

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into as of the date of final signature by the authorized signatories for each of the Parties: the National Cancer Institute, an agency of the United States Government (hereinafter referred to as “NCI”), having offices at 9000 Rockville Pike, Bethesda, Maryland, 20892, and Dairy Management Inc., a non-profit corporation organized under the laws of the District of Columbia, having a principal place of business at 10255 West Higgins Road, Suite 900, Rosemont, Illinois, 60018 (hereinafter “DMI”).

WHEREAS, NCI is the owner of U.S. Registration No. 1,641,635 for the mark 5 A DAY - FOR BETTER HEALTH FRUITS & VEGETABLES and U.S. Registration No. 2,416,006 for the mark EAT 5 A DAY (“NCI’s Marks”); and

WHEREAS, DMI has adopted and is using the mark 3-A-DAY MILK CHEESE YOGURT FOR STRONGER BONES in connection with U.S. Application Serial No. 76/405,471 and the mark 3-A-DAY in connection with U.S. Application Serial No. 76/405,470 and the mark 3-A-DAY & Design in connection with U.S. Application Serial No. 76/483,753 and DMI’s affiliated entity, National Dairy Council, has adopted and is using the mark EAT THE FIVE FOOD GROUP WAY in connection with U.S. Application Serial No. 76/429154 (“DMI’s Marks”);

WHEREAS, for each of DMI’s Marks that has been published for opposition, NCI has timely filed notices of opposition or requests to oppose DMI’s Marks; and

WHEREAS, the parties wish to settle all controversies between them, wish to avoid any likelihood of confusion by virtue of their use of their respective service marks, wish to avoid a potential opposition proceeding and wish to provide for further registration of their respective marks;

NOW THEREFORE, in consideration of the foregoing and of the promises and covenants set forth herein, and intending to be legally bound, the parties agree as follows:

ORIGINAL

NCI-DMI Settlement Agreement

1 Each party acknowledges the other party's ownership of, validity of, and right to use its Marks, and each party agrees and consents to the use and registration of the other party's Marks for the services recited in the noted registrations and applications. Each party agrees not to contest or assist others in contesting the other party's ownership and right to use and register its Marks. In the event that a party learns that the Marks of either party will be used in proximity to the Marks of the other party, the parties shall make reasonable efforts to ensure that the placement or usage of the Marks does not suggest an association with the other party or the other party's Marks.

2. Neither party (or any component or subsidiary thereof) shall state, suggest, or imply in any public statement that, by entering this Agreement, either party (or any component or employee thereof) endorses a product, service, or the content of an educational message of the other party.

3. DMI agrees to adopt and seek to register with the United States Patent and Trademark Office ("USPTO"), a new mark that contains the words "3-A-Day" "Low Fat" "Milk Yogurt and Cheese" and design (the "Low Fat Mark"). DMI intends to use the Low Fat Mark in connection with appropriate activities related to encouraging the consumption of three servings of low fat dairy per day in appropriate venues.

4. DMI agrees to add an attribution of ownership on materials (as further specified below) produced by DMI or its licensees bearing one of the DMI Marks, beginning one hundred twenty (120) days after the final execution of this Agreement by the parties, in accordance with the following:

- A. Where feasible on the materials, including packaging for goods, DMI will encourage its licensees and partners to insert text attributing ownership of the relevant Mark to DMI, except that DMI will not encourage such an attribution on uses of any of the

DMI Marks where the size of the DMI Mark on the packaging or other material is less than 1 inch by 1 inch.

- B. For those materials produced by or for DMI and paid for by DMI, including in electronic formats, bearing at least one of DMI's Marks, DMI will insert text attributing ownership of the Mark to DMI. This text shall be legible relative to the DMI Mark and may be placed at any suitable location in the material as determined by DMI, except that DMI will not be required to insert attribution language on any of the DMI Marks where the size of the DMI Mark standing alone or the size of the materials the DMI Mark is used on is less than 1 inch by 1 inch.
- C. In certain venues agreed upon by the parties at any time following the execution of this agreement, the parties agree to work together and produce a single communication endorsed by both parties or a coordinated set of communications that will serve to highlight the distinct nature of each party's program and, where appropriate, the amicable resolution of this dispute.

DMI further agrees that any non-conforming materials in its possession or custody following the execution of this Agreement shall be used or distributed to the full extent practicable within the 180 days following final execution of this Agreement. After this 180 day period has expired, any remaining non-conforming materials in the possession or custody of DMI shall be destroyed. DMI shall not be obliged to recall (or have its licensees recall) any non-conforming materials that have already been distributed for public use or sale.

5. NCI hereby agrees to file appropriate documents with the USPTO dismissing its oppositions to any pending registrations of any DMI Marks within ten (10) days of the final execution of this Agreement. DMI shall provide a written Consent to NCI's Dismissals for NCI to file in the USPTO along with its dismissal documents.

6. With respect to registration applications for new marks filed after the date of this Agreement, in the event that one of NCI's Marks is cited against a registration application of DMI,

or one of DMI's Marks is referenced or cited against a registration application of NCI, the parties mutually agree that they will promptly provide written consent to the use and registration of the other party's new mark, except that a party shall not be required to consent where it reasonably and in good faith believes that the proposed new mark of the other party will be likely to cause confusion with any of its then-registered marks and then-pending mark applications.

7. In the event that either party becomes aware of any event that potentially constitutes actual confusion or mistake arising from the use of the respective marks of either party, the party that learns of the event will promptly notify the other party, and the parties agree that they will cooperate reasonably and in good faith to abate the cause of confusion or mistake. The fact that a party provides notice under this section shall not constitute an admission that the event constitutes actual confusion in fact, or an admission that it demonstrates a likelihood of confusion in general.

8. A. In consideration of the foregoing, NCI, for itself and for its agents, predecessors, successors, and assigns, and its past, present and future officers, directors, employees, representatives and attorneys, does hereby release, acquit, exonerate, and forever discharge DMI and its agents, representatives, and attorneys, of and from any and all obligations, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands, and liabilities whatsoever of every name and nature, whether known or unknown, suspected or unsuspected, accrued or unaccrued, in law, equity, or otherwise, which it ever had or now has against DMI for, upon, or by reason of, any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement relative to the USPTO opposition proceedings it initiated with respect to the DMI Marks, except that NCI, after the execution of this Agreement,

shall be entitled to bring an action to enforce this Agreement or for a breach thereof.

B. In consideration of the foregoing, DMI, for itself and for its agents, predecessors, successors, and assigns, and its past, present and future officers, directors, employees, representatives and attorneys, does hereby release, acquit, exonerate, and forever discharge NCI and its agents, representatives, and attorneys, of and from any and all obligations, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands, and liabilities whatsoever of every name and nature, whether known or unknown, suspected or unsuspected, accrued or unaccrued, in law, equity, or otherwise, which it ever had or now has against NCI for, upon, or by reason of, any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement relative to the USPTO opposition proceedings NCI initiated with respect to the DMI Marks, except that DMI, after the execution of this Agreement, shall be entitled to bring an action to enforce this Agreement or for a breach thereof.

9. The parties enter into this Agreement as a full and complete settlement and compromise of all claims by the parties hereto which were made or could have been made prior to the date of this Agreement. Neither the execution of this Agreement nor the tender or receipt of any benefit nor the performance of any obligation recited herein is intended as an acknowledgment of responsibility, admission of liability, or other expression reflecting upon the merits of any claims covered by this settlement.

10. The parties represent and state that they are represented by counsel and have been fully informed and have knowledge of the terms, conditions, and effects of this Agreement. The parties further represent and state that no promise or inducement has been made except as is set forth

in this Agreement.

11. This Agreement shall be governed by and be construed in accordance with Federal law as applied by the Federal courts in the District of Columbia, and in accordance with the laws of the District of Columbia. In the event of a conflict between Federal law as applied by the Federal courts in the District of Columbia, and the laws of the District of Columbia, Federal law as applied by the Federal courts in the District of Columbia will prevail.

12. This Agreement constitutes the entire agreement between the parties in relation to the subject matter. No term or provision of this Agreement may be varied, changed, modified, waived or terminated orally, but only by an instrument in writing signed by the party against whom the enforcement of the variation, change, modification, waiver or termination is sought.

13. This Agreement may be executed in duplicate originals.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their predecessors, subsidiaries, affiliates, parent companies, successors, successors in interest, assigns, trustees, officers, directors, shareholders, agents, attorneys and employees.



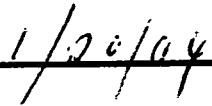
15. All signatory parties hereto represent and warrant that they possess the full and complete authority to covenant and agree as herein provided and further represent and warrant that they have the full and complete authority to execute this Agreement.

16. The waiver by any party of any breach, or the failure by any party to enforce the terms and conditions of this Agreement, at any time, shall not in any way affect, limit, or waive the right of that party thereafter to enforce and compel strict compliance by the other party with respect to any term or condition.

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17. This Agreement shall be worldwide in scope and shall be of unlimited duration so long as neither party abandons all of its respective Marks in the United States.

IN WITNESS WHEREOF, the National Cancer Institute and Dairy Management, Inc. have set their hands on the date indicated below.

NATIONAL CANCER INSTITUTE	DAIRY MANAGEMENT, INC.
Signature: 	Signature: 
Name: Alan Rabson, M.D.	Name: Thomas Gallagher
Title: Deputy Director	Title: Chief Executive Officer
Date: 	Date: 