

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

4 FEDERAL TRADE COMMISSION,) Case No. 25 C 2391
STATE OF ILLINOIS, and STATE)
OF MINNESOTA,)
5 Plaintiffs,)
6)
7 v.)
8 GTCR LLC, GTCR BC HOLDINGS,)
LLC, and SURMODICS, INC.,) Chicago, Illinois
9 Defendants.) November 10, 2025
) 2:00 p.m.

10 TRANSCRIPT OF TELEPHONIC PROCEEDINGS - RULING
BEFORE THE HONORABLE JEFFREY I. CUMMINGS

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1 THE CLERK: 25 C 2391, Federal Trade Commission vs.
2 GTCR BC Holdings, LLC, et al.

3 For the counsel who wish to speak today, can you
4 please state your name for the record?

5 MS. PEREZ (Via Telephone): Good afternoon, your
6 Honor, Maia Perez on behalf of the FTC.

7 MR. BUTERMAN (Via Telephone): Good afternoon, this is
8 Lawrence Buterman, from Latham & Watkins, on behalf of GTCR and
9 BC Holdings.

10 MR. SAINT-ANTOINE (Via Telephone): Good afternoon,
11 this is Paul Saint-Antoine from Faegre Drinker Biddle & Reath
12 on half of Surmodics.

13 (Telephonic Interference.)

14 THE COURT: Good afternoon, everyone. What I am going
15 to do is issue my opinion on the preliminary injunction in this
16 case.

17 Plaintiffs, the Federal Trade Commission, and the
18 States of Illinois and Minnesota, acting through their
19 respective Attorneys General, bring this case against
20 defendants GTCR, LLC, GCTR BC Holdings, LLC, and Surmodics,
21 Inc.

22 Currently before the Court is plaintiffs' motion for a
23 preliminary injunction, pursuant to Section 7 of the Clayton
24 Act, 15 U.S.C. Section 18, and Section 13(b) of the FTC Act, 15
25 U.S.C. Section 53(b), seeking to enjoin GTCR, LLC, GCTR BC

1 Holdings, LLC, and their affiliates and subsidiaries, from
2 consummating their intended acquisition of Surmodics, which
3 includes a fully executed divestiture agreement with non-party
4 Integer Holdings Corporation.

5 For background, the FTC is an agency of the United
6 States government, vested with the authority and responsibility
7 for enforcing, among other things, provisions of the Clayton
8 Act and the FTC Act. The Attorneys General of the States of
9 Illinois and Minnesota are the chief legal officers for their
10 respective states.

11 For purposes of this ruling, and unless otherwise
12 indicated, the Court will refer to the FTC, the states of
13 Illinois and Minnesota collectively as "plaintiffs," or,
14 simply, "the FTC."

15 Defendant GTCR, LLC, is a private equity firm founded
16 in 1980 and based in Chicago, Illinois. Defendant GTCR BC
17 Holdings, LLC -- "BC Holdings," for short -- is an affiliate of
18 GTCR. Although GTCR, LLC, is not a party to the merger
19 agreement at issue here -- and, thus, argues that plaintiffs
20 lack standing against it -- GTCR, LLC, agreed to be bound to
21 the same extent as BC Holdings in these preliminary injunction
22 proceedings.

23 For purposes of this ruling, unless otherwise
24 indicated, the Court will refer to GTCR, LLC, and GTCR BC
25 Holdings collectively as "GTCR."

1 On November 2nd, 2022, GTCR announced that it had made
2 a majority investment, to the tune of about \$210 million, in a
3 company called Biocoat, Inc. Biocoat, founded in 1991, is a
4 hydrophilic coating provider headquartered in Horsham,
5 Pennsylvania.

6 Defendant Surmodics is a publicly traded company
7 founded in 1979 and headquartered in Eden Prairie, Minnesota.
8 Surmodics sells medical devices, in-vitro diagnostics and, like
9 Biocoat, hydrophilic coatings.

10 Integer, the divestiture buyer, is a contract
11 development and manufacturing organization -- which may be
12 referred to as a "CDMO" -- within the medical device industry.

13 Specifically, Integer partners with customers to
14 develop and manufacture medical devices; and, for the past
15 twenty-plus years, has offered the application, though not the
16 sale of, hydrophilic coatings.

17 Integer has 11,000 employees, including 6,000 in the
18 Cardio and Vascular division; 500 employees in Research and
19 Development; and, 50 in sales and marketing. Integer has over
20 twenty facilities worldwide and its annual revenue in 2024 was
21 a little over \$1.7 billion.

22 Lubricious Coatings in General. Lubricious coatings
23 are applied to interventional medical devices, such as
24 catheters, guidewires, sheaths and stents that are inserted
25 into confined spaces in the human body. It is undisputed that

1 lubricious coatings help physicians navigate tortuous pathways
2 in the body, while minimizing trauma and injury, and are, thus,
3 integral to patient safety.

4 Lubricious coatings are primarily purchased by
5 original equipment manufacturers -- or "OEMs" -- that design,
6 develop and manufacture medical devices. OEMs can purchase
7 lubricious coatings from suppliers, such as Biocoat or
8 Surmodics, among others.

9 Alternatively, some OEMs have developed their own
10 in-house coatings business as an alternative to purchasing from
11 outsourced suppliers.

12 There are a number of ways to add lubricity to medical
13 devices, including through the use of hydrophilic coatings and
14 hydrophobic coatings. As the parties agree, however, not all
15 lubricious coatings work on all medical devices.

16 Hydrophilic -- or "water loving" -- coatings reduce
17 friction by absorbing water. Hydrophobic coatings, on the
18 other hand, repel water.

19 With respect to hydrophilic coatings, there are two
20 types: UV-cured and thermal-cured. Curing refers to the
21 process of attaching the coating to the surface of a medical
22 device. UV-cured coatings are cured with UV light, while
23 thermal-cured coatings are cured in an oven with heat.

24 Currently -- or pre-acquisition -- Biocoat offers both
25 thermal-cured and UV-cured hydrophilic coatings under the brand

1 names "Biocoat," "Hydak" and "Hydak UV," respectively.
2 Surmodics currently offers only UV coatings under the brand
3 names "Serene" and "Preside."

4 When an OEM sets out to find a coating to use in a
5 medical device, it first determines the coating supplier -- or,
6 more often, coating suppliers -- it wants to send the device to
7 for the initial feasibility testing. During the feasibility
8 phase, the coating suppliers apply their coatings to the OEM's
9 medical device and various tests are run, including a lubricity
10 test, a pinch test and a dye test.

11 If a coating passes the feasibility phase, the parties
12 enter the optimization phase, during which the supplier refines
13 the coating to best serve the OEM's device. After
14 optimization, the parties proceed to the design-lock phase,
15 during which the supplier attempts to show the reliability and
16 the ability to reproduce the coating at a larger scale.

17 After optimization, the supplier and the OEM move
18 together towards commercialization, which requires additional
19 testing and, ultimately, FDA approval.

20 On May 28, 2024, BC Holdings, which, again, owns
21 Biocoat, entered into a written agreement to acquire Surmodics
22 for approximately \$627 million and form a "Merged Firm" between
23 Biocoat and Surmodics. This will be referred to as the
24 "Original Transaction."

25 The FTC initiated an investigation into the Original

1 Transaction. On March 6, 2025, after it found reason to
2 believe that the Original Transaction would violate antitrust
3 laws, the FTC filed an administrative complaint pursuant to
4 Sections 7 and 11 of the Clayton Act; 15 U.S.C. Sections 18 and
5 21; and, Section 5 of the FTC Act, 15 U.S.C. Section 45.

6 On the same day, the FTC initiated this action in the
7 Federal District Court seeking to preliminary enjoin defendants
8 from consummating the Original Transaction pending resolution
9 of the administrative proceeding.

10 Illinois and Minnesota, through their Attorneys
11 General, later joined as plaintiffs.

12 Shortly after the FTC filed this matter, the parties
13 stipulated to the entry of a temporary restraining order.
14 Under the terms of the TR0, as amended, the parties agreed to
15 maintain the status quo pending preliminary injunction
16 proceedings, and stipulated as follows:

17 "GTCR BC Holdings, LLC, and Surmodics shall not
18 consummate the Acquisition until after 11:59 p.m. Eastern Time
19 on: (A), November 11, 2025; or, (B), the fifth business day
20 after the district court rules on the FTC's motion for a
21 preliminary injunction pursuant to Section 13(b) of the Federal
22 Trade Commission Act and Section 16 of the Clayton Act,
23 whichever occurs earlier in time."

24 Thereafter, the parties engaged in extensive and,
25 largely, cooperative expedited discovery, including written

1 discovery, depositions and expert discovery, which also
2 included depositions and the production of expert reports.

3 While expedited discovery was ongoing, the parties
4 also engaged in settlement negotiations. To that end, on April
5 24, 2025, GTCR provided an initial term sheet to the FTC
6 proposing a divestiture of certain of Biocoat's assets to a
7 qualified buyer in an effort to maintain the competitive vigor
8 in the market.

9 On June 4, 2025, GTCR confirmed that Integer was the
10 proposed divestiture buyer; and, on July 29, 2025, BC Holdings
11 executed an agreement to sell certain of Biocoat's business to
12 Integer. This is the Modified Transaction or the Proposed
13 Divestiture.

14 The fully executed Divestiture Agreement will become
15 effective upon the closing of the Original Transaction if the
16 plaintiffs' motion for a preliminary injunction is not granted.
17 In other words, there is no world in which the Original
18 Transaction closes, but Biocoat does not go through with the
19 divestiture to Integer.

20 Under the terms of the Divestiture, Integer will
21 acquire, among other things, Biocoat's entire UV-cured
22 hydrophilic coatings business and its currently marketed
23 thermal-cured coatings, including two legacy coatings, along
24 with the corresponding FDA master files; that is, the IP and
25 the know-how for the divested products.

1 They will also acquire Biocoat's Brands, "Biocoat" and
2 "Hydak;" a Biocoat facility in Pennsylvania, and the
3 manufacturing equipment; and, eleven full-time employees,
4 including PhD polymer chemist Dr. Tyler Long, who helped invent
5 Biocoat's UV coatings and shepherd those coatings to FDA
6 approval; as well as production technicians, application
7 development engineers, coating technicians, quality assurance
8 and control technicians, process engineers, and an individual
9 tasked with back of the office and warehouse operations.

10 The Divestiture also includes a license-back, whereby
11 Integer will license-back the thermal coatings to the Merged
12 Firm. Under the terms of the agreement, Integer will pay
13 approximately \$8 million up front for the divested assets and
14 an additional \$7 million if it is able to stand up its full
15 coatings business after a year.

16 The FTC declined to accept GTCR's proposed
17 divestiture, through the Modified Transaction, as a resolution
18 to this case.

19 Consequently, between August 21st, 2025, and September
20 2nd, 2025, the Court held a multi-day evidentiary hearing on
21 the FTC's motion for a preliminary injunction. During that
22 hearing, the parties presented hundreds of exhibits and the
23 testimony of eighteen live witnesses.

24 The parties also presented additional deposition
25 testimony through video and written deposition designations.

1 The majority of the witnesses were lay witnesses and
2 included company executives from GTCR, Biocoat, Surmodics,
3 Integer, other coating suppliers and coating customers; namely,
4 the OEMs that purchase lubricious coatings.

5 At the outset, the Court wishes to note that it found
6 the testimony of these lay witnesses to be, for the most part,
7 credible and largely not in dispute. The Court found that
8 these witnesses were impressive representatives of their
9 respective companies and very knowledgeable individuals.

10 Indeed, each witness, ranging from individuals from
11 startup companies to those from long-established companies,
12 shared their own unique experiences and perspectives in the
13 lubricious coating industry.

14 The parties also presented expert testimony. The FTC
15 presented the direct and rebuttal expert testimony of its
16 witness, Dr. Aaron Fix. The defendants presented the testimony
17 of expert witness Dr. Paul Wong.

18 Following the hearing, each side submitted their
19 proposed findings of fact and conclusions of law.

20 To resolve plaintiffs' motion, in addition to the
21 transcript of the evidentiary hearing and the exhibits relied
22 on by the parties, the Court has reviewed and considered the
23 plaintiffs' amended complaint; the defendants' answers to the
24 amended complaint; the plaintiffs' motion for a preliminary
25 injunction; the defendants' response; the plaintiffs' reply;

1 and, the parties' post-hearing proposed findings of fact and
2 conclusions of law.

3 The following represents the Court's findings of fact
4 and conclusions of law.

5 First, with respect to the applicable laws, Section 7
6 of the Clayton Act, 15 U.S.C. Section 18, prohibits any merger
7 or acquisition, "where in any line of commerce or in any
8 activity affecting commerce, in any section of the country, the
9 effect of such acquisition may be to substantially lessen
10 competition or to tend to create a monopoly."

11 Section 13(b) of the Federal Trade Commission Act, 15
12 U.S.C. Section 53(b), authorizes the FTC to bring in the
13 federal district court to preliminarily enjoin a merger or
14 acquisition, pending the FTC's administrative adjudication,
15 when the FTC has reason to believe that a person or entity is
16 about to violate any provision of law enforced by the FTC,
17 including Section 7 of the Clayton Act, and an injunction would
18 be in the interest of the public.

19 The parties dispute the legal standard that the Court
20 should apply when determining whether a preliminary injunction
21 should be granted. In reliance on the Supreme Court's decision
22 in Starbucks Corp. v. McKinney, 602 United States Reporter at
23 346 to 347, 2024, the defendants assert that plaintiffs aren't
24 entitled to receive or to be awarded a preliminary injunction
25 unless they satisfy the following default four factor test:

1 Namely, that plaintiffs must make a clear showing that they are
2 likely to succeed on the merits; that they are likely to suffer
3 irreparable harm in the absence of preliminary relief; that the
4 balance of equities tip in their favor; and, that an injunction
5 is in the public interest.

6 However, the Court notes that the Supreme Court, in
7 the Starbucks decision, stated that the test that I just quoted
8 should apply only "absent a clear command from Congress."

9 As the Seventh Circuit has recognized in *FTC v. World*
10 *Travel Vacation Brokers, Inc.*, 861 F.2d 1020, at 1028 to 1029,
11 Seventh Circuit 1988, Congress has given a clear command
12 regarding the standard that governs when the FTC is seeking to
13 preliminarily enjoin a merger under Section 13(b) of the FTC
14 Act.

15 In particular, on Pages 1028 and 1029 of the *World*
16 *Travel* decision, the Seventh Circuit stated: "We believe that
17 the legislative history of Section 13(b) makes it quite clear
18 that the public interest test is the correct approach. The
19 Conference did not intend, nor did they consider it appropriate,
20 to burden the Commission with the requirements imposed by the
21 traditional equity standard, which the common law applies to
22 private litigants."

23 Under this approach, it is not necessary for the FTC
24 to demonstrate irreparable injury. Rather, "In determining
25 whether to grant a preliminary injunction under Section 13(b),

1 a court must: One, determine the likelihood that the
2 Commission will ultimately succeed on the merits; and, Two,
3 balance the equities."

4 Furthermore, when considering whether to grant a
5 preliminary injunction, the Court is not asked to make a final
6 determination on whether the proposed merger violates Section
7 7, but, rather, to make only a preliminary assessment of the
8 merger's impact on competition.

9 Section 7 forbids mergers and other acquisitions, the
10 effect of which "may" be to lessen competition substantially.
11 A certainty, or even a high probability, need not be shown.

12 Of course, the word "may" should not be taken
13 literally, for, if it were, every acquisition would be
14 unlawful. But the statute requires a prediction. And doubts
15 are to be resolved against the transaction.

16 Nonetheless, the district court may not simply rubber
17 stamp an injunction whenever the FTC provides some threshold
18 evidence, and a showing of a fair or tenable chance of success
19 on the merits will not suffice for injunctive relief.

20 Ultimately, the government meets its burden for
21 obtaining a preliminary injunction if it raises questions going
22 to the merits so serious, substantial, difficult and doubtful
23 as to make them fair ground for a thorough investigation,
24 study, deliberation and determination by the FTC, in the first
25 instance, and, ultimately, by the Court of Appeals.

1 In addition to the World Travel decision, other cases
2 articulating this standard include Federal Trade Commission v.
3 Advocate Health Care Network, 841 F.3d 460, at Page 467,
4 Seventh Circuit 2016; FTC v. Elders Grain, Inc., 868 F.2d 901,
5 at Pages 902, 903 and 906, Seventh Circuit 1989;
6 Federal Trade Commission v. Kroger Company, 2024 Westlaw
7 5053016, at 1, District of Oregon, December 10, 2024; Federal
8 Trade Commission v. IQVIA Holdings, Inc., 710 F. Supp. 3d 329,
9 at Page 377, Southern District of New York 2024; FTC v. OSF
10 Healthcare Systems, 852 F. Supp. 2d 1069, at Page 1074,
11 Northern District of Illinois 2012; FTC v. Arch Coal, Inc., 329
12 F. Supp. 2d 109, at Pages 115 through 116, District of D.C.
13 2004.

14 The Court determines whether to grant a preliminary
15 injunction in its discretion with a consideration of all of the
16 evidence before it, that has been offered by both plaintiffs
17 and defendants. The World Travel decision at 861 F.2d, at Page
18 1031, stands for that proposition; as does FTC v. IAB Marketing
19 Associates, LP, 746 F.3d 1228, at Page 1232, Eleventh Circuit
20 2014.

21 Because this case comes before the Court on a motion
22 for a preliminary injunction, the Court serves as the
23 factfinder. Thus, the Court decides whose testimony to credit
24 and which of permissible inferences to draw, regardless of
25 whether those findings are based on witness testimony or on

1 documentary evidence or on inferences from other facts. The
2 question of what weight to accord expert opinion is a matter
3 committed to the sound discretion of the factfinder.

4 The Court is also entitled, just as a jury would be,
5 to believe some parts and disbelieve other parts of the
6 testimony of any given witness. That said, the Court's
7 findings of fact and conclusions of law are not binding at a
8 trial on the merits, and the FTC remains free to reach its own
9 legal conclusions and develop its own record in its
10 administrative proceedings.

11 That standard was articulated in *Federal Trade
12 Commission v. Tapestry, Inc.*, 755 F. Supp. 3d, Page 386, at
13 Pages 410 and 411, Southern District of New York 2024.

14 To determine whether plaintiffs have shown a
15 likelihood of success on the merits, the Court will apply the
16 burden-shifting framework promulgated in *United States v. Baker
17 Hughes, Inc.*, 908 F.2d 981, at Pages 982 to 983, D.C. Circuit
18 1990.

19 Under the *Baker Hughes* framework, plaintiffs bear the
20 initial burden of making a *prima facie* case. To do so,
21 plaintiffs must first determine the relevant product and
22 geographic markets. The definition of the relevant market is,
23 basically, a fact question dependent upon the special
24 characteristics of the industry involved.

25 Second, plaintiffs must show that the merger will

1 probably lead to anticompetitive effects by creating an undue
2 concentration in the relevant market. This creates a
3 presumption that the merger will substantially lessen
4 competition.

5 The burden then shifts to the defendants to rebut the
6 presumption. The more compelling the *prima facie* case, the
7 more evidence defendants must present to rebut it successfully.

8 If the defendants successfully rebut the presumption,
9 the burden then shifts back to the plaintiffs to produce
10 additional evidence of anticompetitive effects. The ultimate
11 burden of persuasion is with the plaintiffs at all times.
12 This standard comes from the Kroger Company case, 2024 Westlaw
13 5053016, at Page 2; Pennsylvania v. Center Lane Partners, LLC,
14 2024 Westlaw 4792043, at Pages 3 through 4, Western District of
15 Pennsylvania November 14, 2024; Federal Trade Commission v.
16 Microsoft Corp., 681 F. Supp. 3d 1069, at Page 1085, Northern
17 District of California 2023, affirmed, 136 F.4th at Page 954,
18 by the Ninth Circuit in 2025.

19 The IQVIA Holdings Inc., 710 F. Supp. 3d at Page 352,
20 "The parties agree that the relevant geographic market is the
21 United States, given that the devices that the coating is
22 applied to must receive FDA approval." However, the parties
23 dispute whether plaintiffs have identified and defined the
24 relevant product market.

25 Plaintiffs assert that the relevant product market

1 consists of outsourced hydrophilic coatings.

2 Defendants assert that plaintiffs have failed to
3 define the relevant market because their proposed market is
4 both too broad and too narrow.

5 In particular, defendants assert that it is improper
6 to include both UV and thermal hydrophilic coatings in the same
7 market because the two types of coatings do not work on all
8 medical devices, and industry trends predict growth in
9 applications where one of either UV or thermal hydrophilic
10 coatings are unavailable.

11 Defendants assert that plaintiffs' proposed market is
12 also too narrow because it excludes hydrophobic coatings that
13 can serve as an alternative coating for many devices that also
14 use the hydrophilic coatings.

15 Defendants also assert that plaintiffs' proposed
16 market wrongfully excludes in-sourced hydrophilic coatings that
17 are prepared by the OEMs, themselves, and occasionally applied
18 to their own devices.

19 As prior decisions have explained, the relevant
20 product market is defined by the reasonable interchangeability
21 of use or the cross-elasticity of demand between the product,
22 itself, and substitutes for it.

23 The goal is to identify the market participants and
24 competitive pressures that restrain an individual firm's
25 ability to raise prices or restrict output.

1 A relevant product market includes all goods that are
2 reasonable substitutes, even though the products, themselves,
3 are not entirely the same.

4 A properly defined product market includes the
5 functionally similar products to which customers could turn in
6 the event of a post-acquisition price increase. The general
7 question is whether two products can be used for the same
8 purpose; and, if so, whether and to what extent purchasers are
9 willing to substitute one for the other.

10 Market definition is guided by the narrowest market
11 principle in that the product market must be drawn narrowly to
12 exclude any other product to which, within reasonable
13 variations in price, only a limited number of buyers will turn.

14 The relevant market need only include the competitors
15 that would substantially constrain the merged firm's price-
16 increasing ability.

17 Courts consider both quantitative and qualitative
18 evidence in defining the relevant product market, including
19 ordinary course documents, testimony from those in the industry
20 and expert economic testimony. This standard from cases
21 including the IQVIA Holdings Inc., 710 F. Supp. 3d, at Pages
22 352 to 354. It cites multiple decisions, including
23 Brown Shoe Co. v United States, 370 U.S., at Page 294, at Page
24 325, decided in 1962; FTC v. Advocate Health Care Network, 841
25 F.3d 460, at Page 469, Seventh Circuit 2016; and, also, Federal

1 Trade Commission v. Meta Platforms, Inc., 775 F. Supp. 3d, Page
2 16, at Pages 35 through 36, District of Columbia, 2024.

3 After consideration of the relevant evidence, the
4 Court agrees with plaintiffs that the relevant market should
5 include both UV and thermal outsourced hydrophilic coatings.

6 Although it is undisputed that there are certain
7 devices that can use only UV coating, and other devices that
8 can use only thermal coating, the market need not be limited to
9 products which are identical in nature. This is a fact in
10 Kaiser Aluminum & Chemical Corporation v. FTC, 652 F.2d 1324,
11 at Page 1330, Seventh Circuit 1981.

12 Moreover, multiple industry executives testified that
13 both thermal and UV are options for a majority of medical
14 devices. These executives include Andrew Juntenen from
15 Medronics, who testified in the Transcript at Page 141, that
16 approximately 75% of projects can be satisfied with either
17 thermal or UV coating; Ann Gronda from Medronics, who testified
18 at Pages 728 and 729; Robert Hergenrother from Biocoat, who
19 testified at Page 1471 to this effect; and, Dhruv Patel from
20 Integer, who testified in the deposition at Pages 114 through
21 115.

22 The Court also agrees with defendants, though, that
23 plaintiffs' proposed product market is too narrow because it
24 excludes in-source hydrophilic coatings.

25 Dr. Wong identified at least 19 medical device

1 customers that either have in-house coatings or are in the
2 process of developing them. This is at his trial testimony at
3 Page 1576 to 1577.

4 According to Dr. Wong, the 19 customers with in-house
5 coatings accounted for more than 36% of coating eligible
6 medical devices between 2014 to 2024. This is in his report,
7 Defense Exhibit 736.156.

8 Also in his report Dr. Wong noted that the economic
9 theory is clear that customers need not always pick in-house
10 coatings for those in-house coatings to nonetheless be
11 important to competitive constraints. Manufacturers can simply
12 threaten to move to in-house coatings, or threaten future
13 changes, as a competitive discipline on coating suppliers.

14 The fact that customers with in-house capabilities
15 sometimes select their in-house coating and sometimes select a
16 third-party supplier shows competition at work. This is in Dr.
17 Wong's report, DX 736.155.

18 He also cites some articles by Miller -- Nathan
19 Miller -- "Modeling the Effects of Mergers in Procurement,"
20 International Journal of Industrial Organization, Volume 37,
21 2014, at Pages 2001 through 2080. The Court notes that Dr. Fix
22 also cited to that particular article.

23 Although Daniella Petra from DSM testified she did not
24 consider in-house coatings as competition, at Page 327 of the
25 transcript, ordinary course documents reflect DSM acknowledges

1 their place in the market; Defense Exhibit 52.003 indicating
2 that, "Future long-term revenues from Hollister will most
3 likely disappear; Hollister has developed an in-house coating;"
4 and another exhibit, DX 52.004, which noted, among other
5 things, that, "Hollister's moving towards in-house coating."

6 Ms. Petra further testified that Hollister did, in
7 fact, transition away from DSM to its in-house coating.

8 "Harland has competed against internal coatings in the
9 past, and it has been told by certain customers that they were
10 evaluating some internal coating alternatives against what we
11 were working on," so testified Phillip Ankeny of Harland at
12 Page 264 of the transcript.

13 See, also, Defense Exhibit 103.003, where Harland
14 acknowledging that, "Competitive hydrophilic coating supplies
15 include Biocoat Hydak coating and several coatings proprietary
16 to medical device manufacturers."

17 Finally, Josh de Freitas of Biocoat was asked: "Does
18 Biocoat compete against in-house coatings?"

19 And he testified at the hearing: "I feel we do."

20 "How so?

21 "We compete for development opportunities. These are
22 projects that have a need for a coating and have not yet
23 submitted to the FDA. So, to me, that's absolutely who we
24 compete with."

25 That is at Page 669 of the transcript.

1 The Court, however, does not agree that hydrophobic
2 coatings should be included in the relevant product market. As
3 Dr. Fix noted, hydrophobic coatings are quite a bit cheaper
4 than hydrophilic coatings, and it stands to reason that
5 customers who could accept the lower lubricity of a hydrophobic
6 coating are already making use of one. He testified at Pages
7 1090 through 1091 of the transcript.

8 The Court further observes that although it largely
9 agrees with Dr. Wong's criticism of Dr. Fix's hypothetical
10 monopolist test, there is no requirement for plaintiffs to use
11 any specific methodology in defining the relevant product
12 market. And the courts have determined relevant antitrust
13 markets using, for example, only the Brown Shoe factors, or a
14 combination of the Brown Shoe factors and the Hypothetical
15 Monopolist Test, HMT. It is from the Microsoft decision, at
16 Page 681 F. Supp. 3d at Page 1086.

17 Courts have also noted that it bears emphasis that
18 Congress "prescribed a pragmatic, factual approach to the
19 definition of the relevant market and not a formal, legalistic
20 one." That is from the Brown Shoe decision, 370 U.S. at 336;
21 and, *Federal Trade Commission v. Tapestry, Inc.*, 755 F. Supp.
22 3d 386, at Page 415, Southern District of New York 2024.

23 So, the Court finds that plaintiffs have established,
24 for purposes of a *prima facie* case, a relevant product market.

25 Plaintiffs rely on Dr. Fix's analysis to support their

1 argument that the proposed transaction will produce a merged
2 firm that controls an undue percentage share of the relevant
3 market and would result in a significant increase in the
4 concentration of firms in that market.

5 A merger is presumptively unlawful if it would result
6 in a market share for the combined firm greater than 30%, or if
7 it would cause a change in the Herfindahl-Hirschman Index,
8 "HHI," greater than 100, and a post-merger HHI that would
9 exceed 1,800. It comes from *United States v. Philadelphia*
10 *National Bank*, 374 U.S. 321, at Page 364, 1963; the IQVIA
11 *Holdings Inc.*, case, 710 F. Supp. 3d at Pages 377 through 380;
12 *Kroger*, 2024 Westlaw 5053016, at Pages 15 and 16; and,
13 *United States v. Oracle Corp.*, 331 F. Supp. 2d 1098, at Pages
14 1110 through 1012, Northern District of California 2004.

15 Dr. Fix relies on the 2024 total revenue, which shows
16 that Surmodics has a 42.6% share of the relevant market and
17 Biocoat has a 17.8% share of the market, making defendants'
18 combined market share 60.4%.

19 The estimated market shares imply a pre-merger HHI of
20 2,483, a post-merger HHI of 3,998, and a change in HHI of
21 1,515. This comes from Plaintiffs' Exhibit 4000, Paragraphs
22 113 to 114, and trial testimony at Pages 1107 to 1108.

23 The Court notes that this analysis by Dr. Fix
24 considers the proposed transaction without consideration of the
25 divestiture, under the plaintiffs' theory that the divestiture

1 should be ignored at the *prima facie* stage given that it was
2 not part of the original transaction.

3 Defendants assert, with citation to *United States v.*
4 *UnitedHealth Group. Inc.*, 630 F. Supp. 3d, at Page 118, at
5 Pages 133 through 134, and Footnote 5, District of Columbia
6 2022, that the transaction should be considered with the
7 divestiture because the divestiture is not contingent and will
8 take place if the transaction proceeds.

9 The Court agrees with the observation in Footnote 5 of
10 the *UnitedHealth Group* decision, to the effect that the
11 relevant transaction is the proposed acquisition agreement with
12 the proposed divestiture, given that there is no contingency
13 with the proposed divestiture if the transaction is not
14 enjoined.

15 However, the proposed divestiture, as part of the
16 relevant transaction, would not materially change Dr. Fix's
17 analysis.

18 Allocating the portion of Biocoat's 2024 revenue that
19 is associated with the divested coatings to Integer would leave
20 Integer a 2.8% of the market. It would leave Biocoat with 15%
21 market share, which, combined with Surmodics' 42.6% market
22 share, would leave the merged firm with a market share of
23 57.6%, which is still well above the 30% threshold.

24 As such, per Dr. Fix's analysis, the proposed
25 transaction would create an undue concentration in the relevant

1 market. This creates a presumption that the merger would
2 substantially lessen competition and the Court finds that
3 plaintiffs have met their initial burden of establishing a
4 *prima facie* case.

5 Plaintiffs also argue that Biocoat and Surmodics are
6 viewed as the top suppliers in the industry; that customers, as
7 well as Biocoat and Surmodics, themselves, view Biocoat and
8 Surmodics as head-to-head competitors; and, that the proposed
9 transaction would eliminate the competition between the two
10 firms, with citation to the testimony and documentary evidence
11 referenced in plaintiffs' proposed findings of fact, Paragraphs
12 112 through 125.

13 Testimonial evidence and other ordinary course
14 documents can indicate that firms are close competitors; and, a
15 showing of the elimination of head-to-head competition between
16 the merging defendants can bolster plaintiffs' case with
17 additional evidence that the merger will have uncompetitive
18 effects. The IQVIA Holdings Inc., case at 710 F. Supp. 3d, at
19 Pages 382 and 384; and, the Kroger case, 2024 Westlaw 5053016,
20 at Page 17 support that proposition.

21 At the rebuttal stage of the Section 7 analysis,
22 defendants bear the burden to present evidence that the *prima*
23 *facie* case inaccurately predicts the relevant transaction's
24 probable effect on future competition.

25 Defendants' burden is only one of production and not

1 persuasion. The Court notes the burden of persuasion remains
2 with plaintiffs at all times.

3 The Illumina, Inc., v. Federal Trade Commission, 88
4 F.4th Page 1036, at Page 1058, Fifth Circuit 2023, supports
5 this proposition.

6 To rebut this presumption, defendants may show that
7 the market-share statistics give an inaccurate account of the
8 merger's probable effects on competition in the relevant
9 market. United States v. Citizens & S. National Bank, 422 U.S.
10 86, at Page 120, 1975; Lektro-Vend Corp. v. Vendo Company, 660
11 F.2d 255, at Page 275, Seventh Circuit 1981; and, United States
12 v. Oracle Corp., 331 F. Supp. 2d 1098, at Page 1110, Northern
13 District of California 2004, support that proposition.

14 As the Supreme Court has cautioned that statistics
15 concerning market share and concentration, while of great
16 significance, are not conclusive indicators of anticompetitive
17 effects.

18 Statistics reflecting the shares of the market
19 controlled by the industry leaders and the parties to the
20 merger are, of course, the primary index of market power; but,
21 only a further examination of the particular market, its
22 structure, history and probable future can provide the
23 appropriate setting for judging the probable anticompetitive
24 effect of the merger. That's United States v. General Dynamics
25 Corporation, 415 U.S. 486, at Page 498, 1974; Brown Shoe, 370

1 U.S. at 322, Note 38; FTC v. Swedish Match, 131 F. Supp. 2d
2 151, at Page 167, District of Columbia 2000.

3 As the Seventh Circuit has observed in Hospital
4 Corporation of America v. FTC, 807 F.2d 1381, at Page 1385,
5 Seventh Circuit 1986, the Supreme Court has refused to adopt a
6 categorical rule equating the possession of a significant
7 market share with a significant threat to competition. And, in
8 that case, the Supreme Court cited to the General Dynamics
9 Corporation decision, which I just referenced, and the United
10 States v. Citizens & Southern National Bank decision, 422 U.S.
11 86, decided in 1975.

12 As the Seventh Circuit further observed in Ball
13 Memorial Hospital, Inc., v. Mutual Hospital Insurance, Inc.,
14 784 F.2d 1325, at Page 1336, Seventh Circuit 1986, market share
15 is just a way of estimating market power, which is the ultimate
16 consideration. When there are better ways to estimate market
17 power, the Court should use them. Market share reflects
18 current sales, but today's sales do not always indicate power
19 over sales and price tomorrow.

20 In this case, defendants assert that Dr. Fix's market
21 share analysis, with his use of 2024 revenue, presents an
22 inaccurate picture of the present state of competition in the
23 hydrophilic coating market, given the unique nature of that
24 market.

25 Defendants further assert that Dr. Wong's analysis,

1 which focuses on the 2024 FDA approved coating eligible devices
2 that could be won by a coating supplier, gives an accurate
3 picture of the state of present competition in the hydrophilic
4 coating market and shows that the merged firm has a maximum
5 market share, depending on how you calculate it, of 27.4%,
6 without consideration of the divestiture, and a maximum share
7 of 23.9%, with consideration of the divestiture.

8 For the reasons stated below, and as explained below,
9 the Court agrees with defendants on both points, in reliance on
10 the testimony and analyses presented by Dr. Wong at Pages 1538
11 through 1567, and Page 1682 through 1700 of the transcript, in
12 addition to his report.

13 The market share analysis by Dr. Fix isn't informative
14 about the competitiveness of the market because the market
15 share is biased by legacy revenue. Legacy revenue is revenue
16 derived from the old device opportunities won and lost in the
17 past.

18 This industry, Dr. Wong testified, is very unique in
19 terms of how much revenue is legacy revenue and how long it
20 lasts. For example, Biocoat's contracts are 15-year contracts
21 that automatically renew.

22 Dr. Wong concluded that Dr. Fix's analysis was flawed
23 and he characterized it as a fundamental flaw because of his
24 inclusion of legacy revenue in his market share estimates.

25 Revenue does not capture present competition.

1 Competition occurs when devices are under development. The
2 devices then have to get FDA approval and be commercialized
3 before they generate revenue for the coating supplier.

4 If they generate revenue in the future, it is past the
5 point where the competition has occurred.

6 Biocoat and Surmodics are two of the oldest firms in
7 the industry and it is natural that they would have a
8 substantial amount of legacy revenue. It does not necessarily
9 reflect present day competitive significance relative to other
10 firms.

11 In particular, of Biocoat's revenue, 90% is legacy
12 revenue, as I have defined it above, and 10% relates to new
13 opportunities. In fact, 93% of Biocoat's revenue is driven by
14 customers who were first won at least give years ago.

15 Similarly, with Surmodics, 99% of Surmodics' revenue
16 is driven by projects that are more than five years old.

17 Dr. Fix's analysis does not give a picture of how much
18 business that the parties are getting today. There was
19 presentation of the overall revenue that the parties received
20 in 2024.

21 To illustrate this point -- and I find that this
22 particular exhibit was a striking illustration of the point --
23 Dr. Wong found instances for particular customers where 100% of
24 2024 revenue came from legacy revenue, as opposed to current
25 competition.

1 In his Slide No. 17, which overall accounts for 5% of
2 the 60% market share that Biocoat and Surmodics have by 2024
3 revenue, there are four customers presented. Biocoat and
4 Surmodics each had two customers. For Biocoat's customers, it
5 took in a total revenue of 1,770,794. It had eight
6 opportunities in 2024 to obtain new coating opportunities on
7 devices. And with those two customers, out of the eight
8 opportunities, it had zero wins.

9 Surmodics' total revenue for its two customers in 2024
10 was \$4,374,494. Like Biocoat, Surmodics had eight
11 opportunities to obtain new coating -- to quote new offered
12 devices -- and out of those eight opportunities, like Biocoat,
13 it had zero wins.

14 So, despite the fact that both Biocoat and Surmodics
15 have a sterling reputation in the industry; have a long track
16 record of providing service to their customers; and, from all
17 that I can ascertain through the testimony, offered top notch
18 coating, their market revenue did not lead to success with
19 these opportunities in 2024, so that the annual revenue
20 obtained did not translate into competitive success.

21 To assess competition, it is better to look at data
22 that is reflective of new opportunities and current
23 competition. Both experts agree that looking at data from the
24 FDA is appropriate for this purpose.

25 Dr. Wong looked at devices in 2024 that received FDA

1 approval to determine how many new opportunities the parties
2 won recently. To select the devices that he looked at, he
3 focused on catheters, guidewires and introducers, and
4 characterized these devices as coating eligible, and all of the
5 devices needed FDA approval.

6 In 2024, there were 213 such devices. Ninety-one of
7 these devices had hydrophilic coating, both experts agree.
8 Both experts also agree that 45 of these devices had
9 hydrophobic material or were uncoated.

10 There were 77 devices that were identified as
11 catheters and guidewires, but the coating options were not
12 identified.

13 Dr. Wong estimated that 52 of these devices would have
14 hydrophilic coating. And he did that simply by looking at the
15 ratio between the number of -- percentage of -- devices with
16 hydrophilic coating versus those that had hydrophobic coating
17 or no coating, in the number of devices that were actually
18 known, and applying that percentage, which was about
19 two-thirds, to the unknown universe of devices -- the 77
20 devices -- and he came up with 52.

21 Dr. Fix's analysis, I will point out, had some other
22 issues with it. No. 1, his analysis was limited to 15
23 suppliers. And that would miss wins by others suppliers
24 that were outside that group of 15.

25 Dr. Fix, his analysis also ignored situations where a

1 supplier would win a competition, but the device, itself, never
2 generated any revenue. So, in other words, a coating supplier
3 could actually win a competition; get its coating all on a
4 device; and, for one reason or the other, even if the device
5 received FDA approval, perhaps it was not being commercialized,
6 it would, therefore, not generate any revenue.

7 Would that win be evidence of competitive strength?
8 Yes, it would be.

9 Would that win generate revenue? No, it wouldn't.
10 And that sort of situation would not be captured by
11 Dr. Fix's focus on revenue.

12 Another point to make about this industry is the
13 unique nature of this industry, which a number of lay witnesses
14 pointed out, and Dr. Wong confirmed, is that once a coating
15 supplier gets his coating on a device and that device receives
16 FDA approval, that coating supplier is essentially locked into
17 that device for the life of the device. The reason for this is
18 because if a manufacturer decided it wanted to change coating,
19 it would have to do additional testing and go through another
20 round of FDA approval.

21 And there really is no evidence in the record of any
22 manufacturer switching coatings from one supplier to the other
23 and going through a second round of FDA approval to use with
24 that particular device. There is no evidence in the record to
25 that effect. And it is understandable. As I have often heard,

1 "If it ain't broke, don't fix it." And if the coating is
2 working, there is really no incentive for a manufacturer to
3 change up.

4 Now, based on the facts in the analysis that Dr. Wong
5 performed, as I indicated, he would determine that 52 of those
6 77 devices, for which the type of coating is unknown, would
7 have had hydrophilic coating.

8 Dr. Fix, in his rebuttal, in his critique of Dr. Wong,
9 took the position that none of the 77 devices that are unknown
10 would have hydrophilic coatings. And Dr. Wong responded to Dr.
11 Fix's critique by noting that, with respect, he found that Dr.
12 Fix's approach was unreasonable. And I agree for several
13 reasons.

14 First of all, these devices are catheters and
15 guidewires and there is a very high frequency of them being
16 likely to use hydrophilic coatings.

17 Secondly is Dr. Fix acknowledged in his testimony,
18 upon cross-examination and during his rebuttal testimony, that,
19 in fact, he uncovered at least two other devices in that 77,
20 that, in fact, did have hydrophilic coating. And defense
21 counsel was able to establish on cross-examination of Dr. Fix
22 there were two additional devices in that 77 that had
23 hydrophilic coating. And, so, that is four out of the 77, for
24 which we know.

25 In fairness to Dr. Fix, he found seven examples in the

1 77 that did not have hydrophilic coating. But to say that none
2 of the 77 had hydrophilic coating -- and it is undisputed that
3 at least four did -- the Court finds that to be unreasonable.

4 And, again, as I stated, based upon the nature of
5 these devices, it would be highly unlikely that none of the 77
6 would have hydrophilic coating.

7 Defendants also pointed to plaintiffs' complaint which
8 alleges, in part, that hydrophilic coatings are applied to a
9 wide range of interventional medical devices used inside the
10 human body, such as catheters and guidewires, to perform
11 high-stakes neurological, cardiovascular and peripheral
12 vascular procedures. These devices require hydrophilic
13 coatings to reduce friction during use, so that the devices
14 function as intended.

15 That allegation, which I believe is true, also cuts
16 against the idea that all 77 of these devices would -- that
17 none of them would have hydrophilic coatings.

18 There is also evidence in the record that it is
19 possible that the reason that some of these devices were not
20 identified as having any particular coating is because device
21 manufacturers have an option of submitting to the FDA a 510(k)
22 summary, which contains information about the coating, or to
23 submit a 510(k) statement and submit later clinical data to the
24 FDA.

25 A number of these devices were stated to be follow-up

1 -- let me put it precisely. A number of these devices
2 were indicated to be -- where they were applicant devices to be
3 -- substantially equivalent to an existing predicate device.
4 And defense counsel was able to establish that one or two of
5 the 77 that he presented evidence had hydrophilic coatings,
6 were substantially -- he stated to be substantially --
7 equivalent to other devices. So, that could be a reason why
8 the coating is not stated.

9 But, in essence, we have three choices with respect to
10 this data because if you take Dr. Fix's approach of 77, he just
11 ignores 77 devices where the coating is unknown. Then you will
12 have a situation where, by his count, the number of coating
13 opportunities that Biocoat and Surmodics received, of the 91
14 devices where they were known to be hydrophilic coating, would
15 exceed the 30% threshold, if you only look at the 91 devices
16 where the coatings is known.

17 If, however, you take Dr. Wong's estimate of 52 and
18 add them to the 91, then the threshold of a combined market
19 share of Biocoat and Surmodics falls well below the 30%.

20 And if you take a third alternative, which you can do
21 from the additional information we know, which is that out of
22 the 77 devices, there are seven without hydrophilic coating and
23 there are four with hydrophilic coating, if you add seven to
24 four, that would mean 36% of those 11 devices had hydrophilic
25 coating; and, if you apply that percentage to 77, then you

1 would get approximately 27 or 28 devices in the 77 that had
2 hydrophilic coating.

3 It is undisputed in the record that if, at least, 16
4 of the devices in the 77 universe have hydrophilic coating,
5 then Biocoat and Surmodics' share would fall below the 30%
6 threshold.

7 And, so, whether you go with Dr. Wong's estimate of
8 52% or go with a more conservative estimate that is based upon
9 what the parties have learned about the 77, which would add an
10 additional 27 or 28 in, if you adopt either of those
11 alternatives, then Biocoat's and Surmodics' market share, as
12 measured by the 2024 opportunities that they won, would fall
13 below the 30% threshold of market concentration.

14 And, so, the Court, based upon that, finds that the
15 defense has rebutted Dr. Fix's market share analysis with the
16 use of something that better reflects the state of actual
17 competition in the here and now, which is the 2024 data
18 regarding the coating eligible devices that received FDA
19 approval.

20 Next, the Court addresses plaintiffs' argument that
21 the elimination of head-to-head competition between Biocoat and
22 Surmodics bolsters their case with additional evidence that the
23 merger will have anticompetitive effects.

24 As stated earlier, plaintiffs has submitted testimony
25 from industry participants, including executives of Biocoat and

1 Surmodics, and ordinary course documentation to the effect that
2 Biocoat and Surmodics are head-to-head competitors.

3 This evidence, however, is tempered by a lack of
4 transparency within the industry as to the identity of
5 competitors for the various opportunities to win coating
6 business.

7 For, example, Josh de Freitas of Biocoat testified, in
8 response to the question, "Do you even know who you're up
9 against typically in these competitions?"

10 He testified, "Typically, we do not."

11 Jim Moran of Biocoat testified -- and Mr. de Freitas'
12 testimony was on Page 649 of the transcript.

13 Jim Moran testified, in response to this question, "Do
14 you know in any new opportunity situation which of those
15 companies is, in fact, being considered?"

16 "No, we do not. That's kept very confidential by the
17 engineers on the team."

18 That is at Page 817 of the transcript.

19 Joe Ventura of Harland, at Pages 382 through 383 of
20 the transcript, testified, "For a majority of the cases, we
21 don't know if there's an external supplier that's in the mix,
22 or even, for certain companies, whether the in-house
23 hydrophilic coating is also in play. That's a disadvantage for
24 us. But, unfortunately, for a majority of cases, we do not
25 know what other coatings a customer is considering."

1 Similarly, Phillip Ankeny of Harland testified at Page
2 290, in response to these questions, "You would agree that you
3 often don't know what coating you're competing against, right?"

4 "Correct.

5 "In fact, about 70 or 80 percent of the time, you
6 don't know whether you're competing against anyone or not,
7 right?

8 "Yeah, that can be true."

9 So, we have those anecdotal examples, just to point
10 out that this is not -- this particular industry is not -- an
11 industry where the identity of the competitors is always known
12 or readily known by those that they are competing against.

13 But, more fundamentally, we have Dr. Wong's testimony
14 regarding two analyses that he performed. The first was to
15 ascertain the percentage of overlapping customers between
16 Biocoat and Surmodics based on feasibility testing only between
17 January of 2020 and March of 2025. This is found at Pages 1582
18 through 1588, and Defendants' Exhibit 8.040. There were an
19 average of 217 opportunities per year. 67.5% did not involve
20 either Biocoat or Surmodics. 28% of the opportunities involved
21 one firm or the other. 4.1% of the opportunities, or a total
22 of 51, overlapped. But even with these, one firm or the other
23 dropped out because its coating was not performing adequately.

24 All but five of the remaining opportunities were ruled
25 out for head-to-head competition. And the five would total .4%

1 of the industry opportunities, because the customers were
2 looking at other possible suppliers, as well.

3 More broadly, Dr. Wong concluded, by looking at the
4 percentage of overlapping customers between Biocoat and
5 Surmodics, already contracted customers for all products and
6 services excluding feasibility testing between January of 2020
7 and March of 2025, that only 15 pre-existing customers -- or
8 14.4% -- overlap; and, that the vast majority of the firms
9 85.6% either did not use the two firms as substitutes or did
10 not use the two firms at all. That is at DX736.287 and DX
11 1002.

12 Ultimately, Dr. Wong concluded that when properly
13 analyzed and contextualized, he doesn't believe that there is a
14 significant amount of competition between the two companies and
15 he doesn't believe that the transaction would cause a
16 substantial lessening of that competition.

17 The Court finds that Dr. Wong's analytics in his
18 analysis of the overall data to be credible and informative.

19 With respect to the divestiture, itself, defendants
20 have the burden to show that the proposed divestiture to
21 Integer will replace the merging firm's competitive intensity.
22 To evaluate whether a divestiture will do so, the courts
23 consider the likelihood of the divestiture; the experience of
24 the divestiture buyer; the scope of the divestiture; the
25 independence of the divestiture buyer from the merging seller;

1 and, the purchase price.

2 A divestiture is successful rebuttal evidence if it
3 sufficiently mitigates the merger's effect, such that it is no
4 longer likely to substantially lessen competition.

5 The Court notes that defendants are only required to
6 show that the proposed divestiture sufficiently mitigated the
7 merger's effect, such that it was no longer likely to
8 substantially lessen competition. The defendants are not
9 required to show that the divestiture would negate the
10 anti-competitive effects of the merger entirely.

11 That is in the Illumina, Inc., v. Federal Trade
12 Commission case, 88 F.4th 1036, at Page 1059, Fifth Circuit
13 2023; and, the Kroger decision, 2024 Westlaw 5053016, at Page
14 17.

15 A consideration of the relevant factors here
16 demonstrates as follows: First, with respect to the likelihood
17 of divestiture, as I noted near the beginning of this ruling,
18 the divestiture is signed and will become effective upon the
19 closing of the Original Transaction.

20 As Luke Marker stated in his testimony at Page 956,
21 "Put another way, there is no world in which the Original
22 Transaction closes but Biocoat does not go through with the
23 divestiture to Integer."

24 The experience of the divestiture buyer. The evidence
25 shows that Integer, a CDMO with over 11,000 employees and \$1.7

1 billion in annual revenue, is an experienced buyer. And it has
2 relevant experience to this particular area of the industry.
3 Among other things, Integer has manufactured and applied
4 hydrophobic coatings for over 40 years; it has applied and
5 tested both UV and thermal hydrophilic coatings for over 20
6 years; and, thus, has the coating application and testing
7 equipment to do so.

8 Integer also has an established sales force and it
9 employs a gentleman named Dhruv Patel, who worked for Biocoat
10 for over 15 years as its Principal Technical Sales Engineer.

11 Currently, Integer applies hydrophilic coatings to
12 over \$2 million worth of products annually, mostly at its
13 Chaska, Minnesota, facility, where it employs close to 800
14 associates. Integer also has vast experience in submitting
15 510(k) applications for medical devices, with at least 28 of
16 its own FDA-approved medical devices, and familiarity with the
17 cardiovascular, peripheral vascular, structural heart and
18 neurovascular fields, among others.

19 The full record before the Court, thus, clearly
20 reflects, as Dr. Wong has found, that Integer is an
21 exceptionally well-qualified divestiture buyer, in Dr. Wong's
22 testimony at Page 1529.

23 The scope of the divestiture. Again, under the terms
24 of the divestiture, Integer will acquire Biocoat's entire
25 UV-cured hydrophilic coatings business and its currently

1 marketed thermal-cured coatings, plus two legacy coatings that
2 Integer currently purchases from Biocoat, along with the
3 corresponding FDA master files; that is, the IP and the know-
4 how for the divested products. It will acquire Biocoat's
5 brands, Biocoat and Hydak; a Biocoat facility in Pennsylvania,
6 and the manufacturing equipment; eleven full-time employees,
7 including PhD chemist Dr. Tyler Long, who helped invent
8 Biocoat's UV coatings, as well as various other personnel that
9 I have named before.

10 Furthermore, the divestiture includes the
11 license-back, whereby Integer will license-back the thermal
12 coatings to the Merged Firm, so that Biocoat can continue to
13 sell the thermal coatings, as well -- the thermal coatings that
14 have been divested.

15 Although this is a partial and not a full divestiture,
16 the evidence reflects that the divested assets, information,
17 employees, facility and equipment will fill an important
18 capability gap in Integer's business; and, with the addition of
19 the assets, personnel, information and equipment that will come
20 by virtue of the divestiture, it will allow Integer to serve as
21 a one stop shop for the manufacturing and application of
22 hydrophilic coatings.

23 Now, plaintiffs' point out that Integer has twice in
24 the past attempted to develop a hydrophilic coating business
25 and those two efforts were not successful. That is correct and

1 that is undisputed.

2 What that experience tells me, though, is that Integer
3 is interested in the business of developing a hydrophilic
4 business; and, what it lacked in those two prior instances, it
5 will be getting by virtue of this proposed divestiture; namely,
6 it will be getting coatings that are FDA approved; that already
7 have some customers; and, will be getting the know-how and the
8 experience, through the Transition Services Agreement, in which
9 to develop the capacity to move the manufacturing of those
10 coatings to its facility in Chaska, Minnesota.

11 Indeed, in sum, the divested assets, along with its
12 current experience and capabilities, are all the inputs Integer
13 needs to complete the picture and be an effective competitor.
14 That is Dr. Wong's testimony at 1530.

15 The independence of the divestiture buyer from the
16 merging seller. There is little concern that Integer, a global
17 entity with \$1.7 billion in annual revenue, will lack the
18 independence from the merged firm necessary to compete.
19 Although it is true that from Day One -- at least on Day One --
20 that Biocoat will still be manufacturing all of the coatings
21 that Integer will be selling, and continue the manufacture of
22 those coatings until Integer is able to stand up the
23 manufacturing in its Chaska facility.

24 The divestiture includes a Transition Services
25 Agreement, that are standard in such acquisitions, and the

1 Transition Services Agreement serves to ensure that Integer and
2 Biocoat will work to transfer specific processes and qualify
3 coatings at the Integer facility within a year; though,
4 notably, Integer hopes to be up and running in six months.

5 Plaintiffs' assert that it is not interested -- the
6 merged firm -- to help Integer get up and running with the
7 manufacture of these coatings because it will, effectively, be
8 helping another competitor.

9 Well, that is certainly something to think about. But
10 another consideration that the parties built into the
11 divestiture agreement is that there is a \$7 million payment
12 that is contingent upon Biocoat's successful assistance in
13 performing the Transition Services Agreement.

14 And, notably, Biocoat's personnel have testified that
15 they intend to perform this Transition Services Agreement. And
16 Integer's Executive, Mr. Senn, fully expects that the
17 Transition Services Agreement will be performed.

18 Dr. Fix, nonetheless, speculates that Biocoat won't
19 perform its duties, but that is what it is. It is speculation.
20 There is a financial incentive -- a \$7 million financial
21 incentive -- for Biocoat to perform its duties.

22 And I will point out, as well, that Dr. Fix's
23 expertise -- he has expertise, but this is the first
24 divestiture that he has analyzed, per his testimony. And his
25 expertise, it really doesn't extend in this particular area.

1 Now, finally, I turn to the purchase price. And,
2 again, plaintiffs point out that the price that Integer is
3 paying for the divested assets is a fraction of the purchase
4 price that was paid for Biocoat in 2022. And, again, that
5 purchase price was \$210 million in 2022; whereas, the
6 Divestiture agreement requires Integer to pay \$8 million up
7 front for the divested assets, with an additional \$7 million if
8 the Transition Services Agreement is successfully executed.

9 So, the plaintiffs are correct. That is, indeed, a
10 fraction of the purchase price to Biocoat. However, the price
11 differential can be attributed to the fact that the divested
12 Biocoat coatings represent, roughly, 10% of Biocoat's revenue,
13 while the remaining legacy coatings represent 90% of its
14 revenue, per the testimony of Mr. Hance at Pages 1331 through
15 1332 of the transcript.

16 And, so, effectively -- and this really is one of the
17 values of having the legacy revenue -- and I do not mean to
18 suggest in any way, by my ruling here today, that the legacy
19 revenue doesn't have value. It has a tremendous amount of
20 value. It gives value to Biocoat because those payments
21 reflect -- they are almost in the nature of an annuity; and, it
22 provides Biocoat and the merged firm, if the transaction
23 proceeds, with financial resources with which to perform
24 research and development and to effectively compete in this
25 coating market that they are in.

1 And it was kind of striking to me, when I heard Dr.
2 Wong testify that it was actually a good thing that more of the
3 legacy revenue was not included with the divestiture package.
4 But, as I thought about it, it did kind of make sense. Integer
5 has borrowed a tremendous amount of financial resources, to get
6 it to folks currently to research and development. And Dr.
7 Wong's point was that Biocoat and Surmodics, and the merged
8 firm, would need to retain that legacy revenue in order to have
9 the funds for research and development they will need to
10 effectively compete.

11 So, in his view, having this purchase price the way it
12 is, is actually something that will promote the competition in
13 the market in the future.

14 Now, more broadly, one of the facts that is undisputed
15 when you take a step back from these numbers and you just look
16 at the situation, the way it is right now is that you have
17 Surmodics, which is a UV-coating provider; and, you have
18 Biocoat, which provides primarily thermal, but, also, UV right
19 now.

20 If the transaction takes place, you will also have two
21 firms that provide UV and thermal. Because of the divested
22 assets, Integer will have UV and thermal hydrophilic coatings
23 to sell. The merged firm will, likewise, have UV and
24 hydrophilic coatings. And, so, effectively, with this
25 transaction, you won't be -- numbers-wise, anyway --

1 diminishing the number of competitors.

2 There is a question raised about whether Integer will
3 instantly be up and running and be able to effectively compete
4 in the same way that Biocoat currently competes; but, as I
5 indicated earlier, defendants do not have to show that Integer
6 will instantly be a clone of Biocoat, in terms of its ability
7 to compete in the market and to align with plaintiffs' prima
8 facie case.

9 But I am persuaded by the testimony of Mr. Senn that
10 Integer -- and this is another critique that Dr. Fix had of the
11 proposed divestiture, because Integer currently purchases,
12 roughly, \$2 million worth of coating from Biocoat, with the two
13 legacy coatings -- thermal legacy coatings that it purchases --
14 and those two legacy coatings will come over to Integer by
15 virtue of the divestiture, that will enable Integer to save, it
16 was estimated, roughly, a million of that \$2 million cost, once
17 they take that manufacturing in-house.

18 And Dr. Fix's hypothesis is that Integer will be
19 satisfied with those savings and not work to really compete
20 very hard with respect to the UV and thermal hydrophilic
21 coating to try to get new business.

22 Dr. Senn -- or Mr. Senn -- vigorously disagrees with
23 that. And I think, based upon the nature of Integer and its
24 size, it is a company, Mr. Senn testified, that was built on
25 acquisitions. They have an existing plan for the coating

1 business; and, with assets, personnel and equipment that are
2 coming with this divestiture, will enable Integer to fill the
3 remaining gap in its plan.

4 And whether it will succeed in effectively competing
5 or not is something that we will see in the future. But I
6 believe -- I am persuaded -- that Integer will vigorously
7 attempt to compete in this space and become another competitor,
8 to mitigate any loss competition that might otherwise result
9 from the merger of Surmodics and Biocoat.

10 So, in consideration of this evidence, the Court finds
11 that defendants have met their burden of production to rebut
12 the presumption that the proposed transaction will
13 substantially lessen competition.

14 The burden now shifts back to plaintiffs to produce
15 additional evidence of anticompetitive effects if the proposed
16 transaction goes forward.

17 Plaintiffs don't explicitly address this prong of the
18 analysis because they have argued, albeit unsuccessfully, that
19 defendants cannot rebut their *prima facie* case.

20 Nonetheless, plaintiffs have offered another
21 potentially significant piece of evidence, and that is Dr.
22 Fix's merger simulation that he performed, and he described at
23 Page 1143 of the transcript, where he indicated that the
24 removal of the constraint provided by Surmodics would provide
25 Biocoat with incentive to increase prices by 28% or more; and,

1 along these lines, removal of the constraint provided by
2 Biocoat would give Surmodics an incentive to increase prices by
3 almost 13%.

4 However, Dr. Fix's merger simulation did not consider
5 how the proposed divestiture to Integer would have an impact on
6 the merged firm's inclination to raise prices to such a degree.
7 That is at Transcript Page 1144.

8 Although Dr. Fix has doubts about how Integer will
9 proceed and how aggressively it will compete for new business
10 if the transaction goes forward, the Court disagrees with him
11 on this for the reasons I've already discussed.

12 Moreover, Dr. Fix fails to consider how the in-house
13 coating capacity acts as a constraint on the merged firm.
14 As I have discussed earlier, Dr. Wong noted in his report that
15 the economic theory is clear that customers need not always
16 pick in-house coatings for those in-house coatings to,
17 nonetheless, be important to competitive constraints, which
18 means that if Biocoat and Surmodics raise their prices along
19 the lines that Dr. Fix hypothesizes, it could lead you to
20 manufacturers -- and there are many substantial manufacturers
21 with the in-house coating -- to simply explore and possibly
22 move other business in-house rather than relying on other
23 suppliers.

24 I have also referenced evidence of customers with
25 in-house coating capacity threatening to move their coating

1 procurement in-house, as it is; and, at least one example where
2 a supplier, DSM, lost a coating opportunity to an in-house
3 move.

4 No Biocoat, Surmodics or GTCR executive testified that
5 Biocoat and Surmodics planned to raise prices by any specific
6 level, let alone to the degree hypothesized by Dr. Fix.

7 Moreover, no customer has expressed any fear of such
8 price increases or, to my recollection, has expressed concerns
9 about this proposed transaction in general.

10 As such, the Court finds that plaintiffs have
11 proffered no other potentially persuasive evidence of
12 anti-competitive effect, other than what I have covered
13 already.

14 Now, finally, the Court must balance the equities.
15 There are two types of equities which the Court must consider
16 in all Section 13(b) cases: Private equities and public
17 equities. In this case, the private equities include the
18 corporate interests of defendants. The public equities are the
19 interests of the public, either in having the merger go through
20 or in preventing the merger. An analysis of the equities
21 includes the potential benefits, both public and private, that
22 may be lost by enjoining a merger.

23 In addition, the Court notes that in balancing the
24 equities, it is important to keep in mind that while private
25 equities are important, when the Commission demonstrates a

1 likelihood of ultimate success, a counter showing of private
2 equities alone would not suffice to justify the denial of a
3 preliminary injunction barring the merger.

4 That is in the Swedish Match case, 131 F. Supp. 2d, at
5 Page 172.

6 Thus, as the Seventh Circuit has made clear in the
7 Elders Grain decision, 868 F.2d at Page 903, while not giving
8 controlling weight to private equities, the cases give them
9 some weight, and private injuries are entitled to serious
10 consideration.

11 In this case, the balance of the equities weigh in
12 defendants' favor for the following reasons: As the court
13 stated and the Seventh Circuit stated in the Ball Memorial
14 Hospital case, 784 F.2d at Page 1334, in attempting to weigh
15 the equities of granting or denying a preliminary injunction in
16 the antitrust setting, the pro or anti-competitive effects on
17 the market at large should be an important factor in the
18 district court's analysis.

19 As I have stated above, the plaintiffs have not
20 demonstrated a likelihood of success on the merits under the
21 applicable test.

22 Moreover, defendants have offered some evidence
23 through Dr. Wong's testimony that the proposed transaction,
24 which includes its divestiture, may benefit the hydrophilic
25 coating customers and, therefore, the public generally, by

1 providing a new competitor -- namely, Integer -- with FDA
2 approved coating and related brand names, key employees,
3 including Dr. Long, the renowned polymer chemist, along with
4 the equipment and know-how to enable it to manufacture the
5 divested Biocoat hydrophilic coating within the year timeframe
6 specified by the Transition Services Agreement.

7 Finally, the Court, as the Seventh Circuit has
8 discussed in the Ball Memorial Hospital case, 784 F.2d at Page
9 1333, considers the harms to the private equities that may be
10 caused because defendants will likely abandon the proposed
11 transaction in the event that an injunction is granted, rather
12 than facing the costs and uncertainties of lengthy litigation
13 to vindicate their position.

14 In sum, for all of these reasons, the Court, in its
15 discretion, finds that plaintiffs have failed to meet their
16 burden for obtaining a preliminary injunction, by raising
17 questions going to the merits so serious, substantial,
18 difficult and doubtful, as to make them fair ground for a
19 thorough investigation, study, deliberation and determination
20 by the FTC in the first instance and, ultimately, by the Court
21 of Appeals.

22 Accordingly, plaintiffs' motion for a preliminary
23 injunction is hereby denied.

24 The parties are ordered to provide by November 14th,
25 2025, a joint status report as to what further action, if any,

1 that I may need to take with this case.

2 In closing, I want to thank counsel from all the
3 parties for their vigorous, zealous and powerful advocacy in
4 this important case and for your patience here today during
5 this oral ruling, which I wanted to get to you in a timely
6 fashion.

7 The court stands in recess.

8 MS. PEREZ (Via Telephone): Your Honor?

9 THE COURT: Yes?

10 MS. PEREZ (Via Telephone): This is Maia Perez on
11 behalf of the FTC.

12 Will the Court be issuing a written opinion or should
13 we be relying on the transcript?

14 THE COURT: Well, Ms. Perez, I went into consider
15 detail and tried to provide you with the citations because I
16 intend for the transcript to stand as my ruling in the case.

17 MS. PEREZ (Via Telephone): Understood. Thank you,
18 your Honor.

19 In that case, your Honor, plaintiffs respectfully move
20 this Court for an extension of the temporary restraining for
21 five business days, which is the same period as the parties'
22 prior stipulation, so that we may assess certain appellate
23 considerations and seek an appropriate appellate relief on an
24 expedited basis, if we make that determination.

25 Plaintiffs would note that courts have routinely

1 granted such extensions in merger cases to allow an opportunity
2 for appellate review.

3 In some recent examples, the district court in FTC vs.
4 Meta Platforms and FTC vs. Temperate Philly International, both
5 granted extensions of seven days. Both courts noted that the
6 Federal Rule of Civil Procedure 65(b)(2) allows the Court to
7 extend the temporary restraining order for a period not to
8 exceed fourteen days for good cause.

9 In another recent case, FTC vs. Novant Health, the
10 district court denied the FTC's motion pending for an
11 injunction pending appeal, but extended the temporary
12 restraining order to allow the FTC to move the Circuit Court
13 for an injunction pending appeal, which the Circuit Court
14 granted.

15 Plaintiffs believe there is good cause for a short
16 extension of the temporary restraining order here. Without an
17 extension, defendants will be able to consummate the proposed
18 transaction after 11:59 p.m. tomorrow, preventing plaintiffs to
19 obtain full and effective relief at the conclusion of any
20 further proceedings, and undermining the public interest in
21 effective enforcement of the antitrust laws.

22 It will also deprive the judiciary of the opportunity
23 to review any potential appellate-related motions, and could
24 even make the status report that the Court just requested on
25 November 14th somewhat moot.

1 So, plaintiffs have sought to stipulate to an
2 extension of time with defendants, in preparation for this
3 hearing, but the parties were unable to agree on a time that
4 would be sufficient for appellate review.

5 FTC vs. Advocate Health Network -- Healthcare Network
6 -- Judge Alonso of the Northern District held -- of Illinois,
7 sorry, the Northern District of Illinois -- granted the FTC's
8 motion for an injunction pending appeal, finding, in part, that
9 such an injunction was necessary to avert irreparable harm
10 because restoring competition would be very difficult, if not
11 impossible, if the parties did merge and then there was a
12 successful appeal.

13 And, also, because -- and Judge Alonso also found that
14 defendants would not be substantially injured by maintenance of
15 the status quo until appellate review was complete.

16 Judge Alonso concluded that the balance of harm ways
17 heavily in the plaintiffs' favor and that the appeal had some
18 merit.

19 In the court here, your Honor, plaintiffs are merely
20 seeking a short extension of the temporary restraining order in
21 order to assess appellate considerations. But many of those
22 same points -- the need for additional time to avert
23 irreparable harm and the lack of harm to defendants -- are
24 present here.

25 Defendants will not be harmed by a short extension, as

1 they have until November 25th to consummate this deal.

2 Defendants have been and will continue to be able to
3 make any appropriate preparations for that closure and they
4 will still be able to consummate the deal on that timeline
5 unless plaintiffs are successful in seeking further relief.

6 But, first, a short extension is needed to allow
7 plaintiffs to assess whether to seek such relief and to allow
8 the Court and the Circuit Court sufficient time to review and
9 rule on any potential motion.

10 And this additional time is particularly critical,
11 your Honor, given the unforeseen circumstances of the continued
12 government shutdown and the limited judiciary operations, and
13 given that the temporary restraining order will expire
14 tomorrow, which is a federal holiday.

15 MR. BUTERMAN (Via Telephone): Your Honor, this is
16 Lawrence Buterman from Latham & Watkins. May I be heard on
17 this issue?

18 THE COURT: Yes. Just one second, Mr. Buterman.

19 So, Ms. Perez, are you seeking until the 17th?

20 MS. PEREZ (Via Telephone): Your Honor, I was asking
21 for five business days, which technically would be the 18th.

22 THE COURT: The 18th? Okay. Five business days.
23 Okay.

24 Go ahead, Mr. Buterman.

25 MR. BUTERMAN (Via Telephone): Thank you, your Honor.

1 Let me begin by noting, as your Honor did, that we had
2 previously agreed with the FTC that there would be a temporary
3 restraining order in place that would prevent us from closing
4 until either November 11th, or five days after the Court's
5 decision, whichever comes sooner.

6 Obviously, the decision has now come down. In
7 conversations with the Federal Trade Commission, we agreed that
8 we would allow the -- we would not close before Friday, which
9 would give them today, tomorrow, Wednesday, Thursday and Friday
10 to decide what they want to do.

11 Respectfully, your Honor, the cases that Ms. Perez
12 cited are all inapplicable because of the fact that we do have
13 an outside date of November 25th.

14 Ms. Perez's arguments about irreparable harm simply
15 have no place, in light of the Court's finding that there will
16 be no irreparable harm, and that this transaction does not
17 substantially lessen competition.

18 Furthermore, nothing that will happen with respect to
19 closing this transaction will remove appellate review or impact
20 appellate review. This is all about the FTC trying to crater
21 this deal now that this Court has ruled that it does not
22 substantially lessen competition and that the injunction should
23 not be issued.

24 And, so, therefore, while we are comfortable agreeing
25 to an extension and an agreement not to close until Friday,

1 anything beyond Friday, your Honor, runs the risk that we may
2 butt up against the outside date.

3 And the reason is, your Honor, because as typically
4 happens in these cases, the FTC will seek a stay of the
5 decision before your Honor. And, then, assuming that is not
6 successful, they will then make a motion for an emergency stay
7 in front of the Seventh Circuit.

8 And if this goes on until next week, before they have
9 to even approach your Honor, that is going to make it more
10 likely that the FTC will not be giving the Seventh Circuit
11 enough time to analyze their stay motion.

12 And, again, your Honor, the FTC has been aware of the
13 pendency of this decision for some time. And I, respectfully,
14 disagree that there is anything in this decision that is
15 causing them to have to now ruminate for a week to decide
16 whether they want to appeal.

17 MS. PEREZ (Via Telephone): Your Honor, if I may?
18 This is Maia Perez, again.

19 The extension of the temporary restraining order is
20 not simply for plaintiffs to ruminate on whether to move for
21 appellate relief, but, rather, also, for this Court, as
22 Mr. Buterman just said, for this Court and for, potentially,
23 the Circuit Court of Appeals, to rule -- to consider and rule
24 -- on any briefing on that, any potential motion seeking
25 appellate relief.

1 So, your Honor, there is much more that needs to
2 happen before the temporary restraining order than simply for
3 plaintiffs to make up their minds about whether to seek
4 appellate relief.

5 And we are asking for this relief in order to avoid
6 potentially jamming up both your Honor and, then, in turn, the
7 Circuit Court of Appeals, during a shutdown on a week with a
8 federal holiday. And, for that reason, we are asking for
9 slightly more time -- mostly, for sufficient time -- to
10 review.

11 MR. BUTERMAN (Via Telephone): Your Honor, the courts
12 are all operational, as your Honor's thorough work on this
13 opinion shows. The Seventh Circuit is operational. This is
14 about the FTC keeping open the optionality, to try to run out
15 the clock on us. And given the Court's decision, it is time
16 for the FTC to let this one go.

17 And if they want to appeal, they can appeal, but there
18 is no reason to further keep us from beginning consummating
19 this transaction.

20 THE COURT: Well, Mr. Buterman, you have heard my
21 ruling. And I think that I am right, but I could be wrong.
22 And I don't think it is unreasonable to give the plaintiffs
23 until Monday, which I believe would be the 17th, in light of
24 the fact that we have a federal holiday tomorrow.

25 And although many of my colleagues and myself have

1 been quite busy over the past number of weeks with a lot of
2 different things going on, not the least of which, of course,
3 is your case, I think it is reasonable to give the FTC some
4 more time.

5 I don't know how their personnel are even -- if they
6 have been working during the shutdown or -- obviously, there is
7 representation here today, but it may take them a little bit of
8 time. And I don't see how giving them until Monday is going to
9 harm your clients' position.

10 I have full confidence -- and I can promise you, and
11 all counsel -- that if I get any sort of a motion from the
12 plaintiffs to stay, I want an immediate response and I will
13 rule promptly so the case can move forward -- if it moves
14 forward, wherever it needs to go -- there won't be any delays
15 on my account.

16 And I have full confidence that the Court of Appeals
17 will act expeditiously to grant any sort of relief that needs
18 to be granted, so that if the transaction goes forward, it can
19 do so in a timely manner.

20 So, I am going to grant the plaintiffs' request and
21 give them until Monday, and extend the temporary restraining
22 order until Monday at 5:00 p.m., Central Standard Time.

23 Is there anything further from the parties?

24 MS. PEREZ (Via Telephone): Nothing further from
25 plaintiffs, your Honor. Thank you.

1 THE COURT: Okay.

2 MR. BUTERMAN (Via Telephone): No, your Honor. Thank
3 you very much.

4 THE COURT: Thank you all for your patience.

5 You might be tired of the sound of my voice by now,
6 but I thought it was important to give this the sort of
7 consideration that I have spent with your materials.

8 And, again, I thank you, everyone, for their excellent
9 presentations in this case.

10 The Court will stand in recess. Good night.

11 (Concluded at 3:53 p.m.)

* * * *

13 I certify that the foregoing is a correct transcript
14 from the record of proceedings in the above-entitled matter.

15 /s/Joene Hanhardt
16 Joene Hanhardt
17 Official Court Reporter

November 11, 2025

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