

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

THE DANNON COMPANY, INC., a  
Delaware corporation,

Defendant.

NO. 10-2-43197-7 SEA

CONSENT DECREE AND  
JUDGMENT

JUDGMENT SUMMARY

Judgment Creditor:	State of Washington
Judgment Debtor:	The Dannon Company, Inc.
Principal Judgment Amount:	All injunctive provisions as detailed in Sections VII and VIII of this Consent Decree and Judgment plus \$21,000,000 for all 39 participating states, of which the State of Washington shall received approximately \$425,000. Washington's share may be used for any purpose permitted under Paragraph 9.1, including costs and attorneys fees and cy pres.
Costs and Attorney's Fees:	See Paragraph 9.1
Total Judgment for Washington:	\$425,000
Post-judgment Interest Rate:	None if paid in accordance with the time Provisions in Paragraph 9.1; otherwise the maximum rates allowed by law.

1 Attorney for Judgment Creditor:

Robert M. McKenna, Attorney General  
of Washington and Robert Lipson, Senior  
Counsel

2  
3 Attorney for Judgment Debtor:

Christopher Murray  
Hogan Lovells US LLP

4  
5 **I. INTRODUCTION**

6 1.1 The Plaintiff, the State of Washington by and through Robert M. McKenna, the  
7 Attorney General, and Robert A. Lipson, Assistant Attorney General, and the Defendant, The  
8 Dannon Company, Inc., a Delaware corporation, as evidenced by the signatures of counsel, do  
9 consent to the entry of this Consent Decree and Judgment (hereinafter "Judgment").

10  
11 1.2 After engaging in settlement discussions, the Defendant enters into this  
12 Judgment to avoid the time and expense associated with litigation. This is a Judgment for  
13 which execution may issue. This agreement is for settlement purposes only and does not  
14 constitute an admission by Defendant that the law has been violated as alleged in the  
15 complaint, or that the facts as alleged in the complaint, other than the jurisdictional facts, are  
16 true.

17  
18 1.3 The Defendant hereby accepts and expressly waives any defect in connection  
19 with service of process issued to the Defendant by the Plaintiff.

20  
21 1.4 This Judgment is entered into by the Defendant as its own free and voluntary act  
22 and with full knowledge and understanding of the nature of the proceedings and the obligations  
23 and duties imposed upon it by this Judgment, and it consents to its entry without further notice,  
24 and avers that no offers, agreements or inducements of any nature whatsoever have been made  
25 to it by the Plaintiff or their attorneys or any State employee to procure this Judgment.  
26



1 of, or affect the sale or use of, the Defendant's goods or services,  
2 whether the statement appears in Labels or Labeling, in a brochure,  
3 newspaper, magazine, free standing insert, marketing kit, leaflet, mailer,  
4 book insert, letter, catalogue, poster, chart, billboard, electronic mail,  
5 website or other digital format, slide, radio, broadcast television, cable  
6 television, or commercial or infomercial whether live or recorded.  
7

8 C. "And" and "Or" shall be construed conjunctively or disjunctively as  
9 necessary, and to make the applicable phrase or sentence inclusive rather  
10 than exclusive.

11 D. "Attorney General" means Office of the Washington Attorney General.

12 E. "Covered Conduct" shall mean the Defendant's Advertising, Marketing  
13 and Labeling practices regarding the Covered Products through the  
14 Effective Date of this Judgment.  
15

16 F. "Covered Product" or "Covered Products" shall mean (i) any yogurt,  
17 including but not limited to Activia yogurt; (ii) any dairy drink; and  
18 (iii) any food or drink not covered by the foregoing that contains a  
19 Probiotic, including, but not limited to, DanActive.  
20

21 G. "Defendant" or "Dannon" shall refer to The Dannon Company, Inc., a  
22 Delaware corporation with its principal place of business in White  
23 Plains, NY. For purposes of this Consent Judgment only, the term  
24 includes its successors and assigns and their officers, and each of the  
25 above's agents, representatives, and employees.  
26

1 H. **“Disease”** shall refer to damage to an organ, part, structure, or system of  
2 the body such that it does not function properly (*e.g.*, cardiovascular  
3 disease), or a state of health leading to such dysfunctioning  
4 (*e.g.* hypertension); except that diseases resulting from essential nutrient  
5 deficiencies (*e.g.*, scurvy, pellagra) are not included in this definition.  
6

7 I. **“Effective Date”** shall refer to the date that this Judgment is signed and  
8 fully executed by the parties and approved by the Court. However, the  
9 Effective Date as it affects existing Labeling shall be one hundred  
10 twenty (120) days after this Judgment is signed and fully executed by  
11 the parties and approved by the Court. All Covered Product  
12 manufactured after the one hundred twenty (120) days shall have the  
13 revised Labeling. However, the Effective Date for existing print  
14 Advertisements and broadcast Advertisements shall be 90 days after this  
15 Judgment is signed and fully executed by the parties and approved by  
16 the Court.  
17

18 J. **“Essentially Equivalent Product”** means a product that contains the  
19 identical ingredients, except for inactive ingredients (*e.g.*, inactive  
20 binders, flavors, preservatives, colors, fillers, excipients), in the same  
21 form and dosage, and with the same route of administration (*e.g.*, orally,  
22 sublingually), as the Covered Product; provided that the Covered  
23 Product may contain additional ingredients or other differences in  
24 formulation to affect taste, texture, or nutritional value (so long as the  
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1 other differences do not change the form of the product or involve the  
2 ingredients from which the functional benefit is derived), if reliable  
3 scientific evidence generally accepted by experts in the field  
4 demonstrates that the amount of additional ingredients, combination of  
5 additional ingredients, and any other differences in formulation are  
6 unlikely to impede or inhibit the effectiveness of the ingredients in the  
7 Essentially Equivalent Product.  
8

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

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

19 O. **"Probiotics"** shall mean live microorganisms, which when administered  
20 in adequate amounts, confer a health benefit on the host, excluding the  
21 cultures *Streptococcus thermophilus* and *Lactobacillus bulgaricus*.  
22

23 P. **"Settling States"** shall mean all states that sign on to this settlement,  
24 which at this time are thought to include: Alaska, Arizona, Arkansas,  
25 Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois,  
26

1 Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts,  
2 Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New  
3 Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon,  
4 Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee,  
5 Texas, Vermont, Washington, West Virginia, and Wisconsin.

6 Q. “State,” “State of Washington” or “Attorney General” refers to the  
7 Plaintiff and shall mean the Office of the Washington Attorney General.  
8

9  
10 **III. JURISDICTION**

11 3.1. Jurisdiction of this Court over the subject matter and over the Defendant for the  
12 purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by  
13 this Court for the purpose of enabling the State to apply to this Court for such further  
14 Judgments and directions as may be necessary or appropriate for the construction, modification  
15 or execution of this Judgment, including the enforcement of compliance therewith and  
16 remedies, penalties and sanctions for violation thereof. The Defendant agrees to pay all court  
17 costs and attorneys’ fees associated with any successful petition to enforce any provision of  
18 this Judgment against the Defendant.  
19

20 **IV. VENUE**

21 4.1 Pursuant to RCW 4.12, venue as to all matters between the parties relating  
22 hereto or arising out of this Judgment shall be in the King County Superior Court of  
23 Washington.  
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**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.

1 VII. PERMANENT INJUNCTION

2 7.1 All of the requirements of this section, Part VII, are cumulative and any  
3 representation that Defendant makes shall comply with each and every provision in this Part  
4 VII. Except as provided in paragraph 7.2, upon entry of this Judgment, the Defendant, directly  
5 or through any corporation, partnership, subsidiary, division, trade name, or other device, is  
6 hereby permanently enjoined and restrained pursuant to RCW 19.86.080 from:  
7

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

- 15 1. Using:
- 16 a. the term *L. casei Defensis*;
  - 17 b. the phrase, "strengthens your body's defenses;" or
  - 18 c. any depictions, characters or vignettes that imply active  
19 germ fighting;
- 20 2. Representing that any Covered Product can be used to treat,  
21 mitigate, cure or prevent diarrhea; provided, however, a  
22 structure/function claim that the Covered Product supports or  
23 promotes relief from temporary or occasional diarrhea is not  
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1 prohibited, if the Defendant possesses and relies upon competent  
2 and reliable scientific evidence that is sufficient in quality and  
3 quantity based on standards generally accepted in the relevant  
4 scientific fields when considered in light of the entire body of  
5 relevant and reliable scientific evidence that substantiates that the  
6 representation is true. For purposes of this Paragraph, competent  
7 and reliable scientific evidence means tests, analyses, research,  
8 or studies that have been conducted and evaluated in an objective  
9 manner by qualified persons and are generally accepted in the  
10 profession to yield accurate and reliable results.

- 11
- 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  
22 that substantiates that the representation is true. For purposes of  
23 this Paragraph, competent and reliable scientific evidence means  
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1 tests, analyses, research, or studies that have been conducted and  
2 evaluated in an objective manner by qualified persons and are  
3 generally accepted in the profession to yield accurate and reliable  
4 results.

- 5  
6 4. Using the word "immunity," or the phrase, "*L. casei immunitas*",  
7 provided however, that a structure/function claim can be made  
8 for the word "immunity," or the phrase "*L. casei Immunitas*" in  
9 which (a) the Defendant clearly and conspicuously modifies the  
10 word "immunity," or the phrase, "*L. casei Immunitas*" with a  
11 statement that the Covered Product merely helps to promote,  
12 support or maintain the immune system of persons who consume  
13 a Covered Product and (b) the Defendant possesses and relies  
14 upon competent and reliable scientific evidence that is sufficient  
15 in quality and quantity based on standards generally accepted in  
16 the relevant scientific fields, when considered in light of the  
17 entire body of relevant and reliable scientific evidence, to  
18 substantiate that the representation is true. For purposes of this  
19 paragraph, competent and reliable scientific evidence means  
20 tests, analyses, research, or studies that have been conducted and  
21 evaluated in an objective manner by qualified persons and are  
22 generally accepted in the profession to yield accurate and reliable  
23 results.  
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1 5. Citing, summarizing, or linking to clinical studies or research in  
2 the Labeling of a Covered Product if the citation, summary, or  
3 link to the clinical studies or research, in the context of the  
4 Labeling as a whole, implies that a Covered Product or an  
5 ingredient in a Covered Product treats, mitigates, cures, or  
6 prevents a Disease, e.g., placement on the immediate product  
7 Labeling or packaging, inappropriate prominence, or lack of  
8 relationship to the Covered Product's express claims.  
9

10 6. Depicting a cellular wall fortified with a Covered Product that  
11 repels all, or nearly all, of the depictions of germs.  
12

13 B. Making any express or implied representation in connection with the  
14 Advertising, Marketing, or Labeling of a Covered Product, including  
15 through the use of a product name, endorsement, depiction, or  
16 illustration, that such Product reduces the likelihood of getting a cold or  
17 the flu, which in the context of the Labeling, Advertisement, or  
18 Marketing material, directly states or implies that any Covered Product  
19 can be used to treat, mitigate, or prevent a cold or the flu.  
20

21 C. Making any express or implied representation in connection with the  
22 Advertising, Marketing or Labeling of Activia yogurt, including through  
23 the use of a product name, endorsement, depiction, or illustration, that  
24 Activia yogurt relieves temporary irregularity or helps with slow  
25 intestinal transit time, unless the representation is non-misleading,  
26

1 conveys that eating three servings a day is required to obtain the benefit  
2 and, at the time the claim is made, the Defendant possesses and relies  
3 upon competent and reliable scientific evidence that substantiates that  
4 the representation is true. Provided, however, that nothing in this  
5 Paragraph shall prohibit Defendant from representing that such benefit  
6 can be achieved from eating less than three servings a day if such claim  
7 is non-misleading and Defendant possesses and relies upon competent  
8 and reliable scientific evidence that substantiates that the representation  
9 is true.  
10

11 For purposes of paragraph 7.1(C), competent and reliable scientific  
12 evidence shall consist of at least two Adequate and Well-Controlled  
13 Human Clinical Studies of Activia yogurt, or of an Essentially  
14 Equivalent Product, conducted by different researchers, independently  
15 of each other, that conform to acceptable designs and protocols and  
16 whose results, when considered in light of the entire body of relevant  
17 and 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

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

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

15  
16 E. Making any express or implied representation in connection with the  
17 Advertising, Marketing or Labeling of a Covered Product, including  
18 through the use of a product name, endorsement, depiction or  
19 illustration, about the health benefits, performance, efficacy or safety of  
20 a Covered Product, unless the representation is non-misleading, and, at  
21 the time the claim is made, the Defendant possesses and relies upon  
22 competent and reliable scientific evidence that is sufficient in quality  
23 and quantity based on standards generally accepted in the relevant  
24 scientific fields when considered in light of the entire body of relevant  
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1 and reliable scientific evidence to substantiate that the representation is  
2 true.

3 For the purposes of paragraph 7.1(E), "competent and reliable scientific  
4 evidence" means tests, analyses, research, or studies that have been  
5 conducted and evaluated in an objective manner by qualified persons  
6 and are generally accepted in the profession to yield accurate and  
7 reliable results.  
8

9 F. Making, in connection with the Advertising, Marketing, or Labeling of a  
10 Covered Product, any express or implied representation about the  
11 existence, contents, methodology, statistical analyses, study scope,  
12 validity, results, conclusions, or interpretations of any test, study, or  
13 research that is false, misleading or deceptive, or that is misleading or  
14 deceptive when considered together with other representations or  
15 depictions.  
16

17 G. Using, in connection with the Labeling of a Covered Product, the term  
18 Bifidus Regularis™, or any other fanciful term that expressly or  
19 impliedly represents that a Covered Product helps regulate the digestive  
20 system unless the Defendant clearly and conspicuously identifies the  
21 true scientific name of the bacteria, including its genus, species and  
22 strain.  
23

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

5  
6 7.2 Additional Terms Governing Injunctive Relief

7 A. Notwithstanding any of the foregoing provisions, Defendant, directly or  
8 through any corporation, partnership, subsidiary, division, trade name,  
9 or other device, is hereby permanently enjoined and restrained from  
10 making any express or implied statement(s) in connection with the  
11 Advertising, Marketing or Labeling of any Covered Product that is false,  
12 misleading, or deceptive, or that is misleading or deceptive when  
13 considered together with other representations or depictions; and from  
14 omitting any material information such that an express or implied  
15 statement made by the Defendant, directly or through any corporation,  
16 partnership, subsidiary, division, trade name, or other device, is  
17 misleading or deceptive.

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

## 16 VIII. COMPLIANCE

17 8.1 Pursuant to RCW 19.86.080, the Defendant shall, in connection with the  
18 Advertising, promotion, offering for sale, or distribution in or from Washington of any  
19 Covered Product:  
20

- 21 A. Take reasonable steps sufficient to monitor and ensure that the  
22 Defendant complies with this Judgment. In conducting periodic  
23 monitoring of compliance, the Defendant shall document and retain  
24 sufficient evidence to detail and substantiate its monitoring efforts and  
25 produce such documentation as may be requested by the State within  
26

1 thirty (30) days of such a request.

2 B. Conduct periodic reasonable monitoring of representations made by the  
3 Defendant concerning any Covered Product when the relevant actors are  
4 engaged in sales or other customer service functions, including  
5 representations made orally or through electronic communications. For a  
6 period of five (5) years from the date of entry of this Judgment, in  
7 conducting periodic monitoring of the representations made by the  
8 Defendant concerning any Covered Product, the Defendant shall  
9 document and retain sufficient evidence to detail and substantiate its  
10 monitoring efforts and produce such documentation to the State within  
11 thirty (30) days of such a request.  
12

13 C. Conduct periodic reasonable monitoring of representations made about  
14 any Covered Product on all Internet websites operated or maintained by  
15 the Defendant or anyone doing so on their behalf. For a period of five  
16 (5) years from the date of entry of this Judgment, in conducting periodic  
17 monitoring of representations made about any Covered Product on  
18 Internet websites operated or maintained by the Defendant or anyone  
19 doing so on its behalf, the Defendant shall document and retain  
20 sufficient evidence to detail and substantiate their monitoring efforts and  
21 produce such documentation and records as may be requested by the  
22 State within thirty (30) days of such a request.  
23

24 D. Take appropriate disciplinary action against any employee or agent who  
25  
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1 knew or should have know that he or she had engaged in any conduct  
2 prohibited by this Judgment, up to and including termination of any such  
3 employment or agency relationship, within a reasonable period of time  
4 not to exceed thirty (30) days after the Defendant knows or should have  
5 known that such person is, or has been, engaging in such conduct.

6  
7 E. Within sixty (60) days after entry of this Judgment, send an exact copy  
8 of this Judgment to each of the Defendant's directors, officers, and any  
9 employee, agent, or third party who creates, reviews, or edits the  
10 Defendant's Advertising, Marketing or Labeling of Covered Products.  
11 The Defendant shall document and retain sufficient evidence to confirm  
12 distribution as required by this paragraph and shall produce such  
13 documentation to the State within thirty (30) days of such a request.

14  
15 F. Within 60 days of entry of this Judgment, institute a reasonable program  
16 of surveillance that is adequate to reveal whether the Defendant is  
17 disseminating in or from Washington any Advertising, Marketing or  
18 Labeling material that contains any representation that violates the  
19 provisions of this Judgment. For a period of five (5) years from the date  
20 of entry of this Judgment, the Defendant shall document and retain  
21 sufficient evidence to detail and substantiate its program of surveillance  
22 and shall produce such documentation to the State within thirty (30)  
23 days of such a request.

24  
25 G. Promptly, and in a reasonable manner, investigate any information the  
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1 Defendant receives that any retailer or other third party in Washington is  
2 using or disseminating any Advertisements or Marketing material, or  
3 making any oral statements, that violate the provisions of this Judgment,  
4 and send Exhibit A to any retailer or other third party whose  
5 Advertisements or Marketing materials of a Covered Product may  
6 violate the terms of this Judgment if made by the Defendant. For a  
7 period of five (5) years from the date of entry of this Judgment, the  
8 Defendant shall document and retain sufficient evidence to detail and  
9 substantiate their investigation efforts and shall produce such  
10 documentation to the State within thirty (30) days of such a request.  
11

### 12 IX. PAYMENT TO THE STATES

13  
14 9.1 No later than thirty (30) days after the Effective Date of this Judgment, Dannon  
15 shall pay a total amount of \$21 million to be divided and paid by Dannon directly to each  
16 Signatory Attorney General of the Multistate Working Group<sup>[1]</sup> in an amount to be designated  
17 by, and in the sole discretion of, the Multistate Executive Committee.<sup>[2]</sup> The payment received  
18 by plaintiff State of Washington shall be used by the Attorney General's Office for attorneys'  
19 fees and other costs of investigation and litigation, enforcement of the terms of this Consent  
20 Decree, future consumer protection purposes, consumer education, to facilitate programs  
21

22  
23 <sup>[1]</sup> The Working Group consists of Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida,  
24 Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan,  
25 Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio,  
26 Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Tennessee, Vermont,  
Washington, West Virginia, and Wisconsin.

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

1 directed at food banks, nutritional improvement, diagnosis and treatment of gastrointestinal  
2 diseases, enhancement of immune system function, or for other uses permitted by state law,  
3 except as set forth below, at the sole discretion of the Attorney General.  
4

## 5 X. GENERAL PROVISIONS

6 10.1 The acceptance of this Judgment by the State shall not be deemed approval by  
7 the State of any of the Defendant's advertising or business practices. Further, neither the  
8 Defendant nor anyone acting on its behalf shall state or imply, or cause to be stated or implied,  
9 that the State or any other governmental unit of the State has approved, sanctioned or  
10 authorized any practice, act, advertisement or conduct of the Defendant.  
11

12 10.2 This Judgment may only be enforced by the State, the Defendant, and this  
13 Court.

14 10.3 The titles and headers to each section of this Judgment are for convenience  
15 purposes only and are not intended by the parties to lend meaning to the actual provisions of  
16 the Judgment.

17 10.4 Nothing in this Judgment shall limit the State's right to obtain information,  
18 documents or testimony from the Defendant pursuant to any state or federal law, regulation or  
19 rule.  
20

21 10.5 Nothing in this Judgment shall be construed to limit the authority of the  
22 Attorney General to protect the interests of the State or consumers. Except as provided in  
23 Section XII of this Judgment, this Judgment shall not bar the State, or any other governmental  
24 entity from enforcing laws, regulations or rules against the Defendant.  
25  
26

1           10.6 It is the intent of the Parties that this Judgment not be admissible in other  
2 actions or binding on the Defendant in any respect other than in connection with the  
3 enforcement of this Judgment.

4           10.7 No waiver, modification, or amendment of the terms of this Judgment shall be  
5 valid or binding unless made in writing, signed by the party to be charged, approved by this  
6 Court and then only to the extent specifically set forth in such written waiver, modification or  
7 amendment.  
8

9           10.8 Any failure by any party to this Judgment to insist upon the strict performance  
10 by any other party of any of the provisions of this Judgment shall not be deemed a waiver of  
11 any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have  
12 the right thereafter to insist upon the specific performance of any and all of the provisions of  
13 this Judgment and the imposition of any applicable penalties, including but not limited to  
14 contempt, civil penalties and/or the payment of attorneys fees to the State and other applicable  
15 state law.  
16

17           10.9 If any clause, provision or section of this Judgment shall, for any reason, be  
18 held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not  
19 affect any other clause, provision or section of this Judgment and this Judgment shall be  
20 construed and enforced as if such illegal, invalid or unenforceable clause, section or other  
21 provision had not been contained herein.  
22

23           10.10 Time shall be of the essence with respect to each provision of this Judgment that  
24 requires action to be taken by the Defendant within a stated time period or upon a specified  
25 date.  
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1           10.11 Nothing in this Judgment shall be construed to waive any claims of Sovereign  
2 Immunity the State may have in any action or proceeding.

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

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

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

15           10.15 The Defendant further agrees to execute and deliver all authorizations,  
16 documents and instruments which are necessary to carry out the terms and conditions of this  
17 Judgment.

18           10.16 This document may be executed in any number of counterparts and by different  
19 signatories on separate counterparts, each of which shall constitute an original counterpart  
20 hereof and all of which together shall constitute one and the same document. One or more  
21 counterparts of this Judgment may be delivered by facsimile or electronic transmission with  
22 the intent that it or they shall constitute an original counterpart thereof.  
23  
24  
25  
26

1 **XI. COMPLIANCE WITH ALL LAWS**

2 11.1 Nothing in this Judgment shall be construed as relieving the Defendant of the  
3 obligation to comply with all state and federal laws, regulations or rules, nor shall any of the  
4 provisions of this Judgment be deemed to be permission to engage in any acts or practices  
5 prohibited by such law, regulation, or rule.

6 11.2 Nothing in this Judgment shall require the Defendant to: (A) take an action that  
7 is otherwise prohibited by the Constitution, laws or rules or regulations made there under, of  
8 the United States or Washington; or (B) fail to take an action which is so required.  
9

10 **XII. RELEASE**

11 12.1 Nothing in this Judgment shall impair or limit the private right of action that any  
12 consumer, person, or entity may have against the Defendant.  
13

14 12.2 By execution of this Judgment and following a full and complete payment to the  
15 States, the State of Washington releases and forever discharges to the fullest extent of the law,  
16 the Defendant, as defined above, from the following: all civil claims, causes of action,  
17 damages, restitution, fines, costs, and penalties that the Washington Attorney General could  
18 have asserted against the Defendant under the Consumer Protection Act, RCW 19.86 resulting  
19 from the Covered Conduct up to and including the Effective Date that is the subject of this  
20 Judgment.  
21

22 12.3 Notwithstanding any term of this Judgment, any and all of the following forms  
23 of liability are specifically reserved and excluded from the Release in Section 12.2 as to any  
24 entity or person, including the Defendant:

25 A. Any criminal liability that any person or entity, including the Defendant,  
26

1 has or may have to the State of Washington.

2 B. Any civil or administrative liability that any person or entity, including  
3 the Defendant, has or may have to the State of Washington under any  
4 statute, regulation or rule not expressly covered by the release in Section  
5 12.2 above, including but not limited to, any and all of the following  
6 claims:  
7

8 (i) State or federal antitrust violations; or

9 (ii) State or federal tax claims.

10 C. Any liability under the State of Washington's above-cited consumer  
11 protection laws that any person and/or entity, including the Defendant  
12 has or may have to individual consumers, persons, or entities.  
13

### 14 XIII. DISPUTES REGARDING COMPLIANCE

15 13.1 For the purposes of resolving disputes with respect to compliance with this  
16 Judgment, should the Attorney General have a reasonable basis to believe that the Defendant  
17 has engaged in a practice that violates a provision of this Judgment subsequent to the Effective  
18 Date of this Judgment, then the Attorney General shall notify the Defendant in writing of the  
19 specific objection, identify with particularity the provisions of this Judgment that the practice  
20 appears to violate, and give the Defendant thirty (30) calendar days to respond to the  
21 notification; provided, however, that the Attorney General may take any action where the  
22 Attorney General concludes that, because of the specific practice, a threat to the health or  
23 safety of the public requires immediate action.  
24  
25  
26

1           13.2 Upon receipt of written notice and within the thirty (30) calendar-day period,  
2 the Defendant shall provide a good faith written response to the Attorney General's objection.

3 The response shall include an affidavit containing either:

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

18           13.3 Nothing herein shall prevent the Attorney General from agreeing in writing to  
19 provide the Defendant with additional time beyond the thirty (30) calendar-day period to  
20 respond to the notice.  
21

22           13.4 Nothing herein shall be construed to exonerate any failure to comply with any  
23 provision of this Judgment after the date of entry or to compromise the authority of the  
24 Attorney General to initiate a proceeding for failure to comply. Further, nothing in this section  
25  
26

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 the Defendant has taken to remedy any claimed violation of this Judgment.  
6

7 13.6 Upon giving the Defendant thirty (30) calendar days to respond to the  
8 notification described in Paragraph 13.1 above, the Attorney General shall be permitted to  
9 request and the Defendant shall produce relevant, non-privileged, non-work-product records  
10 and documents in the possession, custody or control of the Defendant that relate to its  
11 compliance with each provision of this Judgment as to which legally sufficient cause has been  
12 shown.  
13

#### 14 **XIV. NOTIFICATION TO STATE**

15 14.1 For five (5) years following execution of this Judgment, the Defendant shall  
16 notify the State, in writing at least thirty (30) calendar days prior to the Effective Date of any  
17 proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in  
18 the emergence of a successor corporation or firm, the creation or dissolution of subsidiaries, or  
19 any other changes in the Defendant's status that may impact in any way compliance with  
20 obligations arising out of this Judgment.  
21

22 14.2 Any notices required to be sent to the State or the Defendant by this Judgment  
23 shall be sent by United States mail, certified mail return receipt requested or other nationally  
24 recognized courier service that provides for tracking services and identification of the person  
25 signing for the document. The documents shall be sent to the following addresses:  
26

1 For the Washington State Attorney General:

2 Division Chief  
3 Consumer Protection Division  
4 Office of the Washington Attorney General  
5 800 Fifth Avenue, Suite 2000  
6 Seattle, WA 98104-3188

7 For the Defendant:

8 Sarah Reznick  
9 Bingham McCutchen LLP  
10 2020 K Street NW  
11 Washington, DC 20006-1806

12 **XV. PAYMENT OF COURT COSTS**

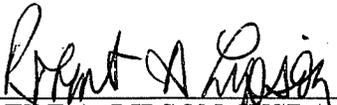
13 15.1 All court costs associated with this action and any other incidental costs or  
14 expenses incurred in this action thereby shall be borne by the Defendant. No costs shall be  
15 taxed to the State. Further, no discretionary costs shall be taxed to the State.

16 IT IS SO ORDERED, ADJUDGED, AND DECREED this 17 day of December 2010.

17  
18 **CARLOS Y. VELAZQUEZ**  
19 JUDGE, King County Superior Court

20 JOINTLY APPROVED AND  
21 SUBMITTED FOR ENTRY; NOTICE  
22 OF PRESENTATION WAIVED:

23 ROBERT M. MCKENNA  
24 Attorney General

25   
26 ROBERT A. LIPSON, WSBA # 11889  
Assistant Attorney General  
Attorneys for State of Washington

**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

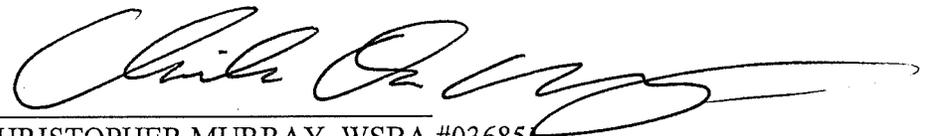
Phone: 202-373-6171

Fax: 202-373-6001

Date: 12/10/10

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HOGAN LOVELLS US LLP



CHRISTOPHER MURRAY, WSBA #036851  
Attorneys for Defendant

1 **EXHIBIT A**

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

4 [Insert Date]

5 [Addressee]

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

7 The Dannon Company, Inc., (Dannon) recently reached a settlement with the  
8 Attorneys General of thirty-eight states and the State of Hawaii, Office of Consumer Protection  
9 (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.

10 Dannon will work with you to ensure the advertisements that you distribute are  
11 in compliance with the Settlement Agreement. To comply with the Settlement Agreement  
12 reached with the State AGs, Dannon offers its assistance in ensuring that the advertising or  
13 promotional materials that you disseminate regarding Activia and DanActive products will be  
14 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.

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

17 Sincerely,

18 The Dannon Company, Inc.  
19  
20  
21  
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23  
24  
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