

A Matter of Public Record

Using Public Records to Uncover
Information on Private Companies

**Bobbi A. Weaver, Foreign & International Law Reference
Librarian, Cal. Western School of Law, San Diego, CA, USA**

baw@cwsf.edu

Large Private Company



Albertsons

Albertsons Research: What I did



- Looked at the “America’s Largest Private Companies: 2018 Rankings,” Forbes, <https://www.forbes.com/largest-private-companies/list/#tab:rank>.
- Searched for dockets on Bloomberg Law for cases involving one of the top three companies. I found this one involving Albertsons to have the most relevant information. [NOTE: The case I chose was a state case so the docket is not available on PACER. A link to a brief docket sheet for the case is available at <https://tinyurl.com/y3vhgmgw> with a further link to where court records can be accessed for a fee.]
- Found complaint and reviewed it for information about the finances and operation of defendant Albertsons.
- On Aug. 14, 2018, the Court issued an order granting voluntary dismissal per Delaware Court of Chancery Rule 41(a)(1)(ii) [See, https://courts.delaware.gov/rules/pdf/Chancery-Rule-Set_clean-9.10.2018.pdf

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I limited the date to the last 5 years so that any information about the corporation I might find is not too dated.

I use keywords that might lead me to documents such as a balance sheet or statement or a cash flow statement or analysis.

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1. Mel Aklile v. Rite Aid Corporation, Docket No. 2018-0305 (Del. Ch. Apr. 24, 2018), Court Docket

DATE FILED

Apr. 24, 2018

JUDGE

Andre G. Bouchard

CASE TYPE

Breach of Fiduciary Duties

LAST UPDATED

Aug. 14, 2018 at 02:39 PM

PARTIES

Albertsons Companies, Inc., Bruce Bodaken, David R Jessick, Frank A Savage, John T Standley, Joseph Anderson Jr, Kevin E Lofton, Marcy Syms, Mel Aklile, Myrtle S Potter and 4 more

42. Citi also implied a value of \$23.42 to \$29.06 per share of Albertsons stock (after applying sensitivities reflecting lower potential future financial performance than reflected in Albertsons forecasts) using the discounted cash flow analysis. The problem is that the Albertsons forecasts used by Citi were not prepared in the ordinary course of business. Before Citi performed its discounted cash flow analysis, Rite Aid management took Albertsons forecasts and "extrapolated" those forecasts.

Show more extracts

The docket entry is highlighted, indicating my search terms appear in this document. This particular document was available for viewing through our subscription.

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ENTRY	FILED	PDF	DESCRIPTION
<input type="checkbox"/> BL-1	Apr 24, 2018	View	<div>Verified Class Action Complaint Demand for an opportunity for shareholders to demand Appraisal.</div> <div> <div>DATE</div> <div>Apr 24, 2018</div> </div> <div> <div>TIME</div> <div>14:34:36</div> </div> <div> <div>TYPE</div> <div>Complaint-class action or derivative>10defs</div> </div> <div> <div>STATUS</div> <div>Accepted</div> </div>

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Mel Aklile v. Rite Aid Corporation, Docket No. 2018-0305 (Del. Ch. Apr. 24, 2018)

[Lawsuit by stockholders of Rite Aid Corporation regarding proposed merger with Albertsons]

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Mel Aklile (“Plaintiff”), on behalf of himself and all other similarly situated stockholders of Rite Aid Corporation (“Rite Aid” or the “Company”), by and through his undersigned counsel, alleges the following against Rite Aid, members of Rite Aid’s Board of Directors (the “Board”), Albertsons Companies, Inc. (“Albertsons”), and certain other entities, in connection with the proposed merger of Rite Aid and Albertsons (the “Proposed Transaction”). Plaintiff’s allegations are based upon personal knowledge as to himself, and upon investigation of Plaintiff’s counsel as to all other matters, which investigation includes, among other things, a review of public filings with the Securities and Exchange Commission (“SEC”), analyst reports, media reports and other publicly available information.

Complaint indicates that Albertsons filed a Form S-4 with the SEC. [Form record available at <https://www.sec.gov/Archives/edgar/data/1646972/000119312518109460/0001193125-18-109460-index.htm>]

7. On April 6, 2018, Albertsons filed with the SEC a preliminary registration statement on Form S-4, which document also constitutes a proxy statement of Rite Aid under Section 14a of the Securities Exchange Act of 1933 (hereinafter the “Preliminary Proxy”). As explained in the Preliminary Proxy, Rite Aid stockholders will not have appraisal rights under the Delaware General Corporations Law (“DGCL”) because they are not required to receive consideration other than Albertsons common stock (to receive part of the Merger Consideration as cash is voluntary):

10. The Court should enjoin Rite Aid’s efforts to avoid providing appraisal rights for the Proposed Transaction. Albertsons is a type of corporation known colloquially as a “unicorn” – a privately held company that purports to be worth more than \$1 billion. According to *Barron’s*, when this term was first used in 2013 it referred to only 39 software start-ups in this value range, but today Dow Jones VentureSource tracks nearly 170 such companies in its database. In 2016, *Forbes* listed Albertsons as the third largest private company in the United States, with reported revenues of \$58.7 billion.

[Still at #3. See, “America’s Largest Private Companies: 2018 Rankings,” Forbes, <https://www.forbes.com/largest-private-companies/list/#tab:rank>]

Financial information about Albertsons from its Form S-4 filed with the SEC

The selected consolidated financial information set forth below is derived from Albertsons Companies, LLC's annual consolidated financial statements for the periods indicated below, including the consolidated balance sheets at February 25, 2017 and February 27, 2016 and the related consolidated statements of operations and comprehensive (loss) income and cash flows for each of the 52-week periods ended February 25, 2017 and February 27, 2016 and the 53-week period ended February 28, 2015 and notes thereto appearing elsewhere in this proxy statement/prospectus. The balance sheet data at February 28, 2015, February 22, 2014 and February 23, 2013 and the statements of operations data as of the 52-week periods ended February 22, 2014 and February 23, 2013 is derived from Albertsons Companies, LLC's audited consolidated financial statements not included in this proxy statement/prospectus. The data for the 40 weeks ended December 2, 2017 and the 40 weeks ended February 25, 2017 is derived from Albertsons Companies, LLC's unaudited condensed consolidated financial statements included elsewhere in this proxy statement/prospectus and which, in the opinion of management, include all adjustments necessary for a fair statement of the results of the applicable interim periods.

(in millions)	40 Weeks Ended		Fiscal Year Ended				
	December 2, 2017	December 3, 2016	February 25, 2017	February 27, 2016	February 28, 2015(1)	February 22, 2014(2)	February 23, 2013
Results of Operations							
Net sales and other revenue	\$ 45,890.9	\$ 45,861.6	\$ 59,678.2	\$ 58,734.0	\$ 27,198.6	\$ 20,054.7	\$ 3,712.0
Gross profit	12,412.8	\$ 12,706.7	\$ 16,640.5	\$ 16,061.7	\$ 7,502.8	\$ 5,399.0	\$ 937.7
Selling and administrative expenses	12,488.7	12,252.2	16,000.0	15,660.0	8,152.2	5,874.1	899.0
Goodwill impairment	142.3	—	—	—	—	—	—
Bargain purchase gain	—	—	—	—	—	(2,005.7)	—
Operating (loss) income	(218.2)	454.5	640.5	401.7	(649.4)	1,530.6	38.7
Interest expense, net	679.2	784.0	1,003.8	950.5	633.2	390.1	7.2
(Gain) loss on debt extinguishment	(5.0)	111.7	111.7	—	—	—	—
Other expense (income)	40.4	(22.9)	(11.4)	(7.0)	96.0	—	—
(Loss) income before income taxes	(932.8)	(418.3)	(463.6)	(541.8)	(1,378.6)	1,140.5	31.5
Income tax (benefit) expense	(590.8)	(10.4)	(90.3)	(39.6)	(153.4)	(572.6)	1.7
(Loss) income from continuing operations, net of tax	(342.0)	(407.9)	(373.3)	(502.2)	(1,225.2)	1,713.1	29.8
Income from discontinued operations, net of tax	—	—	—	—	—	19.5	49.2
Net (loss) income	\$ (342.0)	\$ (407.9)	\$ (373.3)	\$ (502.2)	\$ (1,225.2)	\$ 1,732.6	\$ 79.0
Balance Sheet Data (at end of period)							
Cash and equivalents	\$ 473.3	\$ 806.1	\$ 1,219.2	\$ 579.7	\$ 1,125.8	\$ 307.0	\$ 37.0
Total assets	22,247.3	23,451.5	23,755.0	23,770.0	25,678.3	9,281.0	566.1
Total members' equity (deficit)	824.1	1,208.1	1,371.2	1,613.2	2,168.5	1,759.6	(247.2)
Total debt, including capital leases	11,874.3	12,264.7	12,337.9	12,226.3	12,569.0	3,694.2	120.2

(1) Includes results from four weeks for the stores purchased in the Safeway acquisition on January 30, 2015.

(2) Includes results from 48 weeks for the stores purchased in the NALP acquisition on March 21, 2013 and eight weeks for the stores purchased in the United acquisition on December 29, 2013.

11. Large private companies like Albertsons are notoriously difficult to value for a variety of reasons, including a lack of public filings and the frequent use of preferred offerings on varying terms. Unlike public companies, which are valued by the market every day, private companies are only valued when they seek to raise money. One researcher at Stanford University has recently concluded that the average unicorn is only worth half of the “headline valuation” that is reported in the media when the company raises funds.

Complaint notes
that true valuation
of Albertsons is
difficult because
there are little
public filings

17. Defendant Albertsons is a Delaware corporation with its principal place of business in Boise, Idaho. Albertsons is one of the largest food and drug retailers in the United States. As of February 24, 2018, Albertsons operated 2,318 stores across 35 states. Albertsons is a private company that is currently owned by Cerberus Capital Management, LLC.



Information about Cerberus Capital Management can be found on Bloomberg’s page at <https://www.bloomberg.com/research/stocks/private/snapshot.asp?>

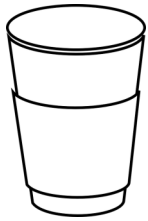
More information on Albertson's

- Company web site: <http://albertsons.com>
- Wendy Lee, “Albertsons sold to Cerberus Capital Management affiliate,” 89.3 KPCC, Jan. 10, 2013, <https://www.scpr.org/news/2013/01/10/35579/albertsons-sold-cerberus-capital-management-affili/>
- “Albertsons and Safeway Complete Merger Transaction,” PR Newswire, Jan. 30, 2015, <https://www.prnewswire.com/news-releases/albertsons-and-safeway-complete-merger-transaction-300028412.html>
- Lauren Hirsch, “After aborted Rite Aid deal, Albertsons faces rocky path,” CNBC, Aug. 9, 2018, <https://www.cnbc.com/2018/08/09/after-aborted-rite-aid-deal-albertsons-faces-rocky-path.html>

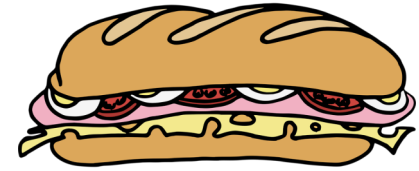
More information on Albertsons

- Jon Springer, “More sale-leasebacks likely for Albertsons,” Winsight Grocery Business, Oct. 16, 2018, <https://www.winsightgrocerybusiness.com/retailers/more-sale-leasebacks-likely-albertsons>
- John Sowell, “Albertsons names new CEO 7 months after the last one started: Here’s who’s moving around.” Idaho Statesman, Mar. 29, 2019, <https://www.idahostatesman.com/news/business/article228581734.html>





Mid-sized private company: Wawa, Inc.



- Privately-held company headquartered in Media, PA (outside of Philadelphia)
- 22,000 employees
- Estimated Corporate Sales: \$4,670,000,000 USD
- Owns and operates convenience stores primarily in the Philadelphia Metropolitan area.

SOURCE: “Wawa, Inc., Media, PA”, *ReferenceUSA* (database updated Jan. 2019).

[NOTE: Other sources have claimed higher or lower sales figures.]



- Incorporated in New Jersey. [See, State of NJ, Business Name Search, <https://www.njportal.com/DOR/BusinessNameSearch/Search/BusinessName>

Finding lawsuits involving Wawa, Inc.



- I started with a Google search and located the news article cited below.
- Carmen Castro-Pagan, “Wawa Sued Again by Ex-Employees Over Forced Stock Sell-Off,” Benefits & Executive Compensation News (Bloomberg BNA), <https://www.bna.com/wawa-sued-again-n73014481580/>
- The article provided a citation and docket number for the case discussed therein. I searched that information on the dockets on Bloomberg Law

The Bloomberg Law docket for the case had a link to the complaint filed with the federal district court. This case is a federal case, so the docket should also be available on PACER (<https://www.pacer.gov/>)

**CUNNINGHAM et al v. WAWA, INC. et al,
Docket No. 2:18-cv-03355 (E.D. Pa. Aug
08, 2018)**

Former employees are protesting the new terms of the
employee stock ownership plan

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN J. CUNNINGHAM, DAVID KRISTOPHER
CIUFFETELLI, BENJAMIN DIDONATO and JOHN
RUCKI, JR.,

Plaintiffs,

-vs.-

WAWA, INC., RETIREMENT PLANS COMMITTEE
OF WAWA, INC., JARED G. CULOTTA, MICHAEL J.
ECKHARDT, JAMES MOREY, CATHERINE PULOS,
HOWARD B. STOECKEL, DOROTHY SWARTZ,
RICHARD D. WOOD, JR., KEVIN WIGGINS and
CHRISTOPHER D. WRIGHT.

Defendants,

and

WAWA, INC. EMPLOYEE STOCK OWNERSHIP
PLAN.

Case No. _____

**COMPLAINT --
CLASS ACTION**

32. Most of the remaining shares of WAWA stock are owned by members of the al Defendant.

Wood family, including Defendant WOOD. The Wood family, including Defendant WOOD, currently owns approximately 50.2% of WAWA. Prior to the 2015 Amendment and the resulting September 2015 forced buyout, the Wood family, including Defendant WOOD, owned approximately 47.2% of WAWA. The Wood family became majority owners of WAWA as a result of the September 2015 forced sale. As a result of the 2014 Amendment and 2015 Amendment, and the resulting continued liquidation of Class Members' shares, the Wood family, including Defendant WOOD, has further increased its ownership percentage in WAWA.

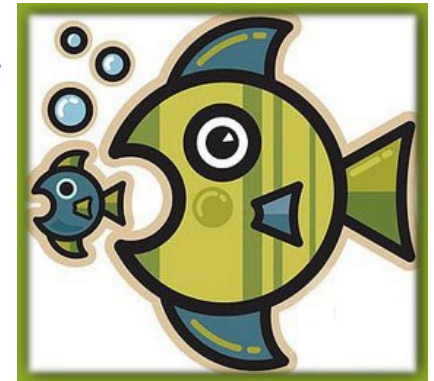
Complaint alleges that most of the shares of Wawa are owned by the Wood family after the forced buyout in 2015



33. The ESOP is a leveraged ESOP because it has borrowed money to purchase shares of WAWA stock from other shareholders. In December 2015, the Board of Directors of WAWA approved a loan to the ESOP of \$188,706,057 for the purpose of consolidating three prior loans approved in 2012, 2013 and 2014. The ESOP is scheduled to repay the loan over 45 years.

40. WAWA has acknowledged in communications with Plaintiffs and the Class that WAWA's recent success is built on many years of hard work by its employees. For example, in the Owners' Update Quarterly Report dated June 28, 2009, then-President & CEO STOECKEL stated: "These results [the Company's strong performance in Q2 2009] are built on the reservoir of trust we have established with our customers during the past 45 years...."

45. In 2004, WAWA was forced to buy out a large minority shareholder, Claneil Enterprises, Inc. ("Claneil"), in order to avoid a public stock offering. WAWA had to turn to its



48. In the “Owners’ Update Quarterly Report” dated September 28, 2014, WAWA President and CEO Chris Gheysens stated “as you read this letter, WAWA has begun the process of converting from a C-Corporation to an S-Corporation, an effort that your management team believes has the potential to be one of the largest value-creating events in WAWA's history. The benefits of the conversion are immediate, significant and long-term, translating into approximately \$1 billion in incremental value to all stakeholders over the next ten years. Through the benefits provided by being an S-Corporation, we will be able to strengthen our ESOP, maintain our aggressive expansion plans and bring more innovations to market.” (Emphasis added.)

49. In his Letter to Owners in WAWA’s Owners’ Update Year End Report dated December 28, 2014, President Gheysens stated: “By converting to an S-Corporation, we have created tremendous value for both your Company and its many stakeholders.” These stakeholders included Plaintiffs and other Class members.

50. WAWA converted from a C-Corporation to an S-Corporation following a merger transaction in December 2014. As a result of this conversion, WAWA no longer had to pay federal corporate income tax as of 2015.

51. As part of the merger transaction, WAWA shareholders who held shares outside the ESOP and who owned at least 250 shares of WAWA stock had the choice of receiving either (1) shares in the new WAWA entity, or (2) \$7,000 in cash for each share of WAWA stock.

WAWA shareholders holding shares outside the ESOP with fewer than 250 shares of WAWA stock received \$7,000 in cash for each share of WAWA stock. Since non-ESOP shareholders

with fewer than 250 shares did not have the right to receive stock in the new WAWA entity,

WAWA was able to reduce the number of shareholders to under 100, as required for an S-

Corporation. Since the ESOP Trustees hold legal title to the WAWA stock allocated to ESOP participants, the ESOP counts as a single shareholder for purposes of the S-Corporation.

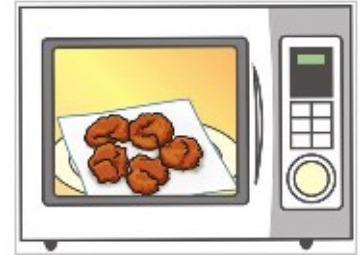
For information on S-Corporations and their requirements, see the IRS publication at <https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations>. As of May 15, 2019, the Bloomberg Law docket indicated that this case was still pending.

More about Wawa

- Company web site: <https://www.wawa.com/>
- Maria Aspan, “The Inside Story of Wawa, the Beloved \$10 Billion Convenience Store Chain Taking Over the East Coast,” *Inc.*, [June 2018], <https://www.inc.com/magazine/201806/maria-aspan/wawa-convenience-store-pennsylvania.html>
- *Company overview of Wawa, Inc.* (Bloomberg, May 15, 2019), <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=854792>
- FYI: The Forbes’ ranking for top private businesses in the U.S. for 2018 has **Wawa Inc. listed as #25**. *See*, <https://www.forbes.com/largest-private-companies/list/#tab:rank>.



Small Private Company
Amy's Kitchen, Inc.



- Founded in 1988
- Headquarters are in Petaluma, CA
- Estimated sales for fiscal year ending Dec. 31, 2014 were \$92.3 M
- The company employed 860 people
- Makes frozen and canned vegetarian and vegan meal items

SOURCE: "Amy's Kitchen Inc." *Ward's Business Directory of U.S. Private and Public Companies*, edited by Virgil L. Burton, III, 58th ed., Gale, 2015. *Gale Directory Library*

Cal. Secretary of State record: <https://businesssearch.sos.ca.gov/>

Business Search

This search provides access to available information for corporations, limited liability companies and limited partnerships of record with the California Secretary of State, including **free PDF copies** of imaged business entity documents, including the most recent imaged Statements of Information filed for corporations and limited liability companies. Please note: This search is not intended to serve as a name availability search. For information on checking or reserving a name, refer to [Name Availability](#).

To conduct a search:

- Select the applicable search type.
- In the "Search Criteria" box, enter the entity name or number you wish to search. Note: If entering the entity number of a corporation, the number must begin with the letter C.
- Select the search filter you wish to use to locate the entity if searching for an entity name.
- Select the Search button.
- For help with searching an entity name or number, refer to [Search Tips](#).

All fields marked with an asterisk (*) are required.

Search Type *

☒ Corporation Name ☐ LP/LLC Name ☐ Entity Number

Search Criteria *

Amy's Kitchen

Search Filter

Keyword ▼

Search

Cal. Secretary of State record: <https://businesssearch.sos.ca.gov/>

Business Search - Results

The California Business Search is updated daily and reflects work processed through Tuesday, May 14, 2019. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

- Select an entity name below to view additional information. Results are listed alphabetically in ascending order by entity name, or you can select a column title to change the sort order.
- To refine the search results, enter a word or a string of words in the "Narrow search results" box. The "Narrow search results" will search on all fields of the initial search results.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on requesting a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Frequently Asked Questions](#).

Results of search for Corporation Name keyword "Amy's Kitchen" returned 2 entity records (out of 2 records found).

Show entities per page

Narrow search results:

Entity Number	Registration Date	Status	Entity Name	Jurisdiction	Agent for Service of Process
C2080156	04/26/2000	ACTIVE	AMY'S & HUNAN KITCHEN, INC.	CALIFORNIA	WEN ZHONG WEN
C1430706	02/29/1988	ACTIVE	AMY'S KITCHEN, INC.	CALIFORNIA	MICHAEL L RESCH

Showing 1 to 2 of 2 entities

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Cal. Secretary of State record: <https://businesssearch.sos.ca.gov/>







Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, May 14, 2019. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C1430706 **AMY'S KITCHEN, INC.**


Registration Date: 02/29/1988
Jurisdiction: CALIFORNIA
Entity Type: DOMESTIC STOCK
Status: ACTIVE
Agent for Service of Process: MICHAEL L RESCH
1650 CORPORATE CIRCLE, SUITE 200
PETALUMA CA 94954-6970
Entity Address: 1650 CORPORATE CIRCLE, SUITE 200
PETALUMA CA 94954-6970
Entity Mailing Address: 1650 CORPORATE CIRCLE, SUITE 200
PETALUMA CA 94954-6970

A Statement of Information is due EVERY year beginning five months before and through the end of February.

Document Type	↕	File Date	↕	PDF
SI-NO CHANGE		01/18/2019		
SI-COMPLETE		02/28/2017		
AMENDMENT		03/01/2011		
MERGER		08/06/1992		
AMENDMENT		04/13/1989		
REGISTRATION		02/29/1988		

Bloomberg Law Docket Search


The screenshot displays the Bloomberg Law Docket Search interface. At the top, there's a search bar with the text "Dockets Search" and navigation links like "Set as Home", "Favorite", and a close button. Below this, several filter categories are listed on the left: KEYWORDS, COURTS, FILING TYPE BY DOCKET KEY, PARTIES, JUDGE, DOCKET #, and DATE. Each category has a corresponding input field or dropdown menu. The KEYWORDS field contains "profit OR revenue". The COURTS field has a placeholder "Type to select from the list". The FILING TYPE BY DOCKET KEY field has a placeholder "Type to select filing types - Powered by Docket Key". The PARTIES field contains "Amy's Kitchen" and "Any Type". The JUDGE field has a placeholder "Search judges by keyword". The DOCKET # field is empty. The DATE field has a dropdown menu set to "Last 5 years". At the bottom, there are radio buttons for "Apply Date To: Docket" (selected) and "Entries".

KEYWORDS 

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JUDGE

DOCKET # 

DATE

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Keywords that might generate financial information about the company.

Name of the company searched as a phrase in quotes

Limit to last 5 years so information found is not too dated.


Bloomberg Law Docket Search

2. **DaVita, Inc. et al v. Amy's Kitchen, Inc. et al**, Docket No. 4:18-cv-06975 (N.D. Cal. Nov 16, 2018)

DATE FILED Nov. 16, 2018

JUDGE Kandis A. Westmore

FEDERAL NOS Labor - Employee Retirement Income Security Act [791]

Entry #	Filing Date	PDF	Description	Powered by Docket Key™
1	Nov 16, 2018	 View	Complaint/Petition - COMPLAINT against Amy's Kitchen, Inc., Amy's Kitchen, Inc. Employee Benefit Health Plan (Filing fee \$ 400, receipt number 0971-12856431.). Filed byDaVita, Inc., Star Dialysis, LLC. (Attachments: # Amy's employs more than 2,400 people and generates \$500 million in 28 annual revenue . 4 COMPLAINT S T R I S 725 S. FIGUEROA ST, STE 1830 M A H E R LOS ANGELES, CA 90017 Case 4:18-cv-06975-KAW Document 1 Filed 11/16/18 Page 5 of 23 1 15. The Amy's Plan is an "employee welfare benefit plan" and an "employee 2 benefit plan" within the meaning of ERISA. See 29 U.S.C. 1002(1) (defining 3 "employee welfare benefit plan" and "welfare plan"); 29 U.S.C. 1002(3) (defining 4 "employee benefit plan" and "plan").	

1 Total Matching Entry | [View Entry →](#)

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I chose this case because the results show my keyword in context, and it looks as though this document might discuss the revenue or estimated revenue of Amy's Kitchen

Bloomberg Law Docket Search

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Attorneys for Plaintiffs DAVITA INC.
and STAR DIALYSIS, LLC

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVITA INC. and STAR DIALYSIS,
LLC,

Plaintiffs,

v.

AMY'S KITCHEN, INC.
EMPLOYEE BENEFIT HEALTH
PLAN and AMY'S KITCHEN, INC.,

Defendants.

Case No. 3:18-cv-6975

COMPLAINT

1. Plaintiffs DaVita Inc. and Star Dialysis, LLC (collectively “DaVita”) provide life-sustaining dialysis treatment to beneficiaries of Defendant Amy’s Kitchen Employee Benefit Health Plan (“Amy’s Plan” or “Plan”) who suffer from end-stage renal disease (“ESRD”). Plan beneficiaries with ESRD historically enjoyed access to care through the same network of providers that is available to all other beneficiaries. And until 2017, the Amy’s Plan paid DaVita an “in-network” rate determined by DaVita’s contractual commitment to serve as a network provider, a rate significantly lower than the usual and customary rates DaVita charges.

2. But as of January 1, 2017, the Amy’s Plan eliminated network coverage and dramatically reduced reimbursement for dialysis—while maintaining its existing network and reimbursement practices for all other health care services. It did so by hiring Renalogic, Inc. (“Renalogic”), an Arizona-based company that purports to specialize in “dialysis cost containment.” *Renalogic*, renalogic.com, last accessed November 1, 2018. Renalogic helps companies “contain” the cost of dialysis, however, by illegally upsetting the allocation of payment responsibility between Medicare and private payors that Congress struck with the passage of the Medicare as Secondary Payer Act (“MSPA”).

NOTE: This is a federal case & the docket should also be available via PACER (pacer.gov)

Bloomberg Law Docket Search

14. Defendant Amy's Kitchen, Inc. ("Amy's") is a California corporation with its headquarters in Petaluma, California and manufacturing facilities in Santa Rosa, California; Medford, Oregon; and Pocatello, Idaho. It sells organic foods (more than 250 products) throughout the United States and internationally, in over 23 countries. Amy's employs more than 2,400 people and generates \$500 million in annual revenue.

The above information is from a pleading filed in 2018, while the Ward's data was published in 2015. Still, it does indicate a large difference in estimates. [Ward's estimated the sales for 2014 were \$92,300,000 and the employees were 860.] Per the assertion in the complaint, it appears that the company's manufacturing facilities have expanded over the years, which could account for the increase in the number of employees and the increase in revenue. The complaint does not cite a source for its estimates, but we might presume that the information was obtained at some point during discovery.

*An opinion for this case is available on Bloomberg Law at *DaVita, Inc. v. Amy's Kitchen, Inc.*, No. 18-cv-06975-JST, 2019 BL 122903 (N.D. Cal. Apr. 05, 2019). An article about the ruling is available online: Scott Holland, "Judge rules DaVita, Star Dialysis cannot sue Amy's Kitchen with federal claims over dialysis coverage." *Northern California Record*, Apr. 23, 2019, <https://tinyurl.com/y3gg37m6>*

More information on Amy's Kitchen

- Company web site: <https://www.amys.com/>
- Tracy Saelinger, “Frozen food brand Amy’s Kitchen is getting into the fast-food game.” Today Show, Sept. 7, 2017, <https://www.today.com/food/amy-s-kitchen-open-fast-food-drive-thru-restaurants-t116035>
- Hema Easley, “Amy’s Kitchen takes a big step forward in Goshen.” Times Herald-Record/RecordOnline (Middletown, NY), Nov. 28, 2018, <https://www.recordonline.com/news/20181128/amys-kitchen-takes-big-step-forward-in-goshen>
- *Amy’s Kitchen founders share inspiration behind their organic frozen food company*, CBS News, Aug. 2, 2017, <https://www.cbsnews.com/news/amys-kitchen-founders-real-food-organic-frozen-meals-rachel-andy-berliner/> [includes video]
- Cheryl Sarfaty, “Amy’s Kitchen starts construction on Marin County restaurant, plans San Francisco airport opening.” Sonoma Index-Tribune, Apr. 24, 2019, <https://www.sonomanews.com/business/9530852-181/amys-kitchen-starts-construction-on>

CONCLUSIONS



- More likely to find more accurate information on the larger private companies as they might have entertained the idea of going public or merging with a public company & have filed paperwork with the SEC under penalty of perjury. [*See above, Albertson's Form S-4 data*]
- For smaller companies, you may have to use commercial resources to check if the pleadings have correct information about company revenue.