

Papa Murphy's Holdings, Inc.  
Form S-8  
May 02, 2014

As filed with the Securities and Exchange Commission on May 1, 2014

Registration No. 333-

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

**FORM S 8**  
**REGISTRATION STATEMENT**  
***UNDER***  
***THE SECURITIES ACT OF 1933***

**Papa Murphy s Holdings, Inc.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction of**  
**incorporation or organization)**

**27-2349094**  
**(I.R.S. Employer**  
**Identification No.)**

**Papa Murphy's Holdings, Inc.**

**8000 NE Parkway Drive, Suite 350**

**Vancouver, WA**  
**(Address of Principal Executive Offices)**

**98662**  
**(Zip Code)**

**2014 Equity Incentive Plan**

**Amended 2010 Management Incentive Plan**

**(Full Title of Plan)**

**Victoria T. Blackwell, Esq.**

**Papa Murphy's Holdings, Inc.**

**8000 NE Parkway Drive, Suite 350**

**Vancouver, WA 98662**

**(Name and address of agent for service)**

**(360) 260-7272**

**(Telephone number, including area code, of agent for service)**

*With a copy to:*

**Alexander D. Lynch, Esq.**

**Weil, Gotshal & Manges LLP**

**767 Fifth Avenue**

**New York, NY 10153**

**(212) 310-8000 (Phone)**

**(212) 310-8007 (Fax)**

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

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, \$0.01 par value per share, reserved for issuance pursuant to the 2014 Equity Incentive Plan	1,200,000	\$11.00(2)	\$13,200,000	\$1,701
Common Stock, \$0.01 par value per share, reserved for issuance pursuant to stock option awards outstanding under the Amended 2010 Management Incentive Plan	81,016	\$26.80(3)	\$2,171,289	\$280

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the Securities Act ), this Registration Statement shall cover any additional securities as may issuable under the 2014 Equity Incentive Plan or the Amended 2010 Management Incentive Plan by reason of any stock splits, stock dividends, recapitalizations or similar transactions.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h) of the Securities Act based on the initial public offering price of \$11.00 per share.
- (3) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h) of the Securities Act based on the exercise price of stock option awards outstanding under the Amended 2010 Management Incentive Plan of \$26.80.

## EXPLANATORY NOTE

This registration statement registers shares of common stock, par value \$0.01 per share ( Common Stock ), of Papa Murphy s Holdings, Inc. (the Registrant ) that may be issued and sold under the 2014 Equity Incentive Plan (the 2014 Plan ) and the shares of Common Stock of the Registrant reserved for issuance pursuant to stock option awards outstanding under the Amended 2010 Management Incentive Plan (the 2010 Plan and together with the 2014 Plan, the Plans ).

### PART I

#### SECTION 10(a) PROSPECTUS

The information specified in Items 1 and 2 of Part I of this Registration Statement on Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of the Registration Statement. The documents containing the information specified in Part I will be delivered to the participants in the Plans covered by this Registration Statement as required by Rule 428(b)(1).

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### **Item 3. Incorporation of Documents by Reference.**

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the Commission ):

The Registrant s prospectus contained in the Registrant s Registration Statement on Form S-1, as amended (Reg. No. 333-194488), in which there is set forth the Registrant s audited financial statements for the latest fiscal year for which such statements have been filed; and

The description of the Registrant s common stock contained in the Registrant s Registration Statement on Form S-1, as amended (Reg. No. 333-194488), which description is incorporated by reference into the Form 8-A filed with the Securities and Exchange Commission on April 30, 2014, pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act ), and any amendment or report filed for the purpose of further updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this registration statement shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in this registration statement, or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this registration statement, modifies or supersedes such prior statement.

Any statement contained in this registration statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document that is or is deemed to be incorporated by reference in this registration statement modifies or supersedes such prior statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

None.

**Item 6. Indemnification of Directors and Officers.**

The Registrant is governed by the Delaware General Corporation Law, or DGCL. Section 145 of the DGCL provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was or is an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the corporation's best interest and, for criminal proceedings, had no reasonable cause to believe that such person's conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

The Registrant's amended and restated bylaws and amended and restated certificate of incorporation will authorize the indemnification of its officers and directors, consistent with Section 145 of the DGCL. Reference is made to Section 102(b)(7) of the DGCL, which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends or unlawful stock purchase or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

As permitted by the DGCL, we will include in our amended and restated certificate of incorporation a provision to eliminate the personal liability of our directors for monetary damages for breach of their fiduciary duties as directors, subject to certain exceptions. In addition, our amended and restated certificate of incorporation and bylaws will provide that we are required to indemnify our officers and directors under certain circumstances, including those circumstances in which indemnification would otherwise be discretionary, and we are required to advance expenses to our officers and directors as incurred in connection with proceedings against them for which they may be indemnified.

The Registrant intends to enter into indemnification agreements with each of its directors and executive officers. These agreements, among other things, will require the Registrant to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts actually and reasonably incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of the Registrant, arising out of the person's services as a director or executive officer.

The Registrant expects to maintain standard policies of insurance that provide coverage (i) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act and (ii) to the Registrant with respect to indemnification payments that it may make to such directors and officers.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Exhibit No.	Description
4.1	2014 Equity Incentive Plan.
4.2	Amended 2010 Management Incentive Plan.
5.1	Legal Opinion of Weil, Gotshal & Manges LLP.
23.1	Consent of Moss Adams LLP, Independent Registered Public Accounting Firm for Papa Murphy's Holdings, Inc. and its subsidiaries.
23.2	Consent of Moss Adams LLP, Independent Auditor for TBD Business Group.
23.3	Consent of Moss Adams LLP, Independent Auditor for KK Great Pizza, LLC.
23.4	Consent of Weil, Gotshal & Manges LLP (included in Exhibit No. 5.1).
24.1	Power of Attorney (included on signature page).

**Item 9. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

- (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement;
  - (i) to include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and



- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;
  - (a) provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

---

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Vancouver, State of Washington, on May 1, 2014.

**Papa Murphy s Holdings, Inc.**

By: /s/ Ken Calwell

Name: Ken Calwell

Title: Chief Executive Officer and President

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned constitutes and appoints each of Ken Calwell and Mark Hutchens, each acting alone, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-8 (including all pre-effective and post-effective amendments and registration statements filed pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming that any such attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Ken Calwell Ken Calwell	President and Chief Executive Officer (Principal Executive Officer) and Director	May 1, 2014
/s/ Mark Hutchens Mark Hutchens	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	May 1, 2014
/s/ John Barr John Barr	Chairman of the Board, Director	May 1, 2014
/s/ Benjamin Hochberg Benjamin Hochberg	Director	May 1, 2014
/s/ Yoo Jin Kim Yoo Jin Kim	Director	May 1, 2014
/s/ Thomas Lee Thomas Lee	Director	May 1, 2014
/s/ John Shafer John Shafer	Director	May 1, 2014
/s/ Achi Yaffe Achi Yaffe	Director	May 1, 2014

**EXHIBIT INDEX**

Exhibit No.	Description
4.1	2014 Equity Incentive Plan.
4.2	Amended 2010 Management Incentive Plan.
5.1	Legal Opinion of Weil, Gotshal & Manges LLP.
23.1	Consent of Moss Adams LLP, Independent Registered Public Accounting Firm for Papa Murphy's Holdings, Inc. and its subsidiaries.
23.2	Consent of Moss Adams LLP, Independent Auditor for TBD Business Group.
23.3	Consent of Moss Adams LLP, Independent Auditor for KK Great Pizza, LLC.
23.4	Consent of Weil, Gotshal & Manges LLP (included in Exhibit No. 5.1).
24.1	Power of Attorney (included on signature page).