

CHEESECAKE FACTORY INC  
Form 8-K  
January 05, 2009

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM 8-K

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

**Date of Report (Date of earliest event reported):**

**December 30, 2008**

## THE CHEESECAKE FACTORY INCORPORATED

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

**0-20574**

**51-0340466**

(State or other jurisdiction  
of incorporation)

(Commission File Number)

(IRS Employer Identification No.)

**26901 Malibu Hills Road  
Calabasas Hills, California 91301**

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code:

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(818) 871-3000

**Not Applicable**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14.d-2(b))
  - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**SECTION 5        CORPORATE GOVERNANCE AND MANAGEMENT**

**ITEM 5.02        DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS**

On December 30, 2008, the Compensation Committee of the Board of Directors of The Cheesecake Factory Incorporated approved amendments to the employment agreements with the following executive officers: David Overton, Max S. Byfuglin and Debby R. Zurzolo. The amendments were made to change the definition of "change of control" under each agreement so that certain compensation which may become payable under the agreements would not be subject to taxation under Section 409A of the Internal Revenue Code.

The forms of these amendments are filed as Exhibits 99.1, 99.2 and 99.3 to this report and are incorporated herein by reference.

**SECTION 9        FINANCIAL STATEMENTS AND EXHIBITS**

**Item 9.01        Financial Statements and Exhibits**

(d) Exhibits

99.1        Form of Third Amendment to Employment Agreement with David Overton

99.2        Form of Second Amendment to Employment Agreement with Max S. Byfuglin

99.3        Form of Second Amendment to Employment Agreement with Debby R. Zurzolo

**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 hereunto duly authorized.

Date: January 5, 2009

THE CHEESECAKE FACTORY INCORPORATED

By:

/s/ CHERYL M. SLOMANN

Cheryl M. Slomann

Interim Chief Financial Officer, Vice President and  
Controller

**EXHIBIT INDEX**

| <b>Exhibit</b> | <b>Description</b>   |
|----------------|--|
| 99.1           | Form of Third Amendment to Employment Agreement with David Overton     |
| 99.2           | Form of Second Amendment to Employment Agreement with Max S. Byfuglin  |
| 99.3           | Form of Second Amendment to Employment Agreement with Debby R. Zurzolo |