UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 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 October 1, 2019

or

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

For the transition period from to

Commission File Number: 001-35987

NOODLES & COMPANY

(Exact name of registrant as specified in its charter)

Delaware	**84-1303469**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
520 Zang Street, Suite D	
Broomfield, CO	**80021**
(Address of principal executive offices)	(Zip Code)

(720) 214-1900
(Registrant's telephone number, including area code)
(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act.

Title of each class	Trading Symbol	Name of each exchange on which registered
Class A Common Stock, $0.01 par value per share	NDLS	Nasdaq Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).
Yes ☒ No ☐

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

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

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

Class	Outstanding at November 1, 2019
Class A Common Stock, $0.01 par value per share	44,122,121 shares

Table of Contents

TABLE OF CONTENTS

PART I

Item 1. Financial Statements

Noodles & Company
Condensed Consolidated Balance Sheets
(in thousands, except share and per share data)

	October 1, 2019	January 1, 2019
	(unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	$ 3,086	$ 4,655
Accounts receivable	2,279	2,391
Inventories	9,875	9,646
Prepaid expenses and other assets	4,291	6,474
Income tax receivable	191	185
Total current assets	19,722	23,351
Property and equipment, net	134,682	138,774
Operating lease assets, net	212,760	—
Goodwill	7,154	6,400
Intangibles, net	963	1,291
Other assets, net	2,346	2,216
Total long-term assets	357,905	148,681
Total assets	$ 377,627	$ 172,032
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 8,145	$ 7,854
Accrued payroll and benefits	9,725	13,391
Accrued expenses and other current liabilities	9,563	11,183
Current operating lease liabilities	22,431	—
Current portion of long-term debt	1,125	719
Total current liabilities	50,989	33,147
Long-term debt, net	41,963	44,183
Long-term operating lease liabilities, net	229,157	—
Deferred rent	—	37,334
Deferred tax liabilities, net	197	133
Other long-term liabilities	4,275	4,554
Total liabilities	326,581	119,351
Stockholders' equity:		
Preferred stock—$0.01 par value, 1,000,000 shares authorized and undesignated as of October 1, 2019 and January 1, 2019; no shares issued or outstanding	—	—
Common stock—$0.01 par value, 180,000,000 shares authorized as of October 1, 2019 and January 1, 2019; 46,545,992 issued and 44,122,121 outstanding as of October 1, 2019 and 46,353,309 issued and 43,929,438 outstanding as of January 1, 2019	465	464
Treasury stock, at cost, 2,423,871 shares as of October 1, 2019 and January 1, 2019	(35,000)	(35,000)
Additional paid-in capital	199,878	198,352
Accumulated deficit	(114,297)	(111,135)
Total stockholders' equity	51,046	52,681
Total liabilities and stockholders' equity	$ 377,627	$ 172,032

See accompanying notes to condensed consolidated financial statements.

Noodles & Company
Condensed Consolidated Statements of Operations
(in thousands, except share and per share data, unaudited)

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018	October 1, 2019	October 2, 2018
Revenue:				
Restaurant revenue	$ 116,759	$ 115,552	$ 344,382	$ 341,616
Franchising royalties and fees, and other	1,545	1,175	4,158	3,032
Total revenue	118,304	116,727	348,540	344,648
Costs and expenses:				
Restaurant operating costs (exclusive of depreciation and amortization shown separately below):				
Cost of sales	29,544	30,617	89,083	90,962
Labor	37,951	37,738	113,920	112,353
Occupancy	12,108	12,035	36,849	37,155
Other restaurant operating costs	17,161	16,224	50,475	49,997
General and administrative	10,436	10,399	32,424	35,480
Depreciation and amortization	5,458	5,790	16,626	17,407
Pre-opening	266	—	331	50
Restaurant impairments, closure costs and asset disposals	336	1,792	3,640	5,952
Total costs and expenses	113,260	114,595	343,348	349,356
Income (loss) from operations	5,044	2,132	5,192	(4,708)
Loss on extinguishment of debt	—	—	—	626
Interest expense, net	737	1,093	2,298	3,385
Income (loss) before income taxes	4,307	1,039	2,894	(8,719)
Provision (benefit) for income taxes	64	(11)	64	(259)
Net income (loss) and comprehensive income (loss)	$ 4,243	$ 1,050	$ 2,830	$ (8,460)
Earnings (loss) per share of Class A and Class B common stock, combined:				
Basic	$ 0.10	$ 0.02	$ 0.06	$ (0.20)
Diluted	$ 0.09	$ 0.02	$ 0.06	$ (0.20)
Weighted average shares of Class A and Class B common stock outstanding, combined:				
Basic	43,990,049	43,094,524	44,007,345	41,798,640
Diluted	44,899,176	44,829,363	45,078,539	41,798,640

See accompanying notes to condensed consolidated financial statements.

Noodles & Company

Condensed Consolidated Statements of Stockholders' Equity

(in thousands, except share data, unaudited)

	Fiscal Quarter Ended						
	Common Stock[1] [2]		Treasury		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance—July 2, 2019	46,508,586	$ 465	2,423,871	$ (35,000)	$ 199,978	$ (118,540)	$ 46,903
Stock plan transactions and other	37,406	—	—	—	(49)	—	(49)
Stock-based compensation expense	—	—	—	—	(51)	—	(51)
Net income	—	—	—	—	—	4,243	4,243
Balance—October 1, 2019	46,545,992	$ 465	2,423,871	$ (35,000)	$ 199,878	$ (114,297)	$ 51,046
Balance—July 3, 2018	43,690,395	$ 437	2,423,871	$ (35,000)	$ 172,936	$ (112,204)	$ 26,169
Issuance of common stock in connection with a public offering, net of transaction expenses	2,500,000	25	—	—	23,132	—	23,157
Stock plan transactions and other	149,618	1	—	—	946	—	947
Stock-based compensation expense	—	—	—	—	652	—	652
Net income	—	—	—	—	—	1,050	1,050
Balance—October 2, 2018	46,340,013	$ 463	2,423,871	$ (35,000)	$ 197,666	$ (111,154)	$ 51,975

	Three Fiscal Quarters Ended						
	Common Stock[1] [2]		Treasury		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance—January 1, 2019	46,353,309	$ 464	2,423,871	$ (35,000)	$ 198,352	$ (111,135)	$ 52,681
Stock plan transactions and other	192,683	1	—	—	(285)	—	(284)
Stock-based compensation expense	—	—	—	—	1,811	—	1,811
Adoption of ASU No. 2016-02, *Leases* (Topic 842)	—	—	—	—	—	(5,992)	(5,992)
Net income	—	—	—	—	—	2,830	2,830
Balance—October 1, 2019	46,545,992	$ 465	2,423,871	$ (35,000)	$ 199,878	$ (114,297)	$ 51,046
Balance—January 2, 2018	43,550,329	$ 436	2,423,871	$ (35,000)	$ 171,613	$ (101,188)	$ 35,861
Issuance of common stock in connection with a public offering, net of transaction expenses	2,500,000	25	—	—	23,132	—	23,157
Stock plan transactions and other	289,684	2	—	—	652	—	654
Stock-based compensation expense	—	—	—	—	2,269	—	2,269
Adoption of ASU No. 2014-09, *Revenue from Contracts with Customers* (Topic 606)	—	—	—	—	—	(1,506)	(1,506)
Net loss	—	—	—	—	—	(8,460)	(8,460)
Balance—October 2, 2018	46,340,013	$ 463	2,423,871	$ (35,000)	$ 197,666	$ (111,154)	$ 51,975

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(1) Unless otherwise noted, activity relates to Class A common stock.

(2) On May 24, 2018, 1,522,098 shares of Class B common stock were converted into the same number of the Company's Class A common stock. As a result of the conversion, no shares of the Company's Class B common stock were outstanding as of October 2, 2018.

See accompanying notes to condensed consolidated financial statements.

Noodles & Company
Condensed Consolidated Statements of Cash Flows
(in thousands, unaudited)

	Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018
Operating activities		
Net income (loss)	$ 2,830	$ (8,460)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	16,626	17,407
Deferred income taxes	64	(263)
Restaurant impairments, closure costs and asset disposals	3,647	5,289
Loss on extinguishment of debt	—	626
Amortization of debt issuance costs	374	484
Stock-based compensation	1,780	2,232
Gain on insurance proceeds received for property damage	—	(373)
Changes in operating assets and liabilities:		
Accounts receivable	122	489
Inventories	(349)	(647)
Prepaid expenses and other assets	(1,062)	(402)
Accounts payable	(864)	(2,172)
Deferred rent	—	(1,278)
Income taxes	(6)	(46)
Operating lease assets and liabilities	(1,749)	—
Accrued expenses and other liabilities	(5,144)	(17,754)
Net cash provided by (used in) operating activities	16,269	(4,868)
Investing activities		
Purchases of property and equipment	(13,788)	(9,937)
Insurance proceeds received for property damage	—	500
Proceeds from disposal of property and equipment	352	—
Franchise restaurant acquisition, net of cash acquired	(1,387)	—
Net cash used in investing activities	(14,823)	(9,437)
Financing activities		
Net payments from swing line loan	—	(101)
Proceeds from issuance of long-term debt	—	74,889
Payments on long-term debt	(2,188)	(84,030)
Issuance of common stock, net of transaction expenses	—	23,157
Payments on finance leases	(543)	—
Stock plan transactions and tax withholding on share-based compensation awards	(284)	654
Debt issuance costs	—	(1,707)
Net cash (used in) provided by financing activities	(3,015)	12,862
Net decrease in cash and cash equivalents	(1,569)	(1,443)
Cash and cash equivalents		
Beginning of period	4,655	3,361
End of period	$ 3,086	$ 1,918

See accompanying notes to condensed consolidated financial statements.

NOODLES & COMPANY

Notes to Condensed Consolidated Financial Statements

(unaudited)

1. Business Summary and Basis of Presentation

Business

Noodles & Company (the "Company"), a Delaware corporation, develops and operates fast casual restaurants that serve globally inspired noodle and pasta dishes, soups, salads and appetizers. As of October 1, 2019, the Company had 391 company-owned restaurants and 67 franchise restaurants in 29 states and the District of Columbia. The Company operates its business as one operating and reportable segment.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements include the accounts of Noodles & Company and its subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. The accompanying interim unaudited condensed consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). Accordingly, they do not include all the information and footnotes required by accounting principles generally accepted in the United States of America ("GAAP") for complete financial statements. In the opinion of the Company, all adjustments considered necessary for the fair presentation of the Company's results of operations, financial position and cash flows for the periods presented have been included and are of a normal, recurring nature. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The results of operations for any interim period are not necessarily indicative of results for the full year. Certain information and footnote disclosures normally included in the Company's annual consolidated financial statements on Form 10-K have been condensed or omitted. The condensed consolidated balance sheet as of January 1, 2019 was derived from audited financial statements. These financial statements should be read in conjunction with the audited financial statements and the related notes included in the Company's Annual Report on Form 10-K for the fiscal year ended January 1, 2019.

Fiscal Year

The Company operates on a 52- or 53-week fiscal year ending on the Tuesday closest to December 31. The Company's fiscal quarters each contain 13 operating weeks, with the exception of the fourth quarter of a 53-week fiscal year, which contains 14 operating weeks. Fiscal year 2019, which ends on December 31, 2019, and fiscal year 2018, which ended on January 1, 2019, both contain 52 weeks. The Company's fiscal quarter that ended October 1, 2019 is referred to as the third quarter of 2019, and the fiscal quarter ended October 2, 2018 is referred to as the third quarter of 2018.

Recent Accounting Pronouncements

The Company reviewed recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a material impact on the Company's financial position or results of operations and cash flows.

Recently Adopted Accounting Pronouncements

On January 2, 2019, the Company adopted ASU 2016-02, "Leases (Topic 842)," along with related clarifications and improvements. This pronouncement requires a lessee to recognize a liability for lease obligations, which represents the discounted obligation to make future lease payments, and a corresponding right-of-use asset on the balance sheet. The guidance also requires certain qualitative and quantitative disclosures about the amount, timing and uncertainty of cash flows arising from leases. The Company elected the alternative transition method to apply the standard as of the beginning of the period of adoption; therefore, the Company has not applied the standard to the comparative periods presented on its condensed consolidated financial statements.

The adoption of this lease guidance did have a material impact on the Company's Condensed Consolidated Balance Sheets by materially increasing its non-current assets and current and non-current liabilities due to the recognition of the right-of-use assets and related lease liabilities primarily related to the Company's restaurant operating leases and corporate office space. Upon adoption, the right-of-use assets were based upon the operating lease liabilities adjusted for prepaid and deferred rent, liabilities associated with lease termination costs and impairment of right-of-use assets. The impairment of right-of-use assets upon adoption was recognized in retained earnings as of January 2, 2019.

The adoption of the standard did not have a material impact on the Company's Condensed Consolidated Statements of Operations in the third quarter of 2019 or the first three quarters of 2019. The adoption also included the enhancement of the Company's disclosures related to leases. See disclosure in Note 9, Leases.

The impact on the Condensed Consolidated Balance Sheet on the date of adoption was as follows:

	January 1, 2019	Adjustments Due to the Adoption of Topic 842 (unaudited)	January 2, 2019 (unaudited)
Assets			
Current assets:			
Cash and cash equivalents	$ 4,655	$ —	$ 4,655
Accounts receivable	2,391	225	2,616
Inventories	9,646	—	9,646
Prepaid expenses and other assets	6,474	(3,243)	3,231
Income tax receivable	185	—	185
Total current assets	23,351	(3,018)	20,333
Property and equipment, net	138,774	844	139,618
Operating lease assets, net	—	219,883	219,883
Goodwill	6,400	—	6,400
Intangibles, net	1,291	(67)	1,224
Other assets, net	2,216	—	2,216
Total long-term assets	148,681	220,660	369,341
Total assets	$ 172,032	$ 217,642	$ 389,674
Liabilities and Stockholders' Equity			
Current liabilities:			
Accounts payable	$ 7,854	$ —	$ 7,854
Accrued payroll and benefits	13,391	—	13,391
Accrued expenses and other current liabilities	11,183	(553)	10,630
Current operating lease liabilities	—	—	—
Current portion of long-term debt	719	—	719
Total current liabilities	33,147	(553)	32,594
Long-term debt, net	44,183	—	44,183
Long-term operating lease liabilities, net	—	260,931	260,931
Deferred rent	37,334	(37,186)	148
Deferred tax liabilities, net	133	—	133
Other long-term liabilities	4,554	442	4,996
Total liabilities	119,351	223,634	342,985
Stockholders' equity:			
Preferred stock—$0.01 par value, 1,000,000 shares authorized and undesignated as of January 1, 2019; no shares issued or outstanding	—	—	—
Common stock—$0.01 par value, 180,000,000 shares authorized as of January 1, 2019; 46,353,309 issued and 43,929,438 outstanding as of January 1, 2019	464	—	464
Treasury stock, at cost, 2,423,871 shares as of January 1, 2019	(35,000)	—	(35,000)
Additional paid-in capital	198,352	—	198,352
Accumulated deficit	(111,135)	(5,992)	(117,127)
Total stockholders' equity	52,681	(5,992)	46,689
Total liabilities and stockholders' equity	$ 172,032	$ 217,642	$ 389,674

2. Supplemental Financial Information

Property and equipment, net, consists of the following (in thousands):

	October 1, 2019	January 1, 2019
Leasehold improvements	$ 200,790	$ 197,571
Furniture, fixtures and equipment	123,641	121,479
Construction in progress	5,606	3,620
	330,037	322,670
Accumulated depreciation and amortization	(195,355)	(183,896)
Property and equipment, net	$ 134,682	$ 138,774

Accrued expenses and other current liabilities consist of the following (in thousands):

	October 1, 2019	January 1, 2019
Gift card liability	$ 1,446	$ 3,284
Occupancy related	1,699	2,600
Utilities	1,391	1,582
Other accrued expenses	5,027	3,717
Accrued expenses and other current liabilities	$ 9,563	$ 11,183

3. Long-Term Debt

On May 9, 2018, the Company entered into a credit facility with U.S. Bank National Association (the "2018 Credit Facility"). The 2018 Credit Facility consists of a term loan facility in an aggregate principal amount of $25.0 million and a revolving line of credit of $65.0 million (which may be increased to $75.0 million), which includes a letter of credit subfacility in the amount of $15.0 million and a swingline subfacility in the amount of $10.0 million. The 2018 Credit Facility has a four-year term and matures on May 9, 2022.

Borrowings under the 2018 Credit Facility, including the term loan facility, bear interest annually, at the Company's option, at either (i) LIBOR plus a margin of 2.25% to 3.25% per annum, based upon the consolidated total lease-adjusted leverage ratio or (ii) the highest of the following base rates plus a margin of 1.25% to 2.25% per annum: (a) the federal funds rate plus 0.50%; (b) the U.S. Bank prime rate or (c) the one-month LIBOR plus 1.00%. The 2018 Credit Facility includes a commitment fee of 0.30% to 0.50% per annum, based upon the consolidated total lease-adjusted leverage ratio, on any unused portion of the revolving credit facility.

As of October 1, 2019, the Company had $44.4 million of indebtedness (excluding $1.3 million of unamortized debt issuance costs) and $3.2 million of letters of credit outstanding under the 2018 Credit Facility. The term loan requires principal payments of $156,250 per quarter through the first quarter of 2019, $187,500 per quarter through the first quarter of 2020, $375,000 per quarter through the first quarter of 2021, and $531,250 per quarter through maturity in the second quarter of 2022.

Aggregate maturities for debt outstanding as of October 1, 2019 are as follows (in thousands):

Year 1	$ 1,125
Year 2	1,813
Year 3	41,451
Total	$ 44,389

The Company's outstanding indebtedness bore interest at rates between 5.34% to 7.25% during the first three quarters of 2019.

Upon execution of the 2018 Credit Facility, the Company repaid in full its outstanding indebtedness under its prior credit facility using funds drawn on its 2018 Credit Facility. Upon repayment, the prior credit facility and all related agreements were terminated.

A loss on extinguishment of debt in the amount of $0.6 million was recorded during the second quarter of 2018 in connection with this repayment.

The Company also maintains outstanding letters of credit to secure obligations under its workers' compensation program and certain lease obligations. The Company was in compliance with all of its debt covenants as of October 1, 2019.

4. Fair Value Measurements

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and all other current liabilities approximate their fair values due to their short-term nature. The carrying amounts of borrowings approximate fair value as the line of credit and term borrowings vary with market interest rates and negotiated terms and conditions are consistent with current market rates. The fair value of the Company's line of credit borrowings is measured using Level 2 inputs.

Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

Assets recognized or disclosed at fair value in the condensed consolidated financial statements on a non-recurring basis include items such as leasehold improvements, property and equipment, operating lease assets, goodwill and other intangible assets. These assets are measured at fair value if determined to be impaired or when acquired.

Adjustments to the fair value of assets measured at fair value on a non-recurring basis as of October 1, 2019 and October 2, 2018 are discussed in Note 7, Restaurant Impairments, Closure Costs and Asset Disposals.

5. Income Taxes

The following table presents the Company's provision (benefit) for income taxes (in thousands):

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	**October 2, 2018**	**October 1, 2019**	**October 2, 2018**
Provision (benefit) for income taxes	$ 64	$ (11)	$ 64	$ (259)
Effective tax rate	1.5%	(1.1)%	2.2%	3.0%

The effective tax rate for the third quarter of 2019 and the first three quarters of 2019 reflect the impact of the previously recorded valuation allowance. For the remainder of fiscal 2019, the Company does not anticipate material income tax expense or benefit as a result of the valuation allowance recorded. The Company will maintain the valuation allowance against deferred tax assets until there is sufficient evidence to support a full or partial reversal. The reversal of a previously recorded valuation allowance will generally result in a benefit from income tax. The effective tax rates for the third quarter of 2018 and the first three quarters of 2018 reflected changes made by the Tax Cuts and Jobs Act ("Tax Act"), which was signed into law in December 2017.

6. Stock-Based Compensation

The Company's Stock Incentive Plan (the "Plan"), as amended and restated in May of 2013, authorizes the grant of non-qualified stock options, incentive stock options, stock appreciation rights, restricted stock, restricted stock units ("RSUs") and incentive bonuses to employees, officers, non-employee directors and other service providers. As of October 1, 2019, approximately 3.5 million share-based awards were available to be granted under the Plan.

The following table shows total stock-based compensation expense (in thousands):

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	**October 2, 2018**	**October 1, 2019**	**October 2, 2018**
Stock-based compensation expense	$ (61)	$ 640	$ 1,820	$ 2,232
Capitalized stock-based compensation expense	$ 11	$ 12	$ 32	$ 37

Included in stock-based compensation expense for the third quarter and first three quarters of 2019 is a credit due to the departure of our former Executive Chairman.

7. Restaurant Impairments, Closure Costs and Asset Disposals

The following table presents restaurant impairments, closure costs and asset disposals (in thousands):

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018	October 1, 2019	October 2, 2018
Restaurant impairments [1]	$ 89	$ 314	$ 2,554	$ 1,231
Closure costs [1]	(643)	1,488	(112)	3,561
Loss (gain) on disposal of assets and other	890	(10)	1,198	1,160
	$ 336	$ 1,792	$ 3,640	$ 5,952

(1) Restaurant impairments and closure costs in all periods presented above include amounts related to restaurants previously impaired or closed.

There were no restaurant impairments during the third quarter of 2019 and two restaurant impairments during the first three quarters of 2019. There were no restaurant impairments during the third quarter of 2018 and one restaurant impairment during the first three quarters of 2018. Each of these periods include ongoing equipment costs for restaurants previously impaired. Impairment is based on management's current assessment of the expected future cash flows of a restaurant based on recent results and other specific market factors. Impairment expense is a Level 3 fair value measure and is determined by comparing the carrying value of restaurant assets to the estimated fair market value of the restaurant assets at resale value and the right-of-use asset based on a discounted cash flow analysis utilizing market lease rates.

Closure costs in the third quarter and first three quarters of 2019 include costs related to restaurants closed in the first three quarters of 2019 as well as ongoing costs and adjustments to the liabilities to landlords as lease terminations occur. The closure costs of $1.5 million recognized during the third quarter of 2018 and $3.6 million recognized during the first three quarters of 2018 are related to the three restaurants closed in the third quarter of 2018 and 12 restaurants closed in the first three quarters of 2018, most of which were approaching the expiration of their leases, as well as ongoing costs of restaurants closed in previous years. These ongoing costs include adjustments to liabilities as lease terminations occur.

Loss on disposal of assets and other includes expenses recognized during the third quarter and first three quarters of 2019 related to the divestiture of five company-owned restaurants to a franchisee, offset by adjustments related to changes in the Company's assessment of remaining operating lease terms, partially offset by ongoing costs of restaurants closed in previous years.

These expenses are included in the "Restaurant impairments, closure costs and asset disposals" line in the Condensed Consolidated Statements of Operations.

8. Earnings (Loss) Per Share

Basic earnings (loss) per share ("EPS") is calculated by dividing net income (loss) available to common stockholders by the weighted-average number of shares of common stock outstanding during each period. Diluted EPS is calculated using net income (loss) available to common stockholders divided by diluted weighted-average shares of common stock outstanding during each period. Potentially dilutive securities include shares of common stock underlying stock options, warrants and RSUs. Diluted EPS considers the impact of potentially dilutive securities except in periods in which there is a loss because the inclusion of the potential common shares would have an anti-dilutive effect.

The following table sets forth the computations of basic and diluted EPS (in thousands, except share and per share data):

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018	October 1, 2019	October 2, 2018
Net income (loss)	$ 4,243	$ 1,050	$ 2,830	$ (8,460)
Shares:				
Basic weighted average shares outstanding	43,990,049	43,094,524	44,007,345	41,798,640
Effect of dilutive securities	909,127	1,734,839	1,071,194	—
Diluted weighted average shares outstanding	44,899,176	44,829,363	45,078,539	41,798,640
Earnings (loss) per share:				
Basic earnings (loss) per share	$ 0.10	$ 0.02	$ 0.06	$ (0.20)
Diluted earnings (loss) per share	$ 0.09	$ 0.02	$ 0.06	$ (0.20)

The Company computes the effect of dilutive securities using the treasury stock method and average market prices during the period. Potential common shares are excluded from the computation of diluted earnings per share when the effect would be anti-dilutive. The shares issuable on the vesting or exercise of share-based awards or exercise of outstanding warrants that were excluded from the calculation of diluted earnings (loss) per share because the effect of their inclusion would have been anti-dilutive totaled 1,748,444 and 176,325 for the third quarter of 2019 and 2018, respectively, and totaled 1,490,202 and 2,758,848 for the first three quarters of 2019 and 2018, respectively.

9. Leases

The Company leases restaurant facilities, office space and certain equipment that expire on various dates through January 2035. Lease terms for restaurants in traditional shopping centers generally include a base term of 10 years, with options to extend these leases for additional periods of 5 to 15 years. Leases with an initial term of 12 months or less are not recorded on the balance sheet; we recognize lease expense for these leases on a straight-line basis over the lease term.

The Company's leases typically contain rent escalations over the lease term. The Company recognizes expense for these leases on a straight-line basis over the lease term. Additionally, tenant incentives used to fund leasehold improvements are recognized when earned and reduce the right-of-use asset related to the lease. These are amortized through the right-of-use asset as reductions of expense over the lease term.

Some of the Company's leases include rent escalations based on inflation indexes and fair market value adjustments. Certain leases contain contingent rental provisions that include a fixed base rent plus an additional percentage of the restaurant's sales in excess of stipulated amounts. Lease expense associated with rent escalation and contingent rental provisions is not material and is included within operating lease cost. Operating lease liabilities are calculated using the prevailing index or rate at lease commencement. Subsequent escalations in the index or rate and contingent rental payments are recognized as variable lease expenses. Our lease agreements do not contain any material residual value guarantees or material restrictive covenants.

The Company elected the practical expedient to account for lease and non-lease components as a single component for substantially all lease types.

As most of the Company's leases do not provide an implicit rate, the Company used its incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments.

Supplemental balance sheet information related to leases is as follows (in thousands):

	Classification		October 1, 2019
Assets			
Operating	Operating lease assets, net	$	212,760
Finance	Finance lease assets, net (1)		896
Total leased assets		$	213,656
Liabilities			
Current lease liabilities			
Operating	Current operating lease liabilities	$	22,431
Finance	Current finance lease liabilities (2)		756
Long-term lease liabilities			
Operating	Long-term operating lease liabilities		229,157
Finance	Long-term finance lease liabilities (2)		158
Total lease liabilities		$	252,502

(1) The finance lease assets are included in property and equipment, net in the Condensed Consolidated Balance Sheets.

(2) The current portion of the finance lease liabilities is included in accrued expenses and other current liabilities, and the long-term portion was included in other long-term liabilities in the Condensed Consolidated Balance Sheets.

The components of lease costs are as follows (in thousands):

	Classification	Fiscal Quarter Ended October 1, 2019	Three Fiscal Quarters Ended October 1, 2019
Operating lease cost	Occupancy, other restaurant operating costs, and general and administrative expenses	$ 10,251	$ 30,583
Finance lease cost			
Amortization of lease assets	Depreciation and amortization	161	511
Interest on lease liabilities	Interest expense, net	18	58
		10,430	31,152
Sublease income	Franchising royalties and fees, and other	(184)	(384)
Total lease cost, net		$ 10,246	$ 30,768

Future minimum lease payments required under existing leases as of October 1, 2019 are as follows (in thousands):

	Operating Leases	Finance Leases	Total
Remainder of 2019	$ 10,815	$ 158	$ 10,973
2020	43,172	539	43,711
2021	42,375	216	42,591
2022	42,184	44	42,228
2023	40,831	14	40,845
Thereafter	189,439	9	189,448
Total lease payments	368,816	980	369,796
Less: Imputed interest	117,228	66	117,294
Present value of lease liabilities	$ 251,588	$ 914	$ 252,502

Operating lease payments include $158.2 million related to options to extend lease terms that are reasonably certain of being exercised and exclude $3.4 million of legally binding minimum lease payments for leases signed but not yet commenced.

Lease term and discount rate as of October 1, 2019 are as follows:

	October 1, 2019
Weighted average remaining lease term (years):	
Operating	9.5
Finance	2.0
Weighted average discount rate:	
Operating	8.69%
Finance	7.20%

Supplemental disclosures of cash flow information related to leases for the third quarter and the first three quarters ended October 1, 2019 are as follows (in thousands):

	Fiscal Quarter Ended	Three Fiscal Quarters Ended
	October 1, 2019	October 1, 2019
Cash paid for lease liabilities:		
Operating leases	$ 10,795	$ 32,301
Finance leases	223	600
	$ 11,018	$ 32,901
Right-of-use assets obtained in exchange for new lease liabilities:		
Operating leases	$ 2,646	$ 7,856
Finance leases	—	229
	$ 2,646	$ 8,085

10. Supplemental Disclosures to Condensed Consolidated Statements of Cash Flows

The following table presents the supplemental disclosures to the Condensed Consolidated Statements of Cash Flows for the first three quarters ended October 1, 2019 and October 2, 2018 (in thousands):

	October 1, 2019	October 2, 2018
Interest paid (net of amounts capitalized)	$ 1,972	$ 3,006
Income taxes paid	6	49
Changes in purchases of property and equipment accrued in accounts payable, net	1,200	(1,346)

11. Revenue Recognition

Revenue

Revenue consists of sales from restaurant operations, franchise royalties and fees, and sublease income. Revenue from the operation of company-owned restaurants is recognized when sales occur. The Company reports revenue net of sales and use taxes collected from customers and remitted to governmental taxing authorities.

Gift Cards

The Company sells gift cards which do not have an expiration date, and it does not deduct non-usage fees from outstanding gift card balances. The Company recognizes revenue from gift cards when the gift card is redeemed by the customer or the Company determines the likelihood of the gift card being redeemed by the customer is remote ("gift card breakage"). The determination of the gift card breakage rate is based upon Company-specific historical redemption patterns. The Company has determined that approximately 9% of gift cards will not be redeemed and recognizes gift card breakage ratably over the estimated redemption period of the gift card, which is approximately 24 months. Gift card liability balances are typically highest at the end of each calendar year following increased gift card purchases during the holiday season.

As of October 1, 2019 and January 1, 2019, the current portion of the gift card liability, $1.4 million and $3.3 million, respectively, was included in accrued expenses and other current liabilities, and the long-term portion, $0.7 million and $0.4 million, respectively, was included in other long-term liabilities in the Condensed Consolidated Balance Sheets.

Revenue recognized in the Condensed Consolidated Statements of Operations for the redemption of gift cards was $4.1 million and $4.4 million for the first three quarters of 2019 and 2018, respectively. The revenue recognized from gift cards for the first three quarters of 2018 included $0.3 million of gift card breakage that resulted from a change in the estimate for gift card unredeemed balances for the years 2014 and after. This change in estimate was a result of a litigation settlement in the second quarter of 2018.

Franchise Fees

Royalties from franchise restaurants are based on a percentage of restaurant revenues and are recognized in the period the related franchised restaurants' sales occur. Development fees and franchise fees, portions of which are collected in advance, are nonrefundable and are recognized in income ratably over the term of the related franchise agreement or recognized upon the termination of the agreement between the Company and the franchisee. The Company has determined that the initial franchise services are not distinct from the continuing rights or services offered during the term of the franchise agreement and should be treated as a single performance obligation; therefore, initial fees received from franchisees are recognized as revenue over the term of each respective franchise agreement, which is typically 20 years.

12. Commitments and Contingencies

In the normal course of business, the Company is subject to other proceedings, lawsuits and claims. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. Consequently, the Company is unable to ascertain the ultimate aggregate amount of monetary liability or financial impact with respect to these matters as of October 1, 2019. These matters could affect the operating results of any one financial reporting period when resolved in future periods. The Company believes that an unfavorable outcome with respect to these matters is remote or a potential range of loss is not material to its consolidated financial statements. Significant increases in the number of these claims, or one or more successful claims that result in greater liabilities than the Company currently anticipates, could materially and adversely affect its business, financial condition, results of operations or cash flows.

NOODLES & COMPANY
MANAGEMENT'S DISCUSSION AND ANALYSIS OF
FINANCIAL CONDITION AND RESULTS OF OPERATIONS

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

Noodles & Company is a Delaware corporation that was organized in 2002. Noodles & Company and its subsidiaries are sometimes referred to as "we," "us," "our" and the "Company" in this report. The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the accompanying unaudited condensed consolidated financial statements and related notes in Item 1 and with the audited consolidated financial statements and the related notes included in our Annual Report on Form 10-K for our fiscal year ended January 1, 2019. We operate on a 52- or 53-week fiscal year ending on the Tuesday closest to December 31. Our fiscal quarters each contain 13 operating weeks, with the exception of the fourth quarter of a 53-week fiscal year, which contains 14 operating weeks. Fiscal years 2019 and 2018 each contain 52 weeks.

Cautionary Note Regarding Forward-Looking Statements

In addition to historical information, this discussion and analysis contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainties such as the number of restaurants we intend to open, projected capital expenditures and estimates of our effective tax rates. In some cases, you can identify forward-looking statements by terms such as "may," "might," "will," "objective," "intend," "should," "could," "can," "would," "expect," "believe," "design," "estimate," "predict," "potential," "plan" or the negative of these terms and similar expressions intended to identify forward-looking statements. These statements reflect our current views with respect to future events and are based on currently available operating, financial and competitive information. Examples of forward-looking statements include all matters that are not historical facts, such as statements regarding estimated costs associated with our closure of underperforming restaurants, the implementation and results of strategic initiatives and our future financial performance. Our actual results may differ materially from those anticipated in these forward-looking statements due to reasons including, but not limited to, our ability to achieve and maintain increases in comparable restaurant sales and to successfully execute our business strategy, including new restaurant initiatives and operational strategies to improve the performance of our restaurant portfolio; our ability to maintain compliance with debt covenants and continue to access financing necessary to execute our business strategy; the success of our marketing efforts; our ability to open new restaurants on schedule; current economic conditions; price and availability of commodities; our ability to adequately staff our restaurants; changes in labor costs; consumer confidence and spending patterns; consumer reaction to industry related public health issues and perceptions of food safety; seasonal factors; weather; and those discussed in "Special Note Regarding Forward-Looking Statements" and "Risk Factors" as filed in our Annual Report on Form 10-K for our fiscal year ended January 1, 2019.

Recent Trends, Risks and Uncertainties

Comparable Restaurant Sales. In the third quarter of 2019, system-wide comparable restaurant sales increased 2.1%, comprised of a 2.2% increase for company-owned restaurants and a 1.6% increase for franchise restaurants. Our ability to continue to increase comparable restaurant sales depends in part on our ability to successfully implement our operational strategies and initiatives.

Increased Labor Costs. Similar to much of the restaurant industry, our base labor costs have risen in recent periods. In the third quarter of 2019, we were able to mitigate the impact of increased base labor costs through labor efficiencies; however, we expect that labor costs will continue to rise as wage rates and benefit costs increase. Some jurisdictions in which we operate have recently increased their minimum wage by a significant amount and other jurisdictions are considering similar actions. Significant additional government-imposed increases could materially affect our labor costs.

Certain Restaurant Closures. We closed 19 company-owned restaurants in 2018 and two company-owned restaurants in the first three quarters of 2019, most of which were at or approaching the expiration of their leases. We currently do not anticipate significant restaurant closures for the foreseeable future; however, we may from time to time close certain restaurants, including closures at, or near, the expiration of their leases.

Restaurant Development. In the first three quarters of 2019, we opened three new company-owned restaurants, acquired one franchise restaurant and sold five restaurants to a franchisee. As of October 1, 2019, we had 391 company-owned restaurants and 67 franchise restaurants in 29 states and the District of Columbia. Given recent improvement in performance, operating effectiveness and liquidity, we are currently pursuing a disciplined development pipeline to execute a modest new unit growth rate in the near term. We will open two additional restaurants system-wide in the fourth quarter of 2019. We expect an annual unit growth rate of 5% by 2021.

Key Measures We Use to Evaluate Our Performance

To evaluate the performance of our business, we utilize a variety of financial and performance measures. These key measures include revenue, average unit volume (“AUV”), comparable restaurant sales, restaurant contribution, restaurant contribution margin, EBITDA and adjusted EBITDA.

Revenue

Restaurant revenue represents sales of food and beverages in company-owned restaurants. Several factors affect our restaurant revenue in any period, including the number of restaurants in operation and per-restaurant sales.

Franchise royalties and fees represent royalty income and initial franchise fees. While we expect that the majority of our revenue and net income growth will be driven by company-owned restaurants, our franchise restaurants remain an important factor impacting our revenue and financial performance.

Seasonal factors cause our revenue to fluctuate from quarter to quarter. Our revenue per restaurant is typically lower in the first and fourth quarters, due to reduced winter and holiday traffic, and is higher in the second and third quarters. As a result of these factors, our quarterly and annual operating results and comparable restaurant sales may fluctuate significantly.

Average Unit Volume

AUV consists of the average annualized sales of all company-owned restaurants for the trailing 12 periods. AUV is calculated by dividing restaurant revenue by the number of operating days within each time period and multiplying by the number of operating days we have in a typical year. This measurement allows management to assess changes in consumer traffic and per person spending patterns at our restaurants.

Comparable Restaurant Sales

Comparable restaurant sales refer to year-over-year sales comparisons for the comparable restaurant base. We define the comparable restaurant base to include restaurants open for at least 18 full periods. This measure highlights performance of existing restaurants, as the impact of new restaurant openings is excluded. Changes in comparable restaurant sales are generated by changes in traffic, which we calculate as the number of entrées sold, or changes in per-person spend, calculated as sales divided by traffic. Per-person spend can be influenced by changes in menu prices and the mix and number of items sold per person.

Measuring our comparable restaurant sales allows us to evaluate the performance of our existing restaurant base. Various factors impact comparable restaurant sales, including:

- consumer recognition of our brand and our ability to respond to changing consumer preferences;
- overall economic trends, particularly those related to consumer spending;
- our ability to operate restaurants effectively and efficiently to meet consumer expectations;
- pricing;
- the number of restaurant transactions, per-person spend and average check amount;
- marketing and promotional efforts;
- abnormal weather patterns;
- food safety and foodborne illness concerns;
- local competition;
- trade area dynamics;
- introduction of new and seasonal menu items and limited time offerings; and
- opening new restaurants in the vicinity of existing locations.

Consistent with common industry practice, we present comparable restaurant sales on a calendar-adjusted basis that aligns current year sales weeks with comparable periods in the prior year, regardless of whether they belong to the same fiscal period or not. Since opening new company-owned and franchise restaurants is a part of our growth strategy and we anticipate new restaurants will be a component of our revenue growth, comparable restaurant sales is only one measure of how we evaluate our performance.

Restaurant Contribution and Restaurant Contribution Margin

Restaurant contribution represents restaurant revenue less restaurant operating costs which are cost of sales, labor, occupancy and other restaurant operating costs. Restaurant contribution margin represents restaurant contribution as a percentage of restaurant revenue. We expect restaurant contribution to increase in proportion to the number of new restaurants we open and our comparable restaurant sales growth.

We believe that restaurant contribution and restaurant contribution margin are important tools for investors and other interested parties because they are widely-used metrics within the restaurant industry to evaluate restaurant-level productivity, efficiency and performance. We also use restaurant contribution and restaurant contribution margin as metrics to evaluate the profitability of incremental sales at our restaurants, restaurant performance across periods and restaurant financial performance compared with competitors. Restaurant contribution and restaurant contribution margin are supplemental measures of the operating performance of our restaurants and are not reflective of the underlying performance of our business because corporate-level expenses are excluded from these measures.

EBITDA and Adjusted EBITDA

We define EBITDA as net income (loss) before interest expense, provision (benefit) for income taxes and depreciation and amortization. We define adjusted EBITDA as net income (loss) before interest expense, provision (benefit) for income taxes, depreciation and amortization, restaurant impairments, closure costs and asset disposals, acquisition costs, severance costs and stock-based compensation expense.

We believe that EBITDA and adjusted EBITDA provide clear pictures of our operating results by eliminating certain non-recurring and non-cash expenses that may vary widely from period to period and are not reflective of the underlying business performance.

The presentation of restaurant contribution, restaurant contribution margin, EBITDA and adjusted EBITDA is not intended to be considered in isolation or as a substitute for, or to be superior to, the financial information prepared and presented in accordance with accounting principles generally accepted in the United States of America ("GAAP"). We use these non-GAAP financial measures for financial and operational decision making and as a means to evaluate period-to-period comparisons. We believe that they provide useful information to management and investors about operating results, enhance the overall understanding of past financial performance and future prospects and allow for greater transparency with respect to key metrics used by management in its financial and operational decision making.

Results of Operations

The following table presents a reconciliation of net income (loss) to EBITDA and adjusted EBITDA:

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018	October 1, 2019	October 2, 2018
	(in thousands, unaudited)			
Net income (loss)	$ 4,243	$ 1,050	$ 2,830	$ (8,460)
Depreciation and amortization	5,458	5,790	16,626	17,407
Interest expense, net	737	1,093	2,298	3,385
Provision (benefit) for income taxes	64	(11)	64	(259)
EBITDA	$ 10,502	$ 7,922	$ 21,818	$ 12,073
Restaurant impairments, closure costs and asset disposals (1)	336	1,792	3,640	5,952
Stock-based compensation expense	(61)	640	1,820	2,232
Litigation settlement (2)	—	—	—	3,796
Loss on extinguishment of debt (3)	—	—	—	626
Fees and costs related to transactions and other acquisition/disposition costs (4)	130	—	166	53
Severance costs (5)	112	—	112	278
Adjusted EBITDA	$ 11,019	$ 10,354	$ 27,556	$ 25,010

(1) The first three quarters of 2019 include the impairment of two restaurants compared to one restaurant during the same period of 2018. Additionally, the first three quarters of 2018 included closure costs for the 12 restaurants closed in the first two quarters of 2018, most of which were approaching the expiration of their leases. See Note 7, Restaurant Impairments, Closure Costs and Asset Disposals.

(2) The first three quarters of 2018 included a charge of $3.4 million for the final assessment related to data breach liabilities and a $0.3 million charge for a litigation settlement related to gift cards.

(3) The first three quarters of 2018 included the loss on extinguishment of debt which resulted from writing off the remaining unamortized balance of debt issuance costs related to the prior credit facility when it was repaid in full in the second quarter of 2018.

(4) The third quarter of 2019 included expenses related to transaction and acquisition costs. The first three quarters of 2019 included acquisition costs related to the purchase of one franchise restaurant and costs related to transaction costs. The first three quarters of 2018 included expenses related to the registration statement the Company filed in 2018.

(5) The third quarter of 2019 and first three quarters of 2019 and 2018 included severance costs from departmental structural changes.

Restaurant Openings, Closures and Relocations

The following table shows restaurants opened or closed during the periods indicated:

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018	October 1, 2019	October 2, 2018
Company-Owned Restaurant Activity				
Beginning of period	395	404	394	412
Openings	3	—	3	1
Acquisition (2)	—	—	1	—
Divestitures (1)	(5)	—	(5)	—
Closures	(2)	(3)	(2)	(12)
Restaurants at end of period	391	401	391	401
Franchise Restaurant Activity				
Beginning of period	62	65	65	66
Openings	—	—	—	—
Acquisitions (2)	5	—	5	—
Divestiture (2)	—	—	(1)	—
Closures	—	—	(2)	(1)
Restaurants at end of period	67	65	67	65
Total restaurants	458	466	458	466

(1) Represents five company-owned restaurants sold to a franchisee.
(2) During the first quarter of 2019 we acquired one franchise restaurant and during the third quarter of 2019 we sold five restaurants to a franchisee.

Statement of Operations as a Percentage of Revenue

The following table summarizes key components of our results of operations for the periods indicated as a percentage of our total revenue, except for the components of restaurant operating costs, which are expressed as a percentage of restaurant revenue.

	Fiscal Quarter Ended		Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018	October 1, 2019	October 2, 2018
	(unaudited)			
Revenue:				
Restaurant revenue	98.7%	99.0 %	98.8%	99.1 %
Franchising royalties and fees, and other	1.3%	1.0 %	1.2%	0.9 %
Total revenue	100.0%	100.0 %	100.0%	100.0 %
Costs and expenses:				
Restaurant operating costs (exclusive of depreciation and amortization shown separately below):				
Cost of sales	25.3%	26.5 %	25.9%	26.6 %
Labor	32.5%	32.7 %	33.1%	32.9 %
Occupancy	10.4%	10.4 %	10.7%	10.9 %
Other restaurant operating costs	14.7%	14.0 %	14.7%	14.6 %
General and administrative	8.8%	8.9 %	9.3%	10.3 %
Depreciation and amortization	4.6%	5.0 %	4.8%	5.1 %
Pre-opening	0.2%	— %	0.1%	— %
Restaurant impairments, closure costs and asset disposals	0.3%	1.5 %	1.0%	1.7 %
Total costs and expenses	95.7%	98.2 %	98.5%	101.4 %
Income (loss) from operations	4.3%	1.8 %	1.5%	(1.4)%
Loss on extinguishment of debt	—%	— %	—%	0.2 %
Interest expense, net	0.6%	0.9 %	0.7%	1.0 %
Income (loss) before income taxes	3.6%	0.9 %	0.8%	(2.5)%
Provision (benefit) for income taxes	—%	— %	—%	(0.1)%
Net income (loss)	3.6%	0.9 %	0.8%	(2.4)%

Third Quarter Ended October 1, 2019 Compared to Third Quarter Ended October 2, 2018

The table below presents our unaudited operating results for the third quarters of 2019 and 2018, and the related quarter-over-quarter changes.

	Fiscal Quarter Ended		Increase / (Decrease)	
	October 1, 2019	October 2, 2018	$	%
	(in thousands, unaudited)			
Revenue:				
Restaurant revenue	$ 116,759	$ 115,552	$ 1,207	1.0 %
Franchising royalties and fees, and other	1,545	1,175	370	31.5 %
Total revenue	118,304	116,727	1,577	1.4 %
Costs and expenses:				
Restaurant operating costs (exclusive of depreciation and amortization shown separately below):				
Cost of sales	29,544	30,617	(1,073)	(3.5)%
Labor	37,951	37,738	213	0.6 %
Occupancy	12,108	12,035	73	0.6 %
Other restaurant operating costs	17,161	16,224	937	5.8 %
General and administrative	10,436	10,399	37	0.4 %
Depreciation and amortization	5,458	5,790	(332)	(5.7)%
Pre-opening	266	—	266	*
Restaurant impairments, closure costs and asset disposals	336	1,792	(1,456)	(81.3)%
Total costs and expenses	113,260	114,595	(1,335)	(1.2)%
Income from operations	5,044	2,132	2,912	*
Interest expense, net	737	1,093	(356)	(32.6)%
Income before income taxes	4,307	1,039	3,268	*
Provision (benefit) from income taxes	64	(11)	75	*
Net income	$ 4,243	$ 1,050	$ 3,193	*
Company-owned:				
Average unit volume	$ 1,157	$ 1,107	$ 50	4.5 %
Comparable restaurant sales	2.2%	5.2%		

* Not meaningful.

Revenue

Total revenue increased $1.6 million in the third quarter of 2019, or 1.4%, to $118.3 million, compared to $116.7 million in the third quarter of 2018. This increase was primarily due to the increase in comparable restaurant sales as well as new restaurant openings, partially offset by the impact of restaurants closed since the beginning of third quarter of 2018, most of which were approaching the expiration of their leases.

AUV increased $50,000 compared to the prior year. AUV for the trailing twelve months was $1,157,000.

System-wide comparable restaurant sales growth was 2.1% in the third quarter of 2019, comprised of a 2.2% increase at company-owned restaurants and a 1.6% increase at franchise-owned restaurants. Comparable restaurant sales growth in the third quarter of 2019 was driven primarily by increased off-premise sales, a new menu pricing structure and corresponding mix shift benefits.

Cost of Sales

Cost of sales decreased by $1.1 million, or 3.5%, in the third quarter of 2019 compared to the same period of 2018, due primarily to ongoing supply chain savings initiatives since the third quarter of 2018. As a percentage of restaurant revenue, cost of sales decreased to 25.3% in the third quarter of 2019 compared to 26.5% in third quarter of 2018 primarily due to increased menu price and lower expenses resulting from ongoing supply chain initiatives.

Labor Costs

Labor costs increased by $0.2 million, or 0.6%, in the third quarter of 2019 compared to the same period of 2018. As a percentage of restaurant revenue, labor costs decreased to 32.5% in the third quarter of 2019 from 32.7% in the third quarter of 2018 as labor initiatives more than offset wage inflation.

Occupancy Costs

Occupancy costs increased by $0.1 million, or 0.6%, in the third quarter of 2019 compared to the third quarter of 2018. As a percentage of revenue, occupancy costs remained flat at 10.4% in the third quarter of 2019, compared to the third quarter of 2018.

Other Restaurant Operating Costs

Other restaurant operating costs increased by $0.9 million, or 5.8%, in the third quarter of 2019 compared to the third quarter of 2018, due primarily to increased third-party delivery fees. As a percentage of restaurant revenue, other restaurant operating costs increased to 14.7% in the third quarter of 2019 compared to 14.0% in the third quarter of 2018.

General and Administrative Expense

General and administrative expense was flat in the third quarter of 2019 compared to the third quarter of 2018, primarily due to decreased stock-based compensation related to the departure of our former Executive Chairman in September of 2019, offset by higher compensation costs as we filled out the management team. As a percentage of revenue, general and administrative expense decreased to 8.8% in the third quarter of 2019 from 8.9% in the third quarter of 2018.

Depreciation and Amortization

Depreciation and amortization decreased by $0.3 million, or 5.7%, in the third quarter of 2019 compared to the third quarter of 2018, due primarily to restaurants closed or impaired since the beginning of the third quarter of 2018. As a percentage of revenue, depreciation and amortization decreased to 4.6% in the third quarter of 2019 from 5.0% in the third quarter of 2018.

Pre-Opening Costs

Pre-opening costs increased $0.3 million in the third quarter of 2019 compared to the third quarter of 2018 due to more restaurants under construction as compared to the same period in 2018.

Restaurant Impairments, Closure Costs and Asset Disposals

Restaurant impairments, closure costs and asset disposals decreased by $1.5 million in the third quarter of 2019 compared to the third quarter of 2018. In the third quarter of 2019, we did not record an impairment charge. Closure costs in the third quarter of 2019 included ongoing costs as well as adjustments to liabilities as lease terminations occur. In the third quarter of 2018, we did not impair any restaurants and recognized $1.5 million of closure costs related to the three restaurants closed in the third quarter of 2018 and ongoing costs from restaurants closed in previous periods. Additionally, the third quarter of 2018 included a gain of $0.4 million from the insurance proceeds received for property damage in excess of the loss recognized.

Interest Expense

Interest expense decreased by $0.4 million in the third quarter of 2019 compared to the third quarter of 2018. The decrease was due to lower average borrowings during the third quarter of 2019 compared to the third quarter of 2018.

Provision (Benefit) from Income Taxes

The effective tax rate was 1.5% for the third quarter of 2019 compared to (1.1)% for the third quarter of 2018. The effective tax rate for the third quarter of 2019 reflects the impact of the previously recorded valuation allowance. The effective tax rate for the third quarter of 2018 reflects changes made by the Tax Cuts and Jobs Act (“Tax Act”), which enabled us to release a portion of the previously recorded valuation allowance as a benefit from income tax. For the remainder of fiscal 2019, we do not anticipate material income tax expense or benefit as a result of the valuation allowance recorded. We will maintain a valuation allowance against deferred tax assets until there is sufficient evidence to support a full or partial reversal. The reversal of a previously recorded valuation allowance will generally result in a benefit from income tax.

Three Quarters Ended October 1, 2019 Compared to Three Quarters Ended October 2, 2018

The table below presents our unaudited operating results for the first three quarters of 2019 and 2018, and the related period-over-period changes.

	Three Fiscal Quarters Ended		Increase / (Decrease)	
	October 1, 2019	October 2, 2018	$	%
	(in thousands, except percentages)			
Revenue:				
Restaurant revenue	$ 344,382	$ 341,616	$ 2,766	0.8 %
Franchising royalties and fees, and other	4,158	3,032	1,126	37.1 %
Total revenue	348,540	344,648	3,892	1.1 %
Costs and expenses:				
Restaurant operating costs (exclusive of depreciation and amortization shown separately below):				
Cost of sales	89,083	90,962	(1,879)	(2.1)%
Labor	113,920	112,353	1,567	1.4 %
Occupancy	36,849	37,155	(306)	(0.8)%
Other restaurant operating costs	50,475	49,997	478	1.0 %
General and administrative	32,424	35,480	(3,056)	(8.6)%
Depreciation and amortization	16,626	17,407	(781)	(4.5)%
Pre-opening	331	50	281	*
Restaurant impairments, closure costs and asset disposals	3,640	5,952	(2,312)	(38.8)%
Total costs and expenses	343,348	349,356	(6,008)	(1.7)%
Income (loss) from operations	5,192	(4,708)	9,900	*
Loss on extinguishment of debt	—	626	(626)	*
Interest expense, net	2,298	3,385	(1,087)	(32.1)%
Income (loss) before income taxes	2,894	(8,719)	11,613	*
Provision (benefit) for income taxes	64	(259)	323	*
Net income (loss)	$ 2,830	$ (8,460)	$ 11,290	*
Company-owned:				
Average unit volumes	$ 1,157	$ 1,107	$ 50	4.5 %
Comparable restaurant sales	3.4%	3.3%		

* Not meaningful.

Revenue

Total revenue increased by $3.9 million, or 1.1%, in the first three quarters of 2019, to $348.5 million compared to $344.6 million in the same period of 2018. This increase was due to the increase in comparable restaurant sales and new restaurant openings, partially offset by the impact of restaurants closed since the beginning of 2018, most of which were approaching the expiration of their leases.

Comparable restaurant sales increased by 3.4% at company-owned restaurants, increased by 2.7% at franchise-owned restaurants and increased by 3.3% system-wide in the first three quarters of 2019.

Cost of Sales

Cost of sales decreased by $1.9 million, or 2.1%, in the first three quarters of 2019 compared to the same period of 2018, due primarily to ongoing supply chain savings initiatives. As a percentage of restaurant revenue, cost of sales decreased to 25.9% in the first three quarters of 2019 compared to 26.6% in the first three quarters of 2018 primarily due to increased menu pricing and supply chain savings initiatives.

Labor Costs

Labor costs increased by $1.6 million, or 1.4%, in the first three quarters of 2019 compared to the same period of 2018, due primarily to the increase in restaurant revenue in the first three quarters of 2019. As a percentage of restaurant revenue, labor costs increased to 33.1% in the first three quarters of 2019 compared to 32.9% in the first three quarters of 2018. The increase as a percentage of restaurant revenue was driven by wage inflation and training investments, mostly offset by labor efficiencies.

Occupancy Costs

Occupancy costs decreased by $0.3 million, or 0.8%, in the first three quarters of 2019 compared to the first three quarters of 2018. As a percentage of revenue, occupancy costs decreased to 10.7% in first three quarters of 2019, compared to 10.9% in the first three quarters of 2018, primarily due to leverage on higher AUVs.

Other Restaurant Operating Costs

Other restaurant operating costs increased by $0.5 million, or 1.0%, in the first three quarters of 2019 compared to the first three quarters of 2018, due primarily to off-premise investments which were partially offset by lower utilities costs. As a percentage of restaurant revenue, other restaurant operating costs increased to 14.7% in the first three quarters of 2019, compared to 14.6% in the first three quarters of 2018.

General and Administrative Expense

General and administrative expense decreased by $3.1 million, or 8.6%, in the first three quarters of 2019 compared to the first three quarters of 2018, due primarily to the recognition of a $3.4 million charge for the final settlement related to data breach liabilities incurred in the second quarter of 2018, as well as a decrease in stock-based compensation related to the departure of our former Executive Chairman in September of 2019. These decreases were partially offset by higher compensation costs as we filled out the management team. As a percentage of revenue, general and administrative expense decreased to 9.3% in the first three quarters of 2019 compared to 10.3% in the first three quarters of 2018.

Depreciation and Amortization

Depreciation and amortization decreased by $0.8 million, or 4.5%, in the first three quarters of 2019 compared to the first three quarters of 2018. As a percentage of revenue, depreciation and amortization decreased to 4.8% in the first three quarters of 2019, compared to 5.1% in the first three quarters of 2018, due to restaurants impaired or closed in prior quarters.

Pre-Opening Costs

Pre-opening costs increased $0.3 million in the first three quarters of 2019 as compared to the first three quarters of 2018 due to more restaurants under construction as compared to the same period in 2018.

Restaurant Impairments, Closure Costs and Asset Disposals

Restaurant impairments, closure costs and asset disposals decreased by $2.3 million in the first three quarters of 2019 compared to the first three quarters of 2018, primarily due to a $3.7 million decrease in closure costs, partially offset by a $1.4 million increase in restaurant impairments. In the first three quarters of 2019, we recorded a $2.2 million impairment charge for two restaurants. Closure costs in the first three quarters of 2019 included ongoing costs as well as adjustments to liabilities as lease terminations occur. In the first three quarters of 2018, we impaired one restaurant, recognized $3.6 million of closure costs related to 12 restaurants closed in the first three quarters of 2018 and incurred $1.2 million loss on disposal of assets.

Loss on Extinguishment of Debt

In May 2018, we entered into the 2018 Credit Facility and repaid in full our outstanding indebtedness under the Prior Credit Facility using funds drawn on the 2018 Credit Facility. As a result, we wrote off the remaining unamortized balance of debt issuance costs related to the Prior Credit Facility and recognized a loss on extinguishment of debt in the amount of $0.6 million in the first three quarters of 2018.

Interest Expense

Interest expense decreased by $1.1 million in the first three quarters of 2019 compared to the same period of 2018. The decrease was mainly due to the lower average borrowings in the first three quarters of 2019 compared to the first three quarters of 2018.

Provision for Income Taxes

The effective tax rate was 2.2% for the first three quarters of 2019 compared to 3.0% for the first three quarters of 2018. The effective tax rate for the first three quarters of 2019 reflects the impact of the previously recorded valuation allowance. The effective tax rate for the first three quarters of 2018 reflects changes made by the Tax Act, which enabled the Company to release a portion of the previously recorded valuation allowance as a benefit from income tax. For the remainder of fiscal 2019, we do not anticipate material income tax expense or benefit as a result of the valuation allowance recorded. We will maintain a valuation allowance against deferred tax assets until there is sufficient evidence to support a full or partial reversal. The reversal of a previously recorded valuation allowance will generally result in a benefit from income tax.

Liquidity and Capital Resources

Summary of Cash Flows

As of October 1, 2019, our cash and cash equivalents balance was $3.1 million and the amount available for future borrowings under our 2018 Credit Facility was $41.4 million.

We have historically used cash to fund capital expenditures for new restaurant openings, reinvest in our existing restaurants, invest in infrastructure and information technology and maintain working capital; however, due to our anticipated modest unit growth, cash required for new restaurant openings has been correspondingly reduced. Our working capital position benefits from the fact that we generally collect cash from sales to customers the same day, or in the case of credit or debit card transactions, within several days of the related sale, and we typically have up to 30 days to pay our vendors.

We believe that we have sufficient sources of cash to meet our liquidity needs and capital resource requirements for the next twelve months, primarily through currently available cash and cash equivalents, cash flows from operations and undrawn capacity under our revolving credit line.

Cash flows from operating, investing and financing activities are shown in the following table (in thousands):

	Three Fiscal Quarters Ended	
	October 1, 2019	October 2, 2018
Net cash provided by (used in) operating activities	$ 16,269	$ (4,868)
Net cash used in investing activities	(14,823)	(9,437)
Net cash (used in) provided by financing activities	(3,015)	12,862
Net decrease in cash and cash equivalents	$ (1,569)	$ (1,443)

Operating Activities

Net cash provided by operating activities increased to $16.3 million in the first three quarters of 2019 from net cash used in operating activities of $4.9 million in the first three quarters of 2018. The improvement in operating cash flows resulted primarily from better operating results during the first three quarters of 2019 compared to the prior comparable period, adjusted for non-cash items such as depreciation and amortization, restaurant impairments, closure costs and asset disposals, stock-based compensation and changes in working capital due to timing. The first three quarters of 2018 included the payment of the liabilities related to the data breach that occurred in 2017.

Investing Activities

Net cash used in investing activities increased $5.4 million in the first three quarters of 2019 from $9.4 million in the first three quarters of 2018. This increase is due to construction activities on new restaurant development and the purchase of one franchise restaurant. Both periods include reinvestments in existing restaurants and investments in technology.

Financing Activities

Net cash used in financing activities was $3.0 million in the first three quarters of 2019 largely related to repayments of long-term debt. The first three quarters of 2018 included net proceeds received from borrowings made from the new credit facility, net of repayments to extinguish the prior credit facility.

Capital Resources

Future Capital Expenditure Requirements. Our capital expenditure requirements are primarily dependent upon the pace of our real estate development program and resulting new restaurant openings, costs for maintenance and remodeling of our existing restaurants as well as information technology expenses and other general corporate capital expenditures.

We estimate capital expenditures for the remainder of 2019 to be approximately $3.0 million to $5.0 million, which includes $1.0 million to $3.0 million related to our construction of new restaurants before any reductions for landlord reimbursements. Our total capital expenditures will be approximately $17.0 million to $19.0 million for the fiscal year. We expect such capital expenditures to be funded by a combination of cash from operations and borrowings under our revolving credit facility.

Current Resources. Our operations have not required significant working capital and, like many restaurant companies, we operate with negative working capital. Restaurant sales are primarily paid for in cash or by credit or debit card, and restaurant operations do not require significant inventories or receivables. In addition, we receive trade credit for the purchase of food, beverages and supplies, therefore reducing the need for incremental working capital to support growth.

Liquidity. We believe that our current cash and cash equivalents, the expected cash flows from company-owned restaurant operations, the expected franchise fees and royalties and borrowings under the credit facility will be sufficient to fund our cash requirements for working capital needs and capital improvements and maintenance of existing restaurants for the next twelve months.

Credit Facility

On May 9, 2018, we entered into the 2018 Credit Facility which consists of a term loan facility in an aggregate principal amount of $25.0 million and a revolving line of credit of $65.0 million (which may be increased to $75.0 million), which includes a letter of credit subfacility in the amount of $15.0 million and a swingline subfacility in the amount of $10.0 million. The 2018 Credit Facility has a four-year term and matures on May 9, 2022. Upon execution of the 2018 Credit Facility, the Company repaid in full its outstanding indebtedness under its prior credit facility using funds drawn on its 2018 Credit Facility. Upon repayment, the prior credit facility and all related agreements were terminated.

As of October 1, 2019, we had $44.4 million of indebtedness (excluding $1.3 million of unamortized debt issuance costs) and $3.2 million of letters of credit outstanding under the 2018 Credit Facility. The term loan requires principal payments of $187,500 per quarter through the first quarter of 2020, $375,000 per quarter through the first quarter of 2021, and $531,250 per quarter through maturity in the second quarter of 2022.

The material terms of the 2018 Credit Facility also include, among other things, the following financial covenants: (i) a maximum consolidated total lease-adjusted leverage ratio covenant; (ii) a minimum consolidated fixed charge coverage ratio covenant; and (iii) a covenant limiting the total capital expenditures by us in any fiscal year. Borrowings under the 2018 Credit Facility bear interest, at our option, at either (i) LIBOR plus a margin of 2.25% to 3.25% per annum, based upon the consolidated total lease-adjusted leverage ratio or (ii) the highest of the following base rates plus a margin of 1.25% to 2.25% per annum: (a) the federal funds rate plus 0.50%; (b) the U.S. Bank prime rate or (c) the one-month LIBOR plus 1.00%. The 2018 Credit Facility includes a commitment fee of 0.30% to 0.50% per annum, based upon the consolidated total lease-adjusted leverage ratio, on any unused portion of the revolving credit facility.

Availability of borrowings under the 2018 Credit Facility is conditioned upon our compliance with the terms of the 2018 Credit Facility, including the financial covenants and other customary affirmative and negative covenants, such as limitations on additional borrowings, acquisitions, dividend payments and lease commitments, and customary representations and warranties.

We expect that we will meet all applicable financial covenants in our 2018 Credit Facility, including the maximum consolidated total lease-adjusted leverage ratio, through at least the fiscal year ending December 31, 2019. However, there can be no assurance we will meet such financial covenants. If such covenants are not met, we would be required to seek a waiver or amendment from the banks participating in the credit facility. There can be no assurance that such waiver or amendment would be granted, which could have a material adverse impact on our liquidity.

Our 2018 Credit Facility is secured by a pledge of stock of substantially all of our subsidiaries and a lien on substantially all of our and our subsidiaries' personal property assets.

Off-Balance Sheet Arrangements

We had no off-balance sheet arrangements or obligations as of October 1, 2019.

Critical Accounting Policies and Estimates

With the adoption of ASU 2016-02, "Leases (Topic 842)," the right-of-use assets in our operating and finance leases are subject to the impairment guidance in ASC 360, "Property, Plant, and Equipment." The operating and finance lease assets are long-lived non-financial assets and are accounted for similar to our other long-lived non-financial assets, such as property and equipment and intangibles, subject to amortization. Therefore, we will review operating and finance lease assets for impairment when events or circumstances indicate the carrying value of the assets may not be recoverable.

In performing our impairment testing, we forecast our future undiscounted cash flows by looking at recent restaurant level performance, restaurant level operating plans, sales trends and cost trends for cost of sales, labor and operating expenses. We believe that this combination of information gives us a fair benchmark to estimate future undiscounted cash flows. We compare this cash flow forecast to the asset's carrying value at the restaurant. Based on this analysis, if the carrying amount of the assets is greater than the estimated future undiscounted cash flows, an impairment charge is recognized, measured as the amount by which the carrying amount exceeds the fair value of the asset.

When determining the fair value of our right-of-use assets, we will consider what market participants would pay to lease the asset (i.e., what a market participant would pay up front in one payment for the right-of-use asset, assuming no additional lease payments would be due) for its highest and best use, even if that use differs from the current or intended use by us.

Our condensed consolidated financial statements and accompanying notes are prepared in accordance with GAAP. Preparing consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. These estimates and assumptions are affected by the application of our accounting policies. Our significant accounting policies are described in our Annual Report on Form 10-K for the year ended January 1, 2019. Critical accounting estimates are those that require application of management's most difficult, subjective or complex judgments, often as a result of matters that are inherently uncertain and may change in subsequent periods. While we apply our judgment based on assumptions believed to be reasonable under the circumstances, actual results could vary from these assumptions. It is possible that materially different amounts would be reported using different assumptions. Our critical accounting estimates are identified and described in our annual consolidated financial statements and the related notes included in our Annual Report on Form 10-K for our fiscal year ended January 1, 2019.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Risk

We are exposed to market risk from changes in interest rates on debt. Our exposure to interest rate fluctuations is limited to our outstanding bank debt, which bears interest at variable rates. As of October 1, 2019, we had $44.4 million of outstanding borrowings under our credit facility. An increase or decrease of 1.0% in the effective interest rate applied on these loans would have resulted in a pre-tax interest expense fluctuation of approximately $0.4 million on an annualized basis.

Commodity Price Risk

We purchase certain products that are affected by commodity prices and are, therefore, subject to price volatility caused by weather, market conditions and other factors which are not considered predictable or within our control. Although these products are subject to changes in commodity prices, certain purchasing contracts or pricing arrangements contain risk management techniques designed to minimize price volatility. Typically, we use these types of purchasing techniques to control costs as an alternative to directly managing financial instruments to hedge commodity prices. In many cases, we believe we will be able to address material commodity cost increases by adjusting our menu pricing or changing our product delivery strategy. However, increases in commodity prices, without adjustments to our menu prices, could increase restaurant operating costs as a percentage of restaurant revenue.

Inflation

The primary inflationary factors affecting our operations are food, labor costs, energy costs and materials used in the construction of new restaurants. Increases in the minimum wage requirements directly affect our labor costs. Many of our leases require us to pay taxes, maintenance, repairs, insurance and utilities, all of which are generally subject to inflationary increases. Finally, the cost of constructing our restaurants is subject to inflationary increases in the costs of labor and material. Over the past five years, inflation has not significantly affected our operating results with the exception of increased wage inflation that affected our results from 2015 through the first three quarters of 2019. We expect wage inflation to continue to affect our results in the near future.

Item 4. Controls and Procedures

Our management carried out an evaluation, under the supervision and with the participation of our chief executive officer and chief financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of October 1, 2019, pursuant to Rule 13a-15 under the Exchange Act. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II

Item 1. Legal Proceedings

In the normal course of business, we are subject to other proceedings, lawsuits and claims. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. Consequently, we are unable to ascertain the ultimate aggregate amount of monetary liability or financial impact with respect to these matters as of October 1, 2019. These matters could affect the operating results of any one financial reporting period when resolved in future periods. We believe that an unfavorable outcome with respect to these matters is remote or a potential range of loss is not material to our consolidated financial statements. Significant increases in the number of these claims, or one or more successful claims that result in greater liabilities than we currently anticipate, could materially adversely affect our business, financial condition, results of operations or cash flows.

Item 1A. Risk Factors

A description of the risk factors associated with our business is contained in the "Risk Factors" section of our Annual Report on Form 10-K for our fiscal year ended January 1, 2019. There have been no material changes to our Risk Factors as previously reported other than as noted below.

We may be harmed by breaches of security of information technology systems or our confidential consumer, employee, financial, or other proprietary data.

We use many information technology systems throughout our operations, including systems that record and process customer sales, manage human resources and generate accounting and financial reports. For example, our restaurants use computerized management information systems, including point-of-sale computers that process customer credit card, debit card and gift card payments, and in-restaurant back office computer systems designed to assist in the management of our restaurants and provide labor and food cost management tools. Our franchisees use similar point of sale systems and are required to report business and operational data through an online reporting network. Through these systems, we have access to and store a variety of consumer, employee, financial and other types of information related to our business. We also rely on third-party vendors to provide information technology systems and to securely process and store related information. Our franchisees also use information technology systems and rely on third-party vendors. If our technology systems, or those of third party vendors we or our franchisees rely upon, are compromised as a result of a cyber-attack (including from circumvention of security systems, denial-of-service attacks, hacking, "phishing" attacks, computer viruses, ransomware, malware, or social engineering) or other external or internal methods, it could adversely affect our reputation, business, financial condition or results of operations.

The cyber risks we face range from cyber-attacks common to most industries to attacks that target us due to the confidential consumer information we obtain through our electronic processing of credit and debit card transactions. Like others in our industry, we have experienced many attempts to compromise our information technology and data, and we may experience more attempts in the future. For example, in 2016, we experienced a malware attack that compromised the security of the payment information of some customers who used debit or credit cards at certain locations between January 31, 2016 and June 2, 2016. We subsequently made payments of approximately $11 million to certain payment card companies for card issuer losses, card replacement costs and other charges issued by payment card companies, and incurred additional fees and costs associated with the data security incident, including legal fees, investigative fees, other professional fees, costs of communications with customers and capital investments for remediation activities.

Because cyber-attacks take many forms, change frequently, are becoming increasingly sophisticated, and may be difficult to detect for significant periods of time, we may not be able to respond adequately or timely to future cyber-attacks. If we or our franchisees, or third-party vendors, were to experience a material breach resulting in the unauthorized access, use, or destruction of our information technology systems or confidential consumer, employee, financial, or other proprietary data, it could negatively impact our reputation, reduce our ability to attract and retain customers and employees and disrupt the implementation and execution of our strategic goals. Moreover, such breaches could result in a violation of various privacy-related laws and subject us to investigations or private litigation, which, in turn, could expose us to civil or criminal liability, fines and penalties imposed by state and federal regulators, claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, compromised security and information systems, failure of our employees to comply with applicable laws, the unauthorized acquisition or use of such information by third parties, or other similar claims, and various costs associated with such matters.

We strive to mitigate the risk of breaches of our information technology systems and confidential data by enhancing our information technology networks and infrastructure, specifically in our physical and technological security measures, to anticipate cyber-attacks and defend against breaches, improving related procedures and controls and training our employees on cyber-security trends. While we have taken preventative measures to mitigate this risk, we can provide no assurance that we will not be the subject of cyber-attacks and data breaches in the future. Additionally, we carry cyber insurance to minimize the potential impact that a security breach may have on our financial condition or results of operations; however, liabilities incurred in connection with a security breach may exceed the limit that our data security liability insurer will pay or reimburse, in which case we would bear these fees and costs directly. Although we dedicate significant resources to preventing security breaches, we may be unsuccessful, which could adversely affect our business, financial condition or results of operations.

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

None.

Item 3. Defaults upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibit Index

Exhibit Number	Description of Exhibit
10.1	Chas Hermann Separation Letter dated September 26, 2019
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
32.1	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith)
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

SIGNATURES

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

NOODLES & COMPANY

By:	/s/ KEN KUICK
	Ken Kuick
	Chief Financial Officer (principal financial officer and duly authorized signatory for the registrant)
Date	November 8, 2019

September 26, 2019

Chas Hermann
1050 Borghese Ln, APT 2002
Naples, FL 34114

Dear Chas:

We are providing this letter in connection with the agreed upon separation of your employment as Chief Brand Officer of Noodles & Company (the “Company”). You shall continue to serve in your current role through January 31, 2020 (the "Separation Date").

Based on the circumstances of your separation, if you choose to execute the enclosed legal release, the terms of your separation will be as follows: a) you will remain in your current role at your current salary and will continue to receive all associated employment benefits through January 31, 2020 (the “Transition Period”); b) you will be entitled to receive that portion of your 2019 bonus, commensurate with the bonus received by the other named executive officers of the Company (i.e. bonus payout shall be based on the EBITDA formula based on year end results and shall also be subject to a review of your Individual Objectives) which shall be paid out on March 13, 2020; and c) you will be entitled to a pro rata portion of options and next vesting of RSU’s as provided under the Noodles & Company Stock Incentive Plan (the “Separation Benefit”) through the Separation Date, which are reflected in the attached **Exhibit A**.

The Separation Benefit shall be conditioned upon your executing the enclosed release attached hereto as **Exhibit B,** which includes standard non-disparagement; non-solicitation and non-compete provisions and you shall agree not to accept alternate employment prior to January 31, 2020 unless you obtain consent from the Company. If you do accept alternate employment and leave the Company during the Transition Period and prior to the Separation Date, you will no longer receive your current salary and you will not be entitled to receive any payment of your 2019 bonus.

Your final paycheck will be provided to you on the next regularly scheduled pay date after the Separation Date. After your separation, the Company will not oppose any application you may make for unemployment compensation benefits.

If you participate in Company’s medical and/or dental plans, your coverage will end on the last day of the month of your last day worked. You may be eligible to continue medical and dental coverage beyond the Separation Date under COBRA. Questions about medical and/or dental benefits may be directed to Amy Cohen at 720-214-1957.

If you participate in short term or long-term disability, life insurance and/or supplemental life insurance, this coverage ends on your last day worked. If you are a participant in the life or voluntary life insurance program(s) you may be eligible to convert these coverages into an individual policy. You may call Amy Cohen at 720-214-1957 with any questions about your insurance coverage.

If you are a participant in the Noodles & Company 401(k) plan, you will be given the option to cash out or roll over your 401(k) account. You should consult your financial adviser before making that election. Questions may be directed to Amy Cohen at 720-214-1957.

Any questions related to any stock options or RSU’s you may have may be directed to Amy Cohen at 720-214-1957.

As noted above, the Company has offered to provide you with a Separation Benefit in exchange for certain commitments on your part, and in the interest of a final resolution of all claims you have or might have against the Company. Specifically, if you choose to sign the enclosed Legal Release and return it to the Company, you will receive the Separation Benefit identified above. If you choose not to sign the Legal Release you will not be entitled to receive the Separation Benefit, but you will be paid only for the time period you worked for the Company. Because the Legal Release may affect your legal rights, we advise you to consult with an attorney before signing it.

You will have twenty-one (21) days to consider whether to accept the Company's offer of a Separation Benefit by signing the attached Legal Release, although you are not required to wait the entire twenty-one-day period. If you agree to the terms and conditions set out above and decide to accept the Separation Benefit, you may do so by executing the Legal Release and returning it to Melissa Heidman in the Company's Legal Department on or before **October 17, 2019.** During the seven (7) day period after you sign the Legal Release, you may revoke that portion of the Legal Release that releases your claim, if any, for age discrimination by delivering a written statement of revocation to the Company. If you do so, that portion of the Legal Release that releases your claim, if any, for age discrimination shall thereafter be void and you will have no right to any further payment from the Company. If the Company does not receive your written statement of revocation by the end of the revocation period, then that portion of the Legal Release that releases your claim, if any, for age discrimination will thereafter be legally enforceable and may not be revoked and you will be entitled to receive the Separation Benefit. In any event, that portion of the Legal Release that releases your claims, if any, of any kind other than a claim for age discrimination, shall be valid, enforceable and irrevocable as of the date you sign the Legal Release.

You agree to return all Company property promptly on or before the Separation Date. Please let me know if you need help to arrange any return of Company property.

We appreciate your work for the Company and wish you well in your personal and professional future.

Sincerely,

Dave Boennighausen
Chief Executive Officer - Noodles & Company

Accepted and agreed by:

____

Chas Hermann

Dated:

____

Exhibit B
Legal Release and Agreement

This Legal Release ("Agreement") is between the undersigned employee ("you") and Noodles & Company ("Company").

1. You acknowledge that you have read and understand the letter from Company (the "Separation Letter") addressing your separation from the Company and describing the separation benefit available to you. You acknowledge that you have read and understand all information enclosed with the Separation Letter, including this Agreement.

2. You understand that in consideration for signing this Agreement, you will receive the separation benefit described in the Separation Letter dated **September 26, 2019**, a copy of which is attached hereto, (the "Separation Benefit"), that your decision to do so is entirely voluntary, that you have not been pressured into accepting the Separation Benefit and that you have enough information about the Separation Benefit to decide whether to sign this Agreement. If, for any reason, you believe that your acceptance of the Separation Benefit is not entirely voluntary, or if you believe that you do not have enough information, then you should not sign this Agreement.

3. a. Subject to subparagraph b below, you agree that by signing this Agreement, you fully and forever release all of your claims against the Company its subsidiaries, affiliates and predecessors, and their respective officers, directors, employees, agents, representatives and insurers (collectively "Releasees"), whether or not presently known to you, including claims based on acts or omissions occurring before you delivered this signed Agreement to the Company, including but not limited to claims in any way relating to your employment with the Company and including your separation from employment except for your right to the Separation Benefit, your vested rights, if any, in any Company-sponsored pension plan, and your COBRA, unemployment compensation and worker's compensation rights, if any. You agree that the claims that you are giving up include, but are not limited to, your claims, if any, under all state and federal statutes that protect you from discrimination in employment on the basis of sex, race, national origin, religion, disability and age, such as the Age Discrimination in Employment Act of 1987, Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, the Americans With Disabilities Act, the Family and Medical Leave Act, the Equal Pay Act, and civil rights laws of any state or political subdivision thereof, as well as all common law claims, such as breach of contract, express or implied, tort, whether negligent or intentional, wrongful discharge and any claim for fraud, omission or misrepresentation concerning the terms of the Separation Benefit. You agree that you have had a full and fair opportunity to consult with counsel of your own choosing concerning the agreements, representations, and declarations set forth in the previous sentence.

b. Nothing contained in this Agreement prohibits or prevents you from filing a charge with or participating, testifying or assisting in any investigation, hearing or other proceeding before any federal, state or local government agency such as the United States Equal Employment Opportunity Commission. For the remainder of this agreement, the activities in the prior sentence are referred to as “Permitted Communications and Participation.” Your rights to Permitted Communications and Participation also are not limited by confidentiality and non-disparagement obligations contained in the remainder of this Agreement. However, to the maximum extent permitted by law, you agree that if such an administrative claim is made, you shall not be entitled to recover any individual monetary relief or other individual remedies.

c. If any claim is not subject to release, to the extent permitted by law, you waive any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Releasees are a party.

4. You agree that the Separation Benefit that you are accepting by signing this Agreement has value to you, that you would not be entitled to that benefit without signing this Agreement, that you will receive that benefit in exchange for the benefit to the Company from your signing this Agreement, and that the Company will withhold from the Separation Benefit all applicable federal, state and local taxes.

5. You agree that the only thing of value that you are to receive by signing this Agreement is the Separation Benefit, and that in signing this Agreement you did not rely on any information, oral or written, from anyone, including your supervisor or manager, other than the description of the Separation Benefit and other information set forth in the Separation Letter and this Agreement.

6. You agree that, if you bring any kind of legal claim against Releasees, that you have given up by signing this Agreement, except actions described in paragraph 3.b., then you will be violating this Agreement and you must pay all legal fees, other costs and expenses incurred by the Releasees in defending against your claim. You further agree that any violation of the terms and conditions of this Agreement constitutes a material breach of the Agreement, that Releasees' remedy at law for any such violation would be inadequate, and that Releasees will be entitled to temporary and permanent injunctive relief against any such violation, together with the cost of its reasonable attorney's fees and related costs. You agree that if Releasees demonstrate any such violation in a court of law by a preponderance of the evidence, you shall pay to Releasees as liquidated damages the sum of $10,000.00. You understand you are not subject to any risk of legal action referenced in this paragraph based on your Permitted Communications and Participation.

7. You represent that you have not previously assigned or transferred any of the legal rights and claims that you have given up by signing this Agreement, and you agree that this Agreement also binds all persons who might assert a legal right or claim on your behalf, such as your heirs, personal representatives and assigns, now and in the future.

8. You agree that the Company will not provide you with recall rights or any other right to future employment at the Company, and that you will not be given any preference or priority with respect to any future job openings that may arise.

9. You agree that: (a) this Agreement constitutes the entire agreement between you and the Company, without regard to any other oral or written information that you may have received about this Agreement; (b) if any part of this Agreement is declared to be unenforceable, all other provisions of this Agreement shall remain enforceable; and (c) this Agreement shall be governed by federal law and by the internal laws of the State of Colorado, irrespective of the choice of law rules of any jurisdiction.

10. You affirm that you have not divulged any proprietary or confidential information of Company and will continue to maintain the confidentiality of such information consistent with Company's policies, your agreements with Company and/or common law.

11. You further affirm that you have not been retaliated against for reporting any allegations of wrongdoing by Company or its officers, including any allegations of corporate fraud.

12. You agree that for a period of twelve (12) months following the Separation date, you will not directly or indirectly through another person, induce or attempt to induce any employee of the Company (other than restaurant-level employees who are not managers) to leave the employ of the Company or such

subsidiary, or in any way interfere with the relationship between the Company or any of its subsidiaries and any such employee.

13. You agree that for a period of six (6) months following the Separation date, you will not directly or indirectly, own, manage, control, participate in, consult with, render service for, or be employee in an executive, managerial or administrative capacity by any entity engaged in the fast or quick-casual restaurant business in North American that derives 20% or more of its revenues from the sale of noodles or pasta dishes or that otherwise is engaged in the fast-casual restaurant business (a "Competing Business").

14. Except for Permitted Communications and Participation, you agree not to disclose any information regarding the underlying facts leading up to or the existence or substance of the Agreement, except to Employee's spouse, tax advisor, an attorney with whom you choose to consult regarding Your consideration of this Agreement and/or any federal, state, or local government agency.

15. Except for Permitted Communications and Participation, the Parties agree not to defame or maliciously disparage the other in any manner whatsoever, except for truthful statements as may be required by valid legal process issued by a court or tribunal of competent jurisdiction.

16. The Parties agree that neither this Agreement nor the furnishing of consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Releasees of wrongdoing or evidence of any liability or unlawful conduct of any kind.

17. You agree that by signing this Agreement you are giving up the right to sue the Releasees for age discrimination, or to receive any benefits if a third party brings such claims on your behalf. You agree we have given you twenty-one (21) days to consider whether to sign this Agreement and that such twenty-one (21) day period is not restarted or modified by our offering a modified Separation Benefit. Accordingly, you have until **October 17, 2019** to consider whether to sign this Agreement. For seven (7) days after you sign this Agreement, you may revoke that portion of this Agreement that releases your claim, if any, for age discrimination by delivering a written statement of revocation to the Company. If you do so, that portion of this Agreement that releases your claim, if any, for age discrimination shall thereafter be void, and you will not receive the Separation Benefit. If you do not deliver to the Company a timely written revocation notice within the revocation period, that portion of this agreement that releases your claim, if any, for age discrimination shall thereafter be enforceable, and shall not be revocable. Notwithstanding the foregoing, that portion of this agreement releasing your claims, if any, of any kind other than a claim for age discrimination, shall be valid, enforceable and irrevocable as of the date you sign this agreement.

Acknowledgment

Your signature below acknowledges that you have read this Agreement fully, that you understand and agree to its contents, that you understand that it is a legally binding document, and that you have been advised to consult a lawyer of your choosing before you sign this Agreement and have had the opportunity to do so.

Signed: ______________________________

Print name: ______________________________

Date: ______________________________

On behalf of Noodles & Company

____

Print name: ______________________________

Date: ______________________________

____

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Dave Boennighausen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Noodles and Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2019

/s/ DAVE BOENNIGHAUSEN

Dave Boennighausen

Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Ken Kuick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Noodles and Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2019

/s/ KEN KUICK

Ken Kuick

Chief Financial Officer

(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

I, Dave Boennighausen, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Noodles & Company on Form 10-Q for the fiscal quarter ended October 1, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition and results of operations of Noodles & Company.

Date: November 8, 2019

By:	/s/ DAVE BOENNIGHAUSEN
Name:	Dave Boennighausen
Title:	Chief Executive Officer

I, Ken Kuick, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Noodles & Company on Form 10-Q for the fiscal quarter ended October 1, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition and results of operations of Noodles & Company.

Date: November 8, 2019

By:	/s/ KEN KUICK
Name:	Ken Kuick
Title:	Chief Financial Officer

This certification accompanies this Quarterly Report on Form 10-Q pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.