

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

BRANDON FAYE, *individually and* )  
*on behalf of all those similarly* )  
*situated,* )

*Plaintiff,* )

No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

v. )

**JURY TRIAL DEMANDED**

DOCTORS SCIENTIFIC )  
ORGANICA, LLC dba Smart for )  
Life, *a Florida limited liability* )  
*company,* )

**INJUNCTIVE RELIEF**

**REQUESTED**

*Defendant.*

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Brandon Faye (“Plaintiff”), individually and on behalf of a Class of nationwide consumers similarly situated, by and through undersigned counsel, hereby brings this action against Doctors Scientific Organica LLC dba Smart for Life (“Smart for Life”), alleging that its Smart for Life Gourmet Protein Bars (strawberry shortcake, lemoncello, and double chocolate flavors); Smart for Life Keto Protein Bar (triple chocolate crisp flavor); and Smart for Life Protein Bars (cinnamon pecan, luscious lemon, caramel almond, and peanut butter flavors) (collectively, “the Product(s)”), which are manufactured, packaged, labeled, advertised, distributed, and sold by Defendant, are misbranded and falsely advertised because they contain far fewer grams of protein per serving than stated upon their

labels, and upon information and belief and investigation of counsel alleges as follows.

### **PARTIES**

1. Plaintiff Brandon Faye is and at all times relevant was a citizen of the state of Florida, domiciled in Palm Bay, Florida.

2. Defendant Doctors Scientific Organica LLC dba Smart for Life is a Florida limited liability company with its principal place of business and headquarters in Riviera Beach, Florida. On information and belief, decisions regarding the formulation and labelling of the Products are made at this Florida location.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original jurisdiction of the federal district courts over “any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

4. Plaintiff seeks to represent Class members who are citizens of states or countries different from the Defendant.

5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate, exclusive of interests and costs.

6. In addition, “the number of members of all proposed plaintiff classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

7. This Court has personal jurisdiction over Defendant because this action arises out of and relates to Defendant’s contacts with this forum.

8. Those contacts include but are not limited to sales of the Products directly to commercial and individual consumers located in this district, including to Plaintiff; shipping the Products to commercial and individual consumers in this district, including to Plaintiff; knowingly directing advertising and marketing materials concerning the Products into this district through wires and mails, both directly and through electronic and print publications that are directed to commercial and individual consumers in this district; and operating an e-commerce web site that offers the Products for sale to commercial and individual consumers in this district, as well as offering the Products for sale through third-party e-commerce websites, through both of which commercial and individual consumers residing in this district have purchased the Products.

9. Defendant knowingly directs electronic activity and ships the Products into this district with the intent to engage in business interactions for profit, and it has in fact engaged in such interactions, including the sale of the Products to Plaintiff.

10. Defendant also sells the Products to retailers and wholesalers in this district for the purpose of making the Products available for purchase by individual consumers in this district.

11. Plaintiff's losses and those of other Class members were sustained in this district.

12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within this district.

13. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court maintains personal jurisdiction over Defendant.

### **FACTUAL ALLEGATIONS**

14. On or about September 19, 2023, Faye purchased a Smart for Life Gourmet Sampler of protein bars, and a Smart for Life Healthy on the Go! sampler pack of bars. Plaintiff is fitness enthusiast who eats a healthy diet in order to maintain his weight and meet fitness goals. As such, he tracks his protein intake.

15. Plaintiff purchased all relevant flavors of the Products. In the alternative, all flavors of the Products are substantially similar to each other, in that they make the same deceptive protein content claim, are sold for a similar price, and are made with a similar base formulation that varies only by flavoring.

16. The front label (or “principal display panel”) of the Products state that they contain between 12 and 20 grams of protein per bar.

17. These claims regarding protein content are false. AOAC method testing conducted at the undersigned’s direction by an independent, third-party laboratory reveals that the protein content in the Products is overstated, with the shortfalls ranging from 6% for the strawberry shortcake bar to 22% for the lemoncello bar:

<b>PRODUCT</b>	<b>STATED GRAMS PROTEIN</b>	<b>ACTUAL GRAMS PROTEIN</b>	<b>% SHORT</b>
Smart for Life Gourmet Protein Bar - Strawberry Shortcake	12	11.25	6%
Smart for Life Gourmet Protein Bar - Lemoncello	15	11.7	22%
Smart for Life Gourmet Protein Bar - Double Chocolate	12	10.1	16%
Smart for Life KETO Protein Bar - Triple Choco Crisp	17	14.3	16%
Smart for Life Protein Bar - Cinnamon Pecan	20	16.9	16%
Smart for Life Protein Bar - Luscious Lemon	18	14.4	20%
Smart for Life Protein Bar - Caramel Almond	19	16.5	13%
Smart for Life Protein Bar - Peanut Butter	19	16.8	12%

18. Because the Products are “Class I” foods as defined in 21 C.F.R. § 101.9(g)(3), no shortfall in protein content is permitted under federal labelling regulations. Instead, pursuant to that provision, “the nutrient content ... must be formulated to be at least equal to the value for that nutrient declared on the label.”

19. Plaintiff reviewed the labels on the Product prior to his purchase, and reviewed the protein content claim made on those labels. Consumers, including Plaintiff, who viewed the Products’ labels reasonably understood this claim to mean that the Products contained the amount of protein stated on the label.

20. Plaintiff had no way of knowing based simply on the Products’ appearance that they do not contain the amount of protein claimed and warranted by the label. Furthermore, consumers such as Plaintiff are under no obligation to investigate the nutrient content values stated on the Products’ labels before making their purchase and are entitled to rely on those statements.

21. Because of its deceptive and false labelling statements, Defendant was able to charge consumers, including Plaintiff, a premium for the Products relative to key competitors’ products, or relative to the average price charged in the marketplace.

22. Consumers, including Plaintiff, reasonably relied on Defendant’s label claims described herein such that they would not have purchased the Products from Defendant if the truth about the Products was known, or would have only been

willing to pay a substantially reduced price for the Products had they known that Defendant's representations were false and misleading.

23. Plaintiff suffered economic injury by Defendant's fraudulent and deceptive conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and Plaintiff's injury.

### **CLASS ACTION ALLEGATIONS**

24. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this action individually and as representative of a Class of all consumers similarly situated nationwide who purchased the Products within four years prior to the filing of this Complaint.

25. Excluded from the Class and Subclass are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staff.

26. Plaintiff reserves the right to alter the Class definition, and to amend this Complaint to add additional Subclasses, as necessary to the full extent permitted by applicable law.

27. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of the claims on a class-wide

basis using the same evidence as individual Class members would use to prove those elements in individual actions alleging the same claims.

28. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all Class members is impracticable. Plaintiff believes and avers there are thousands of Class members geographically dispersed throughout the nation.

29. **Existence and Predominance of Common Questions of Law and Fact – Rule 23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions predominate over any questions that affect only individual Class members. Common legal and factual questions and issues include but are not limited to:

- a. Whether the marketing, advertising, packaging, labeling, and other promotional materials for Defendant’s Products is misleading and deceptive;
- b. Whether a reasonable consumer would understand Defendant’s protein claims to indicate that the Products contained 19 grams of protein, and reasonably relied upon those representations;
- c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class members;
- d. the proper amount of damages and disgorgement or restitution;
- e. the proper scope of injunctive relief; and
- f. the proper amount of attorneys’ fees.



30. Defendant engaged in a common course of conduct in contravention of the laws Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations of law, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that predominate this action. The common questions will yield common answers that will substantially advance the resolution of the case.

31. In short, these common questions of fact and law predominate over questions that affect only individual Class members.

32. **Typicality – Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the Class members because they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

33. Specifically, all Class members, including Plaintiff, were harmed in the same way due to Defendant's uniform misconduct described herein; all Class members suffered similar economic injury due to Defendant's misrepresentations; and Plaintiff seeks the same relief as the Class members.

34. There are no defenses available to Defendant that are unique to the named Plaintiff.

35. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate representative of the Class because Plaintiff's interests do not conflict with

the Class members' interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress against Defendant.

36. Furthermore, Plaintiff has selected competent counsel who are experienced in class action and other complex litigation. Plaintiff and Plaintiff's counsel are committed to prosecuting this action vigorously on behalf of the Class and have the resources to do so.

37. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other available means for the fair and efficient adjudication of this controversy for at least the following reasons:

a. the damages individual Class members suffered are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendant's conduct such that it would be virtually impossible for the Class members individually to redress the wrongs done to them. In fact, they would have little incentive to do so given the amount of damage each member has suffered when weighed against the costs and burdens of litigation;

b. the class procedure presents fewer management difficulties than individual litigation and provides the benefits of single adjudication, economies of scale, and supervision by a single Court;

c. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant; and

d. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would be dispositive of the interests of other Class members or would substantively impair or impede their ability to protect their interests.

38. Unless the Class is certified, Defendant will retain monies received as a result of its unlawful and deceptive conduct alleged herein.

39. Unless a class-wide injunction is issued, Defendant will likely continue to advertise, market, promote, and sell its Products in an unlawful and misleading manner, as described throughout this Complaint, and members of the Class will continue to be misled, harmed, and denied their rights under the law. Plaintiff is unable to rely on the Products' advertising or labeling because of the deceptions and misrepresentations on them, and so will not purchase the Products or other products offered by Defendant although he would like to.

40. **Ascertainability.** To the extent ascertainability is required, the Class members are readily ascertainable from Defendant's records and/or its agents' records of retail and online sales, as well as through public notice.

41. Defendant has acted on grounds applicable to the Class as a whole, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

**COUNT 1**  
**Violation of the Florida Unfair and Deceptive Trade Practices Act**  
**Chapter 501, Part II, Florida Statutes**  
**(Nationwide Class)**

42. Plaintiff and the Class reallege paragraphs 1 through 41 as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

43. Section 501.204(1) of the Florida Statutes provides that “unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” The provisions of the Florida Deceptive and Unfair Trade Practices Act shall be “construed liberally to promote the protection” of the “consuming public and legitimate business enterprises from those who engage in ... deceptive[] or unfair acts or practices in the conduct of any trade or commerce.” § 501.202, Fla. Stat.

44. Defendant was, at all times material to the allegations herein, engaged in “trade or commerce” as defined by the Act. § 501.203, Fla. Stat.

45. Relying on the protein claims made on the Products, consumers including Plaintiff purchased the Products believing they were purchasing foods containing 21 grams of protein, when they did not.

46. Defendant's use of deceptive, false, and/or misleading Product labels constitutes an unfair or deceptive trade practice within the meaning of the FUDTPA.

47. Defendant's unfair or deceptive trade practice has been the proximate cause of actual damages sustained by Plaintiff and the Class.

48. Such damages recoverable by Plaintiff and the Class include, without limitation, monetary losses and actual damages in an amount to be proven at trial, as well as costs of suit and attorneys' fees.

**COUNT 2**  
**UNJUST ENRICHMENT**  
**(Pursuant to Florida Law)**

49. Plaintiff and the Class reallege the paragraphs 1 through 41 as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

50. Defendant, through its marketing and labeling of the Products, misrepresented and deceived consumers regarding the protein content in the Products.

51. Defendant did so for the purpose of enriching itself and it in fact enriched itself by doing so.

52. Consumers conferred a benefit on Defendant by purchasing the Products, including an effective premium above their true value. Defendant appreciated, accepted, and retained the benefit to the detriment of consumers.

53. Defendant continues to possess monies paid by consumers to which Defendant is not entitled.

54. Under the circumstances it would be inequitable for Defendant to retain the benefit conferred upon it and Defendant's retention of the benefit violates fundamental principles of justice, equity, and good conscience.

55. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Court, and such other relief as the Court deems just and proper to remedy Defendant's unjust enrichment.

56. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth above.

**COUNT 3**  
**BREACH OF EXPRESS WARRANTY**  
**(Pursuant to Florida Law)**

57. Plaintiff and the Class reallege paragraphs 1 through 41 as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

58. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller, expressly warranted that the Products contained 19 grams of protein per serving.

59. Defendant's express warranties, and its affirmations of fact and promises made to Plaintiff and the Class and regarding the Products, became part of

the basis of the bargain between Defendant and Plaintiff and the Class, which creates an express warranty that the Products would conform to those affirmations of fact, representations, promises, and descriptions.

60. The Products do not conform to the express warranty that the Products contained 19 grams of protein per serving, as set forth herein.

61. As a direct and proximate cause of Defendant's breach of express warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Products on the same terms if they knew the truth about the Products' unnatural ingredients; (b) they paid a price premium based on Defendant's express warranties; and (c) the Products do not have the characteristics, uses, or benefits that were promised.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the Court grant the following relief against Defendant:

- a. Certifying the Class;
- b. Declaring that Defendant violated the statutes cited herein and/or was unjustly enriched and/or breached express warranties;
- c. Awarding actual and other damages as permitted by law or equity;
- d. Ordering an awarding of injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as

- set forth herein, and ordering Defendant to engage in a corrective advertising campaign;
- e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;
  - f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
  - g. Such other relief as the Court may deem just and proper.

**TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.**



Respectfully submitted,

DATED: May 8, 2024

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury - Product Liability, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.