

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Federal Trade Commission,  
Plaintiff,

Civil Action No. 4:24-cv-02508

vs.

Judge Charles Eskridge

Tempur Sealy International, Inc.,  
*et al.*,  
Defendants.

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**Defendants' Unopposed Motion to Amend  
the Temporary Restraining Order**

On January 31, 2025, this Court denied the FTC's request for a preliminary injunction to block the merger. Order, ECF No. 507. At the same time, the Court extended the Temporary Restraining Order until February 7, 2025, at 3 p.m. Central Standard Time (*i.e.*, 4 p.m. Eastern Time). Order 3, ECF No. 508. It reasoned that this extension would give the Fifth Circuit a reasonable opportunity to consider any expedited request from the FTC while also accommodating the merger agreement's February 9 termination date. Order 2–3, ECF No. 508.

Closing a transaction of this size involves several steps that must occur in a particular sequence. Defendants are working diligently to accomplish as many of those steps as it can in advance. But as a practical matter, certain steps can only reasonably be taken after it is certain that the closing will occur—*i.e.*, after the TRO expires. These steps include: (1) borrowing, funding, and depositing billions of dollars, (2) paying Mattress Firm's loans and other indebtedness where the merger would trigger an event of default, (3) filing a certificate of merger with the Delaware Secretary of State, and (4) confirmation of acceptance of such certificate by the Delaware Secretary of State. These steps take time and many of them involve financial and government institutions outside Defendants' control.

Thus, Defendants respectfully request a minor adjustment so that the TRO instead expires at 12 p.m. Eastern Time on February 7, 2025. *See*

*Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. 1981) (“[A district court] possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient”). Defendants also ask that the Court make clear that, if the Fifth Circuit resolves any emergency request from the FTC *before* the TRO is set to expire or if the FTC decides not to seek emergency relief from the Fifth Circuit, the TRO will end.

Defendants have conferred with the FTC, which does not oppose this request.

Consistent with the Court’s order, ECF No. 508, shortening the TRO by only four hours will allow for emergency Fifth Circuit review while preserving Defendants’ ability to close the merger. Defendants understand that if the FTC seeks emergency relief from the Fifth Circuit, it will do so today. If so, Defendants would promptly file a response. A 12 p.m. Eastern Time expiration gives the Fifth Circuit time to review any request and accommodates the termination date. By contrast, the current 4 p.m. Eastern Time expiration risks preventing the merger from closing altogether.

\* \* \*

To preserve Defendants’ ability to close the merger, while allowing time for any emergency Fifth Circuit review, Defendants ask this Court to revise the Temporary Restraining Order so that it expires at the earliest of (1) 12 p.m. Eastern Time on February 7, 2025, (2) the Fifth Circuit resolving any

emergency request from the FTC, or (3) the FTC deciding not to seek emergency relief from the Fifth Circuit.

Dated: February 3, 2025

/s/ Sara Y. Razi  
*Attorney-In-Charge*

Sara Y. Razi  
N. Preston Miller  
Lindsey C. Bohl  
Avia Gridi  
Nicholas Ingros  
Geoffrey I. Schmelkin  
SIMPSON THACHER &  
BARTLETT LLP  
900 G. Street, N.W.  
Washington, D.C. 20001  
Tel: (202) 636-5500  
Fax: (202) 636-5502  
sara.razi@stblaw.com  
preston.miller@stblaw.com  
lindsey.bohl@stblaw.com  
avia.gridi@stblaw.com  
nicholas.ingros@stblaw.com  
geoffrey.schmelkin@stblaw.com

Michelle E. Gray  
State Bar No. 24078586  
S.D. Tex. Bar No. 892270  
mgray@foglerbrar.com  
Deborah C. Milner  
State Bar No. 24065761  
S.D. Tex. Bar No. 971677  
cmilner@foglerbrar.com

FOGLER, BRAR, O'NEIL & GRAY

/s/ Ryan A. Shores  
*Attorney-In-Charge*

Ryan A. Shores  
D. Bruce Hoffman  
Daniel P. Culley  
Blair W. Matthews  
Matthew I. Bachrack  
Jacob M. Coate  
Gabriel J. Lazarus  
CLEARY GOTTLIEB STEEN &  
HAMILTON LLP  
2112 Pennsylvania Ave., NW  
Washington, D.C. 20037  
202-974-1500  
bhoffman@cgsh.com  
rshores@cgsh.com  
dculley@cgsh.com  
mbachrack@cgsh.com  
bmatthews@cgsh.com  
jcoate@cgsh.com  
glazarus@cgsh.com

Heather S. Nyong'o  
CLEARY GOTTLIEB STEEN &  
HAMILTON LLP  
650 California St.  
San Francisco, CA 94108  
415-796-4400  
hnyongo@cgsh.com

Lina Bensman

LLP  
2 Houston Center  
909 Fannin Street, Suite 1640  
Houston, TX 77002  
(713) 481-1010  
(713) 574-3224 (Fax)

*Counsel for Mattress Firm Group  
Inc.*

CLEARY GOTTLIEB STEEN &  
HAMILTON LLP  
One Liberty Plaza  
New York, NY 10006  
212-225-2000  
lbensman@cgsh.com

Alex B. Roberts  
Federal Bar No. 865757  
Texas State Bar No. 24056216  
aroberts@beckredden.com  
BECK REDDEN LLP  
1221 McKinney Street  
Suite 4500  
Houston, TX 77010  
Tel: (713) 951-3700  
Fax: (713) 951-3720

*Counsel for Tempur Sealy  
International, Inc.*

### **Certificate of Service**

I hereby certify that on February 3, 2025, I electronically filed a true and correct copy of the foregoing document using this Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Ryan A. Shores  
Ryan A. Shores

### **Certificate of Word Count**

I certify that the motion contains 497 words, excluding the case caption, signature block, and certificates.

/s/ Ryan A. Shores  
Ryan A. Shores

### **Certificate of Conference**

Pursuant to Court Procedure 17(a), I certify that, on February 2, 2025, Defendants' counsel conferred with the FTC's counsel, who indicated that the FTC does not oppose this request.

/s/ Ryan A. Shores  
Ryan A. Shores