

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 27, 2023

OR

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

For the transition period from _____ to _____

Commission file number: 001-36823



SHAKE SHACK INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

47-1941186

(IRS Employer
Identification No.)

225 Varick Street

Suite 301

New York, New York

(Address of principal executive offices)

10014

(Zip Code)

(646) 747-7200

(Registrant's telephone number, including area code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value \$0.001	SHAK	New York Stock Exchange

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

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

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

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

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

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

As of October 25, 2023, there were 39,467,861 shares of Class A common stock outstanding and 2,834,513 shares of Class B common stock outstanding.

SHAKE SHACK INC.

TABLE OF CONTENTS

<u>Cautionary Note Regarding Forward-Looking Information</u>	<u>1</u>
--	--------------------------

Part I	<u>2</u>
---------------	---------------------------------

<u>Item 1.</u>	<u>Financial Statements (Unaudited)</u>	<u>2</u>
<u>Item 2.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>26</u>
<u>Item 3.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>43</u>
<u>Item 4.</u>	<u>Controls and Procedures</u>	<u>43</u>

Part II	<u>45</u>
----------------	----------------------------------

<u>Item 1.</u>	<u>Legal Proceedings</u>	<u>45</u>
<u>Item 1A.</u>	<u>Risk Factors</u>	<u>45</u>
<u>Item 2.</u>	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>45</u>
<u>Item 3.</u>	<u>Defaults Upon Senior Securities</u>	<u>45</u>
<u>Item 5.</u>	<u>Other Information</u>	<u>45</u>
<u>Item 6.</u>	<u>Exhibits</u>	<u>46</u>

<u>SIGNATURES</u>	<u>47</u>
--	----------------------------------

Cautionary Note Regarding Forward-Looking Information

This Quarterly Report on Form 10-Q ("Form 10-Q") contains forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which are subject to known and unknown risks, uncertainties and other important factors that may cause actual results to be materially different from the statements made herein. All statements other than statements of historical fact included in this Form 10-Q are forward-looking statements, including, but not limited to, statements about the Company's growth, strategic plan, and liquidity. Forward-looking statements discuss the Company's current expectations and projections relating to its financial position, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "aim," "anticipate," "believe," "estimate," "expect," "forecast," "future," "intend," "outlook," "potential," "project," "projection," "plan," "seek," "may," "could," "would," "will," "should," "can," "can have," "likely," the negatives thereof and other similar expressions.

All forward-looking statements are expressly qualified in their entirety by these cautionary statements. Some of the factors which could cause results to differ materially from the Company's expectations include the continuing impact of the COVID-19 pandemic, including the potential impact of any COVID-19 variants, the Company's ability to develop and open new Shacks on a timely basis, increased costs or shortages or interruptions in the supply and delivery of products, increased labor costs or shortages, inflationary pressures, the Company's management of its digital capabilities and expansion into new channels, including drive-thru and multiple format investments, the Company's ability to maintain and grow sales at existing Shacks, and risks relating to the restaurant industry generally. You should evaluate all forward-looking statements made in this Form 10-Q in the context of the risks and uncertainties disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 2022 as filed with the Securities and Exchange Commission (the "SEC").

The forward-looking statements included in this Form 10-Q are made only as of the date hereof. The Company undertakes no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited).

	Page
Condensed Consolidated Balance Sheets	3
Condensed Consolidated Statements of Income (Loss)	4
Condensed Consolidated Statements of Comprehensive Income (Loss)	5
Condensed Consolidated Statements of Stockholders' Equity	6
Condensed Consolidated Statements of Cash Flows	8
Notes to Condensed Consolidated Financial Statements	9

SHAKE SHACK INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(UNAUDITED)

(in thousands, except share and per share amounts)

	September 27 2023	December 28 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 190,020	\$ 230,521
Marketable securities	94,957	80,707
Accounts receivable, net	13,889	13,877
Inventories	4,608	4,184
Prepaid expenses and other current assets	19,762	14,699
Total current assets	323,236	343,988
Property and equipment, net of accumulated depreciation of \$353,303 and \$290,362, respectively	525,557	467,031
Operating lease assets	397,870	367,488
Deferred income taxes, net	302,156	300,538
Other assets	16,037	15,817
TOTAL ASSETS	\$ 1,564,856	\$ 1,494,862
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 21,251	\$ 20,407
Accrued expenses	47,630	47,945
Accrued wages and related liabilities	18,164	17,576
Operating lease liabilities, current	47,610	42,238
Other current liabilities	17,522	19,552
Total current liabilities	152,177	147,718
Long-term debt	245,375	244,589
Long-term operating lease liabilities	463,370	427,227
Liabilities under tax receivable agreement, net of current portion	235,614	234,893
Other long-term liabilities	26,322	20,687
Total liabilities	1,122,858	1,075,114
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Preferred stock, no par value—10,000,000 shares authorized; none issued and outstanding as of September 27, 2023 and December 28, 2022.	—	—
Class A common stock, \$0.001 par value—200,000,000 shares authorized; 39,466,268 and 39,284,998 shares issued and outstanding as of September 27, 2023 and December 28, 2022, respectively.	39	39
Class B common stock, \$0.001 par value—35,000,000 shares authorized; 2,834,513 and 2,869,513 shares issued and outstanding as of September 27, 2023 and December 28, 2022, respectively.	3	3
Additional paid-in capital	423,811	415,611
Accumulated deficit	(7,496)	(20,537)
Accumulated other comprehensive loss	(3)	—
Total stockholders' equity attributable to Shake Shack Inc.	416,354	395,116
Non-controlling interests	25,644	24,632
Total equity	441,998	419,748
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 1,564,856	\$ 1,494,862

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME (LOSS)

(UNAUDITED)

(in thousands, except per share amounts)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Shack sales	\$ 264,980	\$ 219,501	\$ 771,044	\$ 639,346
Licensing revenue	11,227	8,313	30,246	22,611
TOTAL REVENUE	276,207	227,814	801,290	661,957
Shack-level operating expenses:				
Food and paper costs	77,180	67,774	224,752	193,645
Labor and related expenses	76,233	64,638	225,655	190,954
Other operating expenses	37,307	33,680	108,352	96,002
Occupancy and related expenses	20,300	17,337	58,684	50,270
General and administrative expenses	30,939	26,931	93,726	87,804
Depreciation and amortization expense	23,130	18,647	66,704	53,589
Pre-opening costs	4,969	3,041	14,103	8,576
Impairment and loss on disposal of assets	492	592	2,098	1,697
TOTAL EXPENSES	270,550	232,640	794,074	682,537
INCOME (LOSS) FROM OPERATIONS	5,657	(4,826)	7,216	(20,580)
Other income, net	3,441	1,482	9,505	1,731
Interest expense	(433)	(475)	(1,241)	(1,145)
INCOME (LOSS) BEFORE INCOME TAXES	8,665	(3,819)	15,480	(19,994)
Income tax expense (benefit)	529	(1,508)	1,743	(5,098)
NET INCOME (LOSS)	8,136	(2,311)	13,737	(14,896)
Less: Net income (loss) attributable to non-controlling interests	509	(287)	696	(1,522)
NET INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.	\$ 7,627	\$ (2,024)	\$ 13,041	\$ (13,374)
Earnings (loss) per share of Class A common stock:				
Basic	\$ 0.19	\$ (0.05)	\$ 0.33	\$ (0.34)
Diluted	\$ 0.19	\$ (0.05)	\$ 0.31	\$ (0.34)
Weighted average shares of Class A common stock outstanding:				
Basic	39,460	39,274	39,402	39,221
Diluted	43,978	39,274	43,884	39,221

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(UNAUDITED)
(in thousands)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Net income (loss)	\$ 8,136	\$ (2,311)	\$ 13,737	\$ (14,896)
Other comprehensive income (loss), net of tax ⁽¹⁾ :				
Change in foreign currency translation adjustment	1	—	(3)	(2)
OTHER COMPREHENSIVE INCOME (LOSS)	1	—	(3)	(2)
COMPREHENSIVE INCOME (LOSS)	8,137	(2,311)	13,734	(14,898)
Less: Comprehensive income (loss) attributable to non-controlling interests	509	(287)	696	(1,522)
COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.	\$ 7,628	\$ (2,024)	\$ 13,038	\$ (13,376)

(1) Net of tax expense of \$0 for the thirteen and thirty-nine weeks ended September 27, 2023 and September 28, 2022.

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(UNAUDITED)
(in thousands, except share amounts)

For the Thirteen Weeks Ended September 27, 2023 and September 28, 2022										
	Class A Common Stock		Class B Common Stock		Additional Paid-In Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss)	Non- Controlling Interest	Total Equity	
	Shares	Amount	Shares	Amount						
BALANCE, JUNE 28, 2023	39,449,246	\$ 39	2,844,513	\$ 3	\$ 421,356	\$ (15,123)	\$ (4)	\$ 25,088	\$431,359	
Net income	—	—	—	—	—	7,627	—	509	8,136	
Other comprehensive income (loss):										
Net change in foreign currency translation adjustment	—	—	—	—	—	—	1	—	1	
Equity-based compensation	—	—	—	—	3,563	—	—	—	3,563	
Activity under stock compensation plans	7,022	—	—	—	(469)	—	—	197	(272)	
Redemption of LLC Interests	10,000	—	(10,000)	—	71	—	—	(71)	—	
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	—	—	—	—	(710)	—	—	—	(710)	
Distributions paid to non-controlling interest holders	—	—	—	—	—	—	—	(79)	(79)	
BALANCE, SEPTEMBER 27, 2023	39,466,268	\$ 39	2,834,513	\$ 3	\$ 423,811	\$ (7,496)	\$ (3)	\$ 25,644	\$441,998	
BALANCE, JUNE 29, 2022	39,266,670	\$ 39	2,871,513	\$ 3	\$ 410,520	\$ (7,796)	\$ (1)	\$ 24,871	\$427,636	
Net loss	—	—	—	—	—	(2,024)	—	(287)	(2,311)	
Other comprehensive income (loss):										
Net change in foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	
Equity-based compensation	—	—	—	—	3,570	—	—	—	3,570	
Activity under stock compensation plans	11,029	—	—	—	(182)	—	—	245	63	
Redemption of LLC Interests	2,000	—	(2,000)	—	7	—	—	(7)	—	
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	—	—	—	—	(641)	—	—	—	(641)	
Distributions paid to non-controlling interest holders	—	—	—	—	—	—	—	(65)	(65)	
BALANCE, SEPTEMBER 28, 2022	39,279,699	\$ 39	2,869,513	\$ 3	\$ 413,274	\$ (9,820)	\$ (1)	\$ 24,757	\$428,252	

For the Thirty-Nine Weeks Ended September 27, 2023 and September 28, 2022

	Class A Common Stock		Class B Common Stock		Additional Paid-In Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss)	Non- Controlling Interest	Total Equity
	Shares	Amount	Shares	Amount					
BALANCE, DECEMBER 28, 2022	39,284,998	\$ 39	2,869,513	\$ 3	\$ 415,611	\$ (20,537)	\$ —	\$ 24,632	\$419,748
Net income	—	—	—	—	—	13,041	—	696	13,737
Other comprehensive income (loss):									
Net change in foreign currency translation adjustment	—	—	—	—	—	—	(3)	—	(3)
Equity-based compensation	—	—	—	—	11,438	—	—	—	11,438
Activity under stock compensation plans	146,270	—	—	—	(3,023)	—	—	712	(2,311)
Redemption of LLC Interests	35,000	—	(35,000)	—	265	—	—	(265)	—
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	—	—	—	—	(480)	—	—	—	(480)
Distributions paid to non-controlling interest holders	—	—	—	—	—	—	—	(131)	(131)
BALANCE, SEPTEMBER 27, 2023	39,466,268	\$ 39	2,834,513	\$ 3	\$ 423,811	\$ (7,496)	\$ (3)	\$ 25,644	\$441,998
BALANCE, DECEMBER 29, 2021	39,142,397	\$ 39	2,921,587	\$ 3	\$ 405,940	\$ 3,554	\$ 1	\$ 26,063	\$435,600
Net loss	—	—	—	—	—	(13,374)	—	(1,522)	(14,896)
Other comprehensive income (loss):									
Net change in foreign currency translation adjustment	—	—	—	—	—	—	(2)	—	(2)
Equity-based compensation	—	—	—	—	10,295	—	—	—	10,295
Activity under stock compensation plans	85,228	—	—	—	(2,790)	—	—	918	(1,872)
Redemption of LLC Interests	52,074	—	(52,074)	—	313	—	—	(313)	—
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	—	—	—	—	(484)	—	—	—	(484)
Distributions paid to non-controlling interest holders	—	—	—	—	—	—	—	(389)	(389)
BALANCE, SEPTEMBER 28, 2022	39,279,699	\$ 39	2,869,513	\$ 3	\$ 413,274	\$ (9,820)	\$ (1)	\$ 24,757	\$428,252

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(in thousands)

	Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022
OPERATING ACTIVITIES		
Net income (loss) (including amounts attributable to non-controlling interests)	\$ 13,737	\$ (14,896)
Adjustments to reconcile net income (loss) to net cash provided by operating activities		
Depreciation and amortization expense	66,704	53,589
Amortization of debt issuance costs	786	786
Amortization of cloud computing asset	1,320	1,080
Non-cash operating lease cost	49,775	43,159
Equity-based compensation	11,220	10,155
Deferred income taxes	7,092	12,215
Non-cash interest expense	94	181
Gain on sale of equity securities	(81)	—
Net amortization of discount on held-to-maturity securities	(939)	—
Impairment and loss on disposal of assets	2,098	1,697
Unrealized loss on equity securities	—	400
Changes in operating assets and liabilities:		
Accounts receivable	(12)	1,840
Inventories	(424)	(146)
Prepaid expenses and other current assets	(3,056)	(4,767)
Other assets	(4,750)	(5,966)
Accounts payable	(5,064)	(2,069)
Accrued expenses	(6,424)	(17,783)
Accrued wages and related liabilities	555	3,052
Other current liabilities	(2,757)	4,376
Operating lease liabilities	(41,725)	(32,558)
Other long-term liabilities	2,442	(10)
NET CASH PROVIDED BY OPERATING ACTIVITIES	90,591	54,335
INVESTING ACTIVITIES		
Purchases of property and equipment	(113,033)	(94,797)
Purchases of held-to-maturity securities	(94,019)	—
Purchases of equity securities	(690)	(415)
Sales of equity securities	81,478	—
NET CASH USED IN INVESTING ACTIVITIES	(126,264)	(95,212)
FINANCING ACTIVITIES		
Payments on principal of finance leases	(2,383)	(2,260)
Distributions paid to non-controlling interest holders	(131)	(389)
Proceeds from stock option exercises	631	334
Employee withholding taxes related to net settled equity awards	(2,942)	(2,214)
NET CASH USED IN FINANCING ACTIVITIES	(4,825)	(4,529)
Effect of exchange rate changes on cash and cash equivalents	(3)	(2)
DECREASE IN CASH AND CASH EQUIVALENTS	(40,501)	(45,408)
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	230,521	302,406
CASH AND CASH EQUIVALENTS AT END OF PERIOD	\$ 190,020	\$ 256,998

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC. NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share amounts)

	Page
Note 1	Nature of Operations 10
Note 2	Summary of Significant Accounting Policies 10
Note 3	Revenue 11
Note 4	Fair Value Measurements 12
Note 5	Supplemental Balance Sheet Information 13
Note 6	Debt 14
Note 7	Leases 15
Note 8	Non-Controlling Interests 18
Note 9	Equity-Based Compensation 20
Note 10	Income Taxes 21
Note 11	Earnings (Loss) Per Share 22
Note 12	Supplemental Cash Flow Information 23
Note 13	Commitments and Contingencies 24
Note 14	Related Party Transactions 24

NOTE 1: NATURE OF OPERATIONS

Shake Shack Inc. was formed on September 23, 2014 as a Delaware corporation for the purpose of facilitating an initial public offering and other related transactions in order to carry on the business of SSE Holdings, LLC and its subsidiaries ("SSE Holdings"). Shake Shack Inc. is the sole managing member of SSE Holdings and, as sole managing member, the Company operates and controls all of the business and affairs of SSE Holdings. As a result, the Company consolidates the financial results of SSE Holdings and reports a non-controlling interest representing the economic interest in SSE Holdings held by the other members of SSE Holdings. As of September 27, 2023 the Company owned 93.3% of SSE Holdings. Unless the context otherwise requires, "we," "us," "our," "Shake Shack," the "Company" and other similar references, refer to Shake Shack Inc. and, unless otherwise stated, all of its subsidiaries, including SSE Holdings.

The Company operates and licenses Shake Shack restaurants ("Shacks"), which serve burgers, chicken, hot dogs, crinkle cut fries, shakes, frozen custard, beer, wine and more. As of September 27, 2023, there were 495 Shacks in operation system-wide, of which 280 were domestic Company-operated Shacks, 39 were domestic licensed Shacks and 176 were international licensed Shacks.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements include the accounts of Shake Shack Inc. and its subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. These interim Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and on a basis consistent in all material respects with the accounting policies described in its Annual Report on Form 10-K for the fiscal year ended December 28, 2022 ("2022 Form 10-K"). Certain information and footnote disclosures normally presented in annual financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission. These interim Condensed Consolidated Financial Statements should be read in conjunction with the consolidated financial statements and related notes thereto included in its 2022 Form 10-K. In the Company's opinion, all adjustments, which are normal and recurring in nature, necessary for a fair presentation of the financial position and results of operation have been included. Operating results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year.

The Company has elected to reclassify certain marketing expenses for prior periods to conform with the presentation for the thirteen and thirty-nine weeks ended September 27, 2023. These reclassifications had no effect on previously reported Net Loss. For the thirteen and thirty-nine weeks ended September 28, 2022, the Company reclassified \$286 and \$764, respectively from Other operating expenses to General and administrative expenses in the accompanying Condensed Consolidated Statements of Income (Loss).

SSE Holdings is considered a variable interest entity. Shake Shack Inc. is the primary beneficiary as the Company has the majority economic interest in SSE Holdings and, as the sole managing member, has decision making authority that significantly affects the economic performance of the entity, while the limited partners have no substantive kick-out or participating rights. As a result, the Company consolidates SSE Holdings. The assets and liabilities of SSE Holdings represent substantially all of the Company's consolidated assets and liabilities with the exception of certain deferred taxes and liabilities under the Tax Receivable Agreement. As of September 27, 2023 and December 28, 2022, the net assets of SSE Holdings were \$384,222 and \$362,571, respectively. The assets of SSE Holdings are subject to certain restrictions in SSE Holdings' revolving credit agreement.

Fiscal Year

The Company operates on a 52/53 week fiscal year ending on the last Wednesday of December. Fiscal 2023 contains 52 weeks and ends on December 27, 2023. Fiscal 2022 contained 52 weeks and ended on December 28, 2022. Unless otherwise stated, references to years in this report relate to fiscal years.

Use of Estimates

The preparation of these Condensed Consolidated Financial Statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of sales and expenses during the reporting period. Actual results could differ from those estimates.

Recently Issued Accounting Pronouncements

The Company reviewed all recently issued accounting pronouncements and concluded that they were not applicable or not expected to have a significant impact on its Condensed Consolidated Financial Statements.

NOTE 3: REVENUE

Revenue Recognition

Revenue primarily consists of Shack sales and Licensing revenue. Generally, revenue is recognized as promised goods or services transfer to the guest or customer in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services.

Revenue from Shack sales is recognized when payment is tendered at the point of sale, net of discounts as the performance obligation has been satisfied at that time. Sales tax collected from guests is excluded from Shack sales and the obligation is included as sales tax payable until the taxes are remitted to the appropriate taxing authorities.

Delivery services are fulfilled by third-party delivery partners whether ordered through the Shack app and website ("Company-owned platforms") or through third-party delivery platforms. Revenue from orders through Company-owned platforms includes delivery fees and is recognized when the delivery partner transfers the order to the guest as the Company controls the delivery. For these sales, the Company receives payment directly from the guest at the time of sale. Revenue from orders through third-party delivery platforms is recognized when the order is transferred to the third-party delivery partner and excludes delivery fees collected by the delivery partner as the Company does not control the delivery. The Company receives payment from the delivery partner subsequent to the transfer of the order and the payment terms are short-term in nature. For all delivery sales, the Company is considered the principal and recognizes the revenue on a gross basis.

The Company sells gift cards which do not have expiration dates. Revenue from gift cards is recognized when gift cards are redeemed by the customer or, in the event a gift card is not expected to be redeemed, in proportion to actual redemptions of gift cards ("gift card breakage"). The gift card breakage rate is determined from historical gift card redemption patterns. Gift card breakage income for the thirteen weeks ended September 27, 2023 and September 28, 2022 was \$60 and \$47, respectively. Gift card breakage income for the thirty-nine weeks ended September 27, 2023 and September 28, 2022 was \$238 and \$1,415, respectively. The thirty-nine weeks ended September 28, 2022 included a cumulative catch-up adjustment of \$1,281. Gift card breakage income is included in Shack sales in the Condensed Consolidated Statements of Income (Loss).

Licensing revenue includes initial territory fees, Shack opening fees and ongoing sales-based royalty fees from licensed Shacks. Generally, the licenses granted to develop, open and operate each Shack in a specified territory are the predominant good or service transferred to the licensee and represent distinct performance obligations. Ancillary promised services, such as training and assistance during the initial opening of a Shack, are typically combined with the license and considered one performance obligation per Shack. The Company determines the transaction price for each contract, which is comprised of the initial territory fee and an estimate of the total Shack opening fees the Company expects to be entitled to. The calculation of total Shack opening fees included in the transaction price requires judgment, as it is based on an estimated number of Shacks the Company expects the licensee to open. The transaction price is then allocated equally to each Shack expected to open. The performance obligation is satisfied over time, starting when a Shack opens through the end of the license term for the related Shack, therefore revenue is recognized on a straight-line basis over the license term. Generally, payment for the initial territory fee is received upon execution of the license agreement and payment for the Shack opening fees is received either in advance of or upon

opening the related Shack. These payments are initially deferred and recognized in revenue as the performance obligations are satisfied. Revenue from sales-based royalties is recognized as the related sales occur.

Revenue disaggregated by type was as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Shack sales	\$ 264,980	\$ 219,501	\$ 771,044	\$ 639,346
Licensing revenue:				
Sales-based royalties	10,898	8,050	29,388	21,936
Initial territory and opening fees	329	263	858	675
Total revenue	\$ 276,207	\$ 227,814	\$ 801,290	\$ 661,957

The aggregate amount of the transaction price allocated to performance obligations that were unsatisfied or partially unsatisfied as of September 27, 2023 was \$23,608. The Company expects to recognize this amount as revenue over a long-term period, as the license term for each Shack ranges from 5 to 20 years. This amount excludes any variable consideration related to sales-based royalties.

Contract Balances

Contract liabilities and receivables from contracts with customers were as follows:

	September 27 2023	December 28 2022
Shack sales receivables	\$ 7,531	\$ 8,779
Licensing receivables, net of allowance for doubtful accounts	4,871	3,918
Gift card liability	1,972	2,285
Deferred revenue, current	1,180	969
Deferred revenue, long-term	16,709	14,340

Revenue recognized that was included in the respective liability balances at the beginning of the period was as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Gift card liability ⁽¹⁾	\$ 83	\$ 82	\$ 560	\$ 1,725
Deferred revenue	311	234	829	638

(1) For the thirty-nine weeks ended September 28, 2022, amount includes the cumulative catch-up adjustment of \$1,281 for gift card breakage income.

NOTE 4: FAIR VALUE MEASUREMENTS

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The carrying values of the Company's Cash and cash equivalents, Accounts receivable, net, Accounts payable and Accrued expenses approximate fair value due to the short-term nature of these financial instruments.

The Company's investments were as follows:

	September 27 2023	December 28 2022
Equity securities	\$ —	\$ 80,707
Held-to-maturity securities	94,957	—
Total investments	\$ 94,957	\$ 80,707

The Company classified its available-for-sale and held-to-maturity securities as Level 1 measurements within the fair value hierarchy. Refer to Note 6, Debt, for additional information relating to the fair value of the Company's outstanding debt instruments.

The Company's held-to-maturity securities were as follows:

	September 27, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. Treasuries	\$ 94,957	\$ 256	\$ —	\$ 95,213

As of September 27, 2023, the contractual maturities of held-to-maturity securities were less than 12 months. Any expected credit losses would not be material to the Condensed Consolidated Statements of Income (Loss).

A summary of other income (expense) from investments was as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Income from investments	\$ 1,225	\$ 290	\$ 1,846	\$ 502
Realized gain on sale of equity securities	—	—	81	—
Unrealized gain (loss) on equity securities	—	161	—	(400)
Total	\$ 1,225	\$ 451	\$ 1,927	\$ 102

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

Assets and liabilities measured at fair value on a non-recurring basis include long-lived assets, operating lease right-of-use assets and indefinite-lived intangible assets. The Company performs its impairment analysis at least annually or whenever events or circumstances indicate that the carrying amount of an asset may not be recoverable. There were no impairment charges recognized during the thirteen and thirty-nine weeks ended September 27, 2023 and September 28, 2022.

NOTE 5: SUPPLEMENTAL BALANCE SHEET INFORMATION

The components of Prepaid expenses and other current assets were as follows:

	September 27 2023	December 28 2022
Prepaid expenses	\$ 6,689	\$ 3,815
Tenant allowance receivables	12,128	10,121
Other	945	763
Prepaid expenses and other current assets	\$ 19,762	\$ 14,699

The components of Other current liabilities were as follows:

	September 27 2023	December 28 2022
Sales tax payable	\$ 5,521	\$ 5,363
Gift card liability	1,972	2,285
Current portion of financing equipment lease liabilities	3,235	2,546
Legal reserve	2,620	6,285
Other	4,174	3,073
Other current liabilities	\$ 17,522	\$ 19,552

The components of Other long-term liabilities were as follows:

	September 27 2023	December 28 2022
Deferred licensing revenue	\$ 16,709	\$ 14,340
Long-term portion of financing equipment lease liabilities	8,215	3,909
Other	1,398	2,438
Other long-term liabilities	\$ 26,322	\$ 20,687

NOTE 6: DEBT

Convertible Notes

The Company's \$250,000 aggregate principal amount of 0% Convertible Senior Notes due 2028 ("Convertible Notes") will mature on March 1, 2028, unless earlier converted, redeemed or repurchased in certain circumstances. Upon conversion, the Company pays or delivers, as the case may be, cash, shares of Class A common stock or a combination of cash and shares of Class A common stock, at the Company's election.

The Convertible Notes are convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding December 1, 2027, only under the following circumstances: (1) during any fiscal quarter commencing after the fiscal quarter ending on June 30, 2021 (and only during such fiscal quarter), if the last reported sale price of the Company's Class A common stock, par value \$0.001 per share, for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price for the Convertible Notes on each applicable trading day; (2) during the five business day period after any ten consecutive trading day period (the "measurement period") in which the trading price (as defined in the Indenture) per one thousand dollar principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of Class A common stock and the conversion rate for the Convertible Notes on each such trading day; (3) if the Company calls such Convertible Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date, but only with respect to the Convertible Notes called (or deemed called) for redemption; and (4) upon the occurrence of specified corporate events as set forth in the Indenture. On or after December 1, 2027, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders of the Convertible Notes may convert all or any portion of their Convertible Notes at any time, regardless of the foregoing circumstances.

The Convertible Notes had an initial conversion rate of 5.8679 shares of Class A common stock per one thousand dollar principal amount of Convertible Notes, which is equivalent to an initial conversion price of approximately \$170.42 per share of Class A common stock. The fair value of the Convertible Notes was approximately \$181,408 and \$162,500, respectively, as of September 27, 2023 and December 28, 2022, based on external pricing data, including available quoted market prices of these instruments, and consideration of comparable debt instruments with similar interest rates and trading frequency, among other factors, and is classified as a Level 2 measurement within the fair value hierarchy.

		Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
Classification		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Amortization expense on Convertible Notes	Interest expense	\$ 262	\$ 262	\$ 786	\$ 786
				September 27 2023	December 28 2022
Convertible Notes				\$ 250,000	\$ 250,000
Discount and debt issuance costs, net of amortization				(4,625)	(5,411)
Long-term debt				\$ 245,375	\$ 244,589

Revolving Credit Facility

The Company maintains a revolving credit facility agreement ("Revolving Credit Facility") which permits borrowings up to \$50,000 with the ability to increase available borrowings up to an additional \$100,000, subject to satisfaction of certain conditions. The Revolving Credit Facility has a maturity date of March 5, 2026.

During the thirteen weeks ended September 27, 2023, the Company entered into the fourth amendment to the Revolving Credit Facility ("Fourth Amendment"), which, among other things, modifies the benchmark interest rate to either: (i) the base rate plus applicable margin ranging from 0.0% to 1.5% or (ii) the Secured Overnight Financing Rate ("SOFR") plus applicable margin ranging from 1.0% to 2.5%, in each case depending on the net lease adjusted leverage ratio. As of September 27, 2023 and December 28, 2022, no amounts were outstanding under the Revolving Credit Facility.

The obligations under the Revolving Credit Facility are secured by a first-priority security interest in substantially all of the assets of SSE Holdings and the guarantors. The obligations under the Revolving Credit Facility are guaranteed by each of SSE Holdings' direct and indirect subsidiaries, with certain exceptions. The Revolving Credit Facility requires the Company to comply with maximum net lease adjusted leverage and minimum fixed charge coverage ratios, as well as other customary affirmative and negative covenants. As of September 27, 2023, the Company was in compliance with all covenants.

The Revolving Credit Facility also permits the issuance of letters of credit upon our request of up to \$15,000. As of September 27, 2023, the Company had outstanding letters of credit of \$3,348 in connection with the Revolving Credit Facility. The Company had outstanding letters of credit of \$1,863 in connection with the Revolving Credit Facility as of December 28, 2022.

		Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
Classification		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Interest expense on Revolving Credit Facility	Interest expense	\$ 14	\$ 28	\$ 60	\$ 101

Classification		September 27 2023	December 28 2022
Unamortized deferred financing costs on Revolving Credit Facility	Other assets	\$ 47	\$ 62

NOTE 7: LEASES

Nature of Leases

Shake Shack currently leases all of its domestic Company-operated Shacks, the home office and certain equipment under various non-cancelable lease agreements that expire on various dates through 2044. The Company evaluates contracts entered into to determine whether the contract involves the use of property or equipment, which is either explicitly or implicitly identified in

the contract. The Company evaluates whether it controls the use of the asset, which is determined by assessing whether substantially all economic benefit from the use of the asset is obtained, and whether the Company has the right to direct the use of the asset. If these criteria are met, the Company has identified a lease within the contract, and therefore a right of use asset and lease liability are recorded on the Condensed Consolidated Balance Sheet. Upon possession of a leased asset, the Company determines whether the lease is an operating or finance lease. All of the Company's real estate leases are classified as operating leases and most equipment leases are classified as finance leases.

Generally, real estate leases have initial terms ranging from 10 to 15 years and typically include two five-year renewal options. Renewal options are generally not recognized as part of the right-of-use assets and lease liabilities as it is not reasonably certain at commencement date that the Company would exercise the renewal options. Real estate leases typically contain fixed minimum rent payments and/or contingent rent payments which are based upon sales in excess of specified thresholds. When the achievement of such sales thresholds are deemed to be probable, contingent rent is accrued in proportion to the sales recognized during the period.

For operating leases, fixed lease payments are recognized as operating lease costs on a straight-line basis over the lease term within the Condensed Consolidated Statements of Income (Loss) in the following line items. Lease expense incurred before a Shack opens is recorded in Pre-opening costs. Once a domestic Company-operated Shack opens, the straight-line lease expense and contingent rent, if applicable, are recorded in Occupancy and related expenses. Many of these leases also require the Company to pay real estate taxes, common area maintenance costs and other occupancy costs which are included in Occupancy and related expenses. Finance leases are recognized in depreciation expense on a straight-line basis over the remaining lease term, along with recognition of interest expense associated with accretion of the lease liability.

For both operating and finance leases that contain lease and non-lease components, the components are combined and accounted for as a single lease component. Variable lease costs for both operating and finance leases, if any, are recognized as incurred. Leases with a term of 12 months or less are deemed short-term and are not recognized on the Condensed Consolidated Balance Sheets. Fixed lease payments for short-term leases are recognized on a straight-line basis over the lease term.

The Company calculates operating lease assets and lease liabilities as the present value of fixed lease payments over the reasonably certain lease term beginning at the commencement date. The Company uses its incremental borrowing rate ("IBR") in determining the present value of future lease payments as there are no explicit rates provided in the leases. The IBR used to measure the lease liability is derived from the average of the yield curves obtained from using the notching method and the recovery rate method. The most significant assumption in calculating the IBR is the Company's credit rating and is subject to judgment. The credit rating used to develop the IBR is determined by utilizing the credit ratings of other public companies with similar financial information as SSE Holdings.

The Company expends cash for leasehold improvements to build out and equip leased properties. Generally, a portion of the leasehold improvements and building costs are reimbursed by the landlords through landlord incentives pursuant to agreed-upon terms in the lease agreements. Landlord incentives usually take the form of cash, full or partial credits against future minimum or contingent rents otherwise payable by the Company, or a combination thereof. In most cases, landlord incentives are received after the Company takes possession of the property and as milestones are met during the construction of the property. The Company includes these amounts in the measurement of the initial operating lease liability, and lease asset.

A summary of operating and finance lease assets and lease liabilities were as follows:

	Classification	September 27 2023	December 28 2022
Operating leases	Operating lease assets	\$ 397,870	\$ 367,488
Finance leases	Property and equipment, net	11,155	6,152
Total right-of-use assets		\$ 409,025	\$ 373,640
Operating leases:			
	Operating lease liabilities, current	\$ 47,610	\$ 42,238
	Long-term operating lease liabilities	463,370	427,227
Finance leases:			
	Other current liabilities	3,235	2,546
	Other long-term liabilities	8,215	3,909
Total lease liabilities		\$ 522,430	\$ 475,920

The components of lease expense were as follows:

	Classification	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Operating lease cost	Occupancy and related expenses Pre-opening costs General and administrative expenses	\$ 17,177	\$ 15,178	\$ 49,775	\$ 43,188
Finance lease cost:					
Amortization of right-of-use assets	Depreciation and amortization expense	936	750	2,376	2,275
Interest on lease liabilities	Interest expense	163	55	305	162
Variable lease cost	Occupancy and related expenses Pre-opening costs General and administrative expenses	4,488	3,887	12,940	10,994
Short-term lease cost	Occupancy and related expenses	206	264	719	395
Total lease cost		\$ 22,970	\$ 20,134	\$ 66,115	\$ 57,014

As of September 27, 2023, future minimum lease payments for operating and finance leases consisted of the following:

	Operating Leases	Finance Leases
2023 ⁽¹⁾	\$ 7,463	\$ 1,014
2024	76,359	3,654
2025	80,780	3,010
2026	77,336	2,240
2027	73,003	1,893
Thereafter	342,416	1,106
Total minimum payments	657,357	12,917
Less: imputed interest	158,505	1,467
Total lease liabilities	\$ 498,852	\$ 11,450

(1) Operating leases are net of certain tenant allowance receivables that were reclassified to Other current assets as of September 27, 2023.

As of September 27, 2023 the Company had additional operating lease commitments of \$129,245 for non-cancelable leases without a possession date, which commence in 2023 or later. These lease commitments are materially consistent with the leases that have been executed thus far.

A summary of lease terms and discount rates for operating and finance leases were as follows:

	September 27 2023	December 28 2022
Weighted average remaining lease term (years):		
Operating leases	8.9	8.9
Finance leases	4.9	5.1
Weighted average discount rate:		
Operating leases	6.0 %	5.7 %
Finance leases	5.4 %	4.0 %

Supplemental cash flow information related to leases was as follows:

	Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 52,913	\$ 45,398
Operating cash flows from finance leases	305	162
Financing cash flows from finance leases	2,383	2,260
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	60,560	45,927
Finance leases	7,379	1,376

NOTE 8: NON-CONTROLLING INTERESTS

Shake Shack is the primary beneficiary and sole managing member of SSE Holdings and, as a result, consolidates the financial results of SSE Holdings. The Company reports a non-controlling interest representing the economic interest in SSE Holdings held by the other members of SSE Holdings. The Third Amended and Restated Limited Liability Company Agreement, as further amended, (the "LLC Agreement") of SSE Holdings provides that holders of LLC Interests may, from time to time, require SSE

Holdings to redeem all or a portion of their LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis. In connection with any redemption or exchange, the Company will receive a corresponding number of LLC Interests, increasing the total ownership interest in SSE Holdings. Changes in the ownership interest in SSE Holdings while the Company retains its controlling interest in SSE Holdings will be accounted for as equity transactions. As such, future redemptions or direct exchanges of LLC Interests in SSE Holdings by the other members of SSE Holdings will result in a change in ownership and reduce the amount recorded as non-controlling interest and increase additional paid-in capital.

The following table summarizes the ownership interest in SSE Holdings:

	September 27, 2023		December 28, 2022	
	LLC Interests	Ownership %	LLC Interests	Ownership %
Number of LLC Interests held by Shake Shack Inc.	39,466,268	93.3 %	39,284,998	93.2 %
Number of LLC Interests held by non-controlling interest holders	2,834,513	6.7 %	2,869,513	6.8 %
Total LLC Interests outstanding	42,300,781	100.0 %	42,154,511	100.0 %

The weighted average ownership percentages for the applicable reporting periods are used to attribute Net income (loss) and Other comprehensive income (loss) to the non-controlling interest holders.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Non-controlling interest holders' weighted average ownership percentages	6.7 %	6.8 %	6.7 %	6.9 %

The following table summarizes the effects of changes in ownership of SSE Holdings on the Company's equity:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Net income (loss) attributable to Shake Shack Inc.	\$ 7,627	\$ (2,024)	\$ 13,041	\$ (13,374)
Other comprehensive income (loss):				
Unrealized gain (loss) on foreign currency translation adjustment	1	—	(3)	(2)
Transfers (to) from non-controlling interests:				
Increase in additional paid-in capital as a result of the redemption of LLC Interests	71	7	265	313
Decrease in additional paid-in capital as a result of activity under its stock compensation plan and the related income tax effects	(469)	(182)	(3,023)	(2,790)
Total effect of changes in ownership interest on equity (loss) attributable to Shake Shack Inc.	\$ 7,230	\$ (2,199)	\$ 10,280	\$ (15,853)

The following table summarizes the LLC Interests activity:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
LLC Interests activity under the Company's stock compensation plan				
Number of LLC Interests received by Shake Shack Inc.	7,022	11,029	146,270	85,228
Redemption and acquisition of LLC Interests				
Number of LLC Interests redeemed by non-controlling interest holders	10,000	2,000	35,000	52,074
Number of LLC Interests received by Shake Shack Inc.	10,000	2,000	35,000	52,074
Issuance of Class A common stock				
Shares of Class A common stock issued in connection with redemptions of LLC Interests	10,000	2,000	35,000	52,074
Cancellation of Class B common stock				
Shares of Class B common stock surrendered and canceled	10,000	2,000	35,000	52,074

NOTE 9: EQUITY-BASED COMPENSATION

A summary of equity-based compensation expense by award type was as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Performance stock units	\$ 391	\$ 1,053	\$ 2,450	\$ 3,476
Restricted stock units	3,095	2,462	8,770	6,679
Equity-based compensation expense	\$ 3,486	\$ 3,515	\$ 11,220	\$ 10,155
Total income tax benefit recognized related to equity-based compensation	\$ 105	\$ 107	\$ 305	\$ 224

Equity-based compensation expense recognized was as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
General and administrative expenses	\$ 3,163	\$ 3,245	\$ 10,254	\$ 9,390
Labor and related expenses	323	270	966	765
Equity-based compensation expense	\$ 3,486	\$ 3,515	\$ 11,220	\$ 10,155

NOTE 10: INCOME TAXES

Shake Shack is the sole managing member of SSE Holdings and, as a result, consolidates the financial results of SSE Holdings. SSE Holdings is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, SSE Holdings is not subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by SSE Holdings is passed through to and included in the taxable income or loss of its members, including the Company, on a pro rata basis. The Company is subject to U.S. federal income taxes, in addition to state and local income taxes with respect to its allocable share of any taxable income or loss of SSE Holdings, as well as any stand-alone income or loss generated by Shake Shack Inc. The Company is also subject to withholding taxes in foreign jurisdictions.

The effective income tax rates for the thirteen weeks ended September 27, 2023 and September 28, 2022 were 6.1% and 39.5%, respectively. The decrease was primarily driven by the change in pre-tax income and the impact of permanent differences and discrete expense on pre-tax income for the period compared to pre-tax loss for the same period last year. The Company's ownership interest in SSE Holdings is directly related to its share of the taxable income (loss) of SSE Holdings. The weighted-average ownership interest in SSE Holdings was 93.3% and 93.2% for the thirteen weeks ended September 27, 2023 and September 28, 2022, respectively.

The effective income tax rates for the thirty-nine weeks ended September 27, 2023 and September 28, 2022 were 11.3% and 25.5%, respectively. The decrease was primarily driven by the change in pre-tax income and the effect of permanent differences, primarily tax credits, on pre-tax income for the period compared to pre-tax loss for the same period last year, as well as a decrease in expense due to tax benefits related to certain windfalls in equity-based compensation. The decrease was partially offset by an increase in the Company's ownership interest in SSE Holdings which increased its share of the taxable income (loss) of SSE Holdings. The Company's weighted-average ownership interest in SSE Holdings was 93.3% and 93.1% for the thirty-nine weeks ended September 27, 2023 and September 28, 2022, respectively.

Deferred Tax Assets and Liabilities

During the thirty-nine weeks ended September 27, 2023, the Company acquired an aggregate of 181,270 LLC Interests in connection with the redemption of LLC Interests and activity relating to its stock compensation plan. The Company recognized a deferred tax asset in the amount of \$48 associated with the basis difference in its investment in SSE Holdings upon acquisition of these LLC Interests. As of September 27, 2023, the total deferred tax asset related to the basis difference in the Company's investment in SSE Holdings was \$83,023.

During the thirty-nine weeks ended September 27, 2023, the Company also recognized \$200 of deferred tax assets related to additional tax basis increases generated from expected future payments under the Tax Receivable Agreement and related deductions for imputed interest on such payments. Refer to "Tax Receivable Agreement," herein for additional information.

The Company evaluates the realizability of its deferred tax assets on a quarterly basis and establishes valuation allowances when it is more likely than not that all or a portion of a deferred tax asset may not be realized. As of September 27, 2023, the Company concluded, based on the weight of all available positive and negative evidence, that all of its deferred tax assets (except for those deferred tax assets relating to certain state tax credits and net operating losses and certain foreign tax credits) are more likely than not to be realized. As such, no additional valuation allowance was recognized.

Tax Receivable Agreement

Pursuant to the Company's election under Section 754 of the Internal Revenue Code (the "Code"), the Company expects to obtain an increase in its share of the tax basis in the net assets of SSE Holdings when LLC Interests are redeemed or exchanged by the other members of SSE Holdings. The Company plans to make an election under Section 754 of the Code for each taxable year in which a redemption or exchange of LLC Interest occurs. The Company intends to treat any redemptions and exchanges of LLC Interests as direct purchases of LLC Interests for U.S. federal income tax purposes. These increases in tax basis may reduce the amounts that would otherwise be paid in the future to various tax authorities. They may also decrease gains (or increase losses) on future dispositions of certain capital assets to the extent tax basis is allocated to those capital assets.

On February 4, 2015, the Company entered into a tax receivable agreement with certain of the then-existing members of SSE Holdings (the "Tax Receivable Agreement") that provides for the payment by the Company of 85% of the amount of any tax

benefits that are actually realized, or in some cases are deemed to realize, as a result of (i) increases in the Company's share of the tax basis in the net assets of SSE Holdings resulting from any redemptions or exchanges of LLC Interests, (ii) tax basis increases attributable to payments made under the Tax Receivable Agreement, and (iii) deductions attributable to imputed interest pursuant to the Tax Receivable Agreement (the "TRA Payments"). The Company expects to benefit from the remaining 15% of any tax benefits that may actually realize. The TRA Payments are not conditioned upon any continued ownership interest in SSE Holdings or the Company. The rights of each member of SSE Holdings that is a party to the Tax Receivable Agreement, are assignable to transferees of their respective LLC Interests.

During the thirty-nine weeks ended September 27, 2023, the Company acquired an aggregate of 35,000 LLC Interests in connection with the redemption of LLC Interests, which resulted in an increase in the tax basis of its investment in SSE Holdings subject to the provisions of the Tax Receivable Agreement. The Company recognized an additional liability in the amount of \$721 for the TRA Payments due to the redeeming members, representing 85% of the aggregate tax benefits the Company expects to realize from the tax basis increases related to the redemption of LLC Interests, after concluding it was probable that such TRA Payments would be paid based on estimates of future taxable income. During the thirty-nine weeks ended September 27, 2023 and September 28, 2022, inclusive of interest, no payments were made to the parties to the Tax Receivable Agreement. As of September 27, 2023, the total amount of TRA Payments due under the Tax Receivable Agreement, was \$235,614. Refer to Note 13, Commitments and Contingencies, for additional information relating to the liabilities under the Tax Receivable Agreement.

NOTE 11: EARNINGS (LOSS) PER SHARE

Basic earnings (loss) per share of Class A common stock is computed by dividing Net income (loss) attributable to Shake Shack Inc. by the weighted average number of shares of Class A common stock outstanding during the period. Diluted earnings (loss) per share of Class A common stock is computed by dividing Net income (loss) attributable to Shake Shack Inc. by the weighted average number of shares of Class A common stock outstanding, adjusted to give effect to potentially dilutive securities.

The following table sets forth reconciliations of the numerators and denominators used to compute basic and diluted earnings (loss) per share of Class A common stock (in thousands, except per share amounts):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Numerator:				
Net income (loss) attributable to Shake Shack Inc.—basic	\$ 7,627	\$ (2,024)	\$ 13,041	\$ (13,374)
Reallocation of net income attributable to non-controlling interests from the assumed conversion of Class B shares	509	—	696	—
Net income (loss) attributable to Shake Shack Inc.—diluted	\$ 8,136	\$ (2,024)	\$ 13,737	\$ (13,374)
Denominator:				
Weighted average shares of Class A common stock outstanding—basic	39,460	39,274	39,402	39,221
Effect of dilutive securities:				
Stock options	74	—	77	—
Performance stock units	11	—	11	—
Restricted stock units	129	—	82	—
Convertible Notes	1,467	—	1,467	—
Shares of Class B common stock	2,837	—	2,845	—
Weighted average shares of Class A common stock outstanding—diluted	43,978	39,274	43,884	39,221
Earnings (loss) per share of Class A common stock—basic	\$ 0.19	\$ (0.05)	\$ 0.33	\$ (0.34)
Earnings (loss) per share of Class A common stock—diluted	\$ 0.19	\$ (0.05)	\$ 0.31	\$ (0.34)

The effect of potential share settlement of the Convertible Notes outstanding for the period is included as potentially dilutive shares of Class A common stock under application of the if-converted method in the computation of diluted earnings (loss) per share, except when the effect would be anti-dilutive. Refer to Note 6, Debt, for additional information.

Shares of Class B common stock do not share in the earnings or losses of Shake Shack and are therefore not participating securities. As such, separate presentation of basic and diluted earnings (loss) per share of Class B common stock under the two-class method has not been presented. However, shares of Class B common stock outstanding for the period are considered potentially dilutive shares of Class A common stock under application of the if-converted method and are included in the computation of diluted earnings (loss) per share, except when the effect would be anti-dilutive.

The following table presents potentially dilutive securities excluded from the computations of diluted earnings (loss) per share of Class A common stock:

	Thirteen Weeks Ended			Thirty-Nine Weeks Ended		
	September 27 2023	September 28 2022		September 27 2023	September 28 2022	
Stock options	—	138,306	(2)	—	138,306	(2)
Performance stock units	100,898	(1)	160,064	(2)	100,898	(1)
Restricted stock units	—	398,269	(2)	—	398,269	(2)
Shares of Class B common stock	—	2,869,513	(2)	—	2,869,513	(2)
Convertible notes	—	1,466,975	(2)	—	1,466,975	(2)

- (1) Number of securities outstanding at the end of the period that were excluded from the computation of diluted earnings (loss) per share of Class A common stock because the performance conditions associated with these awards were not met assuming the end of the reporting period was the end of the performance period.
- (2) Number of securities outstanding at the end of the period that were excluded from the computation of diluted loss per share of Class A common stock because the effect would have been anti-dilutive.

NOTE 12: SUPPLEMENTAL CASH FLOW INFORMATION

The following table sets forth supplemental cash flow information:

	Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022
Cash paid for:		
Income taxes, net of refunds	\$ 3,147	\$ 2,904
Interest, net of amounts capitalized	343	179
Non-cash investing activities:		
Accrued purchases of property and equipment	30,096	31,593
Capitalized equity-based compensation	147	93
Non-cash financing activities:		
Establishment of liabilities under tax receivable agreement	721	847

NOTE 13: COMMITMENTS AND CONTINGENCIES

Lease Commitments

The Company is obligated under various operating leases for Shacks and the home office space, expiring in various years through 2044. Under certain of these leases, the Company is liable for contingent rent based on a percentage of sales in excess of specified thresholds and typically responsible for its proportionate share of real estate taxes, common area maintenance costs and other occupancy costs. Refer to Note 7, Leases, for additional information.

Certain leases require the Company to obtain letters of credit. As of September 27, 2023, the Company held two letters of credit, one for \$130 which expires in February 2026 and the second for \$603, which expires in August 2023 and renews automatically for one-year periods through January 2034.

Purchase Commitments

Purchase obligations include legally binding contracts, including commitments for the purchase, construction or remodeling of real estate and facilities, firm minimum commitments for inventory purchases, equipment purchases, marketing-related contracts, software acquisition/license commitments and service contracts. These obligations are generally short-term in nature and are recorded as liabilities when the related goods are received or services rendered. The Company also enters into long-term, exclusive contracts with certain vendors to supply food, beverages and paper goods, obligating the Company to purchase specified quantities.

Legal Contingencies

The Company is subject to various legal proceedings, claims and liabilities, involving employees and guests alike, which arise in the ordinary course of business and are generally covered by insurance. As of September 27, 2023, the amount of the ultimate liability with respect to these matters was not material.

Liabilities under Tax Receivable Agreement

As described in Note 10, Income Taxes, the Company is a party to the Tax Receivable Agreement under which it is contractually committed to pay certain of the members of SSE Holdings 85% of the amount of any tax benefits that are actually realized, or in some cases are deemed to realize, as a result of certain transactions. The Company is not obligated to make any payments under the Tax Receivable Agreement until the tax benefits associated with the transactions that gave rise to the payments are realized. Amounts payable under the Tax Receivable Agreement are contingent upon, among other things, (i) generation of future taxable income over the term of the Tax Receivable Agreement and (ii) future changes in tax laws. If the Company does not generate sufficient taxable income in the aggregate over the term of the Tax Receivable Agreement to utilize the tax benefits, then it would not be required to make the related TRA Payments. During the thirty-nine weeks ended September 27, 2023 and September 28, 2022, the Company recognized liabilities totaling \$721 and \$847, respectively, relating to the obligations under the Tax Receivable Agreement, after concluding that it was probable that it would have sufficient future taxable income over the term of the Tax Receivable Agreement to utilize the related tax benefits. As of September 27, 2023 and December 28, 2022, the total obligations under the Tax Receivable Agreement were \$235,614 and \$234,893, respectively. There were no transactions subject to the Tax Receivable Agreement for which the Company did not recognize the related liability, as the Company concluded that it would have sufficient future taxable income to utilize all of the related tax benefits generated by all transactions that occurred during the thirty-nine weeks ended September 27, 2023.

NOTE 14: RELATED PARTY TRANSACTIONS

Union Square Hospitality Group

The Chairman of the Board of Directors serves as the Executive Chairman of Union Square Hospitality Group, LLC. As a result, Union Square Hospitality Group, LLC and its subsidiary, set forth below, are considered related parties.

Hudson Yards Sports and Entertainment

In fiscal 2011, Shake Shack entered into a Master License Agreement (as amended, "MLA") with Hudson Yards Sports and Entertainment LLC ("HYSE") to operate Shake Shack branded limited menu concession stands in sports and entertainment venues within the United States. In February 2019, the agreement was assigned to Hudson Yards Catering ("HYC"), the parent of HYSE. The agreement expires in January 2027 and includes five consecutive five-year renewal options at HYC's option. As consideration for these rights, HYC pays the Company a license fee based on a percentage of net food sales, as defined in the MLA. HYC also pays a percentage of profits on sales of branded beverages, as defined in the MLA.

		Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
Classification		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Amounts received from HYC	Licensing revenue	\$ 419	\$ 180	\$ 728	\$ 402

		September 27 2023	December 28 2022
Classification			
Amounts due from HYC	Accounts receivable, net	\$ 143	\$ 69

Madison Square Park Conservancy

The Chairman of the Board of Directors serves as a director of the Madison Square Park Conservancy ("MSP Conservancy"), with which Shake Shack has a license agreement and pays license fees to operate the Madison Square Park Shack. No amounts were due to MSP Conservancy as of September 27, 2023 and December 28, 2022.

		Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
Classification		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Amounts paid to MSP Conservancy	Occupancy and related expenses	\$ 224	\$ 383	\$ 672	\$ 859

Olo, Inc.

The Chairman of the Board of Directors serves as a director of Olo, Inc. (formerly known as "Mobo Systems, Inc."), a platform the Company uses in connection with its mobile ordering application.

		Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
Classification		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Amounts paid to Olo, Inc.	Other operating expenses	\$ 156	\$ 110	\$ 423	\$ 316

		September 27 2023	December 28 2022
Classification			
Amounts due to Olo, Inc.	Accounts payable Accrued expenses	\$ 112	\$ 39

Block, Inc.

The Company's Chief Executive Officer is a member of the board of directors of Block, Inc. (formerly known as "Square, Inc."). The Company currently uses certain point-of-sale applications, payment processing services, hardware and other enterprise platform services in connection with its kiosk technology, sales for certain off-site events and the processing of a limited amount of sales at certain locations.

		Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
Classification		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Amounts paid to Block, Inc.	Other operating expenses	\$ 2,520	\$ 1,092	\$ 6,105	\$ 2,952

Classification		September 27 2023	December 28 2022
Amounts due to Block, Inc.	Accounts payable	\$ 40	\$ 55
	Accrued expenses		

Tax Receivable Agreement

The Company entered into a Tax Receivable Agreement that provides for the payment by the Company of 85% of the amount of any tax benefits that are actually realized, or in some cases are deemed to realize, as a result of certain transactions. Refer to Note 10, Income Taxes, for additional information. No payments were made to the members of SSE Holdings pursuant to the Tax Receivable Agreement during the thirty-nine weeks ended September 27, 2023 and September 28, 2022.

Classification		September 27 2023	December 28 2022
Amounts due under the Tax Receivable Agreement	Other current liabilities	\$ 235,614	\$ 234,893
	Liabilities under Tax Receivable Agreement, net of current portion		

Distributions to Members of SSE Holdings

Under the terms of the SSE Holdings LLC Agreement, SSE Holdings is obligated to make tax distributions to its members. No tax distributions were payable to non-controlling interest holders as of September 27, 2023 and December 28, 2022, respectively.

		Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
Classification		September 27 2023	September 28 2022	September 27 2023	September 28 2022
Amounts paid to non-controlling interest holders	Non-controlling interests	\$ 79	\$ 65	\$ 131	\$ 389

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

This section and other parts of this Quarterly Report on Form 10-Q ("Form 10-Q") contain forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which are subject to known and unknown risks, uncertainties and other important factors that may cause actual results to be materially different from the statements made herein. All statements other than statements of historical fact are forward-looking statements including, but not limited to, statements about the Company's growth, strategic plan, and liquidity. Forward-looking statements discuss our current expectations and projections relating to our financial position, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "aim," "anticipate," "believe," "estimate," "expect," "forecast," "future," "intend," "outlook," "potential," "project," "projection," "plan," "seek," "may," "could," "would," "will," "should," "can," "can have," "likely," the negatives thereof and other similar expressions.

All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this Form 10-Q in the context of the risks and uncertainties disclosed in our Annual Report on Form 10-K for the fiscal year ended December 28, 2022 ("2022 Form 10-K").

The forward-looking statements included in this Form 10-Q are made only as of the date hereof. We undertake no obligation to publicly update any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law. If we do update one or more forward-looking statements, no inference should be made that we will make additional updates with respect to those or other forward-looking statements.

The following discussion should be read in conjunction with our 2022 Form 10-K and the Condensed Consolidated Financial Statements and notes thereto included in Part I, Item 1 of this Form 10-Q. All information presented herein is based on our fiscal calendar. Unless otherwise stated, references to particular years, quarters, months or periods refer to our fiscal years and the associated quarters, months and periods of those fiscal years.

OVERVIEW

Shake Shack serves modern, fun and elevated versions of American classics using only the best ingredients. We are known for our made-to-order Angus beef burgers, crispy chicken, hand-spun milkshakes, house-made lemonades, beer, wine, and more. Our fine dining roots and commitment to community building, hospitality and the sourcing of premium ingredients is what we call "fine casual." Fine casual couples the ease, value and convenience of fast casual concepts with the high standards of excellence grounded in our fine dining roots — thoughtful ingredient sourcing and preparation, hospitality and quality.

Our mission is to *Stand For Something Good* in all aspects of our business, including the exceptional team we hire and train, the premium ingredients making up our menu, our community engagement and the design of our Shacks. *Stand For Something Good* is a call to action for all of our stakeholders — our team, guests, communities, suppliers and investors — and we actively invite them all to share in this philosophy with us. This commitment drives our integration into the local communities in which we operate and fosters a deep and lasting connection with our guests.

The following definitions apply to these terms as used herein:

"Average weekly sales" is calculated by dividing total Shack sales by the number of operating weeks for all Shacks in operation during the period. For Shacks that are not open for the entire period, fractional adjustments are made to the number of operating weeks open such that it corresponds to the period of associated sales.

"Same-Shack sales" represents Shack sales for the comparable Shack base, which is defined as the number of domestic Company-operated Shacks open for 24 full fiscal months or longer. For consecutive days that Shacks were temporarily closed, the comparative period was also adjusted.

"System-wide sales" is an operating measure and consists of sales from the Company's domestic Company-operated Shacks, domestic licensed Shacks and international licensed Shacks. The Company does not recognize the sales from licensed Shacks as revenue. Of these amounts, revenue is limited to licensing revenue based on a percentage of sales from domestic and international licensed Shacks, as well as certain up-front fees, such as territory fees and opening fees.

As of September 27, 2023, there were 495 Shacks in operation system-wide, of which 280 were domestic Company-operated Shacks, 39 were domestic licensed Shacks and 176 were international licensed Shacks.

Recent Business Trends

Same-Shack sales for the thirteen weeks ended September 27, 2023 increased 2.3% compared to the same period last year, driven by a 6.5% increase in price mix partially offset by a 4.2% decrease in guest traffic. Compared to the same period last year, same-Shack sales at suburban Shacks increased 3.7% while urban Shacks increased 1.0%. Same-Shack sales during the thirteen weeks ended September 27, 2023 slowed when compared to the thirteen weeks ended June 28, 2023, driven by decreased guest traffic across urban and suburban Shacks partially offset by price mix. For the purpose of calculating same-Shack sales for the thirteen weeks ended September 27, 2023, Shack sales for 202 Shacks were included in the comparable Shack base.

Average weekly sales were \$74,000 for the thirteen weeks ended September 27, 2023 compared to \$73,000 in the same period last year, primarily driven by higher menu prices, partially offset by a decline in guest traffic. Average weekly sales decreased 3.9%, compared to the thirteen weeks ended June 28, 2023, driven by a decline in guest traffic across all domestic Company-operated Shacks partially offset by price mix.

System-wide sales for the thirteen weeks ended September 27, 2023 increased 24.3% to \$438.9 million compared to the same period last year and increased 2.9% compared to the thirteen weeks ended June 28, 2023.

Digital sales for the thirteen weeks ended September 27, 2023 increased 5.4% to \$83.2 million compared to the same period last year and decreased 4.3% compared to the thirteen weeks ended June 28, 2023. Total digital sales includes orders placed on the Shake Shack app, website and third-party delivery platforms, which represented 31.4% of Shack sales during the thirteen weeks ended September 27, 2023.

Development Highlights

During the third quarter of 2023, we opened 10 new domestic Company-operated Shacks, four new domestic licensed Shacks and 11 new international licensed Shacks. There was one permanent international licensed Shack closure in the third quarter of 2023.

Location	Type	Opening Date
New Baltimore, NY — New Baltimore Travel Plaza	Domestic Licensed	6/29/2023
Culver City, CA — Downtown Culver City	Domestic Company-operated	7/5/2023
North Wales, PA — Montgomeryville	Domestic Company-operated	7/6/2023
Los Angeles, CA — Koreatown	Domestic Company-operated	7/12/2023
Guangzhou, China — Taikoo Hui	International Licensed	7/15/2023
Al Ahmadi, Kuwait — Ahmadi Park	International Licensed	7/16/2023
Paradise Island, Bahamas — Atlantis	International Licensed	7/20/2023
Hong Kong, China — Metroplaza	International Licensed	7/22/2023
Houston, TX — Katy Freeway	Domestic Company-operated	7/25/2023
San Marcos, TX — San Marcos	Domestic Company-operated	7/27/2023
Shanghai, China — Raffles City	International Licensed	7/28/2023
Chengdu, China — MixC	International Licensed	7/28/2023
Cranston, RI — Garden City	Domestic Company-operated	8/8/2023
Oceanside, NY — Oceanside	Domestic Company-operated	8/13/2023
Incheon, South Korea — Incheon International Airport (Terminal 1)	International Licensed	8/14/2023
Al Ahmadi, Kuwait — The Warehouse Mall	International Licensed	8/16/2023
Beijing, China — Livat	International Licensed	8/19/2023
New York, NY — Lower East Side	Domestic Company-operated	8/25/2023
Manila, Philippines — Araneta	International Licensed	8/25/2023
Union, NJ — Whitney Houston Travel Area	Domestic Licensed	8/30/2023
Lynnwood, WA — Alderwood Mall	Domestic Company-operated	9/5/2023
Riverton, UT — Mountain View Village	Domestic Company-operated	9/11/2023
Cherry Hill, NJ — Walt Whitman Travel Plaza	Domestic Licensed	9/14/2023
East Brunswick, NJ — Joyce Kilmer Travel Plaza	Domestic Licensed	9/22/2023
Hainan, China — Sanya	International Licensed	9/23/2023

RESULTS OF OPERATIONS

The following table summarizes our results of operations for the thirteen and thirty-nine weeks ended September 27, 2023 and September 28, 2022:

	Thirteen Weeks Ended				Thirty-Nine Weeks Ended			
	September 27 2023		September 28 2022		September 27 2023		September 28 2022	
<i>(dollar amounts in thousands)</i>								
Shack sales	\$ 264,980	95.9 %	\$ 219,501	96.4 %	\$ 771,044	96.2 %	\$ 639,346	96.6 %
Licensing revenue	11,227	4.1 %	8,313	3.6 %	30,246	3.8 %	22,611	3.4 %
TOTAL REVENUE	276,207	100.0 %	227,814	100.0 %	801,290	100.0 %	661,957	100.0 %
Shack-level operating expenses ⁽¹⁾ :								
Food and paper costs	77,180	29.1 %	67,774	30.9 %	224,752	29.1 %	193,645	30.3 %
Labor and related expenses ⁽²⁾	76,233	28.8 %	64,638	29.4 %	225,655	29.3 %	190,954	29.9 %
Other operating expenses	37,307	14.1 %	33,680	15.3 %	108,352	14.1 %	96,002	15.0 %
Occupancy and related expenses	20,300	7.7 %	17,337	7.9 %	58,684	7.6 %	50,270	7.9 %
General and administrative expenses ⁽²⁾	30,939	11.2 %	26,931	11.8 %	93,726	11.7 %	87,804	13.3 %
Depreciation and amortization expense	23,130	8.4 %	18,647	8.2 %	66,704	8.3 %	53,589	8.1 %
Pre-opening costs	4,969	1.8 %	3,041	1.3 %	14,103	1.8 %	8,576	1.3 %
Impairment and loss on disposal of assets	492	0.2 %	592	0.3 %	2,098	0.3 %	1,697	0.3 %
TOTAL EXPENSES	270,550	98.0 %	232,640	102.1 %	794,074	99.1 %	682,537	103.1 %
INCOME (LOSS) FROM OPERATIONS	5,657	2.0 %	(4,826)	(2.1)%	7,216	0.9 %	(20,580)	(3.1)%
Other income, net	3,441	1.2 %	1,482	0.7 %	9,505	1.2 %	1,731	0.3 %
Interest expense	(433)	(0.2)%	(475)	(0.2)%	(1,241)	(0.2)%	(1,145)	(0.2)%
INCOME (LOSS) BEFORE INCOME TAXES	8,665	3.1 %	(3,819)	(1.7)%	15,480	1.9 %	(19,994)	(3.0)%
Income tax expense (benefit)	529	0.2 %	(1,508)	(0.7)%	1,743	0.2 %	(5,098)	(0.8)%
NET INCOME (LOSS)	8,136	2.9 %	(2,311)	(1.0)%	13,737	1.7 %	(14,896)	(2.3)%
Less: Net income (loss) attributable to non-controlling interests	509	0.2 %	(287)	(0.1)%	696	0.1 %	(1,522)	(0.2)%
NET INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.	\$ 7,627	2.8 %	\$ (2,024)	(0.9)%	\$ 13,041	1.6 %	\$ (13,374)	(2.0)%

(1) As a percentage of Shack sales.

(2) The Company elected to reclassify certain marketing expenses for prior periods to conform with the presentation for the thirteen and thirty-nine weeks ended September 27, 2023. These reclassifications had no effect on previously reported Net Loss. For the thirteen and thirty-nine weeks ended September 28, 2022, the Company reclassified \$286 and \$764, respectively, from Other operating expenses to General and administrative expenses in the accompanying Condensed Consolidated Financial Statements.

Shack Sales

Shack sales represent the aggregate sales of food, beverages and Shake Shack branded merchandise at our domestic Company-operated Shacks and gift card breakage income. Shack sales in any period are directly influenced by the number of operating weeks in such period and the total number of open Shacks.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Shack sales	\$ 264,980	\$ 219,501	\$ 771,044	\$ 639,346
Percentage of Total revenue	95.9 %	96.4 %	96.2 %	96.6 %
Dollar change compared to prior year	\$ 45,479		\$ 131,698	
Percentage change compared to prior year	20.7 %		20.6 %	

Shack sales for the thirteen weeks ended September 27, 2023 increased 20.7% to \$265.0 million versus the same period last year. The increase was primarily due to the opening of 48 new domestic Company-operated Shacks between September 28, 2022 and September 27, 2023, which contributed \$40.7 million, as well as increased menu prices, which contributed \$20.0 million, partially offset by a decline in guest traffic.

Shack sales for the thirty-nine weeks ended September 27, 2023 increased 20.6% to \$771.0 million versus the same period last year. The increase was primarily due to the opening of 48 new domestic Company-operated Shacks between September 28, 2022 and September 27, 2023, which contributed \$86.7 million, as well as increased menu prices, which contributed \$55.0 million, partially offset by a decrease in items per check.

Licensing Revenue

Licensing revenue is comprised of license fees, opening fees for certain licensed Shacks and territory fees. License fees are calculated as a percentage of sales and territory fees are payments for the exclusive right to develop Shacks in a specific geographic area.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Licensing revenue	\$ 11,227	\$ 8,313	\$ 30,246	\$ 22,611
<i>Percentage of Total revenue</i>	4.1 %	3.6 %	3.8 %	3.4 %
Dollar change compared to prior year	\$ 2,914		\$ 7,635	
Percentage change compared to prior year	35.1 %		33.8 %	

Licensing revenue for the thirteen weeks ended September 27, 2023 increased 35.1% to \$11.2 million versus the same period last year. Licensing revenue for the thirty-nine weeks ended September 27, 2023 increased 33.8% to \$30.2 million versus the same period last year. The increases in Licensing revenue for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to the opening of 45 net new licensed Shacks between September 28, 2022 and September 27, 2023, which contributed \$1.9 million and \$4.1 million, respectively, as well as higher sales at existing licensed Shacks, particularly domestic airports.

Food and Paper Costs

Food and paper costs include the direct costs associated with food, beverage and packaging of our menu items. The components of Food and paper costs are variable by nature, change with sales volume, are impacted by menu mix, channel mix and fluctuations in commodity costs, as well as geographic scale and proximity.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Food and paper costs	\$ 77,180	\$ 67,774	\$ 224,752	\$ 193,645
<i>Percentage of Shack sales</i>	29.1 %	30.9 %	29.1 %	30.3 %
Dollar change compared to prior year	\$ 9,406		\$ 31,107	
Percentage change compared to prior year	13.9 %		16.1 %	

Food and paper costs for the thirteen weeks ended September 27, 2023 increased 13.9% to \$77.2 million versus the same period last year. Food and paper costs for the thirty-nine weeks ended September 27, 2023 increased 16.1% to \$224.8 million versus the same period last year. The increases for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to the opening of 48 new domestic Company-operated Shacks between September 28, 2022 and September 27, 2023, which contributed approximately \$12.2 million and \$28.0 million, respectively.

As a percentage of Shack sales, the decreases in Food and paper costs for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily driven by menu price increases partially offset by increased commodity costs, particularly in beef and fries.

Labor and Related Expenses

Labor and related expenses include domestic Company-operated Shack-level hourly and management wage rates, bonuses, payroll taxes, equity-based compensation, workers' compensation expense and medical benefits. As we expect with other variable expense items, labor costs should grow as our Shack sales grow. Factors that influence labor costs include minimum wage and payroll tax legislation, health care costs, size and location of the Shack and the performance of our domestic Company-operated Shacks.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Labor and related expenses	\$ 76,233	\$ 64,638	\$ 225,655	\$ 190,954
Percentage of Shack sales	28.8 %	29.4 %	29.3 %	29.9 %
Dollar change compared to prior year	\$ 11,595		\$ 34,701	
Percentage change compared to prior year	17.9 %		18.2 %	

Labor and related expenses for the thirteen weeks ended September 27, 2023 increased 17.9% to \$76.2 million versus the same period last year. Labor and related expenses for the thirty-nine weeks ended September 27, 2023 increased 18.2% to \$225.7 million versus the same period last year. The increases for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to the opening of 48 new domestic Company-operated Shacks between September 28, 2022 and September 27, 2023.

As a percentage of Shack sales, the decreases in Labor and related expenses for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to labor efficiencies and sales leverage partially offset by increased wages.

Other Operating Expenses

Other operating expenses consist of delivery commissions, Shack-level marketing expenses, repairs and maintenance, utilities and other operating expenses incidental to operating our domestic Company-operated Shacks, such as non-perishable supplies, credit card fees and property insurance.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Other operating expenses	\$ 37,307	\$ 33,680	\$ 108,352	\$ 96,002
Percentage of Shack sales	14.1 %	15.3 %	14.1 %	15.0 %
Dollar change compared to prior year	\$ 3,627		\$ 12,350	
Percentage change compared to prior year	10.8 %		12.9 %	

Other operating expenses for the thirteen weeks ended September 27, 2023 increased 10.8% to \$37.3 million versus the same period last year. Other operating expenses for the thirty-nine weeks ended September 27, 2023 increased 12.9% to \$108.4 million versus the same period last year. The increases for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily driven by higher facilities costs, mainly utilities, due to the opening of 48 new domestic Company-operated Shacks between September 28, 2022 and September 27, 2023 as well as increased transaction costs associated with higher sales.

As a percentage of Shack sales, the decrease in Other operating expenses for the thirteen weeks ended September 27, 2023 was primarily driven by decreased repair and maintenance expenses, lower delivery commissions due to a shift in channel mix and sales leverage. As a percentage of Shack sales, the decrease in Other operating expenses for the thirty-nine weeks ended September 27, 2023 was primarily driven by lower delivery commissions as a result of a shift in channel mix, lower repair and maintenance expenses and sales leverage.

Occupancy and Related Expenses

Occupancy and related expenses consist of Shack-level occupancy expenses (including rent, common area expenses and certain local taxes), and exclude occupancy expenses associated with unopened Shacks, which are recorded separately in Pre-opening costs.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Occupancy and related expenses	\$ 20,300	\$ 17,337	\$ 58,684	\$ 50,270
Percentage of Shack sales	7.7 %	7.9 %	7.6 %	7.9 %
Dollar change compared to prior year	\$ 2,963		\$ 8,414	
Percentage change compared to prior year	17.1 %		16.7 %	

Occupancy and related expenses for the thirteen weeks ended September 27, 2023 increased 17.1% to \$20.3 million versus the same period last year. Occupancy and related expenses for the thirty-nine weeks ended September 27, 2023 increased 16.7% to \$58.7 million versus the same period last year. The increases for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to the opening of 48 new domestic Company-operated Shacks between September 28, 2022 and September 27, 2023, which contributed \$2.4 million and \$5.4 million, respectively.

As a percentage of Shack sales, the decrease in Occupancy and related expenses for the thirteen weeks ended September 27, 2023 was primarily driven by a decrease in base rent and sales leverage. As a percentage of Shack sales, the decrease in Occupancy and related expenses for the thirty-nine weeks ended September 27, 2023 was primarily due to sales leverage and lower base rent, partially offset by an increase in common area maintenance charges.

General and Administrative Expenses

General and administrative expenses consist of costs associated with corporate and administrative functions that support Shack development and operations, as well as equity-based compensation expense.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
General and administrative expenses	\$ 30,939	\$ 26,931	\$ 93,726	\$ 87,804
Percentage of Total revenue	11.2 %	11.8 %	11.7 %	13.3 %
Dollar change compared to prior year	\$ 4,008		\$ 5,922	
Percentage change compared to prior year	14.9 %		6.7 %	

General and administrative expenses for the thirteen weeks ended September 27, 2023 increased 14.9% to \$30.9 million versus the same period last year. General and administrative expenses for the thirty-nine weeks ended September 27, 2023 increased 6.7% to \$93.7 million versus the same period last year. The increase in General and administrative expenses for the thirteen weeks ended September 27, 2023 was primarily due to increased wages and other team costs as well as investments in marketing and technology initiatives. The increase in General and administrative expenses for the thirty-nine weeks ended September 27, 2023 was primarily due to increased wages and other team costs, professional fees related to a non-recurring matter of \$2.3 million as well as investments in marketing and technology initiatives, partially offset by lower legal expenses compared to the prior year period.

As a percentage of Total revenue, the decreases in General and administrative expenses for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to sales leverage partially offset by the aforementioned items.

Depreciation and Amortization Expense

Depreciation and amortization expense primarily consists of the depreciation of fixed assets, including leasehold improvements and equipment.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Depreciation and amortization expense	\$ 23,130	\$ 18,647	\$ 66,704	\$ 53,589
Percentage of Total revenue	8.4 %	8.2 %	8.3 %	8.1 %
Dollar change compared to prior year	\$ 4,483		\$ 13,115	
Percentage change compared to prior year	24.0 %		24.5 %	

Depreciation and amortization expense for the thirteen weeks ended September 27, 2023 increased 24.0% to \$23.1 million versus the same period last year. Depreciation and amortization expense for the thirty-nine weeks ended September 27, 2023 increased 24.5% to \$66.7 million versus the same period last year. The increases in Depreciation and amortization expense for the thirteen and thirty-nine weeks ended September 27, 2023 were predominantly due to incremental depreciation of capital expenditures related to the opening of 48 new domestic Company-operated Shacks and technology projects placed into service between September 28, 2022 and September 27, 2023.

As a percentage of Total revenue, the increases in Depreciation and amortization expense for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to the aforementioned items.

Pre-Opening Costs

Pre-opening costs consist primarily of occupancy, manager and team member wages, cookware, travel and lodging costs for our opening training team and other supporting team members, marketing expenses, legal fees and inventory costs incurred prior to the opening of a Shack. All such costs incurred prior to the opening of a domestic Company-operated Shack are expensed in the period in which the expense was incurred. Pre-opening costs can fluctuate significantly from period to period, based on the number and timing of domestic Company-operated Shack openings and the specific pre-opening costs incurred for each domestic Company-operated Shack. Additionally, domestic Company-operated Shack openings in new geographic markets may initially experience higher pre-opening costs than our established geographic markets, such as the New York City metropolitan area, where we have greater economies of scale and incur lower travel and lodging costs for our training team.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Pre-opening costs	\$ 4,969	\$ 3,041	\$ 14,103	\$ 8,576
Percentage of Total revenue	1.8 %	1.3 %	1.8 %	1.3 %
Dollar change compared to prior year	\$ 1,928		\$ 5,527	
Percentage change compared to prior year	63.4 %		64.4 %	

Pre-opening costs for the thirteen weeks ended September 27, 2023 increased 63.4% to \$5.0 million versus the same period last year. Pre-opening costs for the thirty-nine weeks ended September 27, 2023 increased 64.4% to \$14.1 million versus the same period last year. The increase in Pre-opening costs for the thirteen weeks ended September 27, 2023 was primarily due to increased wages and benefits for our Shack teams related to the timing of Shack openings throughout the year, legal costs and travel costs, partially offset by a decrease in occupancy expense related to the timing of Shack openings throughout the year, compared to the prior-year period. The increase in Pre-opening costs for the thirty-nine weeks ended September 27, 2023 was primarily due to increases in wages and benefits for our Shack teams and occupancy expense related to the timing of Shack openings throughout the year, legal costs and smallwares compared to the prior-year period.

Impairment and Loss on Disposal of Assets

Impairment and loss on disposal of assets consist of impairment charges related to our long-lived assets, which includes property and equipment, as well as operating and finance lease assets. Additionally, Impairment and loss on disposal of assets includes

the net book value of assets that have been retired which primarily consists of furniture, equipment and fixtures that were replaced in the normal course of business.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Impairment and loss on disposal of assets	\$ 492	\$ 592	\$ 2,098	\$ 1,697
Percentage of Total revenue	0.2 %	0.3 %	0.3 %	0.3 %
Dollar change compared to prior year	\$ (100)		\$ 401	
Percentage change compared to prior year	(16.9)%		23.6 %	

Impairment and loss on disposal of assets for the thirteen weeks ended September 27, 2023 decreased 16.9% to \$0.5 million versus the same period last year. Impairment and loss on disposal of assets for the thirty-nine weeks ended September 27, 2023 increased 23.6% to \$2.1 million versus the same period last year. The decrease in Impairment and loss on disposal of assets for the thirteen weeks ended September 27, 2023 was primarily due to a reduction in abandoned construction projects in the current year compared to the prior year. The increase in Impairment and loss on disposal of assets for the thirty-nine weeks ended September 27, 2023 was primarily due to the number of Shacks maturing in our base as well as disposal of home office assets.

Other Income, Net

Other income, net consists primarily of interest income, adjustments to liabilities under our tax receivable agreement, dividend income and net unrealized and realized gains and losses from marketable securities.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Other income, net	\$ 3,441	\$ 1,482	\$ 9,505	\$ 1,731
Percentage of Total revenue	1.2 %	0.7 %	1.2 %	0.3 %
Dollar change compared to prior year	\$ 1,959		\$ 7,774	
Percentage change compared to prior year	132.2 %		449.1 %	

Other income, net for the thirteen weeks ended September 27, 2023 increased to \$3.4 million from \$1.5 million. Other income, net for the thirty-nine weeks ended September 27, 2023 increased to \$9.5 million from \$1.7 million. The increases in Other income, net for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to an increase in income from cash equivalents of \$1.2 million and \$6.2 million, respectively, from increased interest rates.

Interest Expense

Interest expense generally consists of interest on the current portion of our liabilities under the Tax Receivable Agreement, imputed interest related to our financing equipment leases, amortization of deferred financing costs, interest and fees on our Revolving Credit Facility and amortization of debt issuance costs.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Interest expense	\$ (433)	\$ (475)	\$ (1,241)	\$ (1,145)
Percentage of Total revenue	(0.2)%	(0.2)%	(0.2)%	(0.2)%
Dollar change compared to prior year	\$ 42		\$ (96)	
Percentage change compared to prior year	(8.8)%		8.4 %	

Interest expense for the thirteen weeks ended September 27, 2023 decreased 8.8% to \$0.4 million versus the same period last year. Interest expense for the thirty-nine weeks ended September 27, 2023 increased 8.4% to \$1.2 million versus the same period last year. The decrease in Interest expense for the thirteen weeks ended September 27, 2023 was primarily due to decreased various sales tax audit assessment charges, partially offset by increased finance lease charges. The increase in Interest expense for the thirty-nine weeks ended September 27, 2023 was primarily due to increased finance lease charges.

Income Tax Expense (Benefit)

We are the sole managing member of SSE Holdings and, as a result, consolidate the financial results of SSE Holdings. SSE Holdings is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, SSE Holdings is not subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by SSE Holdings is passed through to and included in the taxable income or loss of its members, including us, on a pro rata basis. We are subject to U.S. federal income taxes, in addition to state and local income taxes with respect to our allocable share of any taxable income or loss of SSE Holdings, as well as any stand-alone income or loss generated by us. We are also subject to withholding taxes in foreign jurisdictions.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Income tax expense (benefit)	\$ 529	\$ (1,508)	\$ 1,743	\$ (5,098)
Percentage of Total revenue	0.2 %	(0.7)%	0.2 %	(0.8)%
Dollar change compared to prior year	\$ 2,037		\$ 6,841	
Percentage change compared to prior year	(135.1)%		(134.2)%	

Our effective income tax rates for the thirteen weeks ended September 27, 2023 and September 28, 2022 were 6.1% and 39.5%, respectively. The decrease was primarily driven by the change in pre-tax income and the impact of permanent differences and discrete expense on pre-tax income for the period compared to pre-tax loss for the same period last year. The Company's ownership interest in SSE Holdings is directly related to its share of the taxable income (loss) of SSE Holdings. Our weighted average ownership interest in SSE Holdings was 93.3% and 93.2% for the thirteen weeks ended September 27, 2023 and September 28, 2022, respectively.

Our effective income tax rates for the thirty-nine weeks ended September 27, 2023 and September 28, 2022 were 11.3% and 25.5%, respectively. The decrease was primarily driven by the change in pre-tax income and the effect of permanent differences, primarily tax credits, on pre-tax income for the period compared to pre-tax loss for the same period last year, as well as a decrease in expense due to tax benefits related to certain windfalls in equity-based compensation. The decrease was partially offset by an increase in the Company's ownership interest in SSE Holdings which increased its share of the taxable income (loss) of SSE Holdings. Our weighted average ownership interest in SSE Holdings was 93.3% and 93.1% for the thirty-nine weeks ended September 27, 2023 and September 28, 2022, respectively.

Net Income (Loss) Attributable to Non-Controlling Interests

We are the sole managing member of SSE Holdings and have the sole voting power in, and control the management of, SSE Holdings. Accordingly, we consolidate the financial results of SSE Holdings and report a non-controlling interest on our Condensed Consolidated Statements of Income (Loss), representing the portion of net income (loss) attributable to the other members of SSE Holdings. The Third Amended and Restated Limited Liability Company Agreement of SSE Holdings provides that holders of LLC Interests may, from time to time, require SSE Holdings to redeem all or a portion of their LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis. In connection with any redemption or exchange, we will receive a corresponding number of LLC Interests, increasing our total ownership interest in SSE Holdings. The weighted average ownership percentages for the applicable reporting periods are used to attribute net income (loss) and other comprehensive income (loss) to Shake Shack Inc. and the non-controlling interest holders.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Net income (loss) attributable to non-controlling interests	\$ 509	\$ (287)	\$ 696	\$ (1,522)
Percentage of Total revenue	0.2 %	(0.1)%	0.1 %	(0.2)%

Net income (loss) attributable to non-controlling interests for the thirteen weeks ended September 27, 2023 improved to income of \$0.5 million from a loss of \$0.3 million in the same period last year. Net income (loss) attributable to non-controlling interests for the thirty-nine weeks ended September 27, 2023 improved to income of \$0.7 million from a loss of \$1.5 million in the same period last year. The improvements in Net income (loss) attributable to non-controlling interests for the thirteen and thirty-nine weeks ended September 27, 2023 were primarily due to an increase in net results compared to the same periods last year, partially offset by a decrease in the non-controlling interest holders' weighted average ownership, which was 6.7% for the thirteen

and thirty-nine weeks ended September 27, 2023 and 6.8% and 6.9%, respectively for the thirteen and thirty-nine weeks ended September 28, 2022.

NON-GAAP FINANCIAL MEASURES

To supplement the Condensed Consolidated Financial Statements, which are prepared and presented in accordance with accounting principles generally accepted in the United States of America ("GAAP"), we use the following non-GAAP financial measures: Shack-level operating profit, Shack-level operating profit margin, EBITDA, adjusted EBITDA, adjusted EBITDA margin, adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) per fully exchanged and diluted share (collectively the "non-GAAP financial measures").

Shack-Level Operating Profit

Shack-level operating profit, also referred to as restaurant profit, is defined as Shack sales less Shack-level operating expenses including Food and paper costs, Labor and related expenses, Other operating expenses and Occupancy and related expenses.

How This Measure Is Useful

When used in conjunction with GAAP financial measures, Shack-level operating profit and Shack-level operating profit margin are supplemental measures of operating performance that we believe are useful measures to evaluate the performance and profitability of our Shacks. Additionally, Shack-level operating profit and Shack-level operating profit margin are key metrics used internally by our management to develop internal budgets and forecasts, as well as assess the performance of our Shacks relative to budget and against prior periods. It is also used to evaluate team member compensation as it serves as a metric in certain of our performance-based team member bonus arrangements. We believe presentation of Shack-level operating profit and Shack-level operating profit margin provides investors with a supplemental view of our operating performance that can provide meaningful insights to the underlying operating performance of our Shacks, as these measures depict the operating results that are directly impacted by our Shacks and exclude items that may not be indicative of, or are unrelated to, the ongoing operations of our Shacks. It may also assist investors to evaluate our performance relative to peers of various sizes and maturities and provides greater transparency with respect to how our management evaluates our business, as well as our financial and operational decision-making.

Limitations of the Usefulness of this Measure

Shack-level operating profit and Shack-level operating profit margin may differ from similarly titled measures used by other companies due to different methods of calculation. Presentation of Shack-level operating profit and Shack-level operating profit margin is not intended to be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP. Shack-level operating profit excludes certain costs, such as General and administrative expenses and Pre-opening costs, which are considered normal, recurring cash operating expenses and are essential to support the operation and development of our Shacks. Therefore, this measure may not provide a complete understanding of the operating results of our Company as a whole and Shack-level operating profit and Shack-level operating profit margin should be reviewed in conjunction with our GAAP financial results. A reconciliation of Shack-level operating profit to Income (loss) from Operations, the most directly comparable GAAP financial measure, is as follows.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Income (loss) from operations	\$ 5,657	\$ (4,826)	\$ 7,216	\$ (20,580)
Less:				
Licensing revenue	11,227	8,313	30,246	22,611
Add:				
General and administrative expenses ⁽¹⁾	30,939	26,931	93,726	87,804
Depreciation and amortization expense	23,130	18,647	66,704	53,589
Pre-opening costs	4,969	3,041	14,103	8,576
Impairment and loss on disposal of assets	492	592	2,098	1,697
Shack-level operating profit	\$ 53,960	\$ 36,072	\$ 153,601	\$ 108,475
Total revenue	\$ 276,207	\$ 227,814	\$ 801,290	\$ 661,957
Less: Licensing revenue	11,227	8,313	30,246	22,611
Shack sales	\$ 264,980	\$ 219,501	\$ 771,044	\$ 639,346
Shack-level operating profit margin ^(2,3)	20.4 %	16.4 %	19.9 %	17.0 %

(1) The Company has elected to reclassify certain marketing expenses from Other operating expenses to General and administrative expenses in the accompanying Condensed Consolidated Financial Statements for prior periods to be comparable with the classification for the thirteen and thirty-nine weeks ended September 27, 2023.

(2) For the thirty-nine weeks ended September 28, 2022, Shack-level operating profit margin includes a \$1,281 cumulative catch-up adjustment for gift card breakage income, recognized in Shack sales.

(3) As a percentage of Shack sales.

EBITDA and Adjusted EBITDA

EBITDA is defined as Net income (loss) before Interest expense (net of interest income), Income tax expense (benefit) and Depreciation and amortization expense. Adjusted EBITDA is defined as EBITDA (as defined above) excluding equity-based compensation expense, Impairment and loss on disposal of assets, amortization of cloud-based software implementation costs, as well as certain non-recurring items that we do not believe directly reflect our core operations and may not be indicative of our recurring business operations.

In the first quarter of 2023, the Company revised its definition of Adjusted EBITDA to exclude deferred lease costs and executive transition costs as adjustments to the measure. The Company believes excluding both of these items improves the usefulness of Adjusted EBITDA as these items are characteristic of the Company's ongoing operations and such presentation is consistent with other companies in the restaurant industry. Previously reported periods have been revised to conform to the current period presentation.

How These Measures Are Useful

When used in conjunction with GAAP financial measures, EBITDA and adjusted EBITDA are supplemental measures of operating performance that we believe are useful measures to facilitate comparisons to historical performance and competitors' operating results. Adjusted EBITDA is a key metric used internally by our management to develop internal budgets and forecasts and also serves as a metric in our performance-based equity incentive programs and certain of our bonus arrangements. We believe presentation of EBITDA and adjusted EBITDA provides investors with a supplemental view of our operating performance that facilitates analysis and comparisons of our ongoing business operations because they exclude items that may not be indicative of our ongoing operating performance.

Limitations of the Usefulness of These Measures

EBITDA and adjusted EBITDA may differ from similarly titled measures used by other companies due to different methods of calculation. Presentation of EBITDA and adjusted EBITDA is not intended to be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP. EBITDA and adjusted EBITDA exclude certain normal recurring expenses. Therefore, these measures may not provide a complete understanding of our performance and should be reviewed in conjunction with our GAAP financial measures. A reconciliation of EBITDA and adjusted EBITDA to Net income (loss), the most directly comparable GAAP measure, is as follows.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(dollar amounts in thousands)</i>				
Net income (loss)	\$ 8,136	\$ (2,311)	\$ 13,737	\$ (14,896)
Depreciation and amortization expense	23,130	18,647	66,704	53,589
Interest expense, net	(845)	475	(164)	1,145
Income tax expense (benefit)	529	(1,508)	1,743	(5,098)
EBITDA	30,950	15,303	82,020	34,740
Equity-based compensation	3,691	3,515	11,425	10,155
Amortization of cloud-based software implementation costs	440	397	1,320	1,080
Impairment and loss on disposal of assets	492	592	2,098	1,697
Legal settlements	—	—	1,004	6,750
Severance	211	—	211	—
Gift card breakage cumulative catch-up adjustment	—	—	—	(1,281)
Other ⁽¹⁾	—	—	2,321	—
Adjusted EBITDA	\$ 35,784	\$ 19,807	\$ 100,399	\$ 53,141
Adjusted EBITDA margin⁽²⁾	13.0 %	8.7 %	12.5 %	8.0 %

(1) Related to professional fees for a non-recurring matter.

(2) Calculated as a percentage of Total revenue, which was \$276.2 million and \$801.3 million for the thirteen and thirty-nine weeks ended September 27, 2023, respectively, and \$227.8 million and \$662.0 million for the thirteen and thirty-nine weeks ended September 28, 2022, respectively.

Adjusted Pro Forma Net Income (Loss) and Adjusted Pro Forma Earnings (Loss) Per Fully Exchanged and Diluted Share

Adjusted pro forma net income (loss) represents Net income (loss) attributable to Shake Shack Inc. assuming the full exchange of all outstanding SSE Holdings, LLC membership interests ("LLC Interests") for shares of Class A common stock, adjusted for certain non-recurring items that we do not believe are directly related to our core operations and may not be indicative of our recurring business operations. Adjusted pro forma earnings (loss) per fully exchanged and diluted share is calculated by dividing adjusted pro forma net income (loss) by the weighted average shares of Class A common stock outstanding, assuming the full exchange of all outstanding LLC Interests, after giving effect to the dilutive effect of outstanding equity-based awards.

In the first quarter of 2023, the Company revised its definition of Adjusted Pro Forma Net Income to exclude executive transition costs as an adjustment to the measure. Previously reported periods have been revised to conform to the current period presentation. See "EBITDA and Adjusted EBITDA" above for additional information.

How These Measures Are Useful

When used in conjunction with GAAP financial measures, adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) per fully exchanged and diluted share are supplemental measures of operating performance that we believe are useful measures to evaluate our performance period over period and relative to our competitors. By assuming the full exchange of all outstanding LLC Interests, we believe these measures facilitate comparisons with other companies that have different organizational and tax structures, as well as comparisons period over period because it eliminates the effect of any changes in Net income (loss) attributable to Shake Shack Inc. driven by increases in our ownership of SSE Holdings, which are unrelated to

our operating performance, and excludes items that are non-recurring or may not be indicative of our ongoing operating performance.

Limitations of the Usefulness of These Measures

Adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) per fully exchanged and diluted share may differ from similarly titled measures used by other companies due to different methods of calculation. Presentation of adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) per fully exchanged and diluted share should not be considered alternatives to Net income (loss) and earnings (loss) per share, as determined under GAAP. While these measures are useful in evaluating our performance, they do not account for the earnings attributable to the non-controlling interest holders and therefore do not provide a complete understanding of the Net income (loss) attributable to Shake Shack Inc. Adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) per fully exchanged and diluted share should be evaluated in conjunction with our GAAP financial results. A reconciliation of adjusted pro forma net income (loss) to Net income (loss) attributable to Shake Shack Inc., the most directly comparable GAAP measure, and the computation of adjusted pro forma earnings (loss) per fully exchanged and diluted share are set forth below.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
<i>(in thousands, except per share amounts)</i>				
Numerator:				
Net income (loss) attributable to Shake Shack Inc.	\$ 7,627	\$ (2,024)	\$ 13,041	\$ (13,374)
Adjustments:				
Reallocation of Net income (loss) attributable to non-controlling interests from the assumed exchange of LLC Interests ⁽¹⁾	509	(287)	696	(1,522)
Legal settlements	—	—	1,004	6,750
Gift card breakage cumulative catch-up adjustment	—	—	—	(1,281)
Severance	211	—	211	—
Other ⁽²⁾	—	—	2,321	—
Tax impact of above adjustments ⁽³⁾	(810)	(11)	(2,146)	(922)
Adjusted pro forma net income (loss)	\$ 7,537	\$ (2,322)	\$ 15,127	\$ (10,349)
Denominator:				
Weighted average shares of Class A common stock outstanding—diluted	43,978	39,274	43,884	39,221
Adjustments:				
Assumed exchange of LLC Interests for shares of Class A common stock ⁽¹⁾	—	2,871	—	2,899
Adjusted pro forma fully exchanged weighted average shares of Class A common stock outstanding—diluted	43,978	42,145	43,884	42,120
Adjusted pro forma earnings (loss) per fully exchanged share—diluted	\$ 0.17	\$ (0.06)	\$ 0.34	\$ (0.25)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022	September 27 2023	September 28 2022
Earnings (loss) per share of Class A common stock—diluted	\$ 0.19	\$ (0.05)	\$ 0.31	\$ (0.34)
Assumed exchange of LLC Interests for shares of Class A common stock ⁽¹⁾	—	—	—	(0.01)
Non-GAAP adjustments ⁽⁴⁾	(0.02)	(0.01)	0.03	0.10
Adjusted pro forma earnings (loss) per fully exchanged share—diluted	\$ 0.17	\$ (0.06)	\$ 0.34	\$ (0.25)

(1) Assumes the exchange of all outstanding LLC Interests for shares of Class A common stock, resulting in the elimination of the non-controlling interest and recognition of the net income (loss) attributable to non-controlling interests. Refer to Note 11, Earnings (Loss) per Share, in the accompanying Condensed Consolidated Financial Statements, for additional information.

(2) Related to professional fees for a non-recurring matter.

(3) Represents the tax effect of the aforementioned adjustments and pro forma adjustments to reflect corporate income taxes at assumed effective tax rates of 15.1% and 20.5% for the thirteen and thirty-nine weeks ended September 27, 2023, respectively, and 39.2% and 28.8% for the thirteen and thirty-nine weeks ended September 28, 2022, respectively. Amounts include provisions for U.S. federal income taxes, certain LLC entity-level taxes and foreign withholding taxes, assuming the highest statutory rates apportioned to each applicable state, local and foreign jurisdiction.

(4) Represents the per share impact of non-GAAP adjustments for each period. Refer to the reconciliation of Adjusted Pro Forma Net Income (Loss) above, for additional information.

LIQUIDITY AND CAPITAL RESOURCES

Sources and Uses of Cash

Our primary sources of liquidity are cash from operations, cash and cash equivalents on hand, and availability under our Revolving Credit Facility. As of September 27, 2023, we maintained a Cash and cash equivalents balance of \$190.0 million. In March 2021, we issued 0% Convertible Senior Notes ("Convertible Notes"), and received \$243.8 million of proceeds, net of discounts. Refer to Note 6, Debt, in the accompanying Condensed Consolidated Financial Statements, for additional information.

On June 7, 2021, we filed a Registration Statement on Form S-3 with the SEC which permits us to issue a combination of securities described in the prospectus in one or more offerings from time to time. To date, we have not experienced difficulty accessing the capital markets; however, future volatility in the capital markets may affect our ability to access those markets or increase the costs associated with issuing debt or equity instruments.

Our primary requirements for liquidity are to fund our working capital needs, operating and finance lease obligations, capital expenditures and general corporate needs. Our requirements for working capital are generally not significant because our guests pay for their food and beverage purchases in cash or on debit or credit cards at the time of the sale and we are able to sell many of our inventory items before payment is due to the supplier of such items. Our ongoing capital expenditures are principally related to opening new Shacks, existing Shack capital investments (both for remodels and maintenance), as well as investments in our corporate technology infrastructure to support our home office, Shake Shack locations, and digital strategy.

In addition, we are obligated to make payments to certain members of SSE Holdings under the Tax Receivable Agreement. As of September 27, 2023, such obligations totaled \$235.6 million. Amounts payable under the Tax Receivable Agreement are contingent upon, among other things, (i) generation of future taxable income over the term of the Tax Receivable Agreement and (ii) future changes in tax laws. If we do not generate sufficient taxable income in the aggregate over the term of the Tax Receivable Agreement to utilize the tax benefits, then we would not be required to make the related payments under the Tax Receivable Agreement. Although the amount of any payments that must be made under the Tax Receivable Agreement may be significant, the timing of these payments will vary and will generally be limited to one payment per member per year. The amount of such payments are also limited to the extent we utilize the related deferred tax assets. The payments that we are required to make will generally reduce the amount of overall cash flow that might have otherwise been available to us or to SSE Holdings, but we expect the cash tax savings we will realize from the utilization of the related deferred tax assets to fund the required payments.

We believe our existing cash and cash equivalents balances and cash from operations will be sufficient to fund our operating and finance lease obligations, capital expenditures, Tax Receivable Agreement obligations and working capital needs for at least the next 12 months and the foreseeable future.

Summary of Cash Flows

The following table presents a summary of our cash flows from operating, investing and financing activities.

	Thirty-Nine Weeks Ended	
	September 27 2023	September 28 2022
<i>(in thousands)</i>		
Net cash provided by operating activities	\$ 90,591	\$ 54,335
Net cash used in investing activities	(126,264)	(95,212)
Net cash used in financing activities	(4,825)	(4,529)
Effect of exchange rate changes on cash and cash equivalents	(3)	(2)
Net decrease in Cash and cash equivalents	(40,501)	(45,408)
Cash and cash equivalents at beginning of period	230,521	302,406
Cash and cash equivalents at end of period	\$ 190,020	\$ 256,998

Operating Activities

For the thirty-nine weeks ended September 27, 2023, net cash provided by operating activities was \$90.6 million compared to \$54.3 million for the thirty-nine weeks ended September 28, 2022, an increase of \$36.3 million. The increase was primarily driven by a \$43.4 million improvement in net results after excluding non-cash charges, partially offset by changes in working capital of \$7.2 million. The changes in working capital included an increase in payments on lease liabilities, net of tenant improvement receipts and the timing and payments of legal settlements, partially offset by a decrease in the construction in progress accruals due to the timing of shack openings this period compared to the same period last year.

Investing Activities

For the thirty-nine weeks ended September 27, 2023, net cash used in investing activities was \$126.3 million compared to \$95.2 million for the thirty-nine weeks ended September 28, 2022, an increase of \$31.1 million. This increase was primarily due to a net increase in marketable securities activity as a result of the purchase of held-to-maturity debt securities of \$94.0 million partially offset by the sale of equity securities of \$81.5 million, and an increase of \$18.2 million in capital expenditures to support our real estate development.

Financing Activities

For the thirty-nine weeks ended September 27, 2023, net cash used in financing activities was \$4.8 million compared to \$4.5 million for the thirty-nine weeks ended September 28, 2022, an increase of \$0.3 million. This increase was primarily due to an increase in withholding taxes related to the vesting of equity awards, partially offset by an increase in proceeds from stock option exercises and a decrease in distributions paid to non-controlling interest holders.

Convertible Notes

In March 2021, we issued \$250.0 million aggregate principal amount of 0% Convertible Senior Notes due 2028 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933. The Convertible Notes will mature on March 1, 2028, unless earlier converted, redeemed or repurchased in certain circumstances. Upon conversion, we pay or deliver, as the case may be, cash, shares of Class A common stock or a combination of cash and shares of Class A common stock, at our election. Refer to Note 6, Debt, in the accompanying Condensed Consolidated Financial Statements, for additional information.

Revolving Credit Facility

In August 2019, we entered into a Revolving Credit Facility, which matures in March 2026 and permits borrowings up to \$50.0 million, with the ability to increase available borrowings up to an additional \$100.0 million, subject to satisfaction of certain conditions. The Revolving Credit Facility also permits the issuance of letters of credit upon our request of up to \$15.0 million.

During the thirteen weeks ended September 27, 2023, the Company entered into the fourth amendment to the Revolving Credit Facility ("Fourth Amendment"), which, among other things, modifies the benchmark interest rate to either: (i) the base rate plus applicable margin ranging from 0.0% to 1.5% or (ii) the Secured Overnight Financing Rate ("SOFR") plus applicable margin ranging from 1.0% to 2.5%, in each case depending on the net lease adjusted leverage ratio. As of September 27, 2023 and December 28, 2022, no amounts were outstanding under the Revolving Credit Facility.

The obligations under the Revolving Credit Facility are secured by a first-priority security interest in substantially all of the assets of SSE Holdings and the guarantors. The obligations under the Revolving Credit Facility are guaranteed by each of SSE Holdings' direct and indirect subsidiaries, with certain exceptions.

The Revolving Credit Facility requires us to comply with maximum net lease adjusted leverage and minimum fixed charge coverage ratios, as well as other customary affirmative and negative covenants. As of September 27, 2023, we were in compliance with all covenants.

Contractual Obligations

Material contractual obligations arising in the normal course of business primarily consist of operating and finance lease obligations, long-term debt, liabilities under the Tax Receivable Agreement and purchase obligations. The timing and nature of these commitments are expected to have an impact on our liquidity and capital requirements in future periods. Refer to Note 6,

Debt and Note 7, Leases, in the accompanying Condensed Consolidated Financial Statements included in Part I, Item 1 for additional information relating to our long-term debt and operating and financing leases.

Liabilities under the Tax Receivable Agreement include amounts to be paid to the non-controlling interest holders, assuming we will have sufficient taxable income over the term of the Tax Receivable Agreement to utilize the related tax benefits. Refer to Note 10, Income Taxes, and Note 13, Commitments and Contingencies, in the accompanying Condensed Consolidated Financial Statements included in Part I, Item 1, for additional information relating to our Tax Receivable Agreement and related liabilities.

Purchase obligations include all legally binding contracts, including commitments for the purchase, construction or remodeling of real estate and facilities, firm minimum commitments for inventory purchases, equipment purchases, marketing-related contracts, software acquisition/license commitments and service contracts. The majority of our purchase obligations are due within the next 12 months.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our discussion and analysis of our consolidated financial condition and results of operations is based upon the accompanying Condensed Consolidated Financial Statements and notes thereto, which have been prepared in accordance with GAAP. The preparation of the Condensed Consolidated Financial Statements requires us to make estimates, judgments and assumptions, which we believe to be reasonable, based on the information available. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. Variances in the estimates or assumptions used to actual experience could yield materially different accounting results. On an ongoing basis, we evaluate the continued appropriateness of our accounting policies and resulting estimates to make adjustments we consider appropriate under the facts and circumstances. There have been no significant changes to our critical accounting policies as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 28, 2022.

Recently Issued Accounting Pronouncements

Refer to Note 2, Summary of Significant Accounting Policies under Part I, Item 1 of this Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

There have been no material changes to our exposure to market risks as described in Part II, Item 7A of our Annual Report on Form 10-K for the fiscal year ended December 28, 2022.

Item 4. Controls and Procedures.

DISCLOSURE CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of such date. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There were no changes to our internal control over financial reporting that occurred during the quarter ended September 27, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

The information required by this Item is incorporated by reference to Part I, Item 1, Note 13, Commitments and Contingencies.

Item 1A. Risk Factors.

There have been no material changes to the risk factors disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 2022.

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

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 5. Other Information.

Pursuant to Item 408(a) of Regulation S-K, our directors and officers (as defined in Rule 16a-1(f) under the Exchange Act) adopted or terminated a “Rule 10b5-1 trading arrangement” during the thirteen weeks ended September 27, 2023 as follows:

Name	Position	Action	Adoption Date	Expiration Date	Aggregate Numbers of Class A Common Stock to be Purchased/Sold
Daniel Meyer	Chairman of the Board of Directors	Adoption	8/8/2023	4/30/2024	100,000 shares to be sold

Other than as disclosed above, no other officer or director adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

Item 6. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation of Shake Shack Inc., effective February 4, 2015	8-K	3.1	2/10/2015	
3.2	Second Amended and Restated Bylaws of Shake Shack Inc., dated October 1, 2019	8-K	3.1	10/4/2019	
4.1	Form of Class A Common Stock Certificate	S-1/A	4.1	1/28/2015	
10.5	Letter Agreement by and between Charles J. Chapman III and Shake Shack Inc., executed July 1, 2023	8-K	10.1	7/10/2023	
10.6	Separation Agreement by and between Zachary Koff and Shake Shack Enterprises, LLC., executed August 2, 2023	8-K	10.1	8/3/2023	
10.7	Fourth Amendment to Credit Agreement, dated as of June 29, 2023, by and among SSE Holdings, LLC, the Guarantors party hereto, the Lenders party hereto, and JPMorgan Chase Bank, National Association, as Administrative agent	10-Q	10.7	8/4/2023	
31.1	Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				*
31.2	Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				*
32	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				#
101.INS	XBRL Instance Document - the instance document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL document				*
101.SCH	XBRL Taxonomy Extension Schema Document				*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				*
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				*

Furnished herewith.

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.

Shake Shack Inc.

(Registrant)

Date: November 3, 2023

By: /s/ Randy Garutti

Randy Garutti

Chief Executive Officer

(Principal Executive Officer and Duly Authorized Officer)

Date: November 3, 2023

By: /s/ Katherine I. Fogertey

Katherine I. Fogertey

Chief Financial Officer

(Principal Financial Officer and Duly Authorized Officer)

Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Randy Garutti, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 27, 2023 of Shake Shack Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 3, 2023

/s/ Randy Garutti

Randy Garutti
Chief Executive Officer

Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Katherine I. Fogertey, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 27, 2023 of Shake Shack Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 3, 2023

/s/ Katherine I. Fogertey
Katherine I. Fogertey
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Shake Shack Inc. (the "Company"), for the quarterly period ended September 27, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 3, 2023

/s/ Randy Garutti

Randy Garutti
Chief Executive Officer

Date: November 3, 2023

/s/ Katherine I. Fogertey

Katherine I. Fogertey
Chief Financial Officer