

ARK RESTAURANTS CORP  
Form 10-Q  
May 13, 2008

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended March 29, 2008

Commission file number 0-14030

**ARK RESTAURANTS CORP.**

(Exact name of registrant as specified in its charter)

New York  
(State or other jurisdiction of  
incorporation or organization)

13-3156768  
(I.R.S. Employer  
Identification No.)

85 Fifth Avenue, New York, New York  
(Address of principal executive offices)

10003  
(Zip Code)

Registrant's telephone number, including area code: (212) 206-8800

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller  
reporting company)

Smaller Reporting Company

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

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

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

Class	<u>Outstanding shares at May 12, 2008</u>
(Common stock, \$.01 par value)	3,596,799

- 1 -

---

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We may make statements in this Quarterly Report on Form 10-Q regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements, other than statements of historical facts, included or incorporated by reference herein relating to management's current expectations of future financial performance, continued growth and changes in economic conditions or capital markets are forward looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934.

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "projects," "targets," "will likely result," "hopes," "will continue" or similar expressions identify forward looking statements. Forward-looking statements involve risks and uncertainties which could cause actual results or outcomes to differ materially from those expressed. We caution that while we make such statements in good faith and we believe such statements are based on reasonable assumptions, including without limitation, management's examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved. Factors that may cause such differences include: economic conditions generally and in each of the markets in which we are located, the amount of sales contributed by new and existing restaurants, labor costs for our personnel, fluctuations in the cost of food products, adverse weather conditions, changes in consumer preferences and the level of competition from existing or new competitors.

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter of subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in "Item 1A Risk Factors" in Part I of our Annual Report on Form 10-K for the fiscal year ended September 29, 2007 as updated by the information contained under the caption "Item 1A. Risk Factors" in Part II of this Quarterly Report on Form 10-Q.

From time to time, oral or written forward-looking statements are also included in our reports on Forms 10-K, 10-Q and 8-K, our Schedule 14A, our press releases and other materials released to the public. Although we believe that at the time made, the expectations reflected in all of these forward-looking statements are and will be reasonable, any or all of the forward-looking statements in this Quarterly Report on Form 10-Q, our reports on Forms 10-K and 8-K, our Schedule 14A and any other public statements that are made by us may prove to be incorrect. This may occur as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties. Many factors discussed in this Quarterly Report on Form 10-Q, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Quarterly Report on Form 10-Q or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. However, your attention is directed to any further disclosures made on related subjects in our subsequent periodic reports filed with the Securities and Exchange Commission on Forms 10-K, 10-Q and 8-K and Schedule 14A.

Unless the context requires otherwise, references to "we," "us," "our," "ARKR" and the "Company" refer specifically to Ark Restaurants Corp. and its subsidiaries and predecessor entities.

**PART I**  
**FINANCIAL INFORMATION**

**Item 1. Financial Information**

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED BALANCE SHEETS**

(In Thousands)

	March 29, 2008 (unaudited)	September 29, 2007 (see Note 1)
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 2,534	\$ 4,009
Short-term investments in available-for-sale securities	6,613	9,201
Accounts receivable	3,080	2,657
Related party receivables, net	1,001	1,318
Employee receivables	290	316
Current portion of long-term receivables	118	114
Inventories	1,516	1,410
Prepaid expenses and other current assets	661	649
Assets held for sale	-	1,120
Total current assets	15,813	20,794
LONG-TERM RECEIVABLES	292	352
<b>FIXED ASSETS - At cost:</b>		
Leasehold improvements	28,261	27,094
Furniture, fixtures and equipment	26,500	25,692
Construction in progress	1,571	1,142
	56,332	53,928
Less accumulated depreciation and amortization	34,182	33,880
FIXED ASSETS - Net	22,150	20,048
INTANGIBLE ASSETS - Net	71	80
GOODWILL	5,107	5,107
TRADEMARKS	721	721
DEFERRED INCOME TAXES	4,790	4,763
OTHER ASSETS	730	316
<b>TOTAL</b>	<b>\$ 49,674</b>	<b>\$ 52,181</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable - trade	\$ 2,641	\$ 2,404
Accrued expenses and other current liabilities	5,062	5,503
Accrued income taxes	114	1,135
Current portion of note payable	188	181
Total current liabilities	8,005	9,223
OPERATING LEASE DEFERRED CREDIT	3,743	3,771
NOTE PAYABLE	609	704

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

OTHER LIABILITIES	193	229
TOTAL LIABILITIES	12,550	13,927
LIMITED PARTNER INTEREST IN VARIABLE INTEREST ENTITY	163	164
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued, 5,667 shares at March 29, 2008 and September 29, 2007, respectively	57	57
Additional paid-in capital	21,912	21,756
Accumulated other comprehensive income	58	49
Retained earnings	23,444	24,780
	45,471	46,642
Less stock option receivable	(124)	(166)
Less treasury stock of 2,070 shares at March 29, 2008 and September 29, 2007	(8,386)	(8,386)
Total shareholders' equity	36,961	38,090
TOTAL	\$ 49,674	\$ 52,181

See notes to consolidated condensed financial statements.

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

(In Thousands, Except Per Share Amounts)

	13 Weeks Ended		26 Weeks Ended
	March 29, 2008	March 31, 2007	March 29, 2008
<b>REVENUES</b>			
Food and beverage sales	\$ 25,742	\$ 24,728	\$ 55,409
Other income	619	645	1,270
Total revenues	26,361	25,373	56,679
<b>COST AND EXPENSES:</b>			
Food and beverage cost of sales	6,961	6,656	14,695
Payroll expenses	8,949	8,709	18,490
Occupancy expenses	3,771	3,450	7,790
Other operating costs and expenses	3,410	3,203	7,495
General and administrative expenses	2,183	2,072	4,334
Depreciation and amortization	723	668	1,400
Total cost and expenses	25,997	24,758	54,204
OPERATING INCOME	364	615	2,475
<b>OTHER (INCOME) EXPENSE:</b>			
Interest expense	14	-	30
Interest income	(148)	(38)	(293)
Other income	(44)	(237)	(163)
Total other income	(178)	(275)	(426)
Income from continuing operations before provision for income taxes and limited partner interest in variable interest entity	542	890	2,901
Provision for income taxes	181	335	1,033
Limited partner interest in (income) loss of variable interest entity	-	(21)	1
INCOME FROM CONTINUING OPERATIONS	361	534	1,869
<b>DISCONTINUED OPERATIONS:</b>			
Income (loss) from operations of discontinued restaurants (includes net gain on disposal of \$7,814 for the 26 weeks ended March 31, 2007)	(23)	(129)	(60)
Provision (benefit) for income taxes	(8)	27	(21)
INCOME (LOSS) FROM DISCONTINUED OPERATIONS	(15)	(156)	(39)
NET INCOME	\$ 346	\$ 378	\$ 1,830
<b>PER SHARE INFORMATION - BASIC AND DILUTED:</b>			
Income from continuing operations	\$ 0.10	\$ 0.15	\$ 0.52
Discontinued operations	(0.00)	(0.04)	(0.01)
BASIC	\$ 0.10	\$ 0.11	\$ 0.51
Income from continuing operations	\$ 0.10	\$ 0.14	\$ 0.51
Discontinued operations	(0.00)	(0.04)	(0.01)

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

DILUTED	\$ 0.10	\$ 0.10	\$ 0.50
WEIGHTED AVERAGE NUMBER OF SHARES - BASIC	3,597	3,590	3,597
WEIGHTED AVERAGE NUMBER OF SHARES - DILUTED	3,609	3,604	3,625

See notes to consolidated condensed financial statements.

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

(In Thousands)

	26 Weeks Ended	
	March 29, 2008	March 31, 2007 (see Note 1)
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 1,830	\$ 6,968
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred income taxes	(27)	(83)
Tax benefit on exercise of stock options	-	(89)
Stock-based compensation	156	252
Depreciation and amortization	1,422	2,384
Gain on disposal of discontinued operation	-	(7,814)
Impairment loss on assets held for sale of discontinued operations	-	537
Limited partner interest in income (loss) of consolidated variable interest entity	(1)	34
Operating lease deferred credit	(28)	(95)
Changes in operating assets and liabilities:		
Accounts receivable	(423)	(956)
Related party receivables	317	129
Employee receivables	26	25
Inventories	(106)	(40)
Prepaid expenses and other current assets	(29)	(192)
Other assets	(414)	144
Accounts payable - trade	237	(281)
Accrued income taxes	(1,021)	1,244
Accrued expenses and other current liabilities	(441)	(214)
Net cash provided by continuing operating activities	1,498	1,953
Net cash provided by discontinued operating activities	54	103
Net cash provided by operating activities	1,552	2,056
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(3,659)	(2,626)
Proceeds from sale of discontinued operation	1,030	14,000
Purchases of investment securities	(7,584)	(13,162)
Proceeds from sales of investment securities	10,181	8,074
Payment for purchase of Durgin Park	-	(2,000)
Payments received on long-term receivables	56	635
Net cash provided by continuing investing activities	24	4,921
Net cash provided by discontinued investing activities	161	-
Net cash provided by investing activities	185	4,921
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Tax benefit on exercise of stock options	-	89



Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Principal payments on note payable	(88)	(28)
Dividends paid	(3,166)	(13,245)
Exercise of stock options	-	568
Payments received on stock option receivable	42	-
Distributions to limited partners of consolidated variable interest entity	-	(61)
Net cash used in financing activities	(3,212)	(12,677)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(1,475)	(5,700)
CASH AND CASH EQUIVALENTS, Beginning of period	4,009	7,671
CASH AND CASH EQUIVALENTS, End of period	\$ 2,534	\$ 1,971

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

Interest	\$ 30	\$ 12
Income taxes	\$ 2,052	\$ 2,140

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

March 29, 2008

(Unaudited)

---

**1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

The condensed balance sheet as of September 29, 2007, which has been derived from audited financial statements, and the unaudited interim condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to form 10-Q and Article 10 of Regulation S-X. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company's annual report on Form 10-K for the year ended September 29, 2007. The accompanying condensed consolidated balance sheet as of September 29, 2007 has been derived from the audited balance sheet as of that date included in the Form 10-K. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year.

**PRINCIPLES OF CONSOLIDATION** □ The consolidated interim financial statements included the accounts of the Company and all of its partnerships and other entities in which it has a controlling interest. Also included in the consolidated financial statements are certain variable interest entities, as discussed below. All significant intercompany balances and transactions have been eliminated in consolidation.

**RECLASSIFICATIONS** □ In connection with the closure of one facility, the operations of this restaurant has been presented as discontinued operations for the for the 13-week and 26-week periods ended March 29, 2008 and the Company has reclassified its statements of operations and cash flows data for the prior periods presented, in accordance with Statement of Financial Accounting Standards (□SFAS□) No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("FAS 144"). This disposition is discussed below in □Recent Restaurant Dispositions.□

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

**CASH AND CASH EQUIVALENTS** □ Cash and cash equivalents, which primarily consist of money market funds, are stated at cost, which approximates fair value. For financial statement presentation purposes, the Company considers all highly liquid investments having original maturities of three months or less to be cash equivalents. Outstanding checks in excess of account balances, typically vendor payments, payroll and other contractual obligations disbursed on or near the last day of a reporting period are reported as a current liability in the accompanying consolidated balance sheets.

**AVAILABLE-FOR-SALE SECURITIES** □ Available-for-sale securities consist of US Treasury Bills, government bonds, corporate bonds and other fixed income securities, all of which have a high degree of liquidity and are reported at fair value, with unrealized gains and losses recorded in accumulated other comprehensive income. The cost of investments in available-for-sale securities is determined on a specific identification basis. Realized gains or losses and declines in value judged to be other than temporary, if any, are reported in other income, net. The Company evaluates its investments periodically for possible impairment and reviews factors such as the length of time and extent to which fair value has been below cost basis and the Company's ability and intent to hold the investment for a period of time which may be sufficient for anticipated recovery in market value.

RECENT ACCOUNTING DEVELOPMENTS □ In June 2006, the FASB issued FASB Interpretation No. 48, □Accounting for Uncertainty in Income Taxes □ an interpretation of FASB Statement No. 109□ (□FIN 48□). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in financial statements in accordance with FASB Statement No. 109, □Accounting for Income Taxes.□ FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company adopted the provisions of FIN 48 during the first fiscal quarter of 2008. The adoption of FIN 48 had no impact on our consolidated financial position, results of operation, cash flows or financial statement disclosures, nor did the Company have any related interest or penalties.

## 2. RECENT RESTAURANT DISPOSITIONS

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

During the second fiscal quarter of 2008 we opened, along with certain third party investors, a new concept at this location called "Pinch & S" Mac which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5% .

## 3. RECEIVABLES FROM EMPLOYEES IN RESPECT OF STOCK OPTION EXERCISES

Receivables from employees in respect of stock option exercises includes amounts due from officers and directors totaling \$124,000 and \$166,000 at March 29, 2008 and September 29, 2007, respectively. Such amounts, which are due from the exercise of stock options in accordance with the Company's Stock Option Plan, are payable on demand with interest at ½% above prime (6% at March 29, 2008).

## 4. INCOME PER SHARE OF COMMON STOCK

Net income per share is computed in accordance with Statement of Financial Accounting Standards No. 128, *Earnings Per Share*, and is calculated on the basis of the weighted average number of common shares outstanding during each period plus, for diluted earnings per share, the additional dilutive effect of potential common stock. Potential common stock using the treasury stock method consists of dilutive stock options and warrants.

For the 13-week period ended March 29, 2008, options to purchase 166,500 shares of common stock at a price of \$29.60 were included in diluted earnings per share. Options to purchase 105,000 shares of common stock at a price of \$32.15 were not included in diluted earnings per share as their impact was antidilutive for the 13-week period ended March 29, 2008. For the 26-week period ended March 29, 2008, options to purchase 271,500 shares of common stock at a price range of \$29.60 - \$32.15 were included in earning per share.

Options to purchase 282,000 shares of common stock at a price range of \$29.60 - \$32.15 were included in diluted earnings per share for the 13-week and 26-week periods ended March 31, 2007.

During the 26-week period ended March 29, 2008, no options were exercised.

## 5. SHARE-BASED COMPENSATION

The Company has options outstanding under its 2004 Stock Option Plan (the "2004 Plan"). Options granted under the 2004 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant. During fiscal 2005, options to purchase 194,000 shares of common stock were granted and are exercisable as to 50% of the shares commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the second anniversary of the date of grant. During fiscal 2007, options to purchase 105,000 shares of common stock were granted and are exercisable as to 25% of the shares commencing on the first anniversary of the date of grant and as to an additional 25% commencing on each of the second, third and fourth anniversaries of the grant date.

A summary of stock option activity is presented below:

<b>Weighted Average Excercise</b>	<b>Weighted Average Fair</b>	<b>Weighted Average Contractual</b>	<b>Average Intrinsic</b>
---	--------------------------------------	---	------------------------------

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

<b><u>Options</u></b>	<b>Shares</b>	<b>Price</b>	<b>Value</b>	<b>Term (Yrs.)</b>	<b>Value</b>
Outstanding as September 29, 2007:	271,500	\$30.59	\$9.22	8.01	
Granted	-	-	-	-	
Exercised	-	-	-	-	
Forfeited/Cancelled	-	-	-	-	
Outstanding at March 29, 2008	271,500	\$30.59	\$9.22	7.51	\$ -
Exercisable at March 29, 2008	219,000	\$30.2 1	\$8.8 0	7.2 1	\$ -

Compensation cost is recognized on a straight-line basis over the vesting period during which employees perform related services. The Company has applied a forfeitures assumption of 5% per year in the calculation of such expense. As of

March 29, 2008, there was approximately \$690,512 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of approximately three years.

## 6. INVESTMENT SECURITIES

The amortized cost, gross unrealized holding gains, gross unrealized holding losses, and fair value of available for sale debt and fixed income securities by major type and class at March 29, 2008 and September 29, 2007 are as follows (Dollar amounts in thousands):

	Amortized Cost	Gross unrealized holding gains	Gross unrealized holding losses	Fair value
At March 29, 2008:				
Available-for-sale short-term:				
Government debt securities	\$ 5,378	\$ 37	\$ -	\$ 5,415
Corporate debt securities	1,178	20	-	1,198
	\$ 6,556	\$ 57	\$ -	\$ 6,613
At September 29, 2007:				
Available-for-sale short-term:				
Government debt securities	\$ 3,130	\$ 14	\$ -	\$ 3,144
Corporate debt securities	5,427	35	-	5,462
	\$ 8,557	\$ 49	\$ -	\$ 8,606
At September 29, 2007:				
Available-for-sale long-term:				
Corporate debt securities	\$ 595	\$ -	\$ -	\$ 595
	\$ 595	\$ -	\$ -	\$ 595

## 7. DIVIDENDS

A quarterly cash dividend in the amount of \$0.35 per share was declared on October 12, 2004. Subsequent to October 12, 2004, quarterly cash dividends in the amount of \$0.35 per share were declared on January 12, April 12, July 12, October 10 and December 20, 2006 and on April 12, 2007. We declared an increase in our quarterly cash dividend to \$0.44 per share on May 23, 2007 and subsequent quarterly cash dividends reflecting this increased amount were declared on October 12, 2007 and January 11 and April 11, 2008. In addition, we declared a special cash dividend in the amount of \$3.00 per share on December 20, 2006. The Company intends to continue to pay quarterly cash dividends for the foreseeable future; however, the payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flows, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

## 8. RELATED PARTY TRANSACTIONS

Receivables due from officers and employees, excluding stock option receivables, totaled approximately \$290,000 at March 29, 2008 and \$316,000 at September 29, 2007. Such loans bear interest at the minimum statutory rate (2.23% at March 29, 2008).

Receivables due from unconsolidated restaurants, totaled \$1,001,000 and \$1,318,000 at March 29, 2008 and September 29, 2007, respectively, net of an allowance of \$174,000.

**9. LEASE ACCOUNTING**

Leasehold improvements funded by landlord incentives are recorded as deferred rent and amortized as reductions to lease expense of the lease term in accordance with Statement of Financial Accounting Standards No. 13, *Accounting for Leases*. The Company received \$3,000,000 during fiscal 2006 in connection with the construction of its two facilities in Atlantic City, New Jersey.

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

In connection with the sale of two facilities and the closure of one facility, the operations of these restaurants have been presented as discontinued operations for the 13-week and 26-week periods ended March 29, 2008 and the Company has reclassified its statements of operations and cash flows data for the prior periods presented below, in accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144") based on the fact that the Company has met the criteria under SFAS 144. These dispositions are discussed below in "Recent Restaurant Dispositions."

### **Revenues**

During the Company's second fiscal quarter of 2008, total revenues of \$26,361,000 increased 3.9% compared to total revenues of \$25,373,000 in the second fiscal quarter of 2007. The Company had net income of \$346,000 in the second fiscal quarter of 2008 compared to net income of \$378,000 in the second fiscal quarter of 2007.

Same store sales in Las Vegas increased by \$176,000 or 1.2% in the second fiscal quarter of 2008 compared to the second fiscal quarter of 2007. Same store sales in New York increased \$158,000 or 3.7% during the second quarter. Same store sales in Washington D.C. decreased by \$167,000 or 5.5% during the second quarter. Same store sales in Atlantic City remained constant.

During the Company's 26-week period ended March 29, 2008, total revenues of \$56,679,000 increased 7.2% compared to total revenues of \$52,895,000 in the 26-week period ended March 31, 2007. The Company had net income of \$1,830,000 in the 26-week period ended March 29, 2008 compared to net income of \$6,968,000 in the 26-week period ended March 31, 2007. Net income was positively affected during the 26-week period ended March 31, 2007 as a result of the sale during the quarter of the Company's Lutece and Tsunami locations and a portion of the Vivid location used by Lutece as a prep kitchen to Venetian Casino Resort, LLC. Net income was negatively affected during the 26-week period ended March 29, 2008 as a result of \$209,000 pre-opening and early operating losses experienced at the Company's Mexican Restaurant, *Yolos*, at the Planet Hollywood Resort and Casino in Las Vegas, Nevada. .

### **Costs and Expenses**

Food and beverage costs for the second quarter of 2008 as a percentage of total revenues were 26.4% compared to 26.2% in the second quarter of 2007. These costs for the 26-weeks ended March 29, 2008 as a percentage of total revenues were 25.9% compared to 25.5% in the 26-week period ended March 31, 2007. Increased food costs during these periods have had a negative effect on this category of expenses. Although the Company had not raised the price of menu items offered to its customers for several years due to business conditions, the impact of the increase in food costs has caused the Company to review the price of menu items offered to its customers. The Company had determined to increase the price of menu items offered to its customers in specific locations where the Company believes consumer demand has created some elasticity.

Payroll expenses as a percentage of total revenues were 33.9% for the second quarter of 2008 as compared to 34.3% in the second quarter of 2007. Payroll expenses as a percentage of total revenues were 32.6% for the 26-week period ended March 29, 2008 as compared to 32.8% for the 26-week period ended March 31, 2007. Occupancy expenses as a percentage of total revenues were 14.3% during the second fiscal quarter of 2008 compared to 13.6% in the second quarter of 2007. Occupancy expenses as a percentage of total revenues were 13.7% during the 26-week period ended March 29, 2008 compared 13.8% for the 26-week period ended March 31, 2007. Other operating costs and expenses as a percentage of total revenues were 12.9% during the second fiscal quarter of 2008 compared to 12.6% in the second quarter of 2007. Other operating costs and expenses as a percentage of total revenues were 13.2% for the 26-week period ended March 29, 2008 compared to 11.9% for the 26-week period ended March 31, 2007. General and administrative expenses as a percentage of total revenues were 8.3% during the second fiscal quarter of 2008 compared to 8.2% in the second quarter of 2007. General and administrative expenses as a percentage of total revenue were 7.6% for the 26-week period ended March 29, 2008 compared to 7.7% for the 26-week period ended March 31, 2007.

### **Income Taxes**



Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

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

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

The Company's overall effective tax rate in the future will be affected by factors such as the level of losses incurred at the Company's New York facilities, which cannot be consolidated for state and local tax purposes, pre-tax income earned outside

of New York City, the utilization of state and local net operating loss carryforwards and the utilization of FICA tax credits. Nevada has no state income tax and other states in which the Company operates have income tax rates substantially lower in comparison to New York. In order to utilize more effectively tax loss carryforwards at restaurants that were unprofitable, the Company has merged certain profitable subsidiaries with certain loss subsidiaries.

### **Liquidity and Capital Resources**

The Company's primary source of capital has been cash provided by operations. The Company from time to time also utilizes equipment financing in connection with the construction of a restaurant and seller financing in connection with the acquisition of a restaurant. The Company utilizes capital primarily to fund the cost of developing and opening new restaurants, acquiring existing restaurants owned by others and remodeling existing restaurants owned by the Company.

The Company had a working capital surplus of \$7,808,000 at March 29, 2008 as compared to a working capital surplus of \$11,571,000 at September 29, 2007.

The Company's Revolving Credit and Term Loan Facility matured on March 12, 2005. The Company does not currently plan to enter into another credit facility and expects required cash to be provided by operations.

On March 25, 2008, our Board of Directors authorized a stock repurchase program under which up to 500,000 shares of our common stock may be acquired in the open market over the two years following such authorization at our discretion.

The shares may be purchased from time to time at prevailing market prices through open market or unsolicited negotiated transactions, depending on market conditions. Under the program, the purchases are to be funded from available working capital, and the repurchased shares will be held in treasury or used for ongoing stock issuances. At March 29, 2008, no shares had been purchased by us under the program. There is no guarantee as to the exact number of shares which we will repurchase, and we may discontinue the program at any time.

### **Restaurant Expansion**

Also in 2006, we entered into an agreement to lease space for a Mexican restaurant, *Yolos*, at the Planet Hollywood Resort and Casino (formerly known as the Aladdin Resort and Casino) in Las Vegas, Nevada. The obligation to pay rent for *Yolos* was not effective until the restaurant opens for business. This restaurant opened during the second quarter of the 2008 fiscal year.

On January 8, 2007, the Company began operating the *Durgin Park Restaurant and the Black Horse Tavern* in Boston, Massachusetts. The Company purchased this facility from the previous owner for \$2,000,000 in cash and a \$1,000,000 five year promissory note bearing interest at a rate of 7% per year.

In June 2007, we entered into an agreement to design and lease a food court at the to be constructed MGM Grand Casino at the Foxwoods Resort Casino. The obligation to pay rent for this facility is not effective until the food court opens for business. We anticipate the food court will open during our third quarter of the 2008 fiscal year. All pre-opening expenses will be borne by outside investors who will invest in a limited liability company established to develop, construct, operate and manage the food court. We will be the managing member of this limited liability company and, through this limited liability company, we will lease and manage the operations of the food court in exchange for a monthly management fee equal to five-percent of the gross receipts of the food court. Neither we nor any of our subsidiaries will contribute any capital to this limited liability company. None of the obligations of this limited liability company will be guaranteed by us and investors in this limited liability company will have no recourse against us or any of our assets.

### **Recent Restaurant Dispositions**

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

During the second fiscal quarter of 2008, we opened, along with certain third party investors, a new concept at this location called "Pinch & S" Mac" which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5%.

### **Critical Accounting Policies**

The preparation of financial statements requires the application of certain accounting policies, which may require the Company to make estimates and assumptions of future events. In the process of preparing its consolidated financial statements, the Company estimates the appropriate carrying value of certain assets and liabilities, which are not readily apparent from other sources. The primary estimates underlying the Company's financial statements include allowances for potential bad debts on accounts and notes receivable, the useful lives and recoverability of its assets, such as property and intangibles, fair values of

financial instruments, the realizable value of its tax assets and other matters. Management bases its estimates on certain assumptions, which they believe are reasonable in the circumstances, and actual results, could differ from those estimates. Although management does not believe that any change in those assumptions in the near term would have a material effect on the Company's consolidated financial position or the results of operation, differences in actual results could be material to the financial statements.

The Company's critical accounting policies are described in the Company's Form 10-K for the year ended September 29, 2007. There have been no significant changes to such policies during fiscal 2008, other than the implementation of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" an interpretation of FASB Statement No. 109, as discussed below.

### **Recent Accounting Developments**

The Financial Accounting Standards Board has recently issued the following accounting pronouncements:

In September 2006, the FASB issued FASB Statement No. 157 ("SFAS 157"), "Fair Value Measurements." SFAS 157 establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS 157 is effective for all financial statements issued for fiscal years beginning after November 15, 2007. The Company is currently assessing the impact of SFAS 157 on its consolidated financial position and results of operations.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities - including an amendment of FASB Statement No. 115" ("SFAS 159"). SFAS 159 permits entities to elect to measure many financial instruments and certain other items at fair value. Upon adoption of SFAS 159, an entity may elect the fair value option for eligible items that exist at the adoption date. Subsequent to the initial adoption, the election of the fair value option should only be made at initial recognition of the asset or liability or upon a remeasurement event that gives rise to new-basis accounting. SFAS 159 does not affect any existing accounting literature that requires certain assets and liabilities to be carried at fair value nor does it eliminate disclosure requirements included in other accounting standards. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The Company is currently assessing the impact of SFAS 159 on its consolidated financial position and results of operations.

On December 4, 2007, the FASB issued SFAS No. 141(R), "Business Combinations" (SFAS 141(R)), and SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51" (SFAS 160). These new standards will significantly change the accounting for and reporting for business combination transactions and noncontrolling (minority) interests in consolidated financial statements. SFAS 141(R) and SFAS 160 are required to be adopted simultaneously and are effective for the first annual reporting period beginning on or after December 15, 2008. Earlier adoption is prohibited. We are currently evaluating the impact of adopting SFAS 141(R) and SFAS 160 on our consolidated financial statements.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

The Company purchases commodities such as chicken, beef, lobster and shrimp for the Company's restaurants. The prices of these commodities may be volatile depending upon market conditions. The Company does not purchase forward commodity contracts because the changes in prices for them have historically been short-term in nature and, in the Company's view, the cost of the contracts is in excess of the benefits.

The Company's business is also highly seasonal and dependent on the weather. Outdoor seating capacity, such as terraces and sidewalk cafes, are available for dining only in the warm seasons and then only in clement weather.

**Item 4T. Controls and Procedures**

Based on their evaluation, the Company's principal executive officer and principal financial officer have concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) are effective as of March 29, 2008 to ensure that information required to be disclosed by the Company in reports that the Company files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

There were no changes in the Company's internal control over financial reporting during the second quarter of fiscal year 2008 that materially affected or are reasonably likely to materially affect the Company's internal control over financial reporting.

**PART II**  
**OTHER INFORMATION**

**Item 1. Legal Proceedings**

The Company is not subject to any other pending legal proceedings, other than ordinary routine claims incidental to its business, which the Company does not believe will materially impact results of operations.

**Item 1A. Risk Factors**

The most significant risk factors applicable to the Company are described in Part I, Item 1A (Risk Factors) of the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2007 (the "2007 Form 10-K"). There have been no material changes to the risk factors previously disclosed in the 2007 Form 10-K. The risks described in the 2007 Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to management may materially adversely affect the Company's business, financial condition, and/or operating results.

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

None.

**Item 3. Defaults upon Senior Securities**

None.

**Item 4. Submissions of Matters to a Vote of Security Holders**

The Company's Annual Meeting of Stockholders was held on March 25, 2008. The proposals submitted to the stockholders for a vote were as follows:

- (1) To elect a board of nine directors;
- (2) To ratify the appointment of J.H. Cohn LLP as independent auditors for the 2008 fiscal year

The following sets forth the number of votes for, the number of votes against, the number of abstentions (or votes withheld in the case of the election of directors) and broker non-votes with respect to each of the forgoing proposals.

**Proposal**

	Votes For	Votes Against	Withheld (Abstentions)	Broker Non-Votes
<b>Proposal 1</b>				
Michael Weinstein	3,343,974	--	13,755	--
Robert Towers	3,348,744	--	8,985	
Vincent Pascal	3,348,744	--	8,985	--
Paul Gordon	3,338,642	--	19,087	--
Marcia Allen	3,350,694	--	7,035	--
Bruce R. Lewin	3,350,694	--	7,035	--
Steven Shulman	3,351,744	--	5,985	--

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Arthur Stainman	3,350,694	--	7,035	--
Stephen Novick	3,341,442	--	16,287	--
<b>Proposal 2</b>	3,341,935	15,068	726	--

- 13 -

---

**Item 5. Other Information**

None.

**Item 6. Exhibits**

- 31.1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32 Certificate of Chief Executive and Chief Financial Officers Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

- 14 -

---



**SIGNATURES**

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

Date: May 13, 2008

**ARK RESTAURANTS CORP.**

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

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