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

**COMMISSIONERS:**

**Lina M. Khan, Chair  
Rebecca Kelly Slaughter  
Alvaro M. Bedoya  
Melissa Holyoak  
Andrew Ferguson**

**In the Matter of**

**Tempur Sealy International, Inc.,  
a corporation,**

**and**

**Mattress Firm Group Inc.  
a corporation.**

**DOCKET NO. 9433**

**JOINT STATUS REPORT AND MOTION FOR CONTINUANCE**

The Commission’s Order Granting Continuance of Evidentiary Hearing dated November 7, 2024, instructed Complaint Counsel and Respondents Tempur Sealy International, Inc. (“Tempur Sealy”) and Mattress Firm Group Inc. (“Mattress Firm”) “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 evidentiary hearing may be necessary.” The administrative hearing currently is scheduled to begin on February 10, 2025.

In response to the Commission’s Order, the Parties (1) provide a joint update on the status of the federal court proceeding, and (2) jointly move for a 30-day continuance of the administrative hearing.

**I. Joint Status Report**

*A. The Federal Court 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

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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.<sup>1</sup>

On December 27, 2024, Defendants filed a Notice of Revised Slot Commitment. ECF No. 484. The FTC filed a Response to Defendants' Notice of Revised Slot Commitment on January 3, 2025. ECF No. 496. Defendants filed a Reply in Support of Notice of Revised Slot Commitment on January 8, 2025. ECF No. 498.

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 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. The FTC filed a Response to the Court's December 29, 2024 Order on January 10, 2025, providing the information requested by the Court and stating its intention to maintain the preliminary injunction action. ECF No. 499.

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.<sup>2</sup>

### *B. Pending Motions*

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 evidentiary 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.

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<sup>1</sup> Dec. 16 Tr. 1:16-2:24.

<sup>2</sup> In filing this Joint Status Report and Motion for Continuance, Respondents do not concede that the Part 3 proceedings are proper or that the FTC may conduct the administrative hearing consistent with the Constitution. *See Tempur Sealy Int'l, Inc. v. Federal Trade Commission*, No. 4:24-cv-3764 (S.D. Tex.), ECF No. 1.

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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 and Mattress Firm filed a Reply in support of their Motion for Preliminary Injunction on January 10, 2025. ECF No. 42.

There are no other pending motions in the federal court proceeding.

## II. Motion for Continuance

Pursuant to Rule 3.41 of the FTC's Rules of Practice, Complaint Counsel and Respondents jointly move for a 30-day continuance, until March 12, 2025, of the administrative evidentiary hearing currently scheduled to begin on February 10, 2025. This brief postponement may facilitate significant streamlining of the Parties' hearing presentation, will allow for more orderly preparation for the administrative hearing, and in doing so will minimize the expense and burden on both the Parties and non-parties.

Should the current administrative hearing date of February 10, 2025 hold, the Parties would need to undertake significant work over the next four weeks to prepare for the hearing, such as producing expert rebuttal reports, conducting expert depositions, addressing confidentiality concerns for trial exhibits, filing motions *in limine*, responding to motions *in limine*, exchanging expert-related proposed exhibits, exchanging proposed stipulations, and preparing pretrial briefs.<sup>3</sup> Dozens of third-parties would also need to undertake significant work, including addressing confidentiality concerns for proposed trial exhibits and filing motions for *in camera* treatment.

The requested relief will not prejudice the Commission's ability to discharge its duties. As discussed above, the parallel proceeding in federal court on the FTC's motion for a preliminary injunction is ongoing, and the Parties expect a ruling on the motion by January 30, 2025. A brief 30-day stay will not degrade the Commission's ultimate ability to obtain relief relative to the present timing.

The brief continuance jointly requested by the Parties avoids any inefficiencies that may arise from preparing for the administrative hearing under tight deadlines while awaiting the federal court's ruling. This is consistent with the Commission's past approach to close-in-time federal and administrative proceedings. *See, e.g., In re Thomas Jefferson Univ.*, Docket No. 9392, 2020 WL 7237952 (F.T.C. Nov. 6, 2020); *In re RAG-Stiftung*, Docket No. 9384, 2020 WL 91294 (F.T.C. Jan. 2, 2020); *In re Sanford Health*, Docket No. 9376, 2017 WL 6604532 (F.T.C. Dec. 21, 2017); *In re The Penn State Hershey Med. Ctr.*, Docket No. 9368, 2016 WL 3345405 (F.T.C. June 10, 2016); *In re Advocate Health Care Network*, Docket No. 9369, 2016 WL 3182774 (F.T.C. June 2, 2016). As it has done in the past under similar circumstances, the

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<sup>3</sup> The pre-hearing deadlines contained in the Scheduling Order in this matter were suspended by the Administrative Law Judge at the joint request of the Parties. Order Granting Joint Motion to Suspend Deadlines (Nov. 6, 2024). Should the current administrative hearing date of February 10, 2025 hold, the Parties would promptly need to negotiate revised pre-hearing deadlines.

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Commission can grant this joint Motion for Continuance of the administrative hearing without prejudicing itself.

For the foregoing reasons, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rules 3.41(b) and (f) to postpone the administrative hearing by 30 days.

Dated: January 13, 2025

Respectfully submitted,

By: /s/ William Sohn  
William Sohn  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-3356  
Email: wsohn@ftc.gov

*Counsel Supporting the Complaint*

/s/ Ryan A. Shores  
Ryan A. Shores  
D. Bruce Hoffman  
CLEARLY GOTTLIEB STEEN &  
HAMILTON LLP  
2112 Pennsylvania Ave., NW  
Washington, D.C. 20037  
Telephone: (202) 974-1500  
rshores@cgsh.com  
bhoffman@cgsh.com

*Counsel for Respondent Tempur Sealy  
International, Inc.*

/s/ Sara Y. Razi  
Sara Y. Razi  
SIMPSON THACHER & BARTLETT LLP  
900 G Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 636-5500  
sara.razi@stblaw.com

*Counsel for Respondent Mattress Firm  
Group Inc.*

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**[PROPOSED] ORDER**

Having considered the Parties’ joint motion to continue the evidentiary hearing and finding good cause for a 30-day continuance, it is hereby ORDERED that the evidentiary hearing shall be commenced on a date no sooner than March 12, 2025. The Administrative Law Judge shall issue a revised Scheduling Order consistent with the terms of this Order.

By the Commission.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
April J. Tabor  
Secretary

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2025, I caused the foregoing document to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

Office of Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

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

Ryan Shores  
D. Bruce Hoffman  
Cleary Gottlieb Steen & Hamilton LLP  
2112 Pennsylvania Avenue NW  
Washington, DC 20037  
Telephone: (202) 974-1500  
Email: rshores@cgsh.com  
Email: bhoffman@cgsh.com

*Counsel for Respondent Tempur Sealy  
International, Inc.*

Sara Y. Razi  
Simpson Thacher & Bartlett LLP  
900 G Street NW  
Washington, DC 20001  
Telephone: (202) 636-5500  
Email: sara.razi@stblaw.com

*Counsel for Respondent Mattress Firm  
Group Inc.*

By: /s/ William Sohn  
William Sohn

*Counsel Supporting the Complaint*