UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of	)	
Corning Incorporated, a corporation.	)	Docket No. C-

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent Corning Incorporated of certain assets of Becton, Dickinson and Company, and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing consent orders ("Consent Agreement"), an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon issued its complaint and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days (and having duly considered the comments received), now in further con-

H. “Lab Products” means the standard tissue culture treated plastic labware products listed

2. In the event there is a conflict between the terms of this Order and the Supply Agreement, or any ambiguity in the language used in the Supply Agreement, then to the extent that Respondent cannot fully comply with both terms, the terms of this Order shall govern to resolve such conflict or ambiguity; and

3. Respondent shall not modify the terms of the Supply Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

C. No later than ten (10) days after the date this Order is issued, Respondent shall grant to Sigma an irrevocable, worldwide, perpetual covenant not to sue conferring immunity from suit by Respondent based on claims of infringement under all of Respondent's Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any Lab Product; *provided, however,* that such immunity shall not extend to sales made using misappropriated trade secrets of Respondent. Such immunity shall extend to any third-party manufacturer deriving its authority from Sigma with respect to the Lab Products and shall not be assignable to any other Person without prior written consent of Respondent (which consent shall not be unreasonably withheld).

D. Respondent shall allow Sigma-Aldrich International GmbH the right to terminate the Global Agreement (without penalty of any kind

C. Respondent shall enforce the terms of this Paragraph III. as to its employees or any Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

A. At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person ("Monitor") to monitor Respondent's compliance with its obligations as required by this Order including implementation of the controls and training required by Paragraph III.C. of this Order:

1. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.

2. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission.

3. Respondent shall indemnify the Monitor and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct.

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any other time as requested by the staff of the Commission, concerning Respondent's compliance with this Order.

D. The Monitor shall act in a fiduciary capacity for the benefit of the Commission. Respondent shall

C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. A

Confidential Appendix

Asset Sale and Supply Agreement Between
Corning Incorporated and Sigma-Aldrich Co., LLC

[Redacted From Public Record Version, But Incorporated By Reference]