

**ENTERED**

July 16, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TEMPUR SEALY INTERNATIONAL, INC.

and

MATTRESS FIRM GROUP INC.,

Defendants.

Case No. 4:24-cv-02508

**STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIAL  
MATERIAL**

For the purpose of protecting the interests of the parties and non-parties in the above-captioned matter (the “Litigation”) against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Stipulated Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “Confidential Material” shall refer to any document or portion thereof that contains privileged information, Competitively Sensitive Information, or Sensitive Personal Information. “Competitively Sensitive Information” shall refer to, but shall not be limited to, any trade secret or competitively sensitive research, analysis,

technical, financial, development, or commercial information that has not been released into the public domain. “Sensitive Personal Information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a non-party. “Defendants” shall refer to Tempur Sealy International, Inc. (“Tempur Sealy”) and Mattress Firm Group Inc. (“Mattress Firm”). “Plaintiff” shall refer to the Federal Trade Commission (“Commission” or “FTC”) or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding. “Parties” shall refer to the Defendants and the Plaintiff. “FTC Administrative Action” means *In re Tempur Sealy International, Inc. and Mattress Firm Group Inc.*, before the United States of America Federal Trade Commission Office of Administrative Law Judges, Docket No. 9433, and any related investigation by the Federal Trade Commission.

2. Any document or portion thereof submitted by a Defendant or non-party in an FTC investigation or the FTC Administrative Action, or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the

substance of the contents of any confidential materials derived from a document subject to this Order, shall be treated as Confidential Material for purposes of this Order. The identity of a non-party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The Parties and any non-parties, in complying with informal discovery requests, disclosure requirements, discovery demands, or subpoenas in this proceeding may designate any responsive document or portion thereof as Confidential Material, including Documents obtained by them from non-parties pursuant to discovery or as otherwise obtained.

4. The Parties, in conducting discovery from non-parties, shall provide to each non-party a copy of this Order so as to inform each such non-party of their rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Confidential Material as defined in Paragraph 1 of this Order.

6. Material may be designated as Confidential Material by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of Documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL—FTC v. TEMPUR SEALY/MATTRESS FIRM” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document

considered to be Confidential Material. Confidential Material contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL—FTC v. TEMPUR SEALY/MATTRESS FIRM” or any other appropriate notice that identifies this proceeding, in the Document metadata, image file or through another mechanism that clearly identifies the Document as confidential. Masked or otherwise redacted copies of Documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor. The Party or nonparty desiring to designate any or all portions of oral testimony as Confidential Material shall do so by stating orally on the record on the day that the oral testimony is being given or by notifying the Parties in writing of the intention to designate any or all portions of oral testimony as Confidential Material after the oral testimony is given.

7. Confidential Material shall be disclosed only to: (a) the Court presiding over this proceeding and personnel assisting the Court, including its support staff; (b) the Administrative Law Judge presiding over the FTC Administrative Action, and staff and personnel assisting the Administrative Law Judge; (c) the Commission and its employees; (d) personnel retained by the Commission as experts or consultants for this proceeding or the FTC Administrative Action, including litigation support services and their staff, provided that they have signed Appendix A; (e) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter or the FTC Administrative Action; (f) outside counsel retained by any Defendant or by Defendant Mattress Firm’s consortium of shareholders for this proceeding or the FTC Administrative

Action, their associated attorneys and other employees of their law firm(s), provided they are not employees of a Defendant; (g) anyone retained to assist outside counsel for any Defendant in the preparation or hearing of this proceeding or the FTC Administrative Action including consultants and experts, provided they are not employed by or affiliated in any way with a Defendant and have signed Appendix A; (h) any witness or deponent who may have authored or received the information in question; and (i) any interpreter, court reporter, shorthand reporter, typist or videographer translating, recording or transcribing Document or testimony in connection with this Litigation or the FTC Administrative Action.

8. Disclosure of Confidential Material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding and the FTC Administrative Action, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Plaintiff may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose Confidential Material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. Notwithstanding the limitations set forth in Paragraphs 7 and 8 and subject to taking appropriate steps to preserve confidentiality, the Commission may disclose Confidential Material or Sensitive Personal Information to other governmental entities, as provided by 16 C.F.R. §§ 4.9–4.11, 15 U.S.C. §§ 46(f) and 57b-2, or as otherwise authorized or required by law. Such entities include officers and employees of Federal or

State law enforcement agencies (including duly authorized employees of the Commission) and congressional committees.

10. Any party seeking to file under seal any pleading, brief, or supporting material containing Confidential Information must obtain permission of the Court. The Court allows such filing only on showing of exceptional circumstances. Any party seeking to seal Confidential Information must: a. File a sealed motion explaining to the Court the justification for preventing public disclosure of the information; b. Attach the filing proposed for permanent seal on the docket; c. Attach a redacted version suitable to and proposed for filing on the public docket or explanation why redaction is not possible; and d. Absent alternate permission, identify the filing with a title and designation of “SEALED” on the CM/ECF System (for example, “Motion for Summary Judgment (SEALED),” and not simply “SEALED DOCUMENT”). The Court promptly considers such motions and directs filings under seal or on the public docket as appropriate. To the extent possible, anticipate and seek resolution of such motion in advance of filing deadlines.

11. If counsel plans to introduce into evidence at the hearing any Document or transcript containing Confidential Material produced by another Party or by a non-party, they shall provide advance notice to the other Party or non-party for purposes of allowing that Party or non-party to seek an order that the Document or transcript be granted *in camera* treatment. If that Party or non-party wishes *in camera* treatment for the Document or transcript, the Party or non-party shall file an appropriate motion with the Court within 5 days after it receives such notice. Except where such an order is granted, all Documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a

duplicate copy of such Document or transcript with the confidential material deleted therefrom may be placed on the public record.

12. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of Confidential Material submitted by another Party or non-party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of Confidential Material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of Confidential Material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

13. At the time that any consultant or other person retained to assist counsel in the preparation of this Litigation concludes participation in the Litigation, such person shall return to counsel or destroy all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing Confidential Material. At the conclusion of this proceeding and the FTC Administrative Action, including the exhaustion of judicial review, the Parties

shall return or destroy documents obtained in this Litigation to their submitters, provided, however, that the Commission's obligation to return or destroy documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 C.F.R. § 4.12.

14. All Documents produced will be treated as Confidential Material for ten (10) business days from the date this Protective Order is filed, even if not designated in accordance with this Protective Order. Any production of Documents not designated as Confidential Material will not be deemed a waiver of any future claim of confidentiality concerning such information if it is later designated as Confidential Material. If at any time prior to the conclusion of this litigation, a Party or non-party determines that it should have designated as Confidential Material any Documents that the Party or non-party previously produced, it may so designate such Documents by notifying the Parties in writing. The Parties shall thereafter treat the Documents pursuant to the new designation under the terms of this Protective Order. No prior disclosure of newly designated Confidential Material shall violate this Protective Order, provided that the prior disclosure occurred more than ten (10) business days after the production of that previously non-designated Confidential Material. The disclosure of any information for which disclosure was proper when made will not be deemed improper regardless of any such subsequent designation. Any Documents, data, or other information produced to the Federal Trade Commission during its investigation and designated at the time of production as confidential, highly confidential, proprietary, exempt from disclosure under the Freedom of Information Act, or submitted under the HSR Act shall be deemed Confidential Material for purposes of this Litigation.



15. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the producing party or further order of the Court, continue to be binding after the conclusion of this proceeding.

Signed on July 16, 2024, at Houston, Texas.

A handwritten signature in black ink that reads "Charles Eskridge" with a stylized flourish at the end.

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Charles Eskridge  
United States District Judge

**APPENDIX A**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

TEMPUR SEALY INTERNATIONAL  
INC., *et al.*  
Defendants.

Case No. 4:24-CV-02508

**AGREEMENT CONCERNING CONFIDENTIALITY**

I, \_\_\_\_\_, am employed as \_\_\_\_\_ by

\_\_\_\_\_.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the Southern District of Texas solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE