

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)
)
 CEPHALON, INC.,)
 a corporation;)
)
 and)
)
 CIMA LABS INC.,)
 a corporation.)

File No. 041 0025

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of Respondent Cephalon, Inc. (“Cephalon”) and Respondent CIMA LABS INC. (“CIMA”), and it now appearing that Cephalon and CIMA hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into this Agreement Containing Consent Order ("Consent Agreement") to license certain assets and providing for other relief:

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Cephalon, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 145 Brandywine Parkway, West Chester, Pennsylvania 19380.
2. Proposed Respondent CIMA LABS INC. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 10000 Valley View Road, Eden Prairie, Minnesota 55344.
3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint attached hereto.
4. Proposed Respondents waive:
 - a. any further procedural steps;
 - b. the requirement that the Commission's Decision and Order, which is attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of

law;

- c. all rights to seek judicial review or to otherwise challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
5. Within thirty (30) days of the date this Consent Agreement is signed by Proposed Respondents, Proposed Respondent Cephalon shall submit an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33. Proposed Respondent Cephalon shall also submit subsequent reports every thirty (30) days thereafter until the Decision and Order becomes final, at which time the reporting obligations under the Decision and Order shall control. Such reports shall be signed by Proposed Respondent Cephalon, and shall set forth in detail the manner in which Proposed Respondent Cephalon has complied to date, has prepared to comply, is complying, and will comply with the Decision and Order. Such reports will not become part of the public record unless and until the accompanying Consent Agreement and Decision and Order are accepted by the Commission for public comment.
 6. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.
 7. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of Complaint attached hereto, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.
 8. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to the Proposed Respondents, do the following: (1) issue and serve its Complaint corresponding in form with the draft of Complaint here attached and its Decision and Order; and (2) make information public with respect thereto.
 9. When final, the Decision and Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Complaint and the Decision and Order to Proposed Respondents by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service.

Proposed Respondents waive any right they may have to any other manner of service. Proposed Respondents also waive any right they may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agree that they are bound to comply with and will comply with the Decision and Order to the same extent as if they had been served with copies of the Appendices, where Proposed Respondents are already in possession of copies of such Appendices.

10. The Complaint may be used in construing the terms of the Decision and Order and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order.
11. By signing this Consent Agreement, Proposed Respondents represent and warrant that they can comply with the provisions of, and can accomplish the full relief contemplated by, the attached Decision and Order and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are parties to the Consent Agreement.
12. Proposed Respondents have read the draft of Complaint and the Decision and Order contemplated hereby. Proposed Respondents understand that once the Decision and Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Decision and Order. Proposed Respondents agree to comply with the proposed Decision and Order from the date they sign this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.

Signed this _____ day of July, 2004.

CEPHALON, INC.

By:

Frank Baldino, Jr.
Chairman and Chief Executive Officer
Cephalon, Inc.
145 Brandywine Parkway
West Chester, PA 19380

Willard K. Tom
Morgan, Lewis & Bockius
1111 Pennsylvania Ave., NW
Washington, DC 20004

CIMA LABS INC.

By:

Steven Ratoff
Chairman and
Interim Chief Executive Officer
CIMA LABS, INC.
10000 Valley View Road
Eden Prairie, MN 55344

Karen Silverman
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FEDERAL TRADE COMMISSION

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