

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

In the Matter of

Tempur Sealy International, Inc.

and

Mattress Firm Group Inc.

Docket No. 9433

ANSWER AND DEFENSES OF RESPONDENT MATTRESS FIRM GROUP INC.

Pursuant to Rule 3.12 of the Federal Trade Commission (the “FTC” or the “Commission”) Rules of Practice for Adjudicative Proceedings, Respondent Mattress Firm Group Inc. (“Mattress Firm”), by and through its attorneys, hereby admits, denies, and avers as follows with respect to the Administrative Complaint (the “Complaint”) filed in the above captioned matter relating to its proposed acquisition by Tempur Sealy International, Inc. (“Tempur Sealy”). To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

INTRODUCTION

Mattress Firm is a mattress retailer with approximately 2,300 brick-and-mortar stores and a growing online retail operation. Mattresses are sold through practically every retail format imaginable, including furniture stores, department stores, mattress specialty stores, big box and club stores, and local independent retailers and mattress retailers. As a result, Mattress Firm competes vigorously for its customers. Ignoring this commercial reality, the Complaint fails to allege that Mattress Firm has market power in any plausible retail market or to provide any retail market shares for Mattress Firm. Rather, the Complaint relies on a vague assertion that some percentage of U.S. mattress shoppers visit Mattress Firm as part of their purchase journey.

Consistent with the highly competitive retail landscape, Mattress Firm recognizes that people also shop online and visit several other retail stores throughout their purchase journey. Moreover, as the FTC well knows, Mattress Firm’s “conversion rate”—i.e., the proportion of those who visit Mattress Firm that ultimately purchase from Mattress Firm, is less than 50%. Indeed, a substantial percentage of those who visit Mattress Firm but do not buy there will instead buy their mattress online from a different retailer. After over a year of investigative discovery, the FTC should be able to set forth Mattress Firm’s market share in a relevant retail product market, and a complete failure to do so is telling.

Moreover, as the Complaint makes clear, the FTC is focused on a miniscule subset of third-party manufacturers, namely Serta Simmons and Purple. However, those suppliers—and indeed all non-private label, third-party suppliers combined—make up less than half of Mattress Firm’s selection and sales today. As a result, the FTC brings its complaint based on a speculative foreclosure theory that would, at most, impact a fraction of the selection at Mattress Firm, which itself makes up only a fraction of U.S. mattress sales. Competition could not plausibly be substantially lessened under such circumstances.

Furthermore, barriers to opening a mattress store are low and already roughly half of mattress sales in the U.S. are made online. Mattress Firm has succeeded to the degree it has because it has earned a reputation over nearly four decades for providing customers with a broad selection of the most popular mattress brands from various suppliers at competitive prices. After the transaction, Mattress Firm’s success in the highly competitive retail marketplace will continue to turn on offering a comprehensive and diverse assortment featuring both Tempur Sealy and non-Tempur Sealy branded products.

The Commission alleges that competition in mattress manufacturing will be substantially harmed by the transaction. That too is incorrect. Mattress Firm is not essential to any mattress manufacturer, nor to ensure that the mattress manufacturing segment remains competitive. Many of the leading mattress manufacturers today, including multiple mattress manufacturers in the Commission’s alleged amorphous “premium mattress” market, do not sell at Mattress Firm. In fact, several have turned Mattress Firm down when approached for a partnership. The manufacturers that do sell at Mattress Firm do not – and need not – rely on Mattress Firm, because there are more than sufficient alternative retail channels.

Mattress Firm accordingly denies the Commission’s allegations, except as specified below. Further, any allegations relying on the terms “premium mattress” or “premium mattress market” are denied on the ground that those terms are vague and intertwined with legal conclusions. Mattress Firm does not interpret headings or subheadings in the Complaint as well-pleaded allegations to which any response is required. To the extent such a response is required, they are denied. Mattress Firm reserves the right to amend and/or supplement this Answer.

NATURE OF THE CASE

1. Mattress Firm admits that it operates over 2,300 brick-and-mortar stores. Mattress Firm denies that it “dwarfs” every other mattress retailer, and notes that there are thousands upon thousands of mattress retailers in the United States, and that Mattress Firm accounts for only a fraction of mattresses sold in the United States today. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 1 directed at Tempur Sealy and the remaining allegations in Paragraph 1, and denies the allegations on that basis. To the extent the Complaint is quoting from or otherwise characterizing documents produced by

Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

2. Mattress Firm denies that its stores are “ubiquitous” and that Mattress Firm universally “benefits from greater brand recognition than any other mattress specialty store in the United States”; in particular, certain regional chains may benefit from both greater store density and brand recognition than Mattress Firm in the areas in which they are active. Mattress Firm further denies that Paragraph 2 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegation in Paragraph 2 directed at Tempur Sealy, and denies the allegation on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 2 to the extent those allegations are directed at Mattress Firm.

3. Mattress Firm admits that it offers a range of mattresses covering various price points. Mattress Firm states that the term “wide” as used in the first sentence is vague and ambiguous and denies the allegation on that basis. Mattress Firm also states that the allegations in Paragraph 3 including the terms “premium mattresses” and “significant” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies that it is “by far the most important distribution channel for premium mattresses” and notes that mattresses are available through countless competing retailers and direct from manufacturers themselves. Mattress Firm denies that Paragraph 3 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 3 directed at Tempur Sealy, and denies the

allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 3 to the extent those allegations are directed at Mattress Firm.

4. Mattress Firm admits that Purple Innovation, Inc. (“Purple”) began selling through Mattress Firm in 2017. However, rather than being responsible for any alleged “surge” in Purple sales following the commencement of sales through Mattress Firm, Mattress Firm notes that Purple sales had already been “surging” which was why Mattress Firm began carrying Purple in the first place. Mattress Firm admits that Tempur Sealy stopped supplying Mattress Firm in 2017 and began supplying Mattress Firm again in 2019. Mattress Firm states that the allegations in the last sentence of Paragraph 4, including the term “premium mattress,” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 4, and denies the allegations on that basis. Mattress Firm denies all other allegations in Paragraph 4.

5. Mattress Firm denies that it is a critical retail channel or that ownership of Mattress Firm would enable anyone to “wield significant power” over mattress manufacturers. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 5 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 5 to the extent those allegations are directed at Mattress Firm.

6. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 6 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 6 to the extent those allegations are directed at Mattress Firm.

7. Mattress Firm denies that Paragraph 7 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 7 directed at Tempur Sealy, and denies the allegations on that basis. To the extent Paragraph 7 states a legal conclusion, no response is required. To the extent a response is required, Mattress Firm denies the remaining allegations in Paragraph 7.

8. Mattress Firm admits that Tempur Sealy has competed with other brands for floor space at Mattress Firm. Mattress Firm admits that Mattress Firm has never carried the brand referenced in the third sentence of Paragraph 8. Mattress Firm also admits that Mattress Firm never stopped carrying the brand referenced in the fourth sentence of Paragraph 8 in the timeframe alleged. Mattress Firm denies that Paragraph 8 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 8 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 8 to the extent those allegations are directed at Mattress Firm.

9. To the extent that the allegations in Paragraph 9 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the allegations in Paragraph 9.

10. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 10, and denies the allegations on that basis.

11. Mattress Firm denies that ownership of the company could be used to successfully eliminate or block competition. Mattress Firm states that the second sentence of Paragraph 11, including the term “premium mattress suppliers,” is vague and ambiguous and denies the allegations in that sentence on that basis. To the extent that the allegations in Paragraph 11 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the allegations in Paragraph 11.

12. Mattress Firm denies that there are “limited alternatives” in terms of retail sales channels for mattresses. As noted above, there are thousands upon thousands of mattress retailers in the United States. Mattress Firm accounts for only a fraction of mattress sales in the United States. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 12 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm states that the second and third sentences of Paragraph 12, including the terms “premium mattresses” and “premium mattress retailers,” are vague and ambiguous and denies the allegations in those sentences on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 12 to the extent those allegations are directed at Mattress Firm.

13. The allegations in Paragraph 13 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 13 including the term “premium mattresses” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 13 and denies the remaining allegations on that basis.

14. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 14 directed at Tempur Sealy, and denies the allegations on that basis.

To the extent that the allegations in Paragraph 14 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 14 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations.

15. Mattress Firm denies that the Proposed Acquisition is likely to result in competitive harm. Mattress Firm further denies that the substantial package of commitments offered by Tempur Sealy would be insufficient to alleviate any purported competitive harm generated by the Proposed Acquisition. To the extent the allegations in Paragraph 15 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 15 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 15.

JURISDICTION

16. The allegation in Paragraph 16 sets forth a legal conclusion to which no response is required.

17. The allegation in Paragraph 17 sets forth a legal conclusion to which no response is required.

RESPONDENTS AND THE PROPOSED ACQUISITION

18. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 18 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 18 to the extent those

allegations are directed at Mattress Firm, except that Mattress Firm admits that Sherwood Bedding is one of the manufacturers of Mattress Firm's private-label mattresses.

19. Mattress Firm admits that it is a privately owned mattress specialty retail chain headquartered in Houston, Texas. Mattress Firm admits that its current size is approximately 2,300 stores. Mattress Firm admits that it carries a range of mattress brands from multiple suppliers, including Tempur Sealy, Serta Simmons, Purple, Resident Home, Kingsdown, Inc. ("Kingsdown"), King Koil, and Spring Air International ("Spring Air"), as well as two of its own private-label brands, Sleepy's and Tulo. Mattress Firm otherwise denies the remaining allegations in Paragraph 19. To the extent Paragraph 19 is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

20. Mattress Firm admits that Tempur Sealy and Mattress Firm entered into a merger agreement on May 9, 2023, and refers to the merger agreement for its complete content and context. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegation in Paragraph 20 directed at Tempur Sealy, and denies the allegation on that basis.

INDUSTRY BACKGROUND

21. Mattress Firm admits that mattress suppliers sell mattresses to third-party retailers and, in many cases, directly to consumers. Mattress Firm further admits that Tempur Sealy, Serta Simmons, and Sleep Number Corporation ("Sleep Number"), Casper, and Resident Home are mattress suppliers in the U.S. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 21, and denies the allegations on that basis.

22. Mattress Firm admits that mattresses are sold under different brand and product names, and that they come in a range of different sizes, thicknesses, firmness levels, and types. Mattress Firm also admits that mattresses can be, among other things, innerspring, foam, hybrid and gel, and that the quality of mattresses can vary. Mattress Firm further admits that quality within each type can vary. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 22, and denies the allegations on that basis.

23. Mattress Firm states that the allegations in Paragraph 23 including the term “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 23, and denies the allegations on that basis. To the extent the allegations in Paragraph 23 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the remaining allegations in Paragraph 23.

24. Mattress Firm states that the first sentence of Paragraph 24, including the term “premium mattress,” is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm denies that any mattress suppliers must have access to brick-and-mortar retail floor space to reach consumers. Mattress Firm admits that customers have varying mattress preferences. Mattress Firm denies that Paragraph 24 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. To the extent the allegations in Paragraph 24 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm lacks knowledge or information sufficient to admit

or otherwise deny the remaining allegations in Paragraph 24, and denies the allegations on that basis.

25. Mattress Firm admits that sales associates can be helpful for customers shopping either online or in brick-and-mortar stores, but otherwise denies the allegations in the first and second sentences. To the extent the allegations in Paragraph 25 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 25 including the term “premium mattresses,” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 25, and denies the remaining allegations on that basis.

26. Mattress Firm states that the allegations in Paragraph 26 including the term “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies that brick-and-mortar floor space is required to sell any mattresses. Mattress Firm admits that customers can purchase mattresses of all prices online through supplier websites and third-party retailers. Mattress Firm further admits that customers can and do buy mattresses online. Mattress Firm denies that Paragraph 26 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. To the extent the allegations in Paragraph 26 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the remaining allegations in Paragraph 26.

27. Mattress Firm states that the allegations in Paragraph 26 including the term “premium mattresses” and “premium sales” are vague and ambiguous and denies the allegations

on that basis. Mattress Firm denies that manufacturers have not been successful selling mattresses without a brick-and-mortar presence. To the extent the allegations in Paragraph 27 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 27, and denies the allegations on that basis.

28. Mattress Firm admits that floor space available for mattresses at each brick-and-mortar retailer is not infinite and that each retail store typically has a fixed number of slots available for mattresses, which are places on the floor where a mattress can be displayed and tested. Mattress Firm admits that suppliers may offer retailers various incentives to carry their mattresses. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 28, and denies the allegations on that basis.

29. Mattress Firm admits that Mattress Firm's contracts with mattress suppliers may include volume-based rebates and co-op payments. Mattress Firm admits that a co-op payment commonly is structured as a fund paid by the supplier to the retailer on a recurring basis equal to a percentage of the retailer's purchases from the supplier, which the retailer can use to advertise the supplier's mattresses. Mattress Firm notes that fourth sentence is not a factual allegation and requires no response. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 29, and denies the allegations on that basis.

30. Mattress Firm admits the allegations in the first sentence of Paragraph 30. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 30, and denies the allegations on that basis, except that Mattress Firm admits that Paragraph 30 purports to characterize a 2019 contract between Tempur Sealy and Mattress Firm. To the extent the Complaint is quoting from or otherwise characterizing documents produced by

Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

31. Mattress Firm states that the second to last sentence of Paragraph 31, including the term “premium mattress,” is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm denies that Paragraph 31 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 31, and denies the allegations on that basis.

32. Mattress Firm admits that several new mattress suppliers, such as Casper and Purple, were able to successfully enter the market as mattress suppliers, but Mattress Firm otherwise lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 32 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 32 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 32 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 32.

33. Mattress Firm states that the allegations in Paragraph 33 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 33 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 33 to the extent those allegations are directed at Mattress Firm.

34. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 34 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 34 to the extent those allegations are directed at Mattress Firm.

35. Mattress Firm admits that Serta Simmons is a U.S. mattress supplier that owns brands including Beautyrest, Serta, and Tuft & Needle, and that its brands come in a variety of types at a range of price points. To the extent the allegations in Paragraph 35 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 35 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 35, and denies the allegations on that basis.

36. Mattress Firm admits that Sleep Number is a vertically integrated U.S. mattress supplier. To the extent the allegations in Paragraph 36 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the last sentence of Paragraph 35 including the term “premium mattress” is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 36, and denies the allegations on that basis.

37. Mattress Firm admits that Purple and Casper are two U.S. mattress suppliers. To the extent the allegations in Paragraph 37 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 37 including the term “premium mattress” are vague and ambiguous and denies the

allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 37, and further denies the allegations on that basis.

38. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 38, and denies the allegations on that basis.

39. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 39, and denies the allegations on that basis.

40. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 40, and denies the allegations on that basis.

41. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 41, and denies the allegations on that basis.

42. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 42, and denies the allegations on that basis.

43. Mattress Firm denies that its retail footprint “dwarfs” that of all other mattress specialty retailers and furniture stores. Mattress Firm states that the second sentence of Paragraph 43, including the term “premium mattress,” is vague and ambiguous and further denies the allegations in that sentence on that basis. Mattress Firm denies that it is a critical retail channel, and many mattress suppliers have flourished without being carried by Mattress Firm. Mattress Firm does not have knowledge or information sufficient to admit or otherwise deny allegations regarding Mattress Firm’s effect on Purple’s sales, but Mattress Firm understands that Purple’s sales were trending upward prior to its placement at Mattress Firm. Mattress Firm denies that Paragraph 43 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or

otherwise deny the allegations in Paragraph 43 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 43 to the extent those allegations are directed at Mattress Firm.

44. Mattress Firm denies the allegations in the first and second sentences of Paragraph 44. Mattress Firm admits that it has acquired at least 13 other mattress retailers since 2010. Mattress Firm further admits that it acquired Sleepy's in 2016 adding more than 1,000 stores. Mattress Firm denies that its growth is solely the product of these acquisitions. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 44, and denies the allegations on that basis.

45. Mattress Firm states that the first and last sentences of Paragraph 45, including the term "premium mattress," are vague and ambiguous and denies the allegations in those sentences on that basis. Mattress Firm denies the allegations in the third sentence of Paragraph 45. Mattress Firm states that the term "significant" is vague and ambiguous. Mattress Firm denies that it is by far the most significant route to market for mattress suppliers; there are thousands and thousands of brick-and-mortar stores in the United States that sell mattresses, including many large retail chains with national footprints. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations directed at Tempur Sealy in Paragraph 45, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 45 to the extent they are directed at Mattress Firm.

46. Mattress Firm denies that any mattress suppliers are "dependent" upon Mattress Firm. Mattress Firm states that the first and last sentences of Paragraph 46, including the term "premium mattress," are vague and ambiguous and denies the allegations in those sentences on

that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 46, and denies the remaining allegations on that basis.

47. Mattress Firm denies the allegation in the first sentence of Paragraph 47. Mattress Firm admits that Mattress Warehouse, Mancini's Sleepworld and Denver Mattress are multi-vendor mattress specialty retailers. Mattress Firm denies that these stores have only a "limited" presence. In some cases, regional players may offer greater store density than Mattress Firm. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 47, and denies the allegations on that basis.

48. Mattress Firm admits that it commenced bankruptcy proceedings in 2018. Mattress Firm states that the first sentence of Paragraph 48, including the term "premium mattress," is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 48 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 48 to the extent they are directed at Mattress Firm.

49. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 49 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 49 to the extent they are directed at Mattress Firm. To the extent the Complaint is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

50. Mattress Firm admits that it began selling Purple's mattresses in 2017 and that Purple's mattresses were initially deployed to approximately the number of stores alleged. Mattress Firm otherwise denies the allegations in the first and second sentences of Paragraph 50.

Mattress Firm does not have knowledge or information sufficient to admit or otherwise deny allegations regarding its effect on Purple's sales, but Mattress Firm understands that Purple's sales were trending upward prior to the its placement at Mattress Firm. Mattress Firm states that the third sentence of Paragraph 50, including the term "premium mattress," is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 50, and denies the allegations on that basis. To the extent the Complaint is quoting from or otherwise characterizing documents produced by the parties, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

51. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 51 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 51 to the extent they are directed at Mattress Firm. To the extent the Complaint is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

52. Mattress Firm admits that Tempur Sealy asked Mattress Firm not to floor the brand named in Paragraph 52 in the context of the cooperative agreement. Mattress Firm denies that Paragraph 52 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. To the extent the Complaint is quoting from or otherwise characterizing documents produced by the parties, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

53. Mattress Firm states that the first sentence of Paragraph 53, including the term "premium mattress," is vague and ambiguous and denies the allegations in that sentence on that

basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 53 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 53 to the extent they are directed at Mattress Firm.

54. Mattress Firm admits that it resumed receiving supply from Tempur Sealy in 2019. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 54 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 54 to the extent they are directed at Mattress Firm.

55. Mattress Firm admits that it did not remove the brands referenced in Paragraph 55 from its stores in 2019. Mattress Firm states that the second sentence of Paragraph 55, including the term “premium mattress,” is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 55 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the Complaint is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

56. Mattress Firm admits that it did not remove the brand referenced in Paragraph 56 from its stores in 2021. Mattress Firm admits that it sought investments in its retail stores from Tempur Sealy. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 56 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the Complaint is quoting from or otherwise characterizing documents

produced by the parties, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

57. Mattress Firm admits that in 2020 it did not sell the brand referenced in Paragraph 57. Mattress Firm denies that Paragraph 57 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents and testimony for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 57 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the Complaint is quoting from or otherwise characterizing documents produced by the parties, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

58. Mattress Firm admits that in 2020 it did not sell the brand referenced in Paragraph 58. Mattress Firm denies that Paragraph 58 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents and testimony for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 58 directed at Tempur Sealy, and denies the allegations on that basis.

59. Mattress Firm admits that the brand referenced in Paragraph 59 found success without having partnered with Mattress Firm, and has since been unwilling to partner with Mattress Firm. Mattress Firm denies that Paragraph 59 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny allegations in Paragraph 59 directed at Tempur Sealy, and denies the allegations on that basis.

THE RELEVANT ANTITRUST MARKET

60. The allegations in Paragraph 60 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm states that the last sentence of Paragraph 60, including the term “premium mattresses,” is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm denies the remaining allegations in Paragraph 60.

61. The allegations in Paragraph 61 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 61 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the allegations in Paragraph 61.

62. To the extent the allegations in Paragraph 62 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 62 including the term “premium mattresses” are vague and ambiguous and denies the allegations on that basis.

63. To the extent the allegations in Paragraph 63 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 63 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the allegations in Paragraph 63.

64. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny allegations in Paragraph 64 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 64 set forth legal conclusions and arguments, no response

is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 64 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 64.

65. To the extent the allegations in Paragraph 65 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 65 including the term “premium mattresses” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 65, and denies the remaining allegations on that basis.

66. Mattress Firm denies the allegation in the first sentence Paragraph 66. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny allegations in Paragraph 66 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 66 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 66 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 66.

67. To the extent the allegations in Paragraph 67 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 67 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny allegations in Paragraph 67, and further denies the allegations on that basis.

68. Mattress Firm denies that it does not compete with vendors such as big box retailers and online retailers for the sale of all kinds of mattresses. Mattress Firm states that the first sentence of Paragraph 68, including the term “premium mattress,” is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny allegations in Paragraph 68, and denies the allegations on that basis..

TEMPUR SEALY’S PROPOSED ACQUISITION OF MATTRESS FIRM MAY SUBSTANTIALLY LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY

69. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny allegations in Paragraph 69 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 69 set forth legal conclusions and arguments to which no response is required. To the extent that a response is required, Mattress Firm denies the allegations in Paragraph 69.

70. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny allegations in Paragraph 70 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 70 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 70 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 70. To the extent the Complaint is quoting from or otherwise characterizing documents produced by the parties, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

71. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 71 directed at Tempur Sealy, and denies the allegations on that basis.

Mattress Firm otherwise denies the remaining allegations in Paragraph 71 to the extent those allegations are directed at Mattress Firm.

72. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 72 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 72 to the extent those allegations are directed at Mattress Firm.

73. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 73 directed at Tempur Sealy, and denies the allegations on that basis. To the extent, Paragraph 73 sets forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the remaining allegations in Paragraph 73. To the extent the Complaint is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

74. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 74 directed at Tempur Sealy, and denies the allegation on that basis. To the extent Paragraph 74 sets forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the remaining allegations in Paragraph 74.

75. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 75 directed at Tempur Sealy, and denies the allegations on that basis. To the extent, Paragraph 75 sets forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the allegations in Paragraph 75. To the extent the Complaint is quoting from or otherwise characterizing documents produced by the

parties, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

76. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 76 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 76 to the extent those allegations are directed at Mattress Firm.

77. Mattress Firm denies the allegations in the first and last sentences of Paragraph 77. Mattress Firm states that the allegations in Paragraph 77 including the term “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 77, and further denies the allegations on that basis.

78. Mattress Firm denies the allegations in Paragraph 78. To the extent the Complaint is quoting from or otherwise characterizing documents and/or testimony produced by the parties, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

79. Mattress Firm admits that it has worked closely with certain mattress manufacturers to help them develop new mattress products and refine existing products. Mattress Firm denies the allegations in Paragraph 79. To the extent the Complaint is quoting from or otherwise characterizing documents and/or testimony produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

80. Mattress Firm states that the second sentence of Paragraph 80, including the term “premium mattress,” is vague and ambiguous and denies the allegations in that sentence on that basis. Mattress Firm denies the remaining allegations in Paragraph 80.

81. Mattress Firm denies that the allegation in the first sentence of Paragraph 81. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 81, and denies the allegations on that basis. To the extent the Complaint is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

82. Mattress Firm states that the allegations in Paragraph 82 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 82.

83. Mattress Firm states that the allegations in Paragraph 83 including the terms “premium mattresses” and “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 83, and denies the remaining allegations on that basis.

84. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 84 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 84 to the extent those allegations are directed at Mattress Firm.

85. Mattress Firm denies that there are no retailers with “anywhere near Mattress Firm’s premium mattress unit sales”. Mattress Firm denies that loss of access to Mattress Firm “could prove devastating”; many mattress suppliers have thrived without selling their mattresses through Mattress Firm. Mattress Firm states that the allegations in Paragraph 85 including the term “premium mattress” are vague and ambiguous and further denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 85, and denies the allegations on that basis.

86. Mattress Firm states that the allegations in Paragraph 86 including the term “premium mattress” are vague and ambiguous and further denies the allegations on that basis. Mattress Firm denies that building a network of retail stores is costly and time consuming. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 86, and denies the allegations on that basis.

87. Mattress Firm states that the allegations in Paragraph 87 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm further denies the allegations in Paragraph 87.

88. Mattress Firm admits that it did not have a supply relationship with Tempur Sealy from April 2017 through October 2019. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 88 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 88 to the extent those allegations are directed at Mattress Firm.

89. Mattress Firm denies the first sentence of Allegation 89. Mattress Firm states that the first and third sentences of Paragraph 89, including the term “premium mattress,” is vague and ambiguous and further denies the allegations in those sentences on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 89, and denies the remaining allegations on that basis.

90. The first sentence of Paragraph 90 sets forth a legal conclusion and argument to which no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 90 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 90 directed at Tempur Sealy, and

denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 90 to the extent those allegations are directed at Mattress Firm.

91. Mattress Firm states that the allegations in Paragraph 91 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 91 directed at Tempur Sealy, and denies the allegations on that basis. To the extent that the allegations in Paragraph 91 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the allegations in Paragraph 91.

92. Mattress Firm admits that it sells Serta Simmons and Purple mattresses. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 92 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 92 to the extent those allegations are directed at Mattress Firm.

93. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 93 directed at Tempur Sealy, and denies the allegations on that basis.

94. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 94 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 94 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 94 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 94.

95. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 95 directed at Tempur Sealy, and denies the allegations on that basis.

To the extent the allegations in Paragraph 95 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the allegations in Paragraph 95.

96. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 96, and denies the allegations on that basis. To the extent the Complaint is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

97. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 97 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 97 to the extent those allegations are directed at Mattress Firm.

98. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 98 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 98 to the extent those allegations are directed at Mattress Firm.

99. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 99 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 99 to the extent those allegations are directed at Mattress Firm.

100. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 100 directed at Tempur Sealy, and denies the allegations on that basis.

Mattress Firm otherwise denies the remaining allegations in Paragraph 100 to the extent those allegations are directed at Mattress Firm.

101. The allegations in Paragraph 101 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm denies the allegations in Paragraph 101.

102. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 102 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 102 to the extent those allegations are directed at Mattress Firm. To the extent the Complaint is quoting from or otherwise characterizing documents produced by Mattress Firm, Mattress Firm respectfully refers to those documents for a full and accurate statement of their contents.

103. Mattress Firm denies that post-acquisition the “combined firm’s market power would be substantial.” Mattress Firm denies that the “combined firm would also be able to leverage its strengths to undermine competition.” Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 103 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 103 sets forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 103 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm denies the remaining allegations in Paragraph 103.

104. Mattress Firm denies that Paragraph 104 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents and/or testimony for a full and accurate statement of their contents. The

allegations in Paragraph 104 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm denies the allegations in Paragraph 104.

105. Mattress Firm denies the allegation in the first and third sentences of Paragraph 105. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the remaining allegations in Paragraph 105, and denies the allegations on that basis.

106. Mattress Firm denies that Paragraph 106 of the Complaint accurately and/or completely characterizes the quoted documents and/or testimony. Mattress Firm respectfully refers to those documents and/or testimony for a full and accurate statement of their contents. Mattress Firm denies the allegation in the first sentence of Paragraph 106. Mattress Firm states that the first and last sentences of Paragraph 106, including the term “premium mattress,” are vague and ambiguous and further denies the allegations in those sentences on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 106 directed at Tempur Sealy, and denies the allegations on that basis. Mattress Firm otherwise denies the remaining allegations in Paragraph 106 to the extent those allegations are directed at Mattress Firm.

107. The Complaint omits Paragraph 107.

108. The Complaint omits Paragraph 108.

109. The Complaint omits Paragraph 109.

110. The Complaint omits Paragraph 110.

ABSENCE OF COUNTERVAILING FACTORS

111. Mattress Firm denies that “barriers to entry are high for premium mattress suppliers as well as large-scale brick-and-mortar mattress retailers.” The allegations in Paragraph 111 set

forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm states that the first sentence of Paragraph 111, including the term “premium mattress,” is vague and ambiguous and further denies the allegations in that sentence on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 111, and denies the remaining allegations on that basis.

112. The allegations in Paragraph 112 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 112 including the term “premium mattresses” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 112, and further denies the allegations on that basis.

113. The allegation in Paragraph 113 sets forth a legal conclusion and argument to which no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 113, including the term “premium mattress,” are vague and ambiguous and denies the allegations on that basis. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegation in Paragraph 113, and denies the remaining allegations on that basis.

114. Mattress Firm denies that the barriers for a mattress retailer or supplier to establish a sizable brick-and-mortar retail store network are high. The allegations in Paragraph 114 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegation in Paragraph 114, and denies the allegation on that basis.

115. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 115, and denies the allegations on that basis.

116. Mattress Firm denies that the Proposed Acquisition may substantially lessen competition or tend to create a monopoly in the relevant market. The allegations in Paragraph 116 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegation in Paragraph 116, and denies the allegation on that basis.

117. The allegations in Paragraph 117 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegation in Paragraph 117, and denies the allegation on that basis.

118. Mattress Firm understands that Tempur Sealy has made several commitments to the Commission and various market participants in relation to the Proposed Acquisition. The remaining allegations in Paragraph 118 set forth legal conclusions and arguments to which no response is required. To the extent a response is required, Mattress Firm denies the remaining allegations in Paragraph 118.

119. Mattress Firm lacks knowledge or information sufficient to admit or otherwise deny the allegations in Paragraph 119 directed at Tempur Sealy, and denies the allegations on that basis. To the extent the allegations in Paragraph 119 set forth legal conclusions and arguments, no response is required. To the extent a response is required, Mattress Firm denies the remaining allegation in Paragraph 119.

VIOLATION

120. Mattress Firm repeats and incorporates each response to Paragraphs 1 through 119 as if they were fully set forth herein.

121. The allegation in Paragraph 121 sets forth a legal conclusion to which no response is required. To the extent a response is required, Mattress Firm states that the allegations in Paragraph 121 including the term “premium mattress” are vague and ambiguous and denies the allegations on that basis. Mattress Firm further denies the allegations in Paragraph 121.

AFFIRMATIVE AND OTHER DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted, including because:
 - a. The Complaint fails to allege a valid product market, including because the Complaint lacks a cogent definition of “premium” mattresses.
 - b. The Complaint fails to allege a valid geographic market, including because the Complaint apparently fails to account for imported mattresses sold in the United States.
 - c. The Complaint fails to allege that the proposed transaction will plausibly harm consumers or competition, including because the Complaint fails to plausibly allege that Respondents exercise market power, fails to identify Mattress Firm’s market share, fails to account for alternative means of distribution, fails to account for Respondents’ voluntary commitments, and fails to account for the fact that new entry and expansion by competitors can be timely, likely, and sufficient.
2. This case must be dismissed because the Commission’s exercise of rulemaking, prosecutorial, and adjudicative powers violates the separation-of-powers doctrine and Article III.

3. This case must be dismissed because these administrative proceedings are unconstitutionally insulated from Presidential oversight in violation of the separation-of-powers doctrine and Article II.
4. This case must be dismissed because these administrative proceedings violate the Fifth Amendment's Due Process Clause.

NOTICE OF CONTEMPLATED RELIEF

Mattress Firm requests that the Commission:

- A. Dismiss the Complaint with prejudice;
- B. Deny the Commission's requested relief;
- C. Award to Mattress Firm the costs incurred in defending this action, including expert's fees and reasonable attorney's fees;
- D. Any and all further relief as the Commission may deem just and proper.

Dated: July 9, 2024

Respectfully submitted,

/s/ Sara Y. Razi

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Counsel for Respondent

Mattress Firm Group Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send a 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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Counsel Supporting the Complaint

Dated: July 9, 2024

By: /s/ Sara Y. Razi
Sara Y. Razi

*Counsel for Respondent
Mattress Firm Group Inc.*