

LIFEWAY FOODS INC  
Form 8-K  
November 08, 2016

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON D.C. 20549

FORM 8-K  
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 4, 2016

LIFEWAY FOODS, INC.  
(Exact name of registrant as specified in its charter)

ILLINOIS (State or other jurisdiction of incorporation)	000-17363 (Commission File Number)	36-3442829 (I.R.S. Employer Identification No.)
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6431 West Oakton St. Morton Grove, IL (Address of principal executive offices)	60053 (Zip code)
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Registrant's telephone number, including area code: (847) 967-1010

N/A

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

On November 4, 2016, the Audit Committee of the Board of Directors (the "Board") of Lifeway Foods, Inc. (the "Company"), upon the recommendation of management, determined that the consolidated financial statements (the "Previously Issued Financial Statements") presented in the Company's reports for:

- the annual period ended December 31, 2015, and the reports of the independent registered public accounting firm thereon, and related quarterly periods for the annual period ended December 31, 2015; and
- the quarterly periods ended March 31 and June 30, 2016

as set forth in the Company's previous filings with the Securities and Exchange Commission (the "SEC") (the "Revised Periods") should no longer be relied upon as a result of the errors described below. Similarly, earnings releases, management's report on the effectiveness of disclosure controls and procedures, in each case for the Revised Periods and earnings releases, press releases and investor communications describing the Previously Issued Financial Statements should no longer be relied upon because of certain misclassifications described below.

As a result of enhancing its financial reporting efforts, during the third quarter of fiscal 2016, the Company recorded adjustments to properly classify indirect manufacturing overhead costs related to certain production facilities within our manufacturing platform as an element of Cost of Goods Sold in our Statements of Income (Loss) and Comprehensive Income (Loss). In prior periods these costs were incorrectly classified in General and Administrative expenses. The Audit Committee of the Company's Board of Directors, upon recommendation of management and after discussion with the Company's independent registered public accounting firm, concluded that the Company will correct and revise a portion of its expenses by reclassifying certain amounts previously reported in G&A expense into Cost of Goods Sold in the Previously Issued Financial Statements for the Revised Periods.

Additionally, in the first and second quarter of 2015, certain executive compensation was classified in Selling expenses that more appropriately should be classified as General and Administrative expenses. We previously corrected these classification errors in our first and second quarter 2016 filings on Form 10-Q with the SEC.

The reclassifications have no impact on the Company's previously-reported net sales, income from operations, net income, or basic and diluted earnings per common share presented in its Consolidated Statements of Income (Loss) and Comprehensive Income (Loss), nor does it have any effect on the Company's previously-reported Consolidated Balance Sheets, Consolidated Statements of Cash Flows, or Consolidated Statements of Changes in Stockholders' Equity.

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Collectively, these adjustments had the following impact on our Consolidated Statements of Income (Loss) and Comprehensive Income (Loss):

	(Unaudited) Three Months Ended March 31, 2016			(Unaudited) Six Months Ended June 30, 2016		
	As Previously Reported	Adjustment	As Revised	As Previously Reported	Adjustment	As Revised
Net Sales	\$32,570	\$ —	\$32,570	\$63,701	\$ —	\$63,701
Cost of Goods Sold	23,351	519	23,870	44,290	976	45,266
Gross Profit	9,219	(519 )	8,700	19,411	(976 )	18,435
Selling expenses	2,964	—	2,964	6,427	—	6,427
General & administrative	4,465	(519 )	3,946	7,968	(976 )	6,992
Amortization	176	—	176	353	—	353
Operating expenses	7,605	(519 )	7,086	14,748	(976 )	13,772
Income from Operations	\$1,614	\$ —	\$1,614	\$4,663	\$ —	\$4,663

	(Unaudited) Three Months Ended March 31, 2015			(Unaudited) Six Months Ended June 30, 2015		
	As Previously Reported (a)	Adjustment	As Revised	As Previously Reported (a)	Adjustment	As Revised
Net Sales	\$29,622	\$ —	\$29,622	\$59,443	\$ —	\$59,443
Cost of Goods Sold	21,239	458	21,697	44,044	1,017	45,061
Gross Profit	8,383	(458 )	7,925	15,399	(1,017 )	14,382
Selling expenses	3,302	—	3,302	5,920	—	5,920
General & administrative	3,492	(458 )	3,034	7,662	(1,017 )	6,645
Amortization	179	—	179	358	—	358
Operating expenses	6,973	(458 )	6,515	13,940	(1,017 )	12,923
Income from Operations	\$1,410	\$ —	\$1,410	\$1,459	\$ —	\$1,459

(a) As previously reported in our first and second quarter 2016 Form 10Q filings.

	(Unaudited) Nine Months Ended September 30, 2015		(Unaudited) Twelve Months Ended December 31, 2015	
	As Previously Reported	Adjustment	As Previously Reported	Adjustment

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	As Previously Reported	(b)	As Revised	As Previously Reported	(b)	As Revised
Net Sales	\$89,042	\$ —	\$89,042	\$118,587	\$ —	\$118,587
Cost of Goods Sold	64,588	1,137	65,725	86,986	1,556	88,542
Gross Profit	24,454	(1,137 )	23,317	31,601	(1,556 )	30,045
Selling expenses	9,486	(860 )	8,626	12,752	(860 )	11,892
General & administrative	10,920	(277 )	10,643	13,730	(696 )	13,034
Amortization	537	—	537	716	—	716
Operating expenses	20,943	(1,137 )	19,806	27,198	(1,556 )	25,642
Income from Operations	\$3,511	\$ —	\$3,511	\$4,403	\$ —	\$4,403

(b) Includes the reclassification of certain executive compensation from Selling to General and administrative expenses.

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In consultation with its independent registered accounting firm, the Company has determined that an appropriate presentation in light of the circumstances would be to include the corrected financial statements in this Current Report on Form 8-K, its periodic report on Form 10-Q for the quarter ended September 30, 2016, and its annual report on Form 10-K for the year ended December 31, 2016, rather than amend the quarterly and annual reports on Forms 10-Q and 10-K filed for the Revised Periods. Therefore, the Company intends to include the required revisions to the presentation of comparable periods in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2016, which it intends to file as soon as practicable, and in its Annual Report on Form 10-K for the annual period ended December 31, 2016, which the Company expects to be timely filed. The corrected financial statements for the Revised Periods will continue to be included in future filings of the Company's periodic reports on Form 10-Q and Form 10-K.

In connection with the revisions described above, the Company has considered the impact of these classification errors on our internal control assessment and have concluded that the errors are indicative of our existing material weakness in our internal control over financial reporting. As previously disclosed in the Company's 2015 Annual Report on Form 10-K, the Company and its management continue to work to improve the overall effectiveness of its internal control over financial reporting and disclosure controls and procedures in order to rectify its identified material weaknesses. The Company believes that the identification of the classification errors was consequential of the remediation of the material weakness in those controls.

The Company's management and the Audit Committee have discussed the matters disclosed under this Item 4.02 with the Company's independent registered public accounting firm, Mayer Hoffman McCann.

### Caution Regarding Forward-Looking Statements

This Form 8-K includes information that constitutes forward-looking statements. Forward-looking statements often address our expected future business and financial performance, and often contain words such as "believe," "expect," "anticipate," "intend," "plan," or "will." By their nature, forward-looking statements address matters that are subject to risks and uncertainties. Any such forward-looking statements may involve risk and uncertainties that could cause actual results to differ materially from any future results encompassed within the forward-looking statements. Examples of such forward-looking statements include, but are not limited to, statements regarding our expectations with regard to any revised amount in our financial statements for the Revised Period or our anticipated financial results for the three months ended September 30, 2016 furnished under Items 4.02 herein. Factors that could cause or contribute to such differences include: the review of the Company's accounting, accounting policies and internal control over financial reporting; the preparation of and review of the Form 10-Q for the quarter ended September 30, 2016 and the Form 10-K for the year ended December 31, 2016; and the subsequent discovery of additional adjustments to the Company's previously issued financial statements. Actual events or results may differ materially from the Company's expectations. In addition, our financial results and stock price may suffer as a result of this review and any subsequent determinations from this process or any actions taken by governmental or other regulatory bodies as a result of this process. These forward-looking statements are also affected by the risk factors, forward-looking statements and challenges and uncertainties described in the Company's Annual Report on Form 10-K for the year ended December 31, 2015, and Lifeway's other filings with the SEC, which are available at [www.lifewaykefir.com](http://www.lifewaykefir.com). Except as required by law, the Company expressly disclaims any intention or obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise.



SIGNATURE

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

LIFEWAY FOODS, INC.

Dated: November 8, 2016 By: /s/ John P. Waldron  
Name: John P. Waldron  
Title: Chief Financial and Accounting Officer