

**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 28, 2022

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: 001-36556

EL POLLO LOCO HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

20-3563182
(I.R.S. Employer Identification No.)

3535 Harbor Blvd., Suite 100, Costa Mesa, California
(Address of principal executive offices)

92626
(Zip Code)

(714) 599-5000

(Registrant's telephone number, including area code)

N/A

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	LOCO	The Nasdaq Stock Market LLC

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, a 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 Exchange Act). Yes No

As of October 28, 2022, there were 37,049,182 shares of the issuer's common stock outstanding.

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

EL POLLO LOCO HOLDINGS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)
(Amounts in thousands, except share data)

	September 28, 2022	December 29, 2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 19,275	\$ 30,046
Accounts and other receivables, net	14,946	13,407
Inventories	2,209	2,318
Prepaid expenses and other current assets	2,977	3,732
Income tax receivable	570	—
Total current assets	<u>39,977</u>	<u>49,503</u>
Property and equipment, net	78,107	75,668
Property and equipment held under finance lease, net	1,565	1,635
Property and equipment held under operating leases, net ("ROU asset")	167,985	171,981
Goodwill	248,674	248,674
Trademarks	61,888	61,888
Deferred tax assets	1,253	2,245
Other assets	2,920	2,192
Total assets	<u>\$ 602,369</u>	<u>\$ 613,786</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Current portion of obligations under finance leases	\$ 109	\$ 143
Current portion of obligations under operating leases	20,063	19,959
Accounts payable	12,486	10,626
Accrued salaries and vacation	6,975	11,539
Accrued insurance	11,286	11,193
Accrued income taxes payable	—	889
Current portion of income tax receivable agreement payable	417	437
Other accrued expenses and current liabilities	18,930	19,796
Total current liabilities	<u>70,266</u>	<u>74,582</u>
Revolver loan	20,000	40,000
Obligations under finance leases, net of current portion	1,653	1,712
Obligations under operating leases, net of current portion	167,562	171,651
Deferred taxes	6,739	5,464
Income tax receivable agreement payable, net of current portion	776	1,101
Other noncurrent liabilities	5,862	8,653
Total liabilities	<u>272,858</u>	<u>303,163</u>
Commitments and contingencies (Note 7)		
Stockholders' equity		
Preferred stock, \$0.01 par value, 100,000,000 shares authorized; none issued or outstanding	—	—
Common stock, \$0.01 par value, 200,000,000 shares authorized; 37,053,405 and 36,601,648 shares issued and outstanding as September 28, 2022 and December 29, 2021, respectively	370	365
Additional paid-in-capital	347,079	342,941
Accumulated deficit	(18,128)	(32,393)
Accumulated other comprehensive income (loss)	190	(290)
Total stockholders' equity	<u>329,511</u>	<u>310,623</u>
Total liabilities and stockholders' equity	<u>\$ 602,369</u>	<u>\$ 613,786</u>

See notes to condensed consolidated financial statements (unaudited).

EL POLLO LOCO HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME (UNAUDITED)
(Amounts in thousands, except share data)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Revenue				
Company-operated restaurant revenue	\$ 103,174	\$ 99,986	\$ 303,585	\$ 301,117
Franchise revenue	9,543	8,918	28,862	24,919
Franchise advertising fee revenue	7,161	6,796	21,590	19,370
Total revenue	119,878	115,700	354,037	345,406
Cost of operations				
Food and paper cost	30,163	26,698	89,586	78,971
Labor and related expenses	33,279	27,802	98,966	90,060
Occupancy and other operating expenses	26,920	25,108	76,597	74,288
Company restaurant expenses	90,362	79,608	265,149	243,319
General and administrative expenses	9,855	9,357	29,488	30,354
Franchise expenses	9,027	8,545	27,315	24,457
Depreciation and amortization	3,530	3,685	10,745	11,540
Loss on disposal of assets	21	83	129	194
Loss on disposition of restaurants	—	10	—	1,534
Impairment and closed-store reserves	219	167	598	1,091
Total expenses	113,014	101,455	333,424	312,489
Income from operations	6,864	14,245	20,613	32,917
Interest expense, net	108	449	957	1,399
Income tax receivable agreement income	(29)	(19)	(345)	(69)
Income before provision for income taxes	6,785	13,815	20,001	31,587
Provision for income taxes	1,776	3,654	5,736	8,644
Net income	\$ 5,009	\$ 10,161	\$ 14,265	\$ 22,943
Net income per share				
Basic	\$ 0.14	\$ 0.28	\$ 0.39	\$ 0.64
Diluted	\$ 0.14	\$ 0.28	\$ 0.39	\$ 0.63
Weighted-average shares used in computing net income per share				
Basic	36,402,899	36,067,754	36,329,938	35,930,246
Diluted	36,507,050	36,525,424	36,491,624	36,457,110

See notes to condensed consolidated financial statements (unaudited).

EL POLLO LOCO HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)
(Amounts in thousands)

	<u>Thirteen Weeks Ended</u>		<u>Thirty-Nine Weeks Ended</u>	
	<u>September 28, 2022</u>	<u>September 29, 2021</u>	<u>September 28, 2022</u>	<u>September 29, 2021</u>
Net income	\$ 5,009	\$ 10,161	\$ 14,265	\$ 22,943
Other comprehensive income (loss)				
Changes in derivative instruments				
Unrealized net gains (losses) arising during the period from interest rate swap	43	(32)	974	44
Reclassifications of (gains) losses into net income	(369)	133	(197)	367
Income tax expense	—	(27)	(297)	(111)
Other comprehensive (loss) income, net of taxes	<u>(326)</u>	<u>74</u>	<u>480</u>	<u>300</u>
Comprehensive income	<u>\$ 4,683</u>	<u>\$ 10,235</u>	<u>\$ 14,745</u>	<u>\$ 23,243</u>

See notes to condensed consolidated financial statements (unaudited).

EL POLLO LOCO HOLDINGS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (UNAUDITED)

(Amounts in thousands, except share data)

	Thirteen Weeks Ended September 28, 2022					
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount				
Balance, June 29, 2022	37,002,513	\$ 369	\$ 346,095	\$ (23,137)	\$ 516	\$ 323,843
Stock-based compensation	—	—	1,009	—	—	1,009
Issuance of common stock related to restricted shares	53,476	1	(1)	—	—	—
Shares repurchased for employee tax withholdings	(2,584)	—	(24)	—	—	(24)
Other comprehensive income, net of tax	—	—	—	—	(326)	(326)
Net income	—	—	—	5,009	—	5,009
Balance, September 28, 2022	<u>37,053,405</u>	<u>\$ 370</u>	<u>\$ 347,079</u>	<u>\$ (18,128)</u>	<u>\$ 190</u>	<u>\$ 329,511</u>

	Thirteen Weeks Ended September 29, 2021					
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance, June 30, 2021	36,637,761	\$ 367	\$ 341,358	\$ (48,732)	\$ (607)	292,386
Stock-based compensation	—	—	1,042	—	—	1,042
Issuance of common stock upon exercise of stock options, net	41,216	—	300	—	—	300
Shares repurchased for employee tax withholdings	(2,446)	—	(45)	—	—	(45)
Forfeiture of common stock related to restricted shares	(5,084)	(1)	1	—	—	—
Other comprehensive income, net of tax	—	—	—	—	74	74
Net income	—	—	—	10,161	—	10,161
Balance, September 29, 2021	<u>36,671,447</u>	<u>\$ 366</u>	<u>\$ 342,656</u>	<u>\$ (38,571)</u>	<u>\$ (533)</u>	<u>\$ 303,918</u>

Thirty-Nine Weeks Ended September 28, 2022						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' Equity
	Shares	Amount				
Balance, December 29, 2021	36,601,648	\$ 365	\$ 342,941	\$ (32,393)	\$ (290)	\$ 310,623
Stock-based compensation	—	—	2,806	—	—	2,806
Issuance of common stock related to restricted shares	352,114	4	(4)	—	—	—
Issuance of common stock upon exercise of stock options, net	150,475	1	1,579	—	—	1,580
Shares repurchased for employee tax withholdings	(22,901)	—	(243)	—	—	(243)
Forfeiture of common stock related to restricted shares	(27,931)	—	—	—	—	—
Other comprehensive income, net of tax	—	—	—	—	480	480
Net income	—	—	—	14,265	—	14,265
Balance, September 28, 2022	<u>37,053,405</u>	<u>\$ 370</u>	<u>\$ 347,079</u>	<u>\$ (18,128)</u>	<u>\$ 190</u>	<u>\$ 329,511</u>
Thirty-Nine Weeks Ended September 29, 2021						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' Equity
	Shares	Amount				
Balance, December 30, 2020	36,423,505	\$ 364	\$ 339,561	\$ (61,514)	\$ (833)	\$ 277,578
Stock-based compensation	—	—	2,936	—	—	2,936
Issuance of common stock related to restricted shares	206,098	2	(2)	—	—	—
Issuance of common stock upon exercise of stock options, net	132,760	1	865	—	—	866
Shares repurchased for employee tax withholdings	(40,384)	—	(705)	—	—	(705)
Forfeiture of common stock related to restricted shares	(50,532)	(1)	1	—	—	—
Other comprehensive income, net of tax	—	—	—	—	300	300
Net income	—	—	—	22,943	—	22,943
Balance, September 29, 2021	<u>36,671,447</u>	<u>\$ 366</u>	<u>\$ 342,656</u>	<u>\$ (38,571)</u>	<u>\$ (533)</u>	<u>\$ 303,918</u>

See notes to condensed consolidated financial statements (unaudited).

EL POLLO LOCO HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
(Amounts in thousands)

	Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021
Cash flows from operating activities:		
Net income	\$ 14,265	\$ 22,943
Adjustments to reconcile net income to net cash flows provided by provided by operating activities:		
Depreciation and amortization	10,745	11,540
Stock-based compensation expense	2,806	2,936
Income tax receivable agreement income	(345)	(69)
Loss on disposition of restaurants	—	1,534
Loss on disposal of assets	129	194
Impairment of property and equipment	392	701
Amortization of deferred financing costs	292	188
Deferred income taxes, net	2,351	2,026
Changes in operating assets and liabilities:		
Accounts and other receivables	(1,539)	(1,547)
Inventories	108	(27)
Prepaid expenses and other current assets	755	825
Income taxes receivable	(1,459)	3,616
Other assets	(150)	289
Accounts payable	1,285	(507)
Accrued salaries and vacation	(4,564)	(2,116)
Accrued insurance	93	615
Other accrued expenses and liabilities	(3,257)	(809)
Net cash flows provided by operating activities	<u>21,907</u>	<u>42,332</u>
Cash flows from investing activities:		
Proceeds from disposition of restaurants	—	4,556
Purchase of property and equipment	(13,022)	(12,699)
Net cash flows used in investing activities	<u>(13,022)</u>	<u>(8,143)</u>
Cash flows from financing activities:		
Payments on revolver and swingline loan	(20,000)	(22,800)
Minimum tax withholdings related to net share settlements	(243)	(705)
Proceeds from issuance of common stock upon exercise of stock options, net of expenses	1,580	866
Payment of obligations under finance leases	(124)	(100)
Deferred financing costs for revolver loan	(869)	—
Net cash flows used in financing activities	<u>(19,656)</u>	<u>(22,739)</u>
Increase (decrease) in cash and cash equivalents	<u>(10,771)</u>	<u>11,450</u>
Cash and cash equivalents, beginning of period	<u>30,046</u>	<u>13,219</u>
Cash and cash equivalents, end of period	<u>\$ 19,275</u>	<u>\$ 24,669</u>

	Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021
Supplemental cash flow information		
Cash paid during the period for interest	\$ 819	\$ 828
Cash paid during the period for income taxes	\$ 5,100	\$ 4,088
Unpaid purchases of property and equipment	\$ 3,030	\$ 2,259

See notes to condensed consolidated financial statements (unaudited).

EL POLLO LOCO HOLDINGS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Overview

El Pollo Loco Holdings, Inc. (“Holdings”) is a Delaware corporation headquartered in Costa Mesa, California. Holdings and its direct and indirect subsidiaries are collectively referred to herein as the “Company.” The Company’s activities are conducted principally through its indirect wholly-owned subsidiary, El Pollo Loco, Inc. (“EPL”), which develops, franchises, licenses, and operates quick-service restaurants under the name El Pollo Loco® and operates under one operating segment. At September 28, 2022, the Company operated 190 and franchised 297 El Pollo Loco restaurants.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) for interim financial statements and pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all adjustments consisting of normal recurring adjustments necessary for a fair statement of the Company’s condensed consolidated financial position and results of operations and cash flows for the periods presented. Interim results of operations are not necessarily indicative of the results that may be achieved for the full year. The condensed consolidated financial statements and related notes do not include all information and footnotes required by GAAP for annual reports. This quarterly report should be read in conjunction with the consolidated financial statements included in the Company’s annual report on Form 10-K for the year ended December 29, 2021.

The Company uses a 52- or 53-week fiscal year ending on the last Wednesday of the calendar year. In a 52-week fiscal year, each quarter includes 13 weeks of operations; in a 53-week fiscal year, the first, second and third quarters each include 13 weeks of operations, and the fourth quarter includes 14 weeks of operations. Every six or seven years, a 53-week fiscal year occurs. Fiscal 2022 and 2021 are both 52-week years, ending on December 28, 2022 and December 29, 2021, respectively. Revenues, expenses, and other financial and operational figures may be elevated in a 53-week year.

Holdings has no material assets or operations. Holdings and Holdings’ direct subsidiary, EPL Intermediate, Inc. (“Intermediate”), guarantee EPL’s 2022 Revolver (as defined below) on a full and unconditional basis (see Note 4, “Long-Term Debt”), and Intermediate has no subsidiaries other than EPL. EPL is a separate and distinct legal entity and has no obligation to make funds available to Intermediate. EPL and Intermediate may pay dividends to Intermediate and to Holdings, respectively, subject to the terms of the 2022 Revolver.

Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of Holdings and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of 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 disclosures of contingent assets and liabilities at the date of the condensed consolidated financial statements and revenue and expenses during the periods reported. Actual results could materially differ from those estimates. The Company’s significant estimates include estimates for impairment of goodwill, intangible assets and property and equipment, insurance reserves, lease accounting matters, stock-based compensation, income tax receivable agreement liability, contingent liabilities and income tax valuation allowances.

COVID-19

The Company may face future business disruption and related risks resulting from the ongoing COVID-19 pandemic or from another pandemic, epidemic or infectious disease outbreak, or from broader macroeconomic trends, any of which could have a significant impact on our business. During both thirteen weeks ended September 28, 2022 and September 29, 2021, respectively, the Company incurred \$0.5 million in COVID-19 related expenses, primarily due to leaves of absence. During the thirty-nine weeks ended September 28, 2022 and September 29, 2021, respectively, the Company incurred \$3.1 million and \$3.5 million, in COVID-19 related expenses, primarily due to leaves of absence and overtime pay. While all of the Company's restaurants had dining rooms open as of September 28, 2022, the Company continues to experience staffing challenges, including higher wage inflation, overtime costs and other labor related costs. Further, the Company continues to experience inflationary pressures, which resulted in increased commodity prices and impacted the Company's business and results of operations during the thirteen and thirty-nine weeks ended September 28, 2022. The Company expects these pressures to continue during the remainder of fiscal 2022.

Due to the rapid development and fluidity of this situation, the Company cannot determine the ultimate direct and indirect impact that the COVID-19 pandemic and related economic effects will have on the Company's condensed consolidated financial condition, liquidity, and future results of operations, and therefore any prediction as to the ultimate materiality of the adverse impact on the Company's condensed consolidated financial condition, liquidity, and future results of operations is uncertain.

Cash and Cash Equivalents

The Company considers all liquid instruments with an original maturity of three months or less at the date of purchase to be cash equivalents.

Liquidity

The Company's principal liquidity and capital requirements are new restaurants, existing restaurant capital investments (remodels and maintenance), interest payments on its debt, lease obligations and working capital and general corporate needs. At September 28, 2022, the Company's total debt was \$20.0 million. The Company's ability to make payments on its indebtedness and to fund planned capital expenditures depends on available cash and its ability to generate adequate cash flows in the future, which, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory, and other factors that are beyond the Company's control. Based on current operations, the Company believes that its cash flow from operations and available cash of \$19.3 million at September 28, 2022 will be adequate to meet the Company's liquidity needs for the next twelve months from the date of filing of these condensed consolidated financial statements.

Recently Adopted Accounting Pronouncements

None.

Subsequent Events

On October 11, 2022, the Company announced that its Board of Directors declared a special dividend of \$1.50 per share on the common stock, par value \$0.01 per share, of the Company (the "Common Stock"). The special dividend is payable on November 9, 2022, to stockholders of record, including holders of restricted stock and restricted stock units, at the close of business on October 24, 2022.

In addition, on October 11, 2022, the Company announced that its Board of Directors approved a share repurchase program under which the Company is authorized to repurchase up to \$20.0 million of shares of the Company's Common Stock. The repurchase program will terminate on March 28, 2024, may be modified, suspended or discontinued at any time, and does not obligate the Company to acquire any particular number of shares.

Lastly, on November 3, 2022, the Company borrowed \$46.0 million on its 2022 Revolver and outstanding borrowings as of November 3, 2022 were \$66.0 million. After payment of the special dividend, the Company is expected to have approximately \$10.0 million in cash on hand.

Concentration of Risk

Cash and cash equivalents are maintained at financial institutions and, at times, these balances may exceed federally-insured limits. The Company has never experienced any losses related to these balances.

The Company had one supplier to whom amounts due totaled 25.2% and 26.1% of the Company's accounts payable at September 28, 2022 and December 29, 2021, respectively. Purchases from the Company's largest supplier totaled 28.4% and 28.5% of total expenses for the thirteen and thirty-nine weeks ended September 28, 2022 and 27.0% and 28.1% of total expenses for the thirteen and thirty-nine weeks ended September 29, 2021.

Company-operated and franchised restaurants in the greater Los Angeles area generated, in the aggregate, approximately 71.9% and 71.2% of total revenue for the thirteen and thirty-nine weeks ended September 28, 2022 and 71.6% and 70.8% for the thirteen and thirty-nine weeks ended September 29, 2021, respectively.

Goodwill and Indefinite Lived Intangible Assets

The Company's indefinite-lived intangible assets consist of trademarks. Goodwill represents the excess of cost over fair value of net identified assets acquired in business combinations accounted for under the purchase method. The Company does not amortize its goodwill and indefinite-lived intangible assets. Goodwill resulted from the acquisition of certain franchise locations.

Upon the sale or closure of a restaurant, the Company evaluates whether there is a decrement of goodwill. The amount of goodwill included in the cost basis of the asset sold is determined based on the relative fair value of the portion of the reporting unit disposed of compared to the fair value of the reporting unit retained.

The Company performs an annual impairment test for goodwill during the fourth fiscal quarter of each year, or more frequently if impairment indicators arise.

The Company reviews goodwill for impairment utilizing either a qualitative assessment or a fair value test by comparing the fair value of a reporting unit with its carrying amount. If the Company decides that it is appropriate to perform a qualitative assessment and concludes that the fair value of a reporting unit more likely than not exceeds its carrying value, no further evaluation is necessary. If the Company performs the fair value test, the Company will compare the fair value of a reporting unit with its carrying amount, including goodwill. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is considered not impaired. If the carrying amount of a reporting unit exceeds its fair value, the Company will recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value; however, the loss recognized cannot exceed the total amount of goodwill allocated to that reporting unit.

The Company performs an annual impairment test for indefinite-lived intangible assets during the fourth fiscal quarter of each year, or more frequently if impairment indicators arise. An impairment test consists of either a qualitative assessment or a comparison of the fair value of an intangible asset with its carrying amount. The excess of the carrying amount of an intangible asset over its fair value is recognized as an impairment loss.

The assumptions used in the estimate of fair value are generally consistent with the past performance of the Company's reporting segment and are also consistent with the projections and assumptions that are used in current operating plans. These assumptions are subject to change as a result of changing economic and competitive conditions.

The Company determined that there were no indicators of potential impairment of its goodwill and indefinite-lived intangible assets during the thirteen and thirty-nine weeks ended September 28, 2022. Accordingly, the Company did not record any impairment to its goodwill or indefinite-lived intangible assets during the thirteen and thirty-nine weeks ended September 28, 2022.

Fair Value Measurements

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Financial assets and liabilities carried at fair value are classified and disclosed in one of the following three categories:

- Level 1: Quoted prices for identical instruments in active markets.
- Level 2: Observable prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs or significant value drivers are observable.
- Level 3: Unobservable inputs used when little or no market data is available.

During fiscal 2019, the Company entered into an interest rate swap, which is required to be measured at fair value on a recurring basis. The fair value was determined based on Level 2 inputs, which include valuation models, as reported by the Company's counterparty. These valuation models use a discounted cash flow analysis on the cash flows of the derivative based on the terms of the contract and the forward yield curves adjusted for the Company's credit risk. The key inputs for the valuation models are observable market prices, discount rates, and forward yield curves. In connection with the Company's entry into the 2022 Credit Agreement (as defined below), it terminated the interest rate swap in July 2022 previously used to hedge interest rate risk. In settlement of this swap, the Company received approximately \$0.6 million. See Note 4, "Long-Term Debt" for further discussion regarding the Company's interest rate swap and its termination.

The following table presents fair value for the interest rate swap at December 29, 2021 (in thousands):

	Fair Value	Fair Value Measurements Using		
		Level 1	Level 2	Level 3
Other non-current liabilities - Interest rate swap	\$ 396	\$ —	\$ 396	\$ —

Certain assets and liabilities are measured at fair value on a nonrecurring basis. In other words, the instruments are not measured at fair value on an ongoing basis, but are subject to fair value adjustments only in certain circumstances (e.g., when there is evidence of impairment).

The following non-financial instruments were measured at fair value, on a nonrecurring basis, as of and for the thirteen and thirty-nine weeks ended September 28, 2022, reflecting certain property and equipment assets and right-of-use ("ROU") assets for which an impairment loss was recognized during the corresponding periods, as discussed under Note 2, "Property and Equipment" and immediately below under "Impairment of Long-Lived Assets and ROU Assets" (in thousands):

	Total	Fair Value Measurements at September 28, 2022 Using			Thirteen Weeks	Thirty-Nine Weeks
		Level 1	Level 2	Level 3	Ended September 28, 2022	Ended September 28, 2022
					Impairment Losses	Impairment Losses
Certain property and equipment, net	\$ —	\$ —	\$ —	\$ —	\$ 100	\$ 353
Certain ROU assets, net	\$ 332	\$ —	\$ —	\$ 332	\$ 39	\$ 39

The following non-financial instruments were measured at fair value on a nonrecurring basis as of and for the thirteen and thirty-nine weeks ended September 29, 2021, reflecting certain property and equipment assets and ROU assets for which an impairment loss was recognized during the corresponding periods, as discussed immediately below under “Impairment of Long-Lived Assets and ROU Assets” (in thousands):

	Total	Fair Value Measurements at September 29, 2021 Using			Thirteen Weeks	Thirty-Nine Weeks
		Level 1	Level 2	Level 3	Ended September 29, 2021 Impairment Losses	Ended September 29, 2021 Impairment Losses
Certain property and equipment, net	\$ —	\$ —	\$ —	\$ —	\$ 34	\$ 293
Certain ROU assets, net	\$ 424	\$ —	\$ —	\$ 424	\$ —	\$ 407

Impairment of Long-Lived Assets and ROU Assets

The Company reviews its long-lived and ROU assets for impairment on a restaurant-by-restaurant basis whenever events or changes in circumstances indicate that the carrying value of certain long-lived and ROU assets may not be recoverable. The Company considers a triggering event related to long-lived assets or ROU assets in a net asset position to have occurred related to a specific restaurant if the restaurant’s average unit volume for the last twelve months is less than a minimum threshold or if consistent levels of undiscounted cash flows for the remaining lease period are less than the carrying value of the restaurant’s assets. Additionally, the Company considers a triggering event related to ROU assets to have occurred related to a specific lease if the location has closed or been subleased and future estimated sublease income is less than lease payments under the head lease. If the Company concludes that the carrying value of certain long-lived and ROU assets will not be recovered based on expected undiscounted future cash flows, an impairment loss is recorded to reduce the long-lived or ROU assets to their estimated fair value. The fair value is measured on a nonrecurring basis using unobservable (Level 3) inputs. There is uncertainty in the projected undiscounted future cash flows used in the Company’s impairment review analysis, which requires the use of estimates and assumptions. If actual performance does not achieve the projections, or if the assumptions used change in the future, the Company may be required to recognize impairment charges in future periods, and such charges could be material. The Company determined that triggering events occurred for certain restaurants during the thirteen and thirty-nine weeks ended September 28, 2022 that required an impairment review of certain of the Company’s long-lived and ROU assets. Based on the results of the analysis, the Company recorded non-cash impairment charges of \$0.1 million and \$0.4 million for the thirteen and thirty-nine weeks ended September 28, 2022, respectively, primarily related to the long-lived assets of one restaurant in California.

The Company recorded a non-cash impairment charge of \$0.1 million and \$0.7 million for the thirteen and thirty-nine weeks ended September 29, 2021, respectively, primarily related to the carrying value of the ROU assets of one restaurant in Texas closed in 2019, the carrying value of the ROU assets of one restaurant in California and the long-lived assets of three restaurants in California. Given the inherent uncertainty in projecting results for newer restaurants in newer markets, as well as the impact of the COVID-19 pandemic, the Company is monitoring the recoverability of the carrying value of the assets of several restaurants on an ongoing basis. For these restaurants, if expected performance is not realized, an impairment charge may be recognized in future periods, and such charge could be material.

Closed-Store Reserves

When a restaurant is closed, the Company will evaluate the ROU asset for impairment, based on anticipated sublease recoveries. The remaining value of the ROU asset is amortized on a straight-line basis, with the expense recognized in closed-store reserve expense. Additionally, any property tax and common area maintenance (“CAM”) payments relating to closed restaurants are included within closed-store expense. During the thirteen and thirty-nine weeks ended September 28, 2022, the Company recognized less than \$0.1 million and \$0.2 million, respectively, of closed-store reserve expense related to the amortization of ROU assets, property taxes and CAM payments for its closed locations. During the thirteen and thirty-nine weeks ended September 29, 2021, the Company recognized less than \$0.1 million and \$0.4 million of closed-store reserve expense, respectively, primarily related to the amortization of ROU assets, property taxes and CAM payments for its closed locations.

Derivative Financial Instruments

The Company used an interest rate swap, a derivative instrument, to hedge interest rate risk and not for trading purposes. The derivative contract was entered into with a financial institution. In connection with the Company's entry into the 2022 Credit Agreement (as defined below), it terminated the interest rate swap on July 28, 2022.

The Company recorded the derivative instrument on its condensed consolidated balance sheets at fair value. The derivative instrument qualified as a hedging instrument in a qualifying cash flow hedge relationship, and the gain or loss on the derivative instrument was reported as a component of accumulated other comprehensive (loss) income ("AOCI") and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. For any derivative instruments not designated as hedging instruments, the gain or loss will be recognized in earnings immediately. If a derivative previously designated as a hedge is terminated, or no longer meets the qualifications for hedge accounting, any balances in AOCI will be reclassified to earnings immediately.

Income Taxes

The provision for income taxes, income taxes payable and deferred income taxes is determined using the asset and liability method. Deferred tax assets and liabilities are determined based on temporary differences between the financial carrying amounts and the tax bases of assets and liabilities using enacted tax rates in effect in the years in which the temporary differences are expected to reverse. On a periodic basis, the Company assesses the probability that its net deferred tax assets, if any, will be recovered. If, after evaluating all of the positive and negative evidence, a conclusion is made that it is more likely than not that some portion or all of the net deferred tax assets will not be recovered, a valuation allowance is provided by charging to tax expense a reserve for the portion of deferred tax assets which are not expected to be realized.

The Company reviews its filing positions for all open tax years in all U.S. federal and state jurisdictions where the Company is required to file.

When there are uncertainties related to potential income tax benefits, in order to qualify for recognition, the position the Company takes has to have at least a "more likely than not" chance of being sustained (based on the position's technical merits) upon challenge by the respective authorities. The term "more likely than not" means a likelihood of more than 50 percent. Otherwise, the Company may not recognize any of the potential tax benefit associated with the position. The Company recognizes a benefit for a tax position that meets the "more likely than not" criterion at the largest amount of tax benefit that is greater than 50 percent likely of being realized upon its effective resolution. Unrecognized tax benefits involve management's judgment regarding the likelihood of the benefit being sustained. The final resolution of uncertain tax positions could result in adjustments to recorded amounts and may affect the Company's condensed consolidated financial position, results of operations, and cash flows.

The Company's policy is to recognize interest and penalties related to income tax matters in income tax expense. The Company had no accrual for interest or penalties at September 28, 2022 or at December 29, 2021. The Company did not recognize interest or penalties during the thirteen and thirty-nine weeks ended September 28, 2022 and September 29, 2021, respectively, since there were no material unrecognized tax benefits. Management believes no significant changes to the amount of unrecognized tax benefits will occur within the next twelve months.

On July 30, 2014, the Company entered into the income tax receivable agreement (the "TRA"), which calls for the Company to pay to its pre-initial public offering ("IPO") stockholders 85% of the savings in cash that the Company realizes in its income taxes as a result of utilizing its net operating losses ("NOLs") and other tax attributes attributable to preceding periods. For the thirteen and thirty-nine weeks ended September 28, 2022, the Company recorded income tax receivable agreement income of less than \$0.1 million and \$0.3 million, respectively, and for both the thirteen and thirty-nine weeks ended September 29, 2021, the Company recorded income tax receivable agreement income of less than \$0.1 million, in each case, related to the amortization of interest expense related to the total expected TRA payments and changes in estimates for actual tax returns filed and future forecasted taxable income.

The Coronavirus Aid, Relief and Economic Security Act provides for the deferral of employer Social Security taxes that are otherwise owed for wage payment and the creation of refundable employee retention credits. The total amount deferred as of December 30, 2020 was \$4.9 million, of which 50% was paid at the end of 2021 and the remaining 50% is due by December 31, 2022.

2. PROPERTY AND EQUIPMENT

The costs and related accumulated depreciation and amortization of major classes of property and equipment are as follows (in thousands):

	September 28, 2022	December 29, 2021
Land	\$ 12,323	\$ 12,323
Buildings and improvements	152,089	144,631
Other property and equipment	82,095	78,383
Construction in progress	5,133	5,333
	<u>251,640</u>	<u>240,670</u>
Less: accumulated depreciation and amortization	(173,533)	(165,002)
	<u>\$ 78,107</u>	<u>\$ 75,668</u>

Depreciation expense was \$3.5 million and \$3.7 million for the thirteen weeks ended September 28, 2022 and September 29, 2021, respectively, and \$10.7 million and \$11.5 million for the thirty-nine weeks ended September 28, 2022 and September 29, 2021, respectively.

Based on the Company's review of its long-lived assets for impairment, the Company recorded non-cash impairment charges of \$0.1 million and \$0.4 million for the thirteen and thirty-nine weeks ended September 28, 2022, respectively, primarily related to the carrying value of the long-lived assets of one restaurant in California.

During the thirteen and thirty-nine weeks ended September 29, 2021, the Company recorded non-cash impairment charges of less than \$0.1 million and \$0.3 million, respectively, primarily related to the carrying value of the assets of three restaurants in California. See Note 1, "Basis of Presentation and Summary of Significant Accounting Policies – Impairment of Long-Lived Assets and ROU Assets" for additional information.

3. STOCK-BASED COMPENSATION

At September 28, 2022, options to purchase 1,181,944 shares of common stock were outstanding, including 659,861 vested and 522,083 unvested. Unvested options vest over time; however, upon a change in control, the Board of Directors may accelerate vesting. At September 28, 2022, 203,569 premium options, which are options granted above the stock price at date of grant, remained outstanding. A summary of stock option activity as of September 28, 2022 and changes during the thirty-nine weeks ended September 28, 2022 is as follows:

	Shares	Weighted-Average Exercise Price	Weighted-Average Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding - December 29, 2021	978,078	\$ 11.45		
Grants	372,958	10.54		
Exercised	(150,475)	10.50		
Forfeited, cancelled or expired	(18,617)	\$ 15.86		
Outstanding - September 28, 2022	<u>1,181,944</u>	<u>\$ 11.21</u>	6.06	\$ 742
Vested and expected to vest at September 28, 2022	<u>1,172,082</u>	<u>\$ 11.21</u>	6.03	\$ 742
Exercisable at September 28, 2022	<u>659,861</u>	<u>\$ 10.50</u>	3.58	\$ 742

The fair value of each stock option was estimated on the grant date using an exercise price of the closing stock price on the day prior to date of grant and the Black-Scholes option-pricing model with the following weighted average assumptions:

	September 28, 2022	September 29, 2021
Expected volatility	43.0 %	46.9 %
Risk-free interest rate	2.9 %	1.1 %
Expected term (years)	6.25	6.25
Expected dividends	—	—

At September 28, 2022, the Company had total unrecognized compensation expense of \$2.5 million related to unvested stock options, which it expects to recognize over a weighted-average period of 3.20 years.

A summary of restricted share activity as of September 28, 2022 and changes during the thirty-nine weeks ended September 28, 2022 is as follows:

	<u>Shares</u>	<u>Weighted-Average Fair Value</u>
Unvested shares at December 29, 2021	495,780	\$ 13.92
Granted	352,114	\$ 10.36
Released	(180,696)	\$ 13.10
Forfeited, cancelled, or expired	(27,931)	\$ 14.01
Unvested shares at September 28, 2022	<u>639,267</u>	<u>\$ 12.19</u>

At September 28, 2022, the Company had unrecognized compensation expense of \$6.4 million related to unvested restricted shares, which it expects to recognize over a weighted-average period of 2.76 years.

Total stock-based compensation expense was \$1.0 million and \$2.8 million for the thirteen and thirty-nine weeks ended September 28, 2022, respectively, and \$1.0 million and \$2.9 million for the thirteen and thirty-nine weeks ended September 29, 2021.

4. LONG-TERM DEBT

On July 27, 2022, the Company refinanced and terminated its credit agreement (the “2018 Credit Agreement”) among EPL, as borrower, the Company and Intermediate, as guarantors, Bank of America, N.A., as administrative agent, swingline lender, and letter of credit issuer, the lenders party thereto, and the other parties thereto, which provided for a \$150.0 million five-year senior secured revolving credit facility (the “2018 Revolver”). The 2018 Revolver was refinanced pursuant to a credit agreement (the “2022 Credit Agreement”) among EPL, as borrower, the Company and Intermediate, as guarantors, Bank of America, N.A., as administrative agent, swingline lender, and letter of credit issuer, the lenders party thereto, and the other parties thereto, which provides for a \$150.0 million five-year senior secured revolving credit facility (the “2022 Revolver”). In connection with the refinancing, the 2018 Credit Agreement was terminated.

The 2022 Revolver includes a sub limit of \$15.0 million for letters of credit and a sub limit of \$15.0 million for swingline loans. The 2022 Revolver and 2022 Credit Agreement will mature on July 27, 2027. The obligations under the 2022 Credit Agreement and related loan documents are guaranteed by Holdings and Intermediate. The obligations of Holdings, EPL and Intermediate under the 2022 Credit Agreement and related loan documents are secured by a first priority lien on substantially all of their respective assets.

The special dividend announced by the Company’s Board of Directors on October 11, 2022 is permitted under the terms of 2022 Revolver pursuant to both subclause (iii)(d) and (iii)(e) of the preceding sentence. Under the 2022 Revolver, Holdings is restricted from making certain payments such as cash dividends, except that it may, inter alia, (i) pay up to \$1.0 million per year to repurchase or redeem qualified equity interests of Holdings held by past or present officers, directors, or employees (or their estates) of the Company upon death, disability, or termination of employment, (ii) pay under its TRA, and (iii) so long as no default or event of default has occurred and is continuing, (a) make non-cash repurchases of equity interests in connection with the exercise of stock options by directors, officers and management, provided that those equity interests represent a portion of the consideration of the exercise price of those stock options, (b) pay up to \$0.5 million in any 12 month consecutive period to redeem, repurchase or otherwise acquire equity interests of any subsidiary that is not a wholly-owned subsidiary from any holder of equity interest in such subsidiary, (c) pay up to \$2.5 million per year pursuant to stock option plans, employment agreements, or incentive plans, (d) make up to \$5.0 million in other restricted payments per year, and (e) make other restricted payments, subject to its compliance, on a pro forma basis, with (x) a lease-adjusted consolidated leverage ratio not to exceed 4.25 times and (y) the financial covenants applicable to the 2022 Revolver.

Borrowings under the 2022 Credit Agreement (other than any swingline loans) bear interest, at the borrower’s option, at rates based upon either the secured overnight financing rate (“SOFR”) or a base rate, plus, for each rate, a margin determined in accordance with a lease-adjusted consolidated leverage ratio-based pricing grid. The base rate is

calculated as the highest of (a) the federal funds rate plus 0.50%, (b) the published Bank of America prime rate, or (c) Term SOFR with a term of one-month SOFR plus 1.00%. For Term SOFR loans, the margin is in the range of 1.25% to 2.25%, and for base rate loans the margin is in a range of 0.25% to 1.25%. Borrowings under the 2022 Revolver may be repaid and reborrowed. The interest rate range was 2.87% to 6.00% and 1.35% to 6.00% for the thirteen and thirty-nine weeks ended September 28, 2022, respectively, and 1.34% to 1.35% and 1.34% to 1.65% for the thirteen and thirty-nine weeks ended September 29, 2021.

The 2022 Credit Agreement contains certain financial covenants. The Company was in compliance with the financial covenants as of September 28, 2022.

At September 28, 2022, \$10.0 million of letters of credit and \$20.0 million in borrowings under the 2022 Revolver were outstanding. The Company had \$120.0 million in borrowing availability under the 2022 Revolver at September 28, 2022.

Maturities

On July 27, 2022, the Company refinanced and terminated the 2018 Revolver pursuant to the 2022 Credit Agreement. During both the thirteen and thirty-nine weeks ended September 28, 2022 the Company paid down \$20.0 million on the 2022 Revolver. During the thirty-nine weeks ended September 29, 2021, the Company paid down \$22.8 million on the 2018 Revolver none of which was paid during the thirteen weeks ended September 29, 2021.

Interest Rate Swap

During the year ended December 25, 2019, the Company entered into a variable-to-fixed interest rate swap agreement with a notional amount of \$40.0 million that matures in June 2023. The objective of the interest rate swap was to reduce the Company's exposure to interest rate risk for a portion of its variable-rate interest payments on its borrowings under the 2018 Revolver. The interest rate swap was designated as a cash flow hedge, as the changes in the future cash flows of the swap were expected to offset changes in expected future interest payments on the related variable-rate debt, in accordance with Accounting Standards Codification ("ASC") 815 "Derivatives and Hedging."

In connection with the Company's entry into the 2022 Credit Agreement, it terminated the interest rate swap on July 28, 2022 which was previously used to hedge interest rate risk. Prior to the interest rate swap termination, the swap was a highly effective cash flow hedge. In settlement of this swap, the Company received approximately \$0.6 million and derecognized the corresponding interest rate swap asset. The remaining amount in AOCI related to the hedging relationship will be reclassified into earnings when the hedged forecasted transaction is reported in earnings.

As of September 28, 2022, the estimated net gains included in AOCI related to the Company's cash flow hedge that will be reclassified into earnings in the next 12 months is \$0.3 million, based on current Term SOFR interest rates.

The following table shows the financial statement line item and amount of the Company's cash flow hedge accounting on the condensed consolidated balance sheets (in thousands):

	September 28, 2022		December 29, 2021	
	Notional	Fair value	Notional	Fair value
Other liabilities - Interest rate swap	\$ —	\$ —	\$ 40,000	\$ 396

The following table summarizes the effect of the Company's cash flow hedge accounting on the condensed consolidated statements of income (in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Interest expense on hedged portion of debt	\$ 92	\$ 97	\$ 439	\$ 433
Interest (income) expense on interest rate swap	(369)	133	(197)	367
Interest (income) expense on debt and derivatives, net	\$ (277)	\$ 230	\$ 242	\$ 800

The following table summarizes the effect of the Company’s cash flow hedge accounting on AOCI for the thirteen and thirty-nine weeks ended September 28, 2022 and September 29, 2021 (in thousands):

	Thirteen Weeks Ended				Thirty-Nine Weeks Ended			
	Net Gain (Loss) Recognized in OCI		Loss Reclassified from AOCI into Interest (Income) Expense		Net Gain Recognized in OCI		Loss Reclassified from AOCI into Interest (Income) Expense	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Interest rate swap	\$ 43	\$ (32)	\$ (369)	\$ 133	\$ 974	\$ 44	\$ (197)	\$ 367

See Note 1, “Basis of Presentation and Summary of Significant Accounting Policies” for information about the fair value of the Company’s derivative asset.

5. OTHER ACCRUED EXPENSES AND CURRENT LIABILITIES

Other accrued expenses and current liabilities consist of the following (in thousands):

	September 28, 2022	December 29, 2021
Accrued sales and property taxes	\$ 5,652	\$ 4,726
Gift card liability	3,957	4,622
Loyalty rewards program liability	537	687
Accrued advertising	—	3,635
Accrued legal settlements and professional fees	1,161	771
Deferred franchise and development fees	627	637
Employer social security tax deferral	2,543	—
Other	4,453	4,718
Total other accrued expenses and current liabilities	\$ 18,930	\$ 19,796

6. OTHER NONCURRENT LIABILITIES

Other noncurrent liabilities consist of the following (in thousands):

	September 28, 2022	December 29, 2021
Deferred franchise and development fees	\$ 5,761	\$ 5,691
Derivative liability	—	396
Employer social security tax deferral	—	2,426
Other	101	140
Total other noncurrent liabilities	\$ 5,862	\$ 8,653

7. COMMITMENTS AND CONTINGENCIES

Legal Matters

On or about November 5, 2015, a purported Holdings shareholder filed a derivative complaint on behalf of Holdings in the Court of Chancery of the State of Delaware against certain Holdings officers, directors and Trimaran Pollo Partners, L.L.C., under the caption Armen Galustyan v. Sather, et al. (Case No. 11676-VCL). The derivative complaint alleges that these defendants breached their fiduciary duties to Holdings and were unjustly enriched when they sold shares of Holdings at artificially inflated prices due to alleged misrepresentations and omissions regarding EPL’s comparable store sales in the second quarter of 2015. The Holdings shareholder’s requested remedies include an award of compensatory damages to Holdings, as well as a court order to improve corporate governance by putting forward for stockholder vote certain resolutions for amendments to Holdings’ Bylaws or Certificate of Incorporation. The Holdings shareholder voluntarily dismissed the action on October 7, 2020. A second purported Holdings shareholder filed a derivative complaint on or about September 23, 2016, under the caption Diep v. Sather, CA 12760-VCL in the Delaware Court of

Chancery. The Diep action is also purportedly brought on behalf of Holdings, names the same defendants and asserts substantially the same claims on substantially the same alleged facts as does Galustyan. Defendants moved to stay or dismiss the Diep action.

On March 17, 2017, the Delaware court granted in part, and denied in part, the motion to stay the Diep action. The court denied defendants' motion to dismiss the complaint for failure to state a claim. On January 17, 2018, the court entered an order granting the parties' stipulation staying all proceedings in the Diep action for five months or until the completion of an investigation of the allegations in the action by a special litigation committee of the Holdings board of directors (the "SLC"). On September 25, 2020, after concluding its investigation, the SLC filed a motion to dismiss the Diep action and filed its investigative report under seal as an exhibit to the motion to dismiss.

On May 21, 2021, while the SLC's motion to dismiss the Diep action was pending, the Company filed a notice of proposed partial settlement of the Diep action with respect to defendants Kay Bogeajis, Laurance Roberts, Stephen J. Sather, Edward J. Valle, Douglas K. Ammerman, and Samuel N. Borgese (collectively, the "Settling Defendants"). Defendant Trimaran Pollo Partners, LLC ("Trimaran") was not a party to the settlement. The court approved the settlement of \$625,000, less Plaintiffs' fees of \$156,250, on September 10, 2021, and dismissed all claims brought, or that could have been brought, against Settling Defendants. In connection with this settlement, the Company received \$469,000 in insurance proceeds, which was recorded within general and administrative expenses in the Company's statement of income for the thirty-nine weeks ended September 29, 2021.

On July 30, 2021, the court granted the SLC's motion to dismiss with respect to the claims asserted against remaining defendant Trimaran. On October 4, 2021, Plaintiffs filed a notice of appeal of the court's granting of the motion to dismiss against defendant Trimaran. Plaintiff filed its opening brief on December 6, 2021. SLC filed its answering brief on December 20, 2021 and the public version of the brief was filed on January 7, 2022. Plaintiffs filed the reply brief on January 4, 2022. The hearing on the appeal took place on March 30, 2022. On June 28, 2022, the court's granting of the motion to dismiss against Trimaran was affirmed.

The Company is also involved in various other claims such as wage and hour and other legal actions that arise in the ordinary course of business. The outcomes of these actions are not predictable but the Company does not believe that the ultimate resolution of these other actions will have a material adverse effect on its financial position, results of operations, liquidity, or capital resources. A significant increase in the number of claims, or an increase in amounts owing under successful claims, could materially and adversely affect its business, condensed consolidated financial condition, results of operations, and cash flows.

Purchasing Commitments

The Company has long-term beverage supply agreements with certain major beverage vendors. Pursuant to the terms of these arrangements, marketing rebates are provided to the Company and its franchisees from the beverage vendors based upon the dollar volume of purchases for system-wide restaurants which will vary according to their demand for beverage syrup and fluctuations in the market rates for beverage syrup. These contracts have terms extending through the end of 2024.

At September 28, 2022, the Company's total estimated commitment to purchase chicken was \$9.3 million.

Contingent Lease Obligations

As a result of assigning the Company's interest in obligations under real estate leases in connection with the sale of company-operated restaurants to some of the Company's franchisees, the Company is contingently liable on three lease agreements. These leases have various terms, the latest of which expires in 2036. As of September 28, 2022, the potential amount of undiscounted payments the Company could be required to make in the event of non-payment by the primary lessee was \$2.4 million. The present value of these potential payments discounted at the Company's estimated pre-tax cost of debt at September 28, 2022 was \$1.9 million. The Company's franchisees are primarily liable on the leases. The Company has cross-default provisions with these franchisees that would put them in default of their franchise agreements in the event of non-payment under the leases. The Company believes that these cross-default provisions reduce the risk that payments will be required to be made under these leases.

Employment Agreements

As of September 28, 2022, the Company had employment agreements with three of the officers of the Company. These agreements provide for minimum salary levels, possible annual adjustments for cost-of-living changes, and incentive bonuses that are payable under certain business conditions.

Indemnification Agreements

The Company has entered into indemnification agreements with each of its current directors and officers. These agreements require the Company to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Company and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The Company also intends to enter into indemnification agreements with future directors and officers.

8. EARNINGS PER SHARE

Basic earnings per share (“EPS”) is calculated using the weighted-average number of shares of common stock outstanding during the thirteen and thirty-nine weeks ended September 28, 2022 and September 29, 2021. Diluted EPS is calculated using the weighted-average number of shares of common stock outstanding and potentially dilutive during the period, using the treasury stock method.

Below are basic and diluted EPS data for the periods indicated (in thousands except for share and per share data):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Numerator:				
Net income	\$ 5,009	\$ 10,161	\$ 14,265	\$ 22,943
Denominator:				
Weighted-average shares outstanding—basic	36,402,899	36,067,754	36,329,938	35,930,246
Weighted-average shares outstanding—diluted	36,507,050	36,525,424	36,491,624	36,457,110
Net income per share—basic	\$ 0.14	\$ 0.28	\$ 0.39	\$ 0.64
Net income per share—diluted	\$ 0.14	\$ 0.28	\$ 0.39	\$ 0.63
Anti-dilutive securities not considered in diluted EPS calculation	1,434,825	225,308	944,183	118,968

Below is a reconciliation of basic and diluted share counts:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Weighted-average shares outstanding—basic	36,402,899	36,067,754	36,329,938	35,930,246
Dilutive effect of stock options and restricted shares	104,151	457,670	161,686	526,864
Weighted-average shares outstanding—diluted	36,507,050	36,525,424	36,491,624	36,457,110

9. RELATED PARTY TRANSACTIONS

As of September 28, 2022, Trimaran Pollo Partners, L.L.C. (“LLC”), FS Equity Partners V, L.P. and FS Affiliates V, L.P. own approximately 30.2%, 14.7% and 0.2%, respectively, of our outstanding common stock. FS Equity V and FS Affiliates V, which previously indirectly held shares of our common stock through LLC, received shares directly on August 31, 2022, upon LLC’s pro rata distribution in kind of shares of our common stock to FS Equity V and FS Affiliates V.

10. REVENUE FROM CONTRACTS WITH CUSTOMERS

Revenue Recognition

Nature of products and services

The Company has two revenue streams, company-operated restaurant revenue and franchise related revenue.

Company-operated restaurant revenue

Revenues from the operation of company-operated restaurants are recognized as food and beverage products are delivered to customers and payment is tendered at the time of sale. The Company presents sales, net of sales-related taxes and promotional allowances.

The Company offers a loyalty rewards program, which awards a customer points for dollars spent. Customers earn points for each dollar spent and 50 points can be redeemed for a \$5 reward to be used for a future purchase. If a customer does not earn or use points within a one-year period, their account is deactivated and all points expire. Additionally, if a reward is not used within six months, it expires. When a customer is part of the rewards program, the obligation to provide future discounts related to points earned is considered a separate performance obligation, to which a portion of the transaction price is allocated. The performance obligation related to loyalty points is deemed to have been satisfied, and the amount deferred in the balance sheet is recognized as revenue, when the points are transferred to a reward and redeemed, the reward or points have expired, or the likelihood of redemption is remote. A portion of the transaction price is allocated to loyalty points, if necessary, on a pro-rata basis, based on stand-alone selling price, as determined by menu pricing and loyalty points terms. As of September 28, 2022 and December 29, 2021, the revenue allocated to loyalty points that have not been redeemed was \$0.5 million and \$0.7 million, respectively, which is reflected in the Company's accompanying condensed consolidated balance sheets within other accrued expenses and current liabilities. The Company expects the loyalty points to be redeemed and recognized over a one-year period.

The Company sells gift cards to its customers in the restaurants and through selected third parties. The gift cards sold to customers have no stated expiration dates and are subject to actual and/or potential escheatment rights in several of the jurisdictions in which the Company operates. Furthermore, due to these escheatment rights, the Company does not recognize breakage related to the sale of gift cards due to the immateriality of the amount remaining after escheatment. The Company recognizes income from gift cards when redeemed by the customer. Unredeemed gift card balances are deferred and recorded as other accrued expenses on the accompanying condensed consolidated balance sheets.

Franchise and franchise advertising revenue

Franchise revenue consists of franchise royalties, initial franchise fees, license fees due from franchisees, IT support services, and rental income for subleases to franchisees. Franchise advertising revenue consists of advertising contributions received from franchisees. These revenue streams are made up of the following performance obligations:

- Franchise license - inclusive of advertising services, development agreements, training, access to plans and help desk services.
- Discounted renewal option.
- Hardware services.

The Company satisfies the performance obligation related to the franchise license over the term of the franchise agreement, which is typically 20 years. Payment for the franchise license consists of three components, a fixed-fee related to the franchise/development agreement, a sales-based royalty fee and a sales-based advertising fee. The fixed fee, as determined by the signed development and/or franchise agreement, is due at the time the development agreement is entered into, and/or when the franchise agreement is signed, and does not include a finance component.

The sales-based royalty fee and sales-based advertising fee are considered variable consideration and will continue to be recognized as revenue as such sales are earned by the franchisees. Both sales-based fees qualify under the royalty constraint exception, and do not require an estimate of future transaction price. Additionally, the Company is utilizing the practical expedient available under ASC Topic 606, "Revenue from Contracts with Customers" ("Topic 606")

regarding disclosure of the aggregate amount of the transaction price allocated to the performance obligations that are unsatisfied for sales-based royalties.

In certain franchise agreements, the Company offers a discounted renewal to incentivize future renewals after the end of the initial franchise term. As this is considered a separate performance obligation, the Company allocates a portion of the initial franchise fee to this discounted renewal, on a pro-rata basis, assuming a 20-year renewal. This performance obligation is satisfied over the renewal term, typically 10 or 20 years, while payment is fixed and due at the time the renewal is signed.

The Company purchases hardware, such as scanners, printers, cash registers and tablets, from third party vendors, which it then sells to franchisees. As the Company is considered the principal in this relationship, payment for the hardware is considered revenue, and is received upon transfer of the goods from the Company to the franchisee. As of September 28, 2022, there were no performance obligations related to hardware services that were unsatisfied or partially satisfied.

Disaggregated revenue

The following table presents the Company's revenues disaggregated by revenue source and market (in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Core Market⁽¹⁾:				
Company-operated restaurant revenue	\$ 98,732	\$ 95,292	\$ 289,798	\$ 281,945
Franchise revenue	4,501	4,184	13,559	11,956
Franchise advertising fee revenue	3,336	3,129	10,008	8,989
Total core market	\$ 106,569	\$ 102,605	\$ 313,365	\$ 302,890
Non-Core Market⁽²⁾:				
Company-operated restaurant revenue	\$ 4,442	\$ 4,694	\$ 13,787	\$ 19,172
Franchise revenue	5,042	4,733	15,303	12,963
Franchise advertising fee revenue	3,825	3,668	11,582	10,381
Total non-core market	\$ 13,309	\$ 13,095	\$ 40,672	\$ 42,516
Total revenue	\$ 119,878	\$ 115,700	\$ 354,037	\$ 345,406

(1) Core Market includes markets with existing company-operated restaurants at the time of the Company's IPO on July 28, 2014.

(2) Non-Core Market includes markets entered into by the Company subsequent to the IPO date.

The following table presents the Company's revenues disaggregated by geographic market:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Greater Los Angeles area market	71.9 %	71.6 %	71.2 %	70.8 %
Other markets	28.1 %	28.4 %	28.8 %	29.2 %
Total	100 %	100 %	100 %	100 %

Contract balances

The following table provides information about the change in the franchise contract liability balances during the thirty-nine weeks ended September 28, 2022 and September 29, 2021 (in thousands):

December 29, 2021	\$ 6,328
Revenue recognized - beginning balance	(558)
Additional contract liability	618
September 28, 2022	<u>\$ 6,388</u>
December 30, 2020	\$ 5,628
Revenue recognized - beginning balance	(514)
Additional contract liability	1,330
September 29, 2021	<u>\$ 6,444</u>

The Company's franchise contract liability includes development fees, initial franchise and license fees, franchise renewal fees, lease subsidies and royalty discounts and is included within other accrued expenses and current liabilities and other noncurrent liabilities within the accompanying condensed consolidated balance sheets. The Company receives area development fees from franchisees when they execute multi-unit area development agreements. Initial franchise and license fees, or franchise renewal fees, are received from franchisees upon the execution of, or renewal of, a franchise agreement. Revenue is recognized from these agreements as the underlying performance obligation is satisfied, which is over the term of the agreement.

The following table illustrates the estimated revenue to be recognized in future periods related to performance obligations under the applicable contracts that are unsatisfied as of September 28, 2022 (in thousands):

Franchise revenues:	
2022	\$ 167
2023	608
2024	515
2025	468
2026	445
Thereafter	4,185
Total	<u>\$ 6,388</u>

Changes in the loyalty rewards program liability included in deferred revenue within other accrued expenses and current liabilities on the condensed consolidated balance sheets were as follows (in thousands):

	September 28, 2022	December 29, 2021
Loyalty rewards liability, beginning balance	\$ 687	\$ 900
Revenue deferred	2,039	2,677
Revenue recognized	(2,189)	(2,890)
Loyalty rewards liability, ending balance	<u>\$ 537</u>	<u>\$ 687</u>

The Company expects all loyalty points revenue related to performance obligations unsatisfied as of September 28, 2022 to be recognized within one year.

Gift Cards

The gift card liability included in other accrued expenses and current liabilities on the condensed consolidated balance sheets was as follows (in thousands):

	September 28, 2022	December 29, 2021
Gift card liability	\$ 3,957	\$ 4,622

Revenue recognized from the redemption of gift cards that was included in other accrued expenses and current liabilities at the beginning of the year was as follows (in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Revenue recognized from gift card liability balance at the beginning of the year	\$ 237	\$ 220	\$ 967	\$ 903

Contract Costs

The Company does not currently incur costs to obtain or fulfill a contract that would be considered contract assets under Topic 606.

11. LEASES

Nature of leases

The Company's operations utilize property, facilities, equipment and vehicles leased from others. Additionally, the Company has various contracts with vendors that have been determined to contain an embedded lease in accordance with Topic 842.

As of September 28, 2022, the Company had one lease that it had entered into, but had not yet commenced. The Company does not have control of the property until lease commencement.

Building and facility leases

The majority of the Company's building and facilities leases are classified as operating leases; however, the Company currently has one facility and ten equipment leases that are classified as finance leases.

Restaurants are operated under lease arrangements that generally provide for a fixed base rent and, in some instances, contingent rent based on a percentage of gross operating profit or net revenues in excess of a defined amount. Additionally, a number of the Company's leases have payments that increase at pre-determined dates based on the change in the consumer price index. For all leases, the Company also reimburses the landlord for non-lease components, or items that are not considered components of a contract, such as CAM, property tax and insurance costs. While the Company determined not to separate lease and non-lease components, these payments are based on actual costs, making them variable consideration and excluding them from the calculations of the ROU asset and lease liability.

The initial terms of land and restaurant building leases are generally 20 years, exclusive of options to renew. These leases typically have four 5-year renewal options, which have generally been excluded in the calculation of the ROU asset and lease liability, as they are not considered reasonably certain to be exercised, unless (1) the renewal had already occurred as of the time of adoption of Topic 842, or (2) there have been significant leasehold improvements that have a useful life that extend past the original lease term. Furthermore, there are no residual value guarantees and no restrictions imposed by the lease.

During the thirteen and thirty-nine weeks ended September 28, 2022, the Company reassessed the lease terms on five and 18 restaurants, respectively, due to certain triggering events, such as the addition of significant leasehold improvements with useful lives that extend past the current lease expiration, the decision to terminate a lease, or the decision to renew. As a result of the reassessment, an additional \$2.0 million and \$10.5 million of ROU asset and lease liabilities for the thirteen and thirty-nine weeks ended September 28, 2022, respectively, were recognized and will be amortized over the new lease term. During the thirteen and thirty-nine weeks ended September 29, 2021, the Company reassessed the lease terms on four and 16 restaurants, respectively, due to certain triggering events, such as the addition

of significant leasehold improvements with useful lives that extend past the current lease expiration, the decision to terminate a lease, or the decision to renew. This reassessment resulted in an additional \$2.6 million and \$13.8 million of ROU asset and lease liabilities for the thirteen and thirty-nine weeks ended September 29, 2021, respectively, which were recognized and will be amortized over the new lease term. The reassessments had an impact on the original lease classification of one property during the thirty-nine weeks ended September 28, 2022 which represented \$0.7 million of the \$10.5 million total additional ROU asset and lease liabilities for the period. There were no reassessments that impacted the original lease classification during the thirteen weeks ended September 28, 2022. Additionally, as the Company adopted all practical expedients available under Topic 842, no reallocation between lease and non-lease components was necessary.

The Company also subleases facilities to certain franchisees and other non-related parties which are also considered operating leases. Sublease income also includes contingent rental income based on net revenues. The vast majority of these leases have rights to extend terms via fixed rental increases. However, none of these leases have early termination rights, the right to purchase the premises or any residual value guarantees. The Company does not have any related party leases.

During the thirty-nine weeks ended September 28, 2022, the Company recorded a less than \$0.1 million non-cash impairment charge related to one restaurant in California. The Company recorded a \$0.4 million non-cash impairment charge for the thirty-nine weeks ended September 29, 2021 related to one restaurant closed in Texas in 2019 and one restaurant in California. See Note 1, “Basis of Presentation and Summary of Significant Accounting Policies – Impairment of Long-Lived Assets and ROU Assets” for additional information.

Equipment

Leases of equipment primarily consist of restaurant equipment, copiers and vehicles. These leases are fixed payments with no variable component. Additionally, no optional renewal periods have been included in the calculation of the ROU asset, there are no residual value guarantees and no restrictions imposed.

Significant Assumptions and Judgments

In applying the requirements of Topic 842, the Company made significant assumptions and judgments related to determination of whether a contract contains a lease and the discount rate used for the lease.

In determining if any of the Company’s contracts contain a lease, the Company made assumptions and judgments related to its ability to direct the use of any assets stated in the contract and the likelihood of renewing any short-term contracts for a period extending past twelve months.

The Company also made significant assumptions and judgments in determining an appropriate discount rate for property leases. These included using a consistent discount rate for a portfolio of leases entered into at varying dates, using the full 20-year term of the lease, excluding any options, and using the total minimum lease payments. The Company utilizes a third-party valuation firm in determining the discount rate, based on the above assumptions. For all other leases, the Company uses the discount rate implicit in the lease, or the Company’s incremental borrowing rate.

As the Company has adopted the practical expedient not to separate lease and non-lease components, no significant assumptions or judgments were necessary in allocating consideration between these components, for all classes of underlying assets.

The following table presents the Company's total lease cost, disaggregated by underlying asset (in thousands):

	Thirteen Weeks Ended					
	September 28, 2022			September 29, 2021		
	Property Leases	Equipment Leases	Total	Property Leases	Equipment Leases	Total
Finance lease cost:						
Amortization of right-of-use assets	\$ 18	\$ 1	\$ 19	\$ 18	\$ 1	\$ 19
Interest on lease liabilities	10	1	11	14	1	15
Operating lease cost	6,646	256	6,902	6,552	267	6,819
Short-term lease cost	—	4	4	—	7	7
Variable lease cost	151	196	347	138	70	208
Sublease income	(1,130)	—	(1,130)	(1,128)	—	(1,128)
Total lease cost	\$ 5,695	\$ 458	\$ 6,153	\$ 5,594	\$ 346	\$ 5,940

	Thirty-Nine Weeks Ended					
	September 28, 2022			September 29, 2021		
	Property Leases	Equipment Leases	Total	Property Leases	Equipment Leases	Total
Finance lease cost:						
Amortization of right-of-use assets	\$ 55	\$ 2	\$ 57	\$ 60	\$ 2	\$ 62
Interest on lease liabilities	32	2	34	44	2	46
Operating lease cost	19,795	776	20,571	19,935	861	20,796
Short-term lease cost	—	11	11	—	17	17
Variable lease cost	458	463	921	413	260	673
Sublease income	(3,387)	—	(3,387)	(2,722)	—	(2,722)
Total lease cost	\$ 16,953	\$ 1,254	\$ 18,207	\$ 17,730	\$ 1,142	\$ 18,872

The following table presents the Company's total lease cost on the condensed consolidated statements of income (in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Lease cost – Occupancy and other operating expenses	\$ 5,969	\$ 5,811	\$ 17,709	\$ 18,191
Lease cost – General & administrative	133	97	343	316
Lease cost – Depreciation and amortization	18	18	55	60
Lease cost – Interest expense	11	14	35	44
Lease cost – Closed-store reserve	22	—	65	261
Total lease cost	\$ 6,153	\$ 5,940	\$ 18,207	\$ 18,872

During the thirteen and thirty-nine weeks ended September 28, 2022 and September 29, 2021, the Company had the following cash and non-cash activities associated with its leases (dollars in thousands):

	Thirty-Nine Weeks Ended September 28, 2022			Thirty-Nine Weeks Ended September 29, 2021		
	Property Leases	Equipment Leases	Total	Property Leases	Equipment Leases	Total
Cash paid for amounts included in the measurement of lease liabilities						
Operating cash flows used for operating leases	\$ 20,364	\$ 737	\$ 21,101	\$ 19,371	\$ 831	\$ 20,202
Financing cash flows used for finance leases	\$ 82	\$ 42	\$ 124	\$ 67	\$ 33	\$ 100
Non-cash investing and financing activities:						
Operating lease ROU assets obtained in exchange for lease liabilities:						
Operating lease ROU assets	\$ 10,486	\$ 86	\$ 10,572	\$ 13,848	\$ —	\$ 13,848
Finance lease ROU assets obtained in exchange for lease liabilities:						
Finance lease ROU assets	\$ —	\$ 28	\$ 28	\$ —	\$ 196	\$ 196
Derecognition of ROU assets due to terminations, impairment or modifications						
	\$ (39)	\$ (24)	\$ (63)	\$ (4,513)	\$ (99)	\$ (4,612)
Other Information						
Weighted-average remaining years in lease term—finance leases						
	18.12	3.44		18.56	4.27	
Weighted-average remaining years in lease term—operating leases						
	10.91	1.57		11.37	1.66	
Weighted-average discount rate—finance leases						
	2.57 %	1.53 %		2.84 %	1.54 %	
Weighted-average discount rate—operating leases						
	4.49 %	3.82 %		4.43 %	3.91 %	

Information regarding the Company's minimum future lease obligations as of September 28, 2022 is as follows (in thousands):

For the Years Ending	Finance	Operating Leases	
	Minimum Lease Payments	Minimum Lease Payments	Minimum Sublease Income
December 28, 2022	\$ 38	\$ 7,073	\$ 937
December 27, 2023	151	27,673	3,698
December 25, 2024	151	25,348	3,510
December 31, 2025	147	23,186	3,115
December 30, 2026	114	21,048	2,789
Thereafter	1,583	135,928	23,165
Total	\$ 2,184	\$ 240,256	\$ 37,214
Less: imputed interest (1.53% - 4.49%)	(422)	(52,631)	
Present value of lease obligations	1,762	187,625	
Less: current maturities	(109)	(20,063)	
Noncurrent portion	\$ 1,653	\$ 167,562	

Short-Term Leases

The Company has multiple short-term leases, which have terms of less than 12 months, and thus were excluded from the recognition requirements of Topic 842. The Company has recognized these lease payments in its condensed consolidated statements of income on a straight-line basis over the lease term and variable lease payments in the period in which the obligation for those payments was incurred.

Lessor

The Company is a lessor for certain property, facilities and equipment owned by the Company and leased to others, principally franchisees, under non-cancelable leases with initial terms ranging from three to 20 years. These lease

agreements generally provide for a fixed base rent and, in some instances, contingent rent based on a percentage of gross operating profit or net revenues. All leases are considered operating leases.

For the leases in which the Company is the lessor, there are options to extend the lease. However, there are no terms and conditions to terminate the lease, no right to purchase premises and no residual value guarantees. Additionally, there are no related party leases.

The Company received \$0.1 million of lease income from company-owned locations for each of the thirteen weeks ended September 28, 2022 and September 29, 2021. The Company received \$0.3 million of lease income from company-owned locations for each of the thirty-nine weeks ended September 28, 2022 and September 29, 2021.

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

Cautionary Statement Concerning Forward-Looking Statements

This report contains forward-looking statements that are subject to risks and uncertainties. All statements other than statements of historical fact included in this report are forward-looking statements. Forward-looking statements discuss our current expectations and projections relating to our financial condition, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements because they do not relate strictly to historical or current facts. These statements may include words such as “aim,” “anticipate,” “believe,” “estimate,” “expect,” “forecast,” “outlook,” “potential,” “project,” “projection,” “plan,” “intend,” “seek,” “may,” “could,” “would,” “will,” “should,” “can,” “can have,” “likely,” the negatives thereof and other words and terms of similar meaning in connection with any discussion of the timing or nature of future operating or financial performance or other events. They appear in a number of places throughout this report and include statements regarding our intentions, beliefs or current expectations concerning, among other things, our results of operations, financial condition, liquidity, prospects, growth, strategies and the industry in which we operate. All forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those that we expected.

While we believe that our assumptions are reasonable, we caution that it is very difficult to predict the impact of known factors, and it is impossible for us to anticipate all factors that could affect our actual results. All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this report in the context of the factors that could cause outcomes to differ materially from our expectations. These factors include, but are not limited to:

- the impacts of the ongoing COVID-19 pandemic or another pandemic, epidemic or infectious disease outbreak on our company, our employees, our customers, our partners, our industry and the economy as a whole, as well as our franchisees’ ability to maintain operations in their individual restaurants;
- global economic or other business conditions that may affect the desire or ability of our customers to purchase our products such as inflationary pressures, high unemployment levels, increases in gas prices, and declines in median income growth, consumer confidence and consumer discretionary spending;
- our ability to open new restaurants in new and existing markets, including difficulty in finding sites and in negotiating acceptable leases;
- our ability to compete successfully with other quick-service and fast casual restaurants;
- vulnerability to changes in consumer preferences and political and economic conditions;
- our ability to attract, develop and retain employees;
- vulnerability to conditions in the greater Los Angeles area and to natural disasters given the geographic concentration and real estate intensive nature of our business;
- the possibility that we may continue to incur significant impairment of certain of our assets, in particular in our new markets;
- changes in food and supply costs, especially for chicken;
- social media and negative publicity, whether or not valid, and our ability to respond to and effectively manage the accelerated impact of social media;
- our ability to continue to expand our digital business, delivery orders and catering;
- concerns about food safety and quality and about food-borne illness, particularly avian flu;
- dependence on frequent and timely deliveries of food and supplies and our dependence on a single supplier to distribute substantially all of our products to our restaurants;

- our ability to service our level of indebtedness;
- uncertainty related to the success of our marketing programs, new menu items, advertising campaigns and restaurant designs and remodels;
- our reliance on our franchisees, who may incur financial hardships, lose access to credit, close restaurants, or declare bankruptcy, and our limited control over our franchisees and potential liability for their acts;
- potential exposure to unexpected costs and losses from our self-insurance programs;
- potential obligations under long-term and non-cancelable leases, and our ability to renew leases at the end of their terms;
- the impact of any failure of our information technology system or any breach of our network security;
- the impact of any security breaches of confidential customer data or personal information in connection with our electronic process of credit and debit card transactions;
- our ability to enforce and maintain our trademarks and protect our other proprietary intellectual property;
- risks related to government regulation and litigation, including employment and labor laws; and
- other risks set forth in our filings with the SEC from time to time, including under Item 1A, Risk Factors in our annual report on Form 10-K for the year ended December 29, 2021, which filings are available online at www.sec.gov.

We caution you that the important factors referenced above may not contain all of the factors that are important to you. In addition, we cannot assure you that we will realize the results or developments we expect or anticipate or, even if substantially realized, that they will result in the consequences we anticipate or affect us or our operations in the ways that we expect. The forward-looking statements included in this report are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as 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. We qualify all of our forward-looking statements by these cautionary statements.

Overview

El Pollo Loco is a differentiated and growing restaurant concept that specializes in fire-grilling citrus-marinated chicken and operates in the limited service restaurant (“LSR”) segment. We strive to offer food that integrates the culinary traditions of Mexico with the healthier lifestyle of Los Angeles, a combination that we call “LA-Mex.” Our distinctive menu features our signature product--citrus-marinated fire-grilled chicken--and a variety of Mexican and LA-inspired entrees that we create from our chicken. We serve individual and family-sized chicken meals, a variety of Mexican and LA-inspired entrees, and sides, and, throughout the year, on a limited-time basis, additional proteins like shrimp. Our entrees include favorites such as our Chicken Avocado Burrito, Pollo Fit entrees, chicken tostada salads, and Pollo Bowls. Our famous Creamy Cilantro dressings and salsas are prepared fresh daily, allowing our customers to create their favorite flavor profiles to enhance their culinary experience. We believe that our distinctive menu with better for you and more affordable alternatives appeals to consumers across a wide variety of socio-economic backgrounds and drives our balanced composition of sales throughout the day (our “day-part mix”), including at lunch and dinner.

Market Trends and Uncertainties

We may face future business disruption and related risks resulting from the ongoing COVID-19 pandemic or from another pandemic, epidemic or infectious disease outbreak, or from broader macroeconomic trends, any of which could have a significant impact on our business. During both thirteen weeks ended September 28, 2022 and September 29, 2021, respectively, we incurred \$0.5 million in COVID-19 related expenses, primarily due to leaves of absence. During the thirty-nine weeks ended September 28, 2022 and September 29, 2021, respectively, we incurred \$3.1 million and \$3.5 million, in COVID-19 related expenses, primarily due to leaves of absence and overtime pay. In addition, while all of our restaurants had dining rooms open as of September 28, 2022, we continue to experience staffing challenges, including higher wage inflation, overtime costs and other labor related costs. Labor costs could also be adversely impacted as a result of California Assembly Bill No. 257, the Fast Food Accountability and Standards Recovery Act (“FAST Act”), which was signed into law in September 2022 and authorizes the creation of a council to set minimum standards for industry workers in California, including minimum wages. The FAST Act, currently subject to a referendum campaign, could result in increased labor cost at our California restaurants thereby potentially impacting the profitability of our California restaurants. Further, this bill could prompt similar legislation in other states. Further, we continue to experience inflationary pressures, which resulted in increased commodity prices and impacted our business

and results of operations during the thirteen and thirty-nine weeks ended September 28, 2022. We expect these pressures to continue during the rest of fiscal 2022.

Due to the fluidity of the COVID-19 pandemic and current macroeconomic environment, we cannot determine the ultimate impact on our condensed consolidated financial condition, liquidity, and future results of operations, and therefore any prediction as to the ultimate materiality of the adverse impact on our condensed consolidated financial condition, liquidity, and future results of operations is uncertain.

Growth Strategies and Outlook

As of September 28, 2022, we had 487 locations in six states. In fiscal 2021, we opened two new company-operated restaurants, one in Nevada and one in California, and our franchisees opened two new restaurants, one in Texas and one in Louisiana. For the thirty-nine weeks ended September 28, 2022, one new company-operated restaurant was opened in Nevada and two new company-operated restaurants were opened in California. For the thirty-nine weeks ended September 28, 2022, seven new franchised restaurants were opened in California. We plan to continue to expand our business, drive restaurant sales growth, and enhance our competitive positioning, by executing the following strategies:

- develop a people-first culture;
- differentiate the brand;
- simplify operations; and
- accelerate new restaurant development.

To increase comparable restaurant sales, we plan to increase customer frequency, attract new customers, and improve per-person spend. The success of these growth plans is not guaranteed.

Highlights and Trends

Comparable Restaurant Sales

For the thirteen and thirty-nine weeks ended September 28, 2022, system-wide comparable restaurant sales increased by 3.8% and 6.3%, respectively, from the comparable period in the prior year. For company-operated restaurants, comparable restaurant sales for the thirteen and thirty-nine weeks ended September 28, 2022 increased by 3.4% and 2.9%, respectively. For company-operated restaurants, the quarter's change in comparable restaurant sales consisted of an approximately 7.5% increase in average check size and a decrease in transactions of 4.1% and the year-to-date change in comparable restaurant sales consisted of a 4.1% decrease in transactions and a 7.0% increase in average check size. For franchised restaurants, comparable restaurant sales increased 4.1% and 8.6% for the thirteen and thirty-nine weeks ended September 28, 2022, respectively. Refer to Comparable Restaurant Sales definition in "Key Performance Indicators" section below.

Restaurant Development

Our restaurant counts at the beginning and end of each of the last three fiscal years and the thirty-nine weeks ended September 28, 2022, were as follows:

	<u>Thirty-Nine Weeks Ended</u>	<u>Fiscal Year Ended</u>		
	<u>September 28, 2022</u>	<u>2021</u>	<u>2020</u>	<u>2019</u>
Company-operated restaurant activity:				
Beginning of period	189	196	195	213
Openings	3	2	1	2
Restaurant sale to franchisee	—	(8)	—	(16)
Closures	(2)	(1)	—	(4)
Restaurants at end of period	<u>190</u>	<u>189</u>	<u>196</u>	<u>195</u>
Franchised restaurant activity:				
Beginning of period	291	283	287	271
Openings	7	2	3	2
Restaurant sale to franchisee	—	8	—	16
Closures	(1)	(2)	(7)	(2)
Restaurants at end of period	<u>297</u>	<u>291</u>	<u>283</u>	<u>287</u>
System-wide restaurant activity:				
Beginning of period	480	479	482	484
Openings	10	4	4	4
Closures	(3)	(3)	(7)	(6)
Restaurants at end of period	<u>487</u>	<u>480</u>	<u>479</u>	<u>482</u>

Restaurant Remodeling

In 2020, we finalized a new restaurant design that we believe will clearly differentiate and communicate our brand, both on the exterior and interior. We believe that our remodels using this new design will result in higher restaurant revenue and a strengthened brand. During the year ended September 28, 2022, we have completed four company-operated restaurant remodels and eight franchise remodels using the new asset design. In fiscal 2022, we plan to continue our standard practices for remodels, which includes completing a total of six company and 20-30 franchise remodels using the new design. The cost of our restaurant remodels varies depending on the scope of the work required, but on average the investment is \$0.3 million to \$0.4 million per restaurant.

Loco Rewards

Our Loco Rewards loyalty program offers rewards that incentivize customers to visit our restaurants more often each month. Customers earn points for each dollar spent and 50 points can be redeemed for a \$5 reward to be used for a future purchase. If a customer does not earn or use points within a one-year period, their account is deactivated and all points expire. Additionally, if a reward is not used within six months, it expires. When a customer is part of the rewards program, the obligation to provide future discounts related to points earned is considered a separate performance obligation, to which a portion of the transaction price is allocated. The performance obligation related to loyalty points is deemed to have been satisfied, and the amount deferred in the balance sheet is recognized as revenue, when the points are transferred to a reward and redeemed, the reward or points have expired, or the likelihood of redemption is remote. A portion of the transaction price is allocated to loyalty points on a pro-rata basis, based on stand-alone selling price, as determined by menu pricing and loyalty point's terms.

In addition, customers can earn additional points and free entrées for a variety of engagement activities. As points are available for redemption past the quarter earned, a portion of the revenue associated with the earned points will be deferred until redemption or expiration. As of September 28, 2022 and December 29, 2021, the revenue allocated to loyalty points that had not been redeemed was \$0.5 million and \$0.7 million, respectively, which is reflected in our accompanying condensed consolidated balance sheets within other accrued expenses and current liabilities. We had over 3.1 million loyalty program members as of September 28, 2022.

Critical Accounting Policies and Use of Estimates

The preparation of our condensed consolidated financial statements in accordance with U.S. generally accepted accounting principles (“GAAP”) requires us to make estimates and judgments that affect our reported amounts of assets, liabilities, revenue, and expenses, and related disclosures of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under current circumstances in making judgments about the carrying value of assets and liabilities that are not readily available from other sources. We evaluate our estimates on an on-going basis. Actual results may differ from these estimates under different assumptions or conditions.

Accounting policies are an integral part of our condensed consolidated financial statements. A thorough understanding of these accounting policies is essential when reviewing our reported results of operations and our financial position. Management believes that our critical accounting policies and estimates involve the most difficult management judgments, due to the sensitivity of the methods and assumptions used. For a summary of our critical accounting policies and a discussion of our use of estimates, see “Critical Accounting Policies and Estimates” in Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our annual report on Form 10-K for the year ended December 29, 2021.

There have been no material changes to our critical accounting policies or uses of estimates since our annual report on Form 10-K for the year ended December 29, 2021.

Recent Accounting Pronouncements

Recent accounting pronouncements are described in Note 1, “Basis of Presentation and Summary of Significant Accounting Policies” in the Notes to Condensed Consolidated Financial Statements above.

Key Financial Definitions

Revenue

Our revenue is derived from three primary sources: company-operated restaurant revenue, franchise revenue, which is comprised primarily of franchise royalties and, to a lesser extent, franchise fees and sublease rental income, and franchise advertising fee revenue. See Note 10, “Revenue from Contracts with Customers” in the Notes to Condensed Consolidated Financial Statements above for further details regarding our revenue recognition policy.

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 in nature, change with sales volume, are impacted by menu mix, and are subject to increases or decreases in commodity costs. We expect food and paper costs, particularly those items not subject to purchasing commitments, to increase in the short-term due to current inflationary pressures.

Labor and Related Expenses

Labor and related expenses include wages, payroll taxes, workers’ compensation expense, benefits, and bonuses paid to our restaurant management teams. Like other expense items, we expect labor costs to grow proportionately as our restaurant revenue grows. Factors that influence labor costs include minimum wage and payroll tax legislation, state labor laws (which, in California, may include the FAST Act), overtime, wage inflation, the frequency and severity of workers’ compensation claims, health care costs, and the performance of our restaurants.

Occupancy Costs and Other Operating Expenses

Occupancy costs include rent, common area maintenance (“CAM”), and real estate taxes. Other restaurant operating expenses include the costs of utilities, advertising, credit card processing fees, restaurant supplies, repairs and maintenance, and other restaurant operating costs.

General and Administrative Expenses

General and administrative expenses are comprised of expenses associated with corporate and administrative functions that support the development and operations of our restaurants, including compensation and benefits, travel expenses, stock compensation costs, legal and professional fees, and other related corporate costs. Also included are pre-opening costs, and expenses above the restaurant level, including salaries for field management, such as area and regional managers, and franchise field operational support.

Franchise Expenses

Franchise expenses are primarily comprised of rent expenses incurred on properties leased by us and then sublet to franchisees, expenses incurred in support of franchisee information technology systems, and the franchisee's portion of advertising expenses.

Depreciation and Amortization

Depreciation and amortization primarily consists of the depreciation of property and equipment, including leasehold improvements and equipment.

Loss on Disposal of Assets

Loss on disposal of assets includes the loss on disposal of assets related to retirements and replacement or write-off of leasehold improvements or equipment.

Impairment and Closed-Store Reserves

We review long-lived assets such as property, equipment, and intangibles on a unit-by-unit basis for impairment when events or circumstances indicate the carrying value of the assets may not be recoverable. We determine if there is impairment at the restaurant level by comparing undiscounted future cash flows from the related long-lived assets to their respective carrying values and record an impairment charge when appropriate. In determining future cash flows, significant estimates are made by us with respect to future operating results of each restaurant over its remaining lease term, including sales trends, labor rates, commodity costs and other operating cost assumptions. If assets are determined to be impaired, the impairment charge is measured by calculating the amount by which the asset's carrying amount exceeds its fair value. This process of assessing fair values requires the use of estimates and assumptions, including our ability to sell or reuse the related assets and market conditions, which are subject to a high degree of judgment. If these assumptions change in the future, we may be required to record impairment charges for these assets and these charges could be material.

When we close a restaurant, we will evaluate the right of use ("ROU") asset for impairment, based on anticipated sublease recoveries. The remaining value of the ROU asset is amortized on a straight-line basis, with the expense recognized in closed-store reserve expense, in addition to property tax and CAM charges for closed restaurants.

Interest Expense, Net

Interest expense, net, consists primarily of interest on our outstanding debt. Debt issuance costs are amortized at cost over the life of the related debt.

Provision for Income Taxes

Provision for income taxes consists of federal and state taxes on our income.

Comparison of Results of Operations

Our operating results for the thirteen weeks ended September 28, 2022 and September 29, 2021 and expressed as percentages of total revenue, with the exception of cost of operations and company restaurant expenses, which are expressed as percentages of company-operated restaurant revenue, are compared in the tables below.

	Thirteen Weeks Ended					
	September 28, 2022		September 29, 2021		Increase / (Decrease)	
	(\$,000)	(%)	(\$,000)	(%)	(\$,000)	(%)
Statements of Income Data						
Company-operated restaurant revenue	\$ 103,174	86.0	\$ 99,986	86.4	\$ 3,188	3.2
Franchise revenue	9,543	8.0	8,918	7.7	625	7.0
Franchise advertising fee revenue	7,161	6.0	6,796	5.9	365	5.4
Total revenue	119,878	100.0	115,700	100.0	4,178	3.6
Cost of operations						
Food and paper costs (1)	30,163	29.2	26,698	26.7	3,465	13.0
Labor and related expenses (1)	33,279	32.3	27,802	27.8	5,477	19.7
Occupancy and other operating expenses (1)	26,920	26.1	25,108	25.1	1,812	7.2
Company restaurant expenses (1)	90,362	87.6	79,608	79.6	10,754	13.5
General and administrative expenses	9,855	8.2	9,357	8.1	498	5.3
Franchise expenses	9,027	7.5	8,545	7.4	482	5.6
Depreciation and amortization	3,530	2.9	3,685	3.2	(155)	(4.2)
Loss on disposal of assets	21	0.0	83	0.1	(62)	(74.7)
Loss on disposition of restaurants	—	—	10	0.0	(10)	N/A
Impairment and closed-store reserves	219	0.2	167	0.1	52	31.1
Total expenses	113,014	94.3	101,455	87.7	11,559	11.4
Income from operations	6,864	5.7	14,245	12.3	(7,381)	(51.8)
Interest expense, net of interest income	108	0.1	449	0.4	(341)	(75.9)
Income tax receivable agreement income	(29)	(0.1)	(19)	(0.0)	(10)	52.6
Income before provision for income taxes	6,785	5.7	13,815	11.9	(7,030)	(50.9)
Provision for income taxes	1,776	1.5	3,654	3.2	(1,878)	(51.4)
Net income	\$ 5,009	4.2	\$ 10,161	8.7	\$ (5,152)	(50.7)

(1) Percentages for line items relating to cost of operations and company restaurant expenses are calculated with company-operated restaurant revenue as the denominator. All other percentages use total revenue.

Our operating results for the thirty-nine weeks ended September 28, 2022 and September 29, 2021 and expressed as percentages of total revenue, with the exception of cost of operations and company restaurant expenses, which are expressed as a percentage of company-operated restaurant revenue, are compared below.

	Thirty-Nine Weeks Ended					
	September 28, 2022		September 29, 2021		Increase / (Decrease)	
	(\$,000)	(%)	(\$,000)	(%)	(\$,000)	(%)
Statements of Income Data						
Company-operated restaurant revenue	\$ 303,585	85.7	\$ 301,117	87.2	\$ 2,468	0.8
Franchise revenue	28,862	8.2	24,919	7.2	3,943	15.8
Franchise advertising fee revenue	21,590	6.1	19,370	5.6	2,220	11.5
Total revenue	354,037	100.0	345,406	100.0	8,631	2.5
Cost of operations						
Food and paper costs (1)	89,586	29.5	78,971	26.2	10,615	13.4
Labor and related expenses (1)	98,966	32.6	90,060	29.9	8,906	9.9
Occupancy and other operating expenses (1)	76,597	25.2	74,288	24.7	2,309	3.1
Company restaurant expenses (1)	265,149	87.3	243,319	80.8	21,830	9.0
General and administrative expenses	29,488	8.3	30,354	8.8	(866)	(2.9)
Franchise expenses	27,315	7.7	24,457	7.1	2,858	11.7
Depreciation and amortization	10,745	3.0	11,540	3.3	(795)	(6.9)
Loss on disposal of assets	129	0.0	194	0.1	(65)	(33.5)
Loss on disposition of restaurants	—	—	1,534	0.4	(1,534)	N/A
Impairment and closed-store reserves	598	0.2	1,091	0.3	(493)	(45.2)
Total expenses	333,424	94.2	312,489	90.5	20,935	6.7
Income from operations	20,613	5.8	32,917	9.5	(12,304)	(37.4)
Interest expense, net of interest income	957	0.3	1,399	0.4	(442)	(31.6)
Income tax receivable agreement income	(345)	(0.1)	(69)	(0.0)	(276)	400.0
Income before provision for income taxes	20,001	5.6	31,587	9.1	(11,586)	(36.7)
Provision for income taxes	5,736	1.6	8,644	2.5	(2,908)	(33.6)
Net income	\$ 14,265	4.0	\$ 22,943	6.6	\$ (8,678)	(37.8)

(1) Percentages for line items relating to cost of operations and company restaurant expenses are calculated with company-operated restaurant revenue as the denominator. All other percentages use total revenue.

Company-Operated Restaurant Revenue

For the quarter, company-operated restaurant revenue increased \$3.2 million, or 3.2%, from the comparable period in the prior year. The increase in company-operated restaurant sales was primarily due to an increase in company-operated comparable restaurant revenue of \$3.3 million, or 3.4%. The company-operated comparable restaurant sales increase consisted of an approximately 7.5% increase in average check size due to increases in menu prices, partially offset by a 4.1% decrease in transactions. In addition, company-operated restaurant revenue was favorably impacted by \$0.9 million of additional sales from restaurants opened during or after the third quarter of 2021 and a \$0.1 million increase in revenue recognized for our loyalty points program. This company-operated restaurant sales increase was partially offset by a \$1.1 million decrease in revenue from the closure of three restaurants during or subsequent to the third quarter of 2021.

Year-to-date, company-operated restaurant revenue increased \$2.5 million, or 0.8%, from the comparable period in the prior year. The increase in company-operated restaurant sales was primarily due to an increase in company-operated comparable restaurant revenue of \$8.3 million, or 2.9%. The company-operated comparable restaurant sales increase consisted of an approximately 7.0% increase in average check size due to increases in menu prices, partially offset by a 4.1% decrease in transactions. In addition, company-operated restaurant revenue was favorably impacted by \$1.9 million of additional sales from restaurants opened during or after the third quarter of 2021 and a \$0.2 million increase in revenue from restaurants that were temporarily closed due to the COVID-19 pandemic during or subsequent to the third quarter of 2021. This company-operated restaurant sales increase was partially offset by a \$5.3 million decrease in revenue from the eight company-operated restaurants sold by the Company to an existing franchisee and a \$2.6 million decrease in revenue from the closure of three restaurants, in each case, during or subsequent to the first quarter of 2021.

Franchise Revenue

For the quarter, franchise revenue increased \$0.6 million, or 7.0%, from the comparable period in the prior year. This increase was primarily due to a franchise comparable restaurant sales increase of 4.1%, the opening of nine restaurants and eight company-operated restaurants sold by the Company to an existing franchisee, in each case, during or subsequent to the third quarter of 2021. This franchise revenue increase was partially offset by the closure of two franchise locations during or subsequent to the third quarter of 2021.

Year-to-date, franchise revenue increased \$3.9 million, or 15.8%, from the comparable period in the prior year. This increase was primarily due to a franchise comparable restaurant sales increase of 8.6% and the opening of nine restaurants during or subsequent to the third quarter of 2021. The remainder of the franchise revenue increase is attributed to the pass through income related to a corresponding increase in franchise expenses. This franchise revenue increase was partially offset by the closure of three franchise locations during or subsequent to the first quarter of 2021.

Franchise Advertising Fee Revenue

For the quarter, franchise advertising fee revenue increased \$0.4 million, or 5.4%, from the comparable period in the prior year. Year-to-date, franchise advertising fee revenue increased \$2.2 million, or 11.5%, from the comparable period in the prior year. As advertising fee revenue is a percentage of franchisees' revenue, the quarter-to-date and year-to-date fluctuations were due to the increases and decreases noted in franchise revenue above.

Food and Paper Costs

For the quarter, food and paper costs increased \$3.5 million, or 13.0%, from the comparable period in the prior year, primarily due to a \$3.2 million increase in food costs and a \$0.3 million increase in paper costs. Year-to-date, food and paper costs increased \$10.6 million, or 13.4%, from the comparable period in the prior year, due to a \$1.4 million increase in paper costs and a \$9.2 million increase in food costs. The increase in food and paper costs for the quarter and year-to-date periods resulted primarily from commodity inflation, partially offset by lower transactions. For the quarter, food and paper costs as a percentage of company-operated restaurant revenue were 29.2%, up from 26.7% in the comparable period of the prior year.

Year-to-date, food and paper costs as a percentage of company-operated restaurant revenue were 29.5%, up from 26.2% in the comparable period of the prior year. The percentage increase for the quarter and year-to-date periods was primarily due to an investment in new elevated packaging, partially offset by an increase in pricing.

Labor and Related Expenses

For the quarter, labor and related expenses increased \$5.5 million, or 19.7%, from the comparable period in the prior year. The increase for the quarter was primarily due to recognizing a \$3.2 million Employee Retention Credit ("ERC") which was recorded as an offset to the corresponding payroll tax expense and was classified as part of the labor and other operating expenses on the condensed consolidated statements of income during the thirteen weeks ended September 29, 2021. Further, the increase for the quarter was impacted by a \$2.1 million increase primarily related to minimum wage increases in California during fiscal 2022 and other labor wage increases as a result of competitive pressures, a \$1.0 million increase in other labor related expenses primarily related to overtime and payroll taxes and a \$0.4 million increase from restaurants opened during or after the third quarter of the prior year and. The increase in labor and related expenses for the quarter was partially offset by a \$0.8 million decrease related to the 4.1% decrease in year-over-year transactions and a \$0.4 million decrease in worker's compensation expense.

Year-to-date, labor and related expenses increased \$8.9 million, or 9.9%, from the comparable period in the prior year. The increase for the year-to-date period was due to a \$6.2 million increase related to higher minimum wage increases in California during fiscal 2022 and other labor wage increases as a result of competitive pressures, a \$1.3 million increase in overtime, \$0.8 million in higher payroll taxes, a \$0.7 million increase from restaurants opened during or after the third quarter of the prior year and a \$1.1 million increase in other labor related expenses primarily related to training. Further, the increase for the year-to-date period was primarily due to recognizing a \$3.2 million ERC which was recorded as an offset to the corresponding payroll tax expense and was classified as part of the labor and other operating expenses on the condensed consolidated statements of income during the thirty-nine weeks ended September 29, 2021. The increase in labor and related expenses for the year-to-date period was partially offset by a \$2.0 million reduction in labor related to the eight locations sold to an existing franchisee during the prior year, a \$1.8 million decrease related to the 4.1% decrease in year-over-year transactions and a \$0.6 million decrease in worker's compensation expense.

For the quarter, labor and related expenses as a percentage of company-operated restaurant revenue were 32.3%, up from 27.8% in the comparable period in the prior year due to the cost increases highlighted above, partially offset by the higher menu prices. Year-to-date labor and related expenses as a percentage of company-operated restaurant revenue were 32.6%, up from 29.9% in the comparable period in the prior year. The year-to-date percentage was impacted by the cost increases highlighted above, partially offset by an increase in menu pricing.

Occupancy and Other Operating Expenses

For the quarter, occupancy and other operating expenses increased \$1.8 million, or 7.2%, from the comparable period in the prior year. The increase was primarily due to a \$0.7 million increase in utilities, a \$0.2 million increase in repairs and maintenance, a \$0.2 million increase in market place delivery fees, a \$0.2 million increase in occupancy costs and a \$0.5 million increase in other operating supplies.

Year-to-date, occupancy and other operating expenses increased \$2.3 million, or 3.1%, from the comparable period in the prior year. The increase was primarily due to a \$1.6 million increase in utilities, a \$0.5 million increase in market place delivery fees, a \$0.3 million increase in repairs and maintenance and a \$0.4 million increase in other operating expenses. The increase in occupancy and other operating expenses was partially offset by a \$0.3 million decrease in occupancy costs and a \$0.2 million decrease in operating services and supplies.

For the quarter, occupancy and other operating expenses as a percentage of company-operated restaurant revenue were 26.1%, up from 25.1% in the comparable period. Year-to-date, occupancy and other operating expenses as a percentage of company-operated restaurant revenue were 25.2%, up from 24.7% in the comparable period of the prior year. Both the quarter and year-to-date increases resulted from cost increases highlighted above.

General and Administrative Expenses

For the quarter, general and administrative expenses increased \$0.5 million, or 5.3%, from the comparable period in the prior year. The increase for the quarter was primarily due to a \$0.4 million increase in recruiting and training costs.

Year-to-date, general and administrative expenses decreased \$0.9 million, or 2.9%, from the comparable period in the prior year. The decrease for the year-to-date period was due primarily to a \$0.5 million decrease in labor related costs, primarily related to a decrease in estimated management bonus expense and a \$0.5 million decrease in legal and outside professional services. This decrease was partially offset by a \$0.1 million increase in professional services.

For the quarter, general and administrative expenses as a percentage of total revenue were 8.2%, up from 8.1% in the comparable period of the prior year. Year-to-date, general and administrative expenses as a percentage of total revenue were 8.3%, down from 8.8% in the comparable period of the prior year. The percentage increase for the quarterly period is primarily due to the cost increases discussed above. The percentage decrease for the year-to-date period is primarily due to the cost decreases noted above.

Loss on Disposition of Restaurants

During the thirteen and thirty-nine weeks ended September 29, 2021, we completed the sale of our eight restaurants within the Sacramento area to an existing franchisee. This sale resulted in cash proceeds of \$4.6 million and a net loss on

sale of restaurants of less than \$0.1 million and \$1.5 million for the thirteen and thirty-nine weeks ended September 29, 2021, respectively.

Impairment and Closed-Store Reserves

During the thirteen and thirty-nine weeks ended September 28, 2022, we recorded non-cash impairment charges of \$0.1 million and \$0.4 million, respectively, primarily related to the long-lived assets of one restaurant in California. During the thirteen and thirty-nine weeks ended September 29, 2021, we recorded non-cash impairment charges of \$0.1 million and \$0.7 million, respectively, primarily related to the carrying value of the ROU assets of one restaurant in Texas closed in 2019, the ROU assets of one restaurant in California, and the long-lived assets of three restaurants in California. Given the inherent uncertainty in projecting results for newer restaurants in newer markets we are monitoring the recoverability of the carrying value of the assets of several restaurants on an ongoing basis. For these restaurants, if expected performance is not realized, an impairment charge may be recognized in future periods, and such charge could be material.

When a restaurant is closed, we will evaluate the ROU asset for impairment, based on anticipated sublease recoveries. The remaining value of the ROU asset is amortized on a straight-line basis, with the expense recognized in closed-store reserve expense. Additionally, any property tax and CAM payments relating to closed restaurants are included within closed-store expense. During the thirteen and thirty-nine weeks ended September 28, 2022, we recognized \$0.1 million and \$0.2 million, respectively, of closed-store reserve expense related to the amortization of ROU assets, property taxes and CAM payments for our closed locations. During the thirteen and thirty-nine weeks ended September 29, 2021, we recognized \$0.1 million and \$0.4 million, respectively, of closed-store reserve expense, primarily related to the amortization of ROU assets, property taxes and CAM payments for our closed locations.

Interest Expense, Net

For the quarter, interest expense, net, decreased \$0.3 million from the comparable period in the prior year. For the year-to-date period, interest expense, net, decreased \$0.4 million from the comparable period in the prior year. Both the quarter and year-to-date decreases in interest expense were primarily related to the unwinding of our interest rate swap and the corresponding payout that was recognized as part of interest income during the thirteen and thirty-nine weeks ended September 28, 2022 and lower outstanding balances on our 2022 Revolver (as defined below).

Income Tax Receivable Agreement

On July 30, 2014, we entered into the income tax receivable agreement (the “TRA”). The TRA calls for us to pay to our pre-IPO stockholders 85% of the savings in cash that we realize in our taxes as a result of utilizing our net operating losses (“NOLs”) and other tax attributes attributable to preceding periods. For the thirteen and thirty-nine weeks ended September 28, 2022, we recorded income tax receivable agreement income of less than \$0.1 million and \$0.3 million, respectively, and for both the thirteen and thirty-nine weeks ended September 29, 2021 we recorded income tax receivable agreement income of less than \$0.1 million.

Provision for Income Taxes

For the quarter ended September 28, 2022, we recorded an income tax provision of \$1.8 million, reflecting an estimated effective tax rate of 26.2%. For the quarter ended September 29, 2021, we recorded an income tax provision of \$3.7 million, reflecting an estimated effective tax rate of approximately 26.4%. For the year-to-date period ended September 28, 2022, we recorded an income tax provision of \$5.7 million, reflecting an estimated effective tax rate of approximately 28.7%. For the year-to-date ended September 29, 2021, we recorded an income tax provision of \$8.7 million, reflecting an estimated effective tax rate of approximately 27.4%.

The difference between the 21.0% statutory rate and our effective tax rate of 28.7% for the year-to-date ended September 28, 2022 is primarily a result of state taxes, the change in valuation allowance against certain state credits, a tax shortfall related to non-deductible executive compensation, partially offset by a Work Opportunity Tax Credit benefit.

Key Performance Indicators

To evaluate the performance of our business, we utilize a variety of financial and performance measures. These key measures include company-operated restaurant revenue, system-wide sales, comparable restaurant sales, restaurant contribution, restaurant contribution margin, new restaurant openings, EBITDA, and Adjusted EBITDA.

System-Wide Sales

System-wide sales are neither required by, nor presented in accordance with GAAP. System-wide sales are the sum of company-operated restaurant revenue and sales from franchised restaurants. Our total revenue in our condensed consolidated statements of income is limited to company-operated restaurant revenue and franchise revenue from our franchisees. Accordingly, system-wide sales should not be considered in isolation or as a substitute for our results as reported under GAAP. Management believes that system-wide sales are an important figure for investors, because they are widely used in the restaurant industry, including by our management, to evaluate brand scale and market penetration.

The following table reconciles system-wide sales to company-operated restaurant revenue and total revenue:

(Dollar amounts in thousands)	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Company-operated restaurant revenue	\$ 103,174	\$ 99,986	\$ 303,585	\$ 301,117
Franchise revenue	9,543	8,918	28,862	24,919
Franchise advertising fee revenue	7,161	6,796	21,590	19,370
Total Revenue	119,878	115,700	354,037	345,406
Franchise revenue	(9,543)	(8,918)	(28,862)	(24,919)
Franchise advertising fee revenue	(7,161)	(6,796)	(21,590)	(19,370)
Sales from franchised restaurants	159,742	151,657	481,351	432,752
System-wide sales	\$ 262,916	\$ 251,643	\$ 784,936	\$ 733,869

Company-Operated Restaurant Revenue

Company-operated restaurant revenue consists of sales of food and beverages in company-operated restaurants net of promotional allowances, employee meals, and other discounts. Company-operated restaurant revenue in any period is directly influenced by the number of operating weeks in such period, the number of open restaurants, and comparable restaurant sales.

Seasonal factors and the timing of holidays cause our revenue to fluctuate from quarter to quarter. Our revenue per restaurant is typically lower in the first and fourth quarters due to reduced January and December traffic and higher in the second and third quarters. As a result of seasonality, our quarterly and annual results of operations and key performance indicators such as company-operated restaurant revenue and comparable restaurant sales may fluctuate.

Comparable Restaurant Sales

Comparable restaurant sales reflect year-over-year sales changes for comparable company-operated, franchised, and system-wide restaurants. A restaurant enters our comparable restaurant base the first full week after it has operated for fifteen months. Comparable restaurant sales exclude restaurants closed during the applicable period. At September 28, 2022 and September 29, 2021, there were 466 and 462 comparable restaurants, 184 and 189 company-operated restaurants and 282 and 273 franchised restaurants, respectively. Comparable restaurant sales indicate the performance of existing restaurants, since new restaurants are excluded.

Comparable restaurant sales growth can be generated by an increase in the number of meals sold and/or by increases in the average check amount, resulting from a shift in menu mix and/or higher prices resulting from new products or price increases.

Restaurant Contribution and Restaurant Contribution Margin

Restaurant contribution and restaurant contribution margin are neither required by, nor presented in accordance with, GAAP. Restaurant contribution is defined as company-operated restaurant revenue less company restaurant expenses

which includes food and paper cost, labor and related expenses and occupancy and other operating expenses, where applicable. Restaurant contribution excludes certain costs, such as general and administrative expenses, depreciation and amortization, impairment and closed-store reserve and other costs that are considered normal operating costs and, accordingly, restaurant contribution is not indicative of overall Company results and does not accrue directly to the benefit of stockholders because of the exclusion of certain corporate-level expenses. Restaurant contribution margin is defined as restaurant contribution as a percentage of net company-operated restaurant revenue.

Restaurant contribution and restaurant contribution margin are supplemental measures of operating performance of our restaurants, and our calculations thereof may not be comparable to those reported by other companies. Restaurant contribution and restaurant contribution margin have limitations as analytical tools, and you should not consider them in isolation, or superior to, or as substitutes for the analysis of our results as reported under GAAP. Management uses restaurant contribution and restaurant contribution margin as key metrics to evaluate the profitability of incremental sales at our restaurants, to evaluate our restaurant performance across periods, and to evaluate our restaurant financial performance compared with our competitors. Management believes that restaurant contribution and restaurant contribution margin are important tools for investors, because they are widely-used metrics within the restaurant industry to evaluate restaurant-level productivity, efficiency, and performance. Restaurant contribution and restaurant contribution margin may also assist investors in evaluating our business and performance relative to industry peers and provide greater transparency with respect to our financial condition and results of operations.

A reconciliation of restaurant contribution and restaurant contribution margin to company-operated restaurant revenue is provided below:

<u>(Dollar amounts in thousands)</u>	<u>Thirteen Weeks Ended</u>		<u>Thirty-Nine Weeks Ended</u>	
	<u>September 28, 2022</u>	<u>September 29, 2021</u>	<u>September 28, 2022</u>	<u>September 29, 2021</u>
Restaurant contribution:				
Income from operations	\$ 6,864	\$ 14,245	\$ 20,613	\$ 32,917
Add (less):				
General and administrative expenses	9,855	9,357	29,488	30,354
Franchise expenses	9,027	8,545	27,315	24,457
Depreciation and amortization	3,530	3,685	10,745	11,540
Loss on disposal of assets	21	83	129	194
Loss on disposition of restaurants	—	10	—	1,534
Franchise revenue	(9,543)	(8,918)	(28,862)	(24,919)
Franchise advertising fee revenue	(7,161)	(6,796)	(21,590)	(19,370)
Impairment and closed-store reserves	219	167	598	1,091
Restaurant contribution	<u>\$ 12,812</u>	<u>\$ 20,378</u>	<u>\$ 38,436</u>	<u>\$ 57,798</u>
Company-operated restaurant revenue:				
Total revenue	\$ 119,878	\$ 115,700	\$ 354,037	\$ 345,406
Less:				
Franchise revenue	(9,543)	(8,918)	(28,862)	(24,919)
Franchise advertising fee revenue	(7,161)	(6,796)	(21,590)	(19,370)
Company-operated restaurant revenue	<u>\$ 103,174</u>	<u>\$ 99,986</u>	<u>\$ 303,585</u>	<u>\$ 301,117</u>
Restaurant contribution margin (%)	<u>12.4 %</u>	<u>20.4 %</u>	<u>12.7 %</u>	<u>19.2 %</u>

New Restaurant Openings

The number of restaurant openings reflects the number of new restaurants opened by us and our franchisees during a particular reporting period. Before a new restaurant opens, we and our franchisees incur pre-opening costs, as described below. New restaurants often open with an initial start-up period of higher than normal sales volumes, which subsequently decrease to stabilized levels. New restaurants typically experience normal inefficiencies in the form of

higher food and paper, labor, and other direct operating expenses and, as a result, restaurant contribution margins are generally lower during the start-up period of operation. The average start-up period after which our new restaurants' revenue and expenses normalize is approximately fourteen weeks. When we enter new markets, we may be exposed to start-up times and restaurant contribution margins that are longer and lower than reflected in our average historical experience.

EBITDA and Adjusted EBITDA

EBITDA represents net income before interest expense, provision for income taxes, depreciation, and amortization. Adjusted EBITDA represents net income before interest expense, provision for income taxes, depreciation, amortization, and other items that we do not consider representative of our on-going operating performance, as identified in the reconciliation table below.

EBITDA and Adjusted EBITDA as presented in this report are supplemental measures of our performance that are neither required by, nor presented in accordance with, GAAP. EBITDA and Adjusted EBITDA are not measurements of our financial performance under GAAP and should not be considered as alternatives to net income, operating income, or any other performance measures derived in accordance with GAAP, or as alternatives to cash flow from operating activities as a measure of our liquidity. In addition, in evaluating EBITDA and Adjusted EBITDA, you should be aware that in the future we will incur expenses or charges such as those added back to calculate EBITDA and Adjusted EBITDA. Our presentation of EBITDA and Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or nonrecurring items.

EBITDA and Adjusted EBITDA have limitations as analytical tools, and you should not consider them in isolation, or as substitutes for analysis of our results as reported under GAAP. Some of these limitations are (i) they do not reflect our cash expenditures, or future requirements for capital expenditures or contractual commitments, (ii) they do not reflect changes in, or cash requirements for, our working capital needs, (iii) they do not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on our debt, (iv) although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA and Adjusted EBITDA do not reflect any cash requirements for such replacements, (v) they do not adjust for all non-cash income or expense items that are reflected in our statements of cash flows, (vi) they do not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our on-going operations, and (vii) other companies in our industry may calculate these measures differently than we do, limiting their usefulness as comparative measures.

We compensate for these limitations by providing specific information regarding the GAAP amounts excluded from such non-GAAP financial measures. We further compensate for the limitations in our use of non-GAAP financial measures by presenting comparable GAAP measures more prominently.

We believe that EBITDA and Adjusted EBITDA facilitate operating performance comparisons from period to period by isolating the effects of some items that vary from period to period without any correlation to core operating performance or that vary widely among similar companies. These potential differences may be caused by variations in capital structures (affecting interest expense), tax positions (such as the impact on periods or companies of changes in effective tax rates or NOLs) and the age and book depreciation of facilities and equipment (affecting relative depreciation expense). We also present EBITDA and Adjusted EBITDA because (i) we believe that these measures are frequently used by securities analysts, investors and other interested parties to evaluate companies in our industry, (ii) we believe that investors will find these measures useful in assessing our ability to service or incur indebtedness, and (iii) we use EBITDA and Adjusted EBITDA internally for a number of benchmarks, including to compare our performance to that of our competitors.

The following table sets forth reconciliations of our net income to our EBITDA and Adjusted EBITDA:

(Amounts in thousands)	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021	September 28, 2022	September 29, 2021
Net income	\$ 5,009	\$ 10,161	\$ 14,265	\$ 22,943
Non-GAAP adjustments:				
Provision for income taxes	1,776	3,654	5,736	8,644
Interest expense, net of interest income	108	449	957	1,399
Depreciation and amortization	3,530	3,685	10,745	11,540
EBITDA	\$ 10,423	\$ 17,949	\$ 31,703	\$ 44,526
Stock-based compensation expense (a)	1,009	1,042	2,806	2,936
Loss on disposal of assets (b)	21	83	129	194
Loss on disposition of restaurants (c)	—	10	—	1,534
Impairment and closed-store reserves (d)	219	167	598	1,091
Income tax receivable agreement income (e)	(29)	(19)	(345)	(69)
Securities class action legal expense (f)	(10)	(415)	443	256
Legal settlements (g)	(541)	—	(541)	—
Special legal expenses (h)	350	—	350	—
Pre-opening costs (i)	131	36	280	220
Adjusted EBITDA	\$ 11,573	\$ 18,853	\$ 35,423	\$ 50,688

- (a) Includes non-cash, stock-based compensation.
- (b) Loss on disposal of assets includes the loss on disposal of assets related to retirements and replacement or write-off of leasehold improvements or equipment.
- (c) During the thirteen and thirty-nine weeks ended September 29, 2021, we completed the sale of eight restaurants within the Sacramento area to an existing franchisee. This sale resulted in cash proceeds of \$4.6 million during the thirty-nine weeks ended September 29, 2021 and a net loss on sale of restaurants of less than \$0.1 million and \$1.5 million for the thirteen and thirty-nine weeks ended September 29, 2021, respectively.
- (d) Includes costs related to impairment of long-lived and ROU assets and closing restaurants. During the thirteen and thirty-nine weeks ended September 28, 2022, we recorded non-cash impairment charges of \$0.1 million and \$0.4 million, respectively, primarily related to the long-lived assets of one restaurant in California. During the thirteen and thirty-nine weeks ended September 29, 2021, we recorded non-cash impairment charges of \$0.1 million and \$0.7 million, respectively, primarily related to the carrying value of the ROU assets of one restaurant in Texas closed in 2019, the ROU assets of one restaurant in California, and the long-lived assets of three restaurants in California. During the thirteen and thirty-nine weeks ended September 28, 2022, we recognized \$0.1 million and \$0.2 million, respectively, of closed-store reserve expense related to the amortization of ROU assets, property taxes and CAM payments for our closed locations. During the thirteen and thirty-nine weeks ended September 29, 2021, we recognized \$0.1 million and \$0.4 million, respectively, of closed-store reserve expense, primarily related to the amortization of ROU assets, property taxes and CAM payments for our closed locations.
- (e) On July 30, 2014, we entered into the TRA. This agreement calls for us to pay to our pre-IPO stockholders 85% of the savings in cash that we realize in our taxes as a result of utilizing our NOLs and other tax attributes attributable to preceding periods. For the thirteen and thirty-nine weeks ended September 28, 2022 and September 29, 2021, income tax receivable agreement income consisted of the amortization of interest expense and changes in estimates for actual tax returns filed, related to our total expected TRA payments.
- (f) Consists of costs and recoveries related to the defense of securities lawsuits. During the thirteen and thirty-nine weeks ended September 29, 2021, we received \$0.5 million in insurance proceeds, net of legal expenses, related to a derivative complaint.
- (g) Includes \$0.5 million received from legal settlement, net of legal expenses.
- (h) Consists of costs related to a special dividend declaration. On October 11, 2022, the Board of Directors declared a special dividend of \$1.50 per share on the common stock of the Company.
- (i) Pre-opening costs are a component of general and administrative expenses, and consist of costs directly associated with the opening of new restaurants and incurred prior to opening, including management labor costs, staff labor costs during training, food and supplies used during training, marketing costs, and other related pre-opening costs. These are generally incurred over the three to five months prior to opening. Pre-opening costs also include occupancy costs incurred between the date of possession and the opening date for a restaurant.

Liquidity and Capital Resources

Our primary sources of liquidity and capital resources have been cash provided from operations, cash and cash equivalents, and our revolving credit facility. Our primary requirements for liquidity and capital are new restaurants, existing restaurant capital investments (remodels and maintenance), legal defense costs, lease obligations, interest payments on our debt, working capital and general corporate needs. Our working capital requirements are not significant, since our customers pay for their purchases in cash or by payment card (credit or debit) at the time of sale. Thus, we are able to sell many of our inventory items before we have to pay our suppliers. Our restaurants do not require significant inventories or receivables. We believe that these sources of liquidity and capital are sufficient to finance our continued operations, including planned capital expenditures, for at least the next 12 months from the issuance of the condensed consolidated financial statements.

The following table presents summary cash flow information for the periods indicated (in thousands):

(Amounts in thousands)	Thirty-Nine Weeks Ended	
	September 28, 2022	September 29, 2021
Net cash provided by (used in)		
Operating activities	\$ 21,907	\$ 42,332
Investing activities	(13,022)	(8,143)
Financing activities	(19,656)	(22,739)
Net increase (decrease) in cash	\$ (10,771)	\$ 11,450

Operating Activities

For the thirty-nine weeks ended September 28, 2022, net cash from operating activities changed by approximately \$20.4 million from the comparable period of the prior year. This change was due to unfavorable working capital fluctuations and lower profitability compared to the same period in the prior year.

Investing Activities

For the thirty-nine weeks ended September 28, 2022, net cash used in investing activities changed by \$4.9 million from the comparable period of the prior year. This change was due primarily to the Company receiving a deposit of \$4.6 million on the sale of eight restaurants within the Sacramento area during the thirty-nine weeks ended September 29, 2021.

Financing Activities

For the thirty-nine weeks ended September 28, 2022, net cash from financing activities changed by \$3.1 million from the comparable period of the prior year. The change was due primarily to \$22.8 million of net pay downs on the 2018 Revolver during the thirty-nine weeks ended September 29, 2021, compared to net pay downs of \$20.0 million during the thirty-nine weeks ended September 28, 2022. This change was partially offset by a \$1.6 million cash inflow related to option exercises during the thirty-nine weeks ended September 28, 2022, compared to a \$0.9 million cash inflow during the thirty-nine weeks ended September 29, 2021.

Debt and Other Obligations

The Company, as a guarantor, is a party to a credit agreement (the "2022 Credit Agreement") among EPL, as borrower, Intermediate, as a guarantor, Bank of America, N.A., as administrative agent, swingline lender, and letter of credit issuer, the lenders party thereto, and the other parties thereto, which provides for a \$150.0 million five-year senior secured revolving credit facility (the "2022 Revolver"). The 2022 Revolver, which is available pursuant to the 2022 Credit Agreement, includes a sub limit of \$15.0 million for letters of credit and a sub limit of \$15.0 million for swingline loans. The 2022 Revolver and 2022 Credit Agreement will mature on July 27, 2027. The obligations under the 2022

Credit Agreement and related loan documents are guaranteed by Holdings and Intermediate. The obligations of Holdings, EPL and Intermediate under the 2022 Credit Agreement and related loan documents are secured by a first priority lien on substantially all of their respective assets.

The special dividend announced by the Company's Board of Directors on October 11, 2022 is permitted under the terms of 2022 Revolver pursuant to both subclause (iii)(d) and (iii)(e) of the preceding sentence. Under the 2022 Revolver, Holdings is restricted from making certain payments such as cash dividends, except that it may, inter alia, (i) pay up to \$1.0 million per year to repurchase or redeem qualified equity interests of Holdings held by our past or present officers, directors, or employees (or their estates) upon death, disability, or termination of employment, (ii) pay under its TRA, and (iii) so long as no default or event of default has occurred and is continuing, (a) make non-cash repurchases of equity interests in connection with the exercise of stock options by directors, officers and management, provided that those equity interests represent a portion of the consideration of the exercise price of those stock options, (b) pay up to \$0.5 million in any 12 month consecutive period to redeem, repurchase or otherwise acquire equity interests of any subsidiary that is not a wholly-owned subsidiary from any holder of equity interest in such subsidiary, (c) pay up to \$2.5 million per year pursuant to stock option plans, employment agreements, or incentive plans, (d) make up to \$5.0 million in other restricted payments per year, and (e) make other restricted payments, subject to its compliance, on a pro forma basis, with (x) a lease-adjusted consolidated leverage ratio not to exceed 4.25 times and (y) the financial covenants applicable to the 2022 Revolver.

Borrowings under the 2022 Credit Agreement (other than any swingline loans) bear interest, at the borrower's option, at rates based upon either the secured overnight financing rate ("SOFR") or a base rate, plus, for each rate, a margin determined in accordance with a lease-adjusted consolidated leverage ratio-based pricing grid. The base rate is calculated as the highest of (a) the federal funds rate plus 0.50%, (b) the published Bank of America prime rate, or (c) Term SOFR with a term of one-month SOFR plus 1.00%. For Term SOFR loans, the margin is in the range of 1.25% to 2.25%, and for base rate loans the margin is in a range of 0.25% to 1.25%. Borrowings under the 2022 Revolver may be repaid and reborrowed. The interest rate range was 2.87% to 6.00% and 1.35% to 6.00% for the thirteen and thirty-nine weeks ended September 28, 2022, respectively, and 1.34% to 1.35% and 1.34% to 1.65% for the thirteen and thirty-nine weeks ended September 29, 2021, respectively.

The 2022 Credit Agreement contains certain financial covenants. We were in compliance with the financial covenants as of September 28, 2022.

At September 28, 2022, \$10.0 million of letters of credit and \$20.0 million of borrowings were outstanding under the 2022 Revolver. There were \$120.0 million remaining borrowings available under the 2022 Revolver at September 28, 2022.

During the year ended December 25, 2019, we entered into an interest rate swap with a notional amount of \$40.0 million, related to the outstanding borrowings under our 2018 Revolver (defined below). The interest rate swap was designated as a cash flow hedge and effectively converted a portion of our outstanding borrowings to a fixed rate of 1.31%, plus the applicable margin spread, which was 1.5% for the thirty-nine weeks ended September 28, 2022.

During the thirty-nine weeks ended September 28, 2022, we refinanced and terminated our credit agreement (the "2018 Credit Agreement") among EPL, as borrower, the Company and Intermediate, as guarantors, Bank of America, N.A., as administrative agent, swingline lender, and letter of credit issuer, the lenders party thereto, and the other parties thereto, which provided for a \$150.0 million five-year senior secured revolving credit facility (the "2018 Revolver") and entered into the 2022 Credit Agreement. On July 29, 2022, we made a \$20.0 million payment to the 2022 Revolver and the outstanding balance as of September 28, 2022 was \$20.0 million. See Note 4, "Long-term debt" for additional information.

Material Cash Requirements

Our material cash requirements as of September 28, 2022 have not changed materially since those disclosed under "Material Cash Requirements" in Part II, Item 7 of our annual report on Form 10-K for the year ended December 29, 2021. Our material cash requirements relate mostly to future (i) debt payments, including expected interest expense, calculated based on current interest rates, (ii) restaurant operating lease payments, (iii) income tax receivable agreement payments, (iv) purchasing commitments for chicken, (v) restaurant finance lease payments, and (vi) capital expenditures.

Share Repurchase Program and Subsequent Borrowings

On October 11, 2022, our Board of Directors approved a share repurchase program under which the Company is authorized to repurchase up to \$20.0 million of shares of our Common Stock. The repurchase program will terminate on March 28, 2024, may be modified, suspended or discontinued at any time, and does not obligate us to acquire any particular number of shares.

In addition, on October 11, 2022, our Board of Directors declared a special dividend of \$1.50 per share on our common stock. The special dividend is payable on November 9, 2022, to stockholders of record, including holders of restricted stock and restricted stock units, at the close of business on October 24, 2022.

Lastly, on November 3, 2022, we borrowed \$46.0 million on our 2022 Revolver and outstanding borrowings as of November 3, 2022 were \$66.0 million. After payment of the special dividend, we are expected to have approximately \$10.0 million in cash on hand.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Risk

On July 27, 2022, we refinanced the 2018 Revolver and entered into the 2022 Credit Agreement, which provides for a \$150 million five-year senior secured revolving facility. In connection with the refinancing, the 2018 Credit Agreement was terminated. We are exposed to market risk from changes in interest rates on our debt, which bears interest, at secured overnight financing rate (“SOFR”) plus a margin between 1.25% and 2.25%. As of September 28, 2022, we had outstanding borrowings of \$20.0 million under our 2022 Revolver, \$10.0 million of letters of credit in support of our insurance programs, and the applicable margin on outstanding borrowings under 2022 Revolver was 1.5%. We effectively did not have any long-term debt subject to variations in interest rates as of September 28, 2022 as a one percent increase in the variable rate of interest would not result in a material increase in annual interest expense.

On July 29, 2022, we made a \$20.0 million payment to the 2022 Revolver and the outstanding balance as of September 28, 2022 was \$20.0 million. Borrowings under the 2022 Credit Agreement (other than any swingline loans) bear interest, at the borrowers’ option, at rates based upon either “SOFR” or a base rate, plus, for each rate, a margin determined in accordance with a lease-adjusted consolidated leverage ratio-based pricing grid. If future rates based upon SOFR are higher than SOFR rates as currently determined, we may experience potential increases in interest rates on our variable rate debt, which could adversely impact our interest expense, results of operations and cash flows.

In connection with our entry into the 2022 Credit Agreement, we terminated the interest rate swap previously used to hedge interest rate risk. In settlement of this swap, we received approximately \$0.6 million. The remaining amount in AOCI related to the hedging relationship will be reclassified into earnings when the hedged forecasted transaction is reported in earnings.

Inflation

Inflation has an impact on food, paper, construction, utility, labor and benefits, general and administrative, and other costs, all of which can materially impact our operations. In general, we have been able to substantially offset cost increases resulting from inflation by increasing menu prices, managing menu mix, improving productivity, or making other adjustments. We may not be able to offset cost increases in the future. In addition, we have a substantial number of hourly employees who are paid wage rates at or based on the applicable federal, state, or local minimum wage, and increases in the minimum wage will increase our labor costs.

Commodity Price Risk

We are exposed to market price fluctuation in food product prices. Given the historical volatility of certain of our food product prices, including chicken, other proteins, grains, produce, dairy products, and cooking oil, these fluctuations can

materially impact our food and beverage costs. While our purchasing commitments partially mitigate the risk of such fluctuations, there is no assurance that supply and demand factors such as disease or inclement weather will not cause the prices of the commodities used in our restaurant operations to fluctuate. In periods when the prices of commodities drop, we may pay higher prices under our purchasing commitments. In rapidly fluctuating commodities markets, it may prove difficult for us to adjust our menu prices in accordance with input price fluctuations. Therefore, to the extent that we do not pass along cost increases to our customers, our results of operations may be adversely affected. At this time, we do not use financial instruments to hedge our commodity risk.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as such term is defined in Rules 13a-15(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) that are designed to ensure that information required to be disclosed by us in the reports that 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 our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Our disclosure controls and procedures are based on assumptions about the likelihood of future events, and even effective disclosure controls and procedures can only provide reasonable assurance of achieving their objectives. Because of their inherent limitations, we cannot guarantee that our disclosure controls and procedures will succeed in achieving their stated objectives in all cases, that they will be complied with in all cases, or that they will prevent or detect all misstatements.

Our management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures, 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, at the reasonable assurance level, as of September 28, 2022.

Changes in Internal Control over Financial Reporting

No changes in our internal control over financial reporting occurred during the quarter ended September 28, 2022 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.

For information regarding material legal proceedings, see Note 7, “Commitments and Contingencies—Legal Matters” in the “Notes to Condensed Consolidated Financial Statements” above, which information is incorporated by reference into this Item 1.

Item 1A. Risk Factors.

There have been no material changes from the risk factors previously disclosed in our annual report on Form 10-K for the year ended December 29, 2021 filed with the SEC on March 11, 2022, except for the revision of the risk factors that immediately follow.

Matters relating to employment and labor law may adversely affect our business.

Various federal, state and local labor laws govern our relationships with our employees and affect operating costs. These laws include employee classifications as exempt or non-exempt, minimum wage requirements, unemployment tax rates, workers’ compensation rates, citizenship requirements, and other wage and benefit requirements for employees classified as non-exempt. Significant additional government regulations and new laws mandating increases in minimum wages or benefits such as health insurance could materially affect our business, financial condition, operating results, and cash flow. In particular, our labor and regulatory compliance costs could be adversely impacted as a result of California Assembly Bill No. 257, the Fast Food Accountability and Standards Recovery Act (“FAST Act”), which was signed into law in September 2022. The FAST Act, currently subject to a referendum campaign, authorizes the creation of a council to set minimum standards for workers in the industry, including for wages, working hours, and other health and safety conditions. The implementation of the FAST Act could result in increased labor cost at our California restaurants thereby potentially impacting the profitability of our California restaurants. Further, this bill could prompt similar legislation in other states. In addition, the unionization of our employees and of the employees of our franchisees could materially affect our business, financial condition, operating results, and cash flow.

Employee claims against us or our franchisees based on, among other things, wage and hour violations, discrimination, harassment, or wrongful termination may also create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources that could otherwise be used to benefit the future performance of our operations. These types of employee claims could also be asserted against us, on a co-employer theory, by employees of our franchisees. A significant increase in the number of these claims, or an increase in the number of successful claims, could materially and adversely affect our business, brand image, employee recruitment, financial condition, results of operations, or cash flows.

If we or our franchisees face labor shortages or increased labor costs, our results of operations and growth could be adversely affected.

Labor is a primary component in the cost of operating our company-operated and franchised restaurants. Labor shortages and increased labor costs are subject to numerous internal and external factors, including higher employee-turnover rates, changes in immigration policy including barriers to immigrants entering, working in, or remaining in the United States, regulatory changes, prevailing wage rates, including increases in federal, state, or local minimum wages or in other employee benefit costs (including costs associated with health insurance coverage or workers’ compensation insurance), and increased competition we face from other companies for qualified employees. During 2021, we experienced an increasingly competitive and overall tightening of the labor market. This was attributed to, among other things, increased federal unemployment subsidies, including unemployment benefits offered in response to the ongoing COVID-19 pandemic, and other government regulations. A sustained labor shortage could lead to increased costs, such as increased overtime incurred to meet the demands of our customers and increased wage rates to attract and retain employees. Any failure to meet our staffing needs or any material increases in employee turnover rates could adversely affect our business and results of operations, including our ability to grow our restaurant base. See also our risk factor titled “The COVID-19 pandemic and measures intended to prevent its spread may have a significant negative impact on our business, sales, results of operations and financial condition” above for labor shortage risks we may face in connection with the COVID-19 pandemic.

Federally-mandated, state-mandated, or locally-mandated minimum wages have recently increased in several jurisdictions, including the State of California and Los Angeles County, and may be further raised in the future, including as a result of the FAST Act in California. We may be unable to sufficiently increase our menu prices in order to pass future increased labor costs on to our customers, in which case our margins would be negatively affected. Also, reduced margins of franchisees could make it more difficult to sell franchises. In addition, increases in menu prices by us and our franchisees to cover increased labor costs could have the effect of lowering sales, which would thereby reduce our margins and the royalties that we receive from franchisees.

If the ownership of our common stock continues to be highly concentrated, it may prevent minority stockholders from influencing significant corporate decisions and may result in conflicts of interest.

As of September 28, 2022, Trimaran Pollo Partners, L.L.C. (“LLC”) owns approximately 30.2% of our outstanding common stock. This large position means that LLC and its majority owners—which are predecessors and affiliates of, and certain funds managed by, Trimaran Capital Partners (collectively, “Trimaran”)—possess significant influence when stockholders vote on matters such as election of directors, mergers, consolidations and acquisitions, the sale of all or substantially all of our assets, decisions affecting our capital structure, amendments to our certificate of incorporation or our by-laws, and our winding up and dissolution. In addition, as of September 28, 2022, certain affiliates of Freeman Spogli & Co., FS Equity Partners V, L.P. and FS Affiliates V, L.P. (“Freeman Spogli”), own collectively approximately 14.9% of our outstanding common stock, which they received in August 2022 following a distribution by the LLC of a portion of its shares to Freeman Spogli.

Further, two of our eleven directors, including our chairman, are affiliated with Trimaran and one of our directors is affiliated with Freeman Spogli. The interests of Trimaran and Freeman Spogli, either individually or collectively, may not always coincide with our interests or the interests of our other stockholders. While Trimaran and Freeman Spogli act separately with respect to their respective ownership of our shares, their significant ownership may have the effect of delaying, deterring, or preventing acts that would be favored by our other stockholders, including a change in control of us. Also, Trimaran and/or Freeman Spogli may seek to cause us to take courses of action that, in their judgments, could enhance their investments in us, but that might involve risks to our other stockholders or adversely affect us or our other stockholders. As a result, the market price of our common stock could decline, or stockholders might not receive a premium over the then-current market price of our common stock upon a change in control. In addition, this concentration of ownership may adversely affect the trading price of our common stock, because investors may perceive disadvantages in owning shares of a company with significant stockholders.

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

Issuer Purchases of Equity Securities

During the thirteen weeks ended September 28, 2022, the Company acquired shares of its common stock held by its employees to satisfy tax withholding obligations in connection with the vesting of previously issued restricted stock. The number of shares of common stock acquired and the average price paid per share for each month in the third quarter ended September 28, 2022 are as shown in the table below.

	Total Number of Shares Purchased	Average Price Paid Per Share
June 30, 2022 to July 27, 2022	—	\$ —
July 28, 2022 to August 24, 2022	2,584	\$ 9.32
August 25, 2022 to September 28, 2022	—	\$ —
Total	<u>2,584</u>	<u>\$ 9.32</u>

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

None.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Index

<u>Number</u>	<u>Description</u>	<u>Filed Herewith</u>	<u>Form</u>	<u>Period Ended</u>	<u>Exhibit</u>	<u>Filing Date</u>	<u>SEC File Number</u>
3.1	Amended and Restated Certificate of Incorporation of El Pollo Loco Holdings, Inc.		10-Q	6/25/2014	3.1	9/5/2014	001-36556
3.2	Amended and Restated By-Laws of El Pollo Loco Holdings, Inc.		10-Q	6/25/2014	3.2	9/5/2014	001-36556
10.1	Severance and Separation Agreement, dated June 15, 2022, between El Pollo Loco Holdings, Inc. and Miguel Lozano		8-K		10.1	6/21/2022	001-36556
10.2	Employment Agreement, dated June 28, 2022, between El Pollo Loco Holdings, Inc. and Ira Fils		8-K		10.1	7/1/2022	001-36556
10.3	Credit Agreement, dated as of July 27, 2022, among El Pollo Loco, Inc., as borrower, El Pollo Loco Holdings, Inc., as guarantor, the other guarantors party thereto, the lenders party thereto and Bank of America, as administrative agent, swingline lender and letter of credit issuer		8-K		10.1	8/2/2022	001-36556
10.4	Supplemental Agreement, dated as of August 31, 2022, by and among El Pollo Loco Holdings, Inc., FS Equity Partners V, L.P., and FS Affiliates V, L.P.	X					
31.1	Certification of Chief Executive Officer under section 302 of the Sarbanes–Oxley Act of 2002	X					
31.2	Certification of Chief Financial Officer under section 302 of the Sarbanes–Oxley Act of 2002	X					
32.1	Certification of Chief Executive Officer and Chief Financial Officer under 18 U.S.C. section 1350, adopted by section 906 of the Sarbanes–Oxley Act of 2002	*					
101.INS	Inline 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	X					
101.SCH	XBRL Taxonomy Extension Schema Document	X					
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	X					

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101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	X
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	X

* Pursuant to Item 601(b)(32)(ii) of Regulation S-K (17 C.F.R. § 229.601(b)(32)(ii)), this certification is deemed furnished, not filed, for purposes of section 18 of the Exchange Act, nor is it otherwise subject to liability under that section. It will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except if the registrant specifically incorporates it by reference.

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.

El Pollo Loco Holdings, Inc.

(Registrant)

Date: November 4, 2022

/s/ Laurance Roberts

Laurance Roberts

President and Chief Executive Officer

(duly authorized officer)

Date: November 4, 2022

/s/ Ira Fils

Ira Fils

Chief Financial Officer

(principal financial officer)

SUPPLEMENTAL AGREEMENT

SUPPLEMENTAL AGREEMENT (the “Supplemental Agreement”), dated as of August 31, 2022, by and among El Pollo Loco Holdings, Inc. (formerly known as Chicken Acquisition Corp.), a Delaware corporation (the “Company”) and FS Equity Partners V, L.P. (“FSEP V”), and FS Affiliates V, L.P. (“FSA V”) (collectively, the “New Stockholders”). All capitalized terms used herein without meaning shall have the meanings ascribed to such terms in the Stockholders Agreement (as defined below).

RECITALS

WHEREAS, the Company entered into a Stockholders Agreement, dated as of November 18, 2005, with Trimaran Pollo Partners, L.L.C. and certain other stockholders of the Company party thereto, as amended by Amendment No. 1 to the Stockholders Agreement dated April 20, 2006 and Amendment No. 2 to the Stockholders Agreement dated December 26, 2007 (as amended or otherwise modified from time to time, the “Stockholders Agreement”);

WHEREAS, the Company and the New Stockholders desire to execute this Supplemental Agreement pursuant to Section 9.1 of the Stockholders Agreement in order that the New Stockholders may be a party to the Stockholders Agreement.

NOW THEREFORE, in consideration of the foregoing and the agreements set forth below, the parties hereto agree as follows:

1. Agreement by the New Stockholders. By executing this agreement, the New Stockholders hereby agree to be bound, as a party to the Stockholder Agreement, to all of the provisions of the Stockholder Agreement applicable to a Stockholder, in the same manner as if each of the New Stockholders had executed the Stockholder Agreement.

2. Agreement by the Company.

(a) The Company hereby accepts each of the New Stockholders as a party to the Stockholders Agreement with all of the rights and privileges, and subject to all of the obligations, to which a Stockholder is entitled or subject to under the Stockholders Agreement.

(b) If within six months from the date hereof, the Company consummates a merger, reclassification or consolidation (but for the avoidance of doubt, excluding any acquisition of Common Stock pursuant to any share buyback, tender offer or otherwise) (the “Merger”), and in connection with such consummation of the Merger, upon the written request of FS, the Company agrees to adopt the resolutions substantially in the form attached hereto as Exhibit A prior to the consummation of such Merger .

3. Governing Law. This Agreement and the rights and obligations of the parties hereunder and the parties subject hereto shall be governed by, and construed and interpreted in accordance with, the law of the state of Delaware, without giving effect to any contrary result otherwise required under applicable choice of law principles.

4. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Supplemental Agreement as of the date first set forth above.

EL POLLO LOCO HOLDINGS, INC.

By: /s/ Anne Jollay
Name: Anne Jollay
Title: Chief Legal Officer,
General Counsel

FS EQUITY PARTNERS V, L.P.
BY: FS CAPITAL PARTNERS V, LLC

By: /s/ John M Roth
Name: John M Roth

FS AFFILIATES V, L.P.
BY: FS CAPITAL PARTNERS V, LLC

By: /s/ John M Roth
Name: John M Roth

WHEREAS, the Board has determined that the disposition of shares of [Company Stock, Company Stock Options, Company Restricted Shares, Company RSUs, Company PSUs and Company SARs] held by each of the persons listed in Annex I hereto (who are officers, directors (including “directors by deputization”) and other employees of the Company) (“*Company Insiders*”) pursuant to the Merger should have the benefit of an exemption from Section 16 of the Exchange Act.

WHEREAS, the Board is aware that John Roth has relationships with affiliates (such affiliates, the “FS Sponsor Entities”) of [FS Funds that hold the shares] (the “FS Funds”), and that Mr. Roth and the FS Sponsor Entities have certain direct or indirect pecuniary interests in the [*list relevant securities*] held through the FS Funds, and that the FS Sponsor Entities (including, for the avoidance of doubt, the FS Funds) are “directors by deputization” of the Company for purposes of Section 16 under the Securities Exchange Act of 1934 (as amended, the “Exchange Act”) by virtue of such relationships.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves the disposition in the Merger of the shares of [Company Stock, Company Stock Options, Company Restricted Shares, Company RSUs, Company PSUs and Company SARs] held by each of the Company Insiders named in Annex I hereto, pursuant to and in accordance with the terms of the Merger Agreement and approves any and all other transactions involving the Company Insiders relating to the Merger that may be considered “acquisitions” or “dispositions” by such persons under Section 16 of the Exchange Act.

RESOLVED, FURTHER, that the foregoing approval of the disposition of the shares of [Company Stock, Company Stock Options, Company Restricted Stock, Company RSUs, Company PSUs and Company SARs] held by the Company Insiders named in Annex I in connection with the Merger is intended to exempt such dispositions and any related transactions from Section 16(b) under the Exchange Act, as provided for in Rule 16b-3 promulgated under the Exchange Act, including with respect to the disposition of direct or indirect pecuniary interests of Mr. Roth and the FS Sponsor Entities in the Shares held through the FS Funds.

Annex I

- FS Equity Partners V, L.P., FS Affiliates V, L.P., Mr. John Roth and their respective Affiliates that are Company Insiders
 - [*Others – to be determined in the Company's sole discretion*]
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CERTIFICATIONS

I, Laurance Roberts, certify that:

1. I have reviewed this quarterly report on Form 10-Q of El Pollo Loco Holdings, 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 (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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 4, 2022

/s/ Laurance Roberts

Laurance Roberts
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Ira Fils, certify that:

1. I have reviewed this quarterly report on Form 10-Q of El Pollo Loco Holdings, 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 (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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 4, 2022

/s/ Ira Fils

Ira Fils
Chief Financial Officer (Principal Financial Officer)

CERTIFICATION

Under 18 U.S.C. section 1350, adopted by section 906 of the Sarbanes-Oxley Act of 2002, in connection with the attached periodic report, the undersigned each certify that (i) the periodic report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

Date: November 4, 2022

/s/ Laurance Roberts

Laurance Roberts
President and Chief Executive Officer

/s/ Ira Fils

Ira Fils
Chief Financial Officer
