

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Tempur Sealy International, Inc.,
a corporation,

and

Mattress Firm Group Inc.
a corporation.

DOCKET NO. 9433

JOINT STATUS REPORT

Pursuant to the Court’s Order Granting Joint Motion to Suspend Deadlines dated November 7, 2024, Complaint Counsel and Respondents Tempur Sealy International, Inc. (“Tempur Sealy”) and Mattress Firm Group Inc. (“Mattress Firm”) submit this Joint Status Report. The Parties provide an update on the Part 3 proceeding and scheduling, the federal preliminary injunction proceeding, and pending motions related to each. The Parties are available to address these issues and any other issues the Court wishes to address at the Court’s convenience.

I. Part 3 Proceeding

The Commission issued the Administrative Complaint in Part 3 on July 2, 2024. Respondents Tempur Sealy and Mattress Firm filed their respective Answers and Defenses on July 9, 2024. The Court issued a Scheduling Order on July 19, 2024.

Pursuant to the Scheduling Order, Complaint Counsel served its Preliminary Fact Witness List on August 27, 2024. Respondents served their Preliminary Fact Witness List on September 4, 2024. Complaint Counsel served its Expert Witness List on September 6, 2024, and Respondents served their Expert Witness List on September 13, 2024. Complaint Counsel and Respondents served Requests for Production on September 17, 2024. Discovery closed on October 15, 2024. Complaint Counsel served its Expert Reports on October 22, 2024. On October 30, 2024, Complaint Counsel served its Final Proposed Witness List and Final Proposed Exhibit List. Respondents served their Expert Report on November 5, 2024, and a Corrected Supplemental Expert Report on November 6, 2024. Respondents served their Final Proposed Witness List and Final Proposed Exhibit List on November 6, 2024.

On October 2, 2024, Respondents filed a motion requesting that the Commission continue the Part 3 hearing from December 4, 2024, to February 9, 2025, to give the federal court time to rule on the FTC’s request for a preliminary injunction before the beginning of the

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Part 3 hearing.¹ Complaint Counsel filed a Response on October 15, 2024, agreeing that the Part 3 hearing should begin no sooner than February 9, 2025, but requesting that the Commission defer setting a date for the Part 3 hearing and instead require the Parties to submit a joint status report on January 13, 2025, updating the Commission on the status of the preliminary injunction proceeding and its impact on whether (and when) an administrative hearing may be necessary.

On November 6, 2024, the Parties jointly moved this Court to suspend all pre-hearing deadlines in the Scheduling Order while the Commission considered Respondents' motion to continue the Part 3 hearing. On November 7, 2024, the Court granted the Parties' joint motion and suspended all pre-hearing deadlines in the Scheduling Order. The Court directed that, should the Commission grant Respondents' motion to continue the Part 3 hearing, the Parties shall submit a joint status report advising the Court on their position regarding whether and how to amend the Scheduling Order within ten business days after the completion of the preliminary injunction hearing in federal court.

Also on November 7, 2024, the Commission granted Respondents' motion to continue the Part 3 hearing, ordered that the Part 3 hearing commence on February 10, 2025, and directed the Parties to submit a joint status report or separate status reports on January 13, 2025, regarding the status of the federal court proceeding and its impact on whether (and when) an administrative hearing may be necessary.

Pursuant to the Commission's November 7, 2024 Order, the Parties will be conferring on the status report(s) to be submitted on January 13, 2025. The Parties propose that any further amendment to the Scheduling Order be deferred until submission of the January 13, 2025 report(s).

II. The Federal Proceeding

The preliminary injunction hearing in *Federal Trade Commission v. Tempur Sealy Int'l, Inc., et al.*, No. 4:24-cv-02508 (S.D. Tex.), commenced on November 12, 2024, and involved seven days of live witness testimony. The Parties filed Joint Proposed Findings of Fact and Conclusions of Law on December 13, 2024, ECF No. 456, and gave closing arguments on December 16, 2024. In his remarks before the Parties gave closing arguments, Judge Eskridge stated that he will rule on the FTC's request for a preliminary injunction at least ten days before the February 9, 2025 termination date in the Agreement and Plan of Merger between Tempur Sealy and Mattress Firm, *i.e.* by January 30, 2025.²

On December 27, 2024, Defendants filed a Notice of Revised Slot Commitment. ECF No. 484. The FTC will file a Response by January 3, 2025. Defendants will file a Reply by January 8, 2025. On December 29, 2024, to ascertain that the appropriate person or persons with full authority to maintain or withdraw further challenge in the preliminary injunction matter have been advised of the Notice of Revised Slot Commitment and attachments, Judge Eskridge also ordered the FTC to file a statement by January 10, 2025 explaining (i) the identity and authority

¹ A corrected motion was filed on October 3, 2024.

² Dec. 16 Tr. 1:16–2:24.

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of the decisionmaker or decisionmakers, and (ii) whether the FTC wishes to maintain or withdraw the preliminary injunction action from further consideration. ECF No. 485.

Separately, on October 4, 2024, Tempur Sealy and Mattress Firm filed a Complaint against the FTC and the five FTC Commissioners in the Southern District of Texas alleging structural constitutional violations in the Part 3 proceeding. *Tempur Sealy Int'l, Inc. v. Federal Trade Commission*, No. 4:24-cv-3764 (S.D. Tex.), ECF No. 1. The case was transferred to Judge Eskridge as a related case to the FTC's request for a preliminary injunction enjoining Tempur Sealy's proposed acquisition of Mattress Firm. ECF No. 31.

III. Pending Motions

There are no pending motions before this Court or the Commission. There are several pending motions in the federal court proceeding, as described below.

On October 4, 2024, Plaintiff filed its Motion and Brief in Support of Motion for Preliminary Injunction. ECF No. 143. Defendants filed their Response to Plaintiff's Motion for Preliminary Injunction on October 25, 2024. ECF No. 170. Plaintiff filed its Reply in Support of Motion for Preliminary Injunction on November 4, 2024. ECF No. 207. As discussed above, the hearing on Plaintiff's request for a preliminary injunction concluded on December 16, 2024, and the Parties are awaiting a ruling from the federal court.

On November 7, 2024, Plaintiff filed a Motion for Adverse Inferences. ECF No. 225. Defendants filed an Opposition to Plaintiff's Motion for Adverse Inferences on November 27, 2024. ECF No. 427. Plaintiff filed a Reply in Support of Its Motion for Adverse Inferences on December 9, 2024. ECF No. 435. The Motion for Adverse Inferences is fully briefed and pending before the federal court.

In the related 4:24-cv-3764 proceeding, Tempur Sealy and Mattress Firm filed a Motion for Preliminary Injunction on November 5, 2024 to enjoin the Part 3 proceeding. ECF No. 33. The FTC filed its Opposition to Motion for Preliminary Injunction on December 13, 2024. ECF No. 39. Tempur Sealy's and Mattress Firm's Reply in support of their Motion for Preliminary Injunction is due on January 10, 2025. ECF No. 38.

There are no other pending motions before this Court, the Commission, or the federal court.

Dated: December 31, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2024, I caused the foregoing document to be filed electronically using the FTC’s E-Filing System, which will send notification of such filing to:

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I further certify that I caused the foregoing document to be served via email to:

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