



## **PARTIES**

1. Plaintiff Zachary Melancon is and at all times relevant was a resident of Short Pump, Virginia. Melancon attempts to eat a healthy diet in order to maintain his weight and meet fitness goals and tracks his protein intake as part of his fitness plan. He purchased (1) the chocolate glazed doughnut and cookie dough flavor Products from a Nutrition Corner in Short Pump, Virginia on or about May 17, 2024; (2) the blueberry cobbler and cookie dough flavor Products from a Nutrition Corner in Short Pump, Virginia on or about April 20, 2024; (3) the peanut butter chocolate and cookies 'n cream flavor Products from a Vitamin Shoppe on August 22, 2023; (4) the cinnamon roll and glazed doughnut flavors of the Products from a Nutrition Corner store in Short Pump, Virginia on or about May 22, 2023; (5) a box of purple velvet flavor Products from a Nutrition Corner in Short Pump, Virginia on or about October 14, 2022; (6) the peanut butter chocolate and cookies 'n cream flavor Products from a Vitamin Shoppe in Short Pump, Virginia on or about June 16, 2022; and (7) the cookies 'n cream flavor Product from a Nutrition Corner in Short Pump, Virginia on or about June 11, 2022. Melancon believes and avers that he purchased the Products at other times during the Class period but has not retained receipts for those purchases.

2. Daniel James Ruchman is and at all times relevant was a resident of Ventura, California. Ruchman attempts to eat a healthy diet in order to maintain his

weight and meet fitness goals and tracks his protein intake as part of his fitness plan. Ruchman purchased (1) the cookie dough flavor of the Products from the Vitamin Shoppe website on or about May 22, 2024; (2) the blueberry cobbler flavor of the Products from the Vitamin Shoppe website on or about November 2, 2023; and (3) the blueberry cobbler flavor of the Products from the Vitamin Shoppe website on or about October 29, 2023. Ruchman believes and avers that he purchased the Products at other times during the Class period but has not retained receipts for those purchases.

3. Cassey Watson is and at all times relevant was a resident of College Station, Texas. Watson attempts to eat a healthy diet in order to maintain her weight and meet fitness goals and tracks her protein intake as part of her fitness plan. Watson purchased a variety pack containing all flavors of the Products from TikTok Shop on or about March 18, 2024. Watson believes and avers that she purchased the Products at other times during the Class period but has not retained receipts for those purchases.

4. Defendant Alpha Prime Supps LLC is a Florida limited liability company with its principal place of business and headquarters in Sunrise, Florida. On information and belief, decisions regarding the formulation and labelling of the Products are made at this Florida headquarters. On further information and belief,

no member of the limited liability company is a resident of Virginia, California, or Texas.

### **JURISDICTION AND VENUE**

5. 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).

6. Plaintiffs seek to represent Class members who are citizens of states or countries different from the Defendant.

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

8. 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).

9. In the alternative, the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000 exclusive of interest and costs.

10. This Court has personal jurisdiction over Defendant because Defendant is a resident and citizen of Florida.

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

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

### **FACTUAL ALLEGATIONS**

13. Defendant Alpha Prime Supps LLC formulates, manufactures, distributes, and sells a line of protein-infused brownies in the following flavors: banana nut, glazed chocolate doughnut, cinnamon roll, chocolate cookie monster, peanut butter chocolate, cookie dough, birthday cake blondie, blueberry cobbler, and cookies 'n cream. Each flavor of the Product states on the front label (or "principal display panel") that it contains 19 grams of protein in each brownie, as this promotional photo shows:



14. This claim is repeated in the “Nutrition Facts” panel on the back label, and on the Alpha Prime website at <https://alphaprimesupps.com/pages/prime-bites>.

15. Plaintiffs 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. These label and website 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 approximately 10% at the high end (or 17 grams of protein in a bar claiming to contain 19 grams) to 23% at the low end (or 14.7 grams of protein in a bar claiming to contain 19 grams of protein), as shown below:

<b>PRODUCT</b>	<b>STATED PROTEIN (grams)</b>	<b>ACTUAL PROTEIN (grams)</b>	<b>% SHORTFALL</b>
Chocolate Glazed Donut	19	15.8	16.84
Peanut Butter Chocolate	19	16.5	13.16
Birthday Cake	19	16.8	11.58
Glazed Cinnamon Roll	19	15.8	16.84
Chocolate Cookie Monster	19	14.7	22.63
Cookie Dough	19	15.8	16.84
Cookies 'n Cream Blondie	19	15.9	16.32
Blueberry Cobbler	19	17.1	10.00

17. 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.”

18. Purchasers of these protein brownies including Plaintiffs and other Class members rely on the stated protein content of the Products in order to count their “macros,” or to eat a specific amount of protein daily.

19. Plaintiffs reviewed the labels on the Product prior to their purchases, and reviewed the protein content claim made on those labels. Class members, including Plaintiffs, who viewed the Products' labels reasonably understood the protein content claim made on the labels to mean that the Products contained 19 grams of protein in each brownie.

20. Plaintiffs 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 Plaintiffs are under no obligation to investigate the protein 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 enabled 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 for competing products. These protein brownies sell for a significant premium over competing protein-infused products in the marketplace.

22. Consumers, including Plaintiffs, 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 protein content of 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 regarding the Products' protein content were false and misleading.

23. Plaintiffs 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 Plaintiffs' injury.

### **CLASS ACTION ALLEGATIONS**

24. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action individually and as representatives 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 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. Plaintiffs reserve 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 Plaintiffs' claims for Class-wide treatment is appropriate because Plaintiffs can prove the elements of their 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. Plaintiffs believe and aver 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 Plaintiffs 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 Plaintiffs seek 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):** Plaintiffs' 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 Plaintiffs, 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 Plaintiffs seek the same relief as the Class members.

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

35. **Adequacy of Representation – Rule 23(a)(4):** Plaintiffs are fair and adequate representatives of the Class because Plaintiffs' interests do not conflict

with the Class members' interests. Plaintiffs will prosecute this action vigorously and are highly motivated to seek redress against Defendant.

36. Furthermore, Plaintiffs have selected competent counsel who are experienced in class action and other complex litigation. Plaintiffs and Plaintiffs' 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. Plaintiffs are unable to rely on the Products' advertising or labeling because of the deceptions and misrepresentations contained in them, and so will not purchase the Products or other products offered by Defendant although they would like to.

40. Furthermore, Plaintiffs have not merely alleged an "informational" injury, but have also alleged that Defendant has been enabled to charge a price premium for the Products. Plaintiffs have therefore alleged that compliance with federal and state regulations regarding the protein content in the Products would

cause a decrease in the price of the Products at which Plaintiffs and members of the Class would be willing to buy the Products. As a result, Plaintiffs have alleged more than simply an interest in Defendant telling the truth on its labels, but an economic injury that further supports prospective injunctive relief.

41. **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.

42. 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)**

43. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

44. 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.

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

46. Relying on the protein claims made on the Products, consumers including Plaintiffs purchased the Products believing they were purchasing foods containing 19 grams of protein, when they were not.

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

48. Defendant’s unfair or deceptive trade practice has been the proximate cause of damages sustained by Plaintiffs and the Class.

49. Such damages recoverable by Plaintiffs and the Class include, without limitation, monetary losses and actual, punitive, and consequential damages, in an amount to be proven at trial, as well as costs of suit and attorneys’ fees.

**COUNT 2**  
**Unjust Enrichment Under Florida Law**  
**(National Class)**

50. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

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

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

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

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

55. 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.

56. Plaintiffs seek 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.

57. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact as a result of Defendant's actions as set forth above.



**COUNT 3**  
**Breach of Express Warranty Under Florida Law**  
**(National Class)**

58. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

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

60. Defendant's express warranties, and its affirmations of fact and promises made to Plaintiffs and the Class and regarding the Products, became part of the basis of the bargain between Defendant and Plaintiffs and the Class, which creates an express warranty that the Products would conform to those affirmations of fact, representations, promises, and descriptions.

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

62. As a direct and proximate cause of Defendant's breach of express warranty, Plaintiffs 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' protein content; (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, Plaintiffs respectfully request the Court grant the following relief against Defendant:

- a. Certifying the Class;
- b. Declaring that Defendant violated the statues 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 Plaintiffs;
- 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: June 28, 2024

/s/ William J. Cook  
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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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

DEFENDANTS

Zachary Melancon, Daniel James Ruchman, Cassoy Watson

Alpha Prime Supps, LLC

(b) County of Residence of First Listed Plaintiff Short Pump, Virginia (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Broward (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

William J. Cook, Cook Law, P.A., 610 E. Zack Street, Suite 505, Tampa, FL 33602, 813.489.1001

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

Grid of suit categories including CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION 28 U.S.C. 1332(d) Class Action Fairness Act - greater than 100 members of class, citizens of different states

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 5,000,000+

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

6/28/2024