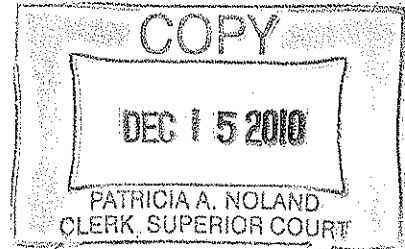


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ARIZONA SUPERIOR COURT
COUNTY OF PIMA

12 STATE OF ARIZONA, *ex rel.* TERRY
13 GODDARD, Attorney General,

14 Plaintiff

15 vs.

16 THE DANNON COMPANY, INC., a
17 Delaware corporation,

18 Defendant.

No. **20109717**

**JOINT MOTION TO ENTER CONSENT
JUDGMENT**

Christopher P. Staring

19 The parties, by and through undersigned counsel, respectfully move this Court to enter
20 an Order to Consent Judgment, a copy of which is filed contemporaneously herewith.

21 1. The State of Arizona filed a Complaint alleging violations of A.R.S. § 44-1521
22 *et seq.*, the Consumer Fraud Act, against defendant THE DANNON COMPANY, INC.

23 2. The State of Arizona, by its counsel, and THE DANNON COMPANY, INC., by
24 its counsel, has agreed to the entry of this Order by the Court without trial or adjudication of
25 any issue of fact or law. THE DANNON COMPANY, INC. denies the allegations of the
26 Complaint and denies violating the Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*
27
28

3. This Court has jurisdiction over the subject matter of this Consent Judgment and over all parties.

4. The terms of the Consent Judgment ("Judgment") shall be governed by the laws of the State of Arizona.

I. INTRODUCTION

1.1 The Plaintiff, the State of Arizona, by and through Terry Goddard, the Attorney General, and Defendant, The Dannon Company, Inc, a Delaware corporation, as evidenced by the signatures of counsel, do consent to the entry of this Judgment and its provisions.

1.2 After engaging in settlement discussions, Defendant enters into this Judgment to avoid the time and expense associated with litigation. This is a Judgment for which execution may issue. This agreement is for settlement purposes only and does not constitute an admission by Defendant that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than the jurisdictional facts, are true.

1.3 Defendant hereby accepts and expressly waives any defect in connection with service of process issued to Defendant by the Plaintiff.

1.4 This Judgment is entered into by Defendant as its own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon it by this Judgment, and it consents to its entry without further notice, and avers that no offers, agreements or inducements of any nature whatsoever have been made to it by the Plaintiff or their attorneys or any State employee to procure this Judgment.

1.5 Defendant has, by signature of counsel hereto, waived any right to add, alter, amend, appeal, petition for certiorari, or move to reargue or rehear or be heard in connection with any judicial proceeding upon this Judgment and any and all challenges in law or equity to the entry of the Judgment by the courts. If the court elects to hold any hearing on this Judgment, a representative of the Attorney General's office will briefly summarize the settlement for the court. Defendant agrees to support the Judgment and its terms at any such hearing for approval.

1.6 In the event the Court shall not approve this Judgment, this Judgment shall be of no force and effect against either party.

II. DEFINITIONS

2.1 As used in this Judgment, the following words or terms shall have the following meanings:

- A. **“Adequate and Well-Controlled Human Clinical Study”** means a human clinical study conducted by persons qualified by training and experience to conduct such study. Such study shall be randomized, and unless it can be demonstrated that blinding or placebo control cannot be effectively or ethically implemented given the nature of the intervention, shall be double-blind and placebo-controlled.
- B. **“Advertise,” “Advertisement,” or “Advertising,”** means any written, oral, graphic, or electronic statement, illustration, or depiction, including Labels or Labeling, that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, the Defendant’s goods or services, whether the statement appears in Labels or Labeling, in a brochure, newspaper, magazine, free standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, electronic mail, website or other digital format, slide, radio, broadcast television, cable television, or commercial or infomercial whether live or recorded.
- C. **“And” and “Or”** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.
- D. **“Attorney General”** means Office of the Arizona Attorney General.
- E. **“Covered Conduct”** shall mean the Defendant’s Advertising, Marketing and Labeling practices regarding the Covered Products through the Effective Date of this Judgment.

- 1 F. **“Covered Product”** or **“Covered Products”** shall mean (i) any yogurt,
2 including but not limited to Activia yogurt; (ii) any dairy drink; and (iii)
3 any food or drink not covered by the foregoing that contains a probiotic,
4 including, but not limited to, DanActive.
- 5 G. **“Defendant”** or **“Dannon”** shall refer to The Dannon Company, Inc., a
6 Delaware corporation with its principal place of business in White
7 Plains, NY. For purposes of this Consent Judgment only, the term
8 includes its successors and assigns and their officers, and each of the
9 above’s agents, representatives, and employees.
- 10 H. **“Disease”** shall refer to damage to an organ, part, structure, or system of
11 the body such that it does not function properly (*e.g.*, cardiovascular
12 disease), or a state of health leading to such dysfunctioning (*e.g.*
13 hypertension); except that diseases resulting from essential nutrient
14 deficiencies (*e.g.*, scurvy, pellagra) are not included in this definition.
- 15 I. **“Effective Date”** shall refer to the date that this Judgment is signed and
16 fully executed by the parties and approved by the Court. However, the
17 Effective Date as it affects existing Labeling shall be one hundred twenty
18 (120) days after this Judgment is signed and fully executed by the parties
19 and approved by the Court. All Covered Products manufactured after the
20 one hundred twenty (120) days shall have the revised Labeling.
21 However, the Effective Date for existing print Advertisements and
22 broadcast Advertisements shall be 90 days after this Judgment is signed
23 and fully executed by the parties and approved by the Court.
- 24 J. **“Essentially Equivalent Product”** means a product that contains the
25 identical ingredients, except for inactive ingredients (*e.g.*, inactive
26 binders, flavors, preservatives, colors, fillers, excipients), in the same
27 form and dosage, and with the same route of administration (*e.g.*, orally,
28 sublingually), as the covered product; provided that the covered product

1 may contain additional ingredients or other differences in formulation to
2 affect taste, texture, or nutritional value (so long as the other differences
3 do not change the form of the product or involve the ingredients from
4 which the functional benefit is derived), if reliable scientific evidence
5 generally accepted by experts in the field demonstrates that the amount
6 of additional ingredients, combination of additional ingredients, and any
7 other differences in formulation are unlikely to impede or inhibit the
8 effectiveness of the ingredients in the essentially equivalent product.

9 K. **"Including"** shall mean including, without limitation.

10 L. **"Label"** shall mean a display of written, printed or graphic matter upon
11 the immediate container of any article, or on the outside container or
12 wrapper, if any, of the retail package of such article.

13 M. **"Labeling"** shall mean all Labels and other written, printed, or graphic
14 matter upon any article or any of its containers or wrappers, or
15 accompanying such article.

16 N. **"Marketing"** shall mean any act or process or technique of promoting,
17 offering, selling or distributing a product or service.

18 O. **"Probiotics"** shall mean live microorganisms, which when administered
19 in adequate amounts, confer a health benefit on the host, excluding the
20 cultures *Streptococcus thermophilus* and *Lactobacillus bulgaricus*.

21 P. **"Settling States"** shall mean and include: Alaska, Arizona, Arkansas,
22 Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois,
23 Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts,
24 Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New
25 Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon,
26 Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee,
27 Texas, Vermont, Washington, West Virginia and Wisconsin.

28 Q. **"State," "State of Arizona," or "Attorney General"** refers to the

1 Plaintiff and shall mean the Office of the Arizona Attorney General.

2 **III. JURISDICTION**

3 3.1. Jurisdiction of this Court over the subject matter and over Defendant for the
4 purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this
5 Court for the purpose of enabling the State to apply to this Court for such further Judgments
6 and directions as may be necessary or appropriate for the construction, modification or
7 execution of this Judgment, including the enforcement of compliance therewith and remedies,
8 penalties and sanctions for violation thereof. Defendant agrees to pay all court costs and
9 attorneys' fees associated with any successful petition to enforce any provision of this
10 Judgment against Defendant.

11 **IV. VENUE**

12 4.1 Pursuant to A.R.S. § 44-1528, venue as to all matters between the parties
13 relating hereto or arising out of this Judgment shall be in the Superior Court in Pima County,
14 Arizona.

15 **V. DEFENDANT**

16 5.1 Defendant warrants and represents that it is the proper party to this Judgment.

17 5.2 Defendant represents and warrants that the execution and delivery of this
18 Judgment is its free and voluntary act, and that this Judgment is the result of good faith
19 negotiations.

20 5.3 Defendant represents and warrants that signatories to this Judgment have
21 authority to act for and bind Defendant.

22 5.4 Defendant acknowledges that it understands that the State and this Court
23 expressly rely upon all representations and warranties in this Judgment. Defendant further
24 acknowledges and understands that if Defendant makes any false or deceptive representation or
25 warranty, the State has the right to vacate or set aside this Judgment, *inter alia*, in whole or in
26 part, and to move that the Defendant making such false, or deceptive representation(s) or
27 warranty(ies) be held in contempt and to seek sanctions and remedies under any other law,
28

1 regulation or rule, together with any and all such other sanctions, remedies or relief as may be
2 available to the State in law or equity, if the State so elects.

3 **VI. APPLICATION OF JUDGMENT**

4 6.1 Defendant agrees that the duties, responsibilities, burdens and obligations
5 undertaken in connection with this Judgment shall apply to The Dannon Company, Inc., its
6 successors and assigns, and their officers, and each of the above's agents, representatives, and
7 employees.

8 **VII. PERMANENT INJUNCTION**

9 7.1 All of the requirements of this section, Part VII, are cumulative and any
10 representation that Defendant makes shall comply with each and every provision in this
11 Part VII. Except as provided in paragraph 7.2, upon entry of this Judgment, Defendant, directly
12 or through any corporation, partnership, subsidiary, division, trade name, or other device, is
13 hereby permanently enjoined and restrained pursuant to A.R.S. § 44-1521, *et seq.* from:

14 A. Making any express or implied representation in connection with the
15 Advertising, Marketing, or Labeling of a Covered Product, including
16 through the use of a product name, endorsement, depiction, or
17 illustration, which in the context of the Labeling, Advertisement, or
18 Marketing material, directly states or implies that such Product may be
19 used in the diagnosis, cure, mitigation, treatment, or prevention of a
20 Disease, including but not limited to:

- 21 1. Using:
- 22 a. the term *L. casei* *Defensis*;
- 23 b. the phrase, "strengthens your body's defenses;" or
- 24 c. any depictions, characters or vignettes that imply active
- 25 germ fighting;
- 26 2. Representing that any Covered Product can be used to treat,
- 27 mitigate, cure or prevent diarrhea; provided, however, a
- 28 structure/function claim that the Covered Product supports or

1 promotes relief from temporary or occasional diarrhea is not
2 prohibited, if the Defendant possesses and relies upon competent
3 and reliable scientific evidence that is sufficient in quality and
4 quantity based on standards generally accepted in the relevant
5 scientific fields when considered in light of the entire body of
6 relevant and reliable scientific evidence that substantiates that the
7 representation is true. For purposes of this Paragraph, competent
8 and reliable scientific evidence means tests, analyses, research, or
9 studies that have been conducted and evaluated in an objective
10 manner by qualified persons and are generally accepted in the
11 profession to yield accurate and reliable results.

- 12 3. Representing that any Covered Product can be used to treat,
13 mitigate, cure, or prevent constipation, including through the use
14 of depictions to symbolize relief from constipation; provided,
15 however a structure/function claim that the Covered Product
16 supports or promotes relief from temporary and occasional
17 constipation is not prohibited, if the Defendant possesses and
18 relies upon competent and reliable scientific evidence that is
19 sufficient in quality and quantity based on standards generally
20 accepted in the relevant scientific fields when considered in light
21 of the entire body of relevant and reliable scientific evidence that
22 substantiates that the representation is true. For purposes of this
23 Paragraph, competent and reliable scientific evidence means
24 tests, analyses, research, or studies that have been conducted and
25 evaluated in an objective manner by qualified persons and are
26 generally accepted in the profession to yield accurate and reliable
27 results.
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4. Using the word “immunity,” or the phrase, “*L. casei immunitas*”, provided however, that a structure/function claim can be made for the word “immunity,” or the phrase “*L. casei Immunitas*” in which (a) the Defendant clearly and conspicuously modifies the word “immunity,” or the phrase, “*L. casei Immunitas*” with a statement that the Covered Product merely helps to promote, support or maintain the immune system of persons who consume a Covered Product and (b) the Defendant possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this paragraph, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.
5. Citing, summarizing, or linking to clinical studies or research in the Labeling of a Covered Product if the citation, summary, or link to the clinical studies or research, in the context of the Labeling as a whole, implies that a Covered Product or an ingredient in a Covered Product treats, mitigates, cures, or prevents a Disease, e.g., placement on the immediate product labeling or packaging, inappropriate prominence, or lack of relationship to the Covered Product’s express claims.
6. Depicting a cellular wall fortified with a Covered Product that repels all, or nearly all, of the depictions of germs.

1 B. Making any express or implied representation in connection with the
2 Advertising, Marketing, or Labeling of a Covered Product, including
3 through the use of a product name, endorsement, depiction, or
4 illustration, that such Product reduces the likelihood of getting a cold or
5 the flu, which in the context of the Labeling, Advertisement, or
6 Marketing material, directly states or implies that any Covered Product
7 can be used to treat, mitigate, or prevent a cold or the flu.

8 C. Making any express or implied representation in connection with the
9 Advertising, Marketing or Labeling of Activia yogurt, including through
10 the use of a product name, endorsement, depiction, or illustration, that
11 Activia yogurt relieves temporary irregularity or helps with slow
12 intestinal transit time, unless the representation is non-misleading,
13 conveys that eating three servings a day is required to obtain the benefit
14 and, at the time the claim is made, the Defendant possesses and relies
15 upon competent and reliable scientific evidence that substantiates that
16 the representation is true. Provided, however, that nothing in this
17 Paragraph shall prohibit Defendant from representing that such benefit
18 can be achieved from eating less than three servings a day if such claim
19 is non-misleading and Defendant possesses and relies upon competent
20 and reliable scientific evidence that substantiates that the representation
21 is true.

22 For purposes of paragraph 7.1(C), competent and reliable scientific
23 evidence shall consist of at least two Adequate and Well-Controlled
24 Human Clinical Studies of Activia yogurt, or of an Essentially
25 Equivalent Product, conducted by different researchers, independently of
26 each other, that conform to acceptable designs and protocols and whose
27 results, when considered in light of the entire body of relevant and
28 reliable scientific evidence, are sufficient to substantiate that the

1 representation is true. Defendant shall have the burden of proving that a
2 product satisfies the definition of Essentially Equivalent Product.

- 3 D. Making any express or implied representation in connection with the
4 Advertising, Marketing or Labeling of any Covered Product other than
5 Activia yogurt, including through the use of a product name,
6 endorsement, depiction, or illustration, that such Product relieves
7 temporary irregularity or helps with slow intestinal transit time, unless
8 the representation is non-misleading and, at the time the claim is made,
9 the Defendant possesses and relies upon competent and reliable scientific
10 evidence that substantiates that the representation is true.

11 For purposes of paragraph 7.1(D), competent and reliable scientific
12 evidence shall consist of at least two Adequate and Well-Controlled
13 Human Clinical Studies of the Covered Product, or of an Essentially
14 Equivalent Product, conducted by different researchers, independently of
15 each other, that conform to acceptable designs and protocols and whose
16 results, when considered in light of the entire body of relevant and
17 reliable scientific evidence, are sufficient to substantiate that the
18 representation is true. Defendant shall have the burden of proving that a
19 product satisfies the definition of Essentially Equivalent Product.

- 20 E. Making any express or implied representation in connection with the
21 Advertising, Marketing or Labeling of a Covered Product, including
22 through the use of a product name, endorsement, depiction or
23 illustration, about the health benefits, performance, efficacy or safety of
24 a Covered Product, unless the representation is non-misleading, and, at
25 the time the claim is made, the Defendant possesses and relies upon
26 competent and reliable scientific evidence that is sufficient in quality and
27 quantity based on standards generally accepted in the relevant scientific
28 fields when considered in light of the entire body of relevant and reliable

1 scientific evidence to substantiate that the representation is true.

2 For the purposes of paragraph 7.1(E), competent and reliable scientific
3 evidence means tests, analyses, research, or studies that have been
4 conducted and evaluated in an objective manner by qualified persons and
5 are generally accepted in the profession to yield accurate and reliable
6 results.

7 F. Making, in connection with the Advertising, Marketing, or Labeling of a
8 Covered Product, any express or implied representation about the
9 existence, contents, methodology, statistical analyses, study scope,
10 validity, results, conclusions, or interpretations of any test, study, or
11 research that is false, misleading or deceptive, or that is misleading or
12 deceptive when considered together with other representations or
13 depictions.

14 G. Using, in connection with the Labeling of a Covered Product, the term
15 Bifidus Regularis™, or any other fanciful term that expressly or
16 impliedly represents that a Covered Product helps regulate the digestive
17 system unless the Defendant clearly and conspicuously identifies the true
18 scientific name of the bacteria, including its genus, species and strain.

19 H. Using, in connection with the Labeling of a Covered Product, the term L.
20 casei Immunitas™, or any other fanciful term that expressly or impliedly
21 represents that a Covered Product supports, promotes, or maintains the
22 functioning of the immune system unless the Defendant clearly and
23 conspicuously identifies the true scientific name of the bacteria,
24 including its genus, species and strain.

25 7.2 Additional Terms Governing Injunctive Relief

26 A. Notwithstanding any of the foregoing provisions, Defendant, directly or
27 through any corporation, partnership, subsidiary, division, trade name, or
28 other device, is hereby permanently enjoined and restrained from making

1 any express or implied statement(s) in connection with the Advertising,
2 Marketing or Labeling of any Covered Product that is false, misleading,
3 or deceptive, or that is misleading or deceptive when considered together
4 with other representations or depictions; and from omitting any material
5 information such that an express or implied statement made by the
6 Defendant, directly or through any corporation, partnership, subsidiary,
7 division, trade name, or other device, is misleading or deceptive.

8 B. Nothing in this Judgment shall prohibit Defendant, directly or through
9 any corporation, partnership, subsidiary, division, trade name, or other
10 device, from making any lawful, non-misleading, and non-deceptive
11 representation for any Covered Product that is: (i) specifically permitted
12 in Labeling for such Product by regulations promulgated by the Food
13 and Drug Administration pursuant to the Nutrition Labeling and
14 Education Act of 1990; (ii) lawful for the Covered Product under the
15 Federal Food Drug and Cosmetic Act; (iii) lawful for the Covered
16 Product under any final regulation promulgated by the Food and Drug
17 Administration; (iv) lawful for the Covered Product under any new drug
18 application applicable to such Product approved by the Food and Drug
19 Administration; (v) part of the lawful marketing for the Covered Product
20 of a homeopathic drug; (vi) part of the lawful marketing for the Covered
21 Product of a Medical Food under the Orphan Drug Amendments of
22 1998; or (vii) lawful for the Covered Product under a FDA monograph of
23 an over-the-counter drug. The failure of the FDA, FTC, or other law
24 enforcement agency to take an enforcement action, or the mere presence
25 of a representation, statement, or claim in the marketplace does not mean
26 a representation, statement, or claim is lawful.

VIII. COMPLIANCE

8.1 Pursuant to A.R.S. § 44-1528, the Defendant shall, in connection with the Advertising, promotion, offering for sale, or distribution in or from Arizona of any Covered Product:

- A. Take reasonable steps sufficient to monitor and ensure that the Defendant complies with this Judgment. In conducting periodic monitoring of compliance, Defendant shall document and retain sufficient evidence to detail and substantiate their monitoring efforts and produce such documentation as may be requested by the State within thirty (30) days of such a request.
- B. Conduct periodic reasonable monitoring of representations made by Defendant concerning any Covered Product when the relevant actors are engaged in sales or other customer service functions, including representations made orally or through electronic communications. For a period of five (5) years from the date of entry of this Judgment, in conducting periodic monitoring of the representations made by Defendant concerning any Covered Product, Defendant shall document and retain sufficient evidence to detail and substantiate their monitoring efforts and produce such documentation to the State within thirty (30) days of such a request.
- C. Conduct periodic reasonable monitoring of representations made about any Covered Product on all Internet websites operated or maintained by Defendant or anyone doing so on their behalf. For a period of five (5) years from the date of entry of this Judgment, in conducting periodic monitoring of representations made about any Covered Product on Internet websites operated or maintained by Defendant or anyone doing so on its behalf, Defendant shall document and retain sufficient evidence to detail and substantiate their monitoring efforts and produce such

1 documentation and records as may be requested by the State within
2 thirty (30) days of such a request.

3 D. Take appropriate disciplinary action against any employee or agent who
4 knew or should have known that he or she had engaged in any conduct
5 prohibited by this Judgment, up to and including termination of any such
6 employment or agency relationship, within a reasonable period of time
7 not to exceed thirty (30) days after Defendant knows or should have
8 known that such person is, or has been, engaging in such conduct.

9 E. Within sixty (60) days after entry of this Judgment, send an exact copy
10 of this Judgment to each of Defendant's directors, officers, and any
11 employee, agent, or third party who creates, reviews, or edits
12 Defendant's Advertising, Marketing or Labeling of Covered Products.
13 Defendant shall document and retain sufficient evidence to confirm
14 distribution as required by this paragraph and shall produce such
15 documentation to the State within thirty (30) days of such a request.

16 F. Within sixty (60) days of entry of this Judgment, institute a reasonable
17 program of surveillance that is adequate to reveal whether Defendant is
18 disseminating in or from Arizona any Advertising, Marketing or
19 Labeling material that contains any representation that violates the
20 provisions of this Judgment. For a period of five (5) years from the date
21 of entry of this Judgment, Defendant shall document and retain sufficient
22 evidence to detail and substantiate its program of surveillance and shall
23 produce such documentation to the State within thirty (30) days of such a
24 request.

25 G. Promptly, and in a reasonable manner, investigate any information
26 Defendant receives that any retailer or other third party in Arizona is
27 using or disseminating any Advertisements or Marketing material, or
28 making any oral statements, that violate the provisions of this Judgment,

1 and send Exhibit A to any retailer or other third party whose
2 Advertisements or Marketing materials of a Covered Product may
3 violate the terms of this Judgment if made by the Defendant. For a period
4 of five (5) years from the date of entry of this Judgment, the Defendant
5 shall document and retain sufficient evidence to detail and substantiate
6 their investigation efforts and shall produce such documentation to the
7 State within thirty (30) days of such a request.

8 IX. PAYMENT TO THE STATES

9 9.1 As part of its settlement with the Settling States, Defendant is ordered to pay the
10 Settling States a total of twenty-one million dollars (\$21,000,000.00). This payment shall not
11 be considered a civil fine or penalty.

12 9.2 The Arizona Attorney General's Office shall receive eight hundred sixty-one
13 thousand and one hundred eleven dollars (\$861,111.00) as its portion of the payment amount
14 set out in paragraph 9.1, above, for distribution exclusively for pharmaceutical, consumer
15 product and health fraud cases.

16 X. GENERAL PROVISIONS

17 10.1 The acceptance of this Judgment by the State shall not be deemed approval by
18 the State of any of Defendant's advertising or business practices. Further, neither Defendant
19 nor anyone acting on its behalf shall state or imply, or cause to be stated or implied, that the
20 State or any other governmental unit of the State has approved, sanctioned or authorized any
21 practice, act, advertisement or conduct of the Defendant.

22 10.2 This Judgment may only be enforced by the State, Defendant, and this Court.

23 10.3 The titles and headers to each section of this Judgment are for convenience
24 purposes only and are not intended by the parties to lend meaning to the actual provisions of
25 the Judgment.

26 10.4 Nothing in this Judgment shall limit the State's right to obtain information,
27 documents or testimony from Defendant pursuant to any state or federal law, regulation or rule.
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1 10.5 Nothing in this Judgment shall be construed to limit the authority of the
2 Attorney General to protect the interests of the State or consumers. Except as provided in
3 Section XII of this Judgment, this Judgment shall not bar the State, or any other governmental
4 entity from enforcing laws, regulations or rules against Defendant.

5 10.6 It is the intent of the Parties that this Judgment not be admissible in other actions
6 or binding on Defendant in any respect other than in connection with the enforcement of this
7 Judgment.

8 10.7 No waiver, modification, or amendment of the terms of this Judgment shall be
9 valid or binding unless made in writing, signed by the party to be charged, approved by this
10 Court and then only to the extent specifically set forth in such written waiver, modification or
11 amendment.

12 10.8 Any failure by any party to this Judgment to insist upon the strict performance
13 by any other party of any of the provisions of this Judgment shall not be deemed a waiver of
14 any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have
15 the right thereafter to insist upon the specific performance of any and all of the provisions of
16 this Judgment and the imposition of any applicable penalties, including but not limited to
17 contempt, civil penalties as set forth in A.R.S. § 44-1521, *et seq.* and/or the payment of
18 attorneys fees to the State and other applicable state law.

19 10.9 If any clause, provision or section of this Judgment shall, for any reason, be held
20 illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect
21 any other clause, provision or section of this Judgment and this Judgment shall be construed
22 and enforced as if such illegal, invalid or unenforceable clause, section or other provision had
23 not been contained herein.

24 10.10 Time shall be of the essence with respect to each provision of this Judgment that
25 requires action to be taken by Defendant within a stated time period or upon a specified date.

26 10.11 Nothing in this Judgment shall be construed to waive any claims of Sovereign
27 Immunity the State may have in any action or proceeding.

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1 10.12 This Judgment sets forth the entire agreement between the parties, and there are
2 no representations, agreements, arrangements, or understanding, oral or written, between the
3 parties relating to the subject matter of this Judgment which are not fully expressed hereto or
4 attached hereto.

5 10.13 Defendant will not participate, directly or indirectly, in any activity or form a
6 separate entity or corporation for the purpose of engaging in acts or practices in whole or in
7 part in the State which are prohibited in this Judgment or for any other purpose which would
8 otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

9 10.14 Defendant has provided the State with certain documents, advertisements, and
10 contracts. Defendant acknowledges and agrees that providing these documents to the State(s) in
11 no way constitutes the State's pre-approval, review for compliance with state or federal law, or
12 with this Judgment, or a release of any issues relating to such documents.

13 10.15 Defendant further agrees to execute and deliver all authorizations, documents
14 and instruments which are necessary to carry out the terms and conditions of this Judgment.

15 10.16 This document may be executed in any number of counterparts and by different
16 signatories on separate counterparts, each of which shall constitute an original counterpart
17 hereof and all of which together shall constitute one and the same document. One or more
18 counterparts of this Judgment may be delivered by facsimile or electronic transmission with the
19 intent that it or they shall constitute an original counterpart thereof.

20 **XI. COMPLIANCE WITH ALL LAWS**

21 11.1 Nothing in this Judgment shall be construed as relieving Defendant of the
22 obligation to comply with all state and federal laws, regulations or rules, nor shall any of the
23 provisions of this Judgment be deemed to be permission to engage in any acts or practices
24 prohibited by such law, regulation, or rule.

25 11.2 Nothing in this Judgment shall require Defendant to: (A) take an action that is
26 otherwise prohibited by the Constitution, laws or rules or regulations made there under, of the
27 United States or Arizona; or (B) fail to take an action which is so required.

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XII. RELEASE

12.1 Nothing in this Judgment shall impair or limit the private right of action that any consumer, person, or entity may have against Defendant.

12.2 By execution of this Judgment and following a full and complete payment to the States, the State of Arizona releases and forever discharges to the fullest extent of the law, Defendant, as defined above, from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the Arizona Attorney General could have asserted against the Defendant under Arizona's Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, resulting from the Covered Conduct up to and including the Effective Date that is the subject of this Judgment.

12.3 Notwithstanding any term of this Judgment, any and all of the following forms of liability are specifically reserved and excluded from the Release in Section 12.2 as to any entity or person, including Defendant:

- A. Any criminal liability that any person or entity, including Defendant, has or may have to the State of Arizona.
- B. Any civil or administrative liability that any person or entity, including Defendant, has or may have to the State of Arizona under any statute, regulation or rule not expressly covered by the release in Section 12.2 above, including but not limited to, any and all of the following claims:
 - (i) State or federal antitrust violations; or
 - (ii) State or federal tax claims.
- C. Any liability under the State of Arizona's above-cited consumer protection laws that any person and/or entity, including Defendant has or may have to individual consumers, persons, or entities.

XIII. DISPUTES REGARDING COMPLIANCE

13.1 For the purposes of resolving disputes with respect to compliance with this Judgment, should the Attorney General have a reasonable basis to believe that Defendant has engaged in a practice that violates a provision of this Judgment subsequent to the Effective

1 Date of this Judgment, then the Attorney General shall notify the Defendant in writing of the
2 specific objection, identify with particularity the provisions of this Judgment that the practice
3 appears to violate, and give Defendant thirty (30) calendar days to respond to the notification;
4 provided, however, that the Attorney General may take any action where the Attorney General
5 concludes that, because of the specific practice, a threat to the health or safety of the public
6 requires immediate action.

7 13.2 Upon receipt of written notice and within the thirty (30) calendar-day period,
8 Defendant shall provide a good faith written response to the Attorney General's objection. The
9 response shall include an affidavit containing either:

- 10 A. A statement explaining why Defendant believes it is in compliance with
11 the Judgment; or
- 12 B. A detailed explanation of how the alleged violation(s) occurred; and
 - 13 i. A statement that the alleged violation has been remedied and how
14 it has been remedied; or
 - 15 ii. A statement that the alleged violation cannot be reasonably
16 remedied within thirty (30) calendar days from receipt of the
17 notice, but (1) Defendant has begun to take corrective action to
18 remedy the violation; (2) Defendant is pursuing such corrective
19 action with reasonable and due diligence; and (3) Defendant has
20 provided the Attorney General with a detailed and reasonable
21 time table for remedying the alleged violation.

22 13.3 Nothing herein shall prevent the Attorney General from agreeing in writing to
23 provide Defendant with additional time beyond the thirty (30) calendar-day period to respond
24 to the notice.

25 13.4 Nothing herein shall be construed to exonerate any failure to comply with any
26 provision of this Judgment after the date of entry or to compromise the authority of the
27 Attorney General to initiate a proceeding for failure to comply. Further, nothing in this section
28

1 shall be construed to limit the authority of the Attorney General to protect the interests of the
2 State.

3 13.5 The Attorney General represents that he or she will seek enforcement of the
4 provisions of this Judgment with due regard for fairness and, in so doing, shall take into
5 account efforts that Defendant has taken to remedy any claimed violation of this Judgment.

6 13.6 Upon giving Defendant thirty (30) calendar days to respond to the notification
7 described in Paragraph 13.1 above, the Attorney General shall be permitted to request and
8 Defendant shall produce relevant, non-privileged, non-work-product records and documents in
9 the possession, custody or control of Defendant that relate to its compliance with each
10 provision of this Judgment as to which legally sufficient cause has been shown.

11 XIV. NOTIFICATION TO STATE

12 14.1 For five (5) years following execution of this Judgment, Defendant shall notify
13 the State, in writing at least thirty (30) calendar days prior to the effective date of any proposed
14 changes in its corporate structure, such as dissolution, assignment, or sale resulting in the
15 emergence of a successor corporation or firm, the creation or dissolution of subsidiaries, or any
16 other changes in Defendant's status that may impact in any way compliance with obligations
17 arising out of this Judgment.

18 14.2 Any notices required to be sent to the State or Defendant by this Judgment shall
19 be sent by United States mail, certified mail return receipt requested or other nationally
20 recognized courier service that provides for tracking services and identification of the person
21 signing for the document. The documents shall be sent to the following addresses:

22 For the State Attorney General:
23 TAREN M. ELLIS
24 Assistant Attorney General
25 State Bar No. 022431
26 Pima County Computer No. 65731
27 taren.ellis@azag.gov
28 Consumer Protection & Advocacy Section
400 W. Congress, South Bldg., Suite 315
Tucson, Arizona 85701-1367
Telephone: (520) 628-6504

1 For the Defendant:
2 Sarah Reznick
3 Bingham McCutchen LLP
4 2020 K Street, NW
5 Washington, DC 20006-1806
6 Telephone: (202) 373-6171
7 sarah.reznick@bingham.com

8 **XV. PAYMENT OF COURT COSTS**

9 15.1 All court costs associated with this action and any other incidental costs or
10 expenses incurred in this action thereby shall be borne by Defendant. No costs shall be taxed to
11 the State. Further, no discretionary costs shall be taxed to the State.

12 **XVI. PENALTY FOR FAILURE TO COMPLY**

13 16.1 Failure to comply with this Judgment will result with legal action consistent
14 with the provisions of A.R.S. § 44-1521, *et seq.*

15 Respectfully submitted this ____ day of December, 2010.

16 FOR THE STATE
17 TERRY GODDARD

18 Attorney General
19 State of Arizona

20 By: Taren M. Ellis

21 DATED: 12/14/10

22 Taren M. Ellis
23 Assistant Attorney General
24 Consumer Protection and Advocacy
25 400 W. Congress, South Building, Third Floor
26 Tucson, AZ 85701
27 Tel: (520) 628-6631
28 Fax: (520) 628-6532

1 FOR THE DEFENDANT,
2 THE DANNON COMPANY, INC.

3 By: William J. Maledon

DATED: 12-9-10

4 William Maledon
5 Osborn Maledon, P.A.
6 2929 North Central Avenue
7 Twenty-First Floor
8 Phoenix, AZ 85012-2793
9 Tel: (602) 640-9331
10 Fax: (602) 640-9050
11 Email: wmaledon@omlaw.com
12 AZ Bar No. 3670

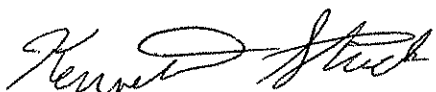
THE DANNON COMPANY, INC.

100 Hillside Avenue

White Plains, NY 10603

Phone: 914-872-8400

Fax: 914-872-1554



By: Kenneth Strick

Title: Vice President and Secretary

Date: December 9, 2010

Bingham McCutchen LLP

National Counsel for **THE DANNON COMPANY, INC.**



Sarah Reznick

Bingham McCutchen LLP

2020 K Street, NW

Washington, DC 20006-1806

Phone: 202-373-6171

Fax: 202-373-6001

Date: 12/10/10

EXHIBIT A

GOVERNMENT-ORDERED DISCLOSURE
[on Dannon Company, Inc., letterhead]

[Insert Date]

[Addressee]

Dear Dannon Company, Inc., Distributor, Reseller, or Retailer:

The Dannon Company, Inc., (Dannon) recently reached a settlement with the Attorneys General of thirty-eight states and the State of Hawaii, Office of Consumer Protection (State AGs) resolving an investigation into what the State AGs believed to be unsubstantiated and/or deceptive and unlawful claims concerning Dannon's Activia and DanActive products. Although we dispute the views of the State AGs and deny any wrongdoing, we have agreed to resolve the State AGs' investigation.

Dannon will work with you to ensure the advertisements that you distribute are in compliance with the Settlement Agreement. To comply with the Settlement Agreement reached with the State AGs, Dannon offers its assistance in ensuring that the advertising or promotional materials that you disseminate regarding Activia and DanActive products will be in compliance with the terms of the Settlement Agreement, including claims identified in the Consent Judgment. Such claims about Activia and DanActive products may only be made if they are true, adequately substantiated and otherwise permitted by law as stated in the Settlement Agreement.

A copy of the settlement with the State AGs is attached. If you have any questions, please call [insert name and telephone numbers of the responsible Dannon Company, Inc. Attorney or Officer].

Sincerely,

The Dannon Company, Inc.