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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

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

For the quarterly period ended March 30, 2021

or

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

Commission File Number: 0-20574

**THE CHEESECAKE FACTORY INCORPORATED**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation or organization)

**51-0340466**

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

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

(Address of principal executive offices)

**91301**

(Zip Code)

**(818) 871-3000**

(Registrant's telephone number, including area code)

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 | <input checked="" type="checkbox"/> | Accelerated filer         | <input type="checkbox"/> |
| Non-accelerated filer   | <input type="checkbox"/>            | Smaller reporting company | <input type="checkbox"/> |
|                         |                                     | Emerging growth company   | <input type="checkbox"/> |

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 April 26, 2021, 46,479,297 shares of the registrant's Common Stock, \$.01 par value per share, were outstanding.

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**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 30,<br>2021   | December 29,<br>2020 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------|
| <b>ASSETS</b>                                                                                                                                                                             |                     |                      |
| Current assets:                                                                                                                                                                           |                     |                      |
| Cash and cash equivalents                                                                                                                                                                 | \$ 181,345          | \$ 154,085           |
| Accounts and other receivable                                                                                                                                                             | 57,815              | 75,787               |
| Income taxes receivable                                                                                                                                                                   | 34,973              | 36,889               |
| Inventories                                                                                                                                                                               | 38,955              | 39,288               |
| Prepaid expenses                                                                                                                                                                          | 30,727              | 35,310               |
| Total current assets                                                                                                                                                                      | 343,815             | 341,359              |
| Property and equipment, net                                                                                                                                                               | 760,722             | 774,137              |
| Other assets:                                                                                                                                                                             |                     |                      |
| Intangible assets, net                                                                                                                                                                    | 253,152             | 253,160              |
| Operating lease assets                                                                                                                                                                    | 1,245,892           | 1,251,027            |
| Other                                                                                                                                                                                     | 131,858             | 127,371              |
| Total other assets                                                                                                                                                                        | 1,630,902           | 1,631,558            |
| Total assets                                                                                                                                                                              | <u>\$ 2,735,439</u> | <u>\$ 2,747,054</u>  |
| <b>LIABILITIES, SERIES A CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY</b>                                                                                                         |                     |                      |
| Current liabilities:                                                                                                                                                                      |                     |                      |
| Accounts payable                                                                                                                                                                          | \$ 56,047           | \$ 58,432            |
| Gift card liabilities                                                                                                                                                                     | 166,178             | 184,655              |
| Operating lease liabilities                                                                                                                                                               | 132,521             | 132,519              |
| Other accrued expenses                                                                                                                                                                    | 203,211             | 210,461              |
| Total current liabilities                                                                                                                                                                 | 557,957             | 586,067              |
| Long-term debt                                                                                                                                                                            | 280,000             | 280,000              |
| Operating lease liabilities                                                                                                                                                               | 1,216,473           | 1,224,321            |
| Other noncurrent liabilities                                                                                                                                                              | 151,010             | 149,725              |
| Commitments and contingencies (Note 8)                                                                                                                                                    |                     |                      |
| Series A convertible preferred stock, \$.01 par value, 200,000 shares authorized; 200,000 and 200,000 shares issued and outstanding at March 30, 2021 and December 29, 2020, respectively | 213,485             | 218,248              |
| Stockholders' equity:                                                                                                                                                                     |                     |                      |
| Preferred stock, \$.01 par value, other than Series A convertible preferred stock, 4,800,000 shares authorized; none issued                                                               | —                   | —                    |
| Common stock, \$.01 par value, 250,000,000 shares authorized; 99,508,470 and 98,645,147 shares issued at March 30, 2021 and December 29, 2020, respectively                               | 995                 | 986                  |
| Additional paid-in capital                                                                                                                                                                | 904,045             | 878,148              |
| Retained earnings                                                                                                                                                                         | 1,114,047           | 1,110,087            |
| Treasury stock, 53,101,293 and 53,026,409 shares at cost at March 30, 2021 and December 29, 2020, respectively                                                                            | (1,700,700)         | (1,696,743)          |
| Accumulated other comprehensive loss                                                                                                                                                      | (1,873)             | (3,785)              |
| Total stockholders' equity                                                                                                                                                                | 316,514             | 288,693              |
| Total liabilities, Series A convertible preferred stock and stockholders' equity                                                                                                          | <u>\$ 2,735,439</u> | <u>\$ 2,747,054</u>  |

See the accompanying notes to the condensed consolidated financial statements

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

|                                                                                                | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Revenues                                                                                       | \$ 627,417                                | \$ 615,106                                |
| Costs and expenses:                                                                            |                                           |                                           |
| Cost of sales                                                                                  | 135,875                                   | 140,905                                   |
| Labor expenses                                                                                 | 229,732                                   | 236,982                                   |
| Other operating costs and expenses                                                             | 181,533                                   | 167,970                                   |
| General and administrative expenses                                                            | 44,427                                    | 43,960                                    |
| Depreciation and amortization expenses                                                         | 22,006                                    | 23,562                                    |
| Impairment of assets and lease termination expenses                                            | 594                                       | 191,896                                   |
| Acquisition-related costs                                                                      | —                                         | 1,236                                     |
| Acquisition-related contingent consideration, compensation and amortization expenses/(benefit) | 550                                       | (4,466)                                   |
| Preopening costs                                                                               | 3,856                                     | 3,119                                     |
| Total costs and expenses                                                                       | 618,573                                   | 805,164                                   |
| Income/(loss) from operations                                                                  | 8,844                                     | (190,058)                                 |
| Interest and other expense, net                                                                | (2,694)                                   | (1,518)                                   |
| Income/(loss) before income taxes                                                              | 6,150                                     | (191,576)                                 |
| Income tax provision/(benefit)                                                                 | 2,282                                     | (55,413)                                  |
| Net income/(loss)                                                                              | 3,868                                     | (136,163)                                 |
| Dividends on Series A preferred stock                                                          | (5,070)                                   | —                                         |
| Net loss available to common stockholders                                                      | \$ (1,202)                                | \$ (136,163)                              |
| Net loss per common share:                                                                     |                                           |                                           |
| Basic                                                                                          | \$ (0.03)                                 | \$ (3.11)                                 |
| Diluted                                                                                        | \$ (0.03)                                 | \$ (3.11)                                 |
| Weighted-average common shares outstanding:                                                    |                                           |                                           |
| Basic                                                                                          | 44,189                                    | 43,773                                    |
| Diluted                                                                                        | 44,189                                    | 43,773                                    |

See the accompanying notes to the condensed consolidated financial statements.

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

|                                                                    | <b>Thirteen<br/>Weeks Ended<br/>March 30, 2021</b> | <b>Thirteen<br/>Weeks Ended<br/>March 31, 2020</b> |
|--------------------------------------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Net income/(loss)                                                  | \$ 3,868                                           | \$ (136,163)                                       |
| Other comprehensive gain/(loss):                                   |                                                    |                                                    |
| Foreign currency translation adjustment                            | 174                                                | (936)                                              |
| Unrealized gain/(loss) on derivative, net of tax                   | 1,738                                              | (2,370)                                            |
| Other comprehensive gain/(loss)                                    | 1,912                                              | (3,306)                                            |
| Total comprehensive income/(loss)                                  | \$ 5,780                                           | \$ (139,469)                                       |
| Comprehensive income attributable to preferred stockholders        | (5,070)                                            | —                                                  |
| Total comprehensive income/(loss) available to common stockholders | <u>\$ 710</u>                                      | <u>\$ (139,469)</u>                                |

See the accompanying notes to the condensed consolidated financial statements

**THE CHEESECAKE FACTORY INCORPORATED**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND SERIES A CONVERTIBLE PREFERRED STOCK**  
(In thousands)  
(Unaudited)

**For the thirteen weeks ended March 30, 2021:**

|                                                                    | Series A Convertible Preferred Stock |            | Common Stock |        | Additional Paid-in Capital | Retained Earnings | Treasury Stock | Accumulated Other Comprehensive Loss | Total      |
|--------------------------------------------------------------------|--------------------------------------|------------|--------------|--------|----------------------------|-------------------|----------------|--------------------------------------|------------|
|                                                                    | Shares                               | Amount     | Shares       | Amount |                            |                   |                |                                      |            |
| Balance, December 29, 2020                                         | 200                                  | \$ 218,248 | 98,645       | \$ 986 | \$ 878,148                 | \$ 1,110,087      | \$ (1,696,743) | \$ (3,785)                           | \$ 288,693 |
| Cumulative effect of adopting ASU 2020-06                          | —                                    | (4,763)    | —            | —      | —                          | 4,763             | —              | —                                    | 4,763      |
| Balance, December 29, 2020, as adjusted                            | 200                                  | 213,485    | 98,645       | 986    | 878,148                    | 1,114,850         | (1,696,743)    | (3,785)                              | 293,456    |
| Net income                                                         | —                                    | —          | —            | —      | —                          | 3,868             | —              | —                                    | 3,868      |
| Foreign currency translation adjustment                            | —                                    | —          | —            | —      | —                          | —                 | —              | 174                                  | 174        |
| Change in derivative, net of tax                                   | —                                    | —          | —            | —      | —                          | —                 | —              | 1,738                                | 1,738      |
| Cash dividends declared Common stock, net of forfeitures           | —                                    | —          | —            | —      | —                          | 399               | —              | —                                    | 399        |
| Stock-based compensation                                           | —                                    | —          | 293          | 3      | 5,480                      | —                 | —              | —                                    | 5,483      |
| Common stock issued under stock-based compensation plans           | —                                    | —          | 570          | 6      | 20,417                     | —                 | —              | —                                    | 20,423     |
| Treasury stock purchases                                           | —                                    | —          | —            | —      | —                          | —                 | (3,957)        | —                                    | (3,957)    |
| Cash dividend declared Series A preferred stock, \$25.35 per share | —                                    | —          | —            | —      | —                          | (5,070)           | —              | —                                    | (5,070)    |
| Balance, March 30, 2021                                            | 200                                  | \$ 213,485 | 99,508       | \$ 995 | \$ 904,045                 | \$ 1,114,047      | \$ (1,700,700) | \$ (1,873)                           | \$ 316,514 |

**For the thirteen weeks ended March 31, 2020:**

|                                                          | Series A Convertible Preferred Stock |        | Common Stock |        | Additional Paid-in Capital | Retained Earnings | Treasury Stock | Accumulated Other Comprehensive Loss | Total      |
|----------------------------------------------------------|--------------------------------------|--------|--------------|--------|----------------------------|-------------------|----------------|--------------------------------------|------------|
|                                                          | Shares                               | Amount | Shares       | Amount |                            |                   |                |                                      |            |
| 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                                  | —                                    | \$ —   | 98,454       | \$ 985 | \$ 861,641                 | \$ 1,255,794      | \$ (1,695,708) | \$ (3,741)                           | \$ 418,971 |

See the accompanying notes to the condensed consolidated financial statements.

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

|                                                                                                | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Cash flows from operating activities:                                                          |                                           |                                           |
| Net income/(loss)                                                                              | \$ 3,868                                  | \$ (136,163)                              |
| Adjustments to reconcile net income/(loss) to cash provided by/(used in) operating activities: |                                           |                                           |
| Depreciation and amortization expenses                                                         | 22,006                                    | 23,562                                    |
| Impairment of assets and lease termination expense                                             | 431                                       | 191,571                                   |
| Deferred income taxes                                                                          | (1,508)                                   | (11,231)                                  |
| Stock-based compensation                                                                       | 5,444                                     | 5,507                                     |
| Changes in assets and liabilities:                                                             |                                           |                                           |
| Accounts and other receivables                                                                 | 15,517                                    | 38,312                                    |
| Income taxes receivable/payable                                                                | 1,916                                     | (44,553)                                  |
| Inventories                                                                                    | 408                                       | (605)                                     |
| Prepaid expenses                                                                               | 4,584                                     | 1,452                                     |
| Operating lease assets/liabilities                                                             | (2,684)                                   | 1,851                                     |
| Other assets                                                                                   | (2,113)                                   | 13,279                                    |
| Accounts payable                                                                               | (1,588)                                   | (3,464)                                   |
| Gift card liabilities                                                                          | (18,480)                                  | (26,753)                                  |
| Other accrued expenses                                                                         | (6,159)                                   | (85,745)                                  |
| Cash provided by/(used in) operating activities                                                | 21,642                                    | (32,980)                                  |
| Cash flows from investing activities:                                                          |                                           |                                           |
| Additions to property and equipment                                                            | (7,227)                                   | (15,775)                                  |
| Additions to intangible assets                                                                 | (480)                                     | (128)                                     |
| Other                                                                                          | (1,000)                                   | —                                         |
| Cash used in investing activities                                                              | (8,707)                                   | (15,903)                                  |
| Cash flows from financing activities:                                                          |                                           |                                           |
| Borrowings on credit facility                                                                  | —                                         | 90,000                                    |
| Proceeds from exercise of stock options                                                        | 20,423                                    | 113                                       |
| Cash dividends paid                                                                            | (2,179)                                   | (15,791)                                  |
| Treasury stock purchases                                                                       | (3,957)                                   | (2,586)                                   |
| Cash provided by financing activities                                                          | 14,287                                    | 71,736                                    |
| Foreign currency translation adjustment                                                        | 38                                        | (246)                                     |
| Net change in cash and cash equivalents                                                        | 27,260                                    | 22,607                                    |
| Cash and cash equivalents at beginning of period                                               | 154,085                                   | 58,416                                    |
| Cash and cash equivalents at end of period                                                     | \$ 181,345                                | \$ 81,023                                 |
| Supplemental disclosures:                                                                      |                                           |                                           |
| Interest paid                                                                                  | \$ 1,742                                  | \$ 253                                    |
| Income taxes paid                                                                              | \$ 327                                    | \$ 352                                    |
| Construction payable                                                                           | \$ 4,206                                  | \$ 3,945                                  |

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 29, 2020 filed with the SEC on February 24, 2021 (“fiscal 2020 10-K”).

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31 for financial reporting purposes. Fiscal 2021 consists of 52 weeks and will end on December 28, 2021. Fiscal 2020, which ended on December 29, 2020, was also a 52-week year.

Beginning with our fiscal 2020 10-K, we combined accounts receivable and other receivable on the consolidated balance sheet and statement of cash flow. Corresponding balances for the thirteen weeks ended March 31, 2020 were reclassified to conform to the current presentation.

*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 continued 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 in March 2020. We experienced significant disruptions to our business as suggested and mandated social distancing and shelter-in-place orders led to 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 the second quarter of fiscal 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms, and we began to reopen dining rooms across our concepts. However, restrictions on the type of permitted operating model and occupancy capacity continue to change. 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 restaurant 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 continued significance of the impact of the COVID-19 pandemic to our operating results and financial position.

## Recent Accounting Pronouncements

In August 2020, the FASB issued Accounting Standards Update ("ASU") 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which is intended to simplify the accounting and measurement of convertible instruments and the settlement assessment for contracts in an entity's own equity. This pronouncement is effective for fiscal years beginning after December 15, 2021 and early adoption is permitted. The guidance allows for either full retrospective adoption or modified retrospective adoption. We adopted this guidance in the first quarter of fiscal 2021 utilizing the modified retrospective method and, accordingly, recorded a \$4.8 million cumulative adjustment to retained earnings to reverse previously recorded beneficial conversion features.

## 2. Fair Value Measurements

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

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

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

|                                                                           | March 30, 2021    |          |         |
|---------------------------------------------------------------------------|-------------------|----------|---------|
|                                                                           | Level 1           | Level 2  | Level 3 |
| <b>Assets/(Liabilities)</b>                                               |                   |          |         |
| Non-qualified deferred compensation assets                                | \$ 85,596         | \$ —     | \$ —    |
| Non-qualified deferred compensation liabilities                           | (84,418)          | —        | —       |
| Acquisition-related deferred consideration                                | —                 | (38,326) | —       |
| Acquisition-related contingent consideration and compensation liabilities | —                 | —        | (7,706) |
| Interest rate swap                                                        | —                 | (2,288)  | —       |
|                                                                           |                   |          |         |
|                                                                           | December 29, 2020 |          |         |
|                                                                           | Level 1           | Level 2  | Level 3 |
| <b>Assets/(Liabilities)</b>                                               |                   |          |         |
| Non-qualified deferred compensation assets                                | \$ 83,485         | \$ —     | \$ —    |
| Non-qualified deferred compensation liabilities                           | (83,702)          | —        | —       |
| Acquisition-related deferred consideration                                | —                 | (38,119) | —       |
| Acquisition-related contingent consideration and compensation liabilities | —                 | —        | (7,465) |
| Interest rate swap                                                        | —                 | (4,591)  | —       |

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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 \$32.0 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):

|                      | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|----------------------|-------------------------------------------|-------------------------------------------|
| Beginning balance    | \$ 7,465                                  | \$ 13,218                                 |
| Change in fair value | 241                                       | (5,938)                                   |
| Ending balance       | <u>\$ 7,706</u>                           | <u>\$ 7,280</u>                           |

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

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

### 3. Inventories

Inventories consisted of (in thousands):

|                                            | March 30, 2021   | December 29, 2020 |
|--------------------------------------------|------------------|-------------------|
| Restaurant food and supplies               | \$ 24,190        | \$ 24,282         |
| Bakery finished goods and work in progress | 7,642            | 7,861             |
| Bakery raw materials and supplies          | 7,123            | 7,145             |
| Total                                      | <u>\$ 38,955</u> | <u>\$ 39,288</u>  |

### 4. Gift Cards

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

|                            | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|----------------------------|-------------------------------------------|-------------------------------------------|
| Gift card liabilities:     |                                           |                                           |
| Beginning balance          | \$ 184,655                                | \$ 187,978                                |
| Activations                | 16,465                                    | 17,340                                    |
| Redemptions and breakage   | (34,942)                                  | (44,103)                                  |
| Ending balance             | <u>\$ 166,178</u>                         | <u>\$ 161,215</u>                         |
| Gift card contract assets: |                                           |                                           |
| Beginning balance          | \$ 17,955                                 | \$ 23,172                                 |
| Deferrals                  | 2,295                                     | 2,203                                     |
| Amortization               | (3,995)                                   | (4,690)                                   |
| Ending balance             | <u>\$ 16,255</u>                          | <u>\$ 20,685</u>                          |

The significant declines in redemptions and breakage during the first quarter of 2021 compared to 2020 stem from the impact of the COVID-19 pandemic on our business.

## 5. Long-Term Debt

On March 30, 2021, we entered into a Second Amendment (the “Second Amendment”) to our existing Third Amended and Restated Loan Agreement, dated July 30, 2019 (as amended by that certain First Amendment, dated as of May 1, 2020 and by the Second Amendment, collectively, the “Amended Credit Agreement”). The Amended Credit Agreement, which terminates on July 30, 2024, consists of a \$400 million revolving loan facility (the “Revolving Facility”), including a \$40 million sublimit for letters of credit. The Amended Credit Agreement also provides the ability to increase the Revolving Facility in an amount not to exceed (a) during the Covenant Relief Period (as defined below) \$125 million and (b) thereafter, \$200 million. The funding of any such increases are subject to receipt of lender commitments and satisfaction of customary conditions precedent. Certain of our material subsidiaries have guaranteed our obligations under the Amended Credit Agreement.

The Second Amendment, among other things, (i) extended the prior covenant relief period during which the testing of the net adjusted debt to EBITDAR ratio covenant (the “Net Adjusted Leverage Ratio”) and the EBITDAR to interest and rent expense ratio covenant (the “EBITDAR Ratio”) is suspended until the quarter ending December 28, 2021 (the “Covenant Relief Period”), (ii) continued to impose a monthly liquidity covenant of \$100 million until the Company has demonstrated compliance with the financial covenants as of the quarter ending December 28, 2021, (iii) provided that the obligations thereunder be secured by a first priority security interest in substantially all of our and any guarantor’s property, with such property to be released upon (a) the termination of the Covenant Relief Period, (b) the Company’s compliance with the Net Adjusted Leverage Ratio and the EBITDAR Ratio as of the quarter ending on March 29, 2022, (c) neither the Company nor any of the guarantors having incurred unsecured debt using certain debt baskets under the Revolving Facility unless such debt is convertible debt or subordinated on customary debt subordination terms reasonably acceptable to the administrative agent and (d) no default or event of default having occurred or continuing, (iv) amended certain negative covenants during the Covenant Relief Period, including certain restrictions on capital expenditures, restricted payments, investments and indebtedness, and (v) permitted the payment of cash dividends with respect to our Series A Convertible Preferred Stock, par value \$0.1 per share (“Series A preferred stock”) for each fiscal quarter of 2021 in an amount not to exceed \$5.25 million per quarter.

Borrowings under the Amended Credit Agreement 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) 1.5%. We also pay a fee of 0.4% on the daily amount of unused commitments under the Amended Credit Agreement.

Subsequent to the Covenant Relief Period, borrowings under the Amended Credit Agreement will bear interest, at our option, at a rate equal to either: (i) 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 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. We paid certain customary loan origination fees in conjunction with the Amended Credit Agreement. During the first quarter of fiscal 2021 we had net availability for borrowings of \$96.6 million, based on a \$280.0 million outstanding debt balance and \$23.4 million in standby letters of credit. Our Liquidity balance was \$300.4 million at March 29, 2021, and we were in compliance with all covenants under the Amended Credit Agreement in effect at that date.

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The Amended Credit Agreement contains customary affirmative and negative covenants, including limits on cash dividends and share repurchases with respect to our equity interests, and restrictions on indebtedness, liens, investments, sales of assets, fundamental changes and other matters. The Amended Credit Agreement also contains customary events of default that include, among others, non-payment of principal, interest or fees, violation of covenants, inaccuracy of representations and warranties, bankruptcy and insolvency events, material judgements, cross defaults to material indebtedness and events constituting a change of control. The occurrence of an event of default could result in the termination of commitments under the Revolving Facility, the declaration that all outstanding loans are immediately due and payable in whole or in part and the requirement of cash collateral deposits in respect of outstanding letters of credit.

## 6. Leases

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

|            | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|------------|-------------------------------------------|-------------------------------------------|
| Operating  | \$ 32,394                                 | \$ 33,041                                 |
| Variable   | 16,481                                    | 15,828                                    |
| Short-term | 70                                        | 129                                       |
| Total      | <u>\$ 48,945</u>                          | <u>\$ 48,998</u>                          |

Supplemental information related to leases (in thousands):

|                                                                              | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Cash paid for amounts included in the measurement of lease liabilities:      |                                           |                                           |
| Operating cash flows from operating leases                                   | \$ 33,926                                 | \$ 30,760                                 |
| Right-of-use assets obtained in exchange for new operating lease liabilities | 7,372                                     | 14,929                                    |

## 7. Derivative

The Company has an interest rate swap agreement, which matures on April 1, 2025, to manage our exposure to interest rate movements on our Revolving Facility. 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 determined that at both March 30, 2021 and March 31, 2020, the interest rate swap agreement was an effective hedging agreement.

Our only derivative is the aforementioned interest rate swap, which is designated as a cash flow hedge. At March 30, 2021 and March 31, 2020, the fair value of our interest rate swap was a liability of \$2.3 million and \$3.1 million, respectively. We reclassified \$0.5 million out of accumulated other comprehensive loss ("AOCL") in the first quarter of fiscal 2021 and none out of AOCL in the first quarter of 2020 for the monthly settlement of the interest rate swap. No gains or losses representing amounts excluded from the assessment of effectiveness were recognized in earnings in the first quarter of fiscal 2021 or 2020.

The following table summarizes the changes in AOCL, net of tax, related to the interest rate swap (in thousands):

|                                                   | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|---------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Beginning balance                                 | \$ (3,464)                                | \$ —                                      |
| Other comprehensive loss before reclassifications | 1,270                                     | (2,370)                                   |
| Amounts reclassified from AOCL                    | 468                                       | —                                         |
| Other comprehensive loss, net of tax              | 1,738                                     | (2,370)                                   |
| Ending balance                                    | <u>\$ (1,726)</u>                         | <u>\$ (2,370)</u>                         |

We classified this interest rate swap within Level 2 of the valuation hierarchy described in Note 2. Our counterparty under this arrangement provided monthly statements of the market values of this instrument 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 liability for the Company's and the counterparty's non-performance risk to the derivative trade was considered when measuring the fair value of derivative liability.

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

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

## **9. Stockholders' Equity and Series A Convertible Preferred Stock**

### *Common Stock -Dividends and Share Repurchases*

To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of the Amended Credit Agreement, in March 2020, our Board suspended the quarterly dividend on our common stock, as well as share repurchases. Prior to this suspension, our Board declared cash dividends of \$0.36 per common share for the first quarter of fiscal 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 Amended Credit Agreement and applicable law, and such other factors that the Board considers relevant. (See Note 5 for further discussion of our long-term debt.)

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 53.1 million shares at a total cost of \$1,700.7 million through March 30, 2021 with 0.1 million shares repurchased at a cost of \$4.0 million during the first quarter of fiscal 2021 to satisfy tax withholding obligations on vested restricted share awards. Our objectives with regard to share repurchases have been to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth.

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Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. Shares may be repurchased in the open market or through privately negotiated transactions at times and prices considered appropriate by us. Future decisions to repurchase shares are at the discretion of the Board and are based on several factors, including current and forecasted operating cash flows, capital needs associated with new restaurant development and maintenance of existing locations, dividend payments, debt levels and cost of borrowing, obligations associated with the acquisitions of North Italia and FRC (the "Acquisition"), our share price and current market conditions. The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the Amended Credit Agreement that limit share repurchases based on a defined ratio. (See Note 5 for further discussion of our long-term debt.)

### *Series A Convertible Preferred Stock*

On April 20, 2020, to increase our liquidity given the impact of the COVID-19 pandemic on our operations, we issued 200,000 shares of Series A preferred stock, par value \$0.01 per share for an aggregate purchase price of \$200 million, or \$1,000 per share. In connection with the issuance, we incurred direct and incremental costs of \$10.3 million, including financial advisory fees, closing costs, legal expenses, a commitment fee and other offering-related expenses. These direct and incremental costs reduced the Series A preferred stock balance at the issuance date and were recognized through retained earnings on June 30, 2020, the first measurement date.

The Series A preferred stock ranks senior to our common stock with respect to dividends and distributions on liquidation, winding-up and dissolution upon which each share of Series A preferred stock will be entitled to receive an amount per share equal to the greater of (i) the purchase price (without giving effect to the commitment fee), plus all accrued and unpaid dividends (the "Liquidation Preference") and (ii) the amount that the holder of the Series A preferred stock would have been entitled to receive at such time if the Series A preferred stock were converted into common stock. At March 30, 2021, the Liquidation Preference was \$1,067.42 per share.

### Dividend Rights

The holders of Series A preferred stock are entitled to dividends on the Liquidation Preference at the rate of 9.5% per annum, payable in cash or, at our option, paid in-kind. Such holders are also entitled to participate in dividends declared or paid on our common stock on an as-converted basis. During the first quarter of fiscal 2021, we declared a cash dividend of \$5.1 million, or \$25.35 per share.

### Conversion Rights

Each holder has the right, at its option, to convert its Series A preferred stock, in whole or in part, into fully paid and non-assessable shares of our common stock at a conversion price equal to \$22.23 per share, subject to customary anti-dilution adjustments, including in the event of any stock split, stock dividend, recapitalization or similar events and certain anti-dilutive offerings if they occur on or prior to April 19, 2021. At March 30, 2021, the number of common shares that would be required to be issued upon conversion of the outstanding shares of Series A preferred stock was 9.6 million. Pursuant to the terms of the Certificate of Designations, unless and until approval of our stockholders is obtained as contemplated by Nasdaq listing rules (the "Stockholder Approval"), no holder may convert shares of Series A preferred stock through either an optional or a mandatory conversion into shares of common stock if and solely to the extent that such conversion would result in the holder beneficially owning in excess of 19.9% of the then outstanding common stock. We have the right to settle any conversion in cash. As of March 30, 2021, the Series A preferred stock was convertible into approximately 17.1% of our outstanding common stock, on an as-converted basis.

After April 20, 2023 and subject to certain conditions, we may, at our option, require conversion of all of the outstanding shares of Series A preferred stock to common stock if, for at least 20 trading days during the 30 consecutive trading days immediately preceding the date we notify the holders of Series A preferred stock of the election to convert, the closing price of the common stock is at least 200% of the conversion price. We will not exercise our right to mandatorily convert all outstanding shares of Series A preferred stock unless certain liquidity conditions with regard to the shares of common stock to be issued upon such conversion are satisfied.

Upon adoption of ASU 2020-06 in the first quarter of fiscal 2021, we recorded a \$4.8 million cumulative adjustment to retained earnings to reverse previously recorded beneficial conversion features.

### Redemption Rights

On and after October 20, 2027, holders of the Series A preferred stock have the right to require redemption of all or any part of the Series A preferred stock for an amount equal to the Liquidation Preference. Upon certain change of control events, we are required to redeem, subject to conversion rights of the holders of Series A preferred stock, all of the outstanding shares of Series A preferred stock for cash consideration equal to the greater of (i) the Liquidation Preference and (ii) the amount that such holder would have been entitled to receive at such time if the Series A preferred stock were converted into common stock.

We may redeem any or all of the Series A preferred stock for an amount equal to (i) 120% of the Liquidation Preference thereof at any time between April 21, 2025 and April 19, 2026 and (ii) 100% of the Liquidation Preference at any time beginning on April 20, 2026, provided that such holder will have the right to convert the Series A preferred stock immediately prior to and in lieu of such redemption. To the extent such holder elects to convert the Series A preferred stock in lieu of such redemption and the number of shares of common stock issuable upon such conversion would exceed 19.9% of the outstanding shares of common stock, and the Stockholder Approval has not been obtained as of such date, any portion in excess of such limit will remain outstanding as Series A preferred stock.

### Voting Rights

Holders of Series A preferred stock are generally entitled to vote with the holders of the common stock on an as-converted basis. Holders of Series A preferred stock are entitled to a separate class vote with respect to, among other things, amendments to the Company's organizational documents that have an adverse effect on the Series A preferred stock, issuances of securities that are senior to, or equal in priority with, the Series A preferred stock and certain business combinations and binding or statutory share exchanges or reclassification involving the Series A preferred stock unless such events do not adversely affect the rights, preferences or voting powers of such preferred stock. In addition, for so long as the holders of Series A preferred stock hold record and beneficial ownership of 25% of the Series A preferred stock issued to them, such holders will have the right to designate one member to our board of directors. If the holders cease to have such designation right, for so long as the holders have record and beneficial ownership of shares of common stock issued upon conversion of the Series A preferred stock that constitute at least 5% of the outstanding common stock, the holders will have the right to nominate one person for election to our board of directors.

## **10. Stock-Based Compensation**

We maintain stock-based incentive plan under which incentive stock options, non-qualified stock options, stock appreciation rights, restricted shares and restricted share units may be granted to staff members, consultants and non-employee directors. The following table presents information related to stock-based compensation, net of forfeitures (in thousands):

|                                                     | <b>Thirteen<br/>Weeks Ended<br/>March 30, 2021</b> | <b>Thirteen<br/>Weeks Ended<br/>March 31, 2020</b> |
|-----------------------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Labor expenses                                      | \$ 2,043                                           | \$ 1,966                                           |
| Other operating costs and expenses                  | 74                                                 | 70                                                 |
| General and administrative expenses                 | 3,327                                              | 3,471                                              |
| Total stock-based compensation                      | 5,444                                              | 5,507                                              |
| Income tax benefit                                  | 1,337                                              | 1,353                                              |
| Total stock-based compensation, net of taxes        | \$ 4,107                                           | \$ 4,154                                           |
| Capitalized stock-based compensation <sup>(1)</sup> | \$ 39                                              | \$ 40                                              |

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



### Stock Options

We did not issue any stock options during the first quarter of fiscal 2021. The weighted-average fair value at the grant date for options issued during the first quarter of fiscal 2020 was \$6.66 per share. 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: (a) an expected option term of 6.9 years, (b) expected stock price volatility of 25.7%, (c) a risk-free interest rate of 1.5% and (d) a dividend yield on our stock of 3.6%.

Stock option activity during the thirteen weeks ended March 30, 2021 was as follows:

|                                  | <b>Shares</b><br><b>(In thousands)</b> | <b>Weighted-Average<br/>Exercise Price</b><br><b>(Per share)</b> | <b>Weighted-Average<br/>Remaining<br/>Contractual<br/>Term</b><br><b>(In years)</b> | <b>Aggregate<br/>Intrinsic<br/>Value<sup>(1)</sup></b><br><b>(In thousands)</b> |
|----------------------------------|----------------------------------------|------------------------------------------------------------------|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Outstanding at December 29, 2020 | 2,294                                  | \$ 45.35                                                         | 5.0                                                                                 | \$ 307                                                                          |
| Granted                          | —                                      | —                                                                |                                                                                     |                                                                                 |
| Exercised                        | (484)                                  | 42.18                                                            |                                                                                     |                                                                                 |
| Forfeited or cancelled           | —                                      | —                                                                |                                                                                     |                                                                                 |
| Outstanding at March 30, 2021    | <u>1,810</u>                           | \$ 46.20                                                         | 5.7                                                                                 | \$ 6,914                                                                        |
| Exercisable at March 30, 2021    | 953                                    | \$ 48.80                                                         | 4.2                                                                                 | \$ 6,473                                                                        |

- (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 30, 2021 and March 31, 2020 was \$5.7 million and \$35.6 million, respectively. As of March 30, 2021, total unrecognized stock-based compensation expense related to unvested stock options was \$6.5 million, which we expect to recognize over a weighted-average period of approximately 3.2 years.

### Restricted Shares and Restricted Share Units

Restricted share and restricted share unit activity during the thirteen weeks ended March 30, 2021 was as follows:

|                                  | <b>Shares</b><br><b>(In thousands)</b> | <b>Weighted-Average<br/>Fair<br/>Value</b><br><b>(Per share)</b> |
|----------------------------------|----------------------------------------|------------------------------------------------------------------|
| Outstanding at December 29, 2020 | 2,008                                  | \$ 43.70                                                         |
| Granted                          | 385                                    | 48.38                                                            |
| Vested                           | (199)                                  | 47.93                                                            |
| Forfeited                        | (92)                                   | 45.34                                                            |
| Outstanding at March 30, 2021    | <u>2,102</u>                           | \$ 44.08                                                         |

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 2021 and 2020 was \$48.38 and \$40.01, respectively. The fair value of shares that vested during the thirteen weeks ended March 30, 2021 was \$9.5 million. As of March 30, 2021, total unrecognized stock-based compensation expense related to unvested restricted shares and restricted share units was \$46.5 million, which we expect to recognize over a weighted-average period of approximately 3.2 years.

## 11. Net Income/(Loss) Per Share

Basic net income/(loss) per share is computed by dividing net income/(loss) available to common stockholders by the weighted-average number of common shares outstanding during the period, reduced by unvested restricted stock awards. At both March 30, 2021 and March 31, 2020, 2.1 million shares of restricted stock issued 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 is computed by dividing net income available to common stockholders by the weighted-average number of common stock equivalents outstanding for the period.

Holders of our Series A Convertible Preferred Stock, par value \$0.01 per share (the "Series A preferred stock") participate in dividends on an as-converted basis when declared on common stock. As a result, our Series A preferred stock meets the definition of a participating security which requires us to apply the two-class method to compute both basic and diluted net income per share. The two-class method is an earnings allocation formula that treats participating securities as having rights to earnings that would otherwise have been available to common stockholders. In addition, as our Series A preferred stock is a participating security, we are required to calculate diluted net income per share under the if-converted method in addition to the two-class method and utilize the most dilutive result. In periods where there is a net loss, no allocation of undistributed net loss to preferred stockholders is performed as the holders of our Series A preferred stock are not contractually obligated to participate in our losses.

|                                                 | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|-------------------------------------------------|-------------------------------------------|-------------------------------------------|
|                                                 | (In thousands, except per share data)     |                                           |
| Basic net income/(loss) per common share:       |                                           |                                           |
| Net income/(loss)                               | \$ 3,868                                  | \$ (136,163)                              |
| Dividends on Series A preferred stock           | (5,070)                                   | —                                         |
| Net loss available to common stockholders       | (1,202)                                   | (136,163)                                 |
| Basic weighted-average shares outstanding       | 44,189                                    | 43,773                                    |
| Basic net loss per common share                 | \$ (0.03)                                 | \$ (3.11)                                 |
| Diluted net income/(loss) per common share:     |                                           |                                           |
| Net loss available to common stockholders       | \$ (1,202)                                | \$ (136,163)                              |
| Basic weighted-average shares outstanding       | 44,189                                    | 43,773                                    |
| Dilutive effect of equity awards <sup>(1)</sup> | —                                         | —                                         |
| Diluted weighted-average shares outstanding     | 44,189                                    | 43,773                                    |
| Diluted net loss per common share               | \$ (0.03)                                 | \$ (3.11)                                 |

(1) Shares of common stock equivalents of 1.5 million and 3.8 million as of March 30, 2021 and March 31, 2020, respectively, were excluded from the diluted calculation due to their anti-dilutive effect.

## 12. 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 ASC 280, "Segment Reporting," The Cheesecake Factory, North Italia and the other FRC brands are the only businesses that meet the criteria of a reportable operating segment. The remaining operating segments (Flower Child, our bakery division and Grand Lux Cafe) along with our businesses that don't qualify as operating segments are combined in Other. Unallocated corporate expenses, capital expenditures and assets are also combined in Other.

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Segment information is presented below (in thousands):

|                                                      | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Revenues:                                            |                                           |                                           |
| The Cheesecake Factory                               | \$ 499,389                                | \$ 488,471                                |
| North Italia                                         | 32,823                                    | 30,512                                    |
| Other FRC                                            | 36,194                                    | 35,583                                    |
| Other                                                | 59,011                                    | 60,540                                    |
| Total                                                | <u>\$ 627,417</u>                         | <u>\$ 615,106</u>                         |
| Income/(loss) from operations:                       |                                           |                                           |
| The Cheesecake Factory                               | \$ 44,481                                 | \$ 39,324                                 |
| North Italia                                         | 332                                       | (72,086)                                  |
| Other FRC                                            | 3,880                                     | (69,964)                                  |
| Other                                                | (39,849)                                  | (87,332)                                  |
| Total                                                | <u>\$ 8,844</u>                           | <u>\$ (190,058)</u>                       |
| Depreciation and amortization expenses:              |                                           |                                           |
| The Cheesecake Factory                               | \$ 16,320                                 | \$ 17,277                                 |
| North Italia                                         | 844                                       | 965                                       |
| Other FRC                                            | 1,177                                     | 1,201                                     |
| Other                                                | 3,665                                     | 4,119                                     |
| Total                                                | <u>\$ 22,006</u>                          | <u>\$ 23,562</u>                          |
| Impairment of assets and lease termination expenses: |                                           |                                           |
| The Cheesecake Factory                               | \$ —                                      | \$ 616                                    |
| North Italia                                         | —                                         | 71,524                                    |
| Other FRC                                            | —                                         | 72,939                                    |
| Other                                                | 594                                       | 46,817                                    |
| Total                                                | <u>\$ 594</u>                             | <u>\$ 191,896</u>                         |
| Preopening costs:                                    |                                           |                                           |
| The Cheesecake Factory                               | \$ 2,063                                  | \$ 1,414                                  |
| North Italia                                         | 1,217                                     | 953                                       |
| Other FRC                                            | 463                                       | (159)                                     |
| Other                                                | 113                                       | 911                                       |
| Total                                                | <u>\$ 3,856</u>                           | <u>\$ 3,119</u>                           |
| Capital expenditures:                                |                                           |                                           |
| The Cheesecake Factory                               | \$ 4,080                                  | \$ 8,598                                  |
| North Italia                                         | 1,212                                     | 2,964                                     |
| Other FRC                                            | 719                                       | 1,104                                     |
| Other                                                | 1,216                                     | 3,109                                     |
| Total                                                | <u>\$ 7,227</u>                           | <u>\$ 15,775</u>                          |
|                                                      | March 30, 2021                            | December 29, 2020                         |
| Total assets:                                        |                                           |                                           |
| The Cheesecake Factory                               | \$ 1,622,997                              | \$ 1,671,733                              |
| North Italia                                         | 244,345                                   | 270,218                                   |
| Other FRC                                            | 285,108                                   | 308,866                                   |
| Other                                                | 582,989                                   | 496,237                                   |
| Total                                                | <u>\$ 2,735,439</u>                       | <u>\$ 2,747,054</u>                       |

### **13. Subsequent Events**

On March 30, 2021, the Audit Committee of our Board declared a cash dividend of \$5.1 million, or \$25.35 per share, on our Series A preferred stock, which was paid on March 31, 2021 to the holders of record on March 15, 2021.

## **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, statements regarding corporate social responsibility and in our corporate social responsibility (CSR) report, the effects of the COVID-19 pandemic on our financial condition and our results of operation, including our expectation with respect to our ability to reopen and keep open our restaurants, 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, sales, 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 the FRC brands; and utilize our capital effectively. These forward-looking statements may be affected by various factors 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; demonstrations, political unrest, potential damage to or closure of our restaurants and potential reputational damage to us or any of our brands; 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; acceptance and success of The Cheesecake Factory in international markets; acceptance and success of North Italia, the FRC brands and our 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 laws and regulations related to COVID-19 impacting restaurant operations and customer access to off- and on-premises dining; increases in minimum wages and benefit costs; the economic health of our landlords and other tenants in retail centers in which our restaurants are located, and our ability to successfully manage our lease arrangements with landlords; 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 any share repurchases or dividends; the ability to achieve projected financial results; economic and political conditions that impact consumer confidence and spending; the resolutions of uncertain tax positions with the Internal Revenue Service and the impact of tax reform legislation; 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.

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In connection with the “safe harbor” provisions of the Acts, we have identified and are disclosing important factors, risks and uncertainties that could cause our actual results to differ materially from those projected in forward-looking statements made by us, or on our behalf. (See Part II, Item 1A of this report, “Risk Factors,” and Part I, Item 1A, “Risk Factors,” included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2020.) These cautionary statements are to be used as a reference in connection with any forward-looking statements. The factors, risks and uncertainties identified in these cautionary statements are in addition to those contained in any other cautionary statements, written or oral, which may be made or otherwise addressed in connection with a forward-looking statement or contained in any of our subsequent filings with the SEC. Because of these factors, risks and uncertainties, we caution against placing undue reliance on forward-looking statements. Although we believe that the assumptions underlying forward-looking statements are currently reasonable, any of the assumptions could be incorrect or incomplete, and there can be no assurance that forward-looking statements will prove to be accurate. Forward-looking statements speak only as of the date on which they are made, and we undertake no obligation to publicly update or revise any forward-looking statements or to make any other forward-looking statements, whether as a result of new information, future events or otherwise, unless required to do so by law.

The below discussion and analysis, which contains forward-looking statements, should be read in conjunction with our interim unaudited condensed consolidated financial statements and related notes in Part I, Item 1 of this report and with the following items included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2020: the audited consolidated financial statements and related notes in Part IV, Item 15; the “Risk Factors” included in Part I, Item 1A; the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in Part II, Item 7; and the cautionary statements included throughout this Form 10-Q. The inclusion of supplementary analytical and related information herein may require us to make estimates and assumptions to enable us to fairly present, in all material respects, our analysis of trends and expectations with respect to our results of operations and financial position.

### **COVID-19 Pandemic**

The Company is subject to continued 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 in March 2020. We experienced significant disruptions to our business as suggested and mandated social distancing and shelter-in-place orders led to 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 the second quarter of fiscal 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms, and we began to reopen dining rooms across our concepts. While restrictions on the type of permitted operating model and occupancy capacity continue to change, as of April 27, 2021, nearly all of the Company’s restaurants were operating with limited indoor dining capacity with The Cheesecake Factory restaurants with reopened dining rooms operating on average at 60% indoor capacity. As of April 27, 2021, one The Cheesecake Factory location was operating an off-premise only model and two Other FRC locations were temporarily closed and plan to reopen in the second quarter of fiscal 2021.

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 restaurant 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.

### **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 298 restaurants throughout the United States and Canada under brands including The Cheesecake Factory®, North Italia® and a collection within our FRC business. Internationally, 28 The Cheesecake Factory® restaurants operate under licensing agreements. Our bakery division operates two facilities that produce quality cheesecakes and other baked products for our restaurants, international licensees and third-party bakery customers.

### **Overview**

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

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Investing in new Company-owned restaurant development is our top long-term capital allocation priority, with a focus on opening our concepts in premier locations within both new and existing markets. 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.

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, as we believe there is opportunity for a longer-term increase in our off-premise mix as we emerge from the COVID-19 pandemic. We are continuing our efforts on a number of initiatives, including a greater focus on increasing customer throughput in our restaurants, leveraging our gift card program, working with a third party to provide delivery services for our restaurants, increasing customer awareness of our online ordering capabilities, augmenting our marketing programs, 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 have targeted menu price increases of approximately 2% to 3% annually, utilizing a market-based strategy to help mitigate cost pressure in higher-wage geographies. Currently, our menu pricing is at the higher end of this range. We will continue to evaluate future pricing decisions in light of the COVID-19 pandemic operating environment.

On October 2, 2019, we completed the acquisitions of North Italia and FRC, including Flower Child, which we expect will further accelerate and diversify our revenue 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 pandemic 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.

Our future cash flow performance will depend on the evolving COVID-19 pandemic regulatory landscape, as well as economic conditions and consumer behavior. We would expect cash generation to increase as the operating environment for the full-service segment of the restaurant industry normalizes from the COVID-19 pandemic impact. Longer-term, we plan to employ a balanced capital allocation strategy, comprised of: investing in new restaurants that are expected to meet our targeted returns, repaying borrowings under our Revolving Facility (as defined below) 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. At present, our dividends on our common stock and share repurchases are suspended. Our ability to declare common dividends and repurchase shares in the future will be subject to financial covenants under the Amended Credit Agreement (as defined below), among other factors.

Longer-term, we believe our domestic revenue growth (comprised of our targeted annual unit growth of 7%, in aggregate across concepts, and comparable sales growth), combined with 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/(loss) 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<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Revenues                                                                                       | 100.0 %                                   | 100.0 %                                   |
| Costs and expenses:                                                                            |                                           |                                           |
| Cost of sales                                                                                  | 21.7                                      | 22.9                                      |
| Labor expenses                                                                                 | 36.6                                      | 38.6                                      |
| Other operating costs and expenses                                                             | 28.9                                      | 27.3                                      |
| General and administrative expenses                                                            | 7.1                                       | 7.1                                       |
| Depreciation and amortization expenses                                                         | 3.5                                       | 3.8                                       |
| Impairment of assets and lease termination expenses                                            | 0.1                                       | 31.2                                      |
| Acquisition-related costs                                                                      | —                                         | 0.2                                       |
| Acquisition-related contingent consideration, compensation and amortization expenses/(benefit) | 0.1                                       | (0.7)                                     |
| Preopening costs                                                                               | 0.6                                       | 0.5                                       |
| Total costs and expenses                                                                       | 98.6                                      | 130.9                                     |
| Income/(loss) from operations                                                                  | 1.4                                       | (30.9)                                    |
| Interest and other expense, net                                                                | (0.4)                                     | (0.2)                                     |
| Income/(loss) before income taxes                                                              | 1.0                                       | (31.1)                                    |
| Income tax provision/(benefit)                                                                 | 0.4                                       | (9.0)                                     |
| Net income/(loss)                                                                              | 0.6                                       | (22.1)                                    |
| Dividends on Series A preferred stock                                                          | (0.8)                                     | —                                         |
| Net loss available to common stockholders                                                      | (0.2)%                                    | (22.1)%                                   |

### Thirteen Weeks Ended March 30, 2021 Compared to Thirteen Weeks Ended March 31, 2020

#### Revenues

Revenues increased 2.0% to \$627.4 million for the fiscal quarter ended March 30, 2021 compared to \$615.1 million for the comparable prior year period, primarily due to an increase in comparable restaurant sales, new restaurant openings and third-party bakery sales, partially offset by permanent and temporary restaurant closures.

The Cheesecake Factory comparable sales increased by 2.8%, or \$13.0 million, from the first quarter of fiscal 2020 and decreased 10.4% from the first quarter of fiscal 2019. The increase from fiscal 2020 was primarily driven by average check growth of 19.6% (based on an increase of 3.0% in menu pricing and a 16.6% positive change in mix), partially offset by decline in customer traffic of 16.8% primarily due to the COVID-19 pandemic. We implemented effective menu price increases of approximately 1.5% in both the first quarter of fiscal 2021 and third quarter of fiscal 2020. Sales through the off-premise channel comprised approximately 43% of our restaurant sales during the first quarter of fiscal 2021 as compared to 22% in the first quarter of fiscal 2020 as consumer behavior shifted towards off-premise dining throughout the pandemic. We account for each off-premise order as one guest for traffic measurement purposes. Therefore, average check is higher as most off-premise orders are for more than one customer. In turn, the high mix of sales in the off-premise channel was the primary driver of the positive change in mix and also had a corresponding impact on the in the reported traffic. The Cheesecake Factory average sales per restaurant operating week increased 2.1% to \$186,478 in the first quarter of fiscal 2021 from \$182,674 in the first quarter of fiscal 2020. Total operating weeks at The Cheesecake Factory restaurants increased 0.1% to 2,678 in the first quarter of fiscal 2021 compared to 2,674 in the prior year.



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North Italia comparable sales increased approximately 5% from the first quarter of fiscal 2020 and decreased approximately 5% compared to the first quarter of fiscal 2019. North Italia average sales per restaurant operating week increased 3.0% to \$108,327 in the first quarter of fiscal 2021 from \$105,214 in the first quarter of fiscal 2020. Total operating weeks at North Italia increased 4.5% to 303 in the first quarter of fiscal 2021 compared to 290 in the prior year.

Restaurants become eligible to enter the comparable sales base in their 19th month of operation. At March 30, 2021, there were four The Cheesecake Factory restaurants and three North Italia restaurants not yet in the comparable sales base. International licensed locations and restaurants that are no longer in operation, including those which we have relocated, are excluded from comparable sales calculations.

External bakery sales were \$16.7 million for the first quarter of fiscal 2021 compared to \$13.8 million in the comparable prior year period.

### *Cost of Sales*

Cost of sales consists of food, beverage 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 21.7% and 22.9% in the first quarters of fiscal 2021 and 2020, respectively, reflecting a shift in sales mix within the restaurants, a higher proportion of third-party bakery revenues and pricing leverage.

### *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 36.6% and 38.6% in the first quarters of fiscal 2021 and 2020, respectively. This decrease was primarily due to deleverage in the prior year when costs associated with the COVID-19 pandemic, including maintaining our full restaurant management team and healthcare benefits for our furloughed staff members, were incurred in the reduced sales environment.

### *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), marketing, including delivery commissions, and 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 28.9% and 27.3% in the first quarters of fiscal 2021 and 2020, respectively. This variance was primarily driven by increased restaurant-level incentive compensation expense, costs associated with COVID-19, such as additional sanitation and personal protective equipment, and marketing expenses, partially offset by decreased occupancy 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% in both the first quarters of fiscal 2021 and 2020 as higher corporate incentive compensation expense was offset by cost management efforts.

### *Depreciation and Amortization Expenses*

As a percentage of revenues, depreciation and amortization expenses decreased to 3.5% in the first quarter of fiscal 2021 from 3.8% in the comparable prior year period.

### *Impairment of Assets and Lease Terminations*

During the first quarter of fiscal 2021, we recorded impairment of assets and lease terminations expense of \$0.6 million related to lease termination costs for two Other restaurants, one of which closed during the fourth quarter of fiscal 2020 and one that closed at the beginning of the first quarter of fiscal 2021. In the first quarter of fiscal 2020, we recorded \$8.9 million of impairment of assets and lease terminations expense primarily related to the impairment of one The Cheesecake Factory, one North Italia, two Other FRC and four Other restaurants. In addition, during the first quarter of fiscal 2020, we determined it was necessary to perform an interim assessment of our goodwill, trade names, trademarks and licensing agreements 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. Based on the results of this assessment, we recorded \$191.9 million of impairment expense. 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.

### *Acquisition-Related Contingent Consideration, Compensation and Amortization Expenses/(Benefit)*

In the first quarter of fiscal 2021, we recorded \$0.6 million of acquisition-related contingent consideration, compensation and amortization, primarily reflecting changes in the fair value of the deferred and contingent consideration and compensation liabilities. In the first quarter of fiscal 2020, we recorded a benefit of \$4.5 million, reflecting a \$6.0 million decrease in the fair value of the contingent consideration and compensation liabilities related to the 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 \$3.9 million and \$3.1 million in the first quarters of fiscal 2021 and 2020, respectively. We opened one The Cheesecake Factory, one North Italia and one Other FRC location in the first quarter of fiscal 2021 compared to one North Italia and one Flower Child location 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.

### *Interest and Other Expense, Net*

Interest and other expense, net was \$2.7 million and \$1.5 million for the first quarters of fiscal 2021 and 2020, respectively. This variance was primarily due to lower gains on our investments used to support our non-qualified executive deferred compensation plan.

### *Income Tax Provision/(Benefit)*

Our effective income tax rate was 37.1% and 28.9% for the first quarters of fiscal 2021 and 2020, respectively. The increase resulted primarily from a reserve for an uncertain tax position recorded in the first quarter of fiscal 2021 related to tenant improvement allowances, partially offset by a higher proportion of employment credits in relation to pre-tax income/(loss) in the first quarter of fiscal 2021 and a benefit in the prior year arising from the expected carryback of our anticipated fiscal 2020 loss to prior years when the federal statutory rate was 35%.

## Non-GAAP Measures

Adjusted net income and adjusted 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 and diluted net loss per common share the impact of items we do not consider indicative of our ongoing operations. To reflect the potential impact of the conversion of our Series A preferred stock into common stock, we exclude the preferred dividend and assume all convertible preferred shares convert to common stock. 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.

Following is a reconciliation from net income/(loss) and diluted net income/(loss) per common share to the corresponding adjusted measures (in thousands, except per share data):

|                                                                                                     | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|-----------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Net loss available to common stockholders                                                           | \$ (1,202)                                | \$ (136,163)                              |
| Dividends on Series A preferred stock                                                               | 5,070                                     | —                                         |
| COVID-19 related costs <sup>(1)</sup>                                                               | 4,917                                     | 3,290                                     |
| Impairment of assets and lease termination expenses                                                 | 594                                       | 191,896                                   |
| Acquisition-related costs                                                                           | —                                         | 1,236                                     |
| Acquisition-related contingent consideration, compensation and amortization expenses/(benefit)      | 550                                       | (4,466)                                   |
| Uncertain tax position related to tenant improvement allowances                                     | 2,471                                     | —                                         |
| Tax effect of adjustments <sup>(2)</sup>                                                            | (1,576)                                   | (49,908)                                  |
| Adjusted net income                                                                                 | <u>\$ 10,824</u>                          | <u>\$ 5,885</u>                           |
| Diluted net loss per common share                                                                   | \$ (0.03)                                 | \$ (3.11)                                 |
| Dividends on Series A preferred stock                                                               | 0.09                                      | —                                         |
| Assumed impact of potential conversion of Series A preferred stock into common stock <sup>(3)</sup> | 0.00                                      | —                                         |
| COVID-19 related costs <sup>(1)</sup>                                                               | 0.09                                      | 0.07                                      |
| Impairment of assets and lease termination expenses                                                 | 0.01                                      | 4.38                                      |
| Acquisition-related costs                                                                           | —                                         | 0.03                                      |
| Acquisition-related contingent consideration, compensation and amortization expenses/(benefit)      | 0.01                                      | (0.10)                                    |
| Uncertain tax position related to tenant improvement allowances                                     | 0.05                                      | —                                         |
| Tax effect of adjustments <sup>(2)</sup>                                                            | (0.03)                                    | (1.14)                                    |
| Adjusted net income per share <sup>(4)</sup>                                                        | <u>\$ 0.20</u>                            | <u>\$ 0.13</u>                            |

- (1) Represents incremental costs associated with the COVID-19 pandemic such as additional sanitation, personal protective equipment, sick and vaccination pay, and healthcare benefits associated with furloughed staff members. For the thirteen weeks ended March 30, 2021, we recorded \$4.9 million for these costs with approximately \$4.6 million reflected in other operating expenses and \$0.3 million in labor expenses. For the thirteen weeks ended March 31, 2020, we recorded \$3.3 million for these costs with approximately \$2.3 million reflected in labor expenses and \$1.0 million in other operating expenses.
- (2) Based on the federal statutory rate and an estimated blended state tax rate, the tax effect on all adjustments assumes a 26% tax rate.
- (3) Represents the impact of assuming the conversion of preferred stock into common stock (9,598,559 shares), resulting in an assumption of 53,787,314 weighted-average common shares outstanding for the first quarter of fiscal 2021.
- (4) Adjusted net income per share may not add due to rounding.

## Second Quarter Fiscal 2021 Update

Second quarter-to-date through April 27, 2021, The Cheesecake Factory restaurant comparable sales increased approximately 220% and 7% compared to the comparable period in fiscal 2020 and fiscal 2019, respectively. Second quarter-to-date

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through April 27, 2021, North Italia comparable sales increased approximately 336% and 8% compared to the comparable period in fiscal 2020 and fiscal 2019, respectively.

### Fiscal 2021 Outlook

For fiscal 2021, we currently estimate commodity cost inflation of approximately 2% and continue to expect government-mandated minimum wage impacts to be more favorable than in recent years. However, there is some uncertainty to overall hourly wage rate inflation given the more competitive current industry labor environment. In addition, we estimate G&A of approximately \$47 million per quarter for the remainder of fiscal 2021.

We plan to open as many as 14 new restaurants in fiscal 2021, including two The Cheesecake Factory restaurants, six North Italia restaurants and six restaurants within our FRC business, which includes two Flower Child locations. Internationally, we expect to open as many as three The Cheesecake Factory restaurants under licensing agreements. We currently estimate fiscal 2021 cash capital expenditures to be approximately \$100 million. This estimate contemplates a net outlay of approximately \$47 million for restaurants expected to open during fiscal 2021, approximately \$43 million for replacements, enhancements and capacity additions to our existing restaurants and approximately \$10 million for bakery and corporate infrastructure investments.

### Liquidity and Capital Resources

During the first quarter of fiscal 2021, our cash and cash equivalents increased by \$27.3 million to \$181.3 million. The following table presents, for the periods indicated, a summary of our key cash flows from operating, investing and financing activities (in millions):

|                                                 | Thirteen<br>Weeks Ended<br>March 30, 2021 | Thirteen<br>Weeks Ended<br>March 31, 2020 |
|-------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Cash provided by/(used in) operating activities | \$ 21.6                                   | \$ (33.0)                                 |
| Additions to property and equipment             | (7.2)                                     | (15.8)                                    |
| Net borrowings on credit facility               | —                                         | 90.0                                      |
| Proceeds from exercise of stock options         | 20.4                                      | 0.0                                       |
| Cash dividends paid                             | (2.2)                                     | (15.8)                                    |
| Treasury stock purchases                        | (4.0)                                     | (2.6)                                     |

#### *Cash Provided by/(Used in) Operating Activities*

Cash flows from operations increased by \$54.6 million from the first quarter of fiscal 2020 primarily due to a lesser impact from the COVID-19 pandemic during the first quarter of fiscal 2021. Our future cash flow performance will depend on the evolving COVID-19 pandemic regulatory landscape, as well as economic conditions and consumer behavior. We would expect cash generation to increase as the operating environment for the full-service segment of the restaurant industry normalizes from the COVID-19 pandemic impact.

#### *Property and Equipment*

Capital expenditures were \$7.2 million and \$15.8 million in the first quarter of fiscal 2021 and 2020, respectively. We opened three restaurants in fiscal 2021 comprised of one The Cheesecake Factory, one North Italia and one Other FRC location, of which a significant amount of the development was completed in fiscal 2020, compared to one North Italia and one Flower Child restaurant during the comparable prior year period. We currently estimate fiscal 2021 cash capital expenditures to be approximately \$100 million.

### *Revolving Facility*

On March 30, 2021, we entered into an Amended Credit Agreement, which terminates on July 30, 2024, and consists of a \$400 million revolving loan facility (the “Revolving Facility”), including a \$40 million sublimit for letters of credit. The Amended Credit Agreement also provides the ability to increase the Revolving Facility in an amount not to exceed (a) during the Covenant Relief Period (as defined below) \$125 million and (b) thereafter, \$200 million. The funding of any such increases are subject to receipt of lender commitments and satisfaction of customary conditions precedent. Certain of our material subsidiaries have guaranteed our obligations under the Amended Credit Agreement.

The Amended Credit Agreement contains customary affirmative and negative covenants, including limits on cash dividends and share repurchases with respect to our equity interests, and restrictions on indebtedness, liens, investments, sales of assets, fundamental changes and other matters. The Amended Credit Agreement also contains customary events of default that include, among others, non-payment of principal, interest or fees, violation of covenants, inaccuracy of representations and warranties, bankruptcy and insolvency events, material judgements, cross defaults to material indebtedness and events constituting a change of control. The occurrence of an event of default could result in the termination of commitments under the Revolving Facility, the declaration that all outstanding loans are immediately due and payable in whole or in part and the requirement of cash collateral deposits in respect of outstanding letters of credit. As of March 30, 2021, we were in compliance with the covenants set forth in the Revolving Facility. (See Note 5 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

During the first quarter of fiscal 2020, we increased our borrowings under the Revolving Facility by \$90.0 million to bolster our cash position and enhance financial flexibility given the impact of the COVID-19 pandemic on our operations. During the third and fourth quarters of fiscal 2020, we repaid \$100.0 million of the outstanding balance on the Revolving Facility such that at March 30, 2021, we had net availability for borrowings of \$96.6 million, based on a \$280.0 million outstanding debt balance and \$23.4 million in standby letters of credit.

### *Series A Preferred Stock Issuance*

During the second quarter of fiscal 2020, we issued 200,000 shares of Series A preferred stock for an aggregate purchase price of \$200 million to increase our liquidity given the impact of the COVID-19 pandemic on our operations. (See Note 9 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our preferred stock.)

### *Cash Dividends*

To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of the Amended Credit Agreement, in March 2020, our Board suspended the quarterly dividend on our common stock. Prior to this suspension, our Board declared cash dividends of \$0.36 per common share for the first quarter of fiscal 2020. Cash dividends of \$2.2 million paid in the first quarter of fiscal 2021 represent dividends previously accrued on restricted stock awards that vested during the quarter. 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 Amended Credit Agreement and applicable law, and other such factors that the Board considers relevant.

### *Share Repurchases*

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 53.1 million shares at a total cost of \$1,700.7 million through March 30, 2021 with 0.1 million shares repurchased at a cost of \$4.0 million during the first quarter of fiscal 2021 to satisfy tax withholding obligations on vested restricted share awards. Our objectives with regard to share repurchases have been to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth. Our share repurchase 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.

To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of our Amended Credit Agreement, in March 2020, our Board suspended share repurchases. Future decisions to repurchase shares are at the discretion of the Board and are based on several factors, including current and forecasted operating cash flows, capital needs associated with new restaurant development and maintenance of existing locations, dividend payments, debt levels and cost of borrowing, obligations associated with the Acquisition, our share price and current market conditions. The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the Amended Credit Agreement that limit share repurchases based on a defined ratio. (See Note 9 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization and methods.)

#### *Cash Flow Outlook*

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

As of March 30, 2021, we had no financing transactions, arrangements or other relationships with any unconsolidated entities or related parties. Additionally, we had no financing arrangements involving synthetic leases or trading activities involving commodity contracts.

#### **Recent Accounting Pronouncements**

See Note 1 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for a summary of new accounting standards.

#### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

The following discussion of market risks contains forward-looking statements and should be read in conjunction with our interim unaudited condensed consolidated financial statements and related notes in Part I, Item 1 of this report and with the following items in our Annual Report on Form 10-K for the fiscal year ended December 30, 2020: the audited consolidated financial statements and related notes in Part IV, Item 15; the “Risk Factors” in Part I, Item 1A; the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7; and the cautionary statements included throughout the report. Actual results may differ materially from the following discussion based on general conditions in the commodity and financial markets.

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 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 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 30, 2021, 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 2021 and 2020, 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 Revolving Facility that is indexed to market rates. Based on outstanding borrowings at March 30, 2021 and December 29, 2020, a hypothetical 1% rise in interest rates would have increased interest expense by \$2.8 million and \$2.8 million, respectively, on an annual basis. (See Note 5 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

We are also subject to market risk related to our investments in variable life insurance contracts used to support our non-qualified 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 30, 2021 and December 29, 2020, a hypothetical 10% decline in the market value of our deferred compensation asset and related liability would not have impacted income before income taxes. However, under such a scenario, net income would have declined by \$2.2 million at both March 30, 2021 and December 29, 2020.

#### **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 30, 2021.

##### *Changes in Internal Control over Financial Reporting*

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during the fiscal quarter ended March 30, 2021 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 8 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report.

#### **Item 1A. Risk Factors.**

A description of the risk factors associated with our business is contained in Part I, Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the fiscal year ended December 29, 2020 ("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.

There have been no material changes in our risk factors since the filing of our Annual Report.

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

The following table presents our purchases of our common stock during the fiscal quarter ended March 30, 2021:

| Period                               | Total Number of Shares Purchased <sup>(1)</sup> | 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 |
|--------------------------------------|-------------------------------------------------|------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| December 30, 2021 — February 2, 2021 | 2,450                                           | \$ 37.23                     | —                                                                                | 2,967,807                                                                      |
| February 3 — March 2, 2021           | 55,518                                          | 51.49                        | —                                                                                | 2,912,289                                                                      |
| March 3, 2021 — March 30, 2021       | 17,332                                          | 58.11                        | —                                                                                | 2,894,957                                                                      |
| Total                                | 75,300                                          |                              | —                                                                                |                                                                                |

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

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 53.1 million shares at a total cost of \$1,700.7 million through March 30, 2021 with 0.1 million shares repurchased at a cost of \$4.0 million during the first quarter of fiscal 2020 to satisfy tax withholding obligations on vested restricted share awards. 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. To preserve liquidity during the COVID-19 pandemic and in conjunction with the terms of our credit facility, in March 2020, our Board suspended share repurchases. The timing and number of shares repurchased are also subject to legal constraints and financial covenants under our credit facility that limit share repurchases based on a defined ratio.

On April 20, 2020, to increase our liquidity given the impact of the COVID-19 pandemic on our operations, we issued 200,000 shares of Series A preferred stock for an aggregate purchase price of \$200 million. During the first quarter of fiscal 2021, we declared a cash dividend of \$5.1 million, or \$25.35 per share.

Each holder of Series A preferred stock has the right, at its option, to convert its Series A preferred stock, in whole or in part, into fully paid and non-assessable shares of our common stock at a conversion price equal to \$22.23 per share, subject to customary anti-dilution adjustments, including in the event of any stock split, stock dividend, recapitalization or similar events and certain anti-dilutive offerings occurring through April 19, 2021. Pursuant to the terms of the Certificate of Designations, unless and until approval of our stockholders is obtained as contemplated by Nasdaq Listing Rules, no holder may convert shares of Series A preferred stock through either an optional or a mandatory conversion into shares of our common stock if and solely to the extent that such conversion would result in the holder beneficially owning in excess of 19.9% of the then outstanding common stock. The Company has the right to settle any conversion in cash.

After April 20, 2023 and subject to certain conditions, we may, at our option, require conversion of all of the outstanding shares of Series A preferred stock to common stock if, for at least 20 trading days during the 30 consecutive trading days immediately preceding the date we notify the holders of the Series A preferred stock of the election to convert, the closing price of the common stock is at least 200% of the conversion price. We will not exercise our right to mandatorily convert all outstanding shares of Series A preferred stock unless certain liquidity conditions with regard to the shares of common stock to be issued upon such conversion are satisfied.

The shares of common stock issuable upon conversion of shares of the Series A preferred stock will be issued in reliance upon the exemption from registration in Section 3(a)(9) of the Securities Act.

(See Note 9 of Notes to Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our stockholders' equity and Series A preferred stock.)



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**Item 6. Exhibits**

| <b>Exhibit No.</b> | <b>Item</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Form</b> | <b>File Number</b> | <b>Incorporated by Reference from Exhibit Number</b> | <b>Filed with SEC</b> |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|--------------------|------------------------------------------------------|-----------------------|
| 3.1                | <a href="#">Restated Certificate of Incorporation of The Cheesecake Factory Incorporated</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 10-Q        | 000-20574          | 3.2                                                  | 8/6/18                |
| 3.2                | <a href="#">Certificate of Designations of The Cheesecake Factory Incorporated, dated April 20, 2020</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 8-K         | 000-20574          | 3.1                                                  | 4/20/20               |
| 3.3                | <a href="#">Bylaws of The Cheesecake Factory Incorporated (Amended and Restated on May 20, 2009)</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 8-K         | 000-20574          | 3.8                                                  | 5/27/09               |
| 10.1               | <a href="#">Second Amendment to the Third Amended and Restated Loan Agreement, dated as of March 30, 2021, among The Cheesecake Factory Incorporated, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto</a>                                                                                                                                                                                                                                                                                                                        | 8-K         | 000-20574          | 10.1                                                 | 4/5/21                |
| 10.2               | <a href="#">Form of Notice of Grant and Stock Option Agreement and/or Restricted Share Agreement for Executive Officers under The Cheesecake Factory Incorporated Stock Incentive Plan</a>                                                                                                                                                                                                                                                                                                                                                                         | —           | —                  | —                                                    | Filed herewith        |
| 31.1               | <a href="#">Rule 13a-14(a)/15d-14(a) Certification of the Principal Executive Officer</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | —           | —                  | —                                                    | Filed herewith        |
| 31.2               | <a href="#">Rule 13a-14(a)/15d-14(a) Certification of the Principal Financial Officer</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | —           | —                  | —                                                    | Filed herewith        |
| 32.1               | <a href="#">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</a>                                                                                                                                                                                                                                                                                                                                                                                          | —           | —                  | —                                                    | Filed herewith        |
| 32.2               | <a href="#">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</a>                                                                                                                                                                                                                                                                                                                                                                                          | —           | —                  | —                                                    | Filed herewith        |
| 101.1              | The following materials from The Cheesecake Factory Incorporated's Quarterly Report on Form 10-Q for the quarter ended March 30, 2021, 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 30, 2021, formatted in iXBRL (included with Exhibit 101.1)                                                                                                                                                                                                                                                                                                                                                                                       | —           | —                  | —                                                    | Filed herewith        |

\* 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: May 3, 2021

### 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, effective May 30, 2019**

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

Notice is hereby given of the following Stock Option Grant and/or Award of Restricted Shares of The Cheesecake Factory Incorporated, a Delaware corporation (“Company”), pursuant to the Stock Incentive Plan, effective May 30, 2019 (as amended from time to time, the “Plan”). In consideration of the promises and of the mutual agreements contained in this Notice of Grant and Stock Option Agreement and/or Restricted Share Agreement (“Agreement”), the parties hereto agree as follows:

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

|                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                         |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Award                                                      | The Options to purchase shares of the Company’s Common Stock (“Shares”) and/or Restricted Shares granted in accordance with this Agreement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                         |
| Date of Grant                                              | _____, 20__                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                         |
| Participant                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                         |
| No. of Time-Based Restricted Shares Awarded                | _____ Restricted Shares                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                         |
| Time-Based Restricted Shares Vesting Date(s)               | Restricted Shares Vesting Date(s)<br><br>_____, 20__<br>_____, 20__<br>_____, 20__                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Incremental Vesting Percentage<br><br>60%<br>20%<br>20% |
| Maximum No. of Performance-Based Restricted Shares Awarded | <p>_____ Restricted Shares (corresponding to achievement of the Performance Goals at maximum, as set forth on Exhibit A). The actual number of Restricted Shares that vest may be at a lower amount, or none at all, dependent upon the level of achievement of the Performance Goals, each within the ranges set forth on Exhibit A attached hereto.</p> <p>The number of Performance-Based Restricted Shares that satisfy the Performance Goals and become eligible to vest (“Earned Shares”) shall be determined as follows:</p> <ul style="list-style-type: none"> <li>First, the average Payout % for each of the Total Revenue Growth Performance Goal, the Sales per Productive Square Foot Performance Goal and the Adjusted Controllable Profit Performance Goal for the Company’s fiscal years 2021, 2022, and 2023 (the</li> </ul> |                                                         |

|                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                   | <p>“Fiscal Years”) shall be determined in accordance with Exhibit A (each, a “Performance Goal Average Payout Percentage”);</p> <ul style="list-style-type: none"> <li>• Second, the average of the Performance Goal Average Payout Percentages shall be calculated (the “Performance Percentage”); and</li> <li>• Third, the Performance Percentage shall be applied to the number of Performance-Based Restricted Shares awarded in order to determine the number of Earned Shares that are eligible to vest.</li> </ul> |
| Target No. of Performance-Based Restricted Shares | ____ Restricted Shares (corresponding to achievement of the Performance Goals at target, as set forth on Exhibit A).                                                                                                                                                                                                                                                                                                                                                                                                       |
| Total Revenue Growth Performance Goal             | The Company’s achievement of total annual consolidated revenue growth goals for each Fiscal Year, as set forth on Exhibit A attached hereto.                                                                                                                                                                                                                                                                                                                                                                               |
| Sales per Productive Square Foot Performance Goal | The Company’s achievement of annual sales per productive square foot goals for each Fiscal Year for The Cheesecake Factory restaurants as reported in the Company’s Form 10-K, as set forth on Exhibit A attached hereto.                                                                                                                                                                                                                                                                                                  |
| Adjusted Controllable Profit Performance Goal     | The Company’s achievement of annual adjusted controllable profit goals for each Fiscal Year for The Cheesecake Factory restaurants, as reported in each restaurant’s profit and loss statement, as set forth on Exhibit A attached hereto.                                                                                                                                                                                                                                                                                 |
| Performance Goals                                 | Refers collectively to the Total Revenue Growth Performance Goal, Sales per Productive Square Foot Performance Goal and Adjusted Controllable Profit Performance Goal.                                                                                                                                                                                                                                                                                                                                                     |

|                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                        |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Performance-Based Restricted Shares Vesting Date(s) | <p>The number of Earned Shares shall be determined by the Committee as soon as administratively practicable, but in no event later than [60] days, following the end of Fiscal Year 2023 (the “Determination Date”). Any Performance-Based Restricted Shares that are determined not to be Earned Shares as of the Determination Date shall be forfeited immediately.</p> <p>The Performance-Based Restricted Shares that remain outstanding after the Determination Date, shall then be subject to the following incrementally time-based vesting condition (with the number of vesting Restricted Shares rounded to the nearest whole number):</p> |                                                                        |
|                                                     | <p>Restricted Shares Vesting Date</p> <p>_____, 20__</p> <p>_____, 20__</p> <p>_____, 20__</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>Incremental Vesting Percentage</p> <p>60%</p> <p>20%</p> <p>20%</p> |

|                                            |                                                                                                                                                                                                              |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Restricted Shares                          | The Shares awarded to Participant pursuant to the Plan and this Agreement comprised of the Time-Based Restricted Shares and the Performance-Based Restricted Shares.                                         |
| Restricted Shares Vesting Dates            | Refers collectively to the Performance-Based Restricted Shares Vesting Date(s) and the Time-Based Restricted Shares Vesting Date(s).                                                                         |
| No. of Non-Statutory Option Shares Granted | ____ Option Shares                                                                                                                                                                                           |
| Option Exercise Price                      | \$____ per Share                                                                                                                                                                                             |
| Option Expiration Date                     | ____, 202__                                                                                                                                                                                                  |
| Option Vesting Date(s)                     | ____ Option Shares on _____, 20__                                                                                                                                                                            |
|                                            | ____ Option Shares on _____, 20__                                                                                                                                                                            |
|                                            | ____ Option Shares on _____, 20__                                                                                                                                                                            |
|                                            | ____ Option Shares on _____, 20__                                                                                                                                                                            |
|                                            | ____ Option Shares on _____, 20__                                                                                                                                                                            |
|                                            | ____ Option Shares on _____, 20__                                                                                                                                                                            |
| Option                                     | The option to purchase Shares granted to Participant pursuant to the Plan and this Agreement. The Option is not intended to constitute an “incentive stock option” as that term is used in Code Section 422. |
| QDRO                                       | A domestic relations order as defined in Code Section 414(p)(1)(B).                                                                                                                                          |

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

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

Section 4. Exercise of Option; Sale of Shares.

(a) This Option is exercisable during its term in accordance with the Option Vesting Dates set out in this Agreement and the applicable provisions of the Plan and this Agreement. This Option is exercisable in a manner and pursuant to such procedures as the Committee may determine. No Shares shall be issued pursuant to the exercise of this Option unless such issuance

and exercise complies with applicable laws. Assuming such compliance, for income tax purposes, the Shares shall be considered transferred to Participant on the date the Option is exercised with respect to such Shares.

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

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

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

Section 5. Termination of Option. (a) The term of the Option shall commence on the Date of Grant and expire on the earlier of (i) the Option Expiration Date set forth above, or (ii) if Participant's Service is terminated, and such termination of Service occurs by reason of (A) death or Disability, twenty-four (24) months from the death or Disability Termination Date; (B) Retirement, twenty-four (24) months from the Retirement Termination Date, *provided, however*, that such twenty-four (24) month period shall instead be thirty-six (36) months if Participant has completed at least twenty (20) continuous years of Service as of the Termination Date; or (C) other than for Retirement, death or Disability, or Cause, three (3) months from the Termination Date unless a later time period is specified in Participant's employment agreement with the Company, if any, in which case such later time period shall apply. Notwithstanding the above, if Participant's termination of Service occurs by reason of Cause, neither Participant nor Participant's estate nor such other person who may then hold the Option shall be entitled to exercise such Option on or after the Termination Date.

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

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

Section 6. Restricted Shares and Forfeiture. The unvested portion of the Restricted Shares is subject to forfeiture. Except as provided in this Agreement, in order to vest in and not forfeit the Restricted Shares, Participant must remain in Service until the applicable Restricted Shares Vesting Date (as such date may be accelerated pursuant to Section 8 below), and until the applicable Restricted Shares Vesting Date, Unvested Restricted Shares shall be subject to the restrictions on Transfer set forth in Section 9 below (the "Restrictions").

Section 7. Dividend and Voting Rights For Restricted Shares. After the Date of Grant, Participant shall be entitled to voting rights with respect to the Restricted Shares even though the Restrictions have not lapsed, provided that such rights shall terminate immediately as to any Restricted Shares that are forfeited pursuant to this Agreement. If any dividends are declared and paid on the Restricted Shares, then such dividends (whether in the form of cash or Shares) shall be subject to the same vesting conditions and restrictions as the Restricted Shares with respect to which the dividends were paid, and Participant shall not be entitled to receive any such dividends until the Restrictions have lapsed. If the Board makes any adjustment pursuant to Section 11 of the Plan and the Restrictions have not lapsed as to the Restricted Shares prior to such adjustment, the Restrictions and forfeiture provisions of this Agreement shall be applicable to any additional Shares resulting from such adjustment to the same extent as the Restrictions and forfeiture provisions of this Agreement are applicable to the Restricted Shares to which the additional Shares relate.

Section 8. Vesting Date; Lapse of Restrictions.

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

(a) To the extent vested, the Option, or portion thereof, shall be exercisable as of the applicable Option Vesting Date (as such date may be accelerated pursuant to this Section 8 below) *provided* Participant is in Service and in good standing on the applicable Option Vesting Date. Notwithstanding the foregoing, in the event of Participant's death or Disability, the Award shall vest in full, to the extent then-unvested, as of the date of Participant's death or the Termination Date due to such Disability.

(b) The Restrictions on the Restricted Shares shall lapse on the applicable Restricted Shares Vesting Date. Notwithstanding the foregoing, in the event of Participant's death or Disability, (i) the Restrictions on the Time-Based Restricted Shares shall lapse in full as of the date of Participant's death or the Termination Date due to such Disability, and (ii) the time-based vesting condition on the Performance-Based Restricted Shares shall be deemed satisfied in full as of the date of Participant's death or the Termination Date due to such Disability and the Performance-Based Restricted Shares shall continue to be subject to the applicable performance-based vesting condition(s) and will only be vested if and when (if ever) such performance-based vesting condition(s) are actually achieved as provided herein (but shall not be subject to further time based vesting) and for the avoidance of doubt, to the extent that such performance-based

vesting condition(s) are not achieved, such Restricted Shares shall automatically be forfeited and cancelled.

(c) In the event that a Change in Control occurs and all or any portion of the then-outstanding Option Shares and/or Restricted Shares subject to this Award are not continued, converted, assumed or replaced, then, pursuant to Plan Section 12(a), such Option Shares and/or Restricted Shares subject to this Award that are not continued, converted, assumed or replaced shall become fully vested and, with respect to all such Option Shares, exercisable, and, with respect to all such Restricted Shares, all forfeiture, repurchase and other restrictions shall lapse, in each case as of immediately before such Change in Control; provided that, to the extent that the vesting of the Performance-Based Restricted Shares are then subject to the satisfaction of performance-based vesting conditions, such Performance-Based Restricted Shares shall vest at the greater of (i) the target level of performance, pro-rated based on the period elapsed between the beginning of the applicable performance period and the date of the Change in Control, or (ii) the actual performance level as of the date of the Change in Control (as determined by the Committee) with respect to all open performance periods. Pursuant to Plan Section 12(b), Participant shall be given an opportunity exercise all such Option Shares during a period of time determined by the Committee.

(d) In the event that a Change in Control occurs and (i) the acquiring entity assumes, continues or replaces some or all of this Award, and (ii) within eighteen (18) months thereafter Participant incurs a termination of Service without Cause, for Good Reason or due to a "Constructive Termination" (as defined under Participant's written employment agreement with the Company, if any), then Participant shall thereupon be fully vested in such continued, assumed or replaced Award (or portion thereof); *provided, however*, that, notwithstanding anything in the Plan to the contrary, with respect to any such continued, assumed or replaced Award which is then subject to one or more performance-based vesting condition(s) or performance goal(s) (a "Performance Award"), any time-based vesting condition of such Performance Award shall be deemed satisfied in full as of the date of such termination, and such Performance Award shall continue to be subject to the applicable performance-based vesting condition(s) or performance goal(s) and will only be vested if and when (if ever) such performance-based vesting condition(s) or performance goal(s) are actually achieved (but shall not be subject to further time based vesting) and for the avoidance of doubt, to the extent that such performance-based vesting condition(s) or performance goal(s) are not achieved, the Performance Award or applicable portion thereof shall automatically be forfeited and cancelled. With respect to any such Performance Awards, the foregoing provision of this Section 8(d) is expressly intended to, and shall, supersede and override the accelerated vesting provisions set forth in Section 12(b) of the Plan.

(e) The number of Shares subject to the Options and the Restricted Shares subject to the Award shall be subject to adjustment pursuant to Section 11 of the Plan.

(f) The provisions of this Section 8 are subject to the specific terms of any written employment agreement between Participant and the Company, which agreement may provide for the acceleration of the Option Vesting Dates or the removal of Restrictions and acceleration of Restricted Shares Vesting Dates upon the occurrence of specified events. If the conditions under such employment agreement occur for the acceleration of the Option Vesting Dates or the removal of Restrictions and acceleration of the Restricted Shares Vesting Dates, then notwithstanding



anything to the contrary in this Agreement, to the extent provided for under such employment agreement, the Option shall become exercisable and vested with respect to the applicable Option Shares granted hereunder and the Restrictions on the Restricted Shares awarded hereunder shall lapse and the Restricted Shares, as applicable, shall become vested as of the date required under such employment agreement, except in no event shall acceleration of any Restricted Shares result in the lapse of the Restrictions prior to one (1) year from the Date of Grant (except as permitted under Plan Sections 3(c)(iv) or 12)).

Section 9. Restrictions on Transfer.

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

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

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

Section 10. 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 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 in effect as of the Date of Grant of this Award.

Section 11. Designation of Beneficiary. Participant may designate one or more beneficiaries with respect to this Award or any Awards made under the Plan by timely filing the prescribed beneficiary designation form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time prior to Participant’s death. If no beneficiary was designated or if no designated beneficiary survives Participant, then after a

Participant's death any vested portion of the Award shall be transferred or distributed to Participant's estate.

Section 12. No Tax or Other Advice from Company. Participant acknowledges and agrees that 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 13. Tax Withholding. The Company in its discretion shall be entitled to require a cash payment by or on behalf of Participant and/or deduct from other compensation payable to Participant any sums required by federal, state, local or foreign tax law or regulation to be withheld with respect to the lapsing of any Restrictions or upon exercise of the Option. If Participant makes the election permitted by Section 83(b) of the Code to include in such Participant's gross income in the year of transfer the amounts specified in Section 83(b) of the Code, then Participant shall notify the Company of such election within 10 days after filing the notice of the election with the Internal Revenue Service. PARTICIPANT ACKNOWLEDGES THAT IT IS PARTICIPANT'S SOLE RESPONSIBILITY, AND NOT THE COMPANY'S, TO FILE A TIMELY ELECTION UNDER CODE SECTION 83(B), EVEN IF PARTICIPANT REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON PARTICIPANT'S BEHALF. MOREOVER, PARTICIPANT IS RELYING SOLELY ON PARTICIPANT'S OWN ADVISORS WITH RESPECT TO THE DECISION AS TO WHETHER OR NOT TO FILE A CODE SECTION 83(B) ELECTION.

Section 14. Notices. All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given and delivered if personally delivered or if sent by nationally-recognized overnight courier, by telecopy, or by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

(a) if to the Company:

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

If to the Company, to exercise an Option:

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

(b) if to Participant:

The last address set forth in the Company's records

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

Section 15. 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 16. 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 17. 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 18. 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 19. 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 19. This Section 19 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 19.

(b) Arbitrators. The panel to be appointed shall consist of three neutral arbitrators: one selected by the Company, one selected by 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 19, 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 19 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 19 are pending. The parties will take such action, if any, required to effectuate such tolling.

(i) Confidentiality. All proceedings under this Section 19, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties and by the arbitrators.

Section 20. Fractional Shares. For purposes of this Agreement, any fractional Shares that vest, become exercisable or are earned pursuant to this Agreement will be rounded to the nearest whole Share, as determined by the Company; provided, however, that in no event shall such rounding cause the aggregate number of Shares that vest, become exercisable or are earned under an Award to exceed the total number of Option Shares, Time-Based Restricted Shares or Performance-Based Restricted Shares, as applicable, awarded to Participant as set forth in Section 1 above.

Section 21. No Employment Commitment by Company; No Effect on Employment Agreements. Nothing in this Agreement or the Plan constitutes an employment commitment by the Company, affects Participant's status under any employment agreement between the Company and Participant, confers upon Participant any right to remain employed by the Company or any subsidiary, interferes in any way with the right of the Company or any subsidiary at any time to terminate such employment, or affects the right of the Company or any subsidiary to increase or decrease Participant's compensation or other benefits. The preceding sentence is subject, however, to the terms of any written employment agreement between Participant and the Company (which may not be modified by any oral agreement). Notwithstanding anything to the contrary in this Agreement, in the event of a conflict between this Agreement and any written employment agreement between Participant and the Company, the written employment agreement shall control provided, however, that if the Plan or this Agreement provides for earlier vesting schedules, or for the earlier acceleration of vesting of any Option or lapse of Restrictions with respect to Restricted Shares upon the occurrence of specified events, then the Plan or this Agreement shall control as to such earlier vesting schedule or earlier acceleration of vesting or lapse of Restrictions upon the occurrence such specified events.

Section 22. 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 23. 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 24. Compliance with Section 409A of the Code. The Option and/or the Restricted Shares awarded under this Agreement, as the case may be, are intended in all respects not to subject Participant to taxation under Section 409A of the Code. To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation, any such regulations or guidance that may be issued after the Date of Grant so that neither the Option nor any Restricted Shares will be subject to Code Section 409A. In the event that the Company determines that any amounts will be taxable to Participant under Section 409A of the Code and related Department of Treasury guidance, the Company may, in its sole and absolute discretion, adopt such amendments to this Agreement (having prospective or retroactive effect), and/or take such other actions, as the Company determines to be necessary or appropriate to avoid the application of Section 409A of the Code to such Option or Restricted Shares. No such amendment or other action shall be adopted or taken that will cause the Option and/or the Restricted Shares to be subject to Section 409A.

Section 25. Stock Certificates For Restricted Shares.

(a) If Restricted Shares are awarded under this Agreement, the Company shall issue such Restricted Shares subject to this grant either: (i) in certificate form as provided below; or (ii)

in book entry form, registered in the name of Participant with notations regarding the applicable restrictions on transfer imposed under this Agreement.

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

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

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

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

**THE CHEESECAKE FACTORY INCORPORATED,**  
a Delaware corporation

By: \_\_\_\_\_

Name and title: Matthew Clark, Executive Vice

President and Chief Financial Officer

Its Authorized Officer

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

PARTICIPANT:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Address for Notice: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**Attachments:**

- Exhibit A – Restricted Shares Performance Goals
- Exhibit B- Stock Power and Assignment Separate from Certificate
- Stock Incentive Plan Summary and Prospectus
- Special Trading Policy and Procedures
- Addendum To Special Trading Policy and Procedures for Section 16 Persons
- SEC Filing List (prospectus supplement)
- Designation of Beneficiary(ies) Form

**EXHIBIT A**  
**EXECUTIVE OFFICER PERFORMANCE SHARE GRANTS**  
**(See Attached)**

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**EXHIBIT B**

**STOCK POWER AND**

**ASSIGNMENT SEPARATE FROM CERTIFICATE**

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

Dated \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

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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: May 3, 2021

/s/ DAVID OVERTON

David Overton

*Chairman of the Board and Chief Executive Officer*  
*(Principal Executive Officer)*

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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: May 3, 2021

/s/ MATTHEW E. CLARK

Matthew E. Clark

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

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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 30, 2021 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.

May 3, 2021

/s/ DAVID OVERTON

David Overton

*Chairman of the Board and Chief Executive Officer*

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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 30, 2021 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.

May 3, 2021

/s/ MATTHEW E. CLARK

Matthew E. Clark

*Executive Vice President and Chief Financial Officer*

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