

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

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

Better Choice Company Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

83-4284557
(I.R.S. Employer Identification No.)

12400 Race Track Road, Tampa, Florida
(Address of Principal Executive Offices)

33626
(Zip Code)

AMENDED AND RESTATED 2019 INCENTIVE AWARD PLAN
(Full title of the plan)

Kent Cunningham
Chief Executive Officer
12400 Race Track Road
Tampa, FL 33626
(813) 659-5921

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:
Louis Lombardo, Esq.
Denis A. Dufresne, Esq.
Meister Seelig & Fein LLP
125 Park Avenue, 7th Floor
New York, New York 10017
Tel: (212) 655-3500
Fax: (212) 655-3535

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

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company ☒ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

EXPLANATORY NOTE

This Registration Statement is being filed for the purpose of increasing the number of securities of the same class as other securities for which a Registration Statement of the registrant on Form S-8 relating to the same employee benefit plan is effective.

The registrant previously registered shares of its common stock, par value \$0.001 per share (“Common Stock”) for issuance under the Amended and Restated 2019 Incentive Award Plan under a Registration Statement on Form S-8 filed with the Securities and Exchange Commission (the “Commission”) on July 16, 2021 (File No. 333-257986) and a Registration Statement on Form S-8 filed with the Commission on July 25, 2022 (File No. 333- 262340). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of the Registration Statements referenced above.

EXHIBITS INDEX

Exhibit Number	Exhibit Description
5.1*	Opinion of Meister Seelig & Fein LLP
23.1*	Consent of Meister Seelig & Fein LLP (included in Exhibit 5.1)
23.2*	Consent of BDO USA LLP
24.1*	Power of Attorney (included on signature page to this Registration Statement)
99.1	Better Choice Company Inc. Amended and Restated 2019 Incentive Award Plan (incorporated by reference to Exhibit 10.19 to the Annual Report on Form 10-K filed on May 4, 2020)

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Tampa, State of Florida on January 18, 2024.

BETTER CHOICE COMPANY INC.

Date: January 18, 2024

By: /S/ CAROLINA MARTINEZ

Carolina Martinez
Chief Financial Officer
(Principal Financial and Accounting Officer)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Carolina Martinez his/her true and lawful attorney-in-fact, with full power of substitution and resubstitution for him/her and in his/her name, place and stead, in any and all capacities to sign any and all amendments to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact or his/her substitute, each acting alone, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1933, as amended, this Registration Statement has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/S/ KENT CUNNINGHAM</u> Kent Cunningham	Chief Executive Officer (Principal Executive Officer)	January 18, 2024
<u>/S/ CAROLINA MARTINEZ</u> Carolina Martinez	Chief Financial Officer (Principal Financial and Accounting Officer)	January 18, 2024
<u>/s/ MICHAEL YOUNG</u> Michael Young	Director	January 18, 2024
<u>/s/ LIONEL F. CONACHER</u> Lionel F. Conacher	Director	January 18, 2024
<u>/s/ GIL FRONZAGLIA</u> Gil Fronzaglia	Director	January 18, 2024
<u>/s/ ARLENE DICKINSON</u> Arlene Dickinson	Director	January 18, 2024
<u>/s/ JOHN M. WORD III</u> John M. Word III	Director	January 18, 2024



January 18, 2024

The Board of Directors
Better Choice Company Inc.
12400 Race Track Road
Tampa, Florida 33626

Re: 2019 Amended and Restated Incentive Award Plan

Ladies and Gentlemen:

We have acted as counsel to Better Choice Company Inc., a Delaware corporation (the "Company") in connection with the registration by the Company of an aggregate of 6,151,142 shares of its common stock, \$0.001 par value per share (the "Shares"), issuable under the Company's 2019 Amended and Restated Incentive Award Plan (the "Plan"). The Shares are included in a registration statement on Form S-8 under the Securities Act of 1933, as amended (the "Act"), filed with the Securities and Exchange Commission (the "Commission") on January 18, 2024 (the "Registration Statement"). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the related prospectuses, other than as expressly stated herein with respect to the issuance of the Shares.

In that connection, we have reviewed originals or copies identified to our satisfaction of the following documents (collectively, the "Documents"):

- (a) The Registration Statement and related prospectus;
- (b) The Plan;

(c) The certificate of incorporation of the Company, filed as Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2023 (the "Form 10-Q"), as filed with the Secretary of State of Delaware on January 4, 2019, as amended by those certain certificates of amendment filed as Exhibits 3.2 – 3.5 to the Form 10-Q, as filed with the Secretary of State of Delaware on February 5, 2019, March 14, 2019, April 22, 2019, July 31, 2020, respectively (collectively, the "Certificate of Incorporation"), the certificate of designations, powers, respectively (collectively, the "Certificate of Incorporation"), the certificate of designations, powers, preferences and other rights of preferred stock and qualifications limitations and restrictions thereof of Series F Preferred Stock of the Company, in the form filed as Exhibit 3.8 to the Form 10-Q (the "Certificate of Designations") and together with the Certificate of Incorporation, the "Charter") and the bylaws of the Company as presently in effect, in the form filed as Exhibit 3.7 to the Form 10-Q (such bylaws, together with the Charter, the "Governing Documents"), all as certified by an officer of the Company as of a recent date; and

*The Board of Directors
January 18, 2024
Page 2 of 3*

(d) Resolutions adopted by the Company's board of directors and stockholders adopting the Plan and authorizing the issuance of awards and Shares thereunder, as certified by an officer of the Company as of a recent date;

The opinions set forth herein are subject to the following qualifications, which are in addition to any other qualifications contained herein:

A. We have assumed without verification the genuineness of all signatures on all documents, the authority of the parties (other than the Company) executing such documents, the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as copies.

B. The opinions set forth herein are based on existing laws, ordinances, rules, regulations, court and administrative decisions as they presently have been interpreted and we can give no assurances that our opinions would not be different after any change in any of the foregoing occurring after the date hereof.

C. We have assumed without verification that, with respect to the minutes of any meetings of the stockholders of the Company or of the Board of Directors or any committees thereof of the Company that we have examined, due notice of the meetings was given or duly waived, the minutes accurately and completely reflect all actions taken at the meetings and a quorum was present and acting throughout the meetings.

D. We have assumed without verification the accuracy and completeness of the information contained in (i) the Registration Statement (including but not limited to statements therein as to the number of shares of common stock issued and outstanding), as well as all of the other Documents and (ii) all corporate records made available to us by the Company.

E. We have assumed that the form of certificates representing the Shares to be issued pursuant to the Plan will conform to the applicable requirements of the General Corporation Law of the State of Delaware (the "DGCL") and the Governing Documents.

F. We express no opinion herein as to the laws of any state or jurisdiction other than the DGCL and the federal laws of the United States of America. As to matters governed by the laws specified in the foregoing sentence, we have relied exclusively on the latest standard compilations of such statutes and laws as reproduced in commonly accepted unofficial publications available to us. The opinions herein are as of the date hereof and are based on current law and facts and circumstances. We have no obligation, and expressly decline any undertaking, to revise or supplement this opinion or otherwise advise you should applicable law or the existing facts and circumstances change.

*The Board of Directors
January 18, 2024
Page 3 of 3*

Based on the foregoing, upon the assumptions that there will be no changes in the documents we have examined and the other matters referred to above, we are of the opinion that the Shares have been duly authorized for issuance and, when the Shares are issued and paid for in accordance with the terms and conditions of the Plan, the Shares will be validly issued, fully paid and nonassessable.

It is understood that this opinion is to be used only in connection with the offer and sale of the Shares while the Registration Statement is in effect.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters.

We hereby consent to the filing of this opinion with the Commission in connection with the Registration Statement in accordance with the requirements of Item 601(b) (5) of Regulation S-K under the Securities Act. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Meister Seelig & Fein PLLC

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We hereby consent to the incorporation by reference in this Registration Statement of our report dated March 28, 2023, relating to the consolidated financial statements of Better Choice Company Inc. (the "Company") appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2022. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, P.C.

Tampa, Florida
January 18, 2024

Calculation of Filing Fee Tables

FORM S-8
REGISTRATION STATEMENT

(Form Type)

Better Choice Company Inc.

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

<u>Security Type</u>	<u>Security Class Title</u>	<u>Fee Calculation Rule</u>	<u>Amount to be Registered⁽¹⁾</u>	<u>Proposed Maximum Offering Price Per Share (3)</u>	<u>Maximum Aggregate Offering Price</u>	<u>Fee Rate</u>	<u>Amount of Registration Fee</u>
Equity	Common Stock, \$0.001 par value share	Rule 457(c) and Rule 457(h)	6,151,142(2)	\$ 0.26	\$ 1,602,372.36	0.00014760	\$ 236.51
Total Offering Amounts							\$ 236.51
Total Fees Previously Paid							\$ 0
Total Fee Offsets							\$ 0
Net Fee Due							\$ 236.51

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of common stock, par value \$0.001 per share (“Common Stock”), of Better Choice Company Inc. (the “Company”) that may become issuable under the Company’s 2019 Amended and restated Incentive Award Plan (the “2019 Plan”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.
- (2) Represents shares of Common Stock that were automatically added to the shares authorized for issuance under the Amended and Restated 2019 Incentive Award Plan on January 1, 2023 and January 1, 2024 pursuant to an “evergreen” provision contained in the Plan. Pursuant to such provision, on January 1st of each year from 2021 through 2029, the number of shares authorized for issuance under the Plan is automatically increased by: (a) a number equal to 10% of the total number of shares of Common Stock outstanding (on an as-converted basis) on December 31st of the preceding calendar year; or (b) a number determined by the Registrant’s board of directors that is less than the amount set forth in the foregoing clause (a).
- (3) Estimated solely for purposes of calculating the registration fee pursuant to Rules 457(h) and 457(c) of the Securities Act, and based upon the average of the high and low sales prices (\$0.2710 and \$0.2500) of the Common Stock as reported on the NYSE American on January 17, 2024.