

ARK RESTAURANTS CORP  
Form 10-Q  
February 10, 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 December 27, 2008

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 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

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  
(Common stock, \$.01 par value)

Outstanding shares at February 6, 2009  
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)

|  | December<br>27,<br>2008<br>(unaudited) | September<br>27,<br>2008<br>(Note 1) |
|--|--|--------------------------------------|
| <b>ASSETS</b>  |  |                                      |
| <b>CURRENT ASSETS:</b>   |  |                                      |
| Cash and cash equivalents  | \$ 953                                 | \$ 2,978                             |
| Short-term investments in available-for-sale securities  | 7,547                                  | 9,267                                |
| Accounts receivable  | 2,726                                  | 2,862                                |
| Related party receivables, net   | 1,079                                  | 881                                  |
| Employee receivables   | 341                                    | 281                                  |
| Current portion of long-term receivables   | 123                                    | 121                                  |
| Inventories  | 1,552                                  | 1,556                                |
| Prepaid expenses and other current assets  | 607                                    | 362                                  |
| Total current assets   | 14,928                                 | 18,308                               |
| LONG-TERM RECEIVABLES, LESS CURRENT PORTION  | 199                                    | 231                                  |
| <b>FIXED ASSETS - At cost:</b>   |  |                                      |
| Leasehold improvements   | 31,607                                 | 31,533                               |
| Furniture, fixtures and equipment  | 28,632                                 | 28,372                               |
| Construction in progress   | 395                                    | 44                                   |
|  | 60,634                                 | 59,949                               |
| Less accumulated depreciation and amortization   | 35,989                                 | 35,087                               |
| FIXED ASSETS - Net   | 24,645                                 | 24,862                               |
| INTANGIBLE ASSETS - Net  | 58                                     | 62                                   |
| GOODWILL   | 4,813                                  | 4,813                                |
| TRADEMARKS   | 721                                    | 721                                  |
| DEFERRED INCOME TAXES  | 4,312                                  | 4,312                                |
| OTHER ASSETS   | 697                                    | 701                                  |
| <b>TOTAL</b>   | <b>\$ 50,373</b>                       | <b>\$ 54,010</b>                     |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>  |  |                                      |
| <b>CURRENT LIABILITIES:</b>  |  |                                      |
| Accounts payable - trade   | \$ 1,492                               | \$ 2,834                             |
| Accrued expenses and other current liabilities   | 4,724                                  | 5,312                                |
| Accrued income taxes   | 514                                    | 823                                  |
| Current portion of note payable  | 198                                    | 195                                  |
| Total current liabilities  | 6,928                                  | 9,164                                |
| OPERATING LEASE DEFERRED CREDIT  | 3,646                                  | 3,695                                |
| NOTE PAYABLE, LESS CURRENT PORTION   | 460                                    | 510                                  |
| OTHER LIABILITIES  | 138                                    | 157                                  |
| <b>TOTAL LIABILITIES</b>   | <b>11,172</b>                          | <b>13,526</b>                        |
| NON-CONTROLLING INTERESTS  | 2,445                                  | 2,681                                |
| <b>COMMITMENTS AND CONTINGENCIES</b>   |  |                                      |
| <b>SHAREHOLDERS' EQUITY:</b>   |  |                                      |
| Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding of 5,667 and 3,490 shares at December 27, 2008, respectively |  |                                      |
| and 5,667 and 3,532 shares at September 27, 2008, respectively   | 57                                     | 57                                   |

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

|  |                  |                  |
|--|------------------|------------------|
| Additional paid-in capital   | 22,146           | 22,068           |
| Accumulated other comprehensive income (loss)  | 6                | (30)             |
| Retained earnings  | 24,718           | 25,427           |
|  | 46,927           | 47,522           |
| Less stock option receivable   | (76)             | (124)            |
| Less treasury stock, at cost, of 2,177 and 2,135 shares at December 27, 2008<br>and September 27, 2008, respectively | (10,095)         | (9,595)          |
| Total shareholders' equity   | 36,756           | 37,803           |
| <b>TOTAL</b>   | <b>\$ 50,373</b> | <b>\$ 54,010</b> |

See notes to consolidated condensed financial statements.

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

(In Thousands, Except Per Share Amounts)

|   | 13 Weeks Ended          |                         |
|---|-------------------------|-------------------------|
|   | December<br>27,<br>2008 | December<br>29,<br>2007 |
| <b>REVENUES</b>   |                         |                         |
| Food and beverage sales   | \$ 26,219               | \$ 28,630               |
| Other income  | 573                     | 650                     |
| Total revenues  | 26,792                  | 29,280                  |
| <b>COST AND EXPENSES:</b>   |                         |                         |
| Food and beverage cost of sales   | 6,711                   | 7,456                   |
| Payroll expenses  | 8,924                   | 9,239                   |
| Occupancy expenses  | 3,793                   | 3,927                   |
| Other operating costs and expenses  | 3,986                   | 3,922                   |
| General and administrative expenses   | 2,087                   | 2,151                   |
| Depreciation and amortization   | 906                     | 668                     |
| Total cost and expenses   | 26,407                  | 27,363                  |
| OPERATING INCOME  | 385                     | 1,917                   |
| <b>OTHER (INCOME) EXPENSE:</b>  |                         |                         |
| Interest expense  | 12                      | 15                      |
| Interest income   | (204)                   | (145)                   |
| Other income, net   | (358)                   | (119)                   |
| Total other income, net   | (550)                   | (249)                   |
| Income from continuing operations before provision for income taxes and non-controlling interests | 935                     | 2,166                   |
| Provision for income taxes  | (324)                   | (782)                   |
| Loss attributable to non-controlling interests  | 236                     | -                       |
| INCOME FROM CONTINUING OPERATIONS   | 847                     | 1,384                   |
| <b>DISCONTINUED OPERATIONS:</b>   |                         |                         |
| Income from operations of discontinued restaurants  | -                       | 157                     |
| Provision for income taxes  | -                       | 56                      |
| INCOME FROM DISCONTINUED OPERATIONS   | -                       | 101                     |
| NET INCOME  | \$ 847                  | \$ 1,485                |
| <b>PER SHARE INFORMATION - BASIC AND DILUTED:</b>   |                         |                         |
| Income from continuing operations   | \$ 0.24                 | \$ 0.38                 |
| Discontinued operations   | -                       | 0.03                    |
| BASIC   | \$ 0.24                 | \$ 0.41                 |
| Income from continuing operations   | \$ 0.24                 | \$ 0.38                 |
| Discontinued operations   | -                       | 0.03                    |
| DILUTED   | \$ 0.24                 | \$ 0.41                 |
| WEIGHTED AVERAGE NUMBER OF SHARES - BASIC   | 3,505                   | 3,597                   |
| WEIGHTED AVERAGE NUMBER OF SHARES - DILUTED   | 3,505                   | 3,641                   |

See notes to consolidated condensed financial statements.

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

(In Thousands)

|   | 13 Weeks<br>Ended<br>December<br>27,<br>2008 | December<br>29,<br>2007 |
|---|--|-------------------------|
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>  |  |                         |
| Net income  | \$ 847                                       | \$ 1,485                |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities: |  |                         |
| Deferred income taxes   | -  | (27)                    |
| Stock-based compensation  | 78   | 78                      |
| Depreciation and amortization   | 906  | 677                     |
| Equity in loss of affiliate   | 7  | -                       |
| Loss attributable to non-controlling interests  | (236)  | -                       |
| Operating lease deferred credit   | (49)   | (112)                   |
| Changes in operating assets and liabilities:  |  |                         |
| Accounts receivable   | 136  | 506                     |
| Related party receivables   | (198)  | (156)                   |
| Employee receivables  | (60)   | 16                      |
| Inventories   | 4  | (152)                   |
| Prepaid expenses and other current assets   | (245)  | (80)                    |
| Other assets  | (3)  | (119)                   |
| Accounts payable - trade  | (1,342)                                      | (62)                    |
| Accrued income taxes  | (309)  | 14                      |
| Accrued expenses and other current liabilities  | (588)  | (1,210)                 |
| Net cash provided by (used in) continuing operating activities                              | (1,052)                                      | 858                     |
| Net cash provided by (used in) discontinued operating activities                            | (19)   | 72                      |
| Net cash provided by (used in) operating activities   | (1,071)                                      | 930                     |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>  |  |                         |
| Purchases of fixed assets   | (685)  | (1,644)                 |
| Proceeds from sale of discontinued operations   | -  | 1,030                   |
| Purchases of investment securities  | (3,488)                                      | (4,651)                 |
| Proceeds from sales of investment securities  | 5,244  | 4,391                   |
| Payments received on long-term receivables  | 30   | 28                      |
| Net cash provided by (used in) continuing investing activities                              | 1,101  | (846)                   |
| Net cash provided by discontinued investing activities                                      | -  | 161                     |
| Net cash provided by (used in) investing activities   | 1,101  | (685)                   |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>  |  |                         |
| Principal payments on note payable  | (47)   | (44)                    |
| Dividends paid  | (1,556)                                      | (1,583)                 |
| Purchase of treasury stock  | (500)  | -                       |
| Payments received on stock option receivable  | 48   | 42                      |
| Net cash used in continuing financing activities  | (2,055)                                      | (1,585)                 |
| <b>NET DECREASE IN CASH AND CASH EQUIVALENTS</b>  | <b>(2,025)</b>                               | <b>(1,340)</b>          |



Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

|  |    |       |    |       |
|--|----|-------|----|-------|
| CASH AND CASH EQUIVALENTS, Beginning of period |    | 2,978 |    | 4,009 |
| CASH AND CASH EQUIVALENTS, End of period       | \$ | 953   | \$ | 2,669 |

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

|              |    |     |    |     |
|--------------|----|-----|----|-----|
| Interest     | \$ | 12  | \$ | 15  |
| Income taxes | \$ | 628 | \$ | 852 |

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

December 27, 2008

(Unaudited)

**1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

The consolidated condensed balance sheet as of December 27, 2008, 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.

**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.

**RECLASSIFICATIONS** □ Certain reclassifications of prior year balances have been made to conform to the current year 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.□

**CONSOLIDATION OF VARIABLE INTEREST ENTITIES** □ Effective October 1, 2006, the Company determined that one of its managed restaurants, El Rio Grande (□Rio□), should be presented on a consolidated basis in accordance with the Emerging Issues Task Force No. 04-5, □Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights□ (□EITF 04-5□), and as a result included Rio in its consolidated financial statements. The impact of such consolidation was not material to the Company's condensed consolidated financial position or results of operations for any period presented.

**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.

## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

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 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 December 27, 2008 by SFAS No. 157 valuation hierarchy: (in thousands)

|                               | Level 1  | Level 2 | Level 3 | Carrying Value |
|-------------------------------|----------|---------|---------|----------------|
| Available-for-sale securities | \$ 7,547 | \$ -    | \$ -    | \$ 7,547       |
| Total assets at fair value    | \$ 7,547 | \$ -    | \$ -    | \$ 7,547       |

The Company¶s available-for-sales 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 28, 2008 and we did not elect to report at fair value any new financial assets or liabilities entered during the quarter ended December 27, 2008.

**RECENT ACCOUNTING DEVELOPMENTS ¶** 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 March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities*, (an amendment of FASB Statement No. 133) (SFAS 161), which requires enhanced disclosures about an entity's derivative and hedging activities and thereby improves the transparency of financial reporting. The objective of the guidance is to provide users of financial statements with an enhanced understanding of how and why an entity uses derivative instruments; how derivative instruments and related hedged items are accounted for; and how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for interim and annual periods beginning after November 15, 2008, which corresponds to the Company's quarterly period beginning December 28, 2008. Management is currently evaluating the impact SFAS 161 will have on the Company's consolidated financial statements, but it currently does not expect the effect to be material.

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 will require certain additional disclosures beginning October 1, 2009 and prospective application to useful life estimates prospectively for intangible assets acquired after September 20, 2009. The Company is in the process of evaluating the impact that the adoption of FSP FAS 142-3 may have on its consolidated financial statements and related disclosures.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 identifies the sources of accounting principles and provides entities with a framework for selecting the principles used in preparation of financial statements that are presented in conformity with GAAP. The current GAAP hierarchy has been criticized because it is directed to the auditor rather than the entity, it is complex, and it ranks FASB Statements of Financial Accounting Concepts, which are subject to the same level of due process as FASB Statements of Financial Accounting Standards, below industry practices that are widely recognized as generally accepted but that are not subject to due process. The Board believes the GAAP hierarchy should be directed to entities because it is the entity (not its auditors) that is responsible for selecting accounting principles for financial statements that are presented in conformity with GAAP. SFAS No. 162 was effective November 15, 2008. The adoption of SFAS No. 162 did not have a material impact on our consolidated financial statements.

## **2. RECENT RESTAURANT EXPANSION**

In 2006, the Company entered into an agreement to lease space for a Mexican restaurant, *Yolos*, at the Planet Hollywood Resort and Casino (formerly known as the Aladdin Resort and Casino) in Las Vegas, Nevada. The obligation to pay rent for *Yolos* commenced when the restaurant opened for business in January 2008.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

In June 2007, the Company entered into an agreement to design and lease a food court at the MGM Grand Casino at the Foxwoods Resort Casino which commenced operations during the third fiscal quarter of 2008. A limited liability company has been established to develop, construct, operate and manage the food court. The Company, through a wholly-owned subsidiary, is the managing member of this limited liability company and has an aggregate ownership interest in the food court operations of 67% and accordingly such operations have been consolidated.

In June 2008, the Company signed two successive one-year agreements to use certain deck space adjacent to the *Sequoia* location in New York City as a Café.

In June 2008, the Company entered into an agreement to design and lease a restaurant at The Museum of Arts & Design at Columbus Circle in New York City. The initial term of the lease for this facility will expire on December 31 sixteen

years after the date the Museum first opens for business to the public following its current refurbishment and will have two five-year renewals. The Company anticipates the restaurant will open during the third quarter of the 2009 fiscal year.

### **3. RECENT RESTAURANT DISPOSITIONS**

During the first fiscal quarter of 2008, we discontinued the operation of our Columbus Bakery retail and wholesale bakery located in New York City. Columbus Bakery was originally intended to serve as the bakery that would provide all of our New York restaurants with baked goods as well as being a retail bakery operation. As a result of the sale and closure of several of our restaurants in New York City during the last several years, this bakery operation was no longer profitable.

During the second fiscal quarter of 2008 we opened, along with certain third party investors, a new concept at this location called "Pinch & S"Mac" which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5% . These operations are not consolidated in the Company's financial statements.

Effective June 30, 2008, the lease for our *Stage Deli* facility at the Forum Shops in Las Vegas, Nevada expired. The landlord for this facility offered to renew the lease at this location prior to its expiration at a significantly increased rent. The Company determined that it would not be able to operate this facility profitably at this location at the rent offered in the landlord's renewal proposal. As a result, the Company discontinued these operations during the third fiscal quarter of 2008 and took a charge for the impairment of goodwill of \$294,000 and a loss on disposal of \$19,000. The impairment charge and disposal loss are included in discontinued operations. Operations for the 13 weeks ended December 29, 2007 have been reclassified as discontinued operations.

### **4. 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 December 27, 2008 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 (4.0% at December 27, 2008).

### **5. 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 period ended December 27, 2008, options to purchase 152,500 shares of common stock at a price of \$29.60 and options to purchase 100,000 shares of common stock at a price of \$32.15 were not included in diluted earnings per share as their impact was antidilutive.

Options to purchase 271,500 shares of common stock at a price range of \$29.60 - \$32.15 were included in diluted earnings per share for the 13-week period ended December 29, 2007.

During the 13-week period ended December 27, 2008, no options were exercised.

### **6. 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 second anniversary



Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

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 second, third and fourth anniversaries of the grant date.

## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

A summary of stock option activity is presented below:

|                                      | Shares   | Weighted<br>Average<br>Exercise<br>Price | Weighted<br>Average<br>Fair<br>Value | Weighted<br>Average<br>Contractual<br>Term | Aggregate<br>Intrinsic<br>Value |
|--------------------------------------|----------|--|--------------------------------------|--|---------------------------------|
| Outstanding as of September 27, 2008 | 271,500  | \$ 30.59                                 | \$ 9.22                              | 7.01                                       |                                 |
| Granted                              | -        | -  | -                                    | -  |                                 |
| Exercised                            | -        | -  | -                                    | -  |                                 |
| Canceled or expired                  | (19,000) | \$ 31.48                                 | \$ 10.20                             | 7.46                                       |                                 |
| Outstanding at December 27, 2008     | 252,500  | \$ 30.61                                 | \$ 9.24                              | 6.71                                       | \$ -                            |
| Exercisable at December 27, 2008     | 252,500  | \$ 30.61                                 | \$ 9.24                              | 6.71                                       | \$ -                            |

Compensation cost is recognized on a straight-line basis over the vesting period during which employees perform related services. The Company has applied a forfeitures assumption of 5% per year in the calculation of such expense. As of December 27, 2008, there was approximately \$457,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of approximately 2 years.

### 7. 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 December 27, 2008 are as follows (Dollar amounts in thousands):

|                                | Amortized<br>Cost | Gross<br>Unrealized<br>Holding<br>Gains | Gross<br>Unrealized<br>Holding<br>Losses | Fair Value |
|--------------------------------|-------------------|---|--|------------|
| <b>At December 27, 2008</b>    |                   |   |  |            |
| Available for sale short-term: |                   |   |  |            |
| Government debt securities     | \$ 7,541          | \$ 6                                    | \$ -                                     | \$ 7,547   |

### 8. DIVIDENDS

A quarterly cash dividend in the amount of \$0.35 per share was declared on 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. 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.

### 9. RELATED PARTY TRANSACTIONS

Receivables due from officers and employees, excluding stock option receivables, totaled \$341,000 at December 27, 2008 and \$284,000 at September 27, 2008. Such loans bear interest at the minimum statutory rate

(1.36% at June 28, 2008).

**11. 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.

On October 31, 2008, the Company purchased 42,000 shares at a purchase price of \$11.90 in the open market pursuant to our stock repurchase program.

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

Certain reclassifications of prior year balances have been made to conform to the current year discontinued operations 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 first fiscal quarter of 2009, total revenues of \$26,792,000 decreased 8.5% compared to total revenues of \$29,280,000 in the first fiscal quarter of 2008. Revenues were reduced by \$1,176,000 during the first fiscal quarter of 2008 as a result of the closure of two facilities. The Company had net income of \$847,000 in the first fiscal quarter of 2009 compared to net income of \$1,485,000 in the first fiscal quarter of 2008. During the first fiscal quarter of 2008 we had pre-opening expenses of \$150,000 related to our new Mexican restaurant and lounge located in the Planet Hollywood Casino in Las Vegas, Nevada and additional expenses related to the expansion and renovation of the banquet facilities in the New York-New York Hotel & Casino.

On a company wide basis same store sales decreased 14.8% during the first fiscal quarter of 2009 compared to the same period last year. Same store sales in Las Vegas decreased by \$1,428,000 or 11.0% in the first fiscal quarter of 2009 compared to the first 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 \$2,057,000 or 23.9% during the first quarter. Same store sales in New York were particularly negatively affected by large amounts of layoffs in the financial sector, a decrease in corporate parties during the holiday season as well as a decrease in tourism and convention business related to the current economic conditions. Same store sales in Washington D.C. decreased by \$221,000 or 5.7% during the first quarter primarily due to the current economic conditions. Same store sales in Atlantic City decreased by \$121,000, or 15.2%, in the first 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 \$117,000, or 26.1%, in the first 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.

### **Costs and Expenses**

Food and beverage costs for the first quarter of 2009 as a percentage of total revenues were 25.0% compared to 25.5% in the first quarter of 2008. Payroll expenses as a percentage of total revenues were 33.3% compared to 31.6% in the first quarter of 2008. The increase in payroll expenses as a percentage of revenue was primarily due to a decrease in sales. The Company has subsequently adjusted payroll to reflect the decrease in sales. Occupancy expenses as a percentage of total revenues were 14.2% during the 13-week period ended December 27, 2008 compared to 13.4% for the 13-week period ended December 29, 2007. The increase in occupancy expenses as a percentage of revenue was primarily due to decreased sales coupled with numerous fixed occupancy costs and expenses. Other operating costs and expenses as a percentage of total revenues were 14.9% during the first fiscal quarter of 2009 compared to 13.4% in the first quarter of 2008. The increase in other operating costs and expenses as a percentage of revenue was primarily due to decreased sales. General and administrative expenses as a percentage of total revenues were 7.8% during the first fiscal quarter of 2009 and 7.3% during the first fiscal quarter of 2008.

### **Income Taxes**

The provision for income taxes reflects Federal income taxes calculated on a consolidated basis and state and local income taxes calculated by each New York subsidiary on a non-consolidated basis. Most of the restaurants owned or managed by the Company are owned or managed by separate subsidiaries.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

For state and local income tax purposes, the losses incurred by a subsidiary may only be used to offset that subsidiary's income, with the exception of the restaurants operating in the District of Columbia. Accordingly, the Company's overall effective tax rate has varied depending on the results of operations at individual subsidiaries.

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.

The Company had a working capital surplus of \$8,000,000 at December 27, 2008 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.

## Restaurant Expansion

In 2006, the Company entered into an agreement to lease space for a Mexican restaurant, *Yolos*, at the Planet Hollywood Resort and Casino (formerly known as the Aladdin Resort and Casino) in Las Vegas, Nevada. The obligation to pay rent for *Yolos* commenced when the restaurant opened for business in January 2008.

In June 2007, the Company entered into an agreement to design and lease a food court at the MGM Grand Casino at the Foxwoods Resort Casino which commenced operations during the third fiscal quarter of 2008. A limited liability company has been established to develop, construct, operate and manage the food court. The Company, through a wholly-owned subsidiary, is the managing member of this limited liability company and has an aggregate ownership interest in the food court operations of 67% and accordingly such operations have been consolidated.

In June 2008, the Company signed two successive one-year agreements to use certain deck space adjacent to the *Sequoia* location in New York City as a Café.

In June 2008, the Company entered into an agreement to design and lease a restaurant at The Museum of Arts & Design at Columbus Circle in New York City. The initial term of the lease for this facility will expire on December 31 sixteen years after the date the Museum first opens for business to the public following its current refurbishment and will have two five-year renewals. The Company anticipates the restaurant will open during the third quarter of the 2009 fiscal year.

## Recent Restaurant Dispositions

During the first fiscal quarter of 2008, we discontinued the operation of our Columbus Bakery retail and wholesale bakery located in New York City. Columbus Bakery was originally intended to serve as the bakery that would provide all of our New York restaurants with baked goods as well as being a retail bakery operation. As a result of the sale and closure of several of our restaurants in New York City during the last several years, this bakery operation was no longer profitable.

During the second fiscal quarter of 2008 we opened, along with certain third party investors, a new concept at this location called "Pinch & S" Mac" which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5%. These operations are not consolidated in the Company's financial statements.

Effective June 30, 2008, the lease for our *Stage Deli* facility at the Forum Shops in Las Vegas, Nevada expired. The landlord for this facility offered to renew the lease at this location prior to its expiration at a significantly increased rent. The Company determined that it would not be able to operate this facility profitably at this location at the rent offered in the landlord's renewal proposal. As a result, the Company discontinued these operations during the third fiscal quarter of 2008 and took a charge for the impairment of goodwill of \$294,000 and a loss on disposal of \$19,000. The impairment charge and disposal loss are included in discontinued operations. Operations for the 13 weeks ended December 29, 2007 have been reclassified as discontinued

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:

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 March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133* (SFAS 161), which requires enhanced disclosures about an entity's derivative and hedging activities and thereby improves the transparency of financial reporting. The objective of the guidance is to provide users of financial statements with an enhanced understanding of how and why an entity uses derivative instruments; how derivative instruments and related hedged items are accounted for; and how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for interim and annual periods beginning after November 15, 2008, which corresponds to the Company's quarterly period beginning December 28, 2008. Management is currently evaluating the impact SFAS 161 will have on the Company's consolidated financial statements, but it currently does not expect the effect to be material.

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 will require certain additional disclosures beginning October 1, 2009 and prospective application to useful life estimates prospectively for intangible assets acquired after September 20, 2009. The Company is in the process of evaluating the impact that the adoption of FSP FAS 142-3 may have on its consolidated financial statements and related disclosures.



In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 identifies the sources of accounting principles and provides entities with a framework for selecting the principles used in preparation of financial statements that are presented in conformity with GAAP. The current GAAP hierarchy has been criticized because it is directed to the auditor rather than the entity, it is complex, and it ranks FASB Statements of Financial Accounting Concepts, which are subject to the same level of due process as FASB Statements of Financial Accounting Standards, below industry practices that are widely recognized as generally accepted but that are not subject to due process. The Board believes the GAAP hierarchy should be directed to entities because it is the entity (not its auditors) that is responsible for selecting accounting principles for financial statements that are presented in conformity with GAAP. SFAS No. 162 was effective November 15, 2008. The adoption of SFAS No. 162 did not have a material impact on our consolidated financial statements.

**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 December 27, 2008 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 first quarter of fiscal year 2008 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 December 27, 2008. 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**

| <b>Period</b>  | <b>(a) Total<br/>Number of<br/>Shares (or<br/>Units)<br/>Purchased</b> | <b>(b)<br/>Average<br/>Price Paid<br/>per Share<br/>(or Unit)</b> | <b>(c) Total Number<br/>of Shares (or<br/>Units)<br/>Purchased as Part<br/>of Publicly<br/>Announced Plans<br/>or Programs</b> | <b>(d) Maximum<br/>Number<br/>(or Approximate<br/>Dollar<br/>Value) of Shares<br/>(or<br/>Units) that May<br/>Yet Be<br/>Purchased Under<br/>the<br/>Plans or<br/>Programs(1)</b> |
|--|--|---|--|---|
| Month #1<br>September 28, 2008<br>through<br>October 27, 2008        | 0  | Not Applicable  | 0  | 435,043   |
| Month #2<br>October 28, 2008<br>through<br>November 27, 2008<br>2008 | 42,000   | \$11.90   | 42,000   | 393,043   |
| Month #3<br>November 28, 2008<br>through<br>December 27, 2008        | 0  | Not Applicable  | 0  | 393,043   |
| <b>Total</b>   | <b>42,000</b>  | <b>11.90</b>  | <b>42,000</b>  | <b>393,043</b>  |

(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 first fiscal quarter of 2009 we purchased an aggregate 64,957 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.

-16-

---

**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: February 10, 2009

**ARK RESTAURANTS CORP.**

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

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