# Form 5500

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

# Annual Return/Report of Employee Benefit Plan

This form is required to be filed for employee benefit plans under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6047(e), and 6058(a) of the Internal Revenue Code (the Code).

▶ **Complete all entries in accordance with the instructions to the Form 5500.**

OMB Nos. 1210-0110
1210-0089

**2009**

**This Form is Open to Public Inspection**

## Part I Annual Report Identification Information

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** This return/report is for:
- [ ] a multiemployer plan;
- [ ] a multiple-employer plan; or
- [X] a single-employer plan;
- [ ] a DFE (specify) ____

**B** This return/report is:
- [ ] the first return/report;
- [ ] the final return/report;
- [ ] an amended return/report;
- [ ] a short plan year return/report (less than 12 months).

**C** If the plan is a collectively-bargained plan, check here. . . . . ▶ [ ]

**D** Check box if filing under:
- [X] Form 5558;
- [ ] automatic extension;
- [ ] the DFVC program;
- [ ] special extension (enter description)

## Part II Basic Plan Information—enter all requested information

**1a** Name of plan
RUBIO'S RESTAURANTS, INC. 401(K) PLAN

**1b** Three-digit plan number (PN) ▶ 002

**1c** Effective date of plan 03/01/1997

**2a** Plan sponsor's name and address (employer, if for a single-employer plan) (Address should include room or suite no.)
RUBIOS RESTAURANTS, INC.

1902 WRIGHT PLACE SUITE 300
CARLSBAD, CA 92008

**2b** Employer Identification Number (EIN) 33-0100303

**2c** Sponsor's telephone number 760-929-8226

**2d** Business code (see instructions) 722210

**Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.**

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, as well as the electronic version of this return/report, and to the best of my knowledge and belief, it is true, correct, and complete.

| | | | |
|---|---|---|---|
| **SIGN HERE** | Filed with authorized/valid electronic signature. | 10/16/2010 | SOMMER KETRON |
| | **Signature of plan administrator** | Date | Enter name of individual signing as plan administrator |
| **SIGN HERE** | | | |
| | **Signature of employer/plan sponsor** | Date | Enter name of individual signing as employer or plan sponsor |
| **SIGN HERE** | | | |
| | **Signature of DFE** | Date | Enter name of individual signing as DFE |

**3a** Plan administrator's name and address (if same as plan sponsor, enter "Same")
RUBIOS RESTAURANTS, INC.

1902 WRIGHT PLACE SUITE 300
CARLSBAD, CA 92008

**3b** Administrator's EIN
33-0100303

**3c** Administrator's telephone number
760-929-8226

**4** If the name and/or EIN of the plan sponsor has changed since the last return/report filed for this plan, enter the name, EIN and the plan number from the last return/report:

**a** Sponsor's name

**4b** EIN

**4c** PN

| | | | |
|---|---|---|---|
| **5** | Total number of participants at the beginning of the plan year | **5** | 1754 |
| **6** | Number of participants as of the end of the plan year (welfare plans complete only lines **6a, 6b, 6c,** and **6d**). | | |
| **a** | Active participants | **6a** | 1765 |
| **b** | Retired or separated participants receiving benefits | **6b** | 3 |
| **c** | Other retired or separated participants entitled to future benefits | **6c** | 33 |
| **d** | Subtotal. Add lines **6a**, **6b**, and **6c** | **6d** | 1801 |
| **e** | Deceased participants whose beneficiaries are receiving or are entitled to receive benefits | **6e** | 0 |
| **f** | Total. Add lines **6d** and **6e** | **6f** | 1801 |
| **g** | Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item) | **6g** | 144 |
| **h** | Number of participants that terminated employment during the plan year with accrued benefits that were less than 100% vested | **6h** | 262 |
| **7** | Enter the total number of employers obligated to contribute to the plan (only multiemployer plans complete this item) | **7** | |

**8a** If the plan provides pension benefits, enter the applicable pension feature codes from the List of Plan Characteristic Codes in the instructions:
3D 2E 2J 2K 2F 2G

**b** If the plan provides welfare benefits, enter the applicable welfare feature codes from the List of Plan Characteristic Codes in the instructions:

**9a** Plan funding arrangement (check all that apply)

| | | |
|---|---|---|
| **(1)** | | Insurance |
| **(2)** | | Code section 412(e)(3) insurance contracts |
| **(3)** | X | Trust |
| **(4)** | | General assets of the sponsor |

**9b** Plan benefit arrangement (check all that apply)

| | | |
|---|---|---|
| **(1)** | | Insurance |
| **(2)** | | Code section 412(e)(3) insurance contracts |
| **(3)** | X | Trust |
| **(4)** | | General assets of the sponsor |

**10** Check all applicable boxes in 10a and 10b to indicate which schedules are attached, and, where indicated, enter the number attached. (See instructions)

**a Pension Schedules**

| | | |
|---|---|---|
| **(1)** | X | **R** (Retirement Plan Information) |
| **(2)** | | **MB** (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) - signed by the plan actuary |
| **(3)** | | **SB** (Single-Employer Defined Benefit Plan Actuarial Information) - signed by the plan actuary |

**b General Schedules**

| | | |
|---|---|---|
| **(1)** | X | **H** (Financial Information) |
| **(2)** | | **I** (Financial Information – Small Plan) |
| **(3)** | | **A** (Insurance Information) |
| **(4)** | X | **C** (Service Provider Information) |
| **(5)** | | **D** (DFE/Participating Plan Information) |
| **(6)** | | **G** (Financial Transaction Schedules) |

| SCHEDULE C (Form 5500) | Service Provider Information | OMB No. 1210-0110 |
|---|---|---|
| Department of the Treasury<br>Internal Revenue Service<br>Department of Labor<br>Employee Benefits Security Administration<br>Pension Benefit Guaranty Corporation | This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).<br>▶ **File as an attachment to Form 5500.** | **2009**<br>**This Form is Open to Public Inspection.** |

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
RUBIO'S RESTAURANTS, INC. 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 002

**C** Plan sponsor's name as shown on line 2a of Form 5500
RUBIOS RESTAURANTS, INC.

**D** Employer Identification Number (EIN)
33-0100303

## Part I Service Provider Information (see instructions)

You must complete this Part, in accordance with the instructions, to report the information required for **each person** who received, directly or indirectly, $5,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan during the plan year. If a person received **only** eligible indirect compensation for which the plan received the required disclosures, you are required to answer line 1 but are not required to include that person when completing the remainder of this Part.

### 1 Information on Persons Receiving Only Eligible Indirect Compensation

**a** Check "Yes" or "No" to indicate whether you are excluding a person from the remainder of this Part because they received only eligible indirect compensation for which the plan received the required disclosures (see instructions for definitions and conditions).. . . . . [X] Yes [ ] No

**b** If you answered line 1a "Yes," enter the name and EIN or address of each person providing the required disclosures for the service providers who received only eligible indirect compensation. Complete as many entries as needed (see instructions).

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

CAPITAL RESEARCH AND MANAGEMENT CO

95-1411037

**(b)** Enter name and EIN or address of person who provided you disclosure on eligible indirect compensation

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**2. Information on Other Service Providers Receiving Direct or Indirect Compensation.** Except for those persons for whom you answered "yes" to line 1a above, complete as many entries as needed to list each person receiving, directly or indirectly, $5,000 or more in total compensation (i.e., money or anything else of value) in connection with services rendered to the plan or their position with the plan during the plan year. (See instructions).

**(a)** Enter name and EIN or address (see instructions)

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| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| 64 52 60 62 25 49 72 37 | RECORDKEEPER | 569 | Yes [X] No [ ] | Yes [X] No [ ] | 0 | Yes [X] No [ ] |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes [ ] No [ ] | Yes [ ] No [ ] | | Yes [ ] No [ ] |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes [ ] No [ ] | Yes [ ] No [ ] | | Yes [ ] No [ ] |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes ☐ No ☐ | Yes ☐ No ☐ | | Yes ☐ No ☐ |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes ☐ No ☐ | Yes ☐ No ☐ | | Yes ☐ No ☐ |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes ☐ No ☐ | Yes ☐ No ☐ | | Yes ☐ No ☐ |

## Part I Service Provider Information (continued)

**3** If you reported on line 2 receipt of indirect compensation, other than eligible indirect compensation, by a service provider, and the service provider is a fiduciary or provides contract administrator, consulting, custodial, investment advisory, investment management, broker, or recordkeeping services, answer the following questions for (a) each source from whom the service provider received $1,000 or more in indirect compensation and (b) each source for whom the service provider gave you a formula used to determine the indirect compensation instead of an amount or estimated amount of the indirect compensation. Complete as many entries as needed to report the required information for each source.

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| | | |
| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. | |
| | | |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| | | |
| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. | |
| | | |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| | | |
| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. | |
| | | |

## Part II Service Providers Who Fail or Refuse to Provide Information

**4** Provide, to the extent possible, the following information for each service provider who failed or refused to provide the information necessary to complete this Schedule.

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

## Part III Termination Information on Accountants and Enrolled Actuaries (see instructions)

(complete as many entries as needed)

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN; |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN; |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

# SCHEDULE H (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

## Financial Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 6058(a) of the Internal Revenue Code (the Code).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2009**

**This Form is Open to Public Inspection**

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
RUBIO'S RESTAURANTS, INC. 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 002

**C** Plan sponsor's name as shown on line 2a of Form 5500
RUBIOS RESTAURANTS, INC.

**D** Employer Identification Number (EIN)
33-0100303

## Part I Asset and Liability Statement

**1** Current value of plan assets and liabilities at the beginning and end of the plan year. Combine the value of plan assets held in more than one trust. Report the value of the plan's interest in a commingled fund containing the assets of more than one plan on a line-by-line basis unless the value is reportable on lines 1c(9) through 1c(14). Do not enter the value of that portion of an insurance contract which guarantees, during this plan year, to pay a specific dollar benefit at a future date. **Round off amounts to the nearest dollar.** MTIAs, CCTs, PSAs, and 103-12 IEs do not complete lines 1b(1), 1b(2), 1c(8), 1g, 1h, and 1i. CCTs, PSAs, and 103-12 IEs also do not complete lines 1d and 1e. See instructions.

| Assets | | (a) Beginning of Year | (b) End of Year |
|---|---|---|---|
| **a** Total noninterest-bearing cash | 1a | 0 | 0 |
| **b** Receivables (less allowance for doubtful accounts): | | | |
| **(1)** Employer contributions | 1b(1) | 0 | 0 |
| **(2)** Participant contributions | 1b(2) | 0 | 0 |
| **(3)** Other | 1b(3) | 0 | 0 |
| **c** General investments: | | | |
| **(1)** Interest-bearing cash (include money market accounts & certificates of deposit) | 1c(1) | 743700 | 707257 |
| **(2)** U.S. Government securities | 1c(2) | 0 | 0 |
| **(3)** Corporate debt instruments (other than employer securities): | | | |
| **(A)** Preferred | 1c(3)(A) | 0 | 0 |
| **(B)** All other | 1c(3)(B) | 0 | 0 |
| **(4)** Corporate stocks (other than employer securities): | | | |
| **(A)** Preferred | 1c(4)(A) | 0 | 0 |
| **(B)** Common | 1c(4)(B) | 0 | 0 |
| **(5)** Partnership/joint venture interests | 1c(5) | 0 | 0 |
| **(6)** Real estate (other than employer real property) | 1c(6) | 0 | 0 |
| **(7)** Loans (other than to participants) | 1c(7) | 0 | 0 |
| **(8)** Participant loans | 1c(8) | 128973 | 121835 |
| **(9)** Value of interest in common/collective trusts | 1c(9) | 0 | 0 |
| **(10)** Value of interest in pooled separate accounts | 1c(10) | | |
| **(11)** Value of interest in master trust investment accounts | 1c(11) | 0 | 0 |
| **(12)** Value of interest in 103-12 investment entities | 1c(12) | 0 | 0 |
| **(13)** Value of interest in registered investment companies (e.g., mutual funds) | 1c(13) | 1213137 | 1710765 |
| **(14)** Value of funds held in insurance company general account (unallocated contracts) | 1c(14) | | |
| **(15)** Other | 1c(15) | 0 | 0 |

| | | (a) Beginning of Year | (b) End of Year |
|---|---|---|---|
| **1d** Employer-related investments: | | | |
| **(1)** Employer securities | 1d(1) | 0 | 0 |
| **(2)** Employer real property | 1d(2) | 0 | 0 |
| **e** Buildings and other property used in plan operation | 1e | 0 | 0 |
| **f** Total assets (add all amounts in lines 1a through 1e) | 1f | 2085810 | 2539857 |
| **Liabilities** | | | |
| **g** Benefit claims payable | 1g | 0 | 0 |
| **h** Operating payables | 1h | | |
| **i** Acquisition indebtedness | 1i | 0 | 0 |
| **j** Other liabilities | 1j | 0 | 0 |
| **k** Total liabilities (add all amounts in lines 1g through1j) | 1k | 0 | 0 |
| **Net Assets** | | | |
| **l** Net assets (subtract line 1k from line 1f) | 1l | 2085810 | 2539857 |

## Part II Income and Expense Statement

**2** Plan income, expenses, and changes in net assets for the year. Include all income and expenses of the plan, including any trust(s) or separately maintained fund(s) and any payments/receipts to/from insurance carriers. Round off amounts to the nearest dollar. MTIAs, CCTs, PSAs, and 103-12 IEs do not complete lines 2a, 2b(1)(E), 2e, 2f, and 2g.

| Income | | (a) Amount | (b) Total |
|---|---|---|---|
| **a Contributions:** | | | |
| **(1)** Received or receivable in cash from: **(A)** Employers | 2a(1)(A) | 60497 | |
| **(B)** Participants | 2a(1)(B) | 302837 | |
| **(C)** Others (including rollovers) | 2a(1)(C) | 0 | |
| **(2)** Noncash contributions | 2a(2) | 0 | |
| **(3)** Total contributions. Add lines **2a(1)(A), (B), (C),** and line **2a(2)** | 2a(3) | | 363334 |
| **b Earnings on investments:** | | | |
| **(1)** Interest: | | | |
| **(A)** Interest-bearing cash (including money market accounts and certificates of deposit) | 2b(1)(A) | 0 | |
| **(B)** U.S. Government securities | 2b(1)(B) | 0 | |
| **(C)** Corporate debt instruments | 2b(1)(C) | 0 | |
| **(D)** Loans (other than to participants) | 2b(1)(D) | 0 | |
| **(E)** Participant loans | 2b(1)(E) | 3235 | |
| **(F)** Other | 2b(1)(F) | 0 | |
| **(G)** Total interest. Add lines **2b(1)(A)** through **(F)** | 2b(1)(G) | | 3235 |
| **(2)** Dividends: **(A)** Preferred stock | 2b(2)(A) | 0 | |
| **(B)** Common stock | 2b(2)(B) | 0 | |
| **(C)** Registered investment company shares (e.g. mutual funds) | 2b(2)(C) | 31465 | |
| **(D)** Total dividends. Add lines **2b(2)(A)**, **(B)**, and **(C)** | 2b(2)(D) | | 31465 |
| **(3)** Rents | 2b(3) | | 0 |
| **(4)** Net gain (loss) on sale of assets: **(A)** Aggregate proceeds | 2b(4)(A) | 0 | |
| **(B)** Aggregate carrying amount (see instructions) | 2b(4)(B) | 0 | |
| **(C)** Subtract line **2b(4)(B)** from line **2b(4)(A)** and enter result | 2b(4)(C) | | 0 |

| | | | (a) Amount | (b) Total |
|---|---|---|---|---|
| 2b | (5) Unrealized appreciation (depreciation) of assets: (A) Real estate | 2b(5)(A) | 0 | |
| | (B) Other | 2b(5)(B) | 0 | |
| | (C) Total unrealized appreciation of assets. Add lines 2b(5)(A) and (B) | 2b(5)(C) | | 0 |
| | (6) Net investment gain (loss) from common/collective trusts | 2b(6) | | 0 |
| | (7) Net investment gain (loss) from pooled separate accounts | 2b(7) | | 0 |
| | (8) Net investment gain (loss) from master trust investment accounts | 2b(8) | | 0 |
| | (9) Net investment gain (loss) from 103-12 investment entities | 2b(9) | | 0 |
| | (10) Net investment gain (loss) from registered investment companies (e.g., mutual funds) | 2b(10) | | 347926 |
| c | Other income | 2c | | 65 |
| d | Total income. Add all **income** amounts in column (b) and enter total | 2d | | 746025 |
| | **Expenses** | | | |
| e | Benefit payment and payments to provide benefits: | | | |
| | (1) Directly to participants or beneficiaries, including direct rollovers | 2e(1) | 266610 | |
| | (2) To insurance carriers for the provision of benefits | 2e(2) | 0 | |
| | (3) Other | 2e(3) | 0 | |
| | (4) Total benefit payments. Add lines 2e(1) through (3) | 2e(4) | | 266610 |
| f | Corrective distributions (see instructions) | 2f | | 0 |
| g | Certain deemed distributions of participant loans (see instructions) | 2g | | 24799 |
| h | Interest expense | 2h | | 0 |
| i | Administrative expenses: (1) Professional fees | 2i(1) | 0 | |
| | (2) Contract administrator fees | 2i(2) | 569 | |
| | (3) Investment advisory and management fees | 2i(3) | 0 | |
| | (4) Other | 2i(4) | 0 | |
| | (5) Total administrative expenses. Add lines 2i(1) through (4) | 2i(5) | | 569 |
| j | Total expenses. Add all **expense** amounts in column (b) and enter total | 2j | | 291978 |
| | **Net Income and Reconciliation** | | | |
| k | Net income (loss). Subtract line 2j from line 2d | 2k | | 454047 |
| l | Transfers of assets: | | | |
| | (1) To this plan | 2l(1) | | 0 |
| | (2) From this plan | 2l(2) | | 0 |

## Part III Accountant's Opinion

**3** Complete lines 3a through 3c if the opinion of an independent qualified public accountant is attached to this Form 5500. Complete line 3d if an opinion is not attached.

**a** The attached opinion of an independent qualified public accountant for this plan is (see instructions):

**(1)** [ ] Unqualified **(2)** [ ] Qualified **(3)** [X] Disclaimer **(4)** [ ] Adverse

**b** Did the accountant perform a limited scope audit pursuant to 29 CFR 2520.103-8 and/or 103-12(d)? [X] Yes [ ] No

**c** Enter the name and EIN of the accountant (or accounting firm) below:

**(1)** Name: MOSS ADAMS LLP **(2)** EIN: 91-0189318

**d** The opinion of an independent qualified public accountant is **not attached** because:

**(1)** [ ] This form is filed for a CCT, PSA, or MTIA. **(2)** [ ] It will be attached to the next Form 5500 pursuant to 29 CFR 2520.104-50.

## Part IV Compliance Questions

**4** CCTs and PSAs do not complete Part IV. MTIAs, 103-12 IEs, and GIAs do not complete 4a, 4e, 4f, 4g, 4h, 4k, 4m, 4n, or 5. 103-12 IEs also do not complete 4j and 4l. MTIAs also do not complete 4l.

During the plan year:

| | | Yes | No | Amount |
|---|---|---|---|---|
| **a** | Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102? Continue to answer "Yes" for any prior year failures until fully corrected. (See instructions and DOL's Voluntary Fiduciary Correction Program.) | 4a | X | | 12209 |
| **b** | Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? Disregard participant loans secured by participant's account balance. (Attach Schedule G (Form 5500) Part I if "Yes" is checked.) | 4b | | X | |
| **c** | Were any leases to which the plan was a party in default or classified during the year as uncollectible? (Attach Schedule G (Form 5500) Part II if "Yes" is checked.) | 4c | | X | |
| **d** | Were there any nonexempt transactions with any party-in-interest? (Do not include transactions reported on line 4a. Attach Schedule G (Form 5500) Part III if "Yes" is checked.) | 4d | | X | |
| **e** | Was this plan covered by a fidelity bond? | 4e | X | | 1000000 |
| **f** | Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty? | 4f | | X | |
| **g** | Did the plan hold any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser? | 4g | | X | |
| **h** | Did the plan receive any noncash contributions whose value was neither readily determinable on an established market nor set by an independent third party appraiser? | 4h | | X | |
| **i** | Did the plan have assets held for investment? (Attach schedule(s) of assets if "Yes" is checked, and see instructions for format requirements.) | 4i | X | | |
| **j** | Were any plan transactions or series of transactions in excess of 5% of the current value of plan assets? (Attach schedule of transactions if "Yes" is checked, and see instructions for format requirements.) | 4j | | X | |
| **k** | Were all the plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC? | 4k | | X | |
| **l** | Has the plan failed to provide any benefit when due under the plan? | 4l | | X | |
| **m** | If this is an individual account plan, was there a blackout period? (See instructions and 29 CFR 2520.101-3.) | 4m | | X | |
| **n** | If 4m was answered "Yes," check the "Yes" box if you either provided the required notice or one of the exceptions to providing the notice applied under 29 CFR 2520.101-3. | 4n | | X | |

**5a** Has a resolution to terminate the plan been adopted during the plan year or any prior plan year? If yes, enter the amount of any plan assets that reverted to the employer this year ☐ **Yes** ☒ **No** **Amount:**

**5b** If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

| **5b(1)** Name of plan(s) | **5b(2)** EIN(s) | **5b(3)** PN(s) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

# SCHEDULE R (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

# Retirement Plan Information

This schedule is required to be filed under section 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2009**

**This Form is Open to Public Inspection.**

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
RUBIO'S RESTAURANTS, INC. 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 002

**C** Plan sponsor's name as shown on line 2a of Form 5500
RUBIOS RESTAURANTS, INC.

**D** Employer Identification Number (EIN)
33-0100303

## Part I Distributions

**All references to distributions relate only to payments of benefits during the plan year.**

**1** Total value of distributions paid in property other than in cash or the forms of property specified in the instructions ..... **1** 0

**2** Enter the EIN(s) of payor(s) who paid benefits on behalf of the plan to participants or beneficiaries during the year (if more than two, enter EINs of the two payors who paid the greatest dollar amounts of benefits):

EIN(s): 20-3691658

**Profit-sharing plans, ESOPs, and stock bonus plans, skip line 3.**

**3** Number of participants (living or deceased) whose benefits were distributed in a single sum, during the plan year. ..... **3**

## Part II Funding Information (If the plan is not subject to the minimum funding requirements of section of 412 of the Internal Revenue Code or ERISA section 302, skip this Part)

**4** Is the plan administrator making an election under Code section 412(d)(2) or ERISA section 302(d)(2)? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

**If the plan is a defined benefit plan, go to line 8.**

**5** If a waiver of the minimum funding standard for a prior year is being amortized in this plan year, see instructions and enter the date of the ruling letter granting the waiver. **Date:** Month _____ Day _____ Year _____

**If you completed line 5, complete lines 3, 9, and 10 of Schedule MB and do not complete the remainder of this schedule.**

**6** **a** Enter the minimum required contribution for this plan year ..... **6a**

**b** Enter the amount contributed by the employer to the plan for this plan year ..... **6b**

**c** Subtract the amount in line 6b from the amount in line 6a. Enter the result (enter a minus sign to the left of a negative amount) ..... **6c**

**If you completed line 6c, skip lines 8 and 9.**

**7** Will the minimum funding amount reported on line 6c be met by the funding deadline? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

**8** If a change in actuarial cost method was made for this plan year pursuant to a revenue procedure providing automatic approval for the change or a class ruling letter, does the plan sponsor or plan administrator agree with the change? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

## Part III Amendments

**9** If this is a defined benefit pension plan, were any amendments adopted during this plan year that increased or decreased the value of benefits? If yes, check the appropriate box(es). If no, check the "No" box. ..... ☐ **Increase** ☐ **Decrease** ☐ **Both** ☐ **No**

## Part IV ESOPs (see instructions). If this is not a plan described under Section 409(a) or 4975(e)(7) of the Internal Revenue Code, skip this Part.

**10** Were unallocated employer securities or proceeds from the sale of unallocated securities used to repay any exempt loan? ..... ☐ **Yes** ☐ **No**

**11** **a** Does the ESOP hold any preferred stock? ..... ☐ **Yes** ☐ **No**

**b** If the ESOP has an outstanding exempt loan with the employer as lender, is such loan part of a "back-to-back" loan? (See instructions for definition of "back-to-back" loan.) ..... ☐ **Yes** ☐ **No**

**12** Does the ESOP hold any stock that is not readily tradable on an established securities market? ..... ☐ **Yes** ☐ **No**

## Part V Additional Information for Multiemployer Defined Benefit Pension Plans

**13** Enter the following information for each employer that contributed more than 5% of total contributions to the plan during the plan year (measured in dollars). See instructions. *Complete as many entries as needed to report all applicable employers.*

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

**14** Enter the number of participants on whose behalf no contributions were made by an employer as an employer of the participant for:

| | | |
|---|---|---|
| **a** The current year | **14a** | |
| **b** The plan year immediately preceding the current plan year | **14b** | |
| **c** The second preceding plan year | **14c** | |

**15** Enter the ratio of the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the current plan year to:

| | | |
|---|---|---|
| **a** The corresponding number for the plan year immediately preceding the current plan year | **15a** | |
| **b** The corresponding number for the second preceding plan year | **15b** | |

**16** Information with respect to any employers who withdrew from the plan during the preceding plan year:

| | | |
|---|---|---|
| **a** Enter the number of employers who withdrew during the preceding plan year | **16a** | |
| **b** If item 16a is greater than 0, enter the aggregate amount of withdrawal liability assessed or estimated to be assessed against such withdrawn employers | **16b** | |

**17** If assets and liabilities from another plan have been transferred to or merged with this plan during the plan year, check box and see instructions regarding supplemental information to be included as an attachment. ☐

## Part VI Additional Information for Single-Employer and Multiemployer Defined Benefit Pension Plans

**18** If any liabilities to participants or their beneficiaries under the plan as of the end of the plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under two or more pension plans as of immediately before such plan year, check box and see instructions regarding supplemental information to be included as an attachment ☐

**19** If the total number of participants is 1,000 or more, complete items (a) through (c)

**a** Enter the percentage of plan assets held as:
Stock: _____% Investment-Grade Debt: _____% High-Yield Debt: _____% Real Estate: _____% Other: _____%

**b** Provide the average duration of the combined investment-grade and high-yield debt:
☐ 0-3 years ☐ 3-6 years ☐ 6-9 years ☐ 9-12 years ☐ 12-15 years ☐ 15-18 years ☐ 18-21 years ☐ 21 years or more

**c** What duration measure was used to calculate item 19(b)?
☐ Effective duration ☐ Macaulay duration ☐ Modified duration ☐ Other (specify):

# RUBIO'S RESTAURANTS, INC.
# 401(k) PLAN

INDEPENDENT AUDITOR'S REPORT
AND
FINANCIAL STATEMENTS WITH
SUPPLEMENTAL INFORMATION

DECEMBER 31, 2009

# C O N T E N T S


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# INDEPENDENT AUDITOR'S REPORT

To the Trustees of the
Rubio's Restaurants, Inc. 401(k) Plan

We were engaged to audit the financial statements and supplemental schedules of Rubio's Restaurants, Inc. 401(k) Plan (the "Plan") as of December 31, 2009 and 2008, and for the year ended December 31, 2009, as listed in the accompanying table of contents. These financial statements and supplemental schedules are the responsibility of the Plan's management.

As permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974, as amended, the Plan administrator instructed us not to perform, and we did not perform, any auditing procedures with respect to the investment information summarized in Note 7, which was certified by Capital Bank & Trust, the custodian of the Plan, except for comparing such information with the related information included in the financial statements and supplemental schedules. We have been informed by the Plan administrator that the custodian holds the Plan's investment assets and executes investment transactions. The Plan administrator has obtained a certification from the custodian as of December 31, 2009 and 2008, and for the year ended December 31, 2009, that the information provided to the Plan administrator by the custodian is complete and accurate.

Because of the significance of the information we did not audit, we are unable to, and do not, express an opinion on the accompanying financial statements and supplemental schedules taken as a whole. The form and content of the information included in the financial statements and supplemental schedules, other than that derived from information certified by Capital Bank & Trust, have been audited by us in accordance with auditing standards generally accepted in the United States of America and, in our opinion, are presented in compliance with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974, as amended.

Moss Adams LLP

San Diego, California
October 14, 2010

# RUBIO'S RESTAURANTS, INC. 401(k) PLAN

## STATEMENTS OF NET ASSETS AVAILABLE FOR BENEFITS
## DECEMBER 31, 2009 AND 2008

| | 2009 | 2008 |
|---|---|---|
| **ASSETS** | | |
| Investments: | | |
| Participant directed investments, at fair value | $ 2,418,022 | $ 1,956,837 |
| Loans to participants | 121,835 | 128,973 |
| | 2,539,857 | 2,085,810 |
| Receivables: | | |
| Participant contributions | 22,617 | - |
| Employer contributions | 16,633 | - |
| | 39,250 | - |
| **NET ASSETS AVAILABLE FOR BENEFITS** | $ 2,579,107 | $ 2,085,810 |

# RUBIO'S RESTAURANTS, INC. 401(k) PLAN

## STATEMENT OF CHANGES IN NET ASSETS AVAILABLE FOR BENEFITS
## YEAR ENDED DECEMBER 31, 2009

| | | |
|---|---|---|
| **ADDITIONS TO NET ASSETS ATTRIBUTED TO:** | | |
| Investment income: | | |
| Net appreciation in fair value of investments | $ | 347,927 |
| Interest and dividends | | 34,700 |
| | | 382,627 |
| Contributions: | | |
| Participant | | 319,352 |
| Employer | | 83,179 |
| Other, including rollovers | | 118 |
| | | 402,649 |
| Total additions | | 785,276 |
| **DEDUCTIONS FROM NET ASSETS ATTRIBUTED TO:** | | |
| Benefits paid to participants | | 291,410 |
| Administrative expenses | | 569 |
| Total deductions | | 291,979 |
| **INCREASE IN NET ASSETS AVAILABLE FOR BENEFITS** | | 493,297 |
| **NET ASSETS AVAILABLE FOR BENEFITS** | | |
| Beginning of year | | 2,085,810 |
| End of year | $ | 2,579,107 |

## NOTES TO FINANCIAL STATEMENTS

### Note 1 – Description of the Plan

The following description of the Rubio's Restaurants, Inc. 401(k) Plan (the "Plan") provides only general information. Participants should refer to the Plan Agreement, as amended, for a more complete description of the Plan's provisions.

**General**: The Plan is a 401(k) salary deferral and profit sharing plan covering substantially all employees of Rubio's Restaurants, Inc. (the "Company") and is subject to provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Company is the Plan's sponsor and serves as Plan administrator.

**Plan Amendment**: On January 1, 2007, the Plan was amended to revise the definition of compensation to be based on Safe Harbor Compensation (section 415 of the Internal Revenue Code ("IRC"), rather than W-2 wages. On April 20, 2010, the Plan was retrospectively restated, effective January 1, 2002, to comply with other aspects of section 415 of the IRC.

**Eligibility**: Employees of the Company are eligible to participate in the Plan upon reaching age 21 and after completing one year of service in which at least 1,000 hours are worked.

**Contributions**: Participants may elect to contribute between 1 and 15 percent of eligible compensation, as defined, to the Plan each year. Participants may also contribute amounts representing distributions from other qualified defined benefit or defined contribution plans. The Company may elect to make discretionary matching and profit sharing contributions to the Plan. Participants must complete at least 1,000 hours of service during the Plan year and be employed as of the last day of the Plan year to be eligible to receive any profit sharing contributions. Profit sharing contributions are allocated to participants in the same proportion as a participant's compensation bears to the total of all participants' compensation. There were no profit sharing contributions for the year ended December 31, 2009. The Company matches 25 percent of employee contributions, up to 6 percent of eligible compensation deferred to the Plan. Contributions are subject to regulatory limitations.

**Participant Accounts**: Each participant's account is credited with the participant's contribution and allocations of (a) the Company's contribution and (b) Plan earnings, and charged with an allocation of administrative expenses. Allocations are based on participant earnings or account balances, as defined. Participants may direct the investment of their account balances into various investment options offered by the Plan. The benefit to which a participant is entitled is the benefit that can be provided from the participant's vested account.

**Vesting**: Participants are fully vested in their salary deferrals plus actual earnings thereon. In general, vesting in Company contributions is based on years of service, as defined, with increases in increments of 20 percent per year until fully vested after five years.

**Loans to Participants**: Participants may borrow from their accounts a minimum of $1,000, up to a maximum equal to the lesser of $50,000 or 50 percent of their vested account balance. Loans are secured by the balance of the participant's account and bear fixed, reasonable rates of interest, as determined by the Plan administrator. The maximum loan term is five years unless the loan qualifies as a home loan. Principal and interest are paid ratably through payroll deductions. As of December 31, 2009, the rates of interest on outstanding loans ranged from 3.25 to 8.25 percent, with various maturities through July 2024.

**Note 1 – Description of the Plan (Continued)**

**Payment of Benefits**: Upon termination of service due to death, disability, or retirement, a participant may elect to receive either a lump-sum amount equal to the value of the participant's account balance or a systematic withdrawal arrangement. For termination of service for other reasons, a participant may receive the value of the vested interest in his or her account as a lump-sum distribution.

**Forfeitures**: Forfeitures are the non-vested portion of a participant's account that is lost upon termination of employment. Forfeitures are retained in the Plan and will first be used to pay Plan administrative expenses, with any remaining amount used to reduce future Company contributions. As of December 31, 2009 and 2008, forfeited non-vested accounts totaled $65 and $0, respectively. For the year ended December 31, 2009, the Company's matching contributions were reduced $1,353 from forfeited non-vested accounts.

**Note 2 – Summary of Significant Accounting Policies**

**Basis of Accounting**: The financial statements of the Plan are prepared under the accrual method of accounting.

**Use of Estimates**: The preparation of financial statements requires the use of estimates and assumptions that may affect certain amounts and disclosures. Accordingly, actual results could differ from those estimates.

**FASB Codification:** On July 1, 2009, the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") became the single authoritative source for nongovernmental U.S. generally accepted accounting principles ("GAAP"). The ASC supersedes all previous authoritative GAAP applicable to the Plan and is effective for interim and annual periods ended after September 15, 2009.

**Investment Valuation**: Investments are stated at fair value as certified by Capital Bank & Trust ("Capital Bank"). If available, quoted market prices are used to value investments. The Plan adopted the provisions of ASC 820, *Fair Value Measurements and Disclosures*, effective January 1, 2008. Under ASC 820, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e. the "exit price") in an orderly transaction between market participants at the measurement date.

**Income Recognition**: Purchases and sales of securities are recorded on a trade date basis. Dividends are recorded on the ex-dividend date. Interest income is recorded on the accrual basis. The net appreciation in fair value of investments consists of both the realized gains or losses and unrealized appreciation and depreciation of those investments.

**Payment of Benefits**: Benefits are recorded when paid.

**Expenses**: Administrative expenses are generally paid by the Company. Certain transaction fees are paid by the Plan.

**Note 2 – Summary of Significant Accounting Policies (Continued)**

**Subsequent Events:** Subsequent events are events or transactions that occur after the statements of net assets available for benefits date, but before the financial statements are available to be issued. The Plan recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the statements of net assets available for benefits, including the estimates inherent in the process of preparing the financial statements. The Plan's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the statements of net assets available for benefits, but arose after the statements of net assets available for benefits date and before the financial statements are available to be issued.

The Plan has evaluated subsequent events through October 14, 2010, which is the date the financial statements were available to be issued (See Note 12 for subsequent event).

**Note 3 – Fair Value Measurement**

In accordance with authoritative guidance, the Plan classifies its investments based upon an established fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are described below:

**Level 1:** Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

**Level 2:** Quoted prices in markets that are not considered to be active or financial instruments without quoted market prices, but for which all significant inputs are observable, either directly or indirectly; and

**Level 3:** Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

Mutual funds are valued at the net asset value of the shares held by the Plan, which are quoted on an active market.

Loans to participants are not actively traded, and significant other observable inputs are not available. Thus, the fair value of participant loans is equal to the amortized cost of the loans because the loans are secured by each respective participant's account balance.

**Note 3 – Fair Value Measurement (Continued)**

The following table discloses by level, the fair value hierarchy, of the Plan's assets at fair value as of December 31, 2009 and 2008:

| | Investment Assets at Fair Value as of December 31, 2009 | | | |
|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Total** |
| Registered investment companies: | | | | |
| Growth funds | $ 1,487,735 | $ - | $ - | $ 1,487,735 |
| Money market funds | 707,258 | - | - | 707,258 |
| Bond funds | 128,904 | - | - | 128,904 |
| Balanced/Value funds | 94,125 | - | - | 94,125 |
| Participant loans | - | - | 121,835 | 121,835 |
| | $ 2,418,022 | $ - | $ 121,835 | $ 2,539,857 |

| | Investment Assets at Fair Value as of December 31, 2008 | | | |
|---|---|---|---|---|
| Mutual funds: | | | | |
| Growth funds | $ 1,008,497 | $ - | $ - | $ 1,008,497 |
| Money market funds | 743,700 | - | - | 743,700 |
| Bond funds | 150,770 | - | - | 150,770 |
| Balanced/Value funds | 53,870 | - | - | 53,870 |
| Participant loans | - | - | 128,973 | 128,973 |
| | $ 1,956,837 | $ - | $ 128,973 | $ 2,085,810 |

The following table discloses the summary of changes in the fair value of the Plan's Level 3 investment assets:

| | **Loans to Participants** |
|---|---|
| Balance, beginning of year | $ 128,973 |
| Purchases, settlements, and dispositions | (7,138) |
| Balance, end of year | $ 121,835 |

## NOTES TO FINANCIAL STATEMENTS

### Note 4 – Investments

**Investments**: Investments representing 5 percent or more of net assets available for benefits consist of the following as of December 31:

| | | 2009 |
|---|---|---|
| American Funds Money Market Fund | $ | 707,258 |
| American Funds Growth Fund of America | | 420,213 |
| American Funds EuroPacific Growth Fund | | 263,780 |
| Oppenheimer Strategic Income Fund | | 261,821 |
| American Funds Capital World Growth & Inc. | | 234,978 |
| American Funds Investment Company of America | | 140,346 |
| American Funds Capital World Bond Fund | | 128,904 |
| | | **2008** |
| American Funds Cash Management Trust | $ | 743,700 |
| American Funds Growth Fund of America | | 290,043 |
| Oppenheimer Strategic Income Fund | | 218,757 |
| American Funds EuroPacific Growth Fund | | 170,014 |
| American Funds Capital World Growth & Inc. | | 151,449 |
| American Funds Capital World Bond Fund | | 150,770 |

### Note 5 – Tax Status

The Internal Revenue Service has determined and informed the Company by a letter dated December 17, 2002 that the Plan and related trust are designed in accordance with applicable sections of the IRC. Although the Plan has been amended since receiving the determination letter, the Plan administrator believes that the Plan is designed and is currently being operated in compliance with the applicable requirements of the IRC.

### Note 6 – Risks and Uncertainties

The Plan invests in various investment securities. Investment securities are exposed to various risks, such as interest rate, market volatility, and credit risks. It is reasonably possible, given the level of risk associated with investment securities that changes in the near-term could materially affect a participant's account balance and the amounts reported in the financial statements.

**Note 7 – Information Certified by the Custodian**

The Plan administrator has elected the method of compliance permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Accordingly, Capital Bank, the custodian of the Plan, has certified to the completeness and accuracy of:

- Investments reflected on the accompanying statements of net assets available for benefits as of December 31, 2009 and 2008.
- Net appreciation in fair value of investments, dividends, and interest reflected on the accompanying statement of changes in net assets available for benefits for the year ended December 31, 2009.
- Investments reflected on the Schedule H, Line 4(i) – Schedule of Assets (Held at End of Year).

**Note 8 – Party-in-Interest Transactions**

Plan investments include shares of registered investment company funds managed by American Funds. Capital Bank is the custodian of the Plan and an affiliate of American Funds, and, therefore, transactions with these entities qualify as exempt party-in-interest transactions. The Plan paid $569 of administrative fees for the year ended December 31, 2009.

**Note 9 – Plan Termination**

Although it has not expressed any intention to do so, the Company has the right to terminate the Plan and discontinue its contributions at any time. If the Plan is terminated, amounts allocated to a participant's account become fully vested.

**Note 10 – Reconciliation to Form 5500**

The Form 5500, which is filed with the Department of Labor, has assets and earnings items that differ from the amounts shown on the accompanying statements of net assets available for benefits.

The following are reconciliations of contributions receivable, net assets available for benefits, and changes in net assets available for benefits between the financial statements and the Form 5500 as of December 31, 2009:

| | |
|---|---|
| Contributions receivable, per the financial statements | $ 39,250 |
| Less: Contributions receivable not recorded prior to filing | (39,250) |
| Contributions receivable per Form 5500 | $ - |
| | |
| Net assets available for benefits, per the financial statements | $ 2,579,107 |
| Less: Contributions receivable not recorded prior to filing | (39,250) |
| Net assets available for benefits per Form 5500 | $ 2,539,857 |

**Note 10 – Reconciliation to Form 5500 (Continued)**

| | | |
|---|---|---|
| Changes in net assets available for benefits per financial statements | $ | 493,297 |
| Less: Contributions receivable not recorded prior to filing | | (39,250) |
| Changes in net assets available for benefits per Form 5500 | $ | 454,047 |

**Note 11 – Late Contributions**

As disclosed in the accompanying supplemental schedule of delinquent participant contributions, certain employee deferrals were not remitted to the Plan within the timeframe required by the DOL. The Company has not yet determined the amount of related lost earnings.

**Note 12 – Subsequent Event**

Subsequent to year end, the Company was acquired. As of October 14, 2010, there have been no plans to terminate or merge the Plan with the plan of the acquirer.

# SUPPLEMENTAL SCHEDULES
# REQUIRED BY THE DEPARTMENT OF LABOR

# RUBIO'S RESTAURANTS, INC. 401(k) PLAN

**EIN: 33-0100303**
**PLAN#: 002**
**SUPPLEMENTAL INFORMATION**
**SCHEDULE H, LINE 4(i) – SCHEDULE OF ASSETS (HELD AT END OF YEAR)**
**DECEMBER 31, 2009**

| (a) | (b) Identity of Issuer, Borrower, Lessor, or Similar Party | (c) Description of Investment, including Maturity Date, Rate of Interest, Collateral, Par, or Maturity Value | (d) Cost | (e) Current Value |
|---|---|---|---|---|
| * | American Funds Money Market Fund | Registered investment company | ** | $ 707,258 |
| * | American Funds Growth Fund of America | Registered investment company | ** | 420,213 |
| * | American Funds EuroPacific Growth Fund | Registered investment company | ** | 263,780 |
| | Oppenheimer Strategic Income Fund | Registered investment company | ** | 261,821 |
| * | American Funds Capital World Growth & Inc. | Registered investment company | ** | 234,978 |
| * | American Funds Investment Company of America | Registered investment company | ** | 140,346 |
| * | American Funds Capital World Bond Fund | Registered investment company | ** | 128,904 |
| * | American Funds Small Capital World Fund | Registered investment company | ** | 117,010 |
| * | American Funds 2015 Target Date Fund | Registered investment company | ** | 47,165 |
| * | American Funds Washington Mutual Fund | Registered investment company | ** | 38,404 |
| | Janus Adviser Perkins Mid Capital Value | Registered investment company | ** | 18,755 |
| * | American Funds 2025 Target Date Fund | Registered investment company | ** | 7,929 |
| | Janus Adviser Enterprise Fund | Registered investment company | ** | 7,336 |
| * | American Funds 2020 Target Date Fund | Registered investment company | ** | 5,619 |
| * | American Funds 2045 Target Date Fund | Registered investment company | ** | 4,630 |
| * | American Funds 2050 Target Date Fund | Registered investment company | ** | 3,910 |
| | Victory Small Company Opportunity | Registered investment company | ** | 3,847 |
| * | American Funds 2035 Target Date Fund | Registered investment company | ** | 3,721 |
| * | American Funds 2040 Target Date Fund | Registered investment company | ** | 2,367 |
| * | American Funds 2010 Target Date Fund | Registered investment company | ** | 29 |
| * | Loans to participants | Interest rates range from 3.25 percent to 8.25 percent, maturing through July 2024 | - | 121,835 |
| | | | | $ 2,539,857 |

* *Indicates party-in-interest.*

** *Information is not required, as investments are participant directed.*

# RUBIO'S RESTAURANTS, INC. 401(k) PLAN

**EIN: 33-0100303**
**PLAN#: 002**
**SUPPLEMENTAL INFORMATION**
**SCHEDULE H, LINE 4(a) – SCHEDULE OF DELINQUENT PARTICIPANT CONTRIBUTIONS**
**DECEMBER 31, 2009**

| | |
|---|---|
| Participant contributions, including loan repayments, transferred late to the Plan: | $ 12,209 |
| Total that constitute non-exempt prohibited transactions: | $ 12,209 |

October 15, 2010

Ms. Sommer Ketron
Rubio's Restaurants, Inc.
401(k) Plan
1902 Wright Place, Suite 300
Carlsbad, CA 92008

Dear Sommer:

Enclosed are 10 bound copies of the financial statements for Rubio's Restaurants, Inc. 401(k) Plan as of December 31, 2009.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Laura J. Roos, Partner for
Moss Adams LLP

LJR:rms

# ASSETS HELD FOR INVESTMENT PURPOSES



**Rubio's Restaurants, Inc. 401(k) Plan**
**01-JAN-09 to 31-DEC-09**



| INVESTMENT OPTION | MATURITY DATE | INTEREST RATE | COST OF ASSETS | CURRENT VALUE |
|---|---|---|---|---|
| 1RERBX | | | 259,311.44 | 263,779.76 |
| 1RGABX | | | 427,756.33 | 420,213.37 |
| 1RSLBX | | | 117,614.71 | 117,009.65 |
| 1JDMRX1 | | | 5,886.54 | 7,335.97 |
| 1JDPRX1 | | | 15,484.54 | 18,755.33 |
| 1GOGFX | | | 2,803.50 | 3,846.81 |
| 1RWIBX | | | 245,832.94 | 234,978.33 |
| 1RICBX | | | 154,648.76 | 140,346.31 |
| 1RWMBX | | | 43,480.81 | 38,403.84 |
| 1RCWBX | | | 125,669.71 | 128,904.29 |
| 1OSINX | | | 271,603.38 | 261,820.62 |
| 1RABXX | | | 704,486.65 | 704,486.65 |
| 1RBATX | | | 29.86 | 29.29 |
| 1RBJTX | | | 50,058.65 | 47,164.68 |
| 1RBCTX | | | 5,183.73 | 5,619.23 |
| 1RBDTX | | | 6,795.93 | 7,929.00 |
| 1RBFTX | | | 3,394.64 | 3,721.62 |
| 1RBKTX | | | 2,143.91 | 2,366.73 |
| 1RBHTX | | | 4,374.01 | 4,630.02 |
| 1RBITX | | | 3,261.28 | 3,909.77 |
| | | | **2,449,821.32** | **2,415,251.27** |
| PARTICIPANT LOANS | VARIOUS | 3.250-8.250 | 121,188.51 | 121,835.22 |
| FORFEITURES | | | 2,770.61 | 2,770.61 |

Attachment to Form 5500, Schedule H, Part 4, Item I
EIN # 330100303

LEGEND

INVESTMENT OPTION:

| | | | |
|---|---|---|---|
| 1RERBX | American Funds EuroPacific Growth Fd R2 | 1RGABX | American Funds Growth Fund of America R2 |
| 1RSLBX | American Funds SMALLCAP World Fund R2 | 1JDMRX1 | Janus Enterprise Fund R |
| 1JDPRX1 | Perkins Mid Cap Value Fund R | 1GOGFX | Victory Small Company Opportunity R |
| 1RWIBX | American Funds Capital World Gr & Inc R2 | 1RICBX | American Funds Invest Co of America R2 |
| 1RWMBX | American Funds Washington Mutual Fund R2 | 1RCWBX | American Funds Capital World Bond Fd R2 |
| 1OSINX | Oppenheimer Strategic Income Fund - N | 1RABXX | American Funds Money Market Fund R2 |
| 1RBATX | American Funds 2010 Target Date Fund R2 | 1RBJTX | American Funds 2015 Target Date Fund R2 |
| 1RBCTX | American Funds 2020 Target Date Fund R2 | 1RBDTX | American Funds 2025 Target Date Fund R2 |
| 1RBFTX | American Funds 2035 Target Date Fund R2 | 1RBKTX | American Funds 2040 Target Date Fund R2 |
| 1RBHTX | American Funds 2045 Target Date Fund R2 | 1RBITX | American Funds 2050 Target Date Fund R2 |

COST OF ASSETS: The original cost of the assets in each investment option as of the last day of the plan year
CURRENT VALUE: The value of all assets in each investment option as of the last day of the plan year