FAMOUS DAVES OF AMERICA INC
Form 10-Q
May 10, 2013
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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 March 31, 2013

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

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

As of May 6, 2013, 7,625,573 shares of the registrant s Common Stock were outstanding.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

MARCH 31, 2013 AND DECEMBER 30, 2012

(in thousands, except share and per share data)

	March 31, 2013 (Unaudited)	December 30, 2012
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,006	$ 2,074
Restricted cash	709	689
Accounts receivable, net	2,769	3,427
Inventories	2,724	2,760
Deferred tax asset	596	596
Prepaid expenses and other current assets	3,451	2,800
Total current assets	12,255	12,346
Property, equipment and leasehold improvements, net	59,471	60,429
Other assets:		
Intangible assets, net	3,032	2,815
Other assets	597	663
	$ 75,355	$ 76,253
LIABILITIES AND SHAREHOLDERS EQUITY		
Current liabilities:		
Current portion of long-term debt and financing lease obligation	$ 959	$ 946
Accounts payable	6,460	3,640
Accrued compensation and benefits	2,876	3,511
Other current liabilities	3,666	4,020
Total current liabilities	13,961	12,117
Long-term liabilities:		
Line of credit	10,500	13,600
Long-term debt, less current portion	4,533	4,703
Financing lease obligation, less current portion	3,729	3,802
Deferred tax liability	1,338	1,231
Other liabilities	7,287	7,033
Total liabilities	41,348	42,486
Shareholders equity:		

Common stock, $.01 par value, 100,000,000 shares authorized, 7,610,000 and 7,514,000 shares issued and outstanding at March 31, 2013 and December 30, 2012, respectively		73		73
Additional paid-in capital		1,366		1,188
Retained earnings		32,568		32,506
Total shareholders equity		34,007		33,767
	$	75,355	$	76,253

See accompanying notes to consolidated financial statements.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

MARCH 31, 2013 AND APRIL 1, 2012

(in thousands, except per share data)

(Unaudited)

	Three Months Ended March 31, 2013	Three Months Ended April 1, 2012
Revenue:		
Restaurant sales, net	$ 32,280	$ 32,696
Franchise royalty revenue	4,092	4,378
Franchise fee revenue	44	170
Licensing and other revenue	184	249
Total revenue	36,600	37,493
Costs and expenses:		
Food and beverage costs	9,958	10,161
Labor and benefits costs	10,757	10,871
Operating expenses	8,982	8,926
Depreciation and amortization	1,541	1,454
General and administrative expenses	5,019	4,472
Asset impairment and estimated lease termination and other closing costs	(12)	92
Pre-opening expenses	6	18
Net loss on disposal of property	1	6
Total costs and expenses	36,252	36,000
Income from operations	348	1,493
Other expense:		
Interest expense	(285)	(264)
Interest income	4	2
Other income, net	18	8
Total other expense	(263)	(254)
Income before income taxes	85	1,239
Income tax expense	(23)	(422)
Net income	$ 62	$ 817
Basic net income per common share	$ 0.01	$ 0.11
Diluted net income per common share	$ 0.01	$ 0.11

Weighted average common shares outstanding basic	7,370	7,636
Weighted average common shares outstanding diluted	7,648	7,747

See accompanying notes to consolidated financial statements.

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

MARCH 31, 2013 AND APRIL 1, 2012

(in thousands)

(Unaudited)

	Three Months Ended	
	March 31, 2013	April 1, 2012
Cash flows from operating activities:		
Net income	$ 62	$ 817
Adjustments to reconcile net income to cash flows provided by operations:		
Depreciation and amortization	1,541	1,454
Asset impairment and estimated lease termination and other closing costs	(12)	92
Net loss on disposal of property	1	6
Amortization of deferred financing costs	15	14
Deferred income taxes	107	
Deferred rent	188	244
Stock-based compensation	465	370
Tax benefit for equity awards issued	354	901
Changes in operating assets and liabilities:		
Restricted cash	(20)	(405)
Accounts receivable, net	817	395
Inventories	36	60
Prepaid expenses and other current assets	(650)	(1,518)
Deposits		11
Accounts payable	2,790	1,821
Accrued compensation and benefits	(1,277)	(3,121)
Other current liabilities	(492)	(1,136)
Long-term deferred compensation	8	(38)
Cash flows provided by (used for) operating activities	3,933	(33)
Cash flows from investing activities:		
Proceeds from the sale of restaurant assets		1,200
Purchases of property, equipment and leasehold improvements	(739)	(785)
Purchases of intangible assets	(229)	
Payments received on notes receivable		16
Cash flows (used for) provided by investing activities	(968)	431
Cash flows from financing activities:		
Proceeds from draws on line of credit	5,300	8,400
Payments on line of credit	(8,400)	(7,400)
Payments for debt issuance costs	(58)	
Payments on long-term debt and financing lease obligation	(229)	(224)
Proceeds from exercise of stock options		34
Tax benefit for equity awards issued	354	901

Repurchase of common stock		(1,530)
Cash flows (used for) provided by financing activities	(3,033)	181
(Decrease) increase in cash and cash equivalents	(68)	579
Cash and cash equivalents, beginning of period	2,074	1,148
Cash and cash equivalents, end of period	$ 2,006	$ 1,727

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 March 31, 2013, there were 187 Famous Dave s restaurants operating in 34 states and 1 Canadian province, including 53 company-owned restaurants and 134 franchise-operated restaurants. An additional 68 franchise restaurants were committed to be developed through signed area development agreements as of March 31, 2013.

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 March 31, 2013 and December 30, 2012 and for the three month periods ended March 31, 2013 and April 1, 2012. 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 30, 2012 as filed with the SEC.

Due to the seasonality of our business, revenue and operating results for the three months ended March 31, 2013 are not necessarily indicative of the results to be expected for the full year.

Reclassifications Certain reclassifications have been made to prior year amounts to conform to the current year s presentation.

(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.

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

(in thousands, except per share data)	**Three Months Ended March 31, 2013**	**Three Months Ended April 1, 2012**
Net income per common share basic:		
Net income	$ 62	$ 817
Weighted average shares outstanding	7,370	7,636
Net income per common share basic	$ 0.01	$ 0.11
Net income per common share diluted:		
Net income	$ 62	$ 817
Weighted average shares outstanding	7,370	7,636
Dilutive impact of common stock equivalents outstanding	278	111
Adjusted weighted average shares outstanding	7,648	7,747
Net income per common share diluted	$ 0.01	$ 0.11

There were 15,000 stock options outstanding as of March 31, 2013 that were not included in the computation of diluted EPS because they were anti-dilutive. All options outstanding as of April 1, 2012 were included in the computation of diluted EPS.

(3) 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 $156,000 and $236,000, at March 31, 2013 and December 30, 2012, 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.

(4) Public Relations and Marketing Development Fund and Restricted Cash

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 0.75%, 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 March 31, 2013 and December 30, 2012. We had approximately $709,000 and $689,000, in this fund, as of March 31, 2013 and December 30, 2012, respectively.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(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.

A reconciliation of beginning and ending amounts of intangible assets at March 31, 2013 and December 30, 2012, respectively, are presented in the table below:

(in thousands)	Remaining estimated useful life (years)	Original Cost	Accumulated Amortization	Net Book Value	Less Current Portion	Non Current Portion
Balance at December 30, 2012						
Lease interest assets	27.1	$ 1,417	$ (135)	$ 1,282	$ (48)	$ 1,234
Liquor licenses[1]		1,581		1,581		1,581
Total		$ 2,998	$ (135)	$ 2,863	$ (48)	$ 2,815

(in thousands)	Remaining estimated useful life (years)	Original Cost	Accumulated Amortization	Net Book Value	Less Current Portion	Non Current Portion
Balance at March 31, 2013						
Lease interest assets	26.8	$ 1,417	$ (147)	$ 1,270	$ (48)	$ 1,222
Liquor licenses[1]		1,810		1,810		1,810
Total		$ 3,227	$ (147)	$ 3,080	$ (48)	$ 3,032

(1) The company purchased a liquor license for a new company-owned restaurant, anticipated to open the fourth quarter of fiscal 2013, for a total of $250,000: $21,000 was recorded in fiscal 2012 and $229,000 was recorded in the first quarter of fiscal 2013.

Amortization of the lease interest assets is expected to be approximately $48,000 per year, for each of the next five years.

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

The Company and certain of its subsidiaries (collectively known as the Borrower) currently have a Credit Agreement with Wells Fargo Bank, National Association. The Credit Agreement will expire on July 5, 2016. It contains a $30.0 million revolving credit facility (the Facility) with an opportunity to increase to $50.0 million, a term loan (the Term Loan) and up to $3.0 million of letters of credit which reduce the availability of the Facility. At March 31, 2013, the principal amount outstanding under the Facility and the Term Loan was $10.5 million and $5.2 million, respectively, along with approximately $620,000 in letters of credit for real estate

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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 purposes as needed. Under the Credit Agreement, the Borrower has 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 three months ended March 31, 2013 and April 1, 2012, our weighted average interest rate for the Facility was 3.09% and 2.74%, respectively. Unused portions of the Facility are subject to a fee which was 0.375% of the unused amount at March 31, 2013. An option exercise fee would also apply to increased outstanding amounts between $30.0 and $50.0 million.

Principal amounts outstanding under the Term Loan bear interest at the same rate as the Facility. The weighted average interest rate of the Term Loan for the three months ended March 31, 2013 and April 1, 2012 was 2.75% and 2.31%, respectively. The Company is required to make minimum annual amortization payments of 10.0% of the principal balance of the Term Loan.

The Facility 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 read in conjunction with the audited consolidated financial statements and notes thereto included in our Form 10-K for the fiscal year ended December 30, 2012. We were in compliance with all covenants as of March 31, 2013.

(7) Other Current Liabilities

Other current liabilities consisted of the following at:

(in thousands)	**March 31, 2013**	**December 30, 2012**
Gift cards payable	$ 1,483	$ 1,863
Other liabilities	1,261	1,112
Sales tax payable	795	803
Deferred franchise fees	115	89
Accrued property and equipment purchases	12	153
	$ 3,666	$ 4,020

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(8) Other Liabilities

Other liabilities consisted of the following at:

(in thousands)	March 31, 2013	December 30, 2012
Deferred rent	$ 6,964	$ 6,785
Other liabilities	152	147
Asset retirement obligations	101	101
Deferred franchise fees	70	
	$ 7,287	$ 7,033

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

Stock-based Compensation

We have adopted a 1995 Stock Option and Compensation Plan, a 1997 Employee Stock Option Plan, a 1998 Director Stock Option Plan and a 2005 Stock Incentive Plan (the Plans), pursuant to which we may grant stock options, stock appreciation rights, restricted stock, performance shares, and other stock and cash awards to eligible participants. Under the 2005 Plan, an aggregate of 34,819 shares of our Company s common stock remained unreserved and available for issuance at March 31, 2013.

We recognized stock-based compensation expense in our consolidated statements of operations for the three months ended March 31, 2013 and April 1, 2012, respectively, as follows:

	Three Months Ended	
	March 31, 2013	April 1, 2012
2010 Program(1)	$	$ 79
2011 Program(1)	68	109
2012 Program(1)	115	124
2013 Program(2)	165	
Performance Shares and Performance Stock Units	$ 348	$ 312
Restricted Stock and Restricted Stock Units	111	34
Director Shares	24	24
	$ 483	$ 370

(1) The 2010, 2011 and 2012 Program s consisted entirely of performance shares.
(2) The 2013 Program s stock-based compensation reflected $147,000 related to performance shares and $18,000 related to performance stock units.

Performance Shares and Performance Stock Units

During the first quarter of fiscal 2013, we issued 146,910 shares upon satisfaction of conditions under the 2010 performance share program, representing the achievement of approximately 86.9% of the target payout for this program. Recipients elected to forfeit 59,801 of those shares to satisfy tax withholding obligations, resulting in a net issuance of 87,099 shares.

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For fiscal 2010, 2011 and 2012, performance, under the Company s performance share programs, was measured by comparing actual earnings per share to a target earnings per share amount. For fiscal 2013, the Compensation Committee of the Board of Directors has elected to replace earnings per share with Adjusted EBITDA as the metric by which to measure performance. For these purposes, Adjusted EBITDA is defined as income from operations of the Company, plus depreciation, and amortization, non-cash adjustments (such as asset impairment, lease termination and other closing costs) and other non-cash items as approved by the Company s Compensation Committee and subject to adjustment by the Compensation Committee in its sole discretion for non-recurring items.

We recognize compensation cost for performance share awards over the requisite service period (i.e. fixed treatment) based on their fair value, which is the closing stock price at the date of grant. Participants in each performance share program are entitled to receive a specified number of shares of our common stock (Performance Shares) based upon our achieving a specified percentage of the cumulative total of the earnings per share or Adjusted EBITDA goals established by our compensation committee for each fiscal year within a three-year performance period (the Cumulative EPS Goal or Cumulative Adjusted EBITDA Goal).

We recognize compensation cost for performance stock unit awards over the requisite service period based on their initial fair value, which is the closing stock price at the date of grant. This award is adjusted to fair value based on the closing stock price at the end of each fiscal quarter. Participants in each performance stock unit award are entitled to receive a specified cash payout based on a number of our stock units awarded (Performance Stock Unit) and based upon our achieving a specified percentage of the cumulative total of Adjusted EBITDA goals established by our compensation committee for each fiscal year within a three-year performance period (the Cumulative Adjusted EBITDA).

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At March 31, 2013, the following performance share programs were in progress:

Award Date	Program	Target No. of Performance Shares and Performance Stock Units (Originally Granted)[1]	Target No. of Performance Shares and Performance Stock Units (Outstanding at March 31, 2013)[3]	Minimum Cumulative Earnings Goal	Maximum Payout (as a percent of target number)
1/3/2011	2011 Program[2]	129,900	97,525[4]	80.0%	100.0%
1/2/2012	2012 Program	144,200	134,400	*[5]	110.0%
1/8/2013	2013 Program[6]	205,450	205,450	*[7]	100.0%

(1) Assumes achievement of 100% of the applicable Cumulative EPS or Adjusted EBITDA Goal.
(2) If the Company achieves the minimum Cumulative EPS Goal, then each recipient will be entitled to receive a percentage of the Target number of Performance Shares granted that is equal to the percentage of the Cumulative EPS Goal achieved, up to the maximum payout. The maximum share payout a recipient will be entitled to receive under this program will be 100% of the Target number of Performance Shares granted if the Cumulative EPS Goal is met or exceeded.
(3) Net of employee forfeitures.
(4) Assumes an estimated payout equal to the forecasted achievement of 82.9% of the applicable Cumulative EPS Goal.
(5) The participants rights to receive Performance Shares will be contingent on the Company achieving cumulative earnings per share for fiscal 2012-2014 equal to at least the sum of the amounts achieved by the Company during fiscal 2011-2013 (as adjusted by the Compensation Committee, if applicable). If the Company achieves this threshold, then participants will be entitled to receive a percentage of their Target number of Performance Shares equal to the percentage of the Cumulative EPS Goal achieved by the Company, up to 100%. If the Company achieves more than 100% of the Cumulative EPS Goal, then participants will be entitled to receive 100% of their Target number of Performance Shares, plus an additional percentage equal to twice the incremental percentage increase in the Cumulative EPS Goal achieved over 100% (e.g., if the Company achieves 103% of the Cumulative EPS Goal, then participants will be entitled to receive 106% of their Target number of Performance Shares); provided that the maximum payout under the fiscal 2012 program is capped at 110% of the Target number of Performance Shares.
(6) This program includes 185,405 performance shares and 20,045 performance stock units.
(7) The participants rights to receive Performance Shares or Performance Stock Units will be contingent on the Company achieving the cumulative Adjusted EBITDA goal for fiscal 2013-2015 equal to at least the sum of the amounts achieved by the Company during fiscal 2012-2014 (as adjusted by the Compensation Committee, if applicable). If the Company achieves this threshold, then participants will be entitled to receive a percentage of their Target number of Performance Shares and Performance Stock Units equal to the percentage of the Adjusted EBITDA Goal achieved by the Company, up to 100%.

Board of Directors Compensation

We recognized Board of Directors compensation expense in our consolidated statement of operations for the three months ended March 31, 2013 and April 1, 2012, respectively, as follows:

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	Three Months Ended	
(in thousands)	**March 31, 2013**	**April 1, 2012**
Stock-based compensation[1][2]	$ 24	$ 24
Cash compensation	82	102
Total board of directors compensation	$ 106	$ 126

(1) On May 5, 2009 and September 29, 2009 one-time 25,000 share restricted stock awards were granted to Lisa A. Kro and Wallace B. Doolin, respectively, upon joining the board of directors. The grants to Ms. Kro and Mr. Doolin had grant date fair values of $168,000 and $150,000, respectively, and will vest ratably over a period of five years beginning on the commencement date of their board service.

(2) On August 2, 2011, a one-time 15,000 share restricted stock award was granted to John F. Gilbert III, upon joining the board of directors. The grant to Mr. Gilbert had a grant date fair value of $153,750 and will vest ratably over a period of five years which began on the commencement date of his board service.

Stock Options

The stock options we had issued under the Plans were fully vested as of January 3, 2010 and expire 10 years from the date of grant. The 1995 Stock Option and Compensation Plan expired on December 29, 2005, the 1997 Employee Stock Option Plan expired on June 24, 2007, and the 1998 Director Stock Option Plan expired on June 19, 2008. Although incentives are no longer eligible for grant under these plans, each such plan will remain in effect until all outstanding incentives granted thereunder have either been satisfied or terminated.

Information regarding our Company s stock options is summarized below:

(number of options in thousands)	**Number of Options**	**Weighted Average Exercise Price**
Outstanding at December 30, 2012	102	$ 6.79
Exercised		
Canceled or expired		
Outstanding at March 31, 2013	102	$ 6.79
Options Exercisable at March 31, 2013	102	$ 6.79

Common Share Repurchases

On May 1, 2012, our Board of Directors approved a stock repurchase program that authorized the repurchase of up to 1.0 million shares of our common stock in both the open market or through privately negotiated transactions. We did not repurchase any shares during the first three months of fiscal 2013. Since the program was adopted May 2012, we have repurchased 323,862 shares for approximately $3.4 million at an average market price per share of $10.49, excluding commissions.

Employee Stock Purchase Plan

The Company maintains an Employee Stock Purchase Plan, which gives eligible employees the option to purchase Common Stock (total purchases in a year may not exceed 10% of an employee s current year compensation) at 100% of the fair market value of the Common Stock at the end of each calendar quarter. There

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were approximately 1,149 and 1,228 shares purchased with a fair value per share of $11.03 and $11.57, during the first quarter of 2013 and first quarter of 2012, respectively. The Company recognized no expense related to the stock purchase plan due to it being non-compensatory as defined by IRS Section 423.

(10) Retirement Savings Plans

401(k) Plan

We have a pre-tax salary reduction/profit-sharing plan under the provisions of Section 401(k) of the Internal Revenue Code, which covers employees meeting certain eligibility requirements. In fiscal 2013, we will match 25.0%, and in fiscal 2012, we matched 25.0%, of the employee s contribution up to 4.0% of their earnings. Employee contributions were approximately $135,000 and $169,000 for the first quarter of fiscal years 2013 and 2012, respectively. The employer match was approximately $23,000 and $24,000 for the first quarter of fiscal years 2013 and 2012, respectively. There were no discretionary contributions to the Plan in the first quarter of fiscal 2013 and 2012.

Non-Qualified Deferred Compensation Plan

We have a Non-Qualified Deferred Compensation Plan effective as of February 25, 2005 (the Plan). Eligible participants are those employees who are at the director level and above and who are selected by the Company to participate in the Plan. Participants must complete a deferral election each year to indicate the level of compensation (salary, bonus and commissions) they wish to have deferred for the coming year. This deferral election is irrevocable except to the extent permitted by the Plan administrator, and the regulations promulgated by the IRS. During fiscal 2013, we will match 25.0%, and in fiscal 2012, we matched 25.0%, of the first 4.0% contributed and are paying a declared interest rate of 6.0% on balances outstanding. The Board of Directors administers the Plan and may change the rate or any other aspects of the Plan at any time.

Deferral periods are limited to the earlier of termination of employment or not less than three calendar years following the end of the applicable Plan year. Extensions of the deferral period for a minimum of five years are allowed provided an election for extension is made at least one year before the first payment affected by the change. Payments can be in a lump sum or in equal payments over a two-, five- or ten-year period, plus interest from the commencement date.

The Plan assets are kept in an unsecured account that has no trust fund. In the event of bankruptcy, any future payments would have no greater rights than that of an unsecured general creditor of the Company and they confer no legal rights for interest or claim on any assets of the Company. Benefits provided by the Plan are not insured by the Pension Benefit Guaranty Corporation (PBGC) under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), because the pension insurance provisions of ERISA do not apply to the Plan.

For the quarter ended March 31, 2013 and April 1, 2012, eligible participants contributed approximately $35,000 and $47,000, respectively, to the Plan, and the Company provided matching funds and interest of approximately $18,000 and $19,000, respectively.

(11) Asset Impairment and Estimated Lease Termination and Other Closing Costs

We evaluate restaurant sites and long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of restaurant sites to be held and used is measured by a comparison of the carrying amount of the restaurant site to the undiscounted future net cash flows expected to be generated on a restaurant-by-restaurant basis. If a restaurant is determined to be impaired, the loss is measured by the amount by which the carrying amount of the restaurant site exceeds its fair value. Fair value is estimated based on the best information available including estimated future

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FAMOUS DAVE S OF AMERICA, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

cash flows, expected growth rates in comparable restaurant sales, remaining lease terms and other factors. If these assumptions change in the future, we may be required to take additional impairment charges for the related assets. Considerable management judgment is necessary to estimate future cash flows. Accordingly, actual results could vary significantly from such estimates. Restaurant sites that are operating but have been previously impaired are reported at the lower of their carrying amount or fair value less estimated costs to sell. Following is a summary of these events during the first quarter of fiscal 2013 and fiscal 2012.

Asset Impairment and Estimated Lease Termination and Other Closing Costs (in thousands):

Restaurants	Reason	Three Months Ended March 31, 2013
Various	Costs for closed restaurants[1]	$ (12)

[1] The Company incurred various costs for closed restaurants which were more than offset by a common area maintenance refund from its Palatine, IL restaurant which was closed in fiscal 2010.

Asset Impairment and Estimated Lease Termination and Other Closing Costs (in thousands):

Restaurants	Reason	Three Months Ended April 1, 2012
Tulsa, OK	Costs for clo	