

FORM 10-Q

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended **September 28, 2008**.

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 0-3189

**NATHAN'S FAMOUS, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

11-3166443

(I.R.S. Employer  
Identification No.)

**1400 Old Country Road, Westbury, New York 11590**

(Address of principal executive offices)

(Zip Code)

**(516) 338-8500**

(Registrant's telephone number, including area code)

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

At October 31, 2008, an aggregate of 5,741,799 shares of the registrant's common stock, par value of \$.01, were outstanding.

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NATHAN'S FAMOUS, INC. AND SUBSIDIARIES

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PART I - FINANCIAL INFORMATION

**Item 1. Financial Statements**

**Nathan's Famous, Inc. and Subsidiaries**  
**CONSOLIDATED BALANCE SHEETS**  
September 28, 2008 and March 30, 2008  
(in thousands, except share and per share amounts)

	<u>September 28,</u> <u>2008</u>	<u>March 30,</u> <u>2008</u>
	<u>(Unaudited)</u>	
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 14,693	\$ 14,371
Marketable securities	22,581	20,950
Accounts and other receivables, net	5,031	3,830
Note receivable	251	606
Inventories	666	822
Prepaid expenses and other current assets	693	1,493
Deferred income taxes	697	697
Current assets held for sale	-	13
<b>Total current assets</b>	<b>44,612</b>	<b>42,782</b>
Note receivable	1,613	1,305
Property and equipment, net	4,309	4,428
Goodwill	95	95
Intangible assets, net	1,353	1,353
Deferred income taxes	704	436
Other assets, net	150	150
Non-current assets held for sale	-	653
	<u>\$ 52,836</u>	<u>\$ 51,202</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 2,316	\$ 2,805
Accrued expenses and other current liabilities	4,862	4,014
Deferred franchise fees	311	284
Current liabilities held for sale	-	29
<b>Total current liabilities</b>	<b>7,489</b>	<b>7,132</b>
Other liabilities	1,140	1,137
Non-current liabilities held for sale	-	325
<b>Total liabilities</b>	<b>8,629</b>	<b>8,594</b>
<b>COMMITMENTS AND CONTINGENCIES (Note J)</b>		
<b>STOCKHOLDERS' EQUITY</b>		
Common stock, \$.01 par value; 30,000,000 shares authorized; 8,225,683 and 8,180,683 shares issued; and 5,924,722 and 6,180,683 shares outstanding at September 28, 2008 and March 30, 2008, respectively	82	82
Additional paid-in capital	48,266	47,704
Deferred compensation	(27)	(63)
Retained earnings	9,427	3,746
Accumulated other comprehensive income (loss)	(44)	225
	<u>57,704</u>	<u>51,694</u>
Treasury stock, at cost, 2,300,961 and 2,000,000 shares at September 28, 2008 and March 30, 2008, respectively.	(13,497)	(9,086)
<b>Total stockholders' equity</b>	<b>44,207</b>	<b>42,608</b>
	<u>\$ 52,836</u>	<u>\$ 51,202</u>

The accompanying notes are an integral part of these statements.

Nathan's Famous, Inc. and Subsidiaries

**CONSOLIDATED STATEMENTS OF EARNINGS**

Thirteen weeks ended September 28, 2008 and September 23, 2007

(in thousands, except share and per share amounts)

(Unaudited)

	<u>September 28, 2008</u>	<u>September 23, 2007</u>
<b>REVENUES</b>		
Sales	\$ 11,418	\$ 11,257
Franchise fees and royalties	1,191	1,384
License royalties	1,628	1,048
Interest income	275	289
Other income	13	43
Total revenues	<u>14,525</u>	<u>14,021</u>
<b>COSTS AND EXPENSES</b>		
Cost of sales	8,601	7,983
Restaurant operating expenses	964	913
Depreciation and amortization	200	192
General and administrative expenses	2,249	2,141
Recovery of property taxes	(441)	-
Total costs and expenses	<u>11,573</u>	<u>11,229</u>
<b>Income from continuing operations before provision for income taxes</b>		
	2,952	2,792
Provision for income taxes	1,093	1,035
Income from continuing operations	<u>1,859</u>	<u>1,757</u>
<b>Income from discontinued operations before provision for income taxes</b>		
	-	28
Provision for income taxes	-	11
Income from discontinued operations	<u>-</u>	<u>17</u>
Net income	<u>\$ 1,859</u>	<u>\$ 1,774</u>
<b>PER SHARE INFORMATION</b>		
<b>Basic income per share:</b>		
Income from continuing operations	\$ .31	\$ .29
Income from discontinued operations	-	.00
Net income	<u>\$ .31</u>	<u>\$ .29</u>
<b>Diluted income per share:</b>		
Income from continuing operations	\$ .29	\$ .27
Income from discontinued operations	-	.00
Net income	<u>\$ .29</u>	<u>\$ .27</u>
<b>Weighted average shares used in computing income per share</b>		
Basic	<u>5,984,000</u>	<u>6,119,000</u>
Diluted	<u>6,309,000</u>	<u>6,562,000</u>

The accompanying notes are an integral part of these statements.

Nathan's Famous, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF EARNINGS

Twenty-six weeks ended September 28, 2008 and September 23, 2007

(in thousands, except share and per share amounts)

(Unaudited)

	September 28, 2008	September 23, 2007
<b>REVENUES</b>		
Sales	\$ 22,434	\$ 21,078
Franchise fees and royalties	2,343	2,606
License royalties	3,243	2,496
Interest income	522	524
Other income	25	56
Total revenues	<u>28,567</u>	<u>26,760</u>
<b>COSTS AND EXPENSES</b>		
Cost of sales	16,933	15,411
Restaurant operating expenses	1,876	1,751
Depreciation and amortization	398	374
General and administrative expenses	4,694	4,213
Recovery of property taxes	(441)	-
Total costs and expenses	<u>23,460</u>	<u>21,749</u>
Income from continuing operations before provision for income taxes	5,107	5,011
Provision for income taxes	1,893	1,846
Income from continuing operations	<u>3,214</u>	<u>3,165</u>
Income from discontinued operations before provision for income taxes	3,914	2,765
Provision for income taxes	1,447	1,004
Income from discontinued operations	<u>2,467</u>	<u>1,761</u>
Net income	<u>\$ 5,681</u>	<u>\$ 4,926</u>
<b>PER SHARE INFORMATION</b>		
Basic income per share:		
Income from continuing operations	\$ .53	\$ .52
Income from discontinued operations	.41	.29
Net income	<u>\$ .94</u>	<u>\$ .81</u>
Diluted income per share:		
Income from continuing operations	\$ .50	\$ .48
Income from discontinued operations	.39	.27
Net income	<u>\$ .89</u>	<u>\$ .75</u>
Weighted average shares used in computing income per share		
Basic	<u>6,075,000</u>	<u>6,069,000</u>
Diluted	<u>6,391,000</u>	<u>6,530,000</u>

The accompanying notes are an integral part of these statements.

Nathan's Famous, Inc. and Subsidiaries

**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**

Twenty-six weeks ended September 28, 2008  
(in thousands, except share and per share amounts)  
(Unaudited)

	Common Shares	Common Stock	Additional Paid-in Capital	Deferred Compensation	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Treasury Stock, at Cost Shares	Amount	Total Stockholders' Equity
Balance, March 30, 2008	8,180,683	\$ 82	\$ 47,704	\$ (63)	\$ 3,746	\$ 225	2,000,000	\$ (9,086)	\$ 42,608
Shares issued in connection with the exercise of employee stock options	45,000	-	145	-	-	-	-	-	145
Income tax benefit on stock option exercises	-	-	203	-	-	-	-	-	203
Share-based compensation	-	-	214	-	-	-	-	-	214
Repurchase of common stock	-	-	-	-	-	-	300,961	(4,411)	(4,411)
Amortization of deferred compensation relating to restricted stock	-	-	-	36	-	-	-	-	36
Unrealized losses on marketable securities, net of deferred income tax benefit of \$183	-	-	-	-	-	(269)	-	-	(269)
Net income	-	-	-	-	5,681	-	-	-	5,681
Balance, September 28, 2008	<u>8,225,683</u>	<u>\$ 82</u>	<u>\$ 48,266</u>	<u>\$ (27)</u>	<u>\$ 9,427</u>	<u>\$ (44)</u>	<u>2,300,961</u>	<u>\$ (13,497)</u>	<u>\$ 44,207</u>

The accompanying notes are an integral part of these statements.

Nathan's Famous, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF CASH FLOWS

Twenty-six weeks ended September 28, 2008 and September 23, 2007

(in thousands, except share and per share amounts)

(Unaudited)

	September 28, 2008	September 23, 2007
Cash flows from operating activities:		
Net income	\$ 5,681	\$ 4,926
Adjustments to reconcile net income to net cash provided by operating activities		
Depreciation and amortization	398	377
Amortization of intangible assets	3	61
Gains on disposals of subsidiaries and leasehold interest	(3,906)	(2,489)
Provision for doubtful accounts	155	-
Amortization of bond premium	115	145
Amortization of deferred compensation	36	36
Share-based compensation expense	214	144
Deferred income taxes	(85)	(59)
Changes in operating assets and liabilities:		
Accounts receivable and other receivables, net	(1,354)	(276)
Inventories	156	(381)
Prepaid expenses and other current assets	831	259
Other assets	-	(116)
Accounts payable, accrued expenses and other current liabilities	318	(1,419)
Deferred franchise fees	27	(27)
Other liabilities	6	700
Net cash provided by operating activities	<u>2,595</u>	<u>1,881</u>
Cash flows from investing activities:		
Proceeds from sale of available-for-sale securities	500	300
Purchase of available-for-sale securities	(2,699)	(1,089)
Purchase of property and equipment	(279)	(594)
Payments received on notes receivable	297	-
Proceeds from sales of subsidiary and leasehold interest	3,961	1,691
Net cash provided by investing activities	<u>1,780</u>	<u>308</u>
Cash flows from financing activities:		
Repurchase of common stock	(4,411)	(1,928)
Proceeds from the exercise of stock options	145	591
Income tax benefit on stock option exercises	203	415
Net cash used in financing activities	<u>(4,063)</u>	<u>(922)</u>
Net increase in cash and cash equivalents	312	1,267
Cash and cash equivalents, beginning of period	14,381	6,932
Cash and cash equivalents, end of period	<u>\$ 14,693</u>	<u>\$ 8,199</u>
Cash paid during the period for:		
Interest	\$ -	\$ -
Income taxes	<u>\$ 1,168</u>	<u>\$ 2,506</u>
Noncash Financing Activities:		
Loan made in connection with the sale of subsidiary	<u>\$ 250</u>	<u>\$ 2,150</u>

The accompanying notes are an integral part of these statements.

**NATHAN'S FAMOUS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

September 28, 2008  
(Unaudited)

**NOTE A - BASIS OF PRESENTATION**

The accompanying consolidated financial statements of Nathan's Famous, Inc. and subsidiaries (collectively "Nathan's", the "Company", "we", "us" or "our") as of and for the thirteen and twenty-six week periods ended September 28, 2008 and September 23, 2007 have been prepared in accordance with accounting principles generally accepted in the United States of America. The unaudited financial statements include all adjustments (consisting of normal recurring adjustments) which, in the opinion of management, are necessary for a fair presentation of financial condition, results of operations and cash flows for the periods presented. However, these results are not necessarily indicative of results for any other interim period or the full fiscal year.

Certain information and footnote disclosures normally included in financial statements in accordance with accounting principles generally accepted in the United States of America have been omitted pursuant to the requirements of the Securities and Exchange Commission. Management believes that the disclosures included in the accompanying interim financial statements and footnotes are adequate to make the information not misleading, but should be read in conjunction with the consolidated financial statements and notes thereto included in Nathan's Annual Report on Form 10-K for the fiscal year ended March 30, 2008.

A summary of the Company's significant accounting policies is identified in Note B of the Notes to Consolidated Financial Statements included in the Company's 2008 Annual Report on Form 10-K. There have been no changes to the Company's significant accounting policies subsequent to March 30, 2008, except as disclosed in Note C.

On April 23, 2008, Nathan's completed the sale of its wholly-owned subsidiary, NF Roasters Corp. and on June 7, 2007, Nathan's completed the sale of its wholly-owned subsidiary, Miami Subs Corporation (See Note D).

**NOTE B - RECENTLY ISSUED ACCOUNTING STANDARDS -NOT YET ADOPTED**

In December 2007, the Financial Accounting Standards Board ("FASB") issued SFAS No. 141 (revised 2007), "Business Combinations" ("SFAS No. 141R"), which establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in an acquiree, including the recognition and measurement of goodwill acquired in a business combination. The requirements of SFAS No. 141R are effective for fiscal years beginning on or after December 15, 2008, which for us is fiscal 2010. Earlier adoption is prohibited. We have not yet evaluated the impact of SFAS No. 141R on our consolidated financial position and results of operations.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements — an amendment of ARB No. 51" ("SFAS No. 160"). SFAS No. 160 amends ARB No. 51 to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a noncontrolling interest in a subsidiary, which is sometimes referred to as minority interest, is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. Among other requirements, this statement requires consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. It also requires disclosure, on the face of the consolidated income statement, of the amounts of consolidated net income attributable to the parent and to the noncontrolling interest. SFAS No. 160 is effective for fiscal years and interim periods within those fiscal years, beginning on or after December 15, 2008, which for us is the first quarter of fiscal 2010. Earlier adoption is prohibited. Based upon Nathan's current organization structure, we do not expect the implementation of SFAS No. 160 to have any impact on our consolidated financial position and results of operations.

In April 2008, the FASB issued FASB Staff Position No. 142-3 ("FSP No. 142-3"), "Determination of the Useful Life of Intangible Assets", which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, "Goodwill and Other Intangible Assets". FSP No. 142-3 is effective for fiscal years beginning after December 15, 2008, which for us is the first quarter of fiscal 2010. We do not expect the adoption of FSP No. 142-3 to have a material effect on our consolidated financial position and results of operations.

In May 2008, the FASB issued SFAS No. 162, "The Hierarchy of Generally Accepted Accounting Principles" ("SFAS No. 162"). SFAS No. 162 identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with GAAP. SFAS No. 162 is effective 60 days following the Securities and Exchange Commission's ("SEC") approval of the Public Company Accounting Oversight Board amendments to AU Section 411, "The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles". We do not expect the adoption of SFAS No. 162 to have any effect on our consolidated financial position and results of operations.

NOTE C – ADOPTION OF ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements” (“SFAS No. 157”), to eliminate the diversity in practice that exists due to the different definitions of fair value. SFAS No. 157 retains the exchange price notion in earlier definitions of fair value, but clarifies that the exchange price is the price in an orderly transaction between market participants to sell an asset or liability in the principal or most advantageous market for the asset or liability. SFAS No. 157 states that the transaction is hypothetical at the measurement date, considered from the perspective of the market participant who holds the asset or liability. As such, fair value is defined as 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 (an exit price), as opposed to the price that would be paid to acquire the asset or received to assume the liability at the measurement date (an entry price). SFAS No. 157 also establishes a three-level hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

In February 2008, the FASB issued FASB Staff Position No. 157-2, effective date of FASB Statement No. 157, which delays the effective date of SFAS No. 157 for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). Nathan’s adopted the provisions of SFAS No. 157 on March 31, 2008 and elected the deferral option for non-financial assets and liabilities. The effect of adopting this standard was not significant.

In October 2008, the FASB issued FASB Staff Position No. 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active” (“FSP No. 157-3”). FSP No. 157-3 applies to financial assets within the scope of accounting pronouncements that require or permit fair value measurements in accordance with SFAS No. 157. FSP No. 157-3 clarifies the application of SFAS No. 157 in a market that is not active and provides an example to illustrate key conditions in determining the fair value of a financial asset when the market for that financial asset is not active. FSP No. 157-3 became effective upon issuance including prior periods for which financial statements have not been issued. Nathan’s adopted the provisions of FSP No. 157-3 effective September 28, 2008. The effect of adopting this standard was not significant.

The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability on the measurement date. The three levels are defined as follows:

- Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for an identical asset or liability in an active market
- Level 2 - inputs to the valuation methodology include quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability
- Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement of the asset or liability

The following table presents assets and liabilities measured at fair value on a recurring basis as of September 28, 2008 by SFAS No. 157 valuation hierarchy: (in thousands)

	Level 1	Level 2	Level 3	Carrying Value
Marketable securities	\$ -	\$ 22,581	\$ -	\$ 22,581
Total assets at fair value	\$ -	\$ 22,581	\$ -	\$ 22,581

Nathan’s marketable securities, which primarily represent municipal bonds, are not actively traded. The valuation of such bonds is based upon quoted market prices for similar bonds currently trading in an active market.

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

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115” (“SFAS No. 159”). This standard amends SFAS No. 115, “Accounting for Certain Investment in Debt and Equity Securities,” with respect to accounting for a transfer to the trading category for all entities with available-for-sale and trading securities electing the fair value option. SFAS No. 159 allows companies to elect fair value accounting for many financial instruments and other items that currently are not required to be accounted for as such, allows different applications for electing the option for a single item or groups of items, and requires disclosures to facilitate comparisons of similar assets and liabilities that are accounted for differently in relation to the fair value option. Nathan’s adopted the provisions of SFAS No. 159 on March 31, 2008. The adoption of SFAS No. 159 had no impact on our consolidated financial position and results of operations as Nathan’s did not elect the fair value option to report its financial assets and liabilities at fair value and elected to continue the treatment of its marketable securities as available-for-sale securities with unrealized gains and losses recorded in accumulated other comprehensive income (loss).

## NOTE D – DISCONTINUED OPERATIONS

The Company follows the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"), related to the accounting and reporting for components of a business to be disposed of. In accordance with SFAS No. 144, the definition of discontinued operations includes components of an entity whose cash flows are clearly identifiable. SFAS No. 144 requires the Company to classify as discontinued operations any restaurant, property or business outlet that Nathan's sells, abandons or otherwise disposes of where the Company will have no further involvement in the operation of, or cash flows from, such restaurant, property or business outlet operations.

### 1. Sale of NF Roasters Corp.

On April 23, 2008, Nathan's completed the sale of its wholly-owned subsidiary, NF Roasters Corp. ("NF Roasters"), the franchisor of the Kenny Rogers Roasters concept, to Roasters Asia Pacific (Cayman) Limited. Pursuant to the Stock Purchase Agreement ("NFR Agreement"), Nathan's sold all of the stock of NF Roasters for \$4,000,000 in cash.

In connection with the NFR Agreement, Nathan's and its previously owned subsidiary, Miami Subs may continue to sell Kenny Rogers products within the existing restaurant systems without payment of royalties.

The following is a summary of the assets and liabilities of NF Roasters, as of the date of sale, that were sold:

Cash	\$	8,000(A)
Accounts receivable, net		1,000
Deferred income taxes, net		230,000
Intangible assets, net		391,000
Other assets, net		30,000
Total assets sold		<u>660,000</u>
Accrued expenses		27,000(B)
Other liabilities		328,000
Total liabilities sold		<u>355,000</u>
Net assets sold	\$	<u><u>305,000</u></u>

(A) – Represents unexpended marketing funds.

(B) – Includes unexpended marketing funds of \$8,000.

Nathan's has realized a gain on the sale of NF Roasters of \$3,656,000 net of professional fees of \$39,000 and recorded income taxes of \$1,352,000 on the gain during the twenty-six weeks ended September 28, 2008. Nathan's has determined that it will not have any significant cash flows or continuing involvement in the ongoing operations of NF Roasters. Therefore, the results of operations for NF Roasters, including the gain on disposal, have been presented as discontinued operations for all periods presented. The accompanying balance sheet for the fiscal year ended March 30, 2008, has been revised to reflect the assets and liabilities of NF Roasters that were subsequently sold, as held for sale as of that date.

### 2. Sale of Miami Subs Corporation

On June 7, 2007, Nathan's completed the sale of its wholly-owned subsidiary, Miami Subs Corporation ("Miami Subs") to Miami Subs Capital Partners I, Inc. ("Purchaser"). Pursuant to the Stock Purchase Agreement ("MSC Agreement"), Nathan's sold all of the stock of Miami Subs in exchange for \$3,250,000, consisting of \$850,000 in cash and the Purchaser's promissory note in the principal amount of \$2,400,000 (the "MSC Note"). The MSC Note bears interest at 8% per annum, which was initially payable over a four-year term and is secured by a lien on all of the assets of Miami Subs and by the personal guarantees of two principals of the Purchaser. The Purchaser may also prepay the MSC Note at any time. In the event the MSC Note was fully repaid within one year of the sale, Nathan's would have been required to reduce the amount due by \$250,000. Due to the ability to prepay the loan and reduce the amount due, the recognition of \$250,000 was initially deferred. The note was not prepaid within the requisite timeframe and Nathan's recognized the deferred revenue of \$250,000 as additional gain and recorded income taxes of \$92,000 during the first quarter ended June 29, 2008. Effective August 31, 2008, Nathan's and Purchaser agreed to extend the due date of the MSC Note until April 2014, to reduce the monthly payment and to settle certain claims under the MSC Agreement. Management evaluated the restructured MSC Note for impairment by comparing the present value of cash flows to the current carrying value and determined that no impairment exists. The current and long-term portions of the MSC Note have been adjusted in the accompanying financial statements to reflect the terms of the restructured MSC Note. In accordance with the MSC Agreement, Nathan's retained ownership of Miami Subs' then corporate office in Fort Lauderdale, Florida.

The following is a summary of the assets and liabilities of Miami Subs, as of the date of sale, that were sold:

Cash	\$ 674,000(A)
Accounts receivable, net	213,000
Notes receivable, net	153,000
Prepaid expenses and other current assets	119,000
Deferred income taxes, net	719,000
Property and equipment, net	48,000
Intangible assets, net	1,803,000
Other assets, net	46,000
<b>Total assets sold</b>	<b><u>3,775,000</u></b>
Accounts payable	27,000
Accrued expenses	1,373,000(A)
Other liabilities	395,000
<b>Total liabilities sold</b>	<b><u>1,795,000</u></b>
<b>Net assets sold</b>	<b><u>\$ 1,980,000</u></b>

(A) – Includes unexpended marketing funds of \$565,000.

In connection with the MSC Agreement, the Purchaser may continue to sell Nathan’s Famous and Arthur Treachers’ products within the existing restaurant system in exchange for a royalty payment of \$6,000 per month.

Nathan’s initially realized a gain on the sale of Miami Subs of \$983,000, net of professional fees of \$37,000 and recorded income taxes of \$334,000 on the gain during the twenty-six weeks ended September 23, 2007. Nathan’s also recognized an additional gain of \$250,000 or \$158,000, net of tax during the twenty-six weeks ended September 28, 2008, resulting from the contingent consideration which was deferred at the time of sale. Nathan’s has determined that it will not have any significant cash flows or continuing involvement in the ongoing operations of Miami Subs. Therefore, the results of operations for Miami Subs, including the gains on disposal, have been presented as discontinued operations for all periods presented.

### 3. Sale of Leasehold Interest

During the twenty-six weeks ended September 23, 2007, Nathan’s completed a Lease Termination Agreement with respect to three leased properties in Fort Lauderdale, Florida, with its landlord, and CVS 3285 FL, L.L.C., (“CVS”) to sell our leasehold interests to CVS for \$2,000,000. As the properties were subject to certain sublease and management agreements between Nathan’s and the then-current occupants, Nathan’s made payments to, or forgave indebtedness of, the then-current occupants of the properties and paid brokerage commissions of \$494,000 in the aggregate. Nathan’s made the property available to the buyer by May 29, 2007, and Nathan’s received the proceeds of the sale on June 5, 2007. Nathan’s recognized a gain of \$1,506,000 and recorded income taxes of \$557,000 during the twenty-six-week period ended September 23, 2007. The results of operations for these properties, including the gain on disposal, have been included as discontinued operations for all periods presented.

The following is a summary of all discontinued operations for the thirteen and twenty-six week periods ended September 28, 2008 and September 23, 2007:

	Thirteen weeks ended September 28, 2008 <u>(in thousands)</u>	Thirteen weeks ended September 23, 2007 <u>(in thousands)</u>	Twenty-six weeks ended September 28, 2008 <u>(in thousands)</u>	Twenty-six weeks ended September 23, 2007 <u>(in thousands)</u>
Revenues (excluding gains from dispositions)	\$ -	\$ 41	\$ 10	\$ 511
Gain from dispositions before income taxes	\$ -	\$ -	\$ 3,906	\$ 2,489
Income before income taxes	\$ -	\$ 28	\$ 3,914	\$ 2,765

NOTE E - INCOME PER SHARE

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

The following chart provides a reconciliation of information used in calculating the per share amounts for the thirteen and twenty-six week periods ended September 28, 2008 and September 23, 2007, respectively.

**Thirteen weeks**

	Income from		Number of Shares		Income from	
	Continuing Operations				Continuing Operations	
	2008	2007	2008	2007	Per Share	
	(in thousands)		(in thousands)		2008	2007
<b>Basic EPS</b>						
Basic calculation	\$ 1,859	\$ 1,757	5,984	6,119	\$ 0.31	\$ 0.29
Effect of dilutive employee stock options and warrants	-	-	325	443	(0.02)	(0.02)
<b>Diluted EPS</b>						
Diluted calculation	\$ 1,859	\$ 1,757	6,309	6,562	\$ 0.29	\$ 0.27

**Twenty-six weeks**

	Income from		Number of Shares		Income from	
	Continuing Operations				Continuing Operations	
	2008	2007	2008	2007	Per Share	
	(in thousands)		(in thousands)		2008	2007
<b>Basic EPS</b>						
Basic calculation	\$ 3,214	\$ 3,165	6,075	6,069	\$ 0.53	\$ 0.52
Effect of dilutive employee stock options and warrants	-	-	316	461	(0.03)	(0.04)
<b>Diluted EPS</b>						
Diluted calculation	\$ 3,214	\$ 3,165	6,391	6,530	\$ 0.50	\$ 0.48

Options to purchase 110,000 shares of common stock in the thirteen and twenty-six week periods ended September 28, 2008 were not included in the computation of diluted EPS because the exercise prices exceeded the average market price of common shares during the period. All outstanding options and warrants to purchase common stock in the thirteen and twenty-six week periods ended September 23, 2007 were included in the computation of diluted EPS.

NOTE F – INCOME TAXES

The income tax provisions on continuing operations for the twenty-six week periods ended September 28, 2008 and September 23, 2007, reflect effective tax rates of 37.1% and 36.8%, respectively. Nathan's expects its annual tax rate for its current fiscal year ending March 2009 to be approximately 37.0% to 38.0%. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates.

Nathan's adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN No. 48") and FIN No. 48-1, "Definition of Settlement in FASB Interpretation No. 48", an amendment of FASB Interpretation FIN No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN No. 48-1") on March 26, 2007 which resulted in a \$155,000 adjustment to increase tax liabilities and decrease opening retained earnings in connection with a cumulative effect of a change in accounting principle. The amount of unrecognized tax benefits at September 28, 2008 was \$472,000, all of which, if recognized, would impact Nathan's effective tax rate. Nathan's recognizes accrued interest and penalties associated with unrecognized tax benefits as part of the income tax provision. As of September 28, 2008, Nathan's had \$324,000 of accrued interest and penalties in connection with unrecognized tax benefits.

There was no material change in the amount of uncertain tax benefits recognized during the twenty-six-week period ended September 28, 2008. It is possible that the amount of unrecognized tax benefits could change in the next 12 months, however, Nathan's does not expect the change to have a significant impact on its results of operations or financial position during the next 12 months.

Nathan's has received notices from the Internal Revenue Service and the New York State Department of Taxation and Finance that they would be reviewing our income tax returns for the fiscal year ended March 2007 and the fiscal years ended March 2005 through March 2007, respectively. Nathan's is unable to determine the impact, if any, on its results of operations or financial position.

#### NOTE G – SHARE-BASED COMPENSATION

Total share-based compensation during the thirteen and twenty-six week periods ended September 28, 2008 was \$126,000 and \$250,000, respectively. Total share-based compensation during the thirteen and twenty-six week periods ended September 23, 2007 was \$83,000 and \$181,000, respectively. Total share-based compensation is included within general and administrative expense in our accompanying Consolidated Statements of Earnings. As of September 28, 2008, there was \$1,114,000 of unamortized compensation expense related to stock options. We expect to recognize this expense over approximately three years, which represents the requisite service periods for such awards.

There were no share-based awards granted during the twenty-six week period ended September 28, 2008.

During the twenty-six weeks ended September 23, 2007, the Company granted 110,000 stock options having an exercise price of \$17.43 per share, all of which expire five years from the date of grant. 60,000 of the options granted will be vested as follows: 25% on the first anniversary of the grant, 50% on the second anniversary of the grant, 75% on the third anniversary of the grant and 100% on the fourth anniversary of the grant. 50,000 of the options granted will be vested as follows: 33.3% on the first anniversary of the grant, 66.7% on the second anniversary of the grant and 100% on the third anniversary of the grant.

The weighted-average option fair values, as determined using the Black-Scholes option valuation model, and the assumptions used to estimate these values for stock options granted during the twenty-six weeks ended September 23, 2007 are as follows:

	Twenty-six weeks ended September 23, 2007
Weighted-average option fair values	\$ 5.8270
Expected life (years)	4.25
Interest rate	4.21%
Volatility	32.93%
Dividend yield	0%

#### Stock options outstanding:

Transactions with respect to stock options for the twenty-six weeks ended September 28, 2008, are as follows:

	Shares	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Life	Aggregate Intrinsic Value
Options outstanding at March 30, 2008	1,152,308	\$ 6.54	3.67	\$ 8,521,000
Granted	-	-	-	-
Expired	-	-	-	-
Exercised	45,000	3.23	-	-
Options outstanding at September 28, 2008	<u>1,107,308</u>	<u>\$ 6.68</u>	<u>3.26</u>	<u>\$ 10,389,000</u>
Options exercisable at September 28, 2008	<u>910,475</u>	<u>\$ 4.92</u>	<u>2.62</u>	<u>\$ 10,054,000</u>

The aggregate intrinsic value of the stock options exercised during the twenty-six-week period ended September 28, 2008 was \$532,000.

NOTE H – STOCKHOLDERS’ EQUITY

On November 5, 2007, Nathan’s Board of Directors authorized its third stock repurchase plan for the purchase of up to 500,000 shares of its common stock on behalf of the Company. On June 11, 2008, Nathan’s and Mutual Securities, Inc. (“MSI”) entered into an agreement (the “10b5-1 Agreement”) pursuant to which MSI has been authorized to purchase shares of the Company’s common stock, having a value of up to an aggregate \$6 million. The 10b5-1 Agreement was adopted under the safe harbor provided by Rule 10b5-1 of the Securities Exchange Act of 1934 in order to assist the Company in implementing its previously announced stock purchase plan for the purchase of up to 500,000 shares. Future purchases may be made from time to time, depending on market conditions, in open market or privately negotiated transactions, at prices deemed appropriate by management. There is no set time limit on the repurchases.

Through September 28, 2008, Nathan’s has purchased a total of 2,300,961 shares of common stock at a cost of approximately \$13,497,000 pursuant to the current and previous stock repurchase plans previously authorized by the Board of Directors. Of these repurchased shares, 300,961 shares at a cost of \$4,411,000 were repurchased during the twenty-six weeks ended September 28, 2008. Subsequent to September 28, 2008, Nathan’s has continued to repurchase its common stock in the open market pursuant to the 10b5-1 Agreement, repurchasing an additional 182,923 shares at a total cost of approximately \$2,691,000 through October 31, 2008. For the period commencing March 31, 2008 and ending October 31, 2008, Nathan’s repurchased 79,255 shares at a cost of approximately \$1,102,000 before the adoption of the 10b5-1 Agreement and purchased 404,629 shares at a cost of approximately \$6,000,000 pursuant to the 10b5-1 Agreement through October 31, 2008, thereby completing the 10b5-1 Agreement. There are 16,116 remaining shares authorized to be repurchased in order to complete Nathan’s third stock repurchase plan.

On June 4, 2008, Nathan’s approved the amendment of its then-existing shareholder rights plan to accelerate the final expiration date of the common stock purchase rights to June, 4, 2008, thereby terminating the then-existing rights, as well as the adoption of a new stockholder rights plan (the “New Rights Plan”) under which all stockholders of record as of June 5, 2008 received rights to purchase shares of common stock (the “New Rights”). The New Rights Plan replaced and updated the Company’s previously existing rights plan, which was in place since 1995, and which was previously scheduled to expire on June 19, 2010.

The New Rights were distributed as a dividend. Initially, the New Rights will attach to, and trade with the Company’s common stock. Subject to the terms, conditions and limitations of the New Rights Plan, the New Rights will become exercisable if (among other things) a person or group acquires 15% or more of the Company’s common stock. Upon such an event and payment of the purchase price of \$30 (the “New Right Purchase Price”), each New Right (except those held by the acquiring person or group) will entitle the holder to acquire one share of the Company’s common stock (or the economic equivalent thereof) or, if the then-current market price is less than the New Right Purchase Price, a number of shares of the Company’s common stock which at the time of the transaction has a market value equal to the New Right Purchase Price. The Company’s Board of Directors may redeem the New Rights prior to the time they are triggered. At September 28, 2008, the Company has reserved 13,582,080 shares of common stock for issuance upon exercise of the New Rights.

NOTE I - COMPREHENSIVE INCOME

The components of comprehensive income are as follows:

	Thirteen weeks ended September 28, 2008 (in thousands)	Thirteen weeks ended September 23, 2007 (in thousands)	Twenty-six weeks ended September 28, 2008 (in thousands)	Twenty-six weeks ended September 23, 2007 (in thousands)
Net income	\$ 1,859	\$ 1,774	\$ 5,681	\$ 4,926
Unrealized (loss) gain on available-for-sale securities, net of tax (benefit) provision of (\$84), \$125, (\$183) and \$44, respectively	(126)	183	(269)	64
Comprehensive income	\$ 1,733	\$ 1,957	\$ 5,412	\$ 4,990

Accumulated other comprehensive income at September 28, 2008 and March 30, 2008 consists entirely of unrealized gains and losses on available-for-sale securities, net of deferred taxes.

## 1. Commitments

In January 2008, the Company entered into a commitment to purchase 1,785,000 pounds of hot dogs for \$2,740,000 from its primary hot dog manufacturer between April through August 2008. As of September 28, 2008, Nathan's fulfilled its entire commitment to acquire these hot dogs yielding savings of approximately \$462,000 as compared to the then-current market prices during the twenty-six week period ended September 28, 2008. Nathan's may enter into new commitments to purchase hot dogs in the future, based upon market conditions.

## 2. Contingencies

The Company and its subsidiaries are from time to time involved in ordinary and routine litigation. Management presently believes that the ultimate outcome of these proceedings, individually or in the aggregate, will not have a material adverse effect on the Company's financial position, cash flows or results of operations. Nevertheless, litigation is subject to inherent uncertainties and unfavorable rulings could occur. An unfavorable ruling could include money damages and, in such event, could result in a material adverse impact on the Company's results of operations for the period in which the ruling occurs.

The Company is also involved in the following legal proceedings:

On March 20, 2007, a personal injury lawsuit was initiated seeking unspecified damages against the Company's subtenant and the Company's master landlord at a leased property in Huntington, New York. The claim relates to damages suffered by an individual as a result of an alleged "trip and fall" on the sidewalk in front of the leased property, maintenance of which is the subtenant's responsibility. Although the Company was not named as a defendant in the lawsuit, under its master lease agreement the Company may have an obligation to indemnify the master landlord in connection with this claim. The Company did not maintain its own insurance on the property concerned at the time of the incident; however, the Company is named as an additional insured under its subtenant's liability policy. Accordingly, if the master landlord is found liable for damages and seeks indemnity from the Company, the Company believes that it would be entitled to coverage under the subtenant's insurance policy. Additionally, under the terms of the sublease, the subtenant is required to indemnify the Company, regardless of insurance coverage.

The Company is party to a License Agreement with SMG, Inc. ("SMG") dated as of February 28, 1994, as amended (the "License Agreement") pursuant to which: (i) SMG acts as the Company's exclusive licensee for the manufacture, distribution, marketing and sale of packaged Nathan's Famous frankfurter product at supermarkets, club stores and other retail outlets in the United States; and (ii) the Company has the right, but not the obligation, to require SMG to produce frankfurters for the Company's Nathan's Famous restaurant system and Branded Product Program. On July 31, 2007, the Company provided notice to SMG that the Company has elected to terminate the License Agreement, effective July 31, 2008, due to SMG's breach of certain provisions of the License Agreement. SMG has disputed that a breach has occurred and has commenced, together with certain of its affiliates, an action in state court in Illinois seeking, among other things, a declaratory judgment that SMG did not breach the License Agreement. The Company filed its own action on August 2, 2007, in New York State court seeking a declaratory judgment that SMG has breached the License Agreement and that the Company has properly terminated the License Agreement. On January 23, 2008, the New York court granted SMG's motion to dismiss the Company's case in New York on the basis that the dispute was already the subject of a pending lawsuit in Illinois. The Company has answered SMG's complaint and asserted its own counterclaims which seek, among other things, a declaratory judgment that SMG did breach the License Agreement and that the Company has properly terminated the License Agreement. On July 31, 2008, SMG and Nathan's entered into a stipulation pursuant to which Nathan's agreed that it would not effectuate the termination of the License Agreement on the grounds alleged in the present litigation until such litigation has been successfully adjudicated, and SMG agreed that in such event, Nathan's shall have the option to require SMG to continue to perform under the License Agreement for an additional period of up to six months to ensure an orderly transition of the business to a new licensee/supplier. The parties are currently proceeding with the discovery process.

## 3. Guarantee

At the time of the sale of Miami Subs, a severance agreement, previously entered into between Miami Subs and one executive of Miami Subs, remained in force along with the guaranty by Nathan's of Miami Subs' obligations under that agreement. The agreement provided for a severance payment of \$115,000 payable in six (6) monthly installments and payment for post-employment health benefits for the employee and dependants for the maximum period permitted under Federal Law. The executive terminated his employment with Miami Subs, effective October 5, 2007 and agreed to receive his severance payment over a 56-week period. Nathan's has the right to seek reimbursement from Miami Subs in the event that Nathan's must make payments under the guarantee of the agreement. Nathan's initially recorded a liability of \$115,000 at the date of sale in connection with this guarantee, of which \$31,000 remains outstanding at September 28, 2008 due to payments made by Miami Subs. Nathan's has not been required to make any payments under this guarantee.

## **Forward-Looking Statements**

Statements in this Form 10-Q quarterly report may be "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements that express our intentions, beliefs, expectations, strategies, predictions or any other statements relating to our future activities or other future events or conditions. These statements are based on current expectations, estimates and projections about our business based, in part, on assumptions made by management. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. These risks and uncertainties, many of which are not within our control, include but are not limited to: the adverse effect that increasing commodity costs has on our profitability and operating results; the pending litigation with the primary supplier of hot dogs to our Branded Product Program may result in a disruption in that supply or increased costs, which would adversely effect our operating results; current economic conditions could result in decreased consumer spending on discretionary products, such as fast food; as well as those risks discussed in this Form 10-Q, in the Company's Form 10-K annual report for the year ended March 30, 2008, and in other documents which we file from time to time with the Securities and Exchange Commission. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in the forward-looking statements. We generally identify forward-looking statements with the words "believe," "intend," "plan," "expect," "anticipate," "estimate," "will," "should" and similar expressions. Any forward-looking statements speak only as of the date on which they are made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date of this Form 10-Q.

## **Introduction**

As used in this Report, the terms "we", "us", "our", "Nathan's" or "the Company" mean Nathan's Famous, Inc. and its subsidiaries (unless the context indicates a different meaning).

Our revenues are generated primarily from selling products under Nathan's Branded Product Program, operating Company-owned restaurants, franchising the Nathan's restaurant concept, including the Arthur Treacher's brand, and licensing the sale of Nathan's products within supermarkets and other retail venues. The Branded Product Program enables foodservice operators to offer Nathan's hot dogs and other proprietary items for sale within their facilities. In conjunction with this program, foodservice operators are granted a limited use of the Nathan's trademark with respect to the sale of hot dogs and certain other proprietary food items and paper goods.

During the fiscal year ended March 25, 2007, we established a new franchising program, to offer limited-menu "Nathan's Famous" ("limited-menu franchise outlets") products to be included into new or existing food service establishments. We began to market limited-menu franchise outlets during the fiscal year ended March 30, 2008. Pursuant to this program, operators are permitted to make limited use of the "Nathan's Famous" trade dress, trademarks and design for the purpose of adding "Nathan's Famous" hot dogs, crinkle-cut French fries and a limited number of other approved "Nathan's Famous" menu items to the menu of a new or existing food service establishment. The location of the new or existing food service establishment, the specific manner in which the limited-menu franchise outlet is incorporated into the operation of the food service establishment and the specific use of our trade dress, trademarks and design are all subject to our prior written approval and must meet our specifications. The initial fee for a limited-menu franchise outlet is \$7,500. Operators participating in this program are not required to pay any royalties on their sale of "Nathan's Famous" products, or make any contributions to the "Nathan's Famous" advertising fund; however, substantially all products offered through the limited-menu franchise outlet must be purchased through a distributor approved by us, and we will make a profit on all such sales. In certain instances, Nathan's may pay a fee to the sponsoring organization in exchange for their operational assistance or for marketing support.

On April 23, 2008, Nathan's completed the sale of its subsidiary, NF Roasters Corp. ("Roasters"). Nathan's previously concluded the sale of its subsidiary, Miami Subs Corporation ("Miami Subs") on June 7, 2007. The following discussion of continuing operations excludes all of the Miami Subs and Roasters operations which were not retained by us. Nathan's has determined that it will not have any significant cash flows or continuing involvement in the ongoing operations of Roasters or Miami Subs and accordingly, has reflected such results in discontinued operations.

See Note D to the Consolidated Financial Statements contained in Item 1 for a description of the terms of such sales.

In order to help the reader better understand Nathan's continuing operations, certain non-financial information, which was previously reported on a combined basis has also been included in this Management Discussion and Analysis. At September 28, 2008, our restaurant system consisted of 235 Nathan's franchised or licensed outlets, including 46 limited-menu franchise outlets and six Company-owned outlets (including one seasonal outlet), located in 25 states and five foreign countries. At September 23, 2007, our restaurant system consisted of 204 Nathan's franchised or licensed outlets including 12 limited-menu franchise outlets and six Company-owned outlets (including one seasonal outlet), located in 21 states and four foreign countries. The Roasters restaurant system included approximately 97 outlets operating in eight foreign countries and one outlet operating in the United States at September 23, 2007.

The following summary reflects the franchise openings and closings, excluding the Roasters franchise system which was sold on April 23, 2008, for the fiscal years ended March 30, 2008, March 25, 2007, March 26, 2006, March 27, 2005 and March 28, 2004.

	March 30, 2008	March 25, 2007	March 26, 2006	March 27, 2005	March 28, 2004
Franchised restaurants operating at the beginning of the period	196	192	174	147	140
New franchised restaurants opened during the period	46	21(A)	27	36	21
Franchised restaurants closed during the period	(18)	(17)	(9)	(9)	(14)
Franchised restaurants operating at the end of the period	<u>224</u>	<u>196</u>	<u>192</u>	<u>174</u>	<u>147</u>

(A) Includes the opening of two test Limited-Menu Franchise Outlets.

### Impact of Economic Environment on Nathan's Results of Operations

During the quarter ended September 28, 2008, Nathan's experienced reduced sales in both its Company-owned restaurants and at its franchised restaurants, particularly during the five-week period ended September 28, 2008, which we believe is due to the effects of the slowing economy.

Nathan's has also experienced some slow-down in collections of accounts receivable during the second quarter ended September 28, 2008, as further described within the following results of operations. During the quarter, we were notified of four bankruptcy filings and that a certain existing franchisee and a potential new franchisee have been unable to secure funding due to the credit crisis.

Preliminary results at our Company-owned restaurants subsequent to September 28, 2008, lead us to believe that we will experience reduced sales as compared to the prior fiscal period in our Company-owned restaurants during the four-week period ending October 26, 2008. In addition, we anticipate that franchisees whose restaurants are located in malls, shopping plazas, airports, travel plazas and various destination venues, may also experience sales declines due to the current economic slow-down.

### Critical Accounting Policies and Estimates

As discussed in our Form 10-K for the fiscal year ended March 30, 2008, the discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States of America. The preparation of these financial statements require us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in those financial statements. These judgments can be subjective and complex, and consequently, actual results could differ from those estimates. Our most critical accounting policies and estimates relate to revenue recognition; impairment of goodwill and other intangible assets; impairment of long-lived assets; impairment of notes receivable; share-based compensation and income taxes (including uncertain tax positions). Since March 30, 2008, there have been no changes in our critical accounting policies or significant changes to the assumptions and estimates related to them, except for the accounting for fair value measurements of financial assets and liabilities and related disclosures, which is discussed in Note C to our Consolidated Financial Statements in Item 1 of this Form 10-Q.

### Adoption of Accounting Pronouncements

See Note C to the Consolidated Financial Statements contained in Item 1, for a complete discussion of the impact of SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157") and SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities – Including an amendment of FASB Statement No. 115", ("SFAS No. 159") on the Company's financial position and results of operations.

### Recently Issued Accounting Standards Not Yet Adopted

See Note B to the Consolidated Financial Statements contained in Item 1 for a discussion of recently issued accounting standards not yet adopted.

## Results of Operations

### Thirteen weeks ended September 28, 2008 compared to thirteen weeks ended September 23, 2007

#### Revenues from Continuing Operations

Total sales increased by \$161,000 or 1.4% to \$11,418,000 for the thirteen weeks ended September 28, 2008 ("second quarter fiscal 2009 period") as compared to \$11,257,000 for the thirteen weeks ended September 23, 2007 ("second quarter fiscal 2008 period"). Sales from the Branded Product Program increased by 20.8% to \$6,282,000 for the second quarter fiscal 2009 period as compared to sales of \$5,199,000 in the second quarter fiscal 2008 period. This increase was primarily attributable to increased sales volume of approximately 11.8% and price increases of approximately 6.5%, beginning in July 2008. Total Company-owned restaurant sales (representing five comparable Nathan's restaurants and one seasonal restaurant) decreased by \$253,000 or 5.1% to \$4,681,000 as compared to \$4,934,000 during the second quarter fiscal 2008 period. The sales decline at our Company-owned restaurants during the five-week period ended September 28, 2008, was approximately \$290,000 which we believe to be due to the effects of the slowing economy. During the second quarter fiscal 2009 period, sales to our television retailer were approximately \$669,000 lower than the second quarter fiscal 2008 period. During the first quarter fiscal 2008 period Nathan's participated in 15 "Try Me" airings. Under this "Try Me" format, most of the sales were shipped in our second quarter fiscal 2008. No similar promotional offerings were made during fiscal 2009. Nathan's products were on air 13 times during the second quarter fiscal 2009 period as compared to 12 times during the second quarter fiscal 2008 period.

Franchise fees and royalties decreased by \$193,000 or 13.9% to \$1,191,000 in the second quarter fiscal 2009 period compared to \$1,384,000 in the second quarter fiscal 2008 period. Total royalties were \$1,058,000 in the second quarter fiscal 2009 period as compared to \$1,131,000 in the second quarter fiscal 2008 period. During the second quarter fiscal 2009 period, we did not recognize revenue of \$70,000 for royalties deemed to be uncollectible as compared to the second quarter fiscal 2008 period, when we did not recognize revenue of \$22,000 for royalties deemed to be uncollectible. Total royalties, excluding the adjustments for royalties deemed uncollectible as described above, were \$1,128,000 in the second quarter fiscal 2009 period as compared to \$1,153,000 in the second quarter fiscal 2008 period. During the second quarter fiscal 2009 period, Nathan's earned \$50,000 of higher royalties from our manufacturers and primary distributor on sales to our limited-menu franchisees. Franchise restaurant sales were \$25,143,000 in the second quarter fiscal 2009 period as compared to \$27,007,000 in the second quarter fiscal 2008 period. Comparable domestic franchise sales (consisting of 140 Nathan's restaurants, excluding sales of the limited-menu franchised outlets) were \$19,647,000 in the second quarter fiscal 2009 period as compared to \$20,837,000 in the second quarter fiscal 2008 period. Sales at our comparable franchised restaurants declined by approximately \$658,000 during the five-week period ended September 28, 2008. At September 28, 2008, 235 domestic and international franchised or limited-menu franchised outlets were operating as compared to 204 domestic and international franchised or limited-menu franchised outlets at September 23, 2007. Royalty income from 15 franchised outlets was deemed unrealizable during the thirteen weeks ended September 28, 2008, as compared to six franchised outlets during the thirteen weeks ended September 23, 2007. Domestic franchise fee income was \$79,000 in the second quarter fiscal 2009 period as compared to \$137,000 in the second quarter fiscal 2008 period due to fewer openings during the second quarter fiscal 2009 period. International franchise fee income was \$9,000 in the second quarter fiscal 2009 period, as compared to \$31,000 during the second quarter fiscal 2008 period. During the second quarter fiscal 2009 period, nine new franchised outlets opened, including seven limited-menu franchised outlets. During the second quarter fiscal 2008 period, 11 new franchised outlets were opened including seven limited-menu franchised outlets and one unit in Kuwait. We also recognized \$45,000 and \$85,000 during the second fiscal quarters 2009 and 2008, respectively, in connection with forfeited franchise and development agreements.

License royalties increased by \$580,000 or 55.3% to \$1,628,000 in the second quarter fiscal 2009 period as compared to \$1,048,000 in the second quarter fiscal 2008 period. Total royalties earned on sales of hot dogs from our retail and foodservice license agreements of \$1,085,000 increased by \$267,000 or 32.6% as a result of higher licensee sales during the second quarter fiscal 2009 period. Royalties earned from our primary licensee, primarily from the retail sale of hot dogs, were \$786,000 during the second quarter fiscal 2009 period as compared to \$700,000 during the second quarter fiscal 2008 period. Royalties earned from another licensee, primarily from sales to Sam's Club, were \$299,000 during the second quarter fiscal 2009 period as compared to \$118,000 during the second quarter fiscal 2008 period. Beginning March 2008, Nathan's hot dogs were introduced into over 500 of the foodservice cafes operating in Sam's Clubs throughout the United States. We earned higher revenues of \$301,000 from our agreement for the manufacture of Nathan's proprietary ingredients, including \$234,000 from the settlement of a multi-year dispute under that agreement related to the unauthorized use of certain ingredients. Net royalties from all other license agreements in the second quarter fiscal 2009 period were \$12,000 more than the second quarter fiscal 2008 period.

Interest income was \$275,000 in the second quarter fiscal 2009 period as compared to \$289,000 in the second quarter fiscal 2008 period. The decrease was primarily due to lower interest earned on our MSC Note (as defined) receivable, received in connection with the sale of Miami Subs on June 7, 2007. Interest income on the MSC Note was \$38,000 in the second quarter fiscal 2009 period as compared to \$48,000 during the second quarter fiscal 2008 period, resulting primarily from the ongoing repayments of the outstanding principal. Interest income on our invested cash and marketable securities was approximately \$3,000 less than the second quarter fiscal 2008 period, due primarily to the reduced interest rate environment during the second quarter fiscal 2009.

Other income was \$13,000 in the second quarter fiscal 2009 period as compared to \$43,000 in the second quarter fiscal 2008 period. During the second quarter fiscal 2008 period, Nathan's earned a \$30,000 consent fee in connection with a licensee's refinancing.

### **Costs and Expenses from Continuing Operations**

Overall, our cost of sales increased by \$618,000 to \$8,601,000 in the second quarter fiscal 2009 period as compared to \$7,983,000 in the second quarter fiscal 2008 period. Our gross profit (representing the difference between sales and cost of sales) was \$2,817,000 or 24.7% of sales during the second quarter fiscal 2009 period as compared to \$3,274,000 or 29.1% of sales during the second quarter fiscal 2008 period. In the Branded Product Program, our costs of sales increased by approximately \$1,281,000 during the second quarter fiscal 2009 period when compared to the second quarter fiscal 2008 period, primarily as a result of product cost increases of 18.4%. However, that percentage increase in costs would have been approximately 22.2% but for the purchase commitment we entered into in January 2008, which locked in a fixed cost on approximately 1.8 million pounds of hot dogs resulting in savings of approximately \$158,000 during the second quarter fiscal 2009 period. These savings helped offset some of the effects of the substantially higher commodity costs for beef and beef trimmings, such that, our average cost per pound in the Branded Product Program was approximately 18.4% higher during the second quarter fiscal 2009 period as compared to the second quarter fiscal 2008 period. We concluded this purchase commitment during August 2008. Throughout the second quarter fiscal 2009 period, the cost of beef and beef trimmings continued to advance to the highest level since the inception of the Branded Product Program, which significantly reduced our gross profit. In response, we increased prices in our Branded Product Program during the second quarter fiscal 2009 period, although we have not been able to pass along all of the increased costs. If the cost of beef and beef trimmings do not decline and we are unable to further pass on these higher costs through price increases, our margins will continue to be significantly impacted. Beginning in mid-August 2008, we began to see a modest softening of these costs, which still remain at very high levels. With respect to our six Company-owned restaurant outlets, our cost of sales during the second quarter fiscal 2009 period was \$2,523,000 or 53.9% of restaurant sales, as compared to \$2,661,000 or 53.9% of restaurant sales in the second quarter fiscal 2008 period. During the second quarter fiscal 2009 period, we experienced higher food costs, which were offset by lower labor and labor-related costs as a percentage of sales. The higher food cost as a percentage of sales was primarily due to the higher cost of our hot dogs and other products such as cooking oil, bread, hamburgers and fish. Cost of sales to our television retailer decreased by \$525,000 in the second quarter fiscal 2009 period primarily due to lower sales volume, which was partly offset by our higher cost of hot dogs.

Restaurant operating expenses increased by \$51,000, to \$964,000 in the second quarter fiscal 2009 period as compared to \$913,000 in the second quarter fiscal 2008 period. The increase during the second quarter fiscal 2009 period when compared to the second quarter fiscal 2008 period resulted primarily from higher utility costs of \$51,000, and various other costs of \$25,000, which were partly offset by lower insurance costs of \$25,000. During the second quarter fiscal 2009 period, our utility costs were approximately 23.6% higher than the second quarter fiscal 2008 period. Despite recent reductions in the cost of oil and natural gas, we remain concerned over the uncertain market conditions of these products. We may continue to incur high utility costs in the future.

Depreciation and amortization was \$200,000 in the second quarter fiscal 2009 period as compared to \$192,000 in the second quarter fiscal 2008 period.

General and administrative expenses were \$2,249,000 in the second quarter fiscal 2009 period as compared to \$2,141,000 in the second quarter fiscal 2008 period. The difference in general and administrative expenses was due primarily to an increased number of bad debts of \$155,000 and increased stock compensation expense of \$43,000, which were partly offset by lower legal fees of \$51,000 during the second quarter fiscal 2009 period, primarily associated with Nathan's litigation against SFG (see Part II, Item 1) and lower audit fees of \$31,000 in the second quarter fiscal 2009 period. The actual amount and timing of future SFG litigation costs is not presently determinable.

Recovery of property taxes in the second quarter fiscal 2009 period, represents the settlement of a multi-year certiorari proceeding at one of Nathan's Company-operated restaurants, net of fees.

### **Provision for Income Taxes from Continuing Operations**

In the second quarter fiscal 2009 period, the income tax provision was \$1,093,000 or 37.0% of income from continuing operations before income taxes as compared to \$1,035,000 or 37.1% of income from continuing operations before income taxes in the second quarter fiscal 2008 period. For the thirteen weeks ended September 28, 2008 and September 23, 2007, Nathan's tax provisions, excluding the effects of tax-exempt interest income, were 40.2% and 40.5%, respectively.

Revenues from Continuing Operations

Total sales increased by \$1,356,000 or 6.4% to \$22,434,000 for the twenty-six weeks ended September 28, 2008 ("fiscal 2009 period") as compared to \$21,078,000 for the twenty-six weeks ended September 23, 2007 ("fiscal 2008 period"). Sales from the Branded Product Program increased by 16.0% to \$12,900,000 for the fiscal 2009 period as compared to sales of \$11,124,000 in the fiscal 2008 period. This increase was primarily attributable to increased sales volume of approximately 11.4% and of price increases of approximately 6.5%, which took effect beginning July 2008. Total Company-owned restaurant sales (representing five comparable Nathan's restaurants and one seasonal restaurant) were \$8,540,000 as compared to \$8,567,000 during the fiscal 2008 period. During the fiscal 2009 period, sales to our television retailer were approximately \$393,000 lower than the fiscal 2008 period. Nathan's products were on air 31 times during the fiscal 2009 period as compared to 35 times during the fiscal 2008 period, which included airings of 15 "Try Me" special promotions and two, half-hour food shows.

Franchise fees and royalties decreased by \$263,000 or 10.1% to \$2,343,000 in the fiscal 2009 period compared to \$2,606,000 in the fiscal 2008 period. Total royalties were \$2,093,000 in the fiscal 2009 period as compared to \$2,189,000 in the fiscal 2008 period. During the fiscal 2009 period, we did not recognize revenue of \$98,000 for royalties deemed to be uncollectible as compared to the fiscal 2008 period, when we did recognize \$55,000 of royalty income that was previously deemed to be uncollectible. Total royalties, excluding the adjustments for royalties deemed uncollectible as described above, were \$2,191,000 in the fiscal 2009 period as compared to \$2,134,000 in the fiscal 2008 period. During the fiscal 2009 period, Nathan's earned \$114,000 of higher royalties from our manufacturers and primary distributor on sales to our limited-menu franchisees. Franchise restaurant sales were \$48,900,000 in the fiscal 2009 period as compared to \$50,771,000 in the fiscal 2008 period. Comparable domestic franchise sales (consisting of 140 Nathan's outlets, excluding sales of the limited-menu franchisees) were \$38,970,000 in the fiscal 2009 period as compared to \$40,136,000 in the fiscal 2008 period. At September 28, 2008, 235 domestic and international franchised or limited-menu franchised outlets were operating as compared to 204 domestic and international franchised or limited-menu franchised outlets at September 23, 2007. Royalty income from 16 franchised outlets was deemed unrealizable during the twenty-six weeks ended September 28, 2008, as compared to four franchised outlets during the twenty-six weeks ended September 23, 2007. Domestic franchise fee income was \$126,000 in the fiscal 2009 period as compared to \$250,000 in the fiscal 2008 period. International franchise fee income was \$79,000 in the fiscal 2009 period, as compared to \$82,000 during the fiscal 2008 period due primarily to fewer openings of larger franchised restaurants. During the fiscal 2009 period, 23 new franchised outlets opened, including 16 limited-menu franchised outlets, two units in Kuwait and one unit in Dubai. During the fiscal 2008 period, 20 new franchised outlets were opened including ten limited-menu franchised outlets and three units in Kuwait.

License royalties increased by \$747,000 or 29.9% to \$3,243,000 in the fiscal 2009 period as compared to \$2,496,000 in the fiscal 2008 period. Total royalties earned on sales of hot dogs from our retail and foodservice license agreements of \$2,443,000 increased 27.8% from \$1,911,000 as a result of higher licensee sales during the fiscal 2009 period. Royalties earned from our primary licensee, primarily from the retail sale of hot dogs, were \$1,838,000 during the fiscal 2009 period as compared to \$1,671,000 during the fiscal 2008 period. Royalties earned from another licensee, primarily from sales to Sam's Club, were \$605,000 during the fiscal 2009 period as compared to \$240,000 during the fiscal 2008 period. Beginning March 2008, Nathan's hot dogs were introduced into over 500 of the foodservice cafes operating in Sam's Clubs throughout the United States. We earned higher revenues of \$274,000 from our agreement for the manufacture of Nathan's proprietary ingredients, including \$234,000 which was as a result of the settlement of a multi-year dispute under that agreement related to the unauthorized use of certain ingredients. We earned lower royalties of \$56,000 from our agreement for the sale of Nathan's pet treats. Last year, there was a sales promotion supporting the introduction of our pet treats into Wal-Mart. Net royalties from all other license agreements in the fiscal 2009 period were \$3,000 less than the fiscal 2008 period.

Interest income was \$522,000 in the fiscal 2009 period as compared to \$524,000 in the fiscal 2008 period, primarily due to lower interest income on our invested cash and marketable securities of approximately \$25,000 due primarily to the reduced interest rate environment and the liquidity crisis which caused Nathan's to shift its short-term investments into secure, but low yielding, Treasury Bills. Interest earned on our MSC Note (as defined) receivable, received in connection with the sale of Miami Subs on June 7, 2007 was \$80,000 in the fiscal 2009 period as compared to \$59,000 in the fiscal 2008 period. This increase was primarily due to the MSC Note being outstanding for six months during the fiscal 2009 period as compared to four months during the fiscal 2008 period.

Other income was \$25,000 in the fiscal 2009 period as compared to \$56,000 in the fiscal 2008 period. During the second quarter fiscal 2008 period, Nathan's earned a \$30,000 consent fee in connection with a licensee's refinancing.

### **Costs and Expenses from Continuing Operations**

Overall, our cost of sales increased by \$1,522,000 to \$16,933,000 in the fiscal 2009 period as compared to \$15,411,000 in the fiscal 2008 period. Our gross profit (representing the difference between sales and cost of sales) was \$5,501,000 or 24.5% of sales during the fiscal 2009 period as compared to \$5,667,000 or 26.9% of sales during the fiscal 2008 period. In the Branded Product Program, our cost of sales increased by approximately \$1,792,000 during the fiscal 2009 period when compared to the fiscal 2008 period, primarily as a result of increased sales volume and also to the higher cost of our hot dogs of approximately 7.7%. However, that percentage increase in costs would have been approximately 12.6% but for the purchase commitment we entered into in January 2008, which locked in a fixed cost on approximately 1.8 million pounds of hot dogs and resulted in a savings of approximately \$462,000 during the fiscal 2009 period. These savings offset some of the effects of the substantially higher commodity costs for beef and beef trimmings such that our average cost per pound in the Branded Product Program was approximately 7.7% higher during the fiscal 2009 period as compared to the fiscal 2008 period. Furthermore, the underlying cost of beef and beef trimmings has continued to advance throughout the fiscal period, reaching the highest level since the inception of the Branded Product Program. In response, we have initiated price increases in our Branded Product Program during the second quarter fiscal 2009 period. Beginning in mid-August 2008, we have seen a modest softening of these costs, which still remain at very high levels. If the cost of beef and beef trimmings does not decline and we are unable to pass on these higher costs through price increases, our margins will continue to be significantly impacted. With respect to our six Company-owned restaurant outlets, our cost of sales during the fiscal 2009 period was \$4,760,000 or 55.7% of restaurant sales, as compared to \$4,737,000 or 55.3% of restaurant sales in the fiscal 2008 period. During the fiscal 2009 period, we experienced higher food and direct labor costs, which were partly offset by slightly lower labor-related costs as a percentage of sales. The higher food cost as a percentage of sales was due primarily to the higher commodity cost of our hot dogs, hamburgers, cooking oil, bread and fish, which were partly mitigated by our sales price increases for select menu items of between 3.0% and 7.3%. Cost of sales to our television retailer declined by \$293,000 in the fiscal 2009 period, primarily due to lower sales volume which was partly offset by our higher cost of hot dogs.

Restaurant operating expenses increased by \$125,000 to \$1,876,000 in the fiscal 2009 period, as compared to \$1,751,000 in the fiscal 2008 period. The increase during the fiscal 2009 period when compared to the fiscal 2008 period resulted primarily from higher utility costs of \$69,000, occupancy costs of \$24,000 and various other costs of \$39,000, which were partly offset by lower insurance costs of \$33,000. During the fiscal 2009 period our utility costs were approximately 18.0% higher than the fiscal 2008 period. Despite recent reductions in the cost of oil and natural gas, we remain concerned over the uncertain market conditions for oil and natural gas. We may continue to incur higher utility costs in the future.

Depreciation and amortization was \$398,000 in the fiscal 2009 period as compared to \$374,000 in the fiscal 2008 period.

General and administrative expenses increased by \$481,000 to \$4,694,000 in the fiscal 2009 period as compared to \$4,213,000 in the fiscal 2008 period. The difference in general and administrative expenses was due to an increase in the number of bad debts of \$154,000, higher legal fees of \$97,000 during the fiscal 2009 period primarily associated with Nathan's litigation against SFG (see Part II, Item 1), higher audit fees of \$48,000 in the fiscal 2009 period related to Nathan's first audit under Section 404 of the Sarbanes-Oxley Act of 2002, requiring Nathan's auditor to audit Nathan's internal controls over financial reporting, a \$70,000 increase in Nathan's stock-based compensation expense, higher compensation costs of \$80,000 and higher occupancy costs of \$14,000. The actual amount and timing of future SFG litigation costs is not presently determinable.

Recovery of property taxes in the second quarter fiscal 2009 period, represents the settlement of a multi-year certiorari proceeding at one of Nathan's Company-operated restaurants, net of fees.

### **Provision for Income Taxes from Continuing Operations**

In the fiscal 2009 period, the income tax provision was \$1,893,000 or 37.1% of income from continuing operations before income taxes as compared to \$1,846,000 or 36.8% of income from continuing operations before income taxes in the fiscal 2008 period. For the twenty-six-week periods ended September 28, 2008 and September 23, 2007, Nathan's tax provision, excluding the effects of tax-exempt interest income, was 40.4% and 40.6%, respectively.

### **Discontinued Operations**

On April 23, 2008, Nathan's completed the sale of its wholly-owned subsidiary, NF Roasters Corp, to Roasters Asia Pacific (Cayman) Limited. Pursuant to the NFR Agreement, Nathan's sold all of the stock of NF Roasters for \$4,000,000 in cash.

Nathan's realized a gain on the sale of Roasters of \$3,656,000 net of professional fees of \$39,000 and recorded income taxes of \$1,352,000 on the gain during the twenty-six weeks ended September 28, 2008. Nathan's has determined that it will not have any significant cash flows or continuing involvement in the ongoing operations of NF Roasters. Therefore, the results of operations for NF Roasters, including the gains on disposal, have been presented as discontinued operations for all periods presented.

On June 7, 2007, Nathan's completed the sale of Miami Subs to Miami Subs Capital Partners I, Inc. ("Purchaser"). Pursuant to the Stock Purchase Agreement ("MSC Agreement"), Nathan's sold all of the stock of Miami Subs in exchange for \$3,250,000, consisting of \$850,000 in cash and the Purchaser's promissory note in the principal amount of \$2,400,000 (the "MSC Note"). The MSC Note bears interest at 8% per annum, is secured by a lien on all of the assets of the Purchaser and by the personal guarantees of two principals of the Purchaser. The Purchaser may also prepay the MSC Note at any time. In the event the MSC Note was fully repaid within one year of the sale, Nathan's had agreed to reduce the amount due by \$250,000. Due to the ability to prepay the loan and reduce the amount due, the recognition of the additional \$250,000 was initially deferred. The MSC Note was not prepaid within the requisite timeframe and Nathan's recognized the deferred revenue of \$250,000 as additional gain and recorded income taxes of \$92,000 during the first quarter ended June 29, 2008. Effective August 31, 2008, Nathan's and the Purchaser agreed to extend the due date of the MSC Note until April 2014, to reduce the monthly payments and to settle certain claims under the MSC Agreement. In accordance with the MSC Agreement, Nathan's retained ownership of Miami Subs' then corporate office in Fort Lauderdale, Florida.

Nathan's initially realized a gain on the sale of Miami Subs of \$983,000, net of professional fees of \$37,000 and recorded income taxes of \$334,000 on the gain during the twenty-six weeks ended September 23, 2007. Nathan's also recognized an additional gain of \$250,000 or \$158,000, net of tax during the twenty-six weeks ended September 28, 2008, resulting from the contingent consideration which was deferred at the time of sale. Nathan's has determined that it will not have any significant cash flows or continuing involvement in the ongoing operations of Miami Subs. Therefore, the results of operations for Miami Subs, including the gains on disposal, have been presented as discontinued operations for all periods presented.

During the twenty-six weeks ended September 23, 2007, Nathan's completed a Lease Termination Agreement with respect to three leased properties in Fort Lauderdale, Florida, with its landlord, and CVS 3285 FL, L.L.C., ("CVS") to sell our leasehold interests to CVS for \$2,000,000. As the properties were subject to certain sublease and management agreements between Nathan's and the then-current occupants, Nathan's made payments to, or forgave indebtedness of, the then-current occupants of the properties and paid brokerage commissions of \$494,000 in the aggregate. Nathan's made the property available to the buyer by May 29, 2007, and Nathan's received the proceeds of the sale on June 5, 2007. Nathan's recognized a gain of \$1,506,000 and recorded income taxes of \$557,000 during the twenty-six-week period ended September 23, 2007. The results of operations for these properties, including the gain on disposal, have been included as discontinued operations for all periods presented.

#### **Off-Balance Sheet Arrangements**

We are not a party to any off-balance sheet arrangements, other than a guarantee of a severance agreement of which \$31,000 has been recorded on the accompanying balance sheet. We have concluded our purchase commitment to acquire a total of 1,785,000 lbs of hot dogs through August 2008. Refer to Note J to the Consolidated Financial Statements for further information on these transactions.

#### **Liquidity and Capital Resources**

Cash and cash equivalents at September 28, 2008 aggregated \$14,693,000, increasing by \$312,000 during the fiscal 2009 period. At September 28, 2008, marketable securities were \$22,581,000 and net working capital increased to \$37,123,000 from \$35,650,000 at March 30, 2008.

Cash provided by operations of \$2,595,000 in the fiscal 2009 period is primarily attributable to net income of \$5,681,000 less gains of \$3,906,000 from the sales of Roasters and Miami Subs, plus other non-cash items of \$836,000. Changes in Nathan's operating assets and liabilities decreased cash by \$16,000, resulting principally from increased accounts and other receivables of \$1,354,000, which were partly offset by an increase in accounts payable of \$318,000, decreased prepaid expenses of \$831,000 and decreased inventory of \$156,000. The net increase in accounts and other receivables relates primarily to sales from the Branded Product Program of approximately \$676,000, receivable for a property tax recovery of \$516,000 and advances made to the Nathan's Famous Advertising Fund of \$320,000. The net increase in accounts payable, accrued expenses and other current liabilities is primarily due to the increase in accrued income taxes payable, resulting primarily from the gain on the sale of NF Roasters Corp. which was partly offset by a reduction in accounts payable and the annual payment of accrued compensation.

Cash was provided from investing activities of \$1,780,000 in the fiscal 2009 period, primarily from cash proceeds from the sale of Roasters in the amount of \$3,961,000, the redemption of \$500,000 of maturing available-for-sale securities and receipt of all scheduled payments of \$297,000 on the MSC Note receivable. We invested \$2,699,000 in available-for-sale securities and incurred capital expenditures of \$279,000.

Cash was used in financing activities of \$4,063,000 in the fiscal 2009 period, primarily for the purchase of 300,961 treasury shares of Company Common Stock at a cost of \$4,411,000 pursuant to the stock repurchase plan as authorized by the Board of Directors on November 5, 2007. Cash was received from the proceeds of employee stock option exercises of \$145,000 and the expected realization of the associated tax benefit of \$203,000.

From the commencement of its stock repurchase program in September 2001 through March 30, 2008, Nathan's purchased a total of 2,000,000 shares of common stock at a cost of approximately \$9,086,000, concluding the second stock repurchase plan previously authorized by the Board of Directors.

On November 5, 2007, Nathan's Board of Directors authorized the purchase of up to an additional 500,000 shares of its common stock on behalf of the Company. On June 11, 2008, Nathan's and Mutual Securities, Inc. ("MSI") entered into an agreement (the "10b5-1 Agreement") pursuant to which MSI has been authorized to purchase shares of the Company's common stock, par value \$.01 per share ("Common Stock") having a value of up to an aggregate \$6 million. The 10b5-1 Agreement was adopted under the safe harbor provided by Rule 10b5-1 of the Securities Exchange Act of 1934 in order to assist the Company in implementing its previously announced stock purchase plan for the purchase of up to 500,000 shares. There is no set time limit on the repurchases. Future purchases may be made from time to time, depending on market conditions, in open market or privately-negotiated transactions, at prices deemed appropriate by management. Through September 28, 2008, the Company had repurchased 221,706 shares of its Common Stock at a total cost of \$3,309,000 pursuant to the 10b5-1 Agreement. Subsequent to September 28, 2008, Nathan's has continued to repurchase its Common Stock in the open market pursuant to the 10b5-1 Agreement, having repurchased an additional 182,923 shares at a total cost of approximately \$2,691,000 through October 31, 2008. For the period commencing March 31, 2008 and ending October 31, 2008, Nathan's repurchased 79,255 shares at a cost of approximately \$1,102,000 before the adoption of the 10b5-1 Agreement and purchased 404,629 shares at a cost of approximately \$6,000,000 pursuant to the 10b5-1 Agreement through October 31, 2008, thereby completing the purchases authorized under the 10b5-1 Agreement. There are 16,116 remaining shares authorized to be repurchased under Nathan's third stock repurchase plan.

Management believes that available cash, marketable securities and cash generated from operations should provide sufficient capital to finance our operations and stock repurchases for at least the next twelve months. Effective October 2008, Nathan's decided that it would not extend its \$7,500,000 uncommitted bank line of credit, having never borrowed any funds under that line of credit.

Nathan's philosophy with respect to maintaining a balance sheet with a significant amount of cash and marketable securities reflects our views of maintaining readily available capital to expand our existing business and pursue any new business opportunities which might present themselves to expand our business. Nathan's believes in the value of returning its cash to its shareholders through the repurchase of its outstanding common stock and continuously evaluates this opportunity. Nathan's routinely assesses its investment management approach with respect to our current and potential capital requirements.

We expect that we will continue the stock repurchase program, make additional investments in certain existing restaurants and support the growth of the Branded Product Program in the future and fund those investments from our operating cash flow. We may also incur capital expenditures in connection with opportunistic investments on a case-by-case basis.

At September 28, 2008, there were three properties that we lease from third parties which we sublease to franchisees and a non-franchisee. We remain contingently liable for all costs associated with these properties including: rent, property taxes and insurance. We may incur future cash payments with respect to such properties, consisting primarily of future lease payments, including costs and expenses associated with terminating any of such leases.

The following schedule represents Nathan's cash contractual obligations and commitments by maturity (in thousands):

	Payments Due by Period				
	Total	Less than 1 Year	1 - 3 Years	3 - 5 Years	More than 5 Years
Cash Contractual Obligations					
Employment Agreements	\$ 3,293	\$ 1,236	\$ 957	\$ 500	\$ 600
Operating Leases	11,719	1,520	1,771	1,102	7,326
Gross Cash Contractual Obligations	15,012	2,756	2,728	1,602	7,926
Sublease Income	1,195	344	541	292	18
Net Cash Contractual Obligations	\$ 13,817	\$ 2,412	\$ 2,187	\$ 1,310	\$ 7,908

### Inflationary Impact

We do not believe that general inflation has materially impacted earnings during fiscal 2008, 2007 and 2006. However, during the fiscal 2009 period, we have experienced significant cost increases for certain food products, distribution costs and utilities. Our commodity costs for beef have been very volatile since fiscal 2004 and the cost of beef has continued to set new highs during the quarter, having increased significantly during the fiscal 2009 period. Nathan's was able to partly mitigate some of the increase by entering into a purchase commitment in January 2008 for approximately 35% of its projected hot dog purchases during the period from April through August 2008. As a result of the purchase commitment, Nathan's actual cost of hot dogs for its Branded Product Program were approximately 7.7% higher than its twenty-six weeks ended September 23, 2007, instead of being approximately 12.6% higher. In addition, the cost of beef for our fiscal year ended March 30, 2008 was approximately 8.2% higher than our prior fiscal year. We are unable to predict the future cost of our hot dogs, however, we expect to experience continued price volatility for our beef products during the rest of fiscal 2009. Since January 2008, we have experienced cost increases for a number of our other food products. We expect to incur higher commodity costs for cooking oil, fish, potatoes and paper products during fiscal 2009. As previously discussed, Nathan's increased prices in response to the increased commodity costs. In addition, for the past four years we have continued to experience the impact of higher oil prices in the form of higher distribution costs for our food products and higher utility costs in our Company-owned restaurants.

From time to time, various Federal and New York State legislators have proposed changes to the minimum wage requirements. On May 25, 2007, President Bush signed legislation which increased the Federal minimum wage to \$5.85 per hour, effective July 24, 2007, with increases to \$6.55 per hour effective July 24, 2008 and to \$7.25 per hour effective July 24, 2009. The New York State minimum wage, where our Company-owned restaurants are located, was increased to \$7.15 per hour on January 1, 2007 and will increase to \$7.25 per hour on July 24, 2009. These wage increases have not had a material impact on our results of operations or financial position as the vast majority of our employees are paid at a rate higher than the minimum wage. Although we only operate six Company-owned restaurants, we believe that significant increases in the minimum wage could have a significant financial impact on our financial results and the results of our franchisees. Continued increases in labor, food and other operating expenses could adversely affect our operations and those of the restaurant industry and we might have to further reconsider our pricing strategy as a means to offset reduced operating margins.

The Company's business, financial condition, operating results and cash flows can be impacted by a number of factors, including but not limited to those set forth above in "Management's Discussion and Analysis of Financial Condition and Results of Operations," any one of which could cause our actual results to vary materially from recent results or from our anticipated future results. For a discussion identifying additional risk factors and important factors that could cause actual results to differ materially from those anticipated, also see the discussions in "Forward-Looking Statements," "Risk Factors" and "Notes to Consolidated Financial Statements" in this Form 10-Q and "Risk Factors" in this Form 10-Q and in our Form 10-K for our fiscal year ended March 30, 2008.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### **Cash and Cash Equivalents**

We have historically invested our cash and cash equivalents in short term, fixed rate, highly rated and highly liquid instruments which are reinvested when they mature throughout the year. Although our existing investments are not considered at risk with respect to changes in interest rates or markets for these instruments, our rate of return on short-term investments could be affected at the time of reinvestment as a result of intervening events. As of September 28, 2008, Nathan's cash and cash equivalents aggregated \$14,693,000. Earnings on these cash and cash equivalents would increase or decrease by approximately \$37,000 per annum for each 0.25% change in interest rates.

#### **Marketable Securities**

We have invested our marketable securities in intermediate term, fixed rate, highly rated and highly liquid instruments. These investments are subject to fluctuations in interest rates. As of September 28, 2008, the market value of Nathan's marketable securities aggregated \$22,581,000. Interest income on these marketable securities would increase or decrease by approximately \$56,000 per annum for each 0.25% change in interest rates. The following chart presents the hypothetical changes in the fair value of the marketable investment securities held at September 28, 2008 that are sensitive to interest rate fluctuations (in thousands):

	Valuation of securities Given an interest rate			Fair Value	Valuation of securities Given an interest rate		
	Decrease of X Basis points				Increase of X Basis points		
	(150BPS)	(100BPS)	(50BPS)		+50BPS	+100BPS	+150BPS
Municipal notes and bonds	\$ 23,794	\$ 23,388	\$ 22,984	\$ 22,581	\$ 22,183	\$ 21,792	\$ 21,408

#### **Borrowings**

The interest rate on our prior borrowings was generally determined based upon the prime rate and was subject to market fluctuation as the prime rate changed, as determined within each specific agreement. At September 28, 2008, we had no outstanding indebtedness. If we were to borrow money in the future, such borrowings would be based upon the then prevailing interest rates. We do not anticipate entering into interest rate swaps or other financial instruments to hedge our borrowings. We maintained a \$7,500,000 credit line at the prime rate (5.0% as of September 28, 2008), which we decided to let expire as of October 1, 2008. We have never borrowed any funds under this credit line. Accordingly, we do not believe that fluctuations in interest rates would have a material impact on our financial results.

#### **Commodity Costs**

The cost of commodities is subject to market fluctuation. In January 2008, we entered into a purchase commitment to acquire approximately 1,785,000 lbs of hot dogs at \$1.535 per lb through August 2008. We may attempt to enter into similar arrangements in the future. With the exception of that commitment, we have not attempted to hedge against fluctuations in the prices of the commodities we purchase using future, forward, option or other instruments. As a result, we expect that the majority of our future commodities purchases will be subject to changes in the prices of such commodities. Generally, we have attempted to pass through permanent increases in our commodity prices to our customers, thereby reducing the impact of long-term increases on our financial results. A short-term increase or decrease of 10.0% in the cost of our food and paper products for the twenty-six weeks ended September 28, 2008 would have increased or decreased our cost of sales by approximately \$1,357,000.

## **Foreign Currencies**

Foreign franchisees generally conduct business with us and make payments in United States dollars, reducing the risks inherent with changes in the values of foreign currencies. As a result, we have not purchased future contracts, options or other instruments to hedge against changes in values of foreign currencies and we do not believe fluctuations in the value of foreign currencies would have a material impact on our financial results.

## **Item 4. Controls and Procedures**

### **Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer, Chief Operating Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as required by Exchange Act Rule 13a-15. Based on that evaluation, the Chief Executive Officer, Chief Operating Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective to ensure that the 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 by the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

### **Changes in Internal Controls**

There were no changes in our internal controls over financial reporting that occurred during the twenty-six weeks ended September 28, 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### **Limitations on the Effectiveness of Controls**

We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives and our Chief Executive Officer, Chief Operating Officer and Chief Financial Officer have concluded that such controls and procedures are effective at the reasonable assurance level.

**Item 1. Legal Proceedings**

We and our subsidiaries are from time to time involved in ordinary and routine litigation. Management presently believes that the ultimate outcome of such ordinary and routine litigation individually or in the aggregate, will not have a material adverse effect on our financial position, cash flows or results of operations. Nevertheless, litigation is subject to inherent uncertainties and unfavorable rulings could occur. An unfavorable ruling could include money damages and, in such event, could result in a material adverse impact on our results of operations for the period in which the ruling occurs.

On March 20, 2007, a personal injury lawsuit was initiated seeking unspecified damages against the Company's subtenant and the Company's master landlord at a leased property in Huntington, New York. The claim relates to damages suffered by an individual as a result of an alleged "trip and fall" on the sidewalk in front of the leased property, maintenance of which is the subtenant's responsibility. Although the Company was not named as a defendant in the lawsuit, under its master lease agreement the Company may have an obligation to indemnify the master landlord in connection with this claim. The Company did not maintain its own insurance on the property concerned at the time of the incident; however, the Company is named as an additional insured under its subtenant's liability policy. Accordingly, if the master landlord is found liable for damages and seeks indemnity from the Company, the Company believes that it would be entitled to coverage under the subtenant's insurance policy. Additionally, under the terms of the sublease, the subtenant is required to indemnify the Company, regardless of insurance coverage.

The Company is party to a License Agreement with SMG, Inc. ("SMG") dated as of February 28, 1994, as amended (the "License Agreement") pursuant to which: (i) SMG acts as the Company's exclusive licensee for the manufacture, distribution, marketing and sale of packaged Nathan's Famous frankfurter product at supermarkets, club stores and other retail outlets in the United States; and (ii) the Company has the right, but not the obligation, to require SMG to produce frankfurters for the Nathan's Famous restaurant system and Branded Product Program. On July 31, 2007, the Company provided notice to SMG that the Company has elected to terminate the License Agreement, effective July 31, 2008, due to SMG's breach of certain provisions of the License Agreement. SMG has disputed that a breach has occurred and has commenced, together with certain of its affiliates, an action in state court in Illinois seeking, among other things, a declaratory judgment that SMG did not breach the License Agreement. The Company's filed its own action on August 2, 2007, in New York State court seeking a declaratory judgment that SMG has breached the License Agreement and that the Company has properly terminated the License Agreement. On January 23, 2008, the New York court granted SMG's motion to dismiss the Company's case in New York on the basis that the dispute was already the subject of a pending lawsuit in Illinois. The Company has answered SMG's complaint and asserted its own counterclaims which seek, among other things, a declaratory judgment that SMG did breach the License Agreement and that the Company has properly terminated the License Agreement. On July 31, 2008, SMG and Nathan's entered into a stipulation pursuant to which Nathan's agreed that it would not effectuate the termination of the License Agreement on the grounds alleged in the present litigation until such litigation has been successfully adjudicated, and SMG agreed that in such event, Nathan's shall have the option to require SMG to continue to perform under the License Agreement for an additional period of up to six months to ensure an orderly transition of the business to a new licensee/supplier. The parties are currently proceeding with the discovery process.

**Item 1A. Risk Factors**

In addition to the other information set forth in this report, you should carefully consider the factors described below, as well as those discussed in Part I, "Item 1A. Risk Factors" in the Annual Report on Form 10-K for the fiscal year ended March 30, 2008, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks facing Nathan's. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

***Increases in the cost of food and paper products could harm our profitability and operating results.***

The cost of the food and paper products we use depends on a variety of factors, many of which are beyond our control. We purchase large quantities of beef and our beef costs in the United States represent approximately 80% to 85% of our food costs. The market for beef is particularly volatile and is subject to significant price fluctuations due to seasonal shifts, climate conditions, industry demand and other factors beyond our control. For example, in the past, reduced supply and increased demand in beef resulted in shortages, which required us to pay significantly higher prices for the beef we purchased. We were unable to pass all of the price increases to our customers. As the price of beef or other food products that we use in our operations increases significantly, particularly in the Branded Product Program, and we choose not to pass, or cannot pass, such increases on to our customers, our operating margins would decrease. Food and paper products typically represent approximately 25% to 30% of our cost of restaurant sales.

Fluctuations in weather, supply and demand and economic conditions could adversely affect the cost, availability and quality of some of our critical products, including beef. Our inability to obtain requisite quantities of high-quality ingredients would adversely affect our ability to provide the menu items that are central to our business, and the highly competitive nature of our industry may limit our ability to pass through increased costs to our customers. Continuing increases in the cost of fuel would increase the distribution costs of our prime products thereby increasing food and paper costs to us and to our franchisees, thereby negatively affecting our profitability.

Nathan's does not have the ability to effectively hedge all of its beef purchases using futures or forward contracts without incurring undue financial risk, although Nathan's had entered into a commitment to purchase 1,785,000 pounds of hot dogs for the period April through August 2008. Nathan's may seek to enter into similar commitments to purchase in the future.

***The loss of one or more of our key suppliers could lead to supply disruptions, increased costs and lower operating results.***

The Company relies on one supplier for the majority of its frankfurters and another supplier for its supply of frozen French fries. An interruption in the supply of product from either one of these suppliers without the Company obtaining an alternative source of supply on comparable terms could lead to supply disruptions, increased costs and lower operating results.

The Company is currently engaged in litigation with its primary supplier of frankfurters for each of the Company's major lines of business seeking a judicial declaration that the Company is entitled to terminate its License Agreement with such supplier. In anticipation of such termination, the Company is seeking one or more alternative sources of supply to commence immediately following the termination of the License Agreement (or sooner if necessary); however, the termination of the License Agreement presents a number of risks to the Company and its operations.

Although the Company believes that its frankfurter supplier is contractually obligated to perform its obligations under the License Agreement until its termination and the Company expects its frankfurter supplier to continue to discharge those obligations, there is no assurance that the supplier will do so. In the event that the frankfurter supplier breaches its contractual obligations under the License Agreement by failing or refusing to manufacture and supply frankfurters for the Company's restaurant and Branded Product Program operations or to manufacture, distribute, market and sell *Nathan's Famous* frankfurters to the retail trade, there is no assurance that the Company could secure an alternate source of supply in a timely manner.

Additionally, all of the frozen French fries sold through its franchised restaurants are obtained from one supplier. In the event that the French fry supplier is unable to fulfill Nathan's requirements for any reasons, including due to a significant interruption in its manufacturing operations, whether as a result of a natural disaster or for other reasons, such interruption could significantly impair the Company's ability to operate its business on a day-to-day basis.

In the event that the Company is unable to find one or more alternative suppliers of frankfurters or French fries on a timely basis, there could be a disruption in the supply of product to Company-owned restaurants, franchised restaurants and Branded Product accounts, which would damage the Company, its franchisees and Branded Product customers and, in turn, negatively impact the Company's financial results. In addition, any gap in supply to retail customers would result in lost royalty payments to the Company, which could have a significant adverse financial impact on the Company's results from operations. Furthermore, any gap in supply to retail customers may damage the *Nathan's Famous* trademarks in the eyes of consumers and the retail trade, which damage might negatively impact the Company's overall business in general and impair the Company's ability to continue its retail licensing program.

Additionally, once secured, there is no assurance that any alternate sources of supply would be capable of meeting the Company's specifications and quality standards on a timely and consistent basis or that the financial terms of such supply arrangement will be as favorable as the Company's present terms with its frankfurter or French fry supplier, as the case may be.

Any of the foregoing occurrences may cause disruptions in supply of the Company's frankfurter or French fry products, as the case may be, damage the Company's franchisees and Branded Product customers, adversely impact the Company's financial results and/or damage the *Nathan's Famous* trademarks.

***The closure of a Coney Island amusement park, and the redevelopment of the Coney Island amusement district, may have a material adverse effect on Nathan's financial results.***

The original, flagship Nathan's Famous restaurant is located in the Coney Island amusement district in Coney Island, New York. We believe that customer traffic at this location depends, in part, on the operation of the various area amusements and attractions. One such attraction, the Astroland Amusement Park, has reportedly been closed permanently as of September 2008. Additionally, the City of New York and a private real estate developer have proposed competing plans to redevelop the entire Coney Island amusement district. We are unable to determine the impact of the closing of Astroland and/or the redevelopment of the Coney Island amusement district; however, any substantial decrease in the number of visitors to Coney Island would likely have a material adverse effect on our financial results.

***Recent turmoil in the credit markets and the financial services industry may negatively impact the Company's profitability and operating results.***

Recently, the credit markets and the financial services industry have been experiencing a period of unprecedented turmoil and upheaval characterized by the bankruptcy, failure, collapse or sale of various financial institutions and an unprecedented level of intervention from the United States federal government. While the ultimate outcome of these events cannot be predicted, they may have a material adverse effect on the Company's liquidity and financial condition if the recent economic crisis results in reduced sales at our Company-owned and franchised restaurants or of licensed products for which we receive royalties or if it adversely impacts franchisees' ability to finance purchases or restructurings of restaurant franchises, any of which may negatively impact the Company's business and operating results.

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

## ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans	(d) Maximum Number of Shares that May Yet Be Purchased Under the Plan
June 30, 2008				
July 27, 2008	73,957	\$ 14.6612	73,957	322,185
July 28, 2008				
August 24, 2008	90,865	\$ 14.9635	90,865	231,320
August 25, 2008				
September 28, 2008	32,281	\$ 15.5358	32,281	199,039
<b>Total</b>	<b>197,103</b>	<b>\$ 14.9744</b>	<b>197,103</b>	<b>199,039</b>

On September 14, 2001, Nathan's was authorized to purchase up to 1,000,000 shares of its common stock. Pursuant to this first stock repurchase program, we repurchased 1,000,000 shares of common stock in open-market transactions and a private transaction at a total cost of \$3,670,000. On October 7, 2002, Nathan's was authorized to purchase up to 1,000,000 additional shares of its common stock. Nathan's concluded the second authorized stock repurchase program of 1,000,000 shares of common stock at a cost of approximately \$5,416,000. On November 5, 2007, Nathan's Board of Directors authorized the purchase of up to an additional 500,000 shares of its common stock on behalf of the Company. On June 11, 2008, Nathan's and MSI entered into the 10b5-1 Agreement pursuant to which MSI has been authorized to purchase shares of the Company's common stock having a value of up to an aggregate \$6 million. The 10b5-1 Agreement was adopted under the safe harbor provided by Rule 10b5-1 of the Securities Exchange Act of 1934 in order to assist the Company in implementing its previously announced stock purchase plan for the purchase of up to 500,000 shares. Through September 28, 2008, Nathan's purchased a total of 2,300,961 shares of common stock at a cost of approximately \$13,497,000 pursuant to the current and previous stock repurchase plans authorized by the Board of Directors. Of these repurchased shares, 300,961 shares at a cost of \$4,411,000 were repurchased during the twenty-six weeks ended September 28, 2008. Subsequent to September 28, 2008, Nathan's has continued to repurchase its common stock in the open market pursuant to the 10b5-1 Agreement, repurchasing an additional 182,923 shares at a total cost of approximately \$2,691,000 through October 31, 2008. For the period commencing March 31, 2008 and ending October 31, 2008, Nathan's repurchased 79,255 shares at a cost of approximately \$1,102,000 before the adoption of the 10b5-1 Agreement and purchased 404,629 shares at a cost of approximately \$6,000,000 pursuant to the 10b5-1 Agreement through October 31, 2008, thereby completing the purchases authorized under the 10b5-1 Agreement. There are 16,116 remaining shares to be repurchased in order to complete Nathan's third stock repurchase plan. Future purchases may be made from time to time, depending on market conditions, in open market or privately-negotiated transactions, at prices deemed appropriate by management. There is no set time limit on the repurchases.

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

- (a) The Company held its Annual Meeting of Stockholders on September 9, 2008.
- (b) Nine Directors were elected at the Annual Meeting to serve until the Annual Meeting of Stockholders in 2009. The names of these Directors and votes cast in favor of their election and shares withheld are as follows:

	FOR	WITHHELD
HOWARD M. LORBER	4,496,557	222,301
WAYNE NORBITZ	4,605,789	113,069
ROBERT J. EIDE	4,513,364	205,494
ERIC GATOFF	4,605,914	112,944
BRIAN S. GENSON	4,622,271	96,587
BARRY LEISTNER	4,630,897	87,961
DONALD L. PERLYN	4,494,798	224,060
A.F. PETROCELLI	4,571,526	147,332
CHARLES RAICH	4,514,220	204,638

**Item 6. Exhibits.**

- 3.1 Certificate of Incorporation. (Incorporated by reference to Exhibit 3.1 to Registration Statement on Form S-1 No. 33-56976.)
- 3.2 Amendment to the Certificate of Incorporation, filed December 15, 1992. (Incorporated by reference to Exhibit 3.2 to Registration Statement on Form S-1 No. 33-56976.)
- 3.3 By-Laws, as amended. (Incorporated by reference to Exhibit 3.3 to Form 10-K for the fiscal year ended March 27, 2005.)
- 4.1 Specimen Stock Certificate. (Incorporated by reference to Exhibit 4.1 to Registration Statement on Form S-1 No. 33-56976.)
- 4.2 Form of Rights Certificate. (Incorporated by reference to Exhibit A to Exhibit 4.2 to Form 8-K dated June 6, 2008.)
- 4.3 Rights Agreement dated as of June 4, 2008 between Nathan's Famous, Inc. and American Stock Transfer and Trust Company. (Incorporated by reference to Exhibit 4.2 to Form 8-K dated June 6, 2008.)
- 10.1 \*Settlement Agreement and Release between Miami Subs Capital Partners I, Inc. and Nathan's Famous, Inc.
- 10.2 \*Amended and Restated Promissory Note of Miami Subs Capital Partners I, Inc.
- 31.1 \*Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 \*Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 \*Certification by Eric Gatoff, CEO, Nathan's Famous, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 \*Certification by Ronald G. DeVos, CFO, Nathan's Famous, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\*Filed herewith.

**SIGNATURES**

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

NATHAN'S FAMOUS, INC.

Date: November 7, 2008

By: /s/Eric Gatoff  
Eric Gatoff  
Chief Executive Officer  
(Principal Executive Officer)

Date: November 7, 2008

By: /s/Ronald G. DeVos  
Ronald G. DeVos  
Vice President - Finance  
and Chief Financial Officer  
(Principal Financial and Accounting Officer)

## Exhibit Index

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\*Filed herewith.

**SETTLEMENT AGREEMENT AND RELEASE**

This **SETTLEMENT AGREEMENT AND RELEASE** (this "Agreement") is made as of the date set forth below, by and between **MIAMI SUBS CAPITAL PARTNERS I, INC.**, a Florida corporation with an office at 6300 NW 31<sup>st</sup> Street, Fort Lauderdale, Florida ("Miami Subs ") and **NATHAN'S FAMOUS, INC.**, a Delaware corporation ("Nathan's"). Miami Subs and Nathan's are collectively referred to herein as the "Parties."

**WITNESSETH:**

**WHEREAS**, on or about June 7, 2007, the Parties entered into a Stock Purchase Agreement ("SPA"), pursuant to which Nathan's sold all of the issued and outstanding shares of stock of Miami Subs Corporation to Miami Subs for an aggregate purchase price of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), consisting of a cash payment of Eight Hundred Fifty Thousand Dollars (\$850,000.00) and the balance of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) to be paid pursuant to the terms of a Nonnegotiable Promissory Note (the "Note"); and

**WHEREAS**, Bruce Galloway ("Galloway") and Lawrence Austin ("Austin") each personally guaranteed Miami Subs' performance under the Note, pursuant to separate written guarantees dated on or about June 7, 2007 (the "Galloway Personal Guaranty" and the "Austin Personal Guaranty"); and

**WHEREAS**, a dispute has arisen between the Parties concerning the SPA (the "Dispute"); and

**WHEREAS**, due to the significant cost, expense, and uncertainty in connection with potentially litigating the Dispute, the Parties desire to resolve and settle in full all past, present or future claims that Miami Subs had, has or may have against Nathan's arising out of the SPA through the date of execution of this Agreement;

**NOW, THEREFORE**, the Parties hereby agree to settle the Dispute upon the following terms and conditions:

1. **Delivery of Amended Note**: Upon the execution of this Agreement by all Parties, Miami Subs shall deliver to Nathan's an Amended and Restated Promissory Note in the form annexed hereto as Exhibit "A" (the "Amended Note"), pursuant to which the term of the Note is extended and the monthly installment amount thereunder reduced, as set forth in the Amended Note.

2. **Delivery of Reaffirmation of Guaranty**: Upon the execution of this Agreement by all Parties, Galloway and Austin shall deliver to Nathan's a Reaffirmation of Guaranty in the form annexed hereto as Exhibit "B" (the "Reaffirmation of Guaranty"), pursuant to which Galloway and Austin personally guaranty the performance of Miami Subs under the Amended Note, as set forth in the Reaffirmation of Guaranty.

3. **General Release to Nathan's**: For and in consideration of the good and valuable consideration identified herein, the sufficiency of which Miami Subs hereby acknowledges, Miami Subs does hereby forever release and discharge Nathan's, its past, present and future shareholders, officers, directors, representatives, agents, employees, affiliated companies, related companies, subsidiaries, parents, predecessors, successors, assigns (collectively, "RELEASEES"), and any other entities in which the RELEASEES have or had any interest, from all claims, demands, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise), that Miami Subs and each of its past, present and future shareholders, officers, directors, representatives, agents, employees, affiliated companies, related companies, subsidiaries, parents, predecessors, successors and assigns, (collectively "RELEASORS") ever had, now have or hereafter can, shall or may have against RELEASEES, including any and all past, present or future claims arising out of the SPA up to and including the date of execution of this Agreement; provided, however, that this Release is not intended to release the obligations set forth in this Agreement.

4. **Miami Subs Acknowledgment of Counsel:** Miami Subs acknowledges that for purposes of this settlement it has had the opportunity to be represented by legal counsel of its own choice throughout all of the negotiations preceding the execution of this Agreement; that it has had the opportunity to consult with its attorneys prior to executing this Agreement; that it has executed this Agreement only after it has had the opportunity to consult with above-described independent legal counsel; that it has carefully read this Agreement in its entirety; that it has had the opportunity to have the provisions of this Agreement explained to it by counsel and has had the opportunity to have answered to its satisfaction any questions it has had with regard to the meaning of any of the provisions of this Agreement; that it fully understands the terms, conditions and significance of this Agreement, and that it voluntarily consents to all of the terms and conditions contained in this Agreement and is signing this Agreement voluntarily and of its own force and will; and that it intends to abide by all the provisions of this Agreement.

5. **Nathan's Acknowledgment of Counsel:** Nathan's acknowledges that for purposes of this settlement it has been represented by Farrell Fritz, P.C., legal counsel of its own choice, throughout all of the negotiations preceding the execution of this Agreement; that it has consulted with its attorneys prior to executing this Agreement; that it executed this Agreement only after consultation with above-described independent legal counsel; that it has carefully read this Agreement in its entirety; that it had the provisions of this Agreement explained to it by counsel who answered to its satisfaction any questions asked with regard to the meaning of any of the provisions of this Agreement; that it fully understand the terms, conditions and significance of this Agreement, and that it voluntarily consent to all of the terms and conditions contained in this Agreement and is signing this Agreement voluntarily and of its own force and will; and that it intends to abide by all the provisions of this Agreement.

6. **No Admission of Wrongdoing:** The Parties have entered into this Agreement for the purpose of avoiding the burden, expense and inconvenience of litigation, and the making of this Agreement is not intended, and shall not be construed, as an admission that any of the Parties breached any duty or contract, including without limitation the SPA; violated any federal, state or local law (statutory or common law), ordinance or regulation; has any liability; or committed any wrongdoing whatsoever.

7. **Non-Disparagement:** Miami Subs shall not make or publish any statement (in verbal, written, electronic or any other form), or instigate, assist or participate in the making or publication of any statement (in verbal, written, electronic or any other form), that would libel, slander or disparage (whether or not such disparagement constitutes libel or slander), or expose to hatred, contempt or ridicule, Nathan's, its products, services, affairs, or operation, and its past or present shareholders, officers, directors, representatives, agents or employees.

8. **Confidentiality:** Miami Subs shall not, except as compelled by law, publicize or disclose to any person the facts or circumstances relating to any asserted or potential claims against Nathan's, including those asserted in the Dispute, and any terms of this Agreement. This covenant of confidentiality includes, but is not limited to, the claims Miami Subs has or could have asserted against Nathan's, any purported unlawful or wrongful conduct by Nathan's, the terms of this Agreement, and Miami Subs' receipt of any consideration pursuant to this Agreement. Other than as required by law, governmental agency or taxing authority, disclosure will not be made to anyone other than to discuss the terms hereof with the attorneys, tax advisors and other professionals and senior corporate officers or directors of Miami Subs (all of whom must agree not to make any disclosure that Miami Subs itself could not make). Upon receipt of any inquiry regarding the Dispute, the parties, or any representative thereof, shall state only that it has been resolved to the satisfaction of the Parties. Miami Subs shall be liable for all damages caused by it or by anyone to whom it made disclosure if a court determines that it or such person were to violate this confidentiality covenant or any other provision of this Agreement.

9. **No Further Action:** Miami Subs represents and warrants that it is the only entity that has any rights, claims or lawsuits against Nathan's as a result of the acts, omissions and conduct alleged in the Dispute. Miami Subs and the RELEASORS, further represent and warrant that they have not and will not file or cause to be filed any lawsuit in any jurisdiction, or make any claim or demand against the RELEASEES or any other person or entity for any and all past, present or future claims arising out of the SPA up to and including the date of execution of this Agreement.

10. **Injuries Known through the Date Hereof:** Miami Subs acknowledges that the consideration received under this Agreement is intended to and does release and discharge the RELEASEES for any and all past, present or future claims arising under the SPA as to which Miami Subs has knowledge up to and including the date of execution of this Agreement. Miami Subs hereby represents and warrants to Nathan's that, as of the date hereof, it has no knowledge of any existing, pending or threatened matter that could give reasonably be expected to give rise to a future claim under the SPA. For the purposes hereof, "knowledge of Miami Subs" means the knowledge of Laurence Austin, Richie Chwatt, Bob Vogel, Bruce Galloway, Gary Herman, Lawrence Austin, Jay Szeffel, Steve Nelson and Fraser Austin following due inquiry, including all reasonable inquiries of any other individuals reasonably expected to have knowledge of any claims that may arise, develop or be discovered in the future under the SPA.

11. **Change in Facts Affecting Settlement:** It is understood that the facts in respect of which this Agreement is made may hereafter turn out to be other than or different from the facts in that connection now known by the Parties or believed by any of the Parties to be true. Each of the Parties expressly accepts and assumes the risks of the facts turning out to be so different. Each of the Parties agrees that the foregoing Agreement shall be in all respects effective and not subject to termination or rescission by any such difference in facts.

12. **Choice of Law/Venue:** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without reference to the choice of law or conflicts of law principles thereof. The venue for any disputes arising under this Agreement shall be in the United States District Court for the Southern District of New York located in New York County, New York, or if subject matter jurisdiction is lacking in such Court, in the Supreme Court of the State of New York for the County of New York.

13. **Section Headings:** Section headings are used herein for convenience of reference only and do not affect the meaning of any provision of this Agreement.

14. **Severability:** If at any time after the date of the execution of this Agreement, any provision of this Agreement shall be held to be illegal, void or unenforceable by a court of competent jurisdiction, such provision shall be of no force and effect; provided, however, that the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

15. **Entire Agreement:** This Agreement (which incorporates as covenants the representations and clauses in the introductory “Whereas” clauses) constitutes the entire agreement and understanding between the Parties relating to the Dispute and the settlement thereof, and it supersedes any and all prior representations, understandings and agreements, whether written or verbal, except that the Parties’ obligations set forth in Article 4 of the SPA shall survive the execution of this Agreement and shall remain in full force and effect.

16. **Changes to Agreement:** This Agreement may not be changed, amended, modified or terminated except by a written instrument signed by each of the Parties.

17. **Additional Obligations:** Each of the Parties agree to execute all such further documents, and to take all such further action, as may be deemed necessary or advisable in order to effectuate the intent and purpose of the foregoing Agreement.

18. **Signatures:** This Agreement may be executed in counterparts and/or by facsimile transmission, each of which when executed shall be deemed to be an original and all of which together shall constitute a single instrument binding upon the Parties; provided, however, that original signed documents shall also be provided. All fully executed copies shall be considered duplicate originals, equally admissible in evidence.

**THE TERMS OF THIS AGREEMENT, INCLUDING THE WAIVER AND GENERAL RELEASE, ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN THE PARTIES. THE PARTIES HAVE READ AND FULLY CONSIDERED THIS AGREEMENT AND MUTUALLY DESIRE TO ENTER INTO THIS AGREEMENT.**

**EACH PARTY HAS BEEN AFFORDED A REASONABLE TIME TO CONSIDER ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT AND TO CONSULT WITH AN ATTORNEY.**

**HAVING ELECTED TO EXECUTE THIS AGREEMENT AFTER CONSULTING WITH LEGAL COUNSEL, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE CONSIDERATION SET FORTH IN PARAGRAPHS “1” AND “2” HEREOF, MIAMI SUBS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS IT HAS OR MIGHT HAVE AGAINST NATHAN’S.**

**WHEREFORE**, the Parties hereto have caused this Settlement Agreement and Release to be signed on the dates indicated below with the Agreement becoming effective upon the last dated signature of the Parties.

**MIAMI SUBS CAPITAL PARTNERS I, INC.**

By:/s/ Gary Herman

\_\_\_\_\_  
Name: Gary Herman

Title: President

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF New York    )

On the 28th day of October 2008, before me, the undersigned, personally appeared Gary Herman, the President of Miami Subs Capital Partners I, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as the President of Miami Subs Capital Partners I, Inc., and that by his signature on the instrument, the individual, or the person upon his behalf of which the individual acted, executed the instrument.

/s/ Andrea Alessi

\_\_\_\_\_  
Notary Public

***(Signature Page 1 of 2)***

**WHEREFORE**, the Parties hereto have caused this Settlement Agreement and Release to be signed on the dates indicated below with the Agreement becoming effective upon the last dated signature of the Parties.

**NATHAN’S FAMOUS, INC.**

By: /s/ Eric Gatoff

\_\_\_\_\_  
Name: Eric Gatoff  
Title: CEO

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NASSAU    )

On the 31<sup>st</sup> day of October 2008, before me, the undersigned, personally appeared Eric Gatoff, the CEO of Nathan’s Famous, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as the CEO of Nathan’s Famous, Inc., and that by his signature on the instrument, the individual, or the person upon his behalf of which the individual acted, executed the instrument.

/s/ Mary Hyland

\_\_\_\_\_  
Notary Public

*(Signature Page 2 of 2)*

**AMENDED AND RESATED  
PROMISSORY NOTE**

\$1,892,210.54

Westbury, New York  
October 28, 2008  
Effective as of August 31, 2008

**FOR VALUE RECEIVED, MIAMI SUBS CAPITAL PARTNERS I, INC.**, a Florida corporation with an office at 6300 NW 31<sup>st</sup> Avenue, Fort Lauderdale, Florida (the "Maker"), promises to pay to the order of **NATHAN'S FAMOUS, INC.**, a Delaware corporation (the "Payee"), the principal amount of **ONE MILLION EIGHT HUNDRED NINETY-TWO THOUSAND TWO HUNDRED TEN AND 54/100 DOLLARS (\$1,892,210.54)**, on or before April 30, 2014 (the "Maturity Date"), in lawful money of the United States of America, together with interest on the unpaid principal amount hereof, from time to time outstanding, from August 31, 2008 (the "Effective Date") through and including the date that this Note is paid in full, at a rate of eight percent (8%) per annum.

The Maker promises to pay to the Payee an installment of \$35,000.00 (THIRTY-FIVE THOUSAND DOLLARS) effective as of the Effective Date, an installment of \$6,883.67 (SIX THOUSAND EIGHT HUNDRED EIGHTY-THREE AND 67/100 DOLLARS) effective as of the date of execution hereof and monthly installments of \$35,000.00 (THIRTY-FIVE THOUSAND DOLLARS) each for the next sixty-seven months, subject to adjustment upon any prepayment made by Maker in accordance with the terms hereof. Following the first two installments hereunder, each monthly installment shall be paid on the last day of each calendar month commencing October 31, 2008, with a final installment to be paid on the Maturity Date. Interest hereunder shall be computed on the actual number of days elapsed over a year comprised of 365 days. Nothing herein shall be deemed to require Maker to make payments of interest which exceed the maximum permitted by law. In any such event, this Note shall be deemed automatically amended to require payment of interest at the maximum amount permitted by law.

All amounts payable hereunder shall be made in lawful money of the United States of America at such place as may be designated to the Maker in writing by the Payee from time to time. If any payment hereunder becomes due and payable on a day other than a Business Day (hereafter defined), such payment shall be extended to the next succeeding Business Day. "Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in New York State are authorized or required by law to close. Upon the occurrence of an Event of Default, as that term is defined below, interest payable on this Note shall be at the rate of twelve percent (12%) per annum or the maximum rate allowed to be charged by law, whichever is lower.

This Note may be prepaid at the option of the Maker in whole or in part at any time without penalty or premium. All prepayments shall be accompanied by accrued interest on the principal amount repaid to the date of repayment.

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This Note shall be subject to mandatory prepayment (i) upon the settlement or the adjudication of the litigation entitled *Ontario Superior Court of Justice-Commercial Litigation, Court File No. 06-00CL6270, Lawrence B. Austin, Plaintiff v. Michael Overs, Tesari Holdings, Ltd., & Pizza Pizza, Ltd., Defendants*, in an amount equal to the amount payable to Lawrence Austin or any affiliate in settlement or by award of the court having jurisdiction over such action, after deduction of attorneys' fees paid by Lawrence Austin in connection with such action and (ii) in an amount equal to any liability of the Payee in respect of an indemnification claim made by Maker against Payee pursuant to Article V of the Stock Purchase Agreement dated as of June 7, 2007 by and among the Maker, the Payee and Miami Subs Corporation upon a final determination of liability by Maker and Payee or by final judicial proceeding. In the event of any partial prepayment, whether or not mandatory, the amount of the monthly payment payable by Maker hereunder shall be reduced to the amount obtained by fully amortizing the unpaid principal balance following such prepayment over the balance of the term remaining until the Maturity Date.

Payee may declare the entire unpaid principal balance of the Note, together with interest accrued thereon, to be immediately due and payable upon the occurrence of any of the following events (each an "Event of Default"): (a) the failure of Maker to pay the principal of, or interest on, this Note when due, and such failure shall continue unremedied for a period of ten (5) days following delivery of written notice of such non-payment; (b) any petition in bankruptcy being filed by or against the Maker, or any proceedings in bankruptcy, or under any law relating to the relief of debtors, being commenced for the relief or readjustment of any indebtedness of the Maker; provided, with respect to any such petition filed against Maker, such petition shall continue undismissed for a period of 30 days from the date of entry thereof; (c) the making by the Maker of an assignment for the benefit of creditors; (d) the appointment of a receiver of all or substantially all of the property of the Maker; (e) the merger, consolidation, or sale of all or substantially all of the assets of the Maker to any third party; (f) any breach of any representation, warranty or covenant of the Maker contained in the Security Agreement, of even date herewith, between Maker and Payee, which breach, if capable of cure, shall not have been cured within twenty (20) days following delivery of written notice to Maker; or (g) the guaranty executed by Lawrence Austin or Bruce Galloway (each, a "Guarantor") with respect to Maker's obligations hereunder shall cease to be in full force and effect or any Guarantor shall so assert in writing.

Maker agrees that whenever an attorney is used to collect or enforce this Note or to enforce, declare or adjudicate any rights or obligations under this Note whether by suit or any other means whatsoever, the Maker shall pay all of the legal fees of the attorneys for the Payee, together with all costs and expenses of such collection, enforcement or adjudication, which obligation shall constitute part of the principal obligation hereunder.

Maker hereby waives diligence, presentment, protest, demand and notice of every kind except as otherwise expressly required herein. This Note may not be modified orally.

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES.**

**This Note is an amendment and restatement of, and is being issued in replacement of and substitution for, the Promissory Note, dated June 7, 2007, in the original principal amount of \$2,400,000 issued by the Maker in favor of Payee (the “Original Note”). The execution and delivery of this Note shall not be construed to have constituted a repayment of any principal of, or interest on, the Original Note.**

**MIAMI SUBS CAPITAL PARTNERS I, INC.,**

/s/ Gary Herman

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By: Gary Herman

## CERTIFICATION

I, Eric Gatoff, Chief Executive Officer of Nathan's Famous, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarter ended September 28, 2008 of Nathan's Famous, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

/s/ Eric Gatoff  
Eric Gatoff  
Chief Executive Officer

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## CERTIFICATION

I, Ronald G. DeVos, Chief Financial Officer of Nathan's Famous, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarter ended September 28, 2008 of Nathan's Famous, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

/s/ Ronald G. DeVos

Ronald G. DeVos

Chief Financial Officer

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CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Eric Gatoff, Chief Executive Officer of Nathan's Famous, Inc., certify that:

The quarterly report on Form 10-Q of Nathan's Famous, Inc. for the period ended September 28, 2008 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

The information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Nathan's Famous, Inc.

/s/ Eric Gatoff

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Name: Eric Gatoff

Date: November 7, 2008

A signed original of this written statement required by Section 906 has been provided to Nathan's Famous, Inc. and will be retained by Nathan's Famous, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Ronald G. DeVos, Chief Financial Officer of Nathan's Famous, Inc., certify that:

The quarterly report on Form 10-Q of Nathan's Famous, Inc. for the period ended September 28, 2008 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

The information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Nathan's Famous, Inc.

/s/ Ronald G. DeVos

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Name: Ronald G. DeVos

Date: November 7, 2008

A signed original of this written statement required by Section 906 has been provided to Nathan's Famous, Inc. and will be retained by Nathan's Famous, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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