Units. (a) A holder of Stock Units shall have no rights other than those of a general creditor of the Company. Subject to the terms of this Agreement, a holder of outstanding Stock Units shall have none of the rights and privileges of a stockholder of the Company, including no right to vote and no dividend rights except as may be set forth in Section 4(b). Subject to the terms and conditions of this

Agreement, the Stock Units create no fiduciary duty of the Company to Participant and only represent an unfunded and unsecured contractual obligation of the Company. The Stock Units shall not be treated as property or as a trust fund of any kind. Participant, or Participant's beneficiary, estate or heirs, has no rights as a stockholder of the Company with respect to the Stock Units underlying this Award until Shares have been issued to Participant, or Participant's beneficiary, estate or heirs, as settlement for such Stock Units.

(b) If the Company declares and pays a dividend on the Shares, Participant shall be credited with dividend equivalents equal to the dividends Participant would have received if Participant had been the owner of a number of Shares (as opposed to Stock Units) on such dividend payment date (the "Dividend Equivalents"). Any Dividend Equivalents deriving from a cash dividend shall be converted under the Plan into additional Stock Units based on the Fair Market Value of Common Stock on the dividend payment date, rounded down to the nearest whole number. Any Dividend Equivalents deriving from a dividend of Shares shall be converted into additional Stock Units on a one-for-one basis (rounded down to the nearest whole number). Notwithstanding the foregoing, if the Stock Units have been deferred pursuant to The Cheesecake Factory Incorporated Executive Savings Plan (the "Savings Plan"), in lieu of the foregoing, Dividend Equivalents shall be credited to Participant's account under the Savings Plan pursuant to the terms and conditions of the Savings Plan. Participant shall continue to be credited with Dividend Equivalents with respect to any outstanding Stock Units until the settlement date of such Stock Units. The Dividend Equivalents so credited shall be subject to the same terms and conditions as this Award. Participant's rights to Dividend Equivalents (if any) shall cease upon settlement of the Stock Units to which they attach.

(c) Until the Award is settled, the number of Stock Units subject to the Award shall be subject to adjustment pursuant to Section 11 of the Plan. Settled Stock Units (and Dividend Equivalents) shall be immediately canceled and no longer outstanding and Participant shall have no further rights or entitlements related to those settled Stock Units (and Dividend Equivalents).

Section 5. Settlement. In the event the Stock Units have been deferred pursuant to the Savings Plan, Stock Units shall be settled in Shares on the date(s) or event(s) specified in the applicable election form pursuant to the terms and conditions of the Savings Plan. In the event Participant has not elected to defer the settlement of the Stock Units pursuant to the Savings Plan, the Stock Units shall be settled in Shares within thirty (30) days of the Date of Grant. Until the Award is settled, the number of Stock Units subject to the Award shall be subject to adjustment pursuant to Section 11 of the Plan.

Section 6. Restrictions on Transfer.

(a) The Stock Units may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of, alienated or encumbered (collectively, a "Transfer") in any way by Participant, either voluntarily or involuntarily. The Award shall not be subject to execution, attachment or similar process other than pursuant to a qualified domestic relations order as defined in Code Section 414(p)(1)(B) ("QDRO"). Prior to the time that the Stock Units have been settled, no Stock Units or any interest therein may be Transferred in any way, either voluntarily or involuntarily. The Transfer restrictions set forth herein shall not apply to: (i) transfers to the Company; (ii) transfers by will or the laws of descent and distribution;

(iii) transfers pursuant to a QDRO; or (iv) transfers to a beneficiary in connection with Participant's death. Following settlement of the Stock Units, Participant shall be permitted to transfer any Shares issued in settlement of the Stock Units subject to applicable securities law requirements, the Company's Special Trading Policy and Procedures, and any other applicable laws or regulations.

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

Section 7. Award Subject to Clawback Policy. In accordance with Section 13(d) of the Plan, the Company may (i) cause the cancellation of all or any portion of this Award, (ii) require reimbursement of all or any portion of this Award by the Participant and (iii) effect any other right of recoupment of equity or other compensation provided under the Plan or otherwise in accordance with Company policies and/or applicable law (each, a "Clawback Policy") in effect as of the Date of Grant of this Award.

Section 8. Voting and Other Rights. A holder of Stock Units shall have no rights other than those of a general creditor of the Company. Subject to the terms of this Agreement, a holder of outstanding Stock Units shall have none of the rights and privileges of a stockholder of the Company, including no right to vote and no rights to dividends, if any are declared. Subject to the terms and conditions of this Agreement, the Stock Units create no fiduciary duty of the Company to Participant and only represent an unfunded and unsecured contractual obligation of the Company. The Stock Units shall not be treated as property or as a trust fund of any kind. Participant, or Participant's estate or heirs, has no rights as a stockholder of the Company unless and until Shares have been issued to Participant.

Section 9. Designation of Beneficiary. If Participant has not elected to defer the Stock Units pursuant to the Savings Plan, Participant may designate one or more beneficiaries with respect to this Award by timely filing the prescribed beneficiary designation form with the Company. Such beneficiary designation may be changed by filing the prescribed form with the Company at any time prior to the Participant's death. If no beneficiary was designated pursuant to the foregoing or if no designated beneficiary survives the Participant, then after a Participant's death any vested portion of the Award shall be transferred or distributed to the Participant's estate. For the avoidance of doubt, if the Stock Units have been deferred pursuant to the Savings Plan, the beneficiary designation made pursuant to the Savings Plan and the applicable provisions of the Savings Plan with respect to beneficiaries shall apply.

Section 10. Taxes. Participant will be solely responsible for payment of any and all applicable taxes, including without limitation any penalties or interest based upon such tax obligations, associated with this Award.

Section 11. No Tax or Other Advice from Company. The Company has not provided any tax, legal or financial advice to Participant, and the Company has not made any recommendations regarding Participant's participation in the Plan or Participant's acquisition or sale of the underlying Shares. Participant is hereby advised to consult with Participant's own

personal tax, legal and financial advisors regarding Participant's participation in the Plan before taking any action related to the Plan or this Agreement.

Section 12. Notices. All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given and delivered if personally delivered or if sent by nationally-recognized overnight courier, by telecopy, or by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

- (a) if to the Company:

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

Attention: General Counsel

- (b) if to Participant:

The last address set forth in the Company's records

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

Section 13. Waiver of Breach. The waiver by either party of a breach of any provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any other or subsequent breach.

Section 14. Participant's Undertaking. Participant hereby agrees to take whatever additional actions and execute whatever additional documents the Company may in its reasonable judgment deem necessary or advisable in order to carry out or affect one or more of the obligations or restrictions imposed on Participant pursuant to the express provisions of this Agreement and the Plan.

Section 15. Modification of Rights. The rights of Participant are subject to modification and termination in certain events as provided in this Agreement and the Plan.

Section 16. Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER

THAN THE STATE OF DELAWARE TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF DELAWARE WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

Section 17. Resolution of Disputes.

(a) Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement or the Plan shall be settled by binding arbitration held in Los Angeles, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, except as specifically otherwise provided in this Section 17. This Section 17 shall be construed and enforced in accordance with the Federal Arbitration Act, notwithstanding any other choice of law provision in this Agreement. Notwithstanding the foregoing:

Any party hereto may, in its discretion, apply to a court of competent jurisdiction for equitable relief. Such an application shall not be deemed a waiver of the right to compel arbitration pursuant to this Section 17.

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

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

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

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

(f) Confidentiality. All proceedings under this Section 17, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties and by the arbitrators.

(g) Continued Performance. The fact that the dispute resolution procedures specified in this Section 17 shall have been or may be invoked shall not excuse any party from performing

its obligations under this Agreement and during the pendency of any such procedure all parties shall continue to perform their respective obligations in good faith.

(h) Tolling. All applicable statutes of limitation shall be tolled while the procedures specified in this Section 17 are pending. The parties will take such action, if any, required to effectuate such tolling.

(i) Confidentiality. All proceedings under this Section 17, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties and by the arbitrators.

Section 18. No Service Commitment by Company. Nothing in this Agreement or the Plan constitutes a service commitment by the Company, confers upon Participant any right to remain in the service of the Company or any subsidiary, interferes in any way with the right of the Company or any subsidiary at any time to terminate such service, or affects the right of the Company or any subsidiary to increase or decrease Participant's compensation or other benefits.

Section 19. Counterparts. This Agreement may be executed in one or more counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts together shall constitute but one agreement.

Section 20. Entire Agreement. This Agreement, the Plan, the Savings Plan and any applicable election thereunder (and the other writings referred to herein) constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior written or oral negotiations, commitments, representations and agreements with respect thereto.

Section 21. Severability. If any provision of this Agreement is found to be invalid or unenforceable, the invalidity or unenforceability shall not affect the validity of the remaining provisions hereof. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 22. Section 409A of the Code. The Stock Units awarded under this Agreement are intended in all respects to be exempt from or comply with Section 409A of the Code. To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation, any such regulations or guidance that may be issued after the Date of Grant so that the Stock Units will be exempt from or comply with Section 409A of the Code. In the event that the Company determines that any amounts will be taxable to Participant under Section 409A of the Code and related Department of Treasury guidance, the Company may, in its sole and absolute discretion, adopt such amendments to this Agreement (having prospective or retroactive effect), and/or take such other actions, as the Company determines to be necessary or appropriate to comply with the requirements of Section 409A of the Code or an exemption therefrom. Notwithstanding anything herein to the contrary, Participant expressly agrees and acknowledges that in the event that any taxes are imposed under Section 409A of the Code in

INDEMNIFICATION AGREEMENT

This Indemnification Agreement, dated as of April 20, 2020, is made by and between The Cheesecake Factory Incorporated, a Delaware corporation and Paul D. Ginsberg, an individual.

RECITALS

The Corporation has previously entered into indemnification agreements with its directors and certain officers;

The Board of Directors has reviewed the form of indemnification agreement previously entered into between the Corporation and its directors and certain officers and considered the adoption of a new form of indemnification agreement to replace the existing form of agreement;

The Board of Directors believes that the Corporation's ability to continue to attract and retain directors and certain officers will be adversely affected unless the Corporation continues or offers to provide indemnification agreements;

The Board of Directors has determined that contractual indemnification as set forth herein is prudent and fair to the Corporation and promotes the best interests of the Corporation and its stockholders;

The Corporation has requested Indemnitee to serve or desires that Indemnitee continue to serve as a director or officer of the Corporation free from undue concern for claims for damages arising out of or related to such services to the Corporation; and

Indemnitee is willing to serve, continue to serve or to provide additional service for or on behalf of the Corporation on the condition that he or she is furnished the indemnity provided for herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. **Generally.**

To the fullest extent permitted by the laws of the State of Delaware:

(a) The Corporation shall indemnify and hold harmless Indemnitee to the fullest extent authorized by the laws of the State of Delaware, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than those laws permitted the Corporation to provide prior to such amendment).

(b) The Corporation shall indemnify and hold harmless Indemnitee if Indemnitee was, is, or is threatened to be made a party to or witness or other participant in any Action by reason of the fact that Indemnitee is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of the Corporation, or while serving as a director or officer of the Corporation, is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent (which, for purposes hereof, shall include a trustee, partner or manager or similar capacity) of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or Other Enterprise by reason of any action alleged to have been taken or omitted in any such capacity, whether the basis of the Action is alleged action or failure to act in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent. For the avoidance of doubt, the foregoing indemnification obligation includes, without limitation, claims for monetary damages against Indemnitee in respect of an alleged breach of fiduciary duties, to the fullest extent permitted under Section 102(b)(7) of the DGCL as in existence on the date hereof.

(c) The indemnification provided by this Section 1 shall be from and against Expenses as well as any Judgments, Fines and Amounts Paid in Settlement actually and reasonably incurred or suffered by Indemnitee or on Indemnitee's behalf in connection with such Action and any appeal therefrom, but shall only be provided if Indemnitee meets the applicable standard of conduct set forth in the DGCL. The termination of any Action by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not meet that standard of conduct.

(d) In the case of any Action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of the Corporation, or while serving as a director or officer of the Corporation, is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent (which for the purposes hereof, shall include a trustee, partner, or manager or similar capacity) of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or Other Enterprise by reason of any action alleged to have been taken or omitted in any such capacity, whether the basis of that Action is alleged action or inaction in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, Indemnitee shall be entitled to the indemnification rights provided by this Indemnification Agreement. *Provided, however*, no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation unless, and only to the extent that, the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 2. Successful Defense; Partial Indemnification.

(a) To the extent that Indemnitee has been successful on the merits or otherwise in defense of any Action referred to in Section 1 hereof or in defense of any claim, issue or matter therein, Indemnitee shall be indemnified against Expenses actually and reasonably incurred in

connection therewith. For purposes of this Indemnification Agreement and without limiting the foregoing, if any Action is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnatee, (ii) an adjudication that Indemnatee was liable to the Corporation, (iii) a plea of guilty or *nolo contendere* by Indemnatee, (iv) an adjudication that Indemnatee did not act in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Corporation, or (v) with respect to any criminal Action, an adjudication that Indemnatee had reasonable cause to believe Indemnatee's conduct was unlawful, Indemnatee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

(b) If Indemnatee is entitled under any provision of this Indemnification Agreement to indemnification by the Corporation for some or a portion of the Expenses and/or any Judgments, Fines or Amounts Paid in Settlement actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection with any Action, or in defense of any claim, issue or matter therein, and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnatee for the portion of such Expenses and any Judgments, Fines or Amounts Paid in Settlement to which Indemnatee is entitled.

(c) Notwithstanding any other provision of this Indemnification Agreement to the contrary, to the extent that Indemnatee is, by reason of the fact that Indemnatee's status with respect to the Corporation or any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or Other Enterprise which Indemnatee is or was serving or has agreed to serve at the request of the Corporation, a witness or otherwise participates in any Action (including, without limitation, any investigation conducted by the Corporation or by any other person) at a time when Indemnatee is not a party in the Action, the Corporation shall indemnify and hold harmless Indemnatee from and against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection therewith.

Section 3. Determination That Indemnification Is Proper. Any indemnification hereunder shall (unless otherwise ordered by a court of competent jurisdiction) be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper under the circumstances because the Indemnatee has met the standard of conduct in the DGCL. Any such determination shall be made (i) by a majority vote of the Disinterested Directors, even if less than a quorum, (ii) by a majority vote of a committee of Disinterested Directors designated by majority vote of Disinterested Directors, even if less than a quorum, (iii) by a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote on the matter, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the action, suit or proceeding in question, (iv) if there are no Disinterested Directors, or if the Disinterested Directors so direct, by independent legal counsel, or (v) by a court of competent jurisdiction.

Section 4. Advance Payment of Expenses; Notification and Defense of Claim.

(a) The Corporation shall pay Expenses incurred by Indemnatee in connection with any Action, in advance of the final disposition of such Action as soon as practicable but in no event later than twenty (20) days after receipt by the Corporation of (i) a statement or statements from Indemnatee requesting such advance or advances from time to time, and (ii) if required by

the DGCL, when the Expenses were incurred by Indemnitee in Indemnitee's capacity as a current director or officer (and not in any other capacity in which service was, or is, rendered by Indemnitee) an undertaking by or on behalf of Indemnitee to repay such amount or amounts, only if, and to the extent that, it shall ultimately be determined by final judicial decision from which there is no further right to appeal or seek review that Indemnitee is not entitled to be indemnified for such Expense by the Corporation as authorized by this Indemnification Agreement or otherwise. Such undertaking is not required to be secured and shall be accepted without reference to the financial ability of Indemnitee to make such repayment. The right to advancement of Expenses as granted by this Indemnification Agreement shall be enforceable by Indemnitee in any court of competent jurisdiction if the Corporation fails to pay such Expenses, in whole or in part, or fails to respond, within such 20-day period.

(b) Promptly after receipt by Indemnitee of notice of the commencement of any Action, Indemnitee shall, if a claim thereof is to be made against the Corporation hereunder, notify the Corporation of the commencement thereof. *Provided, however,* the failure to notify the Corporation promptly of the commencement of the Action or Indemnitee's request for indemnification, will not relieve the Corporation from any liability that it may have to Indemnitee hereunder.

(c) In the event the Corporation is obligated to pay the Expenses of Indemnitee with respect to an Action, as provided in this Indemnification Agreement, the Corporation, if appropriate, will be entitled to (i) participate therein at its own expense and (ii) assume the defense of such Action, jointly, with any other indemnifying person, with counsel reasonably acceptable to Indemnitee, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Corporation, the Corporation will not be liable to Indemnitee under this Indemnification Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Action provided that (1) Indemnitee will have the right to employ Indemnitee's own counsel in such Action at Indemnitee's expense and (2) if (i) the employment of counsel by Indemnitee has been previously authorized in writing by the Corporation, (ii) counsel to the Corporation or Indemnitee will have reasonably concluded that there may be a conflict of interest or position, or reasonably believes that a conflict is likely to arise, on any significant issue between the Corporation and Indemnitee in the conduct of any such defense; or (iii) the Corporation will not have employed counsel within sixty (60) calendar days of receipt of such notice from Indemnitee to assume the defense of such Action, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Corporation, except as otherwise expressly provided by this Indemnification Agreement. The Corporation will not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for the Corporation or Indemnitee has reasonably made the conclusion described in clause (c)(2)(ii) above.

Section 5. Procedure for Indemnification.

(a) To obtain indemnification, Indemnitee shall promptly submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Corporation shall, promptly upon

receipt of such a request for indemnification, advise the Corporation's Board of Directors in writing that Indemnatee has requested indemnification.

(b) The Corporation's determination whether to grant Indemnatee's indemnification request shall be made promptly, and in any event within thirty (30) days following receipt of a request for indemnification pursuant to Section 5(a). The right to indemnification as granted by this Indemnification Agreement shall be enforceable by Indemnatee in any court of competent jurisdiction if the Corporation denies such request, in whole or in part, or fails to respond within such 30-day period. Alternatively, in seeking to establish or enforce a right to indemnification or advancement of Expenses under this Indemnification Agreement, Indemnatee, at Indemnatee's option may seek an award in an arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association, such award to be made within sixty (60) days following the demand for arbitration. The Corporation shall not oppose Indemnatee's right to seek any such adjudication or award in arbitration or any other claim. It shall be a defense to any such action by Indemnatee (other than an action brought to enforce a claim for the advancement of Expenses under Section 4 hereof when the required undertaking, if any, has been received by the Corporation) that Indemnatee has not met the standard of conduct set forth in the DGCL, but the burden of proving such defense by clear and convincing evidence shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors or one of its committees, its independent legal counsel, and its stockholders) to have made a determination prior to the commencement of such action that indemnification of Indemnatee is proper in the circumstances because Indemnatee has met the applicable standard of conduct set forth in the DGCL, nor the fact that there has been an actual determination by the Corporation (including its Board of Directors or one of its committees, its independent legal counsel, and its stockholders) that Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnatee has or has not met the applicable standard of conduct set forth in the DGCL. If a determination is made or deemed to have been made pursuant to the terms of this Indemnification Agreement that Indemnatee is entitled to indemnification, the Corporation shall be bound by such determination and is precluded from asserting that such determination has not been made or that the procedure by which such determination was made is not valid, binding and enforceable. The Corporation further agrees to stipulate in any court or before any arbitrator pursuant to this Section 5 that the Corporation is bound by all the provisions of this Agreement and is precluded from making any assertions to the contrary. If the court or arbitrator determines that Indemnatee is entitled to any indemnification or payment of Expenses hereunder, the Corporation shall pay all Expenses actually and reasonably incurred by Indemnatee in connection with such adjudication or award in arbitration (including, but not limited to, any appellate Proceedings), and in any suit brought by the Corporation to recover an advancement of Expenses pursuant to the terms of an undertaking, the Corporation shall pay all Expenses actually and reasonably incurred by Indemnatee in connection with such suit to the extent Indemnatee has been successful, on the merits or otherwise, in whole or in part, in defense of such suit.

(c) The Indemnatee shall be presumed to be entitled to indemnification under this Indemnification Agreement upon submission of a request for indemnification pursuant to this Section 5, and the Corporation shall have the burden of proof in overcoming that presumption in reaching a determination contrary to that presumption. Such presumption shall be used as a basis for a determination of entitlement to indemnification unless the Corporation overcomes such presumption by clear and convincing evidence.

Section 6. Insurance and Subrogation.

(a) The Corporation shall purchase and maintain directors and officers liability and other insurance covering Indemnitee against claims made against, and liabilities incurred by, Indemnitee or on Indemnitee's behalf, whether or not the Corporation would have the power or the obligation to indemnify Indemnitee against such liability under the provisions of this Indemnification Agreement. Such insurance shall have coverages, limits of liability and retentions as is usual and customary for businesses of similar size and conducting similar types of business. Upon Indemnitee's request, the Corporation shall provide promptly copies of any such policies of insurance, including any riders, supplements or endorsements thereto. If the Corporation receives from Indemnitee any notice of the commencement of an Action, the Corporation shall give prompt notice of the commencement of such Action to the insurers in accordance with the procedures set forth in their respective policies and shall provide Indemnitee with a copy of that notice and copies of all correspondence to and from the insurers pertaining thereto. The Corporation shall also instruct the insurers and its broker(s) that they may communicate directly with Indemnitee regarding any such claim. Thereafter, the Corporation shall take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Action in accordance with the terms of such policy.

(b) Except as provided in Section 14, in the event of any payment by the Corporation under this Indemnification Agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights. The Corporation shall pay or reimburse all Expenses actually and reasonably incurred by Indemnitee in connection with such subrogation.

(c) The Corporation will not be liable under this Indemnification Agreement to make any payment of amounts otherwise indemnifiable hereunder (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) if and to the extent that Indemnitee has otherwise actually received such payment under this Indemnification Agreement or any insurance policy, contract, agreement or otherwise, except in respect of any indemnity exceeding such prior payment.

Section 7. Certain Definitions and Rules of Construction. For purposes of this Indemnification Agreement, the following definitions and rules of construction shall apply:

(a) The term "**Action**" shall mean any actual, threatened, pending or completed action, suit, proceeding, alternative dispute mechanism, or inquiry whether civil, criminal, legislative, administrative or investigative, including, without limitation, any action, suit or proceeding by a quasi-governmental agency, stock exchange or other self regulatory organization to which Indemnitee was, is or is threatened to be made a party to or witness or other participant in by reason of the fact that Indemnitee is or was or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of the Corporation, or while serving as a director or officer of the Corporation, or while serving or agreeing to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or Other Enterprise. The term

“**Action**” shall be broadly construed and includes, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any actual, threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, legislative, administrative or investigative, including, without limitation, any action, suit or proceeding by a quasi-governmental agency, stock exchange or other self regulatory organization.

(b) The phrase “by reason of the fact that Indemnatee is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of the Corporation, or while serving as a director or officer of the Corporation, is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent (which, for purposes hereof, shall include a trustee, partner or manager or similar capacity) of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or Other Enterprise by reason of any action alleged to have been taken or omitted in any such capacity, whether the basis of such Action is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent” shall be broadly construed and includes, without limitation, any actual or alleged act or omission to act.

(c) The term “**Corporation**” means The Cheesecake Factory Incorporated, a Delaware corporation, and includes, without limitation and in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was Serving at the Request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or Other Enterprise, shall stand in the same position under the provisions of this Indemnification Agreement with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

(d) The term “**DGCL**” means the General Corporation Law of the State of Delaware.

(e) The term “**Disinterested Director**” means a director of the Corporation who is not a party to the Action in respect of which indemnification is being sought by Indemnatee.

(f) The term “**Expenses**” shall be broadly and reasonably construed and includes, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys’ fees and related disbursements, fees of accountants and other advisors, expert witness fees, forensic expert fees and costs, retainers and disbursements and advances thereon, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds or their equivalents) other out-of-pocket costs and reasonable compensation for time spent by Indemnatee for which Indemnatee is not otherwise compensated by the Corporation or any third party, provided that the rate of compensation and estimated time involved is approved by the Board of Directors, which approval shall not be unreasonably withheld or delayed), actually and reasonably incurred by Indemnatee in connection with either the

investigation, defense, settlement or appeal of an Action or establishing or enforcing a right to indemnification under this Indemnification Agreement, Section 145 of the DGCL or other applicable law, the Corporation's Certificate of Incorporation, or the Corporation's Bylaws.

(g) The term “**Indemnitee**” means the individual named in the preamble to this Indemnification Agreement.

(h) The term “**Judgments, Fines and Amounts Paid in Settlement**” shall be broadly construed and includes, without limitation, all direct and indirect liabilities, losses, judgments and payments of any type or nature whatsoever (including, without limitation, any amounts paid in settlement and all penalties and amounts required to be forfeited or reimbursed to the Corporation), as well as any penalties or excise taxes assessed on a person with respect to an employee benefit plan).

(i) The term “**Other Enterprises**” includes, without limitation, employee benefit plans.

(j) The term “**Serving at the Request of the Corporation**” includes, without limitation, any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries. For the avoidance of doubt, actions by Indemnitee on behalf of or for the benefit of a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or Other Enterprise controlled by, controlling or under common control with the Corporation are presumed to be made “Serving at the Request of the Corporation.”

(k) The term “**shall**” shall be construed as mandatory.

(l) A person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation”.

Section 8. Limitation on Indemnification. Notwithstanding any other provision herein to the contrary, the Corporation is not obligated pursuant to this Indemnification Agreement:

(a) Claims Initiated by Indemnitee. To indemnify or advance Expenses to Indemnitee with respect to an Action (or part thereof) initiated by Indemnitee, except with respect to an Action brought to establish or enforce a right to indemnification or advancement of Expenses, unless such Action (or part thereof) was authorized by, consented to, or ratified by the Board of Directors of the Corporation.

(b) Non-compete and Non-disclosure. To indemnify Indemnitee in connection with proceedings or claims involving the enforcement by the Corporation of non-compete and/or non-disclosure agreements or the non-compete and/or non-disclosure provisions of employment, consulting or similar agreements the Indemnitee may be a party to with the Corporation, or any subsidiary of the Corporation or any other applicable foreign or domestic corporation, partnership, joint venture, trust or Other Enterprise, if any.

Section 9. Certain Settlement Provisions. The Corporation shall have no obligation to indemnify Indemnatee under this Indemnification Agreement for amounts paid in settlement of any Action without the Corporation's prior written consent, which shall not be unreasonably withheld or delayed. Unless the Corporation pays or agrees to pay on Indemnatee's behalf, the Corporation shall not settle any Action in any manner that would impose any judgment, fine, penalty or other obligation on Indemnatee without Indemnatee's prior written consent, which shall not be unreasonably withheld or delayed.

Section 10. Savings Clause. If any provision or provisions of this Indemnification Agreement is invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify Indemnatee as to Expenses and Judgments, Fines and Amounts Paid in Settlement with respect to any Action to the full extent permitted by any applicable portion of this Indemnification Agreement that shall not have been invalidated and to the full extent permitted by applicable law.

Section 11. Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for herein is held by a court of competent jurisdiction to be unavailable to Indemnatee in whole or in part, it is agreed that, in such event, the Corporation shall, to the fullest extent permitted by law, contribute to the payment of Indemnatee's Expenses and Judgments, Fines and Amounts Paid in Settlement with respect to any Action, in an amount that is just and equitable in the circumstances, taking into account, among other things, contributions by other directors and officers of the Corporation or others pursuant to indemnification agreements or otherwise; provided, that, without limiting the generality of the foregoing, such contribution shall not be required where such holding by the court is due to (i) the failure of Indemnatee to meet the standard of conduct set forth in Section 1 hereof, or (ii) any limitation on indemnification set forth in Section 6(c), 8 or 9 hereof.

Section 12. Form and Delivery of Communications. Any notice, request or other communication required or permitted to be given to the parties under this Indemnification Agreement shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, return receipt requested, postage prepaid, to the parties at the following addresses (or at such other addresses for a party as shall be specified by like notice):

If to the Corporation:

26901 Malibu Hills Road
Calabasas Hills, CA 91301
Attn: General Counsel
Facsimile: (818) 871-3110

If to Indemnatee:

26901 Malibu Hills Road
Calabasas Hills, CA 91301
Attn:
Facsimile:

Section 13. Nonexclusivity. The provisions for indemnification and advancement of expenses set forth in this Indemnification Agreement shall not be deemed exclusive of any other rights which Indemnatee may have under any provision of law, the Corporation's Certificate of Incorporation or Bylaws, in any court in which a proceeding is brought, the vote of the Corporation's stockholders or Disinterested Directors, other agreements or otherwise, and Indemnatee's rights hereunder shall continue after Indemnatee has ceased acting as an agent of the Corporation and shall inure to the benefit of the heirs, executors and administrators of Indemnatee. However, no amendment or alteration of the Corporation's Certificate of Incorporation or Bylaws or any other agreement shall adversely affect the rights provided to Indemnatee under this Indemnification Agreement.

Section 14. Other Rights of Indemnification. The Corporation hereby acknowledges that Indemnatee has certain rights to indemnification, advancement of Expenses and/or insurance provided by Roark Capital and/or certain of its affiliates (collectively, the "**Fund Indemnitors**"). The Corporation hereby agrees (a) that it is the indemnitor of first resort (i.e., its obligations to Indemnatee are primary and any obligation of the Fund Indemnitors to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnatee are secondary), (b) that it shall be required to advance the full amount of Expenses incurred by Indemnatee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law and as required by the terms of this Indemnification Agreement and the Corporation's Certificate of Incorporation or Bylaws (or any other agreement between the Corporation and Indemnatee), without regard to any rights Indemnatee may have against the Fund Indemnitors, and (c) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnatee with respect to any claim for which Indemnatee has sought indemnification from the Corporation shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnatee against the Corporation. The Corporation and Indemnatee agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Section 14.

Section 15. Enforcement. The Corporation shall be precluded from asserting in any judicial proceeding that the procedures and presumptions of this Indemnification Agreement are not valid, binding and enforceable. The Corporation agrees that its execution of this Indemnification Agreement shall constitute a stipulation by which it shall be irrevocably bound in any court of competent jurisdiction in which a proceeding by Indemnatee for enforcement of his rights hereunder shall have been commenced, continued or appealed, that its obligations set forth in this Indemnification Agreement are unique and special, and that failure of the Corporation to comply with the provisions of this Indemnification Agreement will cause irreparable and irremediable injury to Indemnatee, for which a remedy at law will be inadequate. As a result, in addition to any other right or remedy Indemnatee may have at law or in equity with respect to breach of this Indemnification Agreement, Indemnatee is entitled to injunctive or mandatory relief directing specific performance by the Corporation of its obligations under this Indemnification Agreement. The Corporation shall not make any deductions or set-offs to any amounts payable to Indemnatee pursuant to this Indemnification Agreement.

Section 16. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnatee to the fullest extent now or hereafter permitted by law, as the same exists or may hereafter be amended (but, in the case of any amendment to the DGCL, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment). If the DGCL is amended after adoption of this Indemnification Agreement to expand further the indemnification permitted to directors or officers, then the Corporation shall indemnify Indemnatee to the fullest extent permitted by the DGCL, as so amended.

Section 17. Entire Agreement. This Indemnification Agreement and the documents expressly referred to herein constitute the entire agreement between the Corporation and Indemnatee with respect to the matters covered hereby, and any other prior or contemporaneous oral or written understandings or agreements with respect to the matters covered hereby are expressly superseded by this Indemnification Agreement; *provided, however*, with respect to any pending actions, this Indemnification Agreement shall not limit any broader rights to indemnification or advancement of Expenses provided under any prior agreement.

Section 18. Modification and Waiver. No supplement, modification or amendment of this Indemnification Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Indemnification Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

Section 19. Successor and Assigns. All of the terms and provisions of this Indemnification Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement in form and substance reasonably satisfactory to Indemnatee, expressly to assume and agree to perform this Indemnification Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

Section 20. Service of Process and Venue. For purposes of any claims or proceedings to enforce this Indemnification Agreement, the Corporation consents to the jurisdiction and venue of any federal or state court of competent jurisdiction in the states of California and Delaware, and waives and agrees not to raise any defense that any such court is an inconvenient forum or any similar claim.

Section 21. Governing Law. This Indemnification Agreement shall be governed exclusively by and construed and enforced according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware. If a court of competent jurisdiction shall make a final determination that the provisions of the law of any state other than Delaware govern indemnification by the Corporation of its officers and directors, then the indemnification provided under this Indemnification Agreement

shall in all instances be enforceable to the fullest extent permitted under such law, notwithstanding any provision of this Indemnification Agreement to the contrary.

Section 22. Employment Rights. Nothing in this Indemnification Agreement is intended to create in Indemnitee any right to employment or continued employment.

Section 23. Counterparts. This Indemnification Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument, notwithstanding that both parties are not signatories to the original or same counterpart.

Section 24. Limitations on Actions. To the maximum extent permitted by Law, no legal action shall be brought and no cause of action shall be asserted by or on behalf of the Corporation or any affiliate of the Corporation against Indemnitee or Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Corporation or its affiliates shall be extinguished and deemed released unless asserted by timely filing of a legal action within such two-year period; provided, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

Section 25. Headings. The section and subsection headings contained in this Indemnification Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Indemnification Agreement.

IN WITNESS WHEREOF, this Indemnification Agreement has been duly executed and delivered to be effective as of the date first above written.

THE CHEESECAKE FACTORY
INCORPORATED,
a Delaware corporation,

By: /s/ Matthew Clark
Name: Matthew Clark
Title: Executive Vice President,
Chief Financial Officer

INDEMNITEE:

By: /s/ Paul D. Ginsburg
Name: Paul D. Ginsburg
Title: Director

[Signature Page to Indemnification Agreement]

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: June 22, 2020

/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: June 22, 2020

/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 March 31, 2020 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.

June 22, 2020

/s/ DAVID OVERTON

David Overton

Chairman of the Board and Chief Executive 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 March 31, 2020 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.

June 22, 2020

/s/ MATTHEW E. CLARK

Matthew E. Clark

Executive Vice President and Chief Financial Officer
