



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

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

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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 abo3.1 (d)10.8 (a)10.8 (a)3.2 1 (4) (a c (F)6.7 (i)-2.856.7 (i)13 (A)2 8.856.7(

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.

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

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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

81. Mattress Firm denies that the allegation in the the

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 sufficm232019..fg(e)3 b

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.

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.

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.

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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Dated: July 9, 2024

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