10CV020652

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

File No. _____

FILED
2010 DEC 15 AM 10: 16
WAKE COUNTY, C.S.C.
BY _____

STATE OF NORTH CAROLINA,

Plaintiff,

v.

THE DANNON COMPANY, INC.,
a Delaware corporation,

Defendant.

CONSENT JUDGMENT

THIS CAUSE came on before the undersigned Superior Court Judge for entry of a Consent Judgment between plaintiff, the State of North Carolina, by and through Attorney General Roy Cooper, and Defendant, The Dannon Company, Inc. The Court finds that the parties have resolved the matters in controversy between them and have consented to the terms of this Judgment. The Court, with the consent of the parties, makes the following findings and conclusions:

I. INTRODUCTION

1.1 The Plaintiff, the State of North Carolina, by and through Attorney General Roy Cooper, and the 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, the 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 The Defendant hereby accepts and expressly waives any defect in connection with service of process issued to the Defendant by the Plaintiff.

CONCLUSIONS OF LAW

1.4 This Judgment is entered into by the 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 The 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. The Court has jurisdiction over the parties and the subject matter of this action. Entry of this Consent Judgment is in the public interest. The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties. The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

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 North Carolina 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.

F. "**Covered Product**" or "**Covered Products**" shall mean (i) any yogurt, including but not limited to Activia yogurt; (ii) any dairy drink; and (iii) any food or drink not covered by the foregoing that contains a probiotic, including, but not limited to, DanActive.

G. "**Defendant**" or "**Dannon**" shall refer to The Dannon Company, Inc., a Delaware corporation with its principal place of business in White Plains, NY. For purposes of this Consent Judgment only, the term includes its successors and assigns and their officers, and each of the above's agents, representatives, and employees.

H. **"Disease"** shall refer to damage to an organ, part, structure, or system of the body such that it does not function properly (*e.g.*, cardiovascular disease), or a state of health leading to such dysfunctioning (*e.g.* hypertension); except that diseases resulting from essential nutrient deficiencies (*e.g.*, scurvy, pellagra) are not included in this definition.

I. "**Effective Date**" shall refer to the date that this Judgment is signed and fully executed by the parties and approved by the Court. However, the

Effective Date as it affects existing Labeling shall be one hundred twenty (120) days after this Judgment is signed and fully executed by the parties and approved by the Court. All Covered Product manufactured after the one hundred twenty (120) days shall have the revised Labeling. However, the Effective Date for existing print Advertisements and broadcast Advertisements shall be 90 days after this Judgment is signed and fully executed by the parties and approved by the Court.

J. **"Essentially Equivalent Product"** means a product that contains the identical ingredients, except for inactive ingredients (*e.g.*, inactive binders, flavors, preservatives, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (*e.g.*, orally, sublingually), as the covered product; provided that the covered product may contain additional ingredients or other differences in formulation to affect taste, texture, or nutritional value (so long as the other differences do not change the form of the product or involve the ingredients from which the functional benefit is derived), if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount of additional ingredients, combination of additional ingredients, and any other differences in formulation are unlikely to impede or inhibit the effectiveness of the ingredients in the essentially equivalent product.

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

L. "**Label**" shall mean a display of written, printed or graphic matter upon the immediate container of any article, or on the outside container or

wrapper, if any, of the retail package of such article.

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

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

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

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

Q. "**State**," "**State of North Carolina**," or "**Attorney General**" refers to the Plaintiff and shall mean the Office of the North Carolina Attorney General.

III. JURISDICTION

3.1. Jurisdiction of this Court over the subject matter and over the Defendant for the purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further Judgments and

directions as may be necessary or appropriate for the construction, modification or execution of this Judgment, including the enforcement of compliance therewith and remedies, penalties and sanctions for violation thereof. The Defendant agrees to pay all court costs and attorneys' fees associated with any successful petition to enforce any provision of this Judgment against the Defendant.

IV. VENUE

4.1 Venue as to all matters between the parties relating hereto or arising out of this Judgment shall be in Wake County Superior Court, North Carolina.

V. DEFENDANT

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

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

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

5.4 The Defendant acknowledges that it understands that the State and this Court expressly rely upon all representations and warranties in this Judgment. The Defendant further acknowledges and understands that if any Defendant makes any false or deceptive representation or warranty, the State has the right to vacate or set aside this Judgment, *inter alia*, in whole or in part, and to move that the Defendant making such false, or deceptive representation(s) or warranty(ies) be held in contempt and to seek sanctions and remedies under any other law, regulation or rule, together with any and all such other sanctions, remedies or relief as may be available to the State in law or equity, if the State so elects.

VI. APPLICATION OF JUDGMENT

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

VII. PERMANENT INJUNCTION

7.1 All of the requirements of this section, Part VII, are cumulative and any representation that Defendant makes shall comply with each and every provision in this Part VII. Except as provided in paragraph 7.2, upon entry of this Judgment, the Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, is hereby permanently enjoined and restrained pursuant to N.C. Gen. Stat. § 75-14 from:

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

1. Using:

a. the term *L. casei Defensis*;

b. the phrase, "strengthens your body's defenses;" or

c. any depictions, characters or vignettes that imply active germ fighting;

2. Representing that any Covered Product can be used to treat, mitigate, cure or prevent diarrhea; provided, however, a structure/function claim that the Covered Product supports or promotes relief from temporary or occasional diarrhea is not prohibited, if 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 that substantiates 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.

3. Representing that any Covered Product can be used to treat, mitigate, cure, or prevent constipation, including through the use of depictions to symbolize relief from constipation; provided, however a structure/function claim that the Covered Product supports or promotes relief from temporary and occasional constipation is not prohibited, if 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 that substantiates 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.

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.

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

C. Making any express or implied representation in connection with the Advertising, Marketing or Labeling of Activia yogurt, including through the use of a product name, endorsement, depiction, or illustration, that Activia yogurt relieves temporary irregularity or helps with slow intestinal transit time, unless the representation is non-misleading, conveys that eating three servings a day is required to obtain the benefit and, at the time

the claim is made, the Defendant possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. Provided, however, that nothing in this Paragraph shall prohibit Defendant from representing that such benefit can be achieved from eating less than three servings a day if such claim is non-misleading and Defendant possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true.

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

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

that the representation is true.

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

E. Making any express or implied representation in connection with the Advertising, Marketing or Labeling of a Covered Product, including through the use of a product name, endorsement, depiction or illustration, about the health benefits, performance, efficacy or safety of a Covered Product, unless the representation is non-misleading, and, at the time the claim is made, 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 the purposes of paragraph 7.1(E), "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.

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

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

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

7.2 Additional Terms Governing Injunctive Relief

A. Notwithstanding any of the foregoing provisions, Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or

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

B. Nothing in this Judgment shall prohibit Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, from making any lawful, non-misleading, and non-deceptive representation for any Covered Product that is: (i) specifically permitted in Labeling for such Product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990; (ii) lawful for the Covered Product under the Federal Food Drug and Cosmetic Act; (iii) lawful for the Covered Product under any final regulation promulgated by the Food and Drug Administration; (iv) lawful for the Covered Product under any new drug application applicable to such Product approved by the Food and Drug Administration; (v) part of the lawful marketing for the Covered Product of a homeopathic drug; (vi) part of the lawful marketing for the Covered Product of a Medical Food under the Orphan Drug Amendments of 1998; or (vii) lawful for the Covered Product under a FDA monograph of an over-the-counter drug.

The failure of the FDA, FTC, or other law enforcement agency to take an enforcement action, or the mere presence of a representation, statement, or claim in the marketplace does not mean a representation, statement, or claim is lawful.

VIII. COMPLIANCE

8.1 Pursuant to N.C. Gen. Stat. § 75-14, the Defendant shall, in connection with the Advertising, promotion, offering for sale, or distribution in or from North Carolina 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, the Defendant shall document and retain sufficient evidence to detail and substantiate its 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 the 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 the Defendant concerning any Covered Product, the Defendant shall document and retain sufficient evidence to detail and substantiate its 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 the 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 the Defendant or anyone doing so on its behalf, the Defendant shall document and retain sufficient evidence to detail and substantiate their monitoring efforts and produce such documentation and records as may be requested by the State within thirty (30) days of such a request.

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

E. Within sixty (60) days after entry of this Judgment, send an exact copy of this Judgment to each of the Defendant's directors, officers, and any employee, agent, or third party who creates, reviews, or edits the Defendant's Advertising, Marketing or Labeling of Covered Products. The Defendant shall document and retain sufficient evidence to confirm distribution as required by this paragraph and shall produce such

documentation to the State within thirty (30) days of such a request.

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

G. Promptly, and in a reasonable manner, investigate any information the Defendant receives that any retailer or other third party in North Carolina is using or disseminating any Advertisements or Marketing material, or making any oral statements, that violate the provisions of this Judgment, and send Exhibit A to any retailer or other third party whose Advertisements or Marketing materials of a Covered Product may violate the terms of this Judgment if made by the Defendant. For a period of five (5) years from the date of entry of this Judgment, the Defendant shall document and retain sufficient evidence to detail and substantiate their investigation efforts and shall produce such documentation to the State within thirty (30) days of such a request.

IX. PAYMENT TO THE STATES

9.1 No later than thirty (30) days after the Effective Date of this Judgment, Dannon shall pay

a total amount of $21 million to the Office of the Attorney General of Tennessee through electronic funds transfer. The Tennessee Attorney General shall divide and distribute these funds to each Signatory Attorney General of the Multistate Working Group[1] in an amount to be designated by, and in the sole discretion of, the Multistate Executive Committee.[2] Said payment shall be used by the States for consumer protection purposes, including but not limited to consumer protection enforcement, litigation, consumer aid, defraying the cost of the investigation leading to this settlement, for consumer education, or for other uses permitted by state law, at the sole discretion of each Signatory Attorney General.

9.2 Pursuant to Paragraph 9.1, the State of North Carolina's share of the payment to the States, in the amount of $861,111.11, shall be used for consumer protection purposes, including but not limited to consumer protection enforcement, litigation, consumer aid, defraying the cost of the investigation leading to this settlement, for consumer education, or for other uses permitted by state law, at the sole discretion of the Attorney General.

X. GENERAL PROVISIONS

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

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[1] The Working Group consists of Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Tennessee, Vermont, Washington, West Virginia and Wisconsin.

[2] The Executive Committee consists of Arizona, Florida, Kentucky, North Carolina, Ohio, Oregon, Texas, Tennessee, and Wisconsin.

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

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

10.4 Nothing in this Judgment shall limit the State's right to obtain information, documents or testimony from the Defendant pursuant to any state or federal law, regulation or rule.

10.5 Nothing in this Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or consumers. Except as provided in Section XII of this Judgment, this Judgment shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against the Defendant.

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

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

10.8 Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment and the imposition of any applicable penalties, including but not limited to contempt,

civil penalties as set forth in N.C. Gen. Stat. § 75-15.2 and/or the payment of attorneys fees to the State and other applicable state law.

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

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

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

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

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

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

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

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

XI. COMPLIANCE WITH ALL LAWS

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

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

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 the Defendant.

12.2 By execution of this Judgment and following a full and complete payment to the States, the State of North Carolina releases and forever discharges to the fullest extent of the law, the Defendant, as defined above, from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the North Carolina Attorney General could have asserted against the Defendant under N.C. Gen. Stat. § 75-1.1 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 the Defendant:

A. Any criminal liability that any person or entity, including the Defendant, has or may have to the State of North Carolina.

B. Any civil or administrative liability that any person or entity, including the Defendant, has or may have to the State of North Carolina 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 North Carolina's above-cited consumer protection laws that any person and/or entity, including the 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 the Defendant has engaged in a practice that violates a provision of this Judgment subsequent to the Effective Date of this Judgment, then the Attorney General shall notify the Defendant in writing of the specific objection, identify with particularity the provisions of this Judgment that the practice appears to violate, and give the Defendant thirty (30) calendar days to respond to the notification; provided,

however, that the Attorney General may take any action where the Attorney General concludes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

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

A. A statement explaining why the Defendant believes it is in compliance with the Judgment; or

B. A detailed explanation of how the alleged violation(s) occurred; and

i. A statement that the alleged violation has been remedied and how it has been remedied; or

ii. A statement that the alleged violation cannot be reasonably remedied within thirty (30) calendar days from receipt of the notice, but (1) the Defendant has begun to take corrective action to remedy the violation; (2) the Defendant is pursuing such corrective action with reasonable and due diligence; and (3) the Defendant has provided the Attorney General with a detailed and reasonable time table for remedying the alleged violation.

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

13.4 Nothing herein shall be construed to exonerate any failure to comply with any provision of this Judgment after the date of entry or to compromise the authority of the Attorney

General to initiate a proceeding for failure to comply. Further, nothing in this section shall be construed to limit the authority of the Attorney General to protect the interests of the State.

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

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

XIV. NOTIFICATION TO STATE

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

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

For the North Carolina Attorney General's Office:

Kevin Anderson

Special Deputy Attorney General
Consumer Protection Division
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

For the Defendant:

Sarah Reznek
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006-1806

XV. PAYMENT OF COURT COSTS

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

XVI. PENALTY FOR FAILURE TO COMPLY

16.1 Acts or practices of Defendant that violate or fail to comply with this Consent Judgment are subject to, among other things, the civil penalty provisions of N.C. Gen. Stat. § 75-15.2 and are punishable by contempt.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

December 14, 2010

JUDGE

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

For Plaintiff, State of North Carolina

STATE OF NORTH CAROLINA
ex rel. ROY COOPER
ATTORNEY GENERAL

Dec. 15, 2010

Kevin Anderson
Special Deputy Attorney General
N.C. Department of Justice
Consumer Protection Division
Post Office Box 629
Raleigh, NC 27602
Tel. 919-716-6052
Fax 919-716-6050

NC Bar No. 22635

FOR THE DANNON COMPANY, INC.

David Kouba
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Tel: (202) 942-5626
Fax: (202) 942-5999
Email: david.kouba@aporter.com
NC Bar No. 28624

Date: 12/9/2010

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 Reznek
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.