FAMOUS DAVES OF AMERICA INC
Form 10-Q
November 06, 2015
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended September 27, 2015

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

Commission File No. 0-21625

FAMOUS DAVE S of AMERICA, INC.

(Exact name of registrant as specified in its charter)

Minnesota	**41-1782300**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

12701 Whitewater Drive, Suite 200

Minnetonka, MN 55343

(Address of principal executive offices) (Zip code)

Registrant s telephone number, including area code (952) 294-1300

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 þ No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes þ 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 definition of large accelerated filer, accelerate filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer ¨	Accelerated Filer þ
Non-Accelerated Filer ¨	Smaller reporting company ¨
(Do not check if a smaller reporting company)	

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

As of November 6, 2015, 6,957,628 shares of the registrant s Common Stock were outstanding.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

SEPTEMBER 27, 2015 AND DECEMBER 28, 2014

(in thousands, except per share data)

	September 27, 2015 (Unaudited)	December 28, 2014
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,016	$ 2,133
Restricted cash	739	648
Accounts receivable, net	4,369	3,558
Inventories	2,433	2,742
Deferred tax assets	27	1
Prepaid expenses and other current assets	1,577	1,993
Assets held for sale	3,253	2,500
Total current assets	14,414	13,575
Property, equipment and leasehold improvements, net	42,356	49,495
Other assets:		
Intangible assets, net	2,913	2,949
Deferred tax assets	651	336
Other assets	841	322
	$ 61,175	$ 66,677
LIABILITIES AND SHAREHOLDERS EQUITY		
Current liabilities:		
Current portion of long-term debt and financing lease obligation	$ 384	$ 1,031
Line of credit	10,140	
Accounts payable	5,956	5,653
Accrued compensation and benefits	1,482	3,457
Deferred tax liabilities	123	131
Other current liabilities	3,208	3,939
Total current liabilities	21,293	14,211
Long-term liabilities:		
Line of credit		5,000
Long-term debt, less current portion		3,343
Financing lease obligation, less current portion	2,859	3,150
Other liabilities	9,079	9,171
Total liabilities	33,231	34,875

Shareholders equity:		
Common stock, $0.01 par value, 100,000 shares authorized, 6,958 and 7,137 shares issued and outstanding at September 27, 2015 and December 28, 2014, respectively	66	68
Retained earnings	27,878	31,734
Total shareholders equity	27,944	31,802
	$ 61,175	$ 66,677

See accompanying notes to consolidated financial statements.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

SEPTEMBER 27, 2015 AND SEPTEMBER 28, 2014

(in thousands, except per share data)

(Unaudited)

	Three Months Ended		Nine Months Ended	
	September 27, 2015	September 28, 2014	September 27, 2015	September 28, 2014
Revenue:				
Restaurant sales, net	$ 27,242	$ 33,065	$ 87,551	$ 101,207
Franchise royalty revenue	4,312	4,384	13,263	13,194
Franchise fee revenue		5	255	140
Licensing and other revenue	245	222	765	734
Total revenue	31,799	37,676	101,834	115,275
Costs and expenses:				
Food and beverage costs	8,484	9,750	26,805	29,554
Labor and benefits costs	9,786	10,550	29,383	32,381
Operating expenses	8,202	8,781	25,024	26,923
Depreciation and amortization	1,276	1,472	4,023	4,505
General and administrative expenses	4,182	3,913	14,055	12,190
Asset impairment and estimated lease termination and other closing costs	650	80	1,626	642
Pre-opening expenses			1	7
Net (gain) loss on disposal of property	(1,781)	3	(1,756)	424
Total costs and expenses	30,799	34,549	99,161	106,626
Income from operations	1,000	3,127	2,673	8,649
Other expense:				
Interest expense	(224)	(209)	(659)	(709)
Interest income	2		7	1
Other income (expense), net	1	2	1	(1)
Total other expense	(221)	(207)	(651)	(709)
Income before income taxes	779	2,920	2,022	7,940
Income tax expense	(71)	(897)	(463)	(2,550)
Net income	$ 708	$ 2,023	$ 1,559	$ 5,390
Basic net income per common share	$ 0.10	$ 0.28	$ 0.22	$ 0.75
Diluted net income per common share	$ 0.10	$ 0.28	$ 0.22	$ 0.74
Weighted average common shares outstanding - basic	6,945	7,189	7,008	7,215

Weighted average common shares outstanding - diluted	6,958	7,212	7,027	7,244

See accompanying notes to consolidated financial statements.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

SEPTEMBER 27, 2015 AND SEPTEMBER 28, 2014

(in thousands)

(Unaudited)

	Nine Months Ended	
	September 27, 2015	**September 28, 2014**
Cash flows from operating activities:		
Net income	$ 1,559	$ 5,390
Adjustments to reconcile net income to cash flows provided by operations:		
Depreciation and amortization	4,023	4,505
Asset impairment and estimated lease termination and other closing costs	1,626	642
Net (gain) loss on disposal of property	(1,756)	424
Loss on early extinguishment of debt		
Amortization of deferred financing costs	57	62
Deferred income taxes	(349)	
Deferred rent	656	716
Stock-based compensation	319	(752)
Tax benefit for equity awards issued	(153)	(871)
Changes in operating assets and liabilities:		
Restricted cash	(91)	390
Accounts receivable, net	(919)	704
Inventories	121	28
Prepaid expenses and other current assets	411	1,215
Deposits	18	(24)
Accounts payable	(11)	(1,077)
Accrued compensation and benefits	(2,202)	(1,240)
Other current liabilities	(721)	1,138
Other liabilities	(39)	48
Long-term deferred compensation	(74)	(145)
Cash flows provided by operating activities	2,475	11,153
Cash flows used for investing activities:		
Proceeds from the sale of assets	5,341	95
Purchases of property, equipment and leasehold improvements	(3,145)	(2,033)
Cash flows provided by (used for) investing activities	2,196	(1,938)
Cash flows used for financing activities:		
Proceeds from line of credit	20,700	16,700
Payments on line of credit	(19,300)	(23,100)
Payments for debt issuance costs	(128)	(40)
Payments on long-term debt and financing lease obligation	(541)	(734)
Payments from exercise of stock options		(114)
Tax benefit for equity awards issued	153	871
Repurchase of common stock	(5,672)	(2,533)
Cash flows used for financing activities	(4,788)	(8,950)

(Decrease) increase in cash and cash equivalents	(117)	265
Cash and cash equivalents, beginning of period	2,133	1,293
Cash and cash equivalents, end of period	$ 2,016	$ 1,558

See accompanying notes to consolidated financial statements.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) Basis of Presentation

We, Famous Dave s of America, Inc. (Famous Dave s or the Company), were incorporated in Minnesota on March 14, 1994. We develop, own, operate and franchise restaurants under the name Famous Dave s . As of September 27, 2015, there were 179 Famous Dave s restaurants operating in 33 states, the Commonwealth of Puerto Rico and Canada, including 44 company-owned restaurants and 135 franchise-operated restaurants. An additional 59 franchise restaurants were committed to be developed through signed Area Development Agreements as of September 27, 2015.

We prepared these consolidated financial statements in accordance with Securities and Exchange Commission (SEC) Rules and Regulations. These unaudited financial statements represent the consolidated financial statements of Famous Dave s and its subsidiaries as of September 27, 2015 and December 28, 2014 and for the three and nine month periods ended September 27, 2015 and September 28, 2014, respectively. The information furnished in these financial statements includes normal recurring adjustments and reflects all adjustments, which are, in our opinion, necessary for a fair presentation. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Form 10-K for the fiscal year ended December 28, 2014 as filed with the SEC.

Due to the seasonality of our business, revenue and operating results for the three and nine months ended September 27, 2015 are not necessarily indicative of the results to be expected for the full year.

(2) Net Income Per Common Share

Basic net income per common share (EPS) is computed by dividing net income by the weighted average number of common shares outstanding for the reporting period. Diluted EPS equals net income divided by the sum of the weighted average number of shares of common stock outstanding plus all additional common stock equivalents, such as stock options, when dilutive.

Following is a reconciliation of basic and diluted net income per common share:

(in thousands, except per share data)	**Three Months Ended** September 27, 2015	**Three Months Ended** September 28, 2014	**Nine Months Ended** September 27, 2015	**Nine Months Ended** September 28, 2014
Net income per common share basic:				
Net income	$ 708	$ 2,023	$ 1,559	$ 5,390
Weighted average shares outstanding	6,945	7,189	7,008	7,215
Net income per common share basic	$ 0.10	$ 0.28	$ 0.22	$ 0.75
Net income per common share diluted:				
Net income	$ 708	$ 2,023	$ 1,559	$ 5,390
Weighted average shares outstanding	6,945	7,189	7,008	7,215
Dilutive impact of common stock equivalents outstanding	13	23	19	29
Adjusted weighted average shares outstanding	6,958	7,212	7,027	7,244
Net income per common share diluted	$ 0.10	$ 0.28	$ 0.22	$ 0.74

There were 221,024 options outstanding as of September 27, 2015 that were not included in the computation of diluted EPS because they were anti-dilutive. All options outstanding as of September 28, 2014 were included in the computation of diluted earnings per share.

FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(3) Restricted Cash and Marketing Fund

We have a system-wide Public Relations and Marketing Development Fund, to which Company-owned restaurants, in addition to the majority of franchise-operated restaurants, contribute a percentage of net sales, currently 1.0%, for use in public relations and marketing development efforts throughout the system. The assets held by this fund are considered restricted. Accordingly, we reflect the cash related to this fund in restricted cash and reflect the liability in accounts payable on our consolidated balance sheets as of September 27, 2015 and December 28, 2014. We had approximately $739,000 and $648,000 in this fund as of September 27, 2015 and December 28, 2014, respectively.

(4) Allowance for Doubtful Accounts

Accounts Receivable, Net We provide an allowance for uncollectible accounts on accounts receivable based on historical losses and existing economic conditions, when relevant. We provide for a general bad debt reserve for franchise receivables due to increases in days sales outstanding and deterioration in general economic market conditions. This general reserve is based on the aging of receivables meeting specified criteria and is adjusted each quarter based on past due receivable balances. Additionally, we have periodically established a specific reserve on certain receivables as necessary. Any changes to the reserve are recorded in general and administrative expenses. The allowance for uncollectible accounts was approximately $242,000 and $214,000, at September 27, 2015 and December 28, 2014, respectively. Accounts receivable are written off when they become uncollectible, and payments subsequently received on such receivables are credited to allowance for doubtful accounts. Accounts receivable balances written off have not exceeded allowances provided. We believe all accounts receivable in excess of the allowance are fully collectible. If accounts receivable in excess of provided allowances are determined uncollectible, they are charged to expense in the period that determination is made. Outstanding past due accounts receivable are subject to a monthly interest charge on unpaid balances which is recorded as interest income in our consolidated statements of operations. In assessing recoverability of these receivables, we make judgments regarding the financial condition of the franchisees based primarily on past and current payment trends, as well as other variables, including annual financial information, which the franchisees are required to submit to us, as well as other variables.

(5) Intangible Assets, net

The Company has intangible assets that consist of liquor licenses and lease interest assets. The liquor licenses are indefinite lived assets and are not subject to amortization. The lease interest assets are amortized to occupancy costs on a straight-line basis over the remaining term of each respective lease. Amortization of the lease interest assets is expected to be approximately $47,500 per year, for the remaining useful life.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

A reconciliation of beginning and ending amounts of intangible assets at September 27, 2015 and December 28, 2014, respectively, are presented in the table below:

(in thousands)	Remaining estimated useful life (years)	Original Cost	Accumulated Amortization	Net Book Value	Less Current Portion[1]	Non-Current Portion
Balance at September 27, 2015						
Lease interest assets	24.3	$ 1,417	$ (266)	$ 1,151	$ (48)	$ 1,103
Liquor licenses		1,810		1,810		1,810
Total		$ 3,227	$ (266)	$ 2,961	$ (48)	$ 2,913

(in thousands)	Remaining estimated useful life (years)	Original Cost	Accumulated Amortization	Net Book Value	Less Current Portion[1]	Non-Current Portion
Balance at December 28, 2014						
Lease interest assets	25.1	$ 1,417	$ (230)	$ 1,187	$ (48)	$ 1,139
Liquor licenses		1,810		1,810		1,810
Total		$ 3,227	$ (230)	$ 2,997	$ (48)	$ 2,949

[1] The current portion is included in prepaid expenses and other current assets on the consolidated balance sheets.

6) Credit Facility, Long-Term Debt and Debt Covenants

On May 8, 2015, the Company and certain of its subsidiaries (collectively known as the Borrower) entered into a Third Amended and Restated Credit Agreement (the Credit Agreement), which amended and restated the Company s Second Amended and Restated Credit Agreement (the Second Credit Agreement) with Wells Fargo Bank, National Association as administrative agent and lender (the Lender). Pursuant to the Amendment, the Credit Agreement was amended and restated in order to (i) increase the aggregate maximum loan commitment from $30.0 million to $35.0 million, with loans consisting of a $5.0 million Revolving Facility and a $30.0 million Term Loan Facility utilizing development loans that have a 10-year, mortgage-style amortization; (ii) remove the ability to increase the aggregate maximum loan commitment to $50.0 million; (iii) require the proceeds of asset sales be used to pay down borrowings under the Credit Agreement; (iv) provide additional flexibility with respect to the Company s financial covenants and its ability to make Restricted Payments (as defined in the Credit Agreement); and (v) extend the expiration of the Credit Agreement from July 5, 2016 to May 8, 2020. The Credit Agreement ended the previous term loan. The Credit Agreement continues to have up to $3.0 million of letters of credit, which reduce the availability of the Facility. At September 27, 2015, the principal amount outstanding under the Facility was $10.1 million, along with approximately $1.2 million in letters of credit for real estate locations. The Credit Agreement allows for the termination of the Facility by the Borrower without penalty at any time. We expect to use any borrowings under the Credit Agreement for general working capital, limited restaurant remodels, new restaurant development and share repurchases. Under the Credit Agreement, the Borrowers have granted the Lender a security interest in all current and future personal property of the Borrower.

Principal amounts outstanding under the Facility bear interest either at an adjusted Eurodollar rate or Base Rate plus an applicable margin. The applicable margin depends on the Company s Adjusted Leverage Ratio at the end of the previous quarter. For the nine months ended September 27, 2015 and September 28, 2014, our weighted average interest rate for the Facility was 2.64% and 2.88%, respectively. Unused portions of the Facility are subject to a fee, which was 0.375% of the unused amount at September 27, 2015.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Principal amounts previously outstanding under the Term Loan bore interest at the same rate as the Facility. The weighted average interest rate of the Term Loan for the six months ended June 28, 2015 and nine months ended September 28, 2014 was 2.33% and 2.20%, respectively.

The Credit Agreement contains various financial covenants as well as customary affirmative and negative covenants for credit facilities of this type. For more information regarding the details of the various financial covenants and customary affirmative and negative covenants, please refer to the full text of the Credit Agreement filed as Exhibit 10.2 to our quarterly report on Form 10-Q for the period ended March 29, 2015, which was filed on May 8, 2015.

As of September 27, 2015, we were in compliance with all covenants of the Credit Agreement except for two financial covenants: Adjusted Leverage Ratio and Consolidated Cash Flow Ratio.

As of September 27, 2015 the Adjusted Leverage Ratio was 4.49:1.00, which is higher than the maximum Adjusted Leverage Ratio permitted by the Credit Agreement of 4.00:1.00. It is an Event of Default under the Credit Agreement if Borrowers fail to comply with the covenant relating to the Adjusted Leverage Ratio and such failure continues for 30 days.

As of September 27, 2015, the Consolidated Cash Flow Ratio was 1.51:1.00, which is less than the minimum Consolidated Cash Flow Ratio permitted by the Credit Agreement of 1.75:1.00. It is an Event of Default under the Credit Agreement if Borrowers fail to comply with the covenant of the Credit Agreement relating to the Consolidated Cash Flow Ratio.

Upon an Event of Default, the Lender has the right to declare the unpaid principal amount of all outstanding loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other loan document to be immediately due and payable, as well as to exercise its other rights as a secured creditor. In addition, we are prohibited under the Credit Agreement from making dividends or distributions from one Borrower to another Borrower and purchasing common stock pursuant to a board-approved stock purchase program.

On November 6, 2015, the Borrowers and the Lender entered into a Forbearance Agreement Pursuant to which the Lender agreed to forbear from exercising its rights and remedies under the Credit Agreement during for a Forbearance Period ending December 4, 2015 or on the earlier date of any other Event of Default under the Credit Agreement or breach of the Forbearance Agreement. Under the Forbearance Agreement, we have agreed not to request and Wells Fargo is not obligated to make any further extensions of credit to us under the Credit Agreement. During the Forbearance Period, we intend to closely manage our expenses and cash balances to prevent a working capital shortfall. At November 6, 2015, the principal amount outstanding under the Facility was $17.1 million, along with approximately $1.2 million in letters of credit for real estate locations. At November 6, 2015, our unrestricted deposit account cash was approximately $8.4 million.

During the Forbearance Period, we intend to seek an amendment to or restructuring of the Credit Agreement. As a result of the Events of Default at September 27, 2015 and given the length of the Forbearance Period, all outstanding obligations under the Credit Agreement were classified as current liabilities.

(7) Other Current Liabilities

Other current liabilities consisted of the following at:

(in thousands)	**September 27, 2015**	**December 28, 2014**
Gift cards payable	$ 1,446	$ 1,960
Other liabilities	974	844
Sales tax payable	534	824
Deferred franchise fees	190	225
Accrued property and equipment purchases	23	50

Income tax payable	41	36
	$ 3,208	$ 3,939

(8) Other Liabilities

Other liabilities consisted of the following at:

(in thousands)	**September 27, 2015**	**December 28, 2014**
Deferred rent	$ 8,201	$ 8,435
Long term deferred compensation	385	411
Asset retirement obligations	473	115
Other liabilities	8	159
Income taxes payable	12	51
	$ 9,079	$ 9,171

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(9) Performance Shares, Stock Options, Other Forms of Compensation, and Common Share Repurchases

Stock-based Compensation

Effective May 5, 2015, we adopted a 2015 Equity Plan (the 2015 Plan), pursuant to which we may grant stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, performance stock units and other stock and cash awards to eligible participants. We also maintain an Amended and Restated 2005 Stock Incentive Plan (the 2005 Plan). Together, the 2015 Plan and 2005 Plan are referred to herein as the Plans. Under the 2015 Plan, an aggregate of 278,676 shares of our Company s common stock remained unreserved and available for issuance at September 27, 2015. The 2005 Plan prohibits the granting of incentives after May 12, 2015, the tenth anniversary of the date such Plan was approved by the Company s shareholders. Nonetheless, the 2005 Stock Incentive Plan will remain in effect until all outstanding incentives granted thereunder have either been satisfied or terminated.

We recognized stock-based compensation expense in our consolidated statements of operations for the three and nine months ended September 27, 2015 and September 28, 2014, respectively, as follows:

	Three Months Ended		Nine Months Ended	
(in thousands)	**September 27, 2015**	**September 28, 2014**	**September 27, 2015**	**September 28, 2014**
Performance Share Programs:				
2011 Program[1][3]	$	$	$	$ (55)
2012 Program[1][4]		(10)		(550)
2013 Program[2][5]	(24)	(45)	12	(418)
Performance Stock Units	$ (24)	$ (55)	$ 12	$ (1,023)
Stock Options[6]	(15)	54	241	243
Restricted Stock and Restricted Stock Units[7]	15		45	(73)
Director Shares[8]		15		32
	$ (24)	$ 14	$ 298	$ (821)

(1) The 2011 and 2012 Programs consisted entirely of performance shares.

(2) The 2013 Program consisted of performance shares and performance stock units.

(3) The nine months ended September 28, 2014 included the recapture of previously recorded stock-based compensation of approximately $55,000 due to employee departures.

(4) The three and nine months ended September 28, 2014 included the recapture of previously recorded stock-based compensation of approximately $29,000 and $636,000, respectively, due to employee departures.

(5) The three and nine months ended September 28, 2014 included the recapture of previously recorded stock-based compensation related to performance shares of approximately $494,000 and $443,000, and performance stock units of approximately $16,000 and $112,000, respectively, due to employee departures.

(6) The three and nine months ended September 27, 2015 included the recapture of previously recorded stock-based compensation of approximately $105,000 due to employee departures.

(7) The nine months ended September 28, 2014 included the recapture of previously recorded stock-based compensation of approximately $128,000 due to the departure of Chris O Donnell, a former CEO. The three and nine months ended September 27, 2015 included the recapture of previously recorded stock-based compensation of approximately $45,000 due to the departure of our former CEO, Ed Rensi.

(8) The nine months ended September 28, 2014 included the recapture of previously recorded stock-based compensation of approximately $20,000 due to the departure of our former CEO, Chris O Donnell.

Performance Shares and Performance Stock Units