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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

QUYNH PHAN, on behalf of himself and all
 others similarly situated,

Plaintiff,

v.

SARGENTO FOODS INC.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff QUYNH PHAN (“Phan” or “Plaintiff”), a resident of Santa Clara County, California, individually and on behalf of other similarly situated individuals, by and through his counsel, hereby files this Class Action Complaint for equitable relief and damages against Defendant SARGENTO FOODS INC. (“Sargento” or “Defendant”) regarding the deceptive labeling, marketing, and sale of Sargento’s dairy cheese products (“the Products”¹) with the claim

¹ The following Sargento products are deceptively labeled and advertised as alleged in this Complaint: Monterey Jack Natural Cheese, Natural Double Cheddar Cheese, Natural White Cheddar Cheese, Colby Natural Cheese, Colby-Jack Natural Cheese, Medium Cheddar Cheese, Medium Natural Cheddar Cheese, Havarti Natural Cheese, Pepper Jack Natural Cheese, Swiss

“No Antibiotics” when the Products are made with milk from cows raised with antibiotics and when the Products sometimes contain antibiotics, and alleges the following based upon information, belief, and the investigation of his counsel:

INTRODUCTION

1. Consumers are increasingly interested in and aware of how their food is produced due to concerns about public health, the environment, and animal welfare.

2. In particular, consumers are concerned that the use of antibiotics in industrial agriculture contributes to the growing threat of antibiotic resistance. Consumers are also concerned about the use of antibiotics in industrial animal agriculture because the animals, including dairy cows, are subjected to treatment and conditions that inevitably make them sick.

3. According to the Centers for Disease Control and the World Health Organization, antibiotic resistance—the ability of germs to defeat the drugs designed to kill them—is one of the

Natural Cheese, Baby Swiss Natural Cheese, Aged Swiss Natural Cheese, Asadero Natural cheese, Sharp White Cheddar Cheese, Mild Yellow Natural Cheddar Cheese, Sharp Natural Cheddar Cheese, Extra Sharp Natural Cheddar Cheese, 4 State Natural Cheddar Cheese, Natural Double Cheddar Cheese, Taco Natural Cheese, Nacho & Taco Natural Cheese, Authentic Mexican Natural Cheese, Provolone with Natural Smoke Flavor Natural Cheese, 4 Cheese Pizzeria Natura Cheese, 4 Cheese Mexican Natural Cheese, Cheddar Jack Natural Cheese, Mozzarella Natural Cheese, Parmesan Natural Cheese, 4 Cheese Italian Natural Cheese, 18-Month Aged Natural Cheddar Cheese, Aged Italian Blend Natural Cheese, 14-Month Aged Parmesan Natural Cheese, Tomato & Basil Jack Cheese, Smokehouse Cheddar Natural Cheese, Garlic & Herb Jack Cheese, Reduced Fat Pepper Jack Natural Cheese, Reduced Fat Medium Natural Cheddar Cheese, Reduced Fat Colby Jack Natural Cheese, Fresh Asiago Natural Cheese, Gouda Natural Cheese, Muenster Natural Cheese, Sharp, Sharp Non-Smoked Provolone Natural Cheese, Cheddar-Mozzarella Natural Cheese, Aged Gouda Natural Cheese, Sharp White Natural Cheese, Aged White Natural Cheddar Cheese, Part-Skim Mozzarella Natural Cheese, Colby-Pepper Jack Natural Cheese, and Ricotta Natural Cheese. Discovery may reveal that additional Sargento products should be included within the scope of the allegations in this Complaint, and Plaintiff reserves the right to add such products.

greatest and most urgent public health risks of our time.² More than 2.8 million antibiotic-resistant infections occur in the United States each year, and more than 35,000 people die as a result.³ The problem of antibiotic resistance has only been exacerbated by the COVID-19 pandemic due to the widespread use of antibiotics in patients diagnosed with COVID-19.⁴

4. Antibiotics are used extensively in factory-style dairy production because the treatment and conditions to which cows are subjected impair their health and cause infections. The majority of dairy cows in the United States are confined indoors and not allowed to graze on pasture.⁵ Teat trauma caused by milking machines, genetic selection for high milk yields, and unsanitary conditions make cows susceptible to clinical mastitis from pathogenic bacteria, which is the most commonly reported health problem in the dairy industry.⁶

5. The use of antibiotics in industrial agriculture causes residues of antibiotics and antibiotic-resistant bacteria to emerge on agricultural lands, move through the environment,

² *Antibiotic Resistance Threats in the United States, 2019*, Centers for Disease Control (Dec. 2019) at 3, <https://www.cdc.gov/drugresistance/pdf/threats-report/2019-ar-threats-report-508.pdf>; *In the face of slow progress, WHO offers a new tool and sets a target to accelerate action against antimicrobial resistance*, World Health Organization (June 18, 2019), <https://www.who.int/news/item/18-06-2019-in-the-face-of-slow-progress-who-offers-a-new-tool-and-sets-a-target-to-accelerate-action-against-antimicrobial-resistance>.

³ *Antibiotic Resistance Threats in the United States, 2019*, Centers for Disease Control (Dec. 2019) at vii, <https://www.cdc.gov/drugresistance/pdf/threats-report/2019-ar-threats-report-508.pdf>.

⁴ The COVID-19 pandemic has resulted in increased antibiotic use because COVID-19 patients are often prescribed antibiotics to prevent secondary bacterial infections, and many COVID-19 patients receive antibiotics even when not clinically indicated. Steffanie A. Strathdee et al., *Confronting antimicrobial resistance beyond the COVID-19 pandemic and the 2020 US election*, 396 *Lancet* 1050 (Sept. 29, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)32063-8/fulltext?dgcid=raven_jbs_etoc_email](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32063-8/fulltext?dgcid=raven_jbs_etoc_email).

⁵ *An HSUS Report: The Welfare of Cows in the Dairy Industry*, The Humane Society of the United States at 3, <https://www.humanesociety.org/sites/default/files/docs/hsus-report-animal-welfare-cow-dairy-industry.pdf> (last visited Dec. 21, 2020).

⁶ *Id.* at 5.

1 contaminate waterways, and reach consumers in food.⁷ Antibiotics do not have to end up in food
2 to pose a public health risk. Current science shows that a major cause of the development and
3 spread of antibiotic resistance in human pathogens is environmental contamination from
4 agricultural use.⁸

5 6. Sargento is one of the United States' largest producers of dairy cheese products,
6 which it sells under the Sargento name brand.⁹

7 7. Sargento knows that consumers seek out and wish to buy cheese products made
8 with milk from cows raised without antibiotics. Sargento also knows that consumers will pay
9 more for, or buy more of, such products than they would products made with milk from cows
10 raised with antibiotics.

11 8. To capture this growing market of consumers, Sargento labels the retail packaging
12 of the Products with the label "No Antibiotics."

13 9. The "No Antibiotics" claim is false, deceptive, and misleading. The Products are
14 produced with milk from cows who receive antibiotics. In addition, at least some of the Products,
15
16

17 ⁷ Terry Shistar & Carla Curle, *Agricultural Uses of Antibiotics Escalate Bacterial Resistance*,
Beyond Pesticides (Winter 2016-17),
18 [https://www.beyondpesticides.org/assets/media/documents/journal/bp-36.4-w17-Antibiotics-
Cited2.pdf](https://www.beyondpesticides.org/assets/media/documents/journal/bp-36.4-w17-Antibiotics-Cited2.pdf).

19 ⁸ Terry Shistar, *A Is for Apples, Alar, and Antibiotics*, Beyond Pesticides,
20 [https://www.beyondpesticides.org/assets/media/documents/infoservices/pesticidesandyou/docu-
ments/AisforApplesCited.pdf](https://www.beyondpesticides.org/assets/media/documents/infoservices/pesticidesandyou/documents/AisforApplesCited.pdf) (last visited Dec. 21, 2020); *see also* Thomas F. O'Brien,
21 *Emergence, Spread, and Environmental Effect of Antimicrobial Resistance: How Use of an
Antimicrobial Anywhere Can Increase Resistance to Any Antimicrobial Anywhere Else*, *Clinical
Infectious Diseases* S78-84 (June 1, 2002), <https://pubmed.ncbi.nlm.nih.gov/11988877/>; J.
22 Jutkina et al., *Antibiotics and Common Antibacterial Biocides Stimulate Horizontal Transfer of
Resistance at Low Concentrations*, 616-617 *Sci. of the Total Env.* 172-78 (Mar. 2018),
23 <https://pubmed.ncbi.nlm.nih.gov/29112840/>.

⁹ *About Us*, Sargento, <https://www.sargento.com/our-company/about-us> (last visited Dec. 21,
2020).

1 in their final form as sold to consumers, still contain detectable levels of antibiotics, which are
2 then ingested by consumers.

3 10. Reasonable consumers, seeing Sargento's prominent "No Antibiotics"
4 representation, would expect that the Products are made without the use of antibiotics and,
5 therefore, never contain antibiotics.

6 11. In sum, Sargento is deceiving consumers into believing the Products are made
7 without the use of antibiotics, when in fact they are made with milk from cows who are treated
8 with antibiotics, and that the Products contain no antibiotics, when in fact some of them do contain
9 antibiotics.

10 12. By deceiving consumers about the nature and quality of the Products, Sargento is
11 able to sell a greater volume of the Products, to charge higher prices for the Products, and to take
12 away market share from competing products, thereby increasing its own sales and profits.

13 13. Consumers lack the information and scientific knowledge necessary to determine
14 whether the Products are in fact made with "No Antibiotics" and to know or to ascertain the true
15 quality of the Products.

16 14. As a result of its false and misleading labeling and advertising, and omissions of
17 fact, Sargento was and is able to sell the Products to consumers in the United States, including in
18 the State of California, and to realize sizeable profits.

19 15. During any applicable statute of limitations period, Plaintiff and members of the
20 Class (described below) saw Sargento's "No Antibiotics" misrepresentations when purchasing
21 the Products. Plaintiff and other Class members paid more for the Products based upon the
22 misrepresentations than they otherwise would have paid, and/or purchased the Products, or
23 purchased more of the Products, when they would not have if they had known the truth about



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