

**SUPERIOR COURT
(CLASS ACTION)**

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

No.: 500-06-000482-097

EMMANUELLE SONEGO
Petitioner

v.
DANONE INC.
and
THE DANNON COMPANY, INC.
Respondents

AMENDED SETTLEMENT AGREEMENT

1. **WHEREAS** this settlement agreement (the "**Agreement**") is entered into by and among (i) named petitioner Emmanuelle Sonogo on behalf of herself and the Class defined below and (ii) Danone Inc. and The Dannon Company, Inc. (collectively, "**Danone**").
2. **WHEREAS** the Agreement shall be submitted to the Superior Court of Quebec for approval.
3. **WHEREAS** the present Agreement replaces the previous executed Settlement Agreement dated July 4, 2012;
1. **Specifications and definitions:**
4. All amounts of money mentioned in the present Agreement are in Canadian dollars.
5. In this Agreement, in addition to the terms that are defined elsewhere herein, the following terms have the meanings specified below. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.
 - (a) "**Agreement**" means the written Amended settlement agreement set out herein, including its Schedules and any written executed amendments thereto;

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- (b) **"Approval Hearing"** means court hearing held to determine whether the Agreement should be approved;
- (c) **"Approval Order"** means the court order approving the Agreement;
- (d) **"Claims Administrator"** means Danone Inc.;
- (e) **"Claims Filing Deadline"** means the deadline for a Class Member to submit a Claim Form, namely 60 days after the Effective Date;
- (f) **"Claim Form"** means the form submitted by a Class Member in order to obtain Compensation;
- (g) **"Claim Web Site"** means the bilingual web site set up by Danone Inc. or its agent to manage the settlement and inform Class Members, namely certain webpages on the www.collectiva.ca website;
- (h) **"Class"** means the Class as set out more fully below;
- (i) **"Class Counsel"** means the current lawyers on record of the Representative Plaintiff, specifically Lex Group Inc. in Montreal, Canada;
- (j) **"Class Member"** means a Person who falls within the definition of the Class set out more fully below;
- (k) **"Compensation"** means an amount between \$30 and \$100 given by Danone Inc. to a Class Member pursuant to the terms of the Agreement;
- (l) **"Court"** means the Superior Court of Quebec;
- (m) **"Danone Inc."** means one of the two respondents in the present file, having its head office at 100, rue Lauzon, Boucherville, Province of Quebec, Canada;
- (n) **"The Dannon Company, Inc."** means one of the two respondents in the present file, having its principal place of business at 100 Hillside Avenue, White Plains, New York, United States;
- (o) **"Defence Counsel"** means McCarthy Tétrault LLP;
- (p) **"Effective Date"** means 30 days after the Approval Order has been signed and entered and no appeals have been taken therefrom, or if any appeals have been taken, the date upon which such appeals are finally resolved in such manner as to permit the consummation of the settlement in accordance with the terms and conditions of the Agreement;
- (q) **"Litigation"** means the Quebec Class Action;
- (r) **"MLG"** means Merchant Law Group LLP, with offices in Montreal, Quebec, and elsewhere in Canada, who are the former lawyers on record of the Representative Plaintiff, from when the Motion to Authorize was initially filed in 2009 until September 1, 2011;

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- (s) **“Opt Out Deadline”** means 90 days following the publication of the Pre-Approval Notice;
- (t) **“Opt Out Form”** means the form that enables a Class Member to exclude himself from the Agreement;
- (u) **“Person”** means a physical person;
- (v) **“Pre-Approval Notice”** means the notice that advises Class Members of the upcoming Approval Hearing of the Agreement;
- (w) **“Pre-Approval Order”** means the court order rendered with respect to the proposed Pre-Approval Notice;
- (x) **“Products”** means Activia® yogurt with probiotic products or DanActive® dairy drink with probiotic products sold in Canada;
- (y) **“Quebec Class Action”** means the class action commenced against Danone Inc. and The Dannon Company, Inc. by Emmanuelle Sonogo under docket number 500-06-000482-097;
- (z) **“Released Persons”** means Danone Inc. and The Dannon Company, Inc. and each of their present or past directors, officers, employees, agents, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs and assigns;
- (aa) **“Releasing Persons”** means the Representative Plaintiff, on behalf of herself, and the Class Members, as well as their respective heirs, executors, administrators, representatives, agents, partners, successors and assigns, excluding those Class Members who timely and validly request exclusion from the Class pursuant to the Pre-Approval Notice disseminated and published in accordance with the Pre-Approval Order;
- (bb) **“Representative Plaintiff”** means the petitioner named in the Litigation, specifically, Emmanuelle Sonogo;
- (cc) **“Schedules”** means the schedules incorporated by reference into to the Agreement;
- (dd) **“Settlement Approval Notice”** means the notice that advises Class Members of the Approval Order having been rendered and issued by the Court;
- (ee) **“Settling Parties”** means the Representative Plaintiff and Danone Inc. and The Dannon Company, Inc.;

II. **The Class:**

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6. The Class is composed of all Persons residing in Canada who have purchased in Canada between April 1, 2009 and November 6, 2012 Activia® yogurt products or DanActive® probiotic drink products. Excluded from the Class are all Persons who have timely and validly requested exclusion from the Class pursuant to the Pre-Approval Notice disseminated and published in accordance with the Pre-Approval Order, or the Notice of Settlement Agreement detailed herein.
7. The Approval Order, once issued, shall bind all Class Members in Canada, except for those Class Members who have opted-out in accordance with the provisions of the present Agreement.

III. History of the Litigation:

8. Representative Plaintiff Emmanuelle Sonogo filed a *Motion to Authorize the Bringing of a Class Action and To Ascribe the Status of Representative* (the "*Motion to Authorize*") with the Superior Court of Quebec. The *Motion to Authorize* alleged, *inter alia*, that Danone had misrepresented some of the performance characteristics, use or benefits of Activia® yogurt products or DanActive® probiotic drink products. The Representative Plaintiff sought leave to bring an action in damages and an action in exemplary damages against Danone pursuant to the *Civil Code of Quebec*, R.S.Q. 1991, c. 64, and the *Consumer Protection Act (Quebec)*, S.Q. c. P-40.1.
9. At the hearing for authorization, held on January 30 and 31, 2012 before the Honourable Justice Robert Castiglio of the Superior Court of Quebec, Danone strenuously denied, and continues to deny, that it made any misrepresentations whatsoever with respect to its Activia® yogurt products or DanActive® probiotic drink products. Danone further argued that the Quebec Class Action did not meet the criteria for authorization specified in Article 1003 of the *Quebec Code of Civil Procedure* (the "*Code of Civil procedure*" or the "C.C.P."), R.S.Q. c. C-25. The Dannon Company, Inc. also specifically argued that it did not sell or market Activia® yogurt products or DanActive® probiotic drink products in Canada.
10. After an agreement in principle was reached on April 12, 2012 between the Settling Parties to settle the Litigation, the Settling Parties through their respective counsels asked Castiglio J. to stay his deliberations on the *Motion to Authorize* and not to render any decision regarding same.

IV. Settlement Negotiations:

11. Class Counsel and Defence Counsel have engaged in good faith, constructive settlement discussions for several months. The Settling Parties knew about, approved and were kept informed of these ongoing discussions. On or about April 12, 2012, the Settling Parties, through their respective counsels, arrived at an agreement in principle to settle the Litigation.
12. The Representative Plaintiff and Class Counsel believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. They recognize and acknowledge the expense and length of the complex proceedings that will be required to prosecute the Litigation. The Representative Plaintiff and Class Counsel have also taken into account the

uncertain outcome and risks involved in continuing with the Litigation, as well as the difficulties and delays inherent to class action proceedings. Moreover, the Representative Plaintiff and Class Counsel have concluded that the Agreement provides Class Members with benefits and is fair, reasonable, appropriate and in their best interests.

13. Danone Inc. and The Dannon Company, Inc. have denied vigorously, and continue to deny, each and every allegation of liability and wrongdoing, and asserts that they have substantial factual and legal defences to all the claims alleged and that such claims are without merit. Nevertheless, Danone Inc. and The Dannon Company, Inc. have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set out in the Agreement. Without admitting any wrongdoing or liability whatsoever, Danone Inc. and The Dannon Company, Inc. accept the terms of the Agreement provided that all issues relating to the subject matter of the Litigation are hereby completely resolved.
14. Following a hearing before the Court on November 6, 2012, the Settling Parties have agreed to amend the initial Settlement Agreement of July 4, 2012, of which the current Agreement is the result.

V. Considerations:

15. It is understood that The Dannon Company Inc., an American entity, participates in the present Agreement, but states that it had nothing to do with any of the allegations made in the *Motion to Authorize* and its accompanying exhibits, a strictly Canadian proceeding.
16. Danone Inc. will continue to communicate the Products' benefits in compliance with all applicable federal and provincial laws and regulations.
17. The Settling Parties had agreed that Danone Inc. could issue a press release at the time of the publication of the Pre-Approval Notice. The text of said press release read as follows¹ :

"Boucherville, Québec, September 24, 2012 - A class action lawsuit that had been filed on October 5th, 2009 against Danone Inc., the Canadian subsidiary of Danone, regarding advertising about its Activia® yogurt products or DanActive® probiotic drink products has been settled. Today, the parties to the class action announced that they have reached a settlement, subject to approval by the Superior Court of Quebec. As a result of this settlement, Danone Inc. will make certain changes to its communication for these two products, while continuing to communicate the products' benefits in compliance with all applicable federal and

¹ It was and is specifically understood and acknowledged that neither the Representative Plaintiff nor Class Counsel have confirmed, nor that they can attest, that the Products have any "scientifically substantiated benefits". Danone Inc. was and is therefore solely liable and responsible for any consequences relating to the issuance of the press release.

provincial laws and regulations. Consumers can continue to enjoy these products and their scientifically substantiated benefits.

Danone Inc. will reimburse qualified consumers up to \$50 for products purchased.

Anne-Julie Maltais, spokesperson for Danone Inc., said, "While denying any wrongdoing, the Company decided to settle the matter to avoid further litigation and we look forward to resuming our exclusive focus on making yogurts that are enjoyed by our consumers."

VI. Compensation:

(a) *Direct compensation*

18. Danone Inc. will provide to each Class Member that qualifies Compensation in the following manner:

a) Class Members who sign and solemnly declare that they have purchased either Activia® or DanActive® products in Canada between April 1, 2009 and November 6, 2012: \$ 30;

b) Class Members who sign and solemnly declare that they have purchased either Activia® or DanActive® products in Canada between April 1, 2009 and November 6, 2012 AND have proof of purchase will be entitled to receive between \$ 30 and \$ 100, depending on the amount of the purchases:

- If the proof or proofs of purchase show purchase(s) of less than \$ 30, the Class Member is entitled to \$ 30;
- If the proof or proofs of purchase show purchase(s) between \$ 30 and \$ 100, then the Class Member is entitled to the amount of purchase;
- If the proof or proofs of purchase show purchase(s) above \$ 100, then the Class Member is entitled to \$ 100.

19. It is understood that the *Fonds d'aide aux recours collectifs* will be entitled to claim a percentage of 2% on each individual amount of Compensation paid to Class Members residing in the Province of Quebec only. This means that Class Members residing in the Province of Quebec will actually receive 98% of the amount between \$ 30 to \$ 100 that is applicable to them.

(b) *Indirect compensation*

20. Danone Inc. agrees to make the following changes to its advertising and labeling, beginning within 60 days after the Effective Date. Defence Counsel will confirm to Class Counsel as soon as the changes are made.

(i) *Activia® branded products:*

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21. Remove the words "clinically proven" and/or "scientifically/proven" from the product labeling and packaging and commercials and advertisements of its Activia® branded products; and substitute such language with the phrases "there are a number of clinical studies that show" or "clinical studies show", or similar communication that reasonably conveys the same meaning.
22. When stating that Activia® branded products "help(s) regulate the digestive system", or words with a similar meaning, qualify with the explanatory statement "as part of a balanced diet and healthy lifestyle", or similar communication that reasonably conveys the same meaning. On the product, this qualifier shall be made on the product label, packaging over-wrap, or a similarly prominent location. In television commercials, on point of purchase displays, on websites, in health marketing materials and in print advertising, this qualifier shall be displayed such as to comply with the labelling regulations of Canada.
23. When used, place the correct genus, species and strain designation for *Bifidus Regularis*® or any other trade name ("*Bifidobacterium lactis* DN -173-010" or any internationally recognised designation for the same strain) on the label, the ingredient list or on the inside packaging of the product.

(ii) DanActive® branded products:

24. Where used, remove the word "IMMUNITY" from the product labelling, packaging, commercials and advertisements of its DanActive® branded products.
25. Remove the words "clinically proven" and/or "scientifically proven" from the product labelling and packaging and commercials and advertisements of its DanActive® branded products; and substitute such language with the phrases "there are a number of clinical studies that show" or "clinical studies show", or similar communication that reasonably conveys the same meaning.
26. When using the claims that DanActive "helps strengthen your body's defenses" and/or "helps support the immune system", qualify with the explanatory statement "when eaten regularly as part of a balanced diet and healthy lifestyle", or similar communication that reasonably conveys the same meaning. On the product, this qualifier shall be made on the product label, packaging over-wrap, or a similarly prominent location. In television commercials, on point of purchase displays, on websites, in health marketing materials and in print advertising, this qualifier shall be prominently displayed such as to comply with the labelling regulations of Canada.
27. When used place the correct genus, species and strain designation for *L. casei* *Defensis*® or any other trade name ("DN -114-001" or any internationally recognised designation for the same strain) on the label, the ingredient list or on the inside packaging of the product.

(iii) Additional Provisions:

28. Danone Inc. will continue to communicate the Products' benefits in compliance with all applicable federal and provincial laws and regulations, as well as with

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decisions, orders and/or directives from the relevant federal and provincial authorities.

Nothing in this Agreement will prohibit claims about the Products if, at the time they are made, the representations comply with Canadian Laws and are true and non-misleading and, as appropriate, are supported by competent and reliable scientific evidence that substantiates the representations. In this regard, any qualifier or explanatory statements which Danone Inc. agrees to use as per stipulations herein, may be modified or left out at any time if new scientific evidence so supports².

29. Nothing in this Agreement will prohibit Danone Inc. from making any representation in the labelling of the Products that is specifically permitted by applicable Canadian Laws, regulations, decisions, directives, orders or written policies promulgated by relevant authorities.
 30. Nothing in this Agreement shall prohibit Danone Inc. from communicating the results of one or more clinical studies on the Products provided the results are presented in a truthful and non-misleading fashion and provided that this is done in accordance with applicable Canadian Laws, regulations, decisions, directives, orders or written policies promulgated by relevant authorities.
 31. Danone Inc. has the right to change the genus, species and strain designation of the Products if the relevant international authorities make such a change or if any internationally recognised designation for the same strain exists already.
 32. Danone Inc. shall be bound by any labelling laws or regulations as well as decisions, orders and/or directives from the relevant federal and provincial authorities that restrict or expand the scope of claims for which the Products are eligible, and any laws or regulations as well as decisions, written policies, orders and/or directives from the relevant federal and provincial authorities and from the relevant international authorities that have a bearing on the labelling or advertising of the Products shall supersede any terms of this Agreement to the extent they are inconsistent with the terms of this Agreement.
- (iv) *Donation*
33. Over a period of two (2) years following the Effective Date, Danone Inc. shall donate Danone products up to a total wholesale value of \$ 500,000 to be distributed to one or more charities that help feed the poor in Canada to be jointly chosen by the Settling Parties and approved by the Court. This donation may include any commercially sold Danone Inc. dairy product in good, saleable condition and not out of code or past their sale expiration dates at the time they are distributed. Every six (6) months following the Effective Date and until the full amount of the said donations have been made, Defence Counsel will provide to Class Counsel a report detailing the total amount of products donated, the dates of the donations, and the recipients of said donations.

² Danone Inc. would remain solely responsible for any liability stemming from such unilateral actions in the future.

(c) Award for Representative Plaintiff Emmanuelle Sonogo

34. Danone Inc. will pay an award of \$ 5,000 to Representative Plaintiff Emmanuelle Sonogo in consideration for the time and efforts she has put into the Litigation. Danone Inc. shall pay this award to Defence Counsel in trust for Representative Plaintiff five business days after the Superior Court of Quebec has issued the Approval Order. This award deposited in trust shall be released to Class Counsel by Defence Counsel five business days after the Effective Date. Class Counsel shall then remit this award to Representative Plaintiff.

VII. Claims Process and Administration:

35. Danone Inc. is designated as the Claims Administrator and has already utilized an agent to fulfill its duties, namely Collectiva services en recours collectifs Inc.

36. To obtain Compensation:

a) Class Members must:

- i) complete and submit by mail a timely Claim Form (Schedule A of the present Agreement) OR
- ii) send by e-mail with the information requested in the Claim Form with a signature and a solemn declaration as attachment; OR
- ii) on the Claim Web Site, complete the electronic Claim Form and attach a signature and a solemn declaration,

in which he/she solemnly declare that he/she has purchased either Activia® and/or DanActive® products in Canada between April 1, 2009 and November 6, 2012,

b) AND, if claiming more than 30\$ as detailed herein, provide one or more proof(s) of purchase for either of these 2 products.

37. The Claim Form must be postmarked, sent by e-mail or completed on the Claim Web Site on or before the Claims Filing Deadline, namely no later than 60 days after the Effective Date (i.e. between 30 to 90 days after the Court has issued the Approval Order).
38. Class Members are each entitled to submit only one claim, but there is no restriction in the amount of claims submitted from the same civic address.
39. Danone Inc. shall offer to Class Members the choice to communicate in French or in English.
40. If Danone Inc. determines that a Claim Form meets the requirements specified above, Danone Inc. shall send the Class Member, by mail, the applicable Compensation within 60 days of the Claims Filing Deadline.

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41. If the Class Member submits an incomplete Claim Form, Danone Inc. shall give the Class Member written notice of the deficiencies and the Class Member shall have 30 days from the date of the written notice to cure the deficiencies. If, within the time provided, the Class Member cures these deficiencies and Danone Inc. determines that the Claim Form complies with the requirements specified above, Danone Inc. shall send the Class Member, by mail, the applicable Compensation. Class Members shall have only one opportunity to cure.
42. Within 75 days of the Claims Filing Deadline, Defence Counsel will provide to Class Counsel, on a confidential basis, the details of the above claims process, namely details regarding the total amount of claims received, accepted or denied, the total amount of money claimed, the total amount of Compensation disbursed, etc.

VIII. Dispute Resolution:

43. Any dispute involving the right of a Class Member to participate in the Agreement or receive Compensation shall be dealt with first by Danone Inc., which will try to settle it. If there is still a dispute, Class Counsel and Defence Counsel shall meet, confer and attempt to reach a resolution, and, if unable to resolve the issue, shall submit for decision any issue on which they disagree to the judge of the Superior Court of Quebec who will be seized with the approval of the Agreement.

IX. Court approval of the Agreement:

(a) *Pre-Approval Notice*

44. Promptly following execution of the original Settlement Agreement dated July 4, 2012, Class Counsel filed a motion with the Superior Court of Quebec for approval of the Pre-Approval Notice, which has been approved by the Court.

(b) *Motions for Approval*

45. Class Counsel has filed a motion with the Superior Court of Quebec for approval of the Agreement and shall seek to obtain the Approval Order.
46. Subject to judicial approval and only for purposes of this Agreement, Danone shall consent to the authorization of the Quebec Class Action pursuant to Articles 1002 and 1006 C.C.P.
47. At the Approval Hearing, Class Counsel and Defence Counsel shall move for final approval of the Agreement and present their arguments in support thereof and confirm that they and the Settling Parties support all aspects of the present Agreement and the settlement contained herein, and that they believe the settlement to be fair, reasonable, and appropriate under the circumstances.

(c) *Failure to Obtain Approval Order*

48. If the Agreement is not approved by the Superior Court of Quebec, the Settling Parties shall be restored to their respective positions in the Litigation.

X. Notice Requirements of Original Settlement Agreement (July 4, 2102) and Opting Out:

(a) Pre-Approval Notice

49. Danone Inc. has, at its sole expense, notified Class Members of the Agreement by way of a Pre-Approval Notice which stated *inter alia*: (i) that the Agreement would be submitted to the Superior Court of Quebec for approval, specifying the date and place of such proceedings; (ii) the nature of the Agreement and the method of its execution; (iii) the procedure to be followed by the Class Members to prove their Claims; (iv) that the Class Members have the right to present their arguments to the Court as regards the Agreement; and (v) the procedure to be followed in order to file an Opt Out Form on or before the Opt Out Deadline.
50. The Pre-Approval Notice was published in the following newspapers on September 24, 2012: La Presse, The Globe & Mail and The National Post.

(b) Notice of Settlement Agreement

51. Within 30 days of the Approval Order, Collectiva services en recours collectifs Inc. will directly send (by e-mail or mail) to all Class Members who have either submitted an Opt Out Form or who have already made a claim by the date of the Approval Order a Notice of Settlement Agreement, by which it will inform them of the modifications to the direct Compensation being offered and will allow them 60 days from the Effective Date to submit an amended claim or a new claim or to opt out (by completing the Opt Out Form, attached as Schedule C, and filing it with Danone Inc., the whole notwithstanding the already expired Opt-Out Deadline). The costs of this Notice of Settlement Agreement will be borne by Danone Inc. Defence Counsel will provide to Class Counsel copies of any such Opt Out Forms received, if any.
52. The Claims Web Site will also be modified in order to reflect the amendments to the Settlement Agreement. Class Members who have already submitted a valid claim and do not send in an amended claim or a new claim will automatically be entitled to receive the following compensation:

- If the initial compensation they were entitled to was 15\$, they will then receive 30\$;
 - If their initial compensation was between 15\$ and 30\$, they will then receive 30\$;
- If their initial compensation was between 30.01\$ and 50\$, then they will receive the initial amount, unless they have provided copies of receipts which show purchases of over 50\$. If they have provided copies of receipts which show purchases of over 50\$, they will then receive the amount of purchases, up to a maximum of 100\$.

(c) Settlement Approval Notice

53. Once the Approval Order has been issued, Danone Inc. shall, at its sole expense, maintain a bilingual Claim Web Site which will, *inter alia*, describe the Class, summarize the essential elements of the Agreement, and provide for the electronic submission of the Claim Form. Furthermore, Danone Inc. shall, at its sole expense, publish the Settlement Approval Notice in the following newspapers: La Presse and The National Post. Attached as Schedule D is the proposed Settlement Approval Notice, which shall be submitted to the Superior Court of Quebec for approval before its dissemination.

(d) Opting Out of the Agreement

54. Danone Inc., within thirty (30) days following the end of the opting out deadline described at paragraph 51 above, must provide Class Counsel and Defence Counsel a list of all Opt Out Forms.

XI. Class Counsel fees:

55. Class Counsel fees and expenditures shall be paid by Danone Inc. pursuant to the terms and conditions specified below.
56. Within the Motion requesting the issuance of the Approval Order, Class Counsel will be asking the Court to approve their global award, covering attorney fees and expenditures ("Class Counsel Fees"), of \$ 520,000 in total, plus the Goods and Services Tax ("GST") and Quebec Sales Tax ("QST") (at the rates applicable on the date of payment), as more fully detailed hereinbelow.
57. Danone Inc. shall pay the Class Counsel Fees to Defence Counsel in trust five business days after the Superior Court of Quebec has issued the Approval Order. All amounts deposited in trust shall be released by Defence Counsel five business days after the Effective Date, the whole as follows:
- a) \$420,000 (plus GST and QST, at the rates applicable on the date of payment) payable to Class Counsel Lex Group Inc.;
 - b) \$100,000 (plus GST and QST, at the rates applicable on the date of payment) payable to MLG directly, by way of cheque or bank draft made payable to "Merchant Law Group LLP", and sent to MLG's Montreal office.
58. Defence Counsel shall confirm to the Court at the Approval Hearing that they and Danone Inc. believe the Class Counsel Fees to be fair, reasonable and appropriate in the present case and that Danone Inc. has agreed to pay the said amount of Class Counsel Fees in this case.

XII. Fonds d'aide aux recours collectifs:

59. It is understood that the *Fonds d'aide aux recours collectifs* will be entitled to claim the percentage of 2% on each individual Compensation paid to Class Members residing in the Province of Quebec, as provided for at s. 1(3)(a) of the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*, R.R.Q., c. R-2.1, r. 2.

XIII. Releases:

60. Upon the Effective Date, the Representative Plaintiff on behalf of herself and the Class Members hereby fully, finally, and forever release, relinquish, and discharge the Released Persons from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorney fees, losses, expenses, obligations or demands, of any kind whatsoever that the Releasing Persons may have or may have had, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, that were alleged in the Litigation, regarding the past representations surrounding the Activia® yogurt products or DanActive® probiotic drink products sold or marketed in Canada, including without limitation, claims relating to any alleged misrepresentation, or failure to disclose regarding Activia® yogurt products or DanActive® probiotic drink products sold or marketed in Canada and bought or obtained by Representative Plaintiff or Class Members on or before [DATE of change of labels - within 60 days after the Effective Date] (“Released Claims”).
61. Nothing in this Agreement shall constitute or shall be deemed to constitute a waiver by Danone Inc. of any defence with respect to any Class Member who opts out of the Agreement, or in the event this Agreement is not approved by the Court.
62. Any Compensation paid pursuant to the Agreement is made without admission of liability. The Releasing Parties agree that the Agreement, the Pre-Approval Order and the Approval Order rendered in respect of the Agreement shall not constitute an admission or be used as evidence against Danone Inc. Nothing in the Agreement shall be used for any purpose in any legal proceeding unless expressly authorized herein.

XIV. Miscellaneous Provisions:

63. The Agreement and its Schedules supersede all prior settlement agreements between the Settling Parties, whether oral or in writing, pertaining to the subject matter of the Litigation and constitute the entire agreement among the Settling Parties. No representations, warranties, or inducements have been made to any Settling Party concerning the Agreement or its Schedules other than the representations, warranties, and covenants covered and memorialized herein.
64. The Settling Parties acknowledge that it is their intent to consummate the Agreement, and they agree to co-operate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement.
65. The Settling Parties intend the Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Agreement shall not be deemed an admission by any Settling Party as to the merits of any claim or defence. The Settling Parties agree that the consideration provided to the Class Members and the other terms of the Agreement were negotiated in good

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faith, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

66. Neither the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Danone Inc., or is or may be deemed to be or may be used as an admission of, or evidence of, any fault, omission, wrongdoing or liability of Danone Inc., in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. The Released Persons may file this Agreement and/or the Approval Order in any action that may be brought against it in order to support any defence or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim.
67. Danone Inc. and The Dannon Company, Inc. have denied vigorously, and continue to deny, each and every allegation of liability and wrongdoing, and assert that they have substantial factual and legal defences to all the claims alleged and that such claims are without merit. Nevertheless, Danone Inc. and The Dannon Company, Inc. have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set out in the Agreement. Without admitting any wrongdoing or liability whatsoever, Danone Inc. and The Dannon Company, Inc. accept the terms of the Agreement provided that all issues relating to the subject matter of the Litigation are hereby completely resolved.
68. Class Counsel will be entitled, at its discretion and at its costs, to post copies of this Agreement, its Schedules, the Pre-Approval Notice, the Notice of Settlement Agreement, the Settlement Approval Notice and the Approval Order on its firm website(s), together with a brief description of the Litigation.
69. All of the Schedules to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.
70. Unless otherwise ordered by the Court, the Settling Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.
71. The captions contained in the Agreement are inserted only as a matter of convenience and in no way define, extend or describe the scope of the Agreement or the intent of any provision thereof.
72. Except as otherwise provided herein, the Settling Parties shall bear their own respective costs.
73. Class Counsel, on behalf of the Class Members, are expressly authorized by the Representative Plaintiff to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and are expressly authorized to enter into any modifications or amendments to the

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- Agreement on behalf of the Class Members whom Class Counsel deems appropriate.
74. Each counsel or other Person executing the Agreement or any of its Schedules on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.
 75. The Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.
 76. The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Released Persons.
 77. The Superior Court of Quebec shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement and all parties hereto submit to the jurisdiction of this Court for purposes of implementing and enforcing the Agreement.
 78. None of the Settling Parties, or their respective counsel, shall be deemed the drafter of this Agreement or its Schedules for purposes of construing the provisions thereof. The language in all parts of the Agreement and its Schedules shall be interpreted according to its fair meaning, and shall not be interpreted for or against any of the Settling Parties as the drafter thereof.
 79. No Class Counsel, or anyone employed by Class Counsel, may, directly or indirectly, participate in or be involved in, or in any way assist with respect to any action related in any way to this Litigation. Moreover, no Class Counsel or anyone employed with Class Counsel may divulge any non public information obtained in the course of the Litigation to anyone for any purpose, except as permitted by this Agreement or as required by Law or ordered by a Court of Law.
 80. This Agreement and the Schedules hereto shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Quebec.
 81. The parties acknowledge that they have required and consented that the Agreement and all related documents be prepared in both French and English. Both versions are equally authoritative. *Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en français et en anglais Les deux versions ont la même valeur.*
 82. The Agreement constitutes a transaction pursuant to Articles 2631 and following of the *Civil Code of Quebec* and the Settling Parties are hereby renouncing to any errors of fact, law and/or calculation.
 83. Any and all notices, requests, directives or communications required by the Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by e-mail, by postage prepaid mail or by facsimile transmission followed by postage prepaid mail and shall be addressed as follows:

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IF TO: EMMANUELLE SONEGO

Care of:

Me David Assor
Lex Group Inc.
4101 Sherbrooke Street West
Westmount, Quebec H3Z 1A7
Phone 514-451-5500, extension 321
Fax 514-875-8218
davidassor@lexgroup.ca

IF TO: DANONE INC. OR THE DANNON COMPANY, INC.

Care of:

Me Donald Bisson
McCarthy Tétrault LLP
Suite 2500
1000 de la Gauchetière Street West
Montreal, Quebec H3B 0A2
Phone 514-397-4261
Fax : 514-875-6246
dbisson@mccarthy.ca

SIGNED in Montreal on February 26, 2013



(s) Donald Bisson
McCarthy Tétrault LLP
On behalf of Danone Inc. and The Dannon Company, Inc.

SIGNED in Montreal on February 26, 2013



(s) David Assor
Lex Group Inc.
On behalf of Emmanuelle Sonogo

SCHEDULE “A”

Claim Form

Danone Activia® and DanActive® Settlement Program in Canada

INSTRUCTIONS – TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY TO DETERMINE IF YOU QUALIFY FOR COMPENSATION UNDER THIS PROGRAM.

I- WHO IS ELIGIBLE TO MAKE A CLAIM

The following terms and conditions govern this Danone Activia® and DanActive® Settlement Program in Canada:

1. You must be a resident of Canada who purchased in Canada between April 1, 2009 and November 6, 2012 Activia® yogurt products or DanActive® probiotic drink products.
2. Excluded from the Class are all Persons who have timely and validly requested exclusion from the Class.
3. You are entitled to submit only one claim for all your purchases of Activia® yogurt products or DanActive® probiotic drink product in Canada between April 1, 2009 and November 6, 2012.

II- THE SETTLEMENT

4. The settlement provides for three types of compensation – the present claim form covers the first type, the Direct compensation.

(a) Direct compensation

5. Danone Inc. will provide to each Class Member that qualifies Compensation in the following manner:

a) Class Members who sign and solemnly declare that they have purchased either Activia® or DanActive® products in Canada between April 1, 2009 and November 6, 2012: \$ 30;

b) Class Members who sign and solemnly declare that they have purchased either Activia® or DanActive® products in Canada between April 1, 2009 and November 6, 2012 AND have proof of purchase will be entitled to receive between \$ 30 and \$ 100, depending on the amount of the purchases:

- If the proof or proofs of purchase show purchase(s) of less than \$ 30, the Class Member is entitled to \$ 30;

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- If the proof or proofs of purchase show purchase(s) between \$ 30 and \$ 100, then the Class Member is entitled to the amount of purchase;
- If the proof or proofs of purchase show purchase(s) above \$ 100, then the Class Member is entitled to \$ 100.

6. It is understood that the *Fonds d'aide aux recours collectifs* will be entitled to claim a percentage of 2% on each individual amount of Compensation paid to Class Members residing in the Province of Quebec only. This means that Class Members residing in the Province of Quebec will actually receive 98% of the amount between \$30 to \$ 100 that is applicable to them.

(b) Indirect compensation

7. Starting at the latest on [60 days after Effective Date], Danone Inc. will make changes to its advertising and labelling in Canada, to describe with better precision the characteristics of its Activia® yogurt products or DanActive® probiotic drink products.

(c) Donation

8. Over a period of two (2) years following the Effective Date, Danone Inc. shall donate Danone products up to a total wholesale value of \$ 500,000 to be distributed to one or more charities that help feed the poor in Canada to be jointly chosen by the Settling Parties and approved by the Court. This donation may include any commercially sold Danone dairy product in good, saleable condition and not out of code or past their sale expiration dates at the time they are distributed.

III- HOW TO MAKE A CLAIM

9. To receive a Compensation, you must make a claim in the following way.

10. To make a claim, you must complete and submit this Claim Form, along with any required documentation, in compliance with the instructions below, and under penalty of perjury.

11. To obtain Compensation:

a) you must:

i) complete and submit by mail the present Claim Form to the following address:

Collectiva Services en recours collectifs inc.

285, Place D'Youville, bureau 9

Montréal (Québec) H2Y 2A4;

OR

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ii) send by e-mail to info@collectiva.ca with the information requested in the present Claim Form with a signature and the solemn declaration as attachment; OR

ii) on the Claim Web Site www.collectiva.ca, complete the electronic Claim Form and attach a signature and the solemn declaration,

b) in which you solemnly declare under penalty of perjury that you have purchased either Activia® or DanActive® products in Canada between April 1, 2009 and November 6, 2012;

c) AND, if applicable, provide one or more proof(s) of purchase for this/these products.

12. The Claim Form must be postmarked, sent by e-mail or completed on the Claim Web Site no later than [DATE] (i.e. 60 days after the Effective Date (i.e. between 30 to 90 days after the Court has issued the Approval Order)).
13. Class Members are entitled to submit only one claim.
14. Duplicate or incomplete claim forms will not be honoured.
15. If applicable, submit proof of purchase consisting of an itemized, dated sales receipt or invoice or a credit card statement showing a qualifying Activia® or DanActive® products purchase.
16. Keep copies for your records.
17. Lost, late, or misdirected mail or e-mail is not the responsibility of Danone Inc. or its agents. Danone Inc. shall send the Class Member, by mail, the applicable Compensation within 60 days of [the Claims Filing Deadline]. Compensation can only be mailed to you at an address within Canada.

IV- CLAIM FORM

18. To request Compensation:

i) you must print, complete and sign the claim form below. If applicable, attach your proof of purchase to the completed claim form and mail them to the address below. All requests must be postmarked on or before [DATE].

OR

ii) send by e-mail to info@collectiva.ca with the information requested below in the present Claim Form with a signature and the solemn declaration as attachment. If applicable, attach your proof of purchase to the completed claim form;

OR

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ii) on the Claim Web Site www.collectiva.ca, complete the electronic Claim Form and attach a signature and the solemn declaration. If applicable, attach your proof of purchase to the completed claim form.

Received claim forms will be checked for validity. Danone Inc. shall send the Class Member, by mail, the applicable Compensation within 60 days of [the Claims Filing Deadline].

PERSONAL INFORMATION

Please provide the following information, which will be treated as confidential.

Any Compensation that Danone Inc. provides in response to your claim will be issued to the name and street address you provide. Please print clearly.

Name:	
Address:	
City:	
Province:	
Postal Code:	
Phone number (optional):	
E-mail (if available - optional):	
If known, store(s) where Activia® or DanActive® product(s) was(were) purchased	
If known, date(s) of purchase(s) (MM / DD / YYYY)	

Acknowledgement, Certification and Release:

I am a Canadian resident and I solemnly declare under penalty of perjury that I have purchased in Canada between April 1, 2009 and November 6, 2012 [Activia® yogurt products or DanActive® probiotic drink products.

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IF APPLICABLE: I attach a proof of purchase of Activia® yogurt products or DanActive® probiotic drink products purchased in Canada between April 1, 2009 and November 6, 2012.

By signing and dating this form below, I acknowledge that I have read the terms and conditions herein and am qualified to obtain a Compensation under this Settlement Program. I also hereby fully, finally, and forever release the Released Persons³ of all claims alleged in the Litigation relating to any alleged misrepresentation, or failure to disclose regarding Activia® yogurt products or DanActive® probiotic drink products purchased in Canada between April 1, 2009 and November 6, 2012, as more described in the Settlement Agreement.

I state under penalty of perjury that the information provided above is true. All information is complete and accurate.

Date

Signature

REMINDER

Please note the following deadline for postmarking/e-mailing your Claim Form and supporting documentation:

- **The deadline for submitting a claim is [DATE].**
- **If you have any questions while completing the Claim Form please contact Danone Inc. at [PHONE] or at [web address].**

³ "Released Persons" means Danone Inc. and The Dannon Company, Inc. and each of their present or past directors, officers, employees, agents, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs and assigns.

SCHEDULE "C"

OPT OUT FORM

**Opting out from the Danone Activia® and DanActive® Settlement Program in
Canada**

OPT OUT FORM

*****N.B. Only Class Members who have already submitted a Claim prior to the Approval Order can opt out.*****

Class Members are bound by the terms of the Settlement Agreement, unless they opt out of the class action.

If you opt out, you will not be entitled to make a claim or to receive any Compensation. If you opt out, you should be aware that there are strictly enforced time limits within which you must take formal legal action to pursue your claim. By opting out, you will take full responsibility for taking all necessary legal steps to protect your claim.

If you wish to opt out, you must no later than [DATE – N.B. 90 days following the sending by Danone to all Class Members who have already made a claim by the date of the Approval Order a Notice of Amended Settlement Agreement]:

- i) complete and submit by mail the present Opt Out Form to the following address: [address]; OR
- ii) send by e-mail [at the address: ...] the present Opt Out Form with your signature; OR
- ii) on the Claim Web Site [address], complete the electronic Opt Out Form Claim Form and attach a signature.

Class Members who want to opt out and who are residents of Quebec must IN ADDITION give notice to the Clerk of the Superior Court of Quebec at:

Clerk of the Superior Court of Quebec
Palais de Justice
1, rue Notre-Dame Es
Montreal (Quebec) H2Y 1B6
Court file no. 500-06-000482-097

OPTING OUT FORM

Name:	
Address:	
City:	

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Province:	
Postal Code:	
Phone number (optional):	
E-mail (if available - optional):	
If known, store(s) where Activia® or DanActive® product(s) was(were) purchased	
If known, date(s) of purchase(s) (MM / DD / YYYY)	

I wish to opt out of the Danone Activia® and DanActive® Settlement Program in Canada.

Date

Signature
