

ARK RESTAURANTS CORP
Form 10-Q
August 11, 2009

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 June 27, 2009

Commission file number 0-14030

ARK RESTAURANTS CORP.

(Exact name of registrant as specified in its charter)

New York
(State or other jurisdiction of
incorporation or organization)

13-3156768
(I.R.S. Employer
Identification No.)

85 Fifth Avenue, New York, New York
(Address of principal executive offices)

10003
(Zip Code)

Registrant's telephone number, including area code: (212) 206-8800

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 shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files).

Yes No

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

Large accelerated filer

Accelerated filer

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

Smaller Reporting Company

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Indicate by check mark whether the Registrant is a shell company (as defined in Exchange Act Rule 12b-2).

Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class	Outstanding shares at August 11, 2009
(Common stock, \$.01 par value)	3,489,845

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We may make statements in this Quarterly Report on Form 10-Q regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements, other than statements of historical facts, included or incorporated by reference herein relating to management's current expectations of future financial performance, continued growth and changes in economic conditions or capital markets are forward looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934.

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "projects," "will likely result," "hopes," "will continue" or similar expressions identify forward looking statements. Forward-looking statements involve risks and uncertainties which could cause actual results or outcomes to differ materially from those expressed. We caution that while we make such statements in good faith and we believe such statements are based on reasonable assumptions, including without limitation, management's examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved. Factors that may cause such differences include: economic conditions generally and in each of the markets in which we are located, the amount of sales contributed by new and existing restaurants, labor costs for our personnel, fluctuations in the cost of food products, adverse weather conditions, changes in consumer preferences and the level of competition from existing or new competitors.

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter of subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in "Item 1A Risk Factors" in Part I of our Annual Report on Form 10-K for the fiscal year ended September 27, 2008 as updated by the information contained under the caption "Item 1A. Risk Factors" in Part II of this Quarterly Report on Form 10-Q.

From time to time, oral or written forward-looking statements are also included in our reports on Forms 10-K, 10-Q and 8-K, our Schedule 14A, our press releases and other materials released to the public. Although we believe that at the time made, the expectations reflected in all of these forward-looking statements are and will be reasonable, any or all of the forward-looking statements in this Quarterly Report on Form 10-Q, our reports on Forms 10-K and 8-K, our Schedule 14A and any other public statements that are made by us may prove to be incorrect. This may occur as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties. Many factors discussed in this Quarterly Report on Form 10-Q, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Quarterly Report on Form 10-Q or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. However, your attention is directed to any further disclosures made on related subjects in our subsequent periodic reports filed with the Securities and Exchange Commission on Forms 10-K, 10-Q and 8-K and Schedule 14A.

Unless the context requires otherwise, references to "we," "us," "our," "ARKR" and the "Company" refer specifically to Ark Restaurants Corp. and its subsidiaries and predecessor entities.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED BALANCE SHEETS

(In Thousands)

	June 27, 2009 (unaudited)	September 27, 2008 (Note 1)
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 2,900	\$ 2,978
Short-term investments in available-for-sale securities	7,627	9,267
Accounts receivable	2,594	2,862
Related party receivables, net	995	881
Employee receivables	327	281
Current portion of long-term receivables	127	121
Inventories	1,557	1,556
Prepaid income taxes	799	-
Prepaid expenses and other current assets	644	362
Total current assets	17,570	18,308
LONG-TERM RECEIVABLES, LESS CURRENT PORTION	135	231
FIXED ASSETS - At cost:		
Leasehold improvements	31,638	31,533
Furniture, fixtures and equipment	29,221	28,372
Construction in progress	903	44
	61,762	59,949
Less accumulated depreciation and amortization	37,761	35,087
FIXED ASSETS - Net	24,001	24,862
INTANGIBLE ASSETS - Net	50	62
GOODWILL	4,813	4,813
TRADEMARKS	721	721
DEFERRED INCOME TAXES	4,312	4,312
OTHER ASSETS	681	701
TOTAL	\$ 52,283	\$ 54,010
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade	\$ 2,349	\$ 2,834
Accrued expenses and other current liabilities	5,523	5,312
Accrued income taxes	-	823
Current portion of note payable	205	195
Total current liabilities	8,077	9,164
OPERATING LEASE DEFERRED CREDIT	3,627	3,695
NOTE PAYABLE, LESS CURRENT PORTION	355	510
OTHER LIABILITIES	103	157
TOTAL LIABILITIES	12,162	13,526
NON-CONTROLLING INTERESTS	2,327	2,681
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding of 5,667 and 3,490 shares at June 27, 2009, respectively		

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

and 5,667 and 3,532 shares at September 27, 2008, respectively	57	57
Additional paid-in capital	22,346	22,068
Accumulated other comprehensive loss	(42)	(30)
Retained earnings	25,604	25,427
	47,965	47,522
Less stock option receivable	(76)	(124)
Less treasury stock, at cost, of 2,177 and 2,135 shares at June 27, 2009 and September 27, 2008, respectively	(10,095)	(9,595)
Total shareholders' equity	37,794	37,803
TOTAL	\$ 52,283	\$ 54,010

See notes to consolidated condensed financial statements.

- 3 -

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS (Unaudited)

(In Thousands, Except Per Share Amounts)

	13 Weeks Ended		39 Weeks Ended	
	June 27, 2009	June 28, 2008	June 27, 2009	June 28, 2008
REVENUES				
Food and beverage sales	\$ 30,773	\$ 35,406	\$ 80,151	\$ 88,823
Other income	350	671	1,521	1,941
Total revenues	31,123	36,077	81,672	90,764
COST AND EXPENSES:				
Food and beverage cost of sales	7,945	9,224	20,743	23,384
Payroll expenses	9,577	10,125	26,619	28,023
Occupancy expenses	4,134	4,696	12,367	12,259
Other operating costs and expenses	3,871	4,063	11,014	11,209
General and administrative expenses	2,195	2,260	6,833	6,594
Depreciation and amortization	917	771	2,687	2,153
Total cost and expenses	28,639	31,139	80,263	83,622
OPERATING INCOME	2,484	4,938	1,409	7,142
OTHER (INCOME) EXPENSE:				
Interest expense	11	14	34	44
Interest income	(56)	(105)	(284)	(397)
Other income, net	(117)	(158)	(503)	(322)
Total other income, net	(162)	(249)	(753)	(675)
Income from continuing operations before provision for income taxes and non-controlling interests	2,646	5,187	2,162	7,817
Provision for income taxes	961	1,762	702	2,698
(Income) loss attributable to non-controlling interests	(88)	(175)	273	(174)
INCOME FROM CONTINUING OPERATIONS	1,597	3,250	1,733	4,945
DISCONTINUED OPERATIONS:				
Income (loss) from operations of discontinued restaurants	-	(178)	-	33
Provision (benefit) for income taxes	-	(64)	-	12
INCOME (LOSS) FROM DISCONTINUED OPERATIONS	-	(114)	-	21
NET INCOME	\$ 1,597	\$ 3,136	\$ 1,733	\$ 4,966
PER SHARE INFORMATION - BASIC AND DILUTED:				
Income from continuing operations	\$ 0.46	\$ 0.90	\$ 0.50	\$ 1.37
Discontinued operations	-	(0.03)	-	0.01
BASIC	\$ 0.46	\$ 0.87	\$ 0.50	\$ 1.38
Income from continuing operations	\$ 0.46	\$ 0.90	\$ 0.50	\$ 1.37
Discontinued operations	-	(0.03)	-	0.01
DILUTED	\$ 0.46	\$ 0.87	\$ 0.50	\$ 1.38
WEIGHTED AVERAGE NUMBER OF SHARES - BASIC	3,490	3,597	3,495	3,597
WEIGHTED AVERAGE NUMBER OF SHARES - DILUTED	3,490	3,597	3,495	3,612

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS (Unaudited)

(In Thousands)

	39 Weeks Ended	
	June 27, 2009	June 28, 2008
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 1,733	\$ 4,966
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred income taxes	-	(27)
Stock-based compensation	278	234
Depreciation and amortization	2,687	2,208
Equity in loss of affiliate	32	-
Gain on disposal of discontinued operations	-	19
Impairment loss on goodwill related to discontinued operations	-	294
Income (loss) attributable to non-controlling interests	(273)	174
Operating lease deferred credit	(68)	(52)
Changes in operating assets and liabilities:		
Accounts receivable	268	(1,085)
Related party receivables	(114)	(86)
Employee receivables	(46)	60
Inventories	(1)	(236)
Prepaid income taxes	(799)	-
Prepaid expenses and other current assets	(282)	(65)
Other assets	(12)	(405)
Accounts payable - trade	(485)	379
Accrued income taxes	(823)	493
Accrued expenses and other current liabilities	211	356
Net cash provided by continuing operating activities	2,306	7,227
Net cash provided by (used in) discontinued operating activities	(54)	36
Net cash provided by operating activities	2,252	7,263
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(1,815)	(7,429)
Proceeds from sale of discontinued operations	-	1,030
Purchases of investment securities	(7,665)	(9,413)
Proceeds from sales of investment securities	9,293	12,677
Payments received on long-term receivables	90	84
Net cash used in continuing investing activities	(97)	(3,051)
Net cash provided by discontinued investing activities	-	134
Net cash used in investing activities	(97)	(2,917)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal payments on note payable	(144)	(134)
Dividends paid	(1,556)	(4,748)
Purchase of treasury stock	(500)	-
Payments received on stock option receivable	48	42
Capital contributions from limited partners of non-controlling interest	-	1,400

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Distributions to limited partners of non-controlling interest	(81)	(201)
Net cash used in financing activities	(2,233)	(3,641)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(78)	705
CASH AND CASH EQUIVALENTS, Beginning of period	2,978	4,009
CASH AND CASH EQUIVALENTS, End of period	\$ 2,900	\$ 4,714

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

Interest	\$ 34	\$ 44
Income taxes	\$ 2,295	\$ 2,256

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

June 27, 2009

(Unaudited)

1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The consolidated condensed balance sheet as of June 27, 2009, which has been derived from audited financial statements included in the Form 10-K, and the unaudited interim consolidated and condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to form 10-Q and Article 10 of Regulation S-X. All adjustments that, in the opinion of management, are necessary for a fair presentation for the periods presented have been reflected as required by Regulation S-X, Rule 10-01. Such adjustments are of a normal, recurring nature. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company's annual report on Form 10-K for the year ended September 27, 2008. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year or any other interim period.

PRINCIPLES OF CONSOLIDATION □ The consolidated interim financial statements include the accounts of the Company and all of its wholly-owned subsidiaries, partnerships and other entities in which it has a controlling interest. Also included in the consolidated interim financial statements are certain variable interest entities, as discussed below. All significant intercompany balances and transactions have been eliminated in consolidation.

SUBSEQUENT EVENTS □ Management has evaluated subsequent events after the balance sheet date and through August 11, 2009, the financial statement issuance date for appropriate accounting and disclosure.

RECLASSIFICATIONS □ Certain reclassifications of prior period balances have been made to conform to the current period presentation. In connection with the planned or actual sale or closure of various restaurants, the operations of these businesses have been presented as discontinued operations in the consolidated financial statements. Accordingly, the Company has reclassified its statements of operations and cash flow data for the prior periods presented, in accordance with Statement of Financial Accounting Standards (□SFAS□) No. 144, □Accounting for the Impairment or Disposal of Long-Lived Assets□ (□SFAS 144□).

CASH AND CASH EQUIVALENTS □ Cash and cash equivalents, which primarily consist of money market funds, are stated at cost, which approximates fair value. For financial statement presentation purposes, the Company considers all highly liquid investments having original maturities of three months or less to be cash equivalents. Outstanding checks in excess of account balances, typically vendor payments, payroll and other contractual obligations disbursed on or near the last day of a reporting period are reported as a current liability in the accompanying consolidated balance sheets.

AVAILABLE-FOR-SALE SECURITIES □ Available-for-sale securities consist primarily of US Treasury Bills and Notes, all of which have a high degree of liquidity and are reported at fair value, with unrealized gains and losses recorded in accumulated other comprehensive income. The cost of investments in available-for-sale securities is determined on a specific identification basis. Realized gains or losses and declines in value judged to be other than temporary, if any, are reported in other income, net. The Company evaluates its investments periodically for possible impairment and reviews factors such as the length of time and extent to which fair value has been below cost basis and the Company's ability and intent to hold the investment for a period of time which may be sufficient for anticipated recovery in market value.

FAIR VALUE - In September 2006, the Financial Accounting Standards Board (□FASB□) issued SFAS No. 157, □Fair Value Measurements□ (□SFAS 157□), which, among other requirements, eliminated the diversity in practice that exists due to the different definitions of fair value. SFAS No. 157 retains the exchange price notion in earlier definitions of fair value, but clarifies that the exchange price is the price in an orderly transaction between market participants to sell an asset or liability in the principal or most advantageous market for the asset or

liability. SFAS No. 157 states that the transaction is hypothetical at the measurement date, considered from the perspective of the market participant who holds the asset or liability. As such, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (an exit price), as opposed to the price that would be paid to acquire the asset or received to assume the liability at the measurement date (an entry price). SFAS No. 157 also establishes a three-level hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

In February 2008, the FASB issued FASB Staff Position No. 157-2, effective date of FASB Statement No. 157, which delays the effective date of SFAS No. 157 for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company adopted

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

the provisions of SFAS No. 157 on December 27, 2008 and elected the deferral option for non-financial assets and liabilities. The effect of adopting this standard was not significant.

In October 2008, the FASB issued FASB Staff Position No. 157-3, *["Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active"]* (FSP No. 157-3). FSP No. 157-3 applies to financial assets within the scope of accounting pronouncements that require or permit fair value measurements in accordance with SFAS No. 157. FSP No. 157-3 clarifies the application of SFAS No. 157 in a market that is not active and provides an example to illustrate key conditions in determining the fair value of a financial asset when the market for that financial asset is not active. FSP No. 157-3 became effective upon issuance including prior periods for which financial statements have not been issued. The Company's adopted the provisions of FSP No. 157-3 effective December 27, 2008. The effect of adopting this standard was not significant.

The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability on the measurement date. The three levels are defined as follows:

- Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for an identical asset or liability in an active market.
- Level 2 - inputs to the valuation methodology include quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability.
- Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement of the asset or liability.

The following table presents assets and liabilities measured at fair value on a recurring basis as of June 27, 2009 by SFAS No. 157 valuation hierarchy: (in thousands)

	Level 1	Level 2	Level 3	Carrying Value
Available for sale securities	\$ 7,627	\$ -	\$ -	\$ 7,627
Total assets at fair value	\$ 7,627	\$ -	\$ -	\$ 7,627

The Company's available-for-sale securities, which primarily consist of United States Treasury Bills and Notes, are actively traded and the valuation of such securities is based upon quoted market prices.

The carrying amounts of cash equivalents, investments, receivables, accounts payable, and accrued expenses approximate fair value due to the immediate or short-term maturity of these financial instruments. The fair value of notes payable is determined using current applicable rates for similar instruments as of the balance sheet date and approximates the carrying value of such debt.

In February 2007, the FASB issued SFAS No. 159, *["The Fair Value Option for Financial Assets and Financial Liabilities - Including an amendment of FASB Statement No. 115"]* (SFAS No. 159). Under SFAS No. 159, a company may elect to measure eligible financial assets and financial liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings at each subsequent reporting date. If elected, SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. The Company did not elect to begin reporting any financial assets or liabilities at fair value upon adoption of SFAS No. 159 on September 27, 2008 and we did not elect to report at fair value any new financial assets or liabilities entered during the quarter ended June 27, 2009.

NEW ACCOUNTING STANDARDS ADOPTED IN FISCAL 2009 - In April 2009 the FASB issued Staff Position No. 107-1 and APB 28-1, *["Interim Disclosures about Fair Value of Financial Instruments"]* (FSP 107-1 and APB 28-1). This FSP amends SFAS No. 107, *["Disclosure about Fair Value of Financial Instruments"]* and APB Opinion No. 28, *["Interim Financial Reporting"]*, to require disclosures about fair value in interim financial statements as well as in annual financial statements. FSP 107-1 and APB 28-1 applies to all financial instruments within the scope of SFAS No. 107 and requires all entities to disclose the methods and significant assumptions used to estimate the fair value of financial instruments. FSP 107-1 and APB 28-1 are effective for interim and annual periods ending

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

after June 15, 2009 and do not require comparative disclosure for earlier periods presented upon initial adoption. The Company adopted FSP 107-1 and APB 28-1 during the third fiscal quarter of 2009, and its application had no impact on the Company's condensed consolidated financial statements.

In June 2009, the FASB issued SFAS No. 165, *Subsequent Events* (SFAS 165). SFAS 165 incorporates the subsequent events guidance contained in the auditing standards literature into authoritative accounting literature. It also requires entities to disclose the date through which they have evaluated subsequent events and whether the date corresponds with the

release of their financial statements. SFAS 165 is effective for all interim and annual periods ending after June 15, 2009. We adopted SFAS 165 upon its issuance and it had no material impact on our consolidated financial statements.

NEW ACCOUNTING STANDARDS NOT YET ADOPTED □ In December 2007, the FASB issued SFAS No. 141 (Revised), *Business Combinations* (SFAS 141R), which establishes principles and requirements for the reporting entity in a business combination, including recognition and measurement in the financial statements of the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. This statement also establishes disclosure requirements to enable financial statement users to evaluate the nature and financial effects of the business combination. SFAS 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. SFAS 141R will become effective for our fiscal year beginning October 4, 2009.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51*, (SFAS 160), which amends Accounting Research Bulletin No. 51, *Consolidated Financial Statements* (ARB No. 51), to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This standard defines a noncontrolling interest, previously referred to as minority interest, as the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. SFAS 160 requires, among other items, that a noncontrolling interest be included in the consolidated balance sheet within equity separate from the parent's equity; consolidated net income to be reported at amounts inclusive of both the parent's and noncontrolling interest's shares and, separately, the amounts of consolidated net income attributable to the parent and noncontrolling interest all on the consolidated statement of income; and if a subsidiary is deconsolidated, any retained noncontrolling equity investment in the former subsidiary be measured at fair value and a gain or loss be recognized in net income based on such fair value. SFAS 160 is effective for fiscal years beginning after December 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is currently evaluating the potential impact of adopting SFAS 160 on its consolidated financial statements.

In April 2008, the FASB issued FASB Staff Position 142-3, *Determination of the Useful Life of Intangible Assets* (FSP FAS 142-3), which amends the list of factors an entity should consider in developing renewal or extension assumptions in determining the useful life of recognized intangible assets under FAS No. 142, *Goodwill and Other Intangible Assets*. The new guidance applies to (1) intangible assets that are acquired individually or with a group of other assets and (2) intangible assets acquired in both business combinations and asset acquisitions. Under FSP FAS 142-3, entities estimating the useful life of a recognized intangible asset must consider their historical experience in renewing or extending similar arrangements or, in the absence of historical experience, must consider assumptions that market participants would use about renewal or extension. FSP FAS 142-3 is effective for fiscal years beginning after December 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is currently evaluating the impact that the adoption of FSP FAS 142-3 may have on its consolidated financial statements and related disclosures.

In June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)* (SFAS 167). SFAS 167 amends the consolidation guidance applicable to variable interest entities and is effective as of the beginning of the first annual reporting period that begins after November 15, 2009, which corresponds to the Company's fiscal year beginning October 3, 2010. The Company is currently evaluating the impact that the adoption of SFAS 167 may have on its consolidated financial statements and related disclosures.

In June 2009, the FASB issued SFAS No. 168, *The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162* (SFAS 168). The FASB Accounting Standards Codification (the Codification) will become the source of authoritative U.S. generally accepted accounting principles (U.S. GAAP). The Codification, which changes the referencing of financial standards, is effective for interim or annual financial periods ending after September 15, 2009. The Codification is not intended to change or alter existing U.S. GAAP.

2. RECEIVABLES FROM EMPLOYEES IN RESPECT OF STOCK OPTION EXERCISES

Receivables from employees in respect of stock option exercises includes amounts due from officers and directors totaling \$76,000 and \$124,000 at June 27, 2009 and September 27, 2008, respectively. Such amounts, which are due from the exercise of stock options in accordance with the Company's Stock Option Plan, are payable on demand with interest at ½% above prime (3.25% at June 27, 2009).

3. INCOME TAX

The income tax provisions on continuing operations for the 39-week periods ended June 27, 2009 and June 28, 2008 reflect effective tax rates of 32.5% (including the tax benefit disclosed below) and 34.5%, respectively. The Company expects its annual tax rate for its current fiscal year to be approximately 34.0% to 38.0% . The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates.

During the 39-week period ended June 27, 2009, the Company recognized a tax benefit of \$118,000 principally as a result of reducing its long term income tax liability for unrecognized tax benefits due to the resolution of a tax audit.

4. INCOME PER SHARE OF COMMON STOCK

Net income per share is computed in accordance with Statement of Financial Accounting Standards No. 128, *Earnings Per Share*, and is calculated on the basis of the weighted average number of common shares outstanding during each period plus, for diluted earnings per share, the additional dilutive effect of potential common stock. Potential common stock using the treasury stock method consists of dilutive stock options and warrants.

For the 13-week and 39-week periods ended June 27, 2009, options to purchase 152,500 shares of common stock at a price of \$29.60, options to purchase 100,000 shares of common stock at a price of \$32.15 and options to purchase 176,600 shares of common stock at a price of \$12.04 were not included in diluted earnings per share as their impact was antidilutive.

For the 13-week period ended June 28, 2008, options to purchase 166,500 shares of common stock at a price of \$29.60 were included in diluted earnings per share. Options to purchase 105,000 shares of common stock at a price of \$32.15 were not included in diluted earnings per share as their impact was antidilutive for the 13-week period ended June 28, 2008. For the 39-week period ended June 29, 2008, options to purchase 271,500 shares of common stock at a price range of \$29.60 - \$32.15 were included in earning per share.

During the 13-week and 39-week periods ended June 27, 2009, options to purchase 176,600 shares of common stock at a price of \$12.04 were issued.

5. SHARE-BASED COMPENSATION

The Company has options outstanding under its 2004 Stock Option Plan (the "2004 Plan"). Options granted under the 2004 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant. During fiscal 2005, options to purchase 194,000 shares of common stock were granted and are exercisable as to 50% of the shares commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the third anniversary of the date of grant. During fiscal 2007, options to purchase 105,000 shares of common stock were granted and are exercisable as to 25% of the shares commencing on the first anniversary of the date of grant and as to an additional 25% commencing on each of the third, third and fourth anniversaries of the grant date.

During fiscal 2009, options to purchase 176,600 shares of common stock were granted and are exercisable as to 50% of the shares commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the second anniversary of the date of grant.

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of our stock, the expected life of the options and the risk free interest rate. The assumptions used for the 2009 grant include a risk free interest rate of 3.29%, volatility of 42.7%, a dividend yield of 4.27% and an expected life of 5.75 years. The grant date fair value of stock options granted during the 13-weeks ended June 27, 2009 was \$3.53.

A summary of stock option activity is presented below:

Options	Shares	Weighted Average Exercise Price	Weighted Average Fair Value	Weighted Average Contractual Term (Yrs.)	Aggregate Intrinsic Value
Outstanding as September 27, 2008	271,500	\$ 30.59	\$ 9.22	7.01	
Granted	176,600	\$ 12.04	\$ 3.53	9.87	
Exercised	-	-	-	-	
Forfeited/Cancelled	(19,000)	\$ 30.27	\$ 8.87	6.01	

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Outstanding at June 27, 2009	429,100	\$	22.97	\$	6.89	7.75	\$	-
Exercisable at June 27, 2009	252,500	\$	30.61	\$	9.24	6.28	\$	-

Compensation cost is recognized on a straight-line basis over the vesting period during which employees perform related services. As of June 27, 2009 there was approximately \$880,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of approximately 3 years.

Compensation cost for stock options is included in general and administrative expenses in the Company's consolidated condensed statements of operations. Compensation cost for stock options was \$122,000 and \$78,000 for the 13-week periods

ending June 27, 2009 and June 28, 2008, respectively. Compensation cost for stock options was \$278,000 and \$234,000 for the 39-week periods ending June 27, 2009 and June 28, 2008, respectively.

6. INVESTMENT SECURITIES

The amortized cost, gross unrealized holding gains, gross unrealized holding losses, and fair value of available for sale debt and fixed income securities by major type and class at June 27, 2009 are as follows (Dollar amounts in thousands):

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
At June 27, 2009				
Available for sale short-term:				
Government debt securities	\$ 7,612	\$ 15	\$ -	\$ 7,627

7. DIVIDENDS

A quarterly cash dividend in the amount of \$0.35 per share was declared on October 12, 2004. Subsequent to October 12, 2004, quarterly cash dividends in the amount of \$0.35 per share were declared October 10 and December 20, 2006 and on April 12, 2007. We declared an increase in our quarterly cash dividend to \$0.44 per share on May 23, 2007 and subsequent quarterly cash dividends reflecting this increased amount were declared on October 12, 2007 and January 11, April 11, July 11 and October 10, 2008. In addition, we declared a special cash dividend in the amount of \$3.00 per share on December 20, 2006. Prior to this, we had not paid any cash dividends since our inception. On December 18, 2008, our Board of Directors determined to suspend the dividend which would have customarily been declared in January 2009. For the foreseeable future, our dividend policy will be determined by our Board of Directors on a quarter by quarter basis. No dividends were declared during the quarter ended June 27, 2009.

8. RELATED PARTY TRANSACTIONS

Receivables due from officers and employees, excluding stock option receivables, totaled \$327,000 at June 27, 2009 and \$281,000 at September 27, 2008. Such loans bear interest at the minimum statutory rate (0.75% at June 27, 2009).

9. COMMON STOCK REPURCHASE PLAN

On March 25, 2008, the Board of Directors authorized a stock repurchase program under which up to 500,000 shares of the Company's common stock may be acquired in the open market over the two years following such authorization at the Company's discretion.

The Company did not purchase any shares pursuant to our stock repurchase program during the quarter ended June 27, 2009.

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

Certain reclassifications of prior period balances have been made to conform to the current period presentation. In connection with the planned or actual sale or closure of various restaurants, the operations of these businesses have been presented as discontinued operations in the consolidated financial statements. Accordingly, the Company has reclassified its statements of operations and cash flow data for the prior periods presented, in accordance with Statement of Financial Accounting Standards (SFAS) No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS 144). These dispositions are discussed below in Recent Restaurant Dispositions.

Revenues

During the Company's third fiscal quarter of 2009, total revenues of \$31,123,000 decreased 13.7% compared to total revenues of \$36,077,000 in the third fiscal quarter of 2008. The Company had net income of \$1,597,000 in the third fiscal quarter of 2009 compared to net income of \$3,136,000 in the third fiscal quarter of 2008. Net income was negatively affected during the 13-week period ended June 27, 2009 as a result of \$100,000 in legal expenses resulting from litigation related to one restaurant in New York City.

On a company wide basis same store sales decreased 14.3% during the third fiscal quarter of 2009 compared to the same period last year. Same store sales in Las Vegas decreased by \$1,484,000 or 10.3% in the third fiscal quarter of 2009 compared to the third fiscal quarter of 2008. Same store sales in Las Vegas were negatively affected by the unwillingness of the public to engage in gaming activities and a decrease in tourism and convention business, all related to the current economic conditions. Same store sales in New York decreased \$2,487,000 or 24.1% during the third quarter. Same store sales in New

York were particularly negatively affected during the quarter by unusually inclement weather with large amounts of rain, continuing layoffs and lack of new job creation, especially in the financial sector, a decrease in corporate parties and a decrease in tourism and convention business related to the current economic conditions. Same store sales in Washington D.C. decreased by \$432,000 or 7.1% during the third quarter. Although the current economic conditions do not seem to have affected the Washington D.C. region as much as other regions, unusually inclement weather with large amounts of rain, continuing layoffs and lack of new job creation, a decrease in corporate parties and a decrease in tourism and convention business related to the current economic conditions all contributed to a decrease in sales. Same store sales in Atlantic City decreased by \$179,000, or 21.9%, in the third quarter. Same store sales in Atlantic City were negatively affected by the unwillingness of the public to engage in gaming activities and a decrease in tourism and convention business related to the current economic conditions as well as the introduction of slot machine parlors in nearby Pennsylvania. Same store sales in Connecticut decreased by \$51,000, or 11.4%, in the third quarter. Same store sales in Connecticut were negatively affected by the unwillingness of the public to engage in gaming activities related to the current economic conditions. Same store sales in Boston decreased \$148,000 or 11.5% during the third quarter. Same store sales in Boston were negatively affected by unusually inclement weather with large amounts of rain and the current economic conditions.

During the Company's 39-week period ended June 27, 2009, total revenues of \$81,672,000 decreased 10% compared to total revenues of \$90,764,000 in the 39-week period ended June 28, 2008. The Company had net income of \$1,733,000 in the 39-week period ended June 27, 2009 compared to net income of \$4,966,000 in the 39-week period ended June 28, 2008. Net income was negatively affected during the 39-week period ended June 27, 2009 as a result of approximately \$400,000 in legal expenses resulting from litigation related to one restaurant in New York City.

Costs and Expenses

Food and beverage costs for the third quarter of 2009 as a percentage of total revenues were 25.5% compared to 25.6% in the third quarter of 2008. These costs for the 39-weeks ended June 27, 2009 as a percentage of total revenues were 25.4% compared to 25.8% in the 39-week period ended June 28, 2008.

Payroll expenses as a percentage of total revenues were 30.8% for the third quarter of 2009 as compared to 28.1% in the third quarter of 2008. Payroll expenses as a percentage of total revenues were 32.6% for the 39-week period ended June 27, 2009 as compared to 30.9% for the 39-week period ended June 28, 2008. The increase in payroll expenses as a percentage of revenue, for the 39-week period ended June 27, 2009, was primarily due to a decrease in sales. Occupancy expenses as a percentage of total revenues were 13.3% during the third fiscal quarter of 2009 compared to 13.0% in the third quarter of 2008. Occupancy expenses as a percentage of total revenues were 15.1% during the 39-week period ended June 27, 2009 compared 13.5% for the 39-week period ended June 28, 2008. Other operating costs and expenses as a percentage of total revenues were 12.4% during the third fiscal quarter of 2009 compared to 11.3% in the third quarter of 2008. The increase in other operating costs and expenses as a percentage of revenue was due to decreased sales and \$100,000 of legal costs associated with litigation incurred related to a New York City restaurant during the third fiscal quarter of 2009. Other operating costs and expenses as a percentage of total revenues were 13.5% for the 39-week period ended June 27, 2009 compared to 12.3% for the 39-week period ended June 28, 2008. General and administrative expenses as a percentage of total revenues were 7.1% during the third fiscal quarter of 2009 compared to 6.3% in the third quarter of 2008. General and administrative expenses as a percentage of total revenue were 8.4% for the 39-week period ended June 27, 2009 compared to 7.3% for the 39-week period ended June 28, 2008. The increase in general and administrative expenses as a percentage of revenue was primarily due to decreased sales.

Income Taxes

The income tax provisions on continuing operations for the 39-week periods ended June 27, 2009 and June 28, 2008 reflect effective tax rates of 32.5% and 34.5%, respectively. The Company expects its annual tax rate for its current fiscal year to be approximately 34% to 38%. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates.

During the 39-week period ended June 27, 2009, the Company recognized a tax benefit of \$118,000 principally as a result of reducing its long term income tax liability for unrecognized tax benefits due to the resolution of a tax audit.

The Company's overall effective tax rate in the future will be affected by factors such as the level of losses incurred at the Company's New York facilities, which cannot be consolidated for state and local tax purposes, pre-tax income earned outside of New York City, the utilization of state and local net operating loss carryforwards and the utilization of FICA tax credits. Nevada has no state income tax and other states in which the Company operates have income tax rates substantially lower in comparison to New York. In order to utilize more effectively tax loss carryforwards at restaurants that were unprofitable, the Company has merged certain profitable subsidiaries with certain loss subsidiaries.

Liquidity and Capital Resources

The Company's primary source of capital has been cash provided by operations. The Company has, from time to time, utilized equipment financing in connection with the construction of a restaurant and seller financing in connection with the acquisition of a restaurant. The Company utilizes cash from operations primarily to fund the cost of developing and opening new restaurants, acquiring existing restaurants owned by others and remodeling existing restaurants owned by the Company.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

The Company had a working capital surplus of \$9,493,000 at June 27, 2009 as compared to a working capital surplus of \$9,144,000 at September 27, 2008.

The Company's Revolving Credit and Term Loan Facility matured on March 12, 2005. The Company does not currently plan to enter into another credit facility and expects required cash to be provided by operations.

Critical Accounting Policies

The preparation of financial statements requires the application of certain accounting policies, which may require the Company to make estimates and assumptions of future events. In the process of preparing its consolidated financial statements, the Company estimates the appropriate carrying value of certain assets and liabilities, which are not readily apparent from other sources. The primary estimates underlying the Company's financial statements include allowances for potential bad debts on accounts and notes receivable, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments, the realizable value of its tax assets and other matters. Management bases its estimates on certain assumptions, which they believe are reasonable in the circumstances, and actual results, could differ from those estimates. Although management does not believe that any change in those assumptions in the near term would have a material effect on the Company's consolidated financial position or the results of operation, differences in actual results could be material to the financial statements.

The Company's critical accounting policies are described in the Company's Form 10-K for the year ended September 27, 2008. There have been no significant changes to such policies during fiscal 2009, other than the implementation of FASB Interpretation No. 157, "Fair Value Measurements."

Recent Accounting Developments

The Financial Accounting Standards Board has recently issued the following accounting pronouncements which have not yet been adopted:

In December 2007, the FASB issued SFAS No. 141 (Revised), *Business Combinations* (SFAS 141R), which establishes principles and requirements for the reporting entity in a business combination, including recognition and measurement in the financial statements of the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. This statement also establishes disclosure requirements to enable financial statement users to evaluate the nature and financial effects of the business combination. SFAS 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. SFAS 141R will become effective for our fiscal year beginning October 4, 2009.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51*, (SFAS 160), which amends Accounting Research Bulletin No. 51, *Consolidated Financial Statements* (ARB No. 51), to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This standard defines a noncontrolling interest, previously referred to as minority interest, as the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. SFAS 160 requires, among other items, that a noncontrolling interest be included in the consolidated balance sheet within equity separate from the parent's equity; consolidated net income to be reported at amounts inclusive of both the parent's and noncontrolling interest's shares and, separately, the amounts of consolidated net income attributable to the parent and noncontrolling interest all on the consolidated statement of income; and if a subsidiary is deconsolidated, any retained noncontrolling equity investment in the former subsidiary be measured at fair value and a gain or loss be recognized in net income based on such fair value. SFAS 160 is effective for fiscal years beginning after December 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is currently evaluating the potential impact of adopting SFAS 160 on its consolidated financial statements.

In April 2008, the FASB issued FASB Staff Position 142-3, *Determination of the Useful Life of Intangible Assets* (FSP FAS 142-3), which amends the list of factors an entity should consider in developing renewal or extension assumptions in determining the useful life of recognized intangible assets under FAS No. 142, *Goodwill and Other Intangible Assets*. The new guidance applies to (1) intangible assets that are acquired individually or with a group of other assets and (2) intangible assets acquired in both business combinations and asset

acquisitions. Under FSP FAS 142-3, entities estimating the useful life of a recognized intangible asset must consider their historical experience in renewing or extending similar arrangements or, in the absence of historical experience, must consider assumptions that market participants would use about renewal or extension. FSP FAS 142-3 is effective for fiscal years beginning after December 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is currently evaluating the impact that the adoption of FSP FAS 142-3 may have on its consolidated financial statements and related disclosures.

In June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)* (SFAS 167). SFAS 167 amends the consolidation guidance applicable to variable interest entities and is effective as of the beginning of the first annual reporting period that begins after November 15, 2009, which corresponds to the Company's fiscal year beginning October

3, 2010. The Company is currently evaluating the impact that the adoption of SFAS 167 may have on its consolidated financial statements and related disclosures.

In June 2009, the FASB issued SFAS No. 168, *The FASB Accounting Standards CodificationTM and the Hierarchy of Generally Accepted Accounting Principles* a replacement of FASB Statement No. 162 (SFAS 162). The FASB Accounting Standards Codification (the Codification) will become the source of authoritative U.S. generally accepted accounting principles (U.S. GAAP). The Codification, which changes the referencing of financial standards, is effective for interim or annual financial periods ending after September 15, 2009. The Codification is not intended to change or alter existing U.S. GAAP.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

The Company purchases commodities such as chicken, beef, lobster and shrimp for the Company's restaurants. The prices of these commodities may be volatile depending upon market conditions. The Company does not purchase forward commodity contracts because the changes in prices for them have historically been short-term in nature and, in the Company's view, the cost of the contracts is in excess of the benefits.

The Company's business is also highly seasonal and dependent on the weather. Outdoor seating capacity, such as terraces and sidewalk cafes, are available for dining only in the warm seasons and then only in clement weather.

Item 4T. Controls and Procedures

Based on their evaluation, the Company's principal executive officer and principal financial officer have concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Securities Exchange Act of 1934, as amended (the Exchange Act)) are effective as of June 27, 2009 to ensure that information required to be disclosed by the Company in reports that the Company files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

There were no changes in the Company's internal control over financial reporting during the third quarter of fiscal year 2009 that materially affected or are reasonably likely to materially affect the Company's internal control over financial reporting.

PART II
OTHER INFORMATION

Item 1. Legal Proceedings

The Company is not subject to any other pending legal proceedings, other than ordinary routine claims incidental to its business, which the Company does not believe will materially impact results of operations.

Item 1A. Risk Factors

The most significant risk factors applicable to the Company are described in Part I, Item 1A (Risk Factors) of the Company's Annual Report on Form 10-K for the fiscal year ended September 27, 2008 (the "2008 Form 10-K"). There have been no material changes to the risk factors previously disclosed in the 2008 Form 10-K. The risks described in the 2008 Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to management may materially adversely affect the Company's business, financial condition, and/or operating results.

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

The following table sets forth information regarding purchases of our common stock by us and any affiliated purchasers during the three months ended June 27, 2009. Stock repurchases may be made in the open market or in private transactions at times and in amounts that we deem appropriate. However, there is no guarantee as to the exact number of additional shares that may be repurchased, and we may terminate or limit the stock repurchase program at any time prior to its expiration. We will cancel the repurchased shares.

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total Number of Shares (or Units) Purchased	(b) Average Price Paid per Share (or Unit)	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs(1)
Month #1 March 29, 2009 through April 27, 2009	0	Not Applicable	0	393,043
Month #2 April 28, 2009 through May 27, 2009	0	Not Applicable	0	393,043
Month #3 May 28, 2009 through June 27, 2009	0	Not Applicable	0	393,043
Total	0	Not Applicable	0	393,043

(1) On March 25, 2008, our Board of Directors authorized a stock repurchase program under which up to 500,000 shares of our common stock may be acquired in the open market over the two years following such authorization at our discretion. In periods prior to the third fiscal quarter of 2009 we purchased an aggregate 106,957 shares of our common stock.

Item 3. Defaults upon Senior Securities

None.

Item 4. Submissions of Matters to a Vote of Security Holders

None.

Item 5. Other Information

None.

Item 6. Exhibits

- 31.1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32 Certificate of Chief Executive and Chief Financial Officers Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURES

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

Date: August 11, 2009

ARK RESTAURANTS CORP.

By: /s/ Michael Weinstein
Michael Weinstein
Chairman & Chief Executive Officer

By: /s/ Robert J. Stewart
Robert J. Stewart
Chief Financial Officer