

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TEMPUR SEALY INTERNATIONAL, INC. and
MATTRESS FIRM GROUP, INC.,

Plaintiffs,

v.

THE FEDERAL TRADE COMMISSION, et al.,

Defendants.

Civil Action No. 4:24-cv-3764

**JOINT UNOPPOSED MOTION TO AMEND BRIEFING SCHEDULE
ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
AND EXTEND DEFENDANTS' RESPONSIVE PLEADING DEADLINE**

Plaintiffs Tempur Sealy International, Inc. (“Tempur Sealy”) and Mattress Firm Group, Inc. (“Mattress Firm”) (together, “Plaintiffs”), along with Defendants the Federal Trade Commission (“FTC”) and Commissioners of the FTC in their official capacities (together, “Defendants”) (Plaintiffs and Defendants collectively, “the Parties”) jointly move to amend the schedule in this matter in light of the continuance and extension of deadlines recently granted in the FTC’s administrative proceeding.

Plaintiffs previously filed a Motion for Expedited Briefing for Preliminary Injunction, ECF No. 34, on the understanding that the FTC’s administrative proceeding regarding Plaintiffs’ proposed merger was set for a hearing on December 4, 2024. *Id.* at 1. The Court granted that motion, setting Defendants’ Deadline to respond to Plaintiffs’ motion for preliminary injunction on November 26, 2024. ECF No. 35. In their request for

expedited briefing, however, Plaintiffs noted that they had previously moved to continue the administrative proceeding and, were the assigned Administrative Law Judge (“ALJ”) to grant that request prior to November 26, 2024, they would “promptly supplement this motion and work with the FTC to adjust the proposed briefing schedule to account for the proposed continuance.” ECF No. 34 at 3.

Since Plaintiffs’ request for expedition was filed, the FTC granted a continuance of the hearing in the administrative proceeding from December 4, 2024, to February 10, 2024. *Tempur Sealy Int’l, Inc., Order Granting Continuance of Evidentiary Hearing* (FTC Dkt. No. 9433 Nov. 7, 2024). The ALJ further suspended pre-hearing deadlines and ordered the Parties to submit a joint status report within ten days after the completion of the preliminary injunction hearing in *Federal Trade Commission v. Tempur Sealy Int’l, Inc.*, No. 4:24-cv-02508 (S.D. Tex.), with their position on whether and how to amend the scheduling order in the administrative proceeding in light of that outcome. *Tempur Sealy Int’l, Inc., Order Granting Joint Mot. to Suspend Deadlines* (FTC Dkt. No. 9433 Nov. 7, 2024).

Given those developments, the Parties have revisited the schedule for resolving the preliminary-injunction motion and for Defendants’ responsive pleading deadline. The Parties propose amending the schedule as follows:

- December 13, 2024: Defendants’ opposition to Plaintiffs’ motion for preliminary injunction
- January 10, 2025: Plaintiffs’ reply in support of Plaintiffs’ motion for preliminary injunction

- 30 days after resolution of Plaintiffs’ motion for preliminary injunction:
Defendants’ responsive pleading deadline¹
- The Parties further propose that, within two days of this Court’s ruling on the FTC’s motion for preliminary injunction in Civil Action No. 4:24-cv-02508, the Court set a status conference in order to discuss whether a hearing on the Parties’ pending motions is necessary and whether Plaintiffs intend to continue pursuing their constitutional claims.

Good cause exists to adopt the Parties’ proposed schedule. The proposed schedule would allow efficient resolution of Plaintiffs’ pending motion on a timetable that allows the time necessary for briefing and consideration of the important constitutional issues presented. Likewise, because a decision on Plaintiff’s motion for preliminary injunction would provide guidance on the issues to be raised in any motion to dismiss contemplated by Defendants, extending the responsive pleading deadline will allow the Parties the benefit of the Court’s input before moving forward with the case. Finally, it would serve the interests of judicial economy to revisit this schedule following the completion of preliminary injunction proceedings in Civil Action No. 4:24-cv-02508, as the outcome of those proceedings may obviate or alter the need to address the constitutional issues presented, and thus could avoid or minimize any potentially needless expenditure of resources by the Court or the parties on this related matter.

Dated: November 21, 2024

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Respectfully submitted,

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¹ Absent extension, Defendants’ responsive pleading deadline is December 10, 2024.

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CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Plaintiffs' counsel related to the relief requested in this Motion. The Parties are in agreement on the relief sought in this motion.

/s/ Rachael L. Westmoreland
Rachael L. Westmoreland

CERTIFICATE OF WORD COUNT

Pursuant to Court Procedure 16(c), I certify that this motion contains less than 5,000 words.

/s/ Rachael L. Westmoreland
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