

NATHANS FAMOUS INC  
Form 10-Q  
November 05, 2010

FORM 10-Q

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

(Mark One)

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

For the quarterly period ended September 26, 2010.

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 0-3189

NATHAN'S FAMOUS, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

11-3166443  
(I.R.S. Employer  
Identification No.)

One Jericho Plaza, Second Floor – Wing A, Jericho, New York 11753

(Address of principal executive offices)

(Zip Code)

(516) 338-8500

(Registrant's telephone number, including area code)

\_\_\_\_\_  
(Former name, former address and former fiscal year, if changed since last report)

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Edgar Filing: NATHANS FAMOUS INC - Form 10-Q

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

At November 2, 2010, an aggregate of 5,496,188 shares of the registrant's common stock, par value of \$.01, were outstanding.

---

## NATHAN'S FAMOUS, INC. AND SUBSIDIARIES

## INDEX

	Page Number
<b>PART I. FINANCIAL INFORMATION</b>	
Item 1. Financial Statements.	3
Consolidated Financial Statements Consolidated Balance Sheets – September 26, 2010 (Unaudited) and March 28, 2010	3
Consolidated Statements of Earnings (Unaudited) - Thirteen Weeks Ended September 26, 2010 and September 27, 2009	4
Consolidated Statements of Earnings (Unaudited) – Twenty-six Weeks Ended September 26, 2010 and September 27, 2009	5
Consolidated Statement of Stockholders' Equity (Unaudited) – Twenty-six Weeks Ended September 26, 2010	6
Consolidated Statements of Cash Flows (Unaudited) – Twenty-six Weeks Ended September 26, 2010 and September 27, 2009	7
Notes to Consolidated Financial Statements	8
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.	14
Item 3. Quantitative and Qualitative Disclosures About Market Risk.	22
Item 4. Controls and Procedures.	23
<b>PART II. OTHER INFORMATION</b>	
Item 1. Legal Proceedings.	24
Item 1A. Risk Factors.	24
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.	26
Item 5. Other Information	27
Item 6. Exhibits.	28

SIGNATURES	29
Exhibit Index	30

Nathan's Famous, Inc. and Subsidiaries  
**CONSOLIDATED BALANCE SHEETS**  
 September 26, 2010 and March 28, 2010  
 (in thousands, except share and per share amounts)

## Item 1. Financial Statements.

	Sept. 26, 2010	March 28, 2010
	(Unaudited)	
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 14,881	\$ 11,609
Marketable securities	23,971	24,317
Accounts and other receivables, net	5,144	5,225
Note receivable – current portion	104	115
Inventories	973	1,018
Prepaid expenses and other current assets	1,815	1,428
Deferred income taxes	112	111
<b>Total current assets</b>	<b>47,000</b>	<b>43,823</b>
Note receivable	1,122	1,175
Property and equipment, net	5,665	5,467
Goodwill	95	95
Intangible assets, net	1,353	1,353
Deferred income taxes	1,100	1,093
Other assets	408	368
	<b>\$ 56,743</b>	<b>\$ 53,374</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 2,689	\$ 3,069
Accrued expenses and other current liabilities	6,332	3,771
Deferred franchise fees	285	315
<b>Total current liabilities</b>	<b>9,306</b>	<b>7,155</b>
Other liabilities	1,984	1,907
<b>Total liabilities</b>	<b>11,290</b>	<b>9,062</b>
<b>COMMITMENTS AND CONTINGENCIES (Note J)</b>		
<b>STOCKHOLDERS' EQUITY</b>		
Common stock, \$.01 par value; 30,000,000 shares authorized; 8,773,241 shares issued; and 5,530,113 and 5,594,448 shares outstanding at September 26, 2010 and	88	88

Edgar Filing: NATHANS FAMOUS INC - Form 10-Q

March 28, 2010, respectively		
Additional paid-in capital	52,217	52,003
Retained earnings	18,608	16,797
Accumulated other comprehensive income	734	616
	71,647	69,504
Treasury stock, at cost, 3,243,128 and 3,178,793 shares at September 26, 2010 and March 28, 2010, respectively.	(26,194)	(25,192)
Total stockholders' equity	45,453	44,312
	\$ 56,743	\$ 53,374

The accompanying notes are an integral part of these statements.

## Nathan's Famous, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF EARNINGS  
 Thirteen weeks ended September 26, 2010 and September 27, 2009  
 (in thousands, except share and per share amounts)  
 (Unaudited)

	Sept. 26, 2010	Sept. 27, 2009
<b>REVENUES</b>		
Sales	\$ 12,956	\$ 11,758
Franchise fees and royalties	1,428	1,312
License royalties	1,679	1,568
Interest income	217	240
Other income	2	18
<b>Total revenues</b>	<b>16,282</b>	<b>14,896</b>
<b>COSTS AND EXPENSES</b>		
Cost of sales	9,415	8,093
Restaurant operating expenses	967	973
Depreciation and amortization	225	201
General and administrative expenses	2,632	2,239
Litigation accrual (Note J)	2,914	-
<b>Total costs and expenses</b>	<b>16,153</b>	<b>11,506</b>
<b>Income before provision for income taxes</b>	<b>129</b>	<b>3,390</b>
(Benefit) provision for income taxes	(22)	1,227
<b>Net income</b>	<b>\$ 151</b>	<b>\$ 2,163</b>
<b>PER SHARE INFORMATION</b>		
Basic income per share:		
Net income	\$ .03	\$ .40
Diluted income per share:		
Net income	\$ .03	\$ .39
Weighted average shares used in computing income per share		
Basic	5,573,000	5,420,000
Diluted	5,677,000	5,594,000

The accompanying notes are an integral part of these statements.

## Nathan's Famous, Inc. and Subsidiaries

**CONSOLIDATED STATEMENTS OF EARNINGS**  
 Twenty-six weeks ended September 26, 2010 and September 27, 2009  
 (in thousands, except share and per share amounts)  
 (Unaudited)

	Sept. 26, 2010	Sept. 27, 2009
<b>REVENUES</b>		
Sales	\$ 25,306	\$ 22,773
Franchise fees and royalties	2,683	2,466
License royalties	3,478	3,375
Interest income	425	480
Other income	16	34
<b>Total revenues</b>	<b>31,908</b>	<b>29,128</b>
<b>COSTS AND EXPENSES</b>		
Cost of sales	18,903	16,202
Restaurant operating expenses	1,792	1,796
Depreciation and amortization	457	400
General and administrative expenses	5,196	4,867
Litigation accrual (Note J)	2,914	-
<b>Total costs and expenses</b>	<b>29,262</b>	<b>23,265</b>
<b>Income before provision for income taxes</b>	<b>2,646</b>	<b>5,863</b>
Provision for income taxes	835	2,137
<b>Net income</b>	<b>\$ 1,811</b>	<b>\$ 3,726</b>
<b>PER SHARE INFORMATION</b>		
Basic income per share:		
Net income	\$ .32	\$ .68
Diluted income per share:		
Net income	\$ .32	\$ .65
Weighted average shares used in computing income per share		
Basic	5,584,000	5,516,000
Diluted	5,685,000	5,737,000

The accompanying notes are an integral part of these statements.



## Nathan's Famous, Inc. and Subsidiaries

## CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

Twenty-six weeks ended September 26, 2010

(in thousands, except share amounts)

(Unaudited)

	Common Shares	Common Stock	Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income	Treasury Shares	Stock, at Cost Amount	Total Stockholders' Equity
Balance, March 28, 2010	8,773,241	\$ 88	\$ 52,003	\$ 16,797	\$ 616	3,178,793	\$ (25,192)	\$ 44,312
Repurchase of common stock	-	-	-	-	-	64,335	(1,002)	(1,002)
Share-based compensation	-	-	214	-	-	-	-	214
Unrealized gains on available for sale securities, net of deferred income taxes of \$77	-	-	-	-	118	-	-	118
Net income	-	-	-	1,811	-	-	-	1,811
Balance, September 26, 2010	8,773,241	\$ 88	\$ 52,217	\$ 18,608	\$ 734	3,243,128	\$ (26,194)	\$ 45,453

The accompanying notes are an integral part of these statements.

## Nathan's Famous, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF CASH FLOWS  
 Twenty-six weeks ended September 26, 2010 and September 27, 2009  
 (in thousands, except share and per share amounts)  
 (Unaudited)

	Sept. 26, 2010	Sept. 27, 2009
<b>Cash flows from operating activities:</b>		
Net income	\$ 1,811	\$ 3,726
<b>Adjustments to reconcile net income to net cash provided by operating activities</b>		
Depreciation and amortization	457	400
Amortization of bond premium	141	140
Share based compensation expense	214	214
Provision for doubtful accounts	-	181
Deferred income taxes	(85)	(85)
<b>Changes in operating assets and liabilities:</b>		
Accounts and other receivables, net	81	(1,331)
Inventories	45	(171)
Prepaid expenses and other current assets	(387)	634
Other assets	(40)	-
Accounts payable, accrued expenses and other current liabilities	2,181	(930)
Deferred franchise fees	(30)	118
Other liabilities	77	317
<b>Net cash provided by operating activities</b>	<b>4,465</b>	<b>3,213</b>
<b>Cash flows from investing activities:</b>		
Proceeds from sale of available-for-sale securities	400	435
Purchase of property and equipment	(655)	(317)
Payments received on note receivable	64	142
<b>Net cash (used in) provided by investing activities</b>	<b>(191)</b>	<b>260</b>
<b>Cash flows from financing activities:</b>		
Repurchase of treasury stock	(1,002)	(5,019)
Proceeds from the exercise of stock options	-	696
Income tax benefits on stock option exercises	-	862
<b>Net cash used in financing activities</b>	<b>(1,002)</b>	<b>(3,461)</b>
<b>Net increase in cash and cash equivalents</b>	<b>3,272</b>	<b>12</b>
Cash and cash equivalents, beginning of period	11,609	8,679
Cash and cash equivalents, end of period	\$ 14,881	\$ 8,691
Cash paid during the period for:		

Edgar Filing: NATHANS FAMOUS INC - Form 10-Q

Interest	\$	-	\$	-
Income taxes	\$	1,732	\$	1,119

The accompanying notes are an integral part of these statements.

-7-

---

NATHAN'S FAMOUS, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
September 26, 2010  
(Unaudited)

NOTE A - BASIS OF PRESENTATION

The accompanying consolidated financial statements of Nathan's Famous, Inc. and subsidiaries (collectively "Nathan's," the "Company," "we," "us" or "our") as of and for the thirteen and twenty-six week periods ended September 26, 2010 and September 27, 2009 have been prepared in accordance with accounting principles generally accepted in the United States of America. The unaudited financial statements include all adjustments (consisting of normal recurring adjustments) which, in the opinion of management, are necessary for a fair presentation of financial condition, results of operations and cash flows for the periods presented. However, these results are not necessarily indicative of results for any other interim period or the full fiscal year.

Certain information and footnote disclosures normally included in financial statements in accordance with accounting principles generally accepted in the United States of America have been omitted pursuant to the requirements of the Securities and Exchange Commission. Management believes that the disclosures included in the accompanying interim financial statements and footnotes are adequate to make the information not misleading, but should be read in conjunction with the consolidated financial statements and notes thereto included in Nathan's Annual Report on Form 10-K for the fiscal year ended March 28, 2010.

A summary of the Company's significant accounting policies is identified in Note B of the Notes to Consolidated Financial Statements included in the Company's 2010 Annual Report on Form 10-K. There have been no changes to the Company's significant accounting policies subsequent to March 28, 2010.

NOTE B – RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In July 2010, the Financial Accounting Standards Board issued guidance that will enhance future disclosure about the credit quality of a creditor's financing receivables and the adequacy of its allowance for credit losses. The amended guidance will be effective beginning with the first quarterly or annual reporting period ending on or after December 15, 2010. The amended guidance is effective for activity during a reporting period beginning with the first quarterly or annual period beginning on or after December 15, 2010. The Company expects the amended guidance to impact its disclosures beginning with our next quarterly report, but to otherwise not have a material effect on our consolidated results of operations or financial position.

NOTE C – FAIR VALUE MEASUREMENTS

Nathan's follows a three-level fair value hierarchy that prioritizes the inputs to measure fair value. This hierarchy requires entities to maximize the use of "observable inputs" and minimize the use of "unobservable inputs." The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability on the measurement date. The three levels are defined as follows:

- Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for an identical asset or liability in an active market
- Level 2 - inputs to the valuation methodology include quoted prices for a similar asset or liability in an active market, quoted prices in markets that are not active, or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability

- Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement of the asset or liability

The following table presents assets and liabilities measured at fair value on a recurring basis as of September 26, 2010 based upon the valuation hierarchy (in thousands):

	Level 1	Level 2	Level 3	Carrying Value
Marketable securities	\$ -	\$ 23,971	\$ -	\$ 23,971
Total assets at fair value	\$ -	\$ 23,971	\$ -	\$ 23,971

Nathan's marketable securities, which consist primarily of municipal bonds, are not actively traded. The valuation of such bonds is based upon quoted market prices for similar bonds currently trading in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability.

The carrying amounts of cash equivalents, accounts receivable and accounts payable approximate fair value due to the short-term maturity of the instruments. The carrying amount of the note receivable approximates fair value, as determined using level three inputs, as the current interest rate on such instrument approximates current market interest rates on similar instruments.

Certain non-financial assets and liabilities are measured at fair value on a nonrecurring basis; that is, the assets and liabilities are not measured at fair value on an ongoing basis but are subject to fair value adjustments in certain circumstances, such as when evidence of impairment exists. At September 26, 2010, no fair value adjustment or material fair value measurements were required for non-financial assets or liabilities.

#### NOTE D – MARKETABLE SECURITIES

The Company determines the appropriate classification of securities at the time of purchase and reassesses the appropriateness of the classification at each reporting date. At September 26, 2010 and March 28, 2010, all marketable securities held by the Company have been classified as available-for-sale and, as a result, are stated at fair value, based upon quoted market prices for similar assets as determined in active markets or model-derived valuations in which all significant inputs are observable for substantially the full-term of the asset, with unrealized gains and losses included as a component of accumulated other comprehensive income. Realized gains and losses on the sale of securities are determined on a specific identification basis.

The cost, gross unrealized gains, gross unrealized losses and fair market value for marketable securities, which consist entirely of municipal bonds that are classified as available-for-sale securities are as follows (in thousands):

	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Market Value
September 26, 2010	\$ 22,768	\$ 1,203	\$ -	\$ 23,971
March 28, 2010	\$ 23,308	\$ 1,009	\$ -	\$ 24,317

As of September 26, 2010 and March 28, 2010 none of the securities held by the Company were in an unrealized loss position.

The municipal bonds held at September 26, 2010, mature at various dates between November 2010 and October 2019. The following represents the bond maturities by period (in thousands):

Fair value of Municipal Bonds	Total	Less than 1 Year	1 – 5 Years	5 – 10 Years	After 10 Years
September 26, 2010	\$ 23,971	\$ 4,636	\$ 12,517	\$ 6,818	\$ -
March 28, 2010	\$ 24,317	\$ 2,984	\$ 12,354	\$ 8,979	\$ -

Proceeds from the sale of available-for-sale securities and the resulting gross realized gains and losses included in the determination of net income are as follows (in thousands):

Edgar Filing: NATHANS FAMOUS INC - Form 10-Q

	Twenty-six weeks ended	
	Sept. 26, 2010	Sept. 27, 2009
<b>Available-for-sale securities:</b>		
Proceeds	\$ 400	\$ 435
Gross realized gains	\$ -	\$ -

The change in net unrealized gains on available-for-sale securities for the thirteen-week periods ended September 26, 2010 and September 27, 2009 of \$68 and \$356, respectively, which is net of deferred income taxes, has been included as a component of comprehensive income. The change in net unrealized gains on available-for-sale securities for the twenty-six week periods ended September 26, 2010 and September 27, 2009 of \$118 and \$417, respectively, which is net of deferred income taxes, has been included as a component of comprehensive income.

-9-

---

## NOTE E – INCOME PER SHARE

Basic income per common share is calculated by dividing income by the weighted-average number of common shares outstanding and excludes any dilutive effect of stock options or warrants. Diluted income per common share gives effect to all potentially dilutive common shares that were outstanding during the period. Dilutive common shares used in the computation of diluted income per common share result from the assumed exercise of stock options and warrants, as determined using the treasury stock method.

The following chart provides a reconciliation of information used in calculating the per-share amounts for the thirteen- and twenty-six- week periods ended September 26, 2010 and September 27, 2009, respectively.

## Thirteen weeks

	Net Income		Number of Shares		Net Income Per Share	
	2010	2009	2010	2009	2010	2009
	(in thousands)		(in thousands)			
<b>Basic EPS</b>						
Basic calculation	\$ 151	\$ 2,163	5,573	5,420	\$ 0.03	\$ 0.40
Effect of dilutive employee stock options	-	-	104	174	-	(0.01)
<b>Diluted EPS</b>						
Diluted calculation	\$ 151	\$ 2,163	5,677	5,594	\$ 0.03	\$ 0.39

## Twenty-six weeks

	Net Income		Number of Shares		Net Income Per Share	
	2010	2009	2010	2009	2010	2009
	(in thousands)		(in thousands)			
<b>Basic EPS</b>						
Basic calculation	\$ 1,811	\$ 3,726	5,584	5,516	\$ 0.32	\$ 0.68
Effect of dilutive employee stock options	-	-	101	221	-	(0.03)
<b>Diluted EPS</b>						
Diluted calculation	\$ 1,811	\$ 3,726	5,685	5,737	\$ 0.32	\$ 0.65

Options to purchase 110,000 shares of common stock in the thirteen- and twenty-six-week periods ended September 26, 2010 and September 27, 2009 were not included in the computation of diluted EPS because the exercise prices exceeded the average market price of common shares during the periods.

## NOTE F – INCOME TAXES

The income tax provisions for the twenty-six week periods ended September 26, 2010 and September 27, 2009 reflect effective tax rates of 31.6% and 36.4%, respectively, which have been reduced by 5.3% and 2.8% for the differing effects of tax exempt interest income, respectively. Nathan's estimates that its annual tax rate for the fiscal year ending March 27, 2011 will be in the range of approximately 34.0% to 38.0%. The final annual tax rate is subject to many



variables, including the effect of tax-exempt interest earned, among other factors, and therefore cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates.

The amount of unrecognized tax benefits at September 26, 2010 was \$332,000, all of which would impact Nathan's effective tax rate, if recognized. As of September 26, 2010, Nathan's had \$356,000 of accrued interest and penalties in connection with unrecognized tax benefits.

During the twenty-six-week period ended September 26, 2010, Nathan's settled uncertain tax positions with one state jurisdiction and has accordingly reduced the associated unrecognized tax benefits including the related accrued interest and penalties by approximately \$79,000. During the fiscal year ending March 27, 2011, Nathan's is seeking to settle additional uncertain tax positions with the tax authorities. As a result, it is reasonably possible that the amount of unrecognized tax benefits, including the related accrued interest and penalties, could be reduced by up to \$50,000, which would favorably impact Nathan's effective tax rate, although no assurances can be given in this regard.

## NOTE G – SHARE-BASED COMPENSATION

Total share-based compensation during the thirteen-week periods ended September 26, 2010 and September 27, 2009 was \$107,000 and \$107,000, respectively. Total share-based compensation during the twenty-six week periods ended September 26, 2010 and September 27, 2009 was \$214,000 and \$214,000, respectively. Total share-based compensation is included in general and administrative expense in our accompanying Consolidated Statements of Earnings. As of September 26, 2010, there was \$257,000 of unamortized compensation expense related to stock options. We expect to recognize this expense over approximately one year, which represents the requisite service periods for such awards.

On September 14, 2010, the Company adopted the 2010 Stock Incentive Plan (“the 2010 Plan”) which provides for the ability to issue up to 150,000 additional options pursuant to the 2010 Plan together with 171,000 shares that have not been issued under the 2001 Stock Option Plan and the 2002 Stock Incentive Plan plus any shares subject to any outstanding options or restricted stock grants under the 2001 Stock Option Plan and the 2002 Stock incentive Plan that subsequently expire unexercised or are otherwise forfeited up to a maximum of an additional 100,000 shares.

There were no share-based awards granted during the thirteen-week or twenty-six-week periods ended September 26, 2010 or September 27, 2009.

Stock options outstanding:

Transactions with respect to stock options for the twenty-six weeks ended September 26, 2010 are as follows:

	Shares	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Life	Aggregate Intrinsic Value
Options outstanding at March 28, 2010	534,750	\$ 10.31	4.12	\$ 2,879,000
Granted	-	-	-	-
Expired				