

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

PEOPLE OF THE STATE OF NEW YORK by :
ANDREW M. CUOMO, Attorney General of the :
State of New York, :

Petitioner, :

-against- : Index No. 400837/10

TEMPUR-PEDIC INTERNATIONAL, INC. :
Respondent. :

-----X

REPLY AFFIRMATION OF LINDA GARGIULO

Linda J. Gargiulo, an attorney admitted to practice in New York State, affirms:

1. I am an Assistant Attorney General in the office of New York State Attorney General Andrew M. Cuomo. I have worked on the Office's investigation of Tempur-Pedic, International, Inc. ("Tempur-Pedic").

2. As part of this office's investigation, investigators from the New York State Department of Law visited retail stores that sell Tempur-Pedic products. Investigators posed as shoppers and inquired about purchasing a Tempur-Pedic mattress. As part of these visits, investigators also requested prices for Tempur-Pedic mattresses and inquired about possible sales or discounts on Tempur-Pedic products.

3. The investigators' store visits were taped and the audiotape of each visit was provided to the attorneys working on the investigation. The entire content of each audio tape was transcribed by Veritext National Deposition and Litigation Services. Summaries of store visits conducted by investigators are included in paragraphs 47-63 of

my Affirmation, dated March 24, 2010. The relevant portions of the transcripts of those visits are attached as Exhibits 32-41 of that affirmation. The transcript pages attached to my earlier affirmation are the pages containing the discussions relating to the pricing or discounting of Tempur-Pedic products. The omitted pages, for the most part, relate to discussions about the construction of the mattresses, alternative brands, testing the mattresses and end of visit discussions regarding returning at a future date to purchase a mattress.

4. The Department of Law investigators who conducted the store visits are Karon Richardson, Robin Womack, Peter Eiss, and Susan J. White. The affidavit of Karon Richardson, and a transcription of the store visits she participated in, is attached as Exhibit 1. The affidavit of Robin Womack, and a transcription of the store visits in which she participated, is attached as Exhibit 2. The affidavit of Peter Eiss, and the transcription of store visits he conducted, is attached as Exhibit 3. The affidavit of Susan J. White, and a transcription of store visits she conducted, is attached as Exhibit 4.

Dated: June 10, 2010



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EXHIBIT

1

I, Karon Richardson, being duly sworn deposes and says:

1. I am an investigator with the New York State Department of Law. I have worked on the Antitrust Bureau's investigation of Tempur-Pedic International Inc.

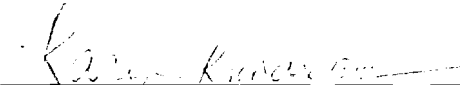
2. On September 4, 2007, Robin Womack, another investigator with the Department of Law, and I posed as shoppers at Sleepy's and the (1) (800) Mattress Store, both located on Montague Street in Brooklyn, New York and at the Levitz Furniture Store located on Fulton Street in Brooklyn, New York. At each of these locations, Investigator Womack and I inquired about purchasing a Tempur-Pedic mattress and sought information about the prices of such mattresses, any discounts that may be available, and any future sales on Tempur-Pedic products. These conversations were taped and a transcript of our entire conversation with the sales representative at each location is attached hereto. I have reviewed this transcription and attest that it is a true and accurate transcription of all conversations that took place during the retail store visits specified herein.

3. On September 25, 2007, I placed a call to Tempur-Pedic Mattress.com and spoke to a sales representative regarding the purchase of a particular Tempur-Pedic mattress. The sales representative provided me with a price for the mattress and advised me that the prices of Tempur-Pedic mattresses are the same at all retailers. The transcript of this conversation is also attached. This transcript is also a true and accurate transcription of my entire conversation with the Tempur-Pedic Mattress.com representative.

4. I have reviewed paragraphs 47-54 and paragraph 64 of the affirmation of Assistant Attorney General Linda Gargiulo, dated March 24, 2010. The information set

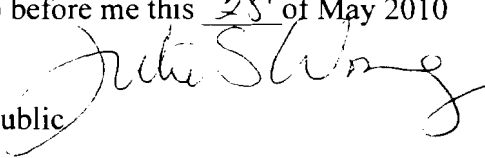
forth in those paragraphs accurately reflects the discussions that Investigator Womack and I had with sales representatives in the three stores visited, as well as my phone conversation with the representative of Tempur-Pedic Mattress.com.

JULIE S. WONG
Notary Public, State of New York
No. 01WO6179204
Qualified in Queens County
Commission Expires Dec. 24, 2011


Karon Richardson

Sworn to before me this 28th of May 2010

Notary Public



STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

RE: TEMPUR-PEDIC MATTRESS

CASE NO.: 07/028

Audio Tape Recording

Sept 24 1987

61

1
2 FEMALE VOICE: The date is
3 Monday, September 4, 2007. The time
4 is now 12:55 hours. I am undercover
5 120 assisting in an investigation with
6 the Anti-Trust Bureau. I am about to
7 enter 116 Montague Street in Brooklyn,
8 Sleepy's mattress retailer. This is
9 in reference to IDN 07-028.

10 VOICE ONE: Here's a
11 Tempur-Pedic here. I guess we should
12 sit on them and try them out.

13 VOICE TWO: Yeah, that's --
14 that is nice, very comfortable. Two
15 of them --

16 Hi. How are you?

17 MALE: I'm just fantastic.
18 Welcome to Sleepy's, the mattress
19 professionals.

20 VOICE ONE: Thank you.

21 MALE: My name is Giles
22 (phonetic). It'll be a pleasure
23 serving you.

24 VOICE ONE: And I'm Sharon.

25 MALE: Sharon. And you are?

1
2 VOICE TWO: Ronnie.

3 MALE: Ronnie?

4 VOICE TWO: Yes. That's my name.

5 MALE: So, which mattress are
6 you looking for today.

7 VOICE ONE: Well, I definitely
8 want the Tempur-Pedic.

9 MALE: Okay.

10 VOICE ONE: And I'm assuming --
11 what do you have, king, queen.

12 MALE: Well, it comes in any
13 different size.

14 VOICE ONE: Okay.

15 MALE: (Mumbled) Tempur-Pedic.

16 VOICE ONE: Okay.

17 MALE: One, uh, Tempur-Pedic is
18 a price-control company, which means
19 that everywhere you go, the price
20 stays the same. As of today is
21 (unintelligible), in the next eight
22 their beds by 100, 200 dollars extra
23 and it's gonna be, wherever you go,
24 it's gonna actually be consistent with
25 these prices.

1

VOICE ONE: Really?

2

3

MALE: Yeah.

4

VOICE ONE: Really? Why is

5

that?

6

MALE: I'm not too sure why the

7

price increases, but one of the --

8

whoever deals with Tempur-Pedic,

9

whatever they do, it's uniform with

10

everywhere --

11

VOICE ONE: Really?

12

MALE: -- you go. Um, we do

13

have a lot of different Tempur-Pedics

14

and that bed, if you come to Sleepy's

15

and actually shopping at Sleepy's,

16

then you get a chance to actually lie

17

on the bed, see what it feels, as

18

opposed to the little sample that

19

everyone show you.

20

VOICE ONE: Right.

21

MALE: So what I will do is, to

22

(unintelligible) --

23

VOICE ONE: Okay.

24

MALE: -- give it a shot, lie in

25

it, see how it feels, because's

1
2 there's different ones and I can
3 explain as far as like --

4 VOICE ONE: Well, what -- how
5 much does it cost?

6 MALE: Well, um, it depends on
7 which one.

8 VOICE ONE: Which one -- oh,
9 let's start with this one.

10 MALE: Okay. Which size?

11 VOICE ONE: It's a queen-size,
12 right?

13 MALE: Queen-size?

14 VOICE ONE: Um-hm.

15 MALE: Well, this is the price.
16 Process. It costs, um, 1899.

17 VOICE ONE: 1899.

18 MALE: Or it comes up to about
19 82, 84 dollars a month, zero down,
20 interest-free financing.

21 VOICE ONE: Okay. And is there
22 -- that's a set price --

23 MALE: Actually --

24 VOICE ONE: -- so there's no
25 discounts? 'Cause I think there was

1
2 -- there was -- I think you've had
3 discounts on mattresses (mumbled).

4 MALE: Not on -- not on
5 Tempur-Pedic. Tempur-Pedic never goes
6 (mumbled) --

7 VOICE ONE: Uh-huh.

8 VOICE TWO: These are
9 (unintelligible).

10 VOICE ONE: Aren't they?

11 VOICE TWO: I feel
12 (unintelligible).

13 VOICE ONE: Oh, man. Oh, yeah.

14 (Voices talking over each
15 other.)

16 VOICE TWO: I may like that
17 (unintelligible) every night.

18 VOICE ONE: (Unintelligible)
19 spoils you. I didn't realize they had
20 -- this is a king-size, huh? That's
21 nice. Let me go see, try this one.

22 (Background voices, laughter.)

23 MALE: It's a great bed.

24 Now, if you want to call
25 Tempur-Pedic, this is exactly what

1
2 they would tell you.

3 VOICE ONE: Okay.

4 MALE: These are all the
5 different beds that -- Sleepy's
6 carries the most selections as far as,
7 um --

8 VOICE ONE: All right.

9 MALE: Okay?

10 VOICE ONE: Um-hm.

11 MALE: Um, this one here is
12 called the Celebrity. If you look
13 right here --

14 VOICE ONE: Um-hm.

15 MALE: -- the price of the
16 Celebrity queen, this is the queen --

17 VOICE ONE: Um-hm.

18 MALE: -- the set, which is the
19 mattress and box spring, is --

20 VOICE ONE: 3499?

21 MALE: -- the queen set, it's
22 price-controlled.

23 VOICE ONE: Um-hm.

24 MALE: Um, the thing with --
25 Tempur-Pedic is -- I was just

1
2 explaining to you before the price
3 increase --

4 VOICE ONE: Right.

5 MALE: -- that's happening. Um,
6 when you get the mattress from
7 Sleepy's, our advantage of shopping at
8 Sleepy's is that, one, you come in and
9 lie and you try the beds.

10 VOICE ONE: Right, right.

11 MALE: Two, we can get it, a day
12 to two days. It takes about three
13 weeks with Tempur-Pedic.

14 VOICE ONE: Um-hm.

15 MALE: Their shipping fee is 175
16 to 200 dollars.

17 VOICE ONE: Okay.

18 MALE: Ours is 69.99. And the
19 price stays the same, no matter where
20 you go.

21 VOICE ONE: Okay. You mean the
22 shipping price also?

23 MALE: Yes. Their shipping
24 price is 175 to 199 dollars --

25 VOICE ONE: No matter where

1
2 I -- what vendor -- what vendor I go
3 to, it's gonna be that much?

4 MALE: No. Tempur-Pedic.

5 VOICE ONE: Oh, Tempur-Pedic?
6 Oh, I see. Okay.

7 MALE: We -- our shipping price
8 is 69.99.

9 VOICE ONE: Uh-huh.

10 MALE: So the concept is,
11 Tempur-Pedic, no matter where you go,
12 the price stays the same. When they
13 increase the price everyone has to
14 price-increase with them. Um, what we
15 can do, uh, with Tempur-Pedic, whereas
16 the price can't be flexible, we can
17 actually -- we have a promotion going
18 on where they give you a free teddy
19 bear.

20 VOICE ONE: Um-hm.

21 MALE: We can actually throw in
22 two pillows, which goes for like \$175
23 apiece, and we give you a \$250 value
24 of gifts with the purchase.

25 FEMALE ONE: Okay.

1
2
3
4
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21
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23
24
25

(Background voice.)

MALE: That one is listed.

VOICE ONE: Right.

(Background voices.)

MALE: Uh, there's one a tidbit
smaller that's 125.

VOICE ONE: So is it written
down they can't change the prices?

MALE: Well, I can actually jump
on the phone right now with
Tempur-Pedic, and I love to do this
with customers --

VOICE ONE: Yeah.

MALE: -- and, um, I call
directly to Tempur-Pedic.

VOICE ONE: Um-hm.

MALE: Come with me. Let's --
let's -- let's try --

VOICE ONE: Okay.

VOICE TWO: Can I ask just one
question?

MALE: Go right ahead.

(Unintelligible.)

MALE: Um, it's --

(Unintelligible.)

(Bells ringing over mumbled voices.)

MALE: Well, what I recommend also -- what I have -- the thing with Tempur-Pedic is that it's --

VOICE TWO: (Unintelligible.)

MALE: Bedbugs can't live in it because the material is natural --

(Bells ringing over voices.)

MALE: What I recommend, everyone put a -- you can put a pillow barrier that actually protects from, um, any type of bacterias from going inside your pillow.

VOICE TWO: (Unintelligible.)

(Background noise.)

VOICE ONE: So who is -- who are you calling, Tempur-Pedic?

MALE: Yes, (unintelligible) directly.

VOICE ONE: Oh, I see.

(Making call, on speaker phone.)

VOICE ONE: Is that like a

1
2 regional office or something?

3 MALE: No, this is -- the sales,
4 um, office.

5 VOICE ONE: Umm.

6 (Phone answered.)

7 VOICE ONE: Are they --

8 MALE: Yes, can I have an
9 outside line?

10 PHONE VOICE: (Unintelligible.)

11 MALE: The number is
12 1-800-790-0094.

13 (Phone ringing, on speaker
14 phone.)

15 PHONE VOICE: Tempur-Pedic
16 Sales, this is Matt.

17 MALE: Hey, Matt. How are you
18 doing?

19 PHONE VOICE: Good. How are
20 you?

21 MALE: Pretty good. Listen, I'm
22 interested in actually purchasing a
23 classic -- uh, Tempur-Pedic from you
24 guys.

25 PHONE VOICE: Okay.

1
2 MALE: Um, two things. One, I
3 heard you guys were having a price
4 increase.

5 PHONE VOICE: That's correct, on
6 the 12th.

7 MALE: On the 12th. And how
8 much would it go up extra?

9 PHONE VOICE: Um, on the
10 queen-size, 200.

11 MALE: 200? And how long do you
12 guys take for shipping?

13 PHONE VOICE: How long does it
14 take?

15 MALE: Yeah.

16 PHONE VOICE: It takes about one
17 to two weeks usually.

18 MALE: One to two weeks. And
19 how much is the shipping fee?

20 PHONE VOICE: 175.

21 MALE: 175. Now, the question
22 is this: Um, how much is the price of
23 the classic?

24 PHONE VOICE: The price for the
25 queen is 1899.

1
2 MALE: I was hoping that -- is
3 there any discounts that you guys can
4 give me on that?

5 PHONE VOICE: We don't discount
6 the price of the mattress.
7 (Unintelligible) raise the prices
8 (unintelligible), but we don't
9 discount the prices.

10 MALE: So what if I go to a
11 different, um, store or something like
12 that?

13 PHONE VOICE: They'll give the
14 exact same price. No matter where you
15 go, it would be the same price. If
16 it's not, then it's not a Tempur-Pedic
17 or it's a returned Tempur-Pedic. But
18 it's a fixed price.

19 MALE: Okay. All right. No
20 problem. I thank you so much.

21 VOICE ONE: Thank you, Matt?
22 What's his name?

23 MALE: What's your name?

24 (No response.)

25 VOICE ONE: He hung up.

1
2 MALE: No matter where you go --

3 VOICE ONE: I guess he was the
4 boss, huh?

5 MALE: Well, I don't know. It's
6 just Tempur-Pedic.

7 VOICE ONE: Oh, Tempur-Pedic.

8 MALE: Instead of us going down,
9 it actually increases. No matter
10 where you go, the price is fixed.

11 VOICE ONE: If I wanted to call
12 and ask him, I could also --

13 MALE: You can call on your cell
14 phone right now -- call Tempur-Pedic.

15 VOICE ONE: Uh-huh. It's just
16 that my husband might want to call and
17 verify.

18 MALE: No problem.

19 VOICE ONE: I think so.

20 MALE: So how soon would you
21 need to get this Tempur-Pedic?

22 VOICE ONE: Well, within the
23 next, huh, couple of weeks.

24 MALE: Well, here's the thing --
25 here's the thing we can do.

1

2

VOICE ONE: Um-hm.

3

4

MALE: You'll get a Tempur-Pedic
which is an awesome mattress.

5

VOICE ONE: Um-hm.

6

7

8

MALE: Like I -- like I
explained, there's gonna be a price
increase, no matter where you go.

9

VOICE ONE: Okay.

10

11

12

13

14

15

16

17

MALE: So we can save you a few
hundred dollars. You can -- here at
Sleepy's we actually allow you to
actually put a refundable deposit, as
low as \$25. It's refundable. What
happens then is, before the price goes
into effect, which is the extra
\$200 --

18

VOICE ONE: Right.

19

20

21

22

23

MALE: -- you lock in the price,
you go, you look at -- you make --
anywhere you need to call as far as
like verifying exactly what I said,
you don't have to take my word for it.

24

VOICE ONE: Okay.

25

MALE: But I know you will --

1
2 you're gonna be back. What that does
3 is, before -- if you don't make the
4 decision by the -- if it takes you
5 (unintelligible) to make the decision,
6 it locks in the price control that
7 Tempur-Pedic will have.

8 VOICE ONE: Okay.

9 MALE: Whenever you and your
10 husband are ready, you come back --

11 VOICE ONE: Um-hm.

12 MALE: -- and it's guaranteed to
13 give you that. If you decide not to
14 get the Tempur-Pedic --

15 VOICE ONE: Um-hm.

16 MALE: That money is refunded, or
17 if you wanted to actually get another
18 bed you can transfer it.

19 VOICE ONE: Umm.

20 MALE: So here's the advantage.
21 One, we're gonna lock in the price
22 before it goes into increase. Two,
23 you're not making any obligations.

24 VOICE ONE: Um-hm.

25 MALE: It's totally refundable.

1
2 Another beautiful thing is that you
3 can go to any one of our Sleepy's, we
4 have 520 stores in (unintelligible)
5 states.

6 VOICE ONE: Um-hm.

7 MALE: And it can be done there.
8 Okay? But that's the (unintelligible)
9 as far as being able to -- and we also
10 will give you those two pillows, so
11 you can use them --

12 VOICE ONE: Um-hm.

13 MALE: -- and, um, I'll just
14 (unintelligible) you understand
15 exactly what I'm saying, and you can
16 also at the same time save some money.

17 VOICE ONE: Okay. That's fair
18 enough. I can't take this today.

19 MALE: Um, I'll use this
20 because --

21 VOICE ONE: That's fair.

22 MALE: -- when customers come in,
23 I love to make them believers and show
24 them exactly as far as like when I get
25 on the phone as far as Tempur-Pedic

1
2 and explain to them, you know, this
3 particular company, exactly what
4 they're saying --

5 VOICE ONE: Um-hm.

6 MALE: -- so, seeing is
7 believing.

8 VOICE ONE: Um-hm.

9 MALE: And sometimes even when
10 -- I can say, but -- even when you see
11 it, still, you know, it's
12 (unintelligible), you understand that.

13 VOICE ONE: Right.

14 MALE: Um, so I love to actually
15 be able to show this --

16 VOICE ONE: Okay. No problem.

17 MALE: So, uh, what we can do
18 for you is -- we can put that price on
19 a reservation for you.

20 VOICE: Oh, like I said, let me
21 talk it over with my husband first and
22 -- you have a card?

23 MALE: I don't have a card.

24 VOICE ONE: Oh.

25 MALE: But, um, what I can do --

1
2 okay, no problem. Um, I want to give
3 you enough time to talk this over with
4 your husband.

5 VOICE ONE: Um-hm.

6 MALE: If you do decide to
7 actually come back and make a
8 purchase, what I will do, I will put
9 this price --

10 VOICE ONE: Um-hm.

11 MALE: -- we also have a
12 (unintelligible) --

13 VOICE ONE: Okay.

14 MALE: I will put this in --

15 VOICE ONE: Can you put your
16 name and number on there?

17 MALE: Yeah. What I will do is
18 put, um, the price on a piece of
19 paper.

20 VOICE ONE: Okay.

21 MALE: If you do come back, it
22 gives me credit for actually speaking
23 to you.

24 VOICE ONE: Okay. Thank you.

25 MALE: What's your telephone

1
2 number?

3 VOICE ONE: 917-561-0361. But,
4 um -- let me -- let me -- let me talk
5 it over with him first.

6 MALE: Oh, yeah. No problem.

7 VOICE ONE: Yeah. Just put your
8 information down.

9 MALE: You want to like --
10 something physical for you to show
11 him?

12 VOICE ONE: No, no, no. 'Cause
13 I'm just starting the process.

14 MALE: Um-hm.

15 VOICE ONE: So, uh, I don't want
16 to --

17 MALE: Show him anything, what
18 the price is or anything?

19 (Voice in background.)

20 VOICE ONE: Well --

21 MALE: Say it again?

22 (Voice in background.)

23 MALE: That's just another
24 (unintelligible.)

25 VOICE TWO: Oh.

1
2 VOICE ONE: Um --

3 (Unintelligible voices.)

4 VOICE ONE: I mean, 'cause this
5 -- we have enough -- I got enough
6 stuff already.

7 MALE: Other stuff as far as?

8 VOICE ONE: I got this, I know,
9 a queen, what they look like over
10 there.

11 MALE: Okay.

12 VOICE ONE: Yeah. I know I
13 liked it and I know that's the brand
14 that, you know, he wants, so --

15 MALE: Okay. So --

16 VOICE ONE: Yeah.

17 MALE: As far as giving him
18 something physically --

19 VOICE ONE: Yeah. No, I have
20 some other things I need to run and
21 do.

22 MALE: So you -- well, you can
23 always give him (unintelligible) no
24 problem.

25 VOICE ONE: Thank you.

1
2 MALE: You're absolutely
3 welcome.

4 (Background voice.)

5 MALE: I am going to give this
6 to you, this --

7 VOICE ONE: Oh, okay.

8 (Background voice.)

9 VOICE ONE: Okay. Thank you.

10 MALE: You're absolute --
11 absolutely welcome.

12 VOICE ONE: All right. Nice
13 meeting you (unintelligible).

14 MALE: You're absolutely welcome
15 and I promise you, you are -- you
16 (unintelligible).

17 VOICE ONE: All right.

18 MALE: So there's nothing I can
19 do today to earn your business?

20 VOICE ONE: Um, you've helped me
21 tremendously. Thank you. Take care.

22 (LEAVING STORE.)

23 * * *

1
2 VOICE ONE: You come in here,
3 you just want to relax automatically.
4 You want to lay down --

5 (Bells ringing over voices.)

6 (Unidentifiable voices speaking,
7 unintelligible.)

8 VOICE ONE: All right. Let me
9 see where else we could go.

10 (Unintelligible) car here, but I don't
11 feel like walking a mile. Um, sheet
12 -- my sheet is in the car. I guess
13 we're gonna have to just (static). I
14 hate to lose this good parking spot.
15 You wanna go eat? Come on. We'll go
16 eat. We'll leave the car here. I
17 need to stay out of there. I spent
18 about \$500 last month in there. Yes,
19 I did. I like their pants, I'd like
20 -- they have like a nice-fitting
21 pants, you know, for my
22 (unintelligible). It didn't take much
23 convincing for me.

24 (Unintelligible voice on tape.)

25 VOICE ONE: I found the perfect

size.

(Unintelligible voice on tape.)

VOICE ONE: Hi.

(Unintelligible voice on tape.)

VOICE ONE: Yeah.

(Unintelligible voice on tape.)

VOICE ONE: I mean, I hear that
a lot -- with a lot of vendors. I
don't see what the big deal is.

(Unintelligible.)

(Music playing.)

VOICE ONE: We're still here in
the (unintelligible).

(Background noise, voices,
traffic sounds.)

* * *

1
2 VOICE ONE: I'm now in front of
3 1-800-Mattress, 136 Montague Street,
4 1-800-Mattress. I'm about to enter to
5 inquire about their Tempur-Pedic
6 mattress prices.

7 Hello.

8 MALE: Hello.

9 FEMALE VOICE: You have
10 Tempur-Pedic mattresses?

11 MALE: Yes, we do.

12 (Unintelligible.)

13 FEMALE VOICE: Um-hm.

14 (Static.)

15 FEMALE VOICE: (Unintelligible)
16 the small ones.

17 MALE: (Unintelligible) the
18 little ones?

19 FEMALE VOICE: Yeah. The little
20 ones. Uh, I guess I could get one for
21 my son's room, huh? That's, uh --
22 that would be small one.

23 MALE: I have all sizes -

24 FEMALE VOICE: Yeah. You think
25 so -- yeah.

1
2 MALE: (Unintelligible.)

3 (Static.)

4 MALE: (Unintelligible.)

5 FEMALE: Symphony classic.

6 MALE: (Unintelligible.)

7 FEMALE: Hm?

8 MALE: (Unintelligible.)

9 FEMALE VOICE: Oh, you only have
10 these two? Um, that would be good.
11 I'm just looking for my son. He's
12 just eleven. This should be good for
13 an eleven-year-old.

14 MALE: Queen-size.

15 (Unintelligible.)

16 FEMALE VOICE: Okay. How much
17 are they?

18 MALE: This one in the
19 queen-size, is 11 -- 1,200.

20 FEMALE VOICE: Um-hm.

21 MALE: Queen-size. And this one
22 is 1,100 in the queen-size.

23 FEMALE VOICE: And do you have
24 sales today?

25 MALE: This Tempur-Pedic, they

1
2 don't run sales.

3 FEMALE VOICE: No?

4 MALE: No.

5 FEMALE VOICE: Not at all?

6 MALE: Not at all.

7 FEMALE VOICE: Why?

8 MALE: Because it's like the
9 Tempur-Pedic brand and the -- they
10 don't negotiate price and we cannot
11 touch their price. Is one price
12 everywhere you go.

13 FEMALE VOICE: It's crazy.

14 MALE: Yeah.

15 FEMALE VOICE: I mean, that's
16 like a written policy or something or
17 something with them?

18 MALE: Yeah. For the
19 Tempur-Pedic it is.

20 FEMALE VOICE: Yeah? They send
21 you a form and say you can't do it?

22 MALE: That's our price, that's
23 it.

24 FEMALE VOICE: Wow.

25 MALE: Nobody gets -- I mean, if

1
2 you go through Sleepy, Macy's, same
3 price.

4 FEMALE VOICE: Same price.

5 SECOND VOICE: So what benefit
6 does she have for selling it?

7 FEMALE VOICE: Yeah, why would
8 you sell it?

9 MALE: Well, I don't know the
10 benefit that the company gets.

11 FEMALE VOICE: Um-hm.

12 SECOND VOICE: Yeah, you have no
13 markup --

14 MALE: I believe -- no, they
15 didn't (unintelligible) different
16 sales, like -- whatever. Same flat
17 price.

18 FEMALE VOICE: Same flat price?

19 MALE: Yes.

20 FEMALE VOICE: Wow, that's
21 really something.

22 Says Tempur-Pedic
23 pressure-relieving Swedish mattresses
24 and pillows. Swedish.

25 SECOND VOICE: Swedish.

(Unintelligible.)

FEMALE VOICE: All right. I was hoping to try to catch a Labor Day sale or something. I was hoping I could --

MALE: (Unintelligible) I mean, I could get you something else, but not as -- but you know what? I do have something -- I don't have it here -- this is not a Tempur-Pedic one, it's for Sealy, and this is on sale.

FEMALE VOICE: All right, but that's a Sealy and --

MALE: Yeah, that's a Sealy mattress.

FEMALE VOICE: My husband wants a --

MALE: This -- this is the same thing, just the name.

FEMALE VOICE: My husband wants it. He's stuck on a brand.

MALE: He wants --

FEMALE VOICE: Yeah. He wants Tempur-Pedic, so I have to speak to

1
2 him.

3 SECOND VOICE: (Unintelligible)

4 How much is this one?

5 MALE: That one's, same size --
6 it's \$800 overall, about \$800.

7 SECOND VOICE: All right, that's
8 \$400, \$300 difference.

9 FEMALE VOICE: Um. Well, I'll
10 let him know, see what he says. Thank
11 you very much.

12 MALE: You're very welcome.

13 (LEAVING STORE.)

14 * * *

1
2 FEMALE VOICE: The address is, I
3 think it's 486.

4 (Noise, static.)

5 VOICE ONE: Okay. The time is
6 now 3:00 p.m., I'm about to enter 486
7 Fulton Street, a Levitz furniture
8 store.

9 SECOND VOICE: I'm going
10 downstairs and see what they have.

11 VOICE ONE: Lower level, bed and
12 mattresses. Main floor, bed and
13 mattress. Okay.

14 (Background noise, static.)

15 VOICE ONE: Thank you. More
16 living furniture up here. They've got
17 it all mixed up.

18 (Unintelligible.)

19 VOICE ONE: Don't you just love
20 the smell of new furniture?

21 (Unintelligible.)

22 VOICE ONE: (Unintelligible.)
23 Okay. Seems like really spread out.

24 (Unintelligible.)

25 VOICE ONE: Right. Right. And

1
2 I see more beds over there.

3 (Unintelligible.)

4 VOICE ONE: Yeah. Ah, there's a
5 sign. Tempur-Pedic, straight ahead.

6 (Unintelligible.)

7 (Background voices -
8 unintelligible.)

9 VOICE ONE: All right. Somebody
10 else.

11 (Unintelligible.)

12 VOICE ONE: That's just the
13 sign.

14 SECOND VOICE: That's the sign
15 (unintelligible).

16 VOICE ONE: Yeah
17 (unintelligible).

18 MALE: (Unintelligible.)

19 VOICE ONE: (Unintelligible.)

20 MALE: That's given our old
21 (unintelligible) typically

22 (unintelligible).

23 VOICE ONE: Tempur-Pedic is up
24 here or no?

25 MALE: Tempur-Pedic is right up

1
2 here.

3 VOICE ONE: Right.

4 MALE: (Unintelligible.)

5 VOICE ONE: Oh, okay.

6 MALE: There's two over here.

7 VOICE ONE: Okay. You got it
8 all spread it, huh?

9 MALE: Yeah (unintelligible)
10 right over there?

11 SECOND VOICE: (Unintelligible.)

12 VOICE ONE: Oh, I see it. Thank
13 you.

14 (Static, background noise.)

15 VOICE ONE: We're gonna have to
16 wait for him, I guess he's the only
17 salesman. This feels so nice.

18 (Unintelligible.)

19 (Static.)

20 (Background voices.)

21 VOICE ONE: Okay.

22 (Background noise.)

23 (Music playing.)

24 (Background voices.)

25 VOICE ONE: I'm waiting for the

1
2 salesman to be free.

3 (Background noise.)

4 (Music playing.)

5 VOICE ONE: Very comfortable,
6 right?

7 SECOND VOICE: Hm?

8 VOICE ONE: Very comfortable.
9 Very, very comfortable.

10 SECOND VOICE: (Unintelligible.)

11 VOICE ONE: I'm gonna be asleep
12 by the time he you get over.

13 MALE: That's (unintelligible)
14 that I hear.

15 VOICE ONE: So what can you tell
16 me about these Tempur-Pedic
17 mattresses?

18 MALE: The Tempur-Pedic mattress
19 is very good because it gets the even
20 spaces they use. And if your child
21 bounces up and down on this side, a
22 glass of water on this side, that's
23 how firm this is.

24 VOICE ONE: Wow.

25 MALE: Right. Very comfortable

1
2 sleeping -- you sleep on this side,
3 and I'm on this side, you won't even
4 both me turning over and doing this,
5 that and the other, 'cause you get
6 comfortable on this side.

7 VOICE ONE: Okay.

8 MALE: You can be having the one
9 with the remote that brings the back
10 up and bring the bottom down,
11 that's --

12 VOICE ONE: Oh, okay.

13 MALE: -- and that's really on
14 the other side.

15 VOICE ONE: Okay.

16 MALE: Like that?

17 VOICE ONE: Uh-huh. And what do
18 they run, these --

19 MALE: What -- depends. Like
20 this queen-size right here is running
21 1899. And you want it with the
22 adjustable bed frame one, you come up
23 to 3199.

24 VOICE ONE: 3199. Okay. With
25 frame. You have any sales on it,

1
2 Labor Day sales, I mean, did I miss
3 any?

4 MALE: Well, nothing.
5 Tempur-Pedic sells itself. It -- it's
6 something that they don't normally run
7 on sale. It's like Sterns & Foster
8 mattress. They don't them on sale
9 either because they normally sell it,
10 just the comfort of it. Anything else
11 has the same kind of comfort but they
12 -- they promote them different. Those
13 things they get -- they do for
14 themselves.

15 VOICE ONE: Uh-huh. Any store
16 discounts? I mean, do you --

17 MALE: How do you mean store
18 discount?

19 VOICE ONE: You don't bring them
20 down for certain sales or anything?

21 MALE: Not really.

22 VOICE ONE: No? Hm. I'm just
23 trying -- I was hoping I could get a
24 decent, you know, some kind of sale,
25 holiday sale or something on it. They

1
2 don't come down at all, you're saying?

3 MALE: Not normally.

4 (Unintelligible) not normally. See,
5 like us, we got Serta that goes on
6 sale, we got Sealy that goes on sale.
7 But Tempur-Pedic and Sterns &
8 Foster --

9 VOICE ONE: Um-hm.

10 MALE: -- it's firm.

11 VOICE ONE: Hm. Well -- so
12 1899.

13 SECOND VOICE: You got full
14 (unintelligible), right?

15 MALE: These -- all these are
16 fulls on this whole floor, they
17 (unintelligible).

18 SECOND VOICE: Oh.

19 MALE: Queens are that size,
20 they be -- queens are six inches
21 bigger than the full. So, it's not
22 that much bigger.

23 VOICE ONE: Um. And they're
24 what -- and the price difference?

25 MALE: What?

1
2 VOICE ONE: The price
3 difference?

4 MALE: The price difference
5 between a queen and a full
6 (unintelligible) this is a full-size
7 right here, 1599.

8 VOICE ONE: Um-hm.

9 MALE: The queen-size bed is
10 1899.

11 VOICE ONE: Um-hm.

12 MALE: So you got 3- or \$400
13 difference between the queen and the
14 full, the prices on the same bed.

15 VOICE ONE: Um-hm.

16 MALE: (Unintelligible.) Here's
17 the queen-size price, the full-size
18 bed is one sale 949, here's the
19 queen-size 999. That's \$50
20 difference.

21 VOICE ONE: \$50 difference,
22 yeah.

23 MALE: They run -- depend on
24 which you may like.

25 VOICE ONE: And no sales on that

1
2 either, queen-size either?

3 MALE: This is queen-size, Sealy
4 (unintelligible).

5 VOICE ONE: But --

6 MALE: Postur-Pedic.

7 VOICE ONE: Oh, that's not
8 Tempur-Pedic?

9 MALE: No, that's not
10 Tempur-Pedic.

11 VOICE ONE: Ah-ha. So that's
12 the company policy, huh?

13 MALE: You know, it's not
14 company policy. It's the way it's
15 sold. But it may go one sale, but
16 normally Tempur-Pedic and Sterns &
17 Foster don't go on sale.

18 VOICE ONE: Hm. Anyway --

19 MALE: (Unintelligible.)

20 VOICE ONE: Um-hm.

21 MALE: (Unintelligible.)

22 VOICE ONE: Oh, okay. Okay.

23 MALE: (Unintelligible.)

24 VOICE ONE: Which one is he
25 talking about?

1
2
3
4
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24
25

Oh, that one?

SECOND VOICE: Or this one here.

VOICE ONE: Yeah.

MALE: (Unintelligible.)

VOICE ONE: That looks like a --
that doesn't look like a queen.
That's a queen-size?

MALE: (Unintelligible) queen,
smaller from the same company.

VOICE ONE: Oh.

MALE: But, you know --

(Static.)

SECOND VOICE: (Unintelligible.)

VOICE ONE: This is like so
comfortable.

(Unintelligible.)

VOICE ONE: Yeah. That's right,
am I working?

(Unintelligible.)

(Conversation, unintelligible.)

VOICE ONE: He doesn't sound
like he -- that other guy was really
informative, the first one, right?

MALE: (Unintelligible.)

1
2 VOICE ONE: This one doesn't
3 sound like he really, you know -- so
4 this is Levitz.

5 (Static.)

6 VOICE ONE: Okay. Thanks.
7 We'll look around a little more.

8 MALE: Um-hm.

9 What are you looking to do?

10 VOICE ONE: Well, I wanted some
11 kind of -- I wanted some kind of, um,
12 I wanted to catch a sale. I mean, I
13 heard that some of the stores are
14 having sales on mattresses. But every
15 time I ask about Tempur-Pedic,
16 everybody seems to say that no,
17 there's no sale on it.

18 MALE: Yeah, the most
19 (unintelligible).

20 VOICE ONE: I can't believe
21 that.

22 MALE: Oh, yes. I told you,
23 there's certain things. You got
24 Cadillacs don't go on sale. Neither
25 do Lincolns. Okay. Lincolns are a

1
2 better ride than the Cadillac, but
3 they don't go on sale.

4 VOICE ONE: They don't go on
5 sale.

6 MALE: I once had a Lincoln over
7 40 years and I know how good it rides,
8 but it don't go on sale.

9 VOICE ONE: Wow.

10 MALE: See, what -- certain
11 things don't go on sale.

12 VOICE ONE: Um-hm.

13 MALE: You know. Everything
14 goes on sale, but certain things
15 don't. All right?

16 VOICE ONE: Uh --

17 MALE: And you gonna talk about
18 what Tempur-Pedic (unintelligible).
19 So, comfort.

20 VOICE ONE: Yeah. We see.

21 MALE: Yeah.

22 VOICE ONE: Um-hm. It's very
23 comfortable. All right. Well --

24 MALE: And usually, whatever
25 you like don't -- never goes on sale

1
2 anyway.

3 VOICE ONE: Yeah, that's true.

4 MALE: Just -- that's rule of
5 thumb.

6 VOICE ONE: That's -- that is
7 true.

8 MALE: Everybody look for a
9 sale, but what they like is never one
10 sale.

11 VOICE ONE: Hm.

12 MALE: What they don't like is
13 on sale.

14 VOICE ONE: Right.

15 MALE: (Unintelligible.) I like
16 those, too, but it never go on sale,
17 what I like.

18 VOICE ONE: Never goes on sale.

19 MACK: Anything I don't like is
20 on sale. And usually everything that
21 you see that you want is already sold.

22 VOICE ONE: Right.

23 MALE: If it's sold, then you
24 want it. Because that's nature.

25 VOICE ONE: That's true.

1
2 Thank you very much.

3 MALE: Let me give you my card.

4 VOICE ONE: Oh, sure.

5 MALE: And you come back see us
6 again, please.

7 VOICE ONE: Okay.

8 MALE: And it's Thompson on the
9 card.

10 VOICE ONE: Thompson. Thank
11 you.

12 MALE: Thank you, ladies.
13 Thank you very much.

14 VOICE ONE: Thank you.

15 MALE: Pleasure. Come and see us
16 again.

17 VOICE ONE: Okay.

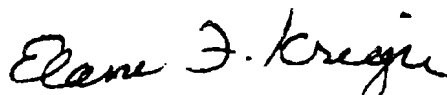
18 (Leaving store.)

19 * * *

20 (END OF AUDIO.)
21
22
23
24
25

CERTIFICATION

I, Elaine Krieger, a Notary
Public within and for the State of New
York, do hereby certify the above and
foregoing to be a true and accurate
transcript of the audio recording
presented to me, to the best of my
ability.



ELAINE KRIEGER

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

In Re: Tempur-Pedic Investigation

No. 07-028

AUDIO TAPE TRANSCRIPT

9-25-07

VERITEXT

212-267-6868

516-608-2400

1
2 Today is Tuesday, September 25,
3 2007. The time is now 1200 hours. I
4 am Investigator Karen Richardson,
5 assigned to the New York State
6 Attorney General's office. I am
7 assisting in an investigation in the
8 Anti-Trust Bureau involving
9 Tempur-Pedic Mattress, also known as
10 Investigation Bureau Number 07-028.

11 I am about to call Tempur-Pedic
12 Mattress at 1-888-811-5053, and
13 attempt to get a discount on their
14 mattress. I will stop the recording
15 device in order to deactivate it and
16 then I will reactivate it again.

17 (Dialing phone.)

18 TEMPUR-PEDIC: Thank you for
19 calling Tempur-Pedic. This is
20 Casandra. How may I help you?

21 KAREN RICHARDSON: Yes, I'm
22 calling regarding purchasing a
23 mattress.

24 TEMPUR-PEDIC: Uh-huh.

25 KAREN RICHARDSON: Um, I think

1
2 it's called celebrity.

3 TEMPUR-PEDIC: Okay.

4 KAREN RICHARDSON: And I want to
5 know how much the price is.

6 TEMPUR-PEDIC: Um, what size,
7 ma'am?

8 KAREN RICHARDSON: Queen size.

9 TO VOICE: And do you need the
10 mattress and foundation or the
11 mattress only?

12 KAREN RICHARDSON: Um, I would
13 like the mattress and foundation.

14 TEMPUR-PEDIC: Okay. It'd be
15 3,499.

16 KAREN RICHARDSON: 3,499. Now,
17 I have been to some of your stores,
18 and, um, they don't have any sales or
19 discounts. I was wondering, do you
20 offer discounts?

21 TEMPUR-PEDIC: No, ma'am. The
22 prices are the same, regardless of
23 where you go. It's just the trial
24 periods that are different.

25 KAREN RICHARDSON: The trial

1
2 periods?

3 TEMPUR-PEDIC: Yes.

4 KAREN RICHARDSON: Uh, could you
5 explain that?

6 TEMPUR-PEDIC: Well, when you
7 order directly through Tempur-Pedic,
8 it's a money-back guarantee. If
9 you're not satisfied you're just
10 responsible for the one-time shipping
11 fee. On the celebrity model it's 199,
12 but you've got three months to test it
13 out to make sure you're completely
14 satisfied. If you wanted to exchange
15 it, you could. There's wouldn't be a
16 trial period on the second mattress.

17 KAREN RICHARDSON: Um-hm.

18 TEMPUR-PEDIC: Or you could just
19 return it to us. If you go to the
20 stores, not all stores extend a trial
21 period. That's just something you
22 would need to speak to them about.

23 KAREN RICHARDSON: Oh, I see.
24 But the prices are gonna be the same
25 in all the stores?

1
2 TP VOICES: The prices are the
3 same.

4 KAREN RICHARDSON: Okay. Now, I
5 know this is not true with other
6 mattresses. Is there any specific
7 reason why you don't give any
8 discounts?

9 TEMPUR-PEDIC: Nobody gives a
10 discount on a Tempur-Pedic, ma'am.
11 The prices are always the same.

12 KAREN RICHARDSON: I see. Okay.
13 Um, and they're not -- and there's no
14 place, no sales or anything?

15 TEMPUR-PEDIC: We never have a
16 discount on the products. The prices
17 are always the same.

18 KAREN RICHARDSON: Wow, they're
19 always the same. Okay. Um -- all
20 right. What is -- you have something
21 called a low-profile foundation. Is
22 that like a box spring?

23 TEMPUR-PEDIC: It replaces a box
24 spring. Yes, ma'am, it's five inches
25 compared to the high, that's nine and

1
2 a half inches.

3 KAREN RICHARDSON: Umm. Okay.
4 All right. I'll get back to you then.

5 TEMPUR-PEDIC: All right.

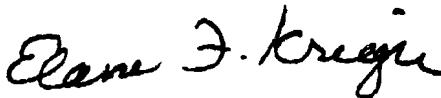
6 KAREN RICHARDSON: Thank you.

7 (END OF TAPE)

8 * * *

9
10
11 C E R T I F I C A T I O N

12
13
14 I, Elaine Krieger, a notary
15 public within and for the State of New
16 York, hereby certify the above and
17 foregoing to be an accurate transcript
18 of the audio tape presented to me, to
19 the best of my ability.

20 
21

Elaine Krieger

EXHIBIT

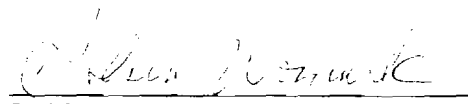
2

I, Robin Womack being duly sworn deposes and says:

1. I am an investigator with the New York State Department of Law. I have worked on the Antitrust Bureau's investigation of Tempur-Pedic International Inc.

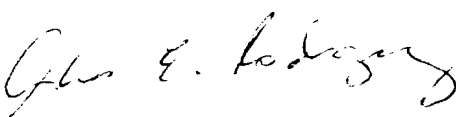
2. On September 4, 2007, Karon Richardson, another investigator with the Department of Law, and I posed as shoppers at Sleepy's and at the (1) (800) Mattress Store, both located on Montague Street in Brooklyn, New York and at the Levitz Furniture Store located on Fulton Street in Brooklyn, New York. At each of these locations, Investigator Richardson and I spoke with individuals who represented themselves as employees or agents of the store visited. At each store, Investigator Richardson and I inquired about purchasing a Tempur-Pedic mattress and sought information about the prices of such mattresses, any discounts that may be available, and any future sales on Tempur-Pedic products. These conversations were taped and a transcript of our entire conversation with the sales representative at each location is attached hereto. I have reviewed this transcription and I attest it is a true and accurate transcription of the conversation that took place during these store visits specified herein.

3. I have reviewed paragraphs 47-54 of the Affirmation of Assistant Attorney General Linda Gargiulo, dated March 24, 2010. The information set forth in those paragraphs accurately reflects the discussions that Investigator Richardson and I had with sales representatives in the three stores visited.


Robin Womack

Sworn to before me this 8 day of June 2010

Notary Public



ANDRES E. RODRIGUEZ
Notary Public, State of New York
No. 01200004119
Qualified in Bronx County
Commission Expires March 19, 2011

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

RE: TEMPUR-PEDIC MATTRESS

CASE NO.: 07/028

Audio Tape Recording

Set 7

21

1
2 FEMALE VOICE: The date is
3 Monday, September 4, 2007. The time
4 is now 12:55 hours. I am undercover
5 120 assisting in an investigation with
6 the Anti-Trust Bureau. I am about to
7 enter 116 Montague Street in Brooklyn,
8 Sleepy's mattress retailer. This is
9 in reference to IDN 07-028.

10 VOICE ONE: Here's a
11 Tempur-Pedic here. I guess we should
12 sit on them and try them out.

13 VOICE TWO: Yeah, that's --
14 that is nice, very comfortable. Two
15 of them --

16 Hi. How are you?

17 MALE: I'm just fantastic.
18 Welcome to Sleepy's, the mattress
19 professionals.

20 VOICE ONE: Thank you.

21 MALE: My name is Giles
22 (phonetic). It'll be a pleasure
23 serving you.

24 VOICE ONE: And I'm Sharon.

25 MALE: Sharon. And you are?

1
2 VOICE TWO: Ronnie.

3 MALE: Ronnie?

4 VOICE TWO: Yes. That's my name.

5 MALE: So, which mattress are
6 you looking for today.

7 VOICE ONE: Well, I definitely
8 want the Tempur-Pedic.

9 MALE: Okay.

10 VOICE ONE: And I'm assuming --
11 what do you have, king, queen.

12 MALE: Well, it comes in any
13 different size.

14 VOICE ONE: Okay.

15 MALE: (Mumbled) Tempur-Pedic.

16 VOICE ONE: Okay.

17 MALE: One, uh, Tempur-Pedic is
18 a price-control company, which means
19 that everywhere you go, the price
20 stays the same. As of today is
21 (unintelligible), in the next eight
22 their beds by 100, 200 dollars extra
23 and it's gonna be, wherever you go,
24 it's gonna actually be consistent with
25 these prices.

1

VOICE ONE: Really?

2

3

MALE: Yeah.

4

VOICE ONE: Really? Why is

5

that?

6

MALE: I'm not too sure why the

7

price increases, but one of the --

8

whoever deals with Tempur-Pedic,

9

whatever they do, it's uniform with

10

everywhere --

11

VOICE ONE: Really?

12

MALE: -- you go. Um, we do

13

have a lot of different Tempur-Pedics

14

and that bed, if you come to Sleepy's

15

and actually shopping at Sleepy's,

16

then you get a chance to actually lie

17

on the bed, see what it feels, as

18

opposed to the little sample that

19

everyone show you.

20

VOICE ONE: Right.

21

MALE: So what I will do is, to

22

(unintelligible) --

23

VOICE ONE: Okay.

24

MALE: -- give it a shot, lie in

25

it, see how it feels, because's

1
2 there's different ones and I can
3 explain as far as like --

4 VOICE ONE: Well, what -- how
5 much does it cost?

6 MALE: Well, um, it depends on
7 which one.

8 VOICE ONE: Which one -- oh,
9 let's start with this one.

10 MALE: Okay. Which size?

11 VOICE ONE: It's a queen-size,
12 right?

13 MALE: Queen-size?

14 VOICE ONE: Um-hm.

15 MALE: Well, this is the price.
16 Process. It costs, um, 1899.

17 VOICE ONE: 1899.

18 MALE: Or it comes up to about
19 82, 84 dollars a month, zero down,
20 interest-free financing.

21 VOICE ONE: Okay. And is there
22 -- that's a set price --

23 MALE: Actually --

24 VOICE ONE: -- so there's no
25 discounts? 'Cause I think there was

1
2 -- there was -- I think you've had
3 discounts on mattresses (mumbled).

4 MALE: Not on -- not on
5 Tempur-Pedic. Tempur-Pedic never goes
6 (mumbled) --

7 VOICE ONE: Uh-huh.

8 VOICE TWO: These are
9 (unintelligible).

10 VOICE ONE: Aren't they?

11 VOICE TWO: I feel
12 (unintelligible).

13 VOICE ONE: Oh, man. Oh, yeah.

14 (Voices talking over each
15 other.)

16 VOICE TWO: I may like that
17 (unintelligible) every night.

18 VOICE ONE: (Unintelligible)
19 spoils you. I didn't realize they had
20 -- this is a king-size, huh? That's
21 nice. Let me go see, try this one.

22 (Background voices, laughter.)

23 MALE: It's a great bed.

24 Now, if you want to call
25 Tempur-Pedic, this is exactly what

1
2 they would tell you.

3 VOICE ONE: Okay.

4 MALE: These are all the
5 different beds that -- Sleepy's
6 carries the most selections as far as,
7 um --

8 VOICE ONE: All right.

9 MALE: Okay?

10 VOICE ONE: Um-hm.

11 MALE: Um, this one here is
12 called the Celebrity. If you look
13 right here --

14 VOICE ONE: Um-hm.

15 MALE: -- the price of the
16 Celebrity queen, this is the queen --

17 VOICE ONE: Um-hm.

18 MALE: -- the set, which is the
19 mattress and box spring, is --

20 VOICE ONE: 3499?

21 MALE: -- the queen set, it's
22 price-controlled.

23 VOICE ONE: Um-hm.

24 MALE: Um, the thing with --
25 Tempur-Pedic is -- I was just

1
2 explaining to you before the price
3 increase --

4 VOICE ONE: Right.

5 MALE: -- that's happening. Um,
6 when you get the mattress from
7 Sleepy's, our advantage of shopping at
8 Sleepy's is that, one, you come in and
9 lie and you try the beds.

10 VOICE ONE: Right, right.

11 MALE: Two, we can get it, a day
12 to two days. It takes about three
13 weeks with Tempur-Pedic.

14 VOICE ONE: Um-hm.

15 MALE: Their shipping fee is 175
16 to 200 dollars.

17 VOICE ONE: Okay.

18 MALE: Ours is 69.99. And the
19 price stays the same, no matter where
20 you go.

21 VOICE ONE: Okay. You mean the
22 shipping price also?

23 MALE: Yes. Their shipping
24 price is 175 to 199 dollars --

25 VOICE ONE: No matter where

1
2 I -- what vendor -- what vendor I go
3 to, it's gonna be that much?

4 MALE: No. Tempur-Pedic.

5 VOICE ONE: Oh, Tempur-Pedic?
6 Oh, I see. Okay.

7 MALE: We -- our shipping price
8 is 69.99.

9 VOICE ONE: Uh-huh.

10 MALE: So the concept is,
11 Tempur-Pedic, no matter where you go,
12 the price stays the same. When they
13 increase the price everyone has to
14 price-increase with them. Um, what we
15 can do, uh, with Tempur-Pedic, whereas
16 the price can't be flexible, we can
17 actually -- we have a promotion going
18 on where they give you a free teddy
19 bear.

20 VOICE ONE: Um-hm.

21 MALE: We can actually throw in
22 two pillows, which goes for like \$175
23 apiece, and we give you a \$250 value
24 of gifts with the purchase.

25 FEMALE ONE: Okay.

(Background voice.)

MALE: That one is listed.

VOICE ONE: Right.

(Background voices.)

MALE: Uh, there's one a tidbit
smaller that's 125.

VOICE ONE: So is it written
down they can't change the prices?

MALE: Well, I can actually jump
on the phone right now with
Tempur-Pedic, and I love to do this
with customers --

VOICE ONE: Yeah.

MALE: -- and, um, I call
directly to Tempur-Pedic.

VOICE ONE: Um-hm.

MALE: Come with me. Let's --
let's -- let's try --

VOICE ONE: Okay.

VOICE TWO: Can I ask just one
question?

MALE: Go right ahead.

(Unintelligible.)

MALE: Um, it's --

(Unintelligible.)

(Bells ringing over mumbled
voices.)

MALE: Well, what I recommend
also -- what I have -- the thing with
Tempur-Pedic is that it's --

VOICE TWO: (Unintelligible.)

MALE: Bedbugs can't live in it
because the material is natural --

(Bells ringing over voices.)

MALE: What I recommend,
everyone put a -- you can put a pillow
barrier that actually protects from,
um, any type of bacterias from going
inside your pillow.

VOICE TWO: (Unintelligible.)

(Background noise.)

VOICE ONE: So who is -- who are
you calling, Tempur-Pedic?

MALE: Yes, (unintelligible)
directly.

VOICE ONE: Oh, I see.

(Making call, on speaker phone.)

VOICE ONE: Is that like a

1
2 regional office or something?

3 MALE: No, this is -- the sales,
4 um, office.

5 VOICE ONE: Umm.

6 (Phone answered.)

7 VOICE ONE: Are they --

8 MALE: Yes, can I have an
9 outside line?

10 PHONE VOICE: (Unintelligible.)

11 MALE: The number is
12 1-800-790-0094.

13 (Phone ringing, on speaker
14 phone.)

15 PHONE VOICE: Tempur-Pedic
16 Sales, this is Matt.

17 MALE: Hey, Matt. How are you
18 doing?

19 PHONE VOICE: Good. How are
20 you?

21 MALE: Pretty good. Listen, I'm
22 interested in actually purchasing a
23 classic -- uh, Tempur-Pedic from you
24 guys.

25 PHONE VOICE: Okay.

1
2 MALE: Um, two things. One, I
3 heard you guys were having a price
4 increase.

5 PHONE VOICE: That's correct, on
6 the 12th.

7 MALE: On the 12th. And how
8 much would it go up extra?

9 PHONE VOICE: Um, on the
10 queen-size, 200.

11 MALE: 200? And how long do you
12 guys take for shipping?

13 PHONE VOICE: How long does it
14 take?

15 MALE: Yeah.

16 PHONE VOICE: It takes about one
17 to two weeks usually.

18 MALE: One to two weeks. And
19 how much is the shipping fee?

20 PHONE VOICE: 175.

21 MALE: 175. Now, the question
22 is this: Um, how much is the price of
23 the classic?

24 PHONE VOICE: The price for the
25 queen is 1899.

1
2 MALE: I was hoping that -- is
3 there any discounts that you guys can
4 give me on that?

5 PHONE VOICE: We don't discount
6 the price of the mattress.
7 (Unintelligible) raise the prices
8 (unintelligible), but we don't
9 discount the prices.

10 MALE: So what if I go to a
11 different, um, store or something like
12 that?

13 PHONE VOICE: They'll give the
14 exact same price. No matter where you
15 go, it would be the same price. If
16 it's not, then it's not a Tempur-Pedic
17 or it's a returned Tempur-Pedic. But
18 it's a fixed price.

19 MALE: Okay. All right. No
20 problem. I thank you so much.

21 VOICE ONE: Thank you, Matt?
22 What's his name?

23 MALE: What's your name?

24 (No response.)

25 VOICE ONE: He hung up.

1

MALE: No matter where you go --

2

3

VOICE ONE: I guess he was the

4

boss, huh?

5

MALE: Well, I don't know. It's

6

just Tempur-Pedic.

7

VOICE ONE: Oh, Tempur-Pedic.

8

MALE: Instead of us going down,

9

it actually increases. No matter

10

where you go, the price is fixed.

11

VOICE ONE: If I wanted to call

12

and ask him, I could also --

13

MALE: You can call on your cell

14

phone right now -- call Tempur-Pedic.

15

VOICE ONE: Uh-huh. It's just

16

that my husband might want to call and

17

verify.

18

MALE: No problem.

19

VOICE ONE: I think so.

20

MALE: So how soon would you

21

need to get this Tempur-Pedic?

22

VOICE ONE: Well, within the

23

next, huh, couple of weeks.

24

MALE: Well, here's the thing --

25

here's the thing we can do.

1
2 VOICE ONE: Um-hm.

3 MALE: You'll get a Tempur-Pedic
4 which is an awesome mattress.

5 VOICE ONE: Um-hm.

6 MALE: Like I -- like I
7 explained, there's gonna be a price
8 increase, no matter where you go.

9 VOICE ONE: Okay.

10 MALE: So we can save you a few
11 hundred dollars. You can -- here at
12 Sleepy's we actually allow you to
13 actually put a refundable deposit, as
14 low as \$25. It's refundable. What
15 happens then is, before the price goes
16 into effect, which is the extra
17 \$200 --

18 VOICE ONE: Right.

19 MALE: -- you lock in the price,
20 you go, you look at -- you make --
21 anywhere you need to call as far as
22 like verifying exactly what I said,
23 you don't have to take my word for it.

24 VOICE ONE: Okay.

25 MALE: But I know you will --

1
2 you're gonna be back. What that does
3 is, before -- if you don't make the
4 decision by the -- if it takes you
5 (unintelligible) to make the decision,
6 it locks in the price control that
7 Tempur-Pedic will have.

8 VOICE ONE: Okay.

9 MALE: Whenever you and your
10 husband are ready, you come back --

11 VOICE ONE: Um-hm.

12 MALE: -- and it's guaranteed to
13 give you that. If you decide not to
14 get the Tempur-Pedic --

15 VOICE ONE: Um-hm.

16 MALE: That money is refunded, or
17 if you wanted to actually get another
18 bed you can transfer it.

19 VOICE ONE: Umm.

20 MALE: So here's the advantage.
21 One, we're gonna lock in the price
22 before it goes into increase. Two,
23 you're not making any obligations.

24 VOICE ONE: Um-hm.

25 MALE: It's totally refundable.

1
2 Another beautiful thing is that you
3 can go to any one of our Sleepy's, we
4 have 520 stores in (unintelligible)
5 states.

6 VOICE ONE: Um-hm.

7 MALE: And it can be done there.
8 Okay? But that's the (unintelligible)
9 as far as being able to -- and we also
10 will give you those two pillows, so
11 you can use them --

12 VOICE ONE: Um-hm.

13 MALE: -- and, um, I'll just
14 (unintelligible) you understand
15 exactly what I'm saying, and you can
16 also at the same time save some money.

17 VOICE ONE: Okay. That's fair
18 enough. I can't take this today.

19 MALE: Um, I'll use this
20 because --

21 VOICE ONE: That's fair.

22 MALE: -- when customers come in,
23 I love to make them believers and show
24 them exactly as far as like when I get
25 on the phone as far as Tempur-Pedic

1
2 and explain to them, you know, this
3 particular company, exactly what
4 they're saying --

5 VOICE ONE: Um-hm.

6 MALE: -- so, seeing is
7 believing.

8 VOICE ONE: Um-hm.

9 MALE: And sometimes even when
10 -- I can say, but -- even when you see
11 it, still, you know, it's
12 (unintelligible), you understand that.

13 VOICE ONE: Right.

14 MALE: Um, so I love to actually
15 be able to show this --

16 VOICE ONE: Okay. No problem.

17 MALE: So, uh, what we can do
18 for you is -- we can put that price on
19 a reservation for you.

20 VOICE: Oh, like I said, let me
21 talk it over with my husband first and
22 -- you have a card?

23 MALE: I don't have a card.

24 VOICE ONE: Oh.

25 MALE: But, um, what I can do --

1
2 okay, no problem. Um, I want to give
3 you enough time to talk this over with
4 your husband.

5 VOICE ONE: Um-hm.

6 MALE: If you do decide to
7 actually come back and make a
8 purchase, what I will do, I will put
9 this price --

10 VOICE ONE: Um-hm.

11 MALE: -- we also have a
12 (unintelligible) --

13 VOICE ONE: Okay.

14 MALE: I will put this in --

15 VOICE ONE: Can you put your
16 name and number on there?

17 MALE: Yeah. What I will do is
18 put, um, the price on a piece of
19 paper.

20 VOICE ONE: Okay.

21 MALE: If you do come back, it
22 gives me credit for actually speaking
23 to you.

24 VOICE ONE: Okay. Thank you.

25 MALE: What's your telephone

number?

VOICE ONE: 917-561-0361. But,
um -- let me -- let me -- let me talk
it over with him first.

MALE: Oh, yeah. No problem.

VOICE ONE: Yeah. Just put your
information down.

MALE: You want to like --
something physical for you to show
him?

VOICE ONE: No, no, no. 'Cause
I'm just starting the process.

MALE: Um-hm.

VOICE ONE: So, uh, I don't want
to --

MALE: Show him anything, what
the price is or anything?

(Voice in background.)

VOICE ONE: Well --

MALE: Say it again?

(Voice in background.)

MALE: That's just another
(unintelligible.)

VOICE TWO: Oh.

1

2

VOICE ONE: . Um --

3

(Unintelligible voices.)

4

VOICE ONE: I mean, 'cause this

5

-- we have enough -- I got enough

6

stuff already.

7

MALE: Other stuff as far as?

8

VOICE ONE: I got this, I know,

9

a queen, what they look like over

10

there.

11

MALE: Okay.

12

VOICE ONE: Yeah. I know I

13

liked it and I know that's the brand

14

that, you know, he wants, so --

15

MALE: Okay. So --

16

VOICE ONE: Yeah.

17

MALE: As far as giving him

18

something physically --

19

VOICE ONE: Yeah. No, I have

20

some other things I need to run and

21

do.

22

MALE: So you -- well, you can

23

always give him (unintelligible) no

24

problem.

25

VOICE ONE: Thank you.

1
2 MALE: You're absolutely
3 welcome.

4 (Background voice.)

5 MALE: I am going to give this
6 to you, this --

7 VOICE ONE: Oh, okay.

8 (Background voice.)

9 VOICE ONE: Okay. Thank you.

10 MALE: You're absolute --
11 absolutely welcome.

12 VOICE ONE: All right. Nice
13 meeting you (unintelligible).

14 MALE: You're absolutely welcome
15 and I promise you, you are -- you
16 (unintelligible).

17 VOICE ONE: All right.

18 MALE: So there's nothing I can
19 do today to earn your business?

20 VOICE ONE: Um, you've helped me
21 tremendously. Thank you. Take care.

22 (LEAVING STORE.)

23 * * *

1
2 VOICE ONE: You come in here,
3 you just want to relax automatically.
4 You want to lay down --

5 (Bells ringing over voices.)

6 (Unidentifiable voices speaking,
7 unintelligible.)

8 VOICE ONE: All right. Let me
9 see where else we could go.

10 (Unintelligible) car here, but I don't
11 feel like walking a mile. Um, sheet
12 -- my sheet is in the car. I guess
13 we're gonna have to just (static). I
14 hate to lose this good parking spot.
15 You wanna go eat? Come on. We'll go
16 eat. We'll leave the car here. I
17 need to stay out of there. I spent
18 about \$500 last month in there. Yes,
19 I did. I like their pants, I'd like
20 -- they have like a nice-fitting
21 pants, you know, for my
22 (unintelligible). It didn't take much
23 convincing for me.

24 (Unintelligible voice on tape.)

25 VOICE ONE: I found the perfect

size.

(Unintelligible voice on tape.)

VOICE ONE: Hi.

(Unintelligible voice on tape.)

VOICE ONE: Yeah.

(Unintelligible voice on tape.)

VOICE ONE: I mean, I hear that
a lot -- with a lot of vendors. I
don't see what the big deal is.

(Unintelligible.)

(Music playing.)

VOICE ONE: We're still here in
the (unintelligible).

(Background noise, voices,
traffic sounds.)

* * *

1
2 VOICE ONE: I'm now in front of
3 1-800-Mattress, 136 Montague Street,
4 1-800-Mattress. I'm about to enter to
5 inquire about their Tempur-Pedic
6 mattress prices.

7 Hello.

8 MALE: Hello.

9 FEMALE VOICE: You have
10 Tempur-Pedic mattresses?

11 MALE: Yes, we do.

12 (Unintelligible.)

13 FEMALE VOICE: Um-hm.

14 (Static.)

15 FEMALE VOICE: (Unintelligible)
16 the small ones.

17 MALE: (Unintelligible) the
18 little ones?

19 FEMALE VOICE: Yeah. The little
20 ones. Uh, I guess I could get one for
21 my son's room, huh? That's, uh --
22 that would be small one.

23 MALE: I have all sizes -

24 FEMALE VOICE: Yeah. You think
25 so -- yeah.

1
2 MALE: (Unintelligible.)

3 (Static.)

4 MALE: (Unintelligible.)

5 FEMALE: Symphony classic.

6 MALE: (Unintelligible.)

7 FEMALE: Hm?

8 MALE: (Unintelligible.)

9 FEMALE VOICE: Oh, you only have
10 these two? Um, that would be good.
11 I'm just looking for my son. He's
12 just eleven. This should be good for
13 an eleven-year-old.

14 MALE: Queen-size.

15 (Unintelligible.)

16 FEMALE VOICE: Okay. How much
17 are they?

18 MALE: This one in the
19 queen-size, is 11 -- 1,200.

20 FEMALE VOICE: Um-hm.

21 MALE: Queen-size. And this one
22 is 1,100 in the queen-size.

23 FEMALE VOICE: And do you have
24 sales today?

25 MALE: This Tempur-Pedic, they

1
2 don't run sales.

3 FEMALE VOICE: No?

4 MALE: No.

5 FEMALE VOICE: Not at all?

6 MALE: Not at all.

7 FEMALE VOICE: Why?

8 MALE: Because it's like the
9 Tempur-Pedic brand and the -- they
10 don't negotiate price and we cannot
11 touch their price. Is one price
12 everywhere you go.

13 FEMALE VOICE: It's crazy.

14 MALE: Yeah.

15 FEMALE VOICE: I mean, that's
16 like a written policy or something or
17 something with them?

18 MALE: Yeah. For the
19 Tempur-Pedic it is.

20 FEMALE VOICE: Yeah? They send
21 you a form and say you can't do it?

22 MALE: That's our price, that's
23 it.

24 FEMALE VOICE: Wow.

25 MALE: Nobody gets -- I mean, if

1
2 you go through Sleepy, Macy's, same
3 price.

4 FEMALE VOICE: Same price.

5 SECOND VOICE: So what benefit
6 does she have for selling it?

7 FEMALE VOICE: Yeah, why would
8 you sell it?

9 MALE: Well, I don't know the
10 benefit that the company gets.

11 FEMALE VOICE: Um-hm.

12 SECOND VOICE: Yeah, you have no
13 markup --

14 MALE: I believe -- no, they
15 didn't (unintelligible) different
16 sales, like -- whatever. Same flat
17 price.

18 FEMALE VOICE: Same flat price?

19 MALE: Yes.

20 FEMALE VOICE: Wow, that's
21 really something.

22 Says Tempur-Pedic
23 pressure-relieving Swedish mattresses
24 and pillows. Swedish.

25 SECOND VOICE: Swedish.

(Unintelligible.)

FEMALE VOICE: All right. I was hoping to try to catch a Labor Day sale or something. I was hoping I could --

MALE: (Unintelligible) I mean, I could get you something else, but not as -- but you know what? I do have something -- I don't have it here -- this is not a Tempur-Pedic one, it's for Sealy, and this is on sale.

FEMALE VOICE: All right, but that's a Sealy and --

MALE: Yeah, that's a Sealy mattress.

FEMALE VOICE: My husband wants a --

MALE: This -- this is the same thing, just the name.

FEMALE VOICE: My husband wants it. He's stuck on a brand.

MALE: He wants --

FEMALE VOICE: Yeah. He wants Tempur-Pedic, so I have to speak to

1
2 him.

3 SECOND VOICE: (Unintelligible)
4 How much is this one?

5 MALE: That one's, same size --
6 it's \$800 overall, about \$800.

7 SECOND VOICE: All right, that's
8 \$400, \$300 difference.

9 FEMALE VOICE: Um. Well, I'll
10 let him know, see what he says. Thank
11 you very much.

12 MALE: You're very welcome.

13 (LEAVING STORE.)

14 * * *

1
2 FEMALE VOICE: The address is, I
3 think it's 486.

4 (Noise, static.)

5 VOICE ONE: Okay. The time is
6 now 3:00 p.m., I'm about to enter 486
7 Fulton Street, a Levitz furniture
8 store.

9 SECOND VOICE: I'm going
10 downstairs and see what they have.

11 VOICE ONE: Lower level, bed and
12 mattresses. Main floor, bed and
13 mattress. Okay.

14 (Background noise, static.)

15 VOICE ONE: Thank you. More
16 living furniture up here. They've got
17 it all mixed up.

18 (Unintelligible.)

19 VOICE ONE: Don't you just love
20 the smell of new furniture?

21 (Unintelligible.)

22 VOICE ONE: (Unintelligible.)
23 Okay. Seems like really spread out.

24 (Unintelligible.)

25 VOICE ONE: Right. Right. And

1
2 I see more beds over there.

3 (Unintelligible.)

4 VOICE ONE: Yeah. Ah, there's a
5 sign. Tempur-Pedic, straight ahead.

6 (Unintelligible.)

7 (Background voices -
8 unintelligible.)

9 VOICE ONE: All right. Somebody
10 else.

11 (Unintelligible.)

12 VOICE ONE: That's just the
13 sign.

14 SECOND VOICE: That's the sign
15 (unintelligible).

16 VOICE ONE: Yeah
17 (unintelligible).

18 MALE: (Unintelligible.)

19 VOICE ONE: (Unintelligible.)

20 MALE: That's given our old
21 (unintelligible) typically
22 (unintelligible).

23 VOICE ONE: Tempur-Pedic is up
24 here or no?

25 MALE: Tempur-Pedic is right up

1
2 here.

3 VOICE ONE: Right.

4 MALE: (Unintelligible.)

5 VOICE ONE: Oh, okay.

6 MALE: There's two over here.

7 VOICE ONE: Okay. You got it
8 all spread it, huh?

9 MALE: Yeah (unintelligible)
10 right over there?

11 SECOND VOICE: (Unintelligible.)

12 VOICE ONE: Oh, I see it. Thank
13 you.

14 (Static, background noise.)

15 VOICE ONE: We're gonna have to
16 wait for him, I guess he's the only
17 salesman. This feels so nice.

18 (Unintelligible.)

19 (Static.)

20 (Background voices.)

21 VOICE ONE: Okay.

22 (Background noise.)

23 (Music playing.)

24 (Background voices.)

25 VOICE ONE: I'm waiting for the

1
2 salesman to be free.

3 (Background noise.)

4 (Music playing.)

5 VOICE ONE: Very comfortable,
6 right?

7 SECOND VOICE: Hm?

8 VOICE ONE: Very comfortable.
9 Very, very comfortable.

10 SECOND VOICE: (Unintelligible.)

11 VOICE ONE: I'm gonna be asleep
12 by the time he you get over.

13 MALE: That's (unintelligible)
14 that I hear.

15 VOICE ONE: So what can you tell
16 me about these Tempur-Pedic
17 mattresses?

18 MALE: The Tempur-Pedic mattress
19 is very good because it gets the even
20 spaces they use. And if your child
21 bounces up and down on this side, a
22 glass of water on this side, that's
23 how firm this is.

24 VOICE ONE: Wow.

25 MALE: Right. Very comfortable

1
2 sleeping -- you sleep on this side,
3 and I'm on this side, you won't even
4 both me turning over and doing this,
5 that and the other, 'cause you get
6 comfortable on this side.

7 VOICE ONE: Okay.

8 MALE: You can be having the one
9 with the remote that brings the back
10 up and bring the bottom down,
11 that's --

12 VOICE ONE: Oh, okay.

13 MALE: -- and that's really on
14 the other side.

15 VOICE ONE: Okay.

16 MALE: Like that?

17 VOICE ONE: Uh-huh. And what do
18 they run, these --

19 MALE: What -- depends. Like
20 this queen-size right here is running
21 1899. And you want it with the
22 adjustable bed frame one, you come up
23 to 3199.

24 VOICE ONE: 3199. Okay. With
25 frame. You have any sales on it,

1
2 Labor Day sales, I mean, did I miss
3 any?

4 MALE: Well, nothing.
5 Tempur-Pedic sells itself. It -- it's
6 something that they don't normally run
7 on sale. It's like Sterns & Foster
8 mattress. They don't them on sale
9 either because they normally sell it,
10 just the comfort of it. Anything else
11 has the same kind of comfort but they
12 -- they promote them different. Those
13 things they get -- they do for
14 themselves.

15 VOICE ONE: Uh-huh. Any store
16 discounts? I mean, do you --

17 MALE: How do you mean store
18 discount?

19 VOICE ONE: You don't bring them
20 down for certain sales or anything?

21 MALE: Not really.

22 VOICE ONE: No? Hm. I'm just
23 trying -- I was hoping I could get a
24 decent, you know, some kind of sale,
25 holiday sale or something on it. They

1
2 don't come down at all, you're saying?

3 MALE: Not normally.

4 (Unintelligible) not normally. See,
5 like us, we got Serta that goes on
6 sale, we got Sealy that goes on sale.
7 But Tempur-Pedic and Sterns &
8 Foster --

9 VOICE ONE: Um-hm.

10 MALE: -- it's firm.

11 VOICE ONE: Hm. Well -- so
12 1899.

13 SECOND VOICE: You got full
14 (unintelligible), right?

15 MALE: These -- all these are
16 fulls on this whole floor, they
17 (unintelligible).

18 SECOND VOICE: Oh.

19 MALE: Queens are that size,
20 they be -- queens are six inches
21 bigger than the full. So, it's not
22 that much bigger.

23 VOICE ONE: Um. And they're
24 what -- and the price difference?

25 MALE: What?

1
2 VOICE ONE: The price
3 difference?

4 MALE: The price difference
5 between a queen and a full
6 (unintelligible) this is a full-size
7 right here, 1599.

8 VOICE ONE: Um-hm.

9 MALE: The queen-size bed is
10 1899.

11 VOICE ONE: Um-hm.

12 MALE: So you got 3- or \$400
13 difference between the queen and the
14 full, the prices on the same bed.

15 VOICE ONE: Um-hm.

16 MALE: (Unintelligible.) Here's
17 the queen-size price, the full-size
18 bed is one sale 949, here's the
19 queen-size 999. That's \$50
20 difference.

21 VOICE ONE: \$50 difference,
22 yeah.

23 MALE: They run -- depend on
24 which you may like.

25 VOICE ONE: And no sales on that

1
2 either, queen-size either?

3 MALE: This is queen-size, Sealy
4 (unintelligible).

5 VOICE ONE: But --

6 MALE: Postur-Pedic.

7 VOICE ONE: Oh, that's not
8 Tempur-Pedic?

9 MALE: No, that's not
10 Tempur-Pedic.

11 VOICE ONE: Ah-ha. So that's
12 the company policy, huh?

13 MALE: You know, it's not
14 company policy. It's the way it's
15 sold. But it may go on sale, but
16 normally Tempur-Pedic and Sterns &
17 Foster don't go on sale.

18 VOICE ONE: Hm. Anyway --

19 MALE: (Unintelligible.)

20 VOICE ONE: Um-hm.

21 MALE: (Unintelligible.)

22 VOICE ONE: Oh, okay. Okay.

23 MALE: (Unintelligible.)

24 VOICE ONE: Which one is he
25 talking about?

Oh, that one?

SECOND VOICE: Or this one here.

VOICE ONE: Yeah.

MALE: (Unintelligible.)

VOICE ONE: That looks like a --
that doesn't look like a queen.
That's a queen-size?

MALE: (Unintelligible) queen,
smaller from the same company.

VOICE ONE: Oh.

MALE: But, you know --

(Static.)

SECOND VOICE: (Unintelligible.)

VOICE ONE: This is like so
comfortable.

(Unintelligible.)

VOICE ONE: Yeah. That's right,
am I working?

(Unintelligible.)

(Conversation, unintelligible.)

VOICE ONE: He doesn't sound
like he -- that other guy was really
informative, the first one, right?

MALE: (Unintelligible.)

1
2 VOICE ONE: This one doesn't
3 sound like he really, you know -- so
4 this is Levitz.

5 (Static.)

6 VOICE ONE: Okay. Thanks.
7 We'll look around a little more.

8 MALE: Um-hm.

9 What are you looking to do?

10 VOICE ONE: Well, I wanted some
11 kind of -- I wanted some kind of, um,
12 I wanted to catch a sale. I mean, I
13 heard that some of the stores are
14 having sales on mattresses. But every
15 time I ask about Tempur-Pedic,
16 everybody seems to say that no,
17 there's no sale on it.

18 MALE: Yeah, the most
19 (unintelligible).

20 VOICE ONE: I can't believe
21 that.

22 MALE: Oh, yes. I told you,
23 there's certain things. You got
24 Cadillacs don't go on sale. Neither
25 do Lincolns. Okay. Lincolns are a

1
2 better ride than the Cadillac, but
3 they don't go on sale.

4 VOICE ONE: They don't go on
5 sale.

6 MALE: I once had a Lincoln over
7 40 years and I know how good it rides,
8 but it don't go on sale.

9 VOICE ONE: Wow.

10 MALE: See, what -- certain
11 things don't go on sale.

12 VOICE ONE: Um-hm.

13 MALE: You know. Everything
14 goes on sale, but certain things
15 don't. All right?

16 VOICE ONE: Uh --

17 MALE: And you gonna talk about
18 what Tempur-Pedic (unintelligible).
19 So, comfort.

20 VOICE ONE: Yeah. We see.

21 MALE: Yeah.

22 VOICE ONE: Um-hm. It's very
23 comfortable. All right. Well --

24 MALE: And usually, whatever
25 you like don't -- never goes on sale

1
2 anyway.

3 VOICE ONE: Yeah, that's true.

4 MALE: Just -- that's rule of
5 thumb.

6 VOICE ONE: That's -- that is
7 true.

8 MALE: Everybody look for a
9 sale, but what they like is never one
10 sale.

11 VOICE ONE: Hm.

12 MALE: What they don't like is
13 on sale.

14 VOICE ONE: Right.

15 MALE: (Unintelligible.) I like
16 those, too, but it never go on sale,
17 what I like.

18 VOICE ONE: Never goes on sale.

19 MACK: Anything I don't like is
20 on sale. And usually everything that
21 you see that you want is already sold.

22 VOICE ONE: Right.

23 MALE: If it's sold, then you
24 want it. Because that's nature.

25 VOICE ONE: That's true.

1
2 Thank you very much.

3 MALE: Let me give you my card.

4 VOICE ONE: Oh, sure.

5 MALE: And you come back see us
6 again, please.

7 VOICE ONE: Okay.

8 MALE: And it's Thompson on the
9 card.

10 VOICE ONE: Thompson. Thank
11 you.

12 MALE: Thank you, ladies.
13 Thank you very much.

14 VOICE ONE: Thank you.

15 MALE: Pleasure. Come and see us
16 again.

17 VOICE ONE: Okay.

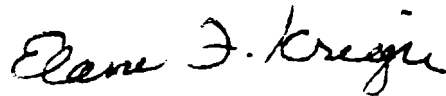
18 (Leaving store.)

19 * * *

20 (END OF AUDIO.)
21
22
23
24
25

CERTIFICATION

I, Elaine Krieger, a Notary
Public within and for the State of New
York, do hereby certify the above and
foregoing to be a true and accurate
transcript of the audio recording
presented to me, to the best of my
ability.



ELAINE KRIEGER

EXHIBIT

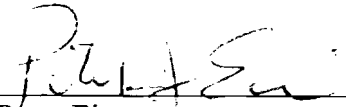
3

I, Peter Eiss being duly sworn deposes and says:

1. I am an investigator with the New York State Department of Law. I have worked on the Antitrust Bureau's investigation of Tempur-Pedic International Inc.

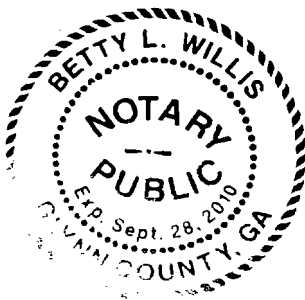
2. On September 17, 2007, I posed as a shopper at the Raymour & Flanigan Store located at 1359 Niagara Falls Boulevard, Amherst, New York; Bon Ton Department Store located at 4545 Transit Road, Williamsville, New York and Mattress Glen at 7660 Transit Road, Williamsville, New York. At each of these locations, I spoke with individuals who represented themselves as employees or agents of the particular store visited. At each store, I inquired about purchasing a Tempur-Pedic mattress and sought information about the prices of such mattresses, any discounts that may be available, and any future sales on Tempur-Pedic products. These conversations were taped and a transcript of my entire conversation with the sales representative at each location is attached hereto. I have reviewed this transcription and I attest that it is a true and accurate transcription of all conversations that took place during the retail store visits specified herein.

3. I have reviewed paragraphs 55-59 of the Affirmation of Assistant Attorney General Linda Gargiulo, dated March 24, 2010. The information set forth in those paragraphs accurately reflects the discussions that I had with sales representatives in the three stores visited.


Peter Eiss

Sworn to before me this 8th day of June 2010

Notary Public





STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

In Re: Tempur-Pedic Investigation

AUDIO TAPE TRANSCRIPT

9-17-07

1
2 INVESTIGATOR: This is
3 Investigator Peter Eiss of the New
4 York State Attorney General's office,
5 Buffalo. Today is September 17, 2007.
6 It is 2:38 p.m. I am about to enter
7 Raymour & Flanagan Furniture at 1359
8 Niagra Falls Boulevard, Amherst, New
9 York.

10 (Entering store.)

11 SALESMAN: How you doing today?

12 INVESTIGATOR: Good. How are
13 you?

14 SALESMAN: Oh, not bad.

15 INVESTIGATOR: I'm looking for a
16 mattress.

17 SALESMAN: Oh --

18 INVESTIGATOR: Actually, two
19 twins and a queen.

20 SALESMAN: Sure.

21 INVESTIGATOR: My wife's got me
22 out here and she's interested in the
23 Tempur-Pedics.

24 SALESMAN: Right.

25 INVESTIGATOR: It's supposed to

1
2 be a very good mattress.

3 SALESMAN: Yes, they are.

4 INVESTIGATOR: Is it --

5 SALESMAN: Excellent mattress.

6 Which size do you want it in?

7 INVESTIGATOR: Queen.

8 SALESMAN: Okay.

9 INVESTIGATOR: What kind of
10 prices do you have on it?

11 SALESMAN: Let me get you a guy
12 that's really good --

13 INVESTIGATOR: Okay.

14 (Background noise.)

15 SALESMAN 2: Hi. I'm Steve,
16 he's letting me help you.

17 INVESTIGATOR: Hi, Steve.

18 SALESMAN 2: How are you.

19 INVESTIGATOR: Looking for a
20 queen-size Tempur-Pedic.

21 SALESMAN 2: Queen-size?

22 INVESTIGATOR: Yeah.

23 SALESMAN 2: Okay. For you or
24 you and somebody?

25 INVESTIGATOR: My wife and

1
2 myself.

3 SALESMAN 2: Your wife and
4 yourself? Okay. We run these two
5 models for them right now. I can
6 order any of them. So we've got the
7 delux and I've got the rhapsody. The
8 rhapsody is one of the best-selling
9 models.

10 INVESTIGATOR: Okay. I don't
11 know that much about them. My wife's
12 crazy about them, though. She's seen
13 something or heard something about
14 them.

15 SALESMAN 2: A lot of people
16 like them. It's really revolutionized
17 the bedding industry. Uh, the last
18 time something revolutionized the
19 bedding industry way the coil-less
20 spring. Okay.

21 (Unintelligible.)

22 SALESMAN 2: What they are, the
23 Tempur material is -- is a generic --
24 is generically known as memory foam.
25 Okay?

1

2

INVESTIGATOR: Okay.

3

4

SALESMAN 2: That's Tempur
material.

5

INVESTIGATOR: Oh, wow.

6

7

SALESMAN 2: Okay. What it's
gonna do is actually mold to you.
Okay? So why don't you take a moment
and lay on that.

9

10

INVESTIGATOR: Sure.

11

12

13

14

15

SALESMAN 2: Put your feet up.
Just relax. Take a deep breath. And
what you're gonna do is slowly feel
this mold to you. Okay? It actually
does mold to your shape.

16

17

INVESTIGATOR: I can feel it
now. Yeah.

18

19

20

21

22

23

SALESMAN 2: Okay. So as your
body heat -- the material itself
responds to your body heat. So your
body heat will work into it and it's
-- it takes a few minutes, but it will
fit in and around --

24

25

INVESTIGATOR: Okay. If you
bounce around a lot it might -- you're

1
2 supposed to keep in one position to
3 get a good night's sleep. Okay.

4 SALESMAN 2: The material is
5 designed to absorb energy. Okay? The
6 material is pressureless. You're
7 gonna have virtually no motion
8 transferred between partners. Okay?
9 People could sleep on this, studies
10 show, you sleep deeper and longer.
11 Most people will tend to wake up in
12 the same position they fell asleep in
13 because there's no pressure. So if
14 you're a back sleeper, odds are you'll
15 wake up in the same position. If
16 you're a side sleeper, you're gonna
17 wake up on the same side. You're not
18 gonna (unintelligible) People toss
19 and turn a lot (unintelligible)
20 comfortable.

21 INVESTIGATOR: Okay.

22 SALESMAN 2: They're cutting off
23 circulation. So it's your body's
24 natural response to trying to
25 stimulate your circulation (background

1
2 voices and noise) So if you wake up
3 (unintelligible - background noise)

4 INVESTIGATOR: Okay.

5 SALESMAN 2: Okay. Your body
6 needs to toss and turn in order to get
7 circulation going. So for somebody
8 who tosses and turns a lot, they'll
9 probably settle down on a product like
10 this.

11 INVESTIGATOR: Okay.

12 SALESMAN 2: Okay. There are
13 differences between the two
14 mattresses.

15 INVESTIGATOR: Um, is the cost a
16 lot different than a normal --

17 SALESMAN 2: Yeah.

18 INVESTIGATOR: It is?

19 SALESMAN 2: Yeah. I mean, they
20 have all different price points, but
21 there's differences between all the
22 mattresses, between the price points.
23 So they have - they have a lot of
24 different models, but we stock these
25 two for immediate delivery. We're the

1
2 only stocking dealer of Tempur-Pedic.
3 I mean, you have to -- gotta get it
4 from the factory. I can literally
5 have these in the house tomorrow for
6 you. So --

7 INVESTIGATOR: What do you --

8 SALESMAN 2: We stock --

9 INVESTIGATOR: What are we
10 looking at here in price?

11 SALESMAN 2: For a Queen?

12 INVESTIGATOR: Yeah.

13 SALESMAN 2: This one is 2,599.

14 INVESTIGATOR: 2,599. And this
15 is -- which one is this?

16 SALESMAN 2: This is the delux.

17 INVESTIGATOR: Delux. Delux
18 bed. Okay.

19 SALESMAN 2: Yeah. So that's
20 mattress and foundation.

21 INVESTIGATOR: Both, yeah.
22 Okay.

23 SALESMAN 2: And this one is
24 2,999. Mattress and foundation.

25 INVESTIGATOR: Okay.

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SALESMAN 2: Okay.

INVESTIGATOR: And the
foundation is the box springs?

SALESMAN 2: It's not a box
spring.

INVESTIGATOR: Okay.

SALESMAN 2: It's a foundation.

INVESTIGATOR: Oh, all right.

SALESMAN 2: Okay?

INVESTIGATOR: Okay.

SALESMAN 2: It's a rigid
platform, okay? You don't put this on
a box spring.

INVESTIGATOR: Okay. Am I
better to wait for these to go on
sale? I know mattresses go on sale
all the time.

SALESMAN 2: Actually, this is
what we have to sell them for. This
is -- Tempur-Pedic has the most --
everybody sells them at the same
price.

INVESTIGATOR: Oh, they do?

SALESMAN 2: Yeah. They will

1
2 take away your -- the product if they
3 catch you selling it at a discount.
4 Whether you buy it on line -- no
5 matter where you buy it from, this --
6 these mattresses -- this is what these
7 mattresses are supposed to sell for.

8 INVESTIGATOR: No matter where I
9 go or who --

10 SALESMAN 2: Same price, yeah.
11 They have the same price.

12 INVESTIGATOR: Okay.

13 SALESMAN 2: There have been a
14 few retailers busted on it.

15 INVESTIGATOR: Yeah?

16 SALESMAN 2: Tempur-Pedic will
17 take it away. Okay? This is what you
18 -- this is what you sell.

19 INVESTIGATOR: Okay.

20 SALESMAN 2: Now, I got similar
21 products that are less expensive.

22 INVESTIGATOR: No, my wife
23 specifically -- she specifically --

24 SALESMAN 2: Like Sealy, over
25 there. So the Sealy product is very

1
2 similar, but less expensive.

3 INVESTIGATOR: Okay.

4 SALESMAN 2: Okay? So the
5 Tempur-Pedics --

6 INVESTIGATOR: What's the
7 difference in price with the Sealy?

8 SALESMAN 2: That one is 1,699.

9 INVESTIGATOR: Okay.

10 SALESMAN 2: And then the next
11 one is 1,299.

12 INVESTIGATOR: That's a big
13 difference for me.

14 SALESMAN 2: Right. There's
15 also a big difference in the amount of
16 material you're getting.

17 INVESTIGATOR: Oh.

18 SALESMAN 2: Okay?

19 INVESTIGATOR: Okay.

20 SALESMAN 2: That one right
21 there has five inches --

22 INVESTIGATOR: Right.

23 SALESMAN 2: -- of memory foam.
24 The one on the other side has got
25 three inches. This has got seven

1
2 inches. This has got nine inches.

3 INVESTIGATOR: Okay.

4 SALESMAN 2: Okay?

5 INVESTIGATOR: You get what you
6 pay for.

7 SALESMAN 2: Right. And the top
8 two inches of this or so, I'd have to
9 look up to be specific but it's
10 approximately two inches --

11 INVESTIGATOR: Right.

12 SALESMAN 2: Okay? All memory
13 foams comes -- all foam in general, it
14 doesn't matter what you're buying, is
15 rated with a poundage, okay? So if
16 you took a cubic foot, a cubic
17 block --

18 INVESTIGATOR: Right.

19 SALESMAN 2: -- of foam --

20 INVESTIGATOR: Right.

21 SALESMAN 2: -- and put it on a
22 scale, what that shows as a weight, is
23 how it's rated. For example, a
24 standard cushion core in a sofa --

25 INVESTIGATOR: Right.

1

2

SALESMAN 2: -- is 1.8 pounds.

3

Okay?

4

INVESTIGATOR: Right.

5

6

SALESMAN 2: So you take a cubic foot, 1.8 pounds. This right here,

7

what I showed you, what makes up seven

8

inches here, this is 5 pounds.

9

INVESTIGATOR: Big difference.

10

SALESMAN 2: Big difference.

11

You have nine inches here, the top

12

couple inches, is 7 pounds.

13

INVESTIGATOR: Wow. Okay.

14

SALESMAN 2: Okay? So it's an

15

extremely dense material. Over

16

here --

17

INVESTIGATOR: Can I ask you a

18

question? Do you sell a lot? Do

19

you --

20

SALESMAN 2: Oh, my God

21

(unintelligible) --

22

INVESTIGATOR: Pardon?

23

SALESMAN 2: People love them.

24

We just brought -- we just brought

25

Tempur-Pedic in a few weeks ago.

1
2 They're already outselling most of our
3 Stearns & Fosters.

4 INVESTIGATORS: Really?

5 SALESMAN 2: Yeah. Okay?

6 INVESTIGATORS: Why are --

7 SALESMAN 2: These over here are
8 five pounds.

9 INVESTIGATOR: Why don't you
10 give me a card and I'll have her come
11 in and -- and -- just to see the
12 difference?

13 SALESMAN 2: I mean --

14 INVESTIGATOR: I think this is
15 what she's probably gonna want, but --

16 SALESMAN 2: You want to come in
17 with her?

18 INVESTIGATOR: I'd come in with
19 her, sure.

20 SALESMAN 2: When would you like
21 to come back?

22 INVESTIGATOR: Uh, is the phone
23 number on here? I know when I could
24 come back, I'm not sure when I can get
25 her back here.

1
2 SALESMAN 2: I'm gonna put Joe's
3 name on here 'cause he greeted you.

4 INVESTIGATOR: Okay.

5 SALESMAN 2: We just work as a
6 team.

7 INVESTIGATOR: All right.

8 SALESMAN 2: Bedding manager,
9 bedding supervisor. Bedding expert.
10 Whatever you want to -- I'm very good
11 in bedding. I know the product
12 extremely well. Um, Joe said
13 something about (unintelligible)

14 INVESTIGATOR: I said I'm not
15 (unintelligible)

16 SALESMAN 2: We got some of
17 those Sealy Posturpedics that would
18 work.

19 INVESTIGATOR: We can look at
20 that, too.

21 SALESMAN 2: I know we have some
22 basic mattresses.

23 INVESTIGATOR: There's a
24 thousand dollars difference between
25 this and the Sealy?

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SALESMAN 2: Yeah.

INVESTIGATOR: And the Sealy
will go on sale, but this won't?
Okay.

SALESMAN 2: We're not supposed
to do any discounting on these. They
are very strict -- we gotta be --
'cause we're really pushing, because
we are catching other vendors, and
reporting them to Tempur-Pedic.

INVESTIGATOR: Oh, really?

SALESMAN 2: Tempur-Pedic is
cracking down on -- I mean, if you go
on line with Tempur-Pedic, you will
see these price points. Okay?

INVESTIGATOR: Okay.

SALESMAN 2: And we -- and most
vendors now are -- are really back --
sticking to it, because Tempur-Pedic
is just extremely --

INVESTIGATOR: So if you sell it
for less than this, they'll take the
product away?

SALESMAN 2: If you get caught,

1
2 yeah. They can pull the line. You
3 want to know something? We have 70
4 (intelligible) in six days.

5 INVESTIGATOR: Okay.

6 SALESMAN 2: And where you're
7 here or our showroom in Manhattan, the
8 prices are the same.

9 INVESTIGATOR: Exactly the same.
10 Okay.

11 SALESMAN 2: And it goes for
12 anything. Everything here is the same
13 price --

14 INVESTIGATOR: We've bought
15 quite a bit from -- uh, from the
16 store here, and I prefer to buy
17 here --

18 SALESMAN 2: Okay.

19 INVESTIGATOR: -- as long as the
20 price guaranteed.

21 SALESMAN 2: The price is
22 guaranteed, number one, because we do
23 have that right on our tags here.
24 It's right on our tags, that we
25 guarantee it. We give you the lowest

1
2 price guarantee. I mean, if you can
3 find it for less, that's fine.

4 INVESTIGATOR: You're telling me
5 I won't though?

6 SALESMAN 2: You won't.

7 INVESTIGATOR: Okay.

8 SALESMAN 2: Okay. But if --
9 you know, no one will be advertising
10 it for less, this form.

11 INVESTIGATOR: Right.

12 SALESMAN 2: I mean, they just
13 -- it's just -- we're very careful
14 with this product. 'Cause, I mean, we
15 can work with you on the Sealys, I can
16 work with you with these over here, I
17 can work with you on the Stearns &
18 Foster --

19 INVESTIGATOR: The twins you can
20 do a deal maybe --

21 SALESMAN 2: I can't.
22 (Unintelligible) the balance here,
23 okay? That's where we can get very,
24 very cool, okay?

25 INVESTIGATOR: But you're very

1
2 strict, any prices here --

3 SALESMAN 2: I'm -- yeah, I've
4 gotta be very careful because they --
5 I understand where Tempur-Pedic's
6 coming from.

7 INVESTIGATOR: What do they
8 want? Why are they doing this, do you
9 know?

10 SALESMAN 2: That's the
11 beautiful part. They're --

12 INVESTIGATOR: That good?

13 SALESMAN: Yeah, because you
14 want to know something? It's nice to
15 hit something you're -- there's an
16 integrity factor where this is what
17 the product sells for and this is it,
18 you know? Um, and it -- it is what it
19 is and if you go to the web site,
20 because no matter anywhere in the
21 country, this sells -- you see it's
22 the price. So if you order it on
23 line, if you order it from the
24 television ads, you know, no matter
25 where you order it from, these prices

1
2 are standardized across the board.

3 INVESTIGATOR: Okay.

4 SALESMAN 2: So if you do find
5 it for less, that's fine. Then we'll
6 honor that.

7 INVESTIGATOR: Can I just write
8 down --

9 SALESMAN 2: Yeah.

10 INVESTIGATOR: This is the delux
11 bed here?

12 SALESMAN 2: Delux.

13 INVESTIGATOR: Okay.

14 SALESMAN 2: And if you can find
15 it for less, let me know. I would be
16 -- I would report it to Tempur-Pedic.
17 Okay? This is the rhapsody.

18 INVESTIGATOR: Okay.

19 SALESMAN 2: This is one of the
20 best sellers. But they do have, like
21 12 models.

22 INVESTIGATOR: The rhapsody,
23 now, that's 20 --

24 SALESMAN 2: 2,999.

25 INVESTIGATOR: 2,999.

1
2 SALESMAN 2: And we do have
3 financing terms we can work with you
4 on if you need.

5 INVESTIGATOR: And this one
6 here?

7 SALESMAN 2: 20 -- 2,599.

8 INVESTIGATOR: 2,599.

9 SALESMAN 2: They've got models,
10 I know, as low as, I think, 1,499.

11 INVESTIGATOR: She's the one
12 that heard about this and she's the
13 one that's really --

14 SALESMAN 2: It's gonna sleep
15 differently for you. Okay? It's --
16 because it doesn't react an inner
17 spring.

18 INVESTIGATOR: Okay.

19 SALESMAN 2: Okay? It doesn't
20 have a bounce effect. You don't get
21 on it and it comes back. It's
22 designed to (inaudible). So for some
23 people it's -- there's an adjustment
24 period for sleeping on it.

25 INVESTIGATOR: What if we buy it

1
2 and she's not happy with it? We're
3 stuck with it?

4 SALESMAN 2: No, we --

5 INVESTIGATOR: No?

6 SALESMAN 2: -- we have a comfort
7 guarantee, so does Tempur-Pedic.

8 INVESTIGATOR: Okay.

9 SALESMAN 2: Tempur-Pedic has a
10 comfort guarantee, so do we.

11 INVESTIGATOR: Okay.

12 SALESMAN 2: It's not a return,
13 it's an exchange. So you can come in
14 and pick something else.

15 INVESTIGATOR: Okay.

16 SALESMAN 2: So that's not --

17 INVESTIGATOR: Fair enough.

18 SALESMAN 2: Yeah, it's not a
19 problem. Okay.

20 INVESTIGATOR: Fair enough.

21 SALESMAN 2: You can't back and
22 then buy a 699 set. It's, you know --

23 INVESTIGATOR: I understand.
24 Something comparable, right?

25 SALESMAN 2: Yeah. But, you

1
2 know, something comparable. But, you
3 know, I've got this Sealy product
4 that's a whole lot less. We actually
5 -- our initial plan was to bring these
6 in so that we were gonna push the
7 Sealy sales.

8 INVESTIGATOR: Right.

9 SALESMAN 2: But it's done the
10 direct opposite. It's pushed these
11 sales.

12 INVESTIGATOR: It's that much
13 better?

14 SALESMAN 2: Yeah. I mean, I --
15 lay on it and see the difference. You
16 know, people -- people really love the
17 Tempur-Pedic. It's been amazing. You
18 know, when it first came in, we
19 thought it would be pushing a few
20 because of the price point.

21 INVESTIGATOR: Sure.

22 SALESMAN 2: These are
23 outselling almost all -- most of our
24 -- any -- most of our models and
25 Stearns & Foster.

1
2 INVESTIGATOR: It's amazing.

3 SALESMAN 2: It -- it -- I mean,
4 we're having a hard time believing it
5 and we're retailers, okay? And we're,
6 you know -- you know, you're -- you
7 have a certain plan, and it didn't go
8 according to what they were thinking.
9 They actually thought we'd sell a few
10 of these, you know.

11 INVESTIGATOR: Just --

12 SALESMAN 2: Well, we'd sell a
13 few and nothing (inaudible) hoping it
14 would push the series. And if not,
15 these things are -- we sold intensive,
16 the first month, something like 46.

17 INVESTIGATOR: Really.

18 SALESMAN 2: Yeah.

19 INVESTIGATOR: Amazing.

20 SALESMAN 2: King. You know
21 what the king was?

22 INVESTIGATOR: No.

23 SALESMAN 2: 3,400.

24 INVESTIGATOR: Wow. She won't
25 have a king. That's a lot of money.

1
2 SALESMAN 2: It's a lot of
3 money. You know, people, as they're
4 getting up into our age group, okay,
5 we're hitting a point where are
6 mattresses are becoming more and more
7 important, okay?

8 INVESTIGATOR: Right.

9 SALESMAN 2: Okay.

10 INVESTIGATOR: Okay.

11 SALESMAN 2: That we need to,
12 you know -- I sleep on a \$2,000
13 Stearns & Foster. I get a great
14 night's sleep.

15 INVESTIGATOR: Good night's
16 sleep, right.

17 SALESMAN 2: I mean, I get a
18 really nice sleep. I need a good
19 night's sleep. I have health issues
20 that I need to contend with, and part
21 of these, I need to get a good night's
22 sleep. Because the body heals when it
23 sleeps.

24 INVESTIGATOR: It does. I've
25 heard that.

1
2 SALESMAN 2: And so I need that
3 rest so my body actually heals, you
4 know. And so a good night's sleep, a
5 good mattress will affect your sleep.
6 It determines how you sleep, it
7 determines your health, it determines
8 your productivity. It determines how
9 you treat people. So, for me, I
10 become (unintelligible) good mattress,
11 you know.

12 INVESTIGATOR: Okay.

13 SALESMAN 2: Let me just get
14 your name. When do you think --

15 INVESTIGATOR: (Unintelligible).

16 SALESMAN 2: What's your last
17 name?

18 INVESTIGATOR: Eiss, E-I-S-S.

19 SALESMAN 2: I'm sorry. One
20 more time?

21 INVESTIGATOR: E-I-S-S.

22 SALESMAN 2: And what's the
23 address? You're in (unintelligible),
24 you said?

25 INVESTIGATOR: We're in

1
2 Clarence. 6182 Shamrock Lane.

3 SALESMAN 2: Okay. I'm here
4 every -- I'm here Thursday night.

5 INVESTIGATOR: Okay.

6 SALESMAN 2: If you want to come
7 back I'll be available. I'm here
8 tomorrow 9 to 5. I'm here Thursday
9 again (unintelligible).

10 INVESTIGATOR: Okay. I'm just
11 driving by.

12 SALESMAN 2: Okay, yeah, if you
13 want to --

14 INVESTIGATOR: But --

15 SALESMAN 2: If you want to come
16 in the evening, I'm here every night
17 and Thursday to close.

18 INVESTIGATOR: More likely in
19 the evening.

20 SALESMAN 2: Okay. Just show
21 them my card when you walk in. I
22 think -- I'd have to check and see,
23 Joe is here on Friday nights. But I'm
24 the bedding training, so I'd know
25 the --

1
2 INVESTIGATOR: She'll had no idea
3 what the prices are, so when she finds
4 that out, if she still wants to come
5 back --

6 SALESMAN 2: Well, I have the
7 models I can order for her.

8 INVESTIGATOR: Okay.

9 SALESMAN 2: Okay. That are
10 starting like at around -- they have
11 some -- the classic, I think, is like
12 1,499. So let me give you brochure,
13 you can take it home.

14 INVESTIGATOR: That'd be great.

15 SALESMAN 2: Okay?

16 INVESTIGATOR: That'd be great.

17 (Background noise, loud music.)

18 SALESMAN 2: This is all the
19 models.

20 INVESTIGATOR: Okay, great.

21 SALESMAN 2: Okay. I'll put the
22 prices in here. I can get the prices
23 for you, if there's anything in here
24 that she likes, okay?

25 INVESTIGATOR: Okay.

1
2 SALESMAN 2: So that gives the
3 breakdown, the construction, there's
4 the delux and the rhapsody, that we're
5 running.

6 INVESTIGATOR: (Unintelligible).

7 SALESMAN 2: This is one of the
8 best-selling mattresses. This is
9 absolutely one of the best-selling
10 models.

11 INVESTIGATOR: Great.

12 SALESMAN 2: Okay. And we're not
13 gonna bring something that doesn't
14 sell good to run. So we're looking at
15 (unintelligible) and saying what are
16 your best models, okay? So we're
17 volume-work-oriented retailer.

18 INVESTIGATOR: Okay.

19 (Music.)

20 SALESMAN 2: Another one
21 (unintelligible) for you.

22 INVESTIGATOR: All right.
23 They'll never be on sale, right? I
24 mean, like three months from now I'll
25 come in here and they'll be \$500?

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SALESMAN 2: No.

(Background noise.)

SALESMAN 2: Hey, how are you?
Be right with you.

(Unintelligible.)

SALESMAN 2: No, just finishing
up.

But these are all the stats.

INVESTIGATOR: Okay.

SALESMAN 2: Okay. Tell her I
can order anything in here for her.
The original, the symphony, whatever
she wants, everything's in here. I'd
be more than happy to go over the
product with her. Okay
(unintelligible).

INVESTIGATOR: Right. Thank you
very much. You have a good day.

SALESMAN 2: You, too.

(Background noise. Music.)

(Leaving store.)

* * *

1
2 (New recording - no
3 introduction.)

4 MALE: Ma'am? Is there someone
5 who can help me with the mattresses?

6 I'm looking at the
7 Tempur-Pedics. My wife's got me on a
8 mission.

9 FEMALE: Okay.

10 MALE: She's heard about it, she
11 thinks it's a great mattress. You
12 know (unintelligible) and see what you
13 got.

14 FEMALE: (Static -
15 unintelligible).

16 MALE: Okay.

17 FEMALE: One's a 9-inch foam and
18 this one's 11.

19 MALE: Okay. Queen-size, we're
20 interested in.

21 FEMALE: (Unintelligible).

22 MALE: Yeah.

23 FEMALE: Queen-size is 2,299 and
24 this one here is --

25 MALE: And which model is this?

1
2 FEMALE: That's the 9-inch foam.

3 MALE: 9-inch foam.

4 FEMALE: And the queen is -- in
5 the 11-inch is 2,399.

6 MALE: 2,399. Okay. And that
7 comes with the box springs?

8 FEMALE: Yeah, um-hm. A set.

9 MALE: Okay. Right. Am I
10 better to wait for them to go on sale?

11 FEMALE: They're always at this
12 price and there's no extra discounts
13 off of them.

14 MALE: So you don't put these on
15 sale like you do the other ones?

16 FEMALE: No, they're always at
17 this price here.

18 MALE: They're never on sale?

19 FEMALE: Uh-uh.

20 MALE: You always have anything
21 one sale?

22 FEMALE: Well, it's the
23 manufacturer's request that we sell
24 them at this -- this is the everyday
25 price.

1
2 MALE: They meant to do this?

3 FEMALE: Yeah, this is the
4 agreement with the manufacturer.

5 MALE: Okay. All right.

6 FEMALE: Yeah.

7 MALE: So I buy them, I come
8 back here in a month, it's not gonna
9 be sale, is it?

10 FEMALE: It might be higher. It
11 depends. You know, if there's a price
12 increase.

13 MALE: Okay. Right. But you
14 can't give a sale price or anything
15 like -- (unintelligible).

16 FEMALE: Actually, no. We're
17 out of them. We're waiting for the
18 company to send us some more. But,
19 yeah, I'm out of them.

20 MALE: Do you sell them pretty
21 good?

22 FEMALE: We have some people
23 like how it feels, a lot of people
24 don't. You know, it depends.

25 MALE: Seems like a lot of

1
2 money, if I should buy one and not
3 like it -- am I stuck with it?

4 FEMALE: Pretty much.

5 MALE: My wife's heard about
6 them. I don't know what she actually
7 knows. They're foam, right?

8 FEMALE: They're foam, yeah.

9 MALE: Yeah.

10 FEMALE: The thing is, like I
11 said, a lot of people like how they
12 feel, some people don't. So, you
13 know, did she (unintelligible).

14 MALE: Yeah, her friends have
15 been talking about it. No, she
16 hasn't.

17 FEMALE: She should really come
18 in and lay on it, because it's a whole
19 different feel than a regular bed.

20 MALE: Right. The price of this
21 is set from the manufacturer, if I go
22 to another store shopping --

23 FEMALE: They may be. I don't
24 know. I don't know. These are the
25 prices that we're set at. And there's

1
2 no extra discounts --

3 MALE: Are there any coupons in
4 the paper?

5 FEMALE: No extra discounts.
6 No.

7 MALE: No discounts.

8 FEMALE: That's always excluded.

9 MALE: Even if I had my charge
10 card, something set up --

11 FEMALE: There is no extra
12 discount. Believe me. It states it
13 right on the coupons.

14 MALE: Okay. Okay.

15 FEMALE: Yeah.

16 MALE: And you don't have any
17 brochures then?

18 FEMALE: No. We're waiting for
19 some more to come in.

20 MALE: So I'm not gonna like
21 find this someplace else cheaper and
22 they won't be on sale here.

23 FEMALE: It won't be on sale
24 here. If you find it someplace else
25 cheaper, I can't tell you that. I

1
2 don't know.

3 MALE: Okay.

4 FEMALE: I don't know.

5 MALE: But you'll it from the
6 manufacturer, not (unintelligible).

7 FEMALE: This is what the name
8 says here on the bottom, come up with
9 the price on.

10 MALE: You won't do it, you
11 won't --

12 FEMALE: I won't.

13 MALE: Okay.

14 FEMALE: Because I could get
15 fired for doing that.

16 MALE: We don't want you to get
17 fired.

18 FEMALE: No, I kids want to eat.

19 MALE: Yeah, mine do, too.
20 Everything goes on sale. It's funny
21 those do not.

22 FEMALE: Well, you know, some
23 consistency on this is good
24 (unintelligible) bring in them in at a
25 certain price and that's what they

1
2 need to (unintelligible) you know
3 (static).

4 MALE: It's unique, that's a
5 unique product. So, yeah.

6 Do you have a business card or
7 anything here, I can call you and --
8 you look like you're busy today.

9 FEMALE: Um, I got a lot of
10 stuff going on (unintelligible)
11 yesterday.

12 MALE: So even if you had your
13 bid store sale, they won't be on sale?

14 FEMALE: You don't believe me,
15 do you? They won't be on sale.

16 MALE: Okay.

17 FEMALE: (Unintelligible) big
18 sale right now.

19 MALE: Oh, you are? I see the
20 other mattresses are all on sale.
21 That's why I --

22 FEMALE: Right.

23 MALE: Could you just give me
24 the price of the queen again, the two
25 models you have there? Or write them

1
2 down on the back of your card. Maybe
3 I can tell my wife what they are and
4 bring her up? She should actually try
5 it out very well --

6 FEMALE: She should try --

7 MALE: The queen-size. Okay.

8 FEMALE: Right.

9 MALE: And that's with the box
10 springs, it comes with that?

11 FEMALE: It's a two-piece set.

12 MALE: Okay. All right.

13 FEMALE: There you go.

14 MALE: All right. They're both
15 queen?

16 FEMALE: Yeah. She should
17 really lay on these. As I said, you
18 have to like the feel. It's a whole
19 different feel than a regular bed.

20 MALE: I know. I tried it in a
21 different store. Sealy has one just
22 close to that, right?

23 FEMALE: Sealy is the bed in
24 front of it.

25 MALE: You have any sales on the

1
2 Sealy?

3 FEMALE: It's the price that's
4 on the sign, actually.

5 MALE: Okay. I'll bring her in.

6 FEMALE: Yeah, bring her in.
7 That's your best bet. She might not
8 like it at all.

9 MALE: Be good for me.

10 (Laughter.)

11 (Leaving store.)
12
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1
2 INVESTIGATOR: This is
3 Investigator Peter Eiss of the New
4 York State Attorney General's office,
5 Buffalo. Today is September 17, 2007.
6 It is approximately 4 p.m. I'm about
7 to enter the Mattress Glen located at
8 7660 Transit Road, Williamsville, New
9 York.

10 * * *

11 SALESMAN: Hi, there.

12 INVESTIGATOR: Hiya, how you
13 doing?

14 SALESMAN: Good, thanks.

15 INVESTIGATOR: Okay. I'm on a
16 mission for my wife. She wants to look
17 at the -- I think it's the
18 Tempur-Pedic there.

19 SALESMAN: You're on a very
20 common mission.

21 INVESTIGATOR: Am I really?

22 SALESMAN: Many men are sent on
23 that mission.

24 INVESTIGATOR: Queen-size. Um,
25 what've you got, you know? Take a

1
2 look.

3 SALESMAN: (Unintelligible)
4 number one seller, the rhapsody.

5 INVESTIGATOR: Rhapsody?

6 SALESMAN: Yeah.

7 I was sent on a mission, too,
8 and that's what I came up with.

9 INVESTIGATOR: What's the -- why
10 is that number one?

11 SALESMAN: Just the comfort of
12 it. They's a great feel to it. Real
13 nice bed.

14 It starts when you press this
15 thing (noise - voices).

16 INVESTIGATOR: And classic would
17 be --

18 SALESMAN: (Unintelligible).

19 INVESTIGATOR: Okay.

20 SALESMAN: Queen-size, 1,899.
21 (Unintelligible) next sticker, 2,399.

22 INVESTIGATOR: Okay.

23 SALESMAN: The classic would do
24 everything the others will do, without
25 some of the bells and whistles.

1
2 Relieve pressure points, keep you
3 sleeping in the same spot so you don't
4 toss and turn.

5 INVESTIGATOR: Right.

6 SALESMAN: Some people just like
7 the feel of the other --

8 INVESTIGATOR: Now, the
9 rhapsody, that's how much more than
10 this one?

11 SALESMAN: That's 2,999.

12 INVESTIGATOR: That's a thousand
13 dollars more.

14 SALESMAN Yeah.

15 INVESTIGATOR: What are the
16 bells and whistles on there?

17 SALESMAN: Higher density foam.
18 The other foam is measured by its
19 weight per cubic foot.

20 INVESTIGATOR: Okay.

21 SALESMAN: This is 5-pound foam.
22 That's the 5-pound foam as well. The
23 other, the rhapsody, is 7-pound. So
24 more density, more cells per square
25 inch, more support and comfort.

1
2 INVESTIGATOR: Okay.

3 SALESMAN: (Unintelligible).

4 INVESTIGATOR: Expensive, yeah.

5 Um --

6 SALESMAN: Good stuff is.

7 INVESTIGATOR: Okay. Um, do you
8 have sales on an of them?

9 SALESMAN: They set price.
10 Manufacturer sets the price.

11 INVESTIGATOR: Manufacturer sets
12 the price.

13 SALESMAN: In fact, I just
14 ordered a bunch, these went up. They
15 went up by \$200 last Thursday or
16 Friday. Thursday. And I still -- I
17 bought some stock for the old price,
18 so --

19 INVESTIGATOR: Oh, okay.

20 SALESMAN: It's a smart buy.

21 INVESTIGATOR: So this is \$200
22 less than it's gonna be?

23 SALESMAN: Yeah, that's going
24 up. (Unintelligible) by the new
25 ones.

1
2 INVESTIGATOR: So you're still
3 selling them at this price?

4 SALESMAN: Yeah.

5 INVESTIGATOR: Okay.

6 SALESMAN: No sales.

7 INVESTIGATOR: The mattresses
8 are on sale all over the place.

9 SALESMAN: Not Tempur-Pedic.

10 INVESTIGATOR: Not Tempur-Pedic.

11 SALESMAN: (Unintelligible).

12 INVESTIGATOR: If I were to buy
13 something in here with my wife and I
14 come back here in two or three months,
15 it would be up but it wouldn't be
16 down?

17 SALESMAN: Never be down.

18 INVESTIGATOR: Okay.

19 Do you have some literature or
20 something I could take and --

21 SALESMAN: Sure. The only time
22 I've ever seen them go down is when
23 they closed out a model.

24 INVESTIGATOR: Oh.

25 SALESMAN: Then you're talking

1
2 \$100.

3 INVESTIGATOR: Oh, not
4 worthwhile --

5 SALESMAN: No. But they're not
6 closing out any -- usually the best
7 sellers.

8 INVESTIGATOR: This one here is
9 how much? This is the rhapsody.

10 SALESMAN: That's 2,999.

11 INVESTIGATOR: 2,999. Okay.

12 SALESMAN: (Unintelligible).

13 INVESTIGATOR: Why don't you
14 give me a brochure with the prices,
15 this and the one you recommended
16 there?

17 SALESMAN: I -- I --

18 INVESTIGATOR: It's a different
19 type of a mattress, right? I'm just
20 wondering if she doesn't like it, what
21 happens then?

22 SALESMAN: We have a full free
23 months, if you don't like it we'll buy
24 it back from you.

25 INVESTIGATOR: Do you know --

1
2 SALESMAN: You know, a place,
3 they give you a credit. We give you
4 your money back. The only place
5 that'll do that.

6 INVESTIGATOR: Okay.

7 SALESMAN: (Unintelligible) for
8 you. You don't want the one that's
9 6,399?

10 (Laughter.)

11 (Unintelligible)

12 INVESTIGATOR: (Unintelligible)
13 like a big guy, huh?

14 SALESMAN: No. Uh, no.

15 INVESTIGATOR: Does it make any
16 difference how big the -- no, no.
17 (Unintelligible).

18 SALESMAN: We had one customer
19 over 500 pounds (unintelligible).

20 INVESTIGATOR: Really?

21 SALESMAN: Okay.

22 INVESTIGATOR: Do you have any
23 like knock-offs that you sell?

24 SALESMAN: Tons of them.

25 INVESTIGATOR: Tons?

1
2 SALESMAN: Tons of them. Don't
3 make that mistake.

4 INVESTIGATOR: It's a mistake,
5 huh?

6 SALESMAN: (Unintelligible)

7 INVESTIGATOR: Great, the
8 queens, huh?

9 SALESMAN: Yeah.

10 INVESTIGATOR: Okay. Sounds
11 good. This is good though. She can
12 try it out and it's not her cup of
13 tea --

14 SALESMAN: That's why you do
15 business with us.

16 INVESTIGATOR: And the price
17 will be the same no matter where I go?

18 SALESMAN: No matter. It can be
19 higher, but this the lowest price
20 allowed. So they can sell them for
21 more.

22 INVESTIGATOR: Oh, is that right?
23 They just put a base on how --

24 SALESMAN: Can't sell them for
25 less.

1
2 INVESTIGATOR: Less than that
3 price.

4 SALESMAN: Nobody will beat our
5 price.

6 INVESTIGATOR: All right. Thank
7 you very much.

8 SALESMAN: You're on a mission.

9 INVESTIGATOR: Yeah, yeah. I
10 think this mission ends here, because
11 I've looked around and the prices are
12 the same, but you're stuck with it.
13 So (unintelligible) different --

14 SALESMAN: Your first month it's
15 an adjustment. It's a big adjustment.
16 But after that --

17 INVESTIGATOR: She bounces
18 around all night and --

19 Salesman: Women are very
20 difficult sleepers.

21 INVESTIGATOR: This night keep
22 her in one spot. But if she does
23 bounce around, I may not --

24 SALESMAN: You won't feel it.

25 INVESTIGATOR: All righty.

1
2 Thank you.

3 SALESMAN: Thank you, sir.

4 Enjoy the sunshine.

5 INVESTIGATOR: I'll try.

6
7 (END OF TAPE)

8
9
10
11 C E R T I F I C A T I O N

12
13
14 I, Elaine Krieger, a notary
15 public within and for the State of New
16 York, hereby certify the above and
17 foregoing to be an accurate transcript
18 of the audio tape presented to me, to
19 the best of my ability.

20 *Elaine J. Krieger*
21 -----

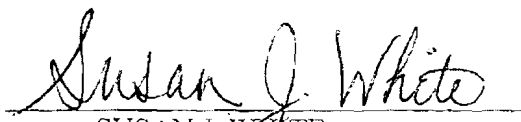
22 Elaine Krieger
23
24
25

EXHIBIT

4

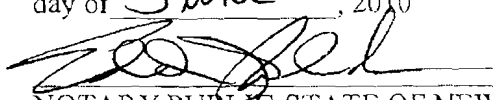
I, Susan J. White, being duly sworn, deposes and says:

1. I am an investigator with the New York State Department of Law. I have worked on the Antitrust Bureau's investigation of Tempur-Pedic International Inc.
2. On October 4, 2007, I posed as a shopper at the New York Mattress Factory located at 1529 Central Avenue, Albany, New York, and at Mooradian's Furniture Store located at 800 Central Avenue, Albany, New York. On October 11, 2007 I posed as a shopper at Boscov's Department Store in Clifton Park, New York. At each of these locations, I spoke with individuals who represented themselves as employees or agents of the store visited. At each store, I inquired about purchasing a Tempur-Pedic mattress and sought information about the prices of such mattresses, any discounts that may be available, and any future sales on Tempur-Pedic products. These conversations were taped and a transcript of my entire conversations with sales representatives at each location is attached hereto. I have reviewed these transcriptions and I attest that they are true and accurate transcriptions of all conversations that took place during the retail store visits specified herein.
3. I have reviewed paragraphs 60-63 of the Affirmation of Assistant Attorney General Linda Gargiulo, dated March 24, 2010. The information set forth in those paragraphs accurately reflects the discussions that I had with sales representatives in the three stores visited.


SUSAN J. WHITE

Sworn to before me this 7th

day of June, 2010



NOTARY PUBLIC-STATE OF NEW YORK

EDWARD J. CONLAN, JR.
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CO6003482
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES MARCH 9, 2014

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

In Re: Tempur-Pedic Investigation

No. IEN-07-028

AUDIO TAPE TRANSCRIPT

MOORADIAN'S, INC.

10-4-07

1
2 SUSAN WHITE: This is
3 Investigator Susan White. Today is
4 October 4, 2007. I am on undercover
5 assignment, case number IEN-07-028,
6 Tempur-Pedic Mattress. I am going to
7 enter the Mooradian's Furniture Store,
8 800 Central Avenue, Albany, New York.
9 It is 1:47 and I am entering
10 Mooradian's Furniture Store.

11 (Traffic noise.)

12 SALESPERSON: Hello.

13 SUSAN WHITE: Hi.

14 SALESPERSON: How are you?

15 SUSAN WHITE: Good. How are
16 you?

17 SALESPERSON: Not bad. Have you
18 anything in particular --

19 SUSAN WHITE: Mattresses.

20 SALESPERSON: Sure. You see the
21 Tempur-Pedics here?

22 SUSAN WHITE: Yes, that's what
23 (unintelligible) I see the sign on
24 your front door.

25 SALESPERSON: Do you want

1 something a little firmer or softer.

2 SUSAN WHITE: Um, actually in
3 the middle.

4 SALESPERSON: Okay.

5 SUSAN WHITE: It's way back
6 here, huh?

7 SALESPERSON: Sorry.

8 (Noise.)

9 SALESPERSON: (Unintelligible)
10 lay down on it. Don't worry about it.

11 SUSAN WHITE: Okay.

12 SALESPERSON: (Mumbling)
13 (laughter).

14 SUSAN WHITE: That's the firm?
15 I couldn't -- uh --

16 SALESPERSON: This happens to be
17 the firmest one.

18 SUSAN WHITE: Oh, over there?
19 Okay.

20 SALESPERSON: That one
21 (unintelligible).

22 SUSAN WHITE: Okay. That's the
23 firm?

24 SALESPERSON: (Unintelligible)
25

1
2 that surrounds you, has just a little
3 more memory foam in it. Probably just
4 a little bit softer than this one.

5 SUSAN WHITE: Okay.

6 SALESPERSON: I would definitely
7 say firm. One of these is, you know
8 (unintelligible).

9 SUSAN WHITE: Okay. Now, are
10 they -- are they on sale, did you say?

11 SALESPERSON: The Tempur-Pedics,
12 they are what they call
13 price-protected. So Tempur-Pedic says
14 you have to sell them at this price,
15 not below it. A lot of people jack
16 them up and then lower them down to
17 the retail, the lowest retail -- we
18 sell the lowest --

19 SUSAN WHITE: Oh.

20 SALESPERSON: We just sell them
21 at the lowest retail already. A lot
22 of companies -- like this one here,
23 the queen is 1,899. A lot of
24 companies say 2,499 and they'll sell
25 it to you for 1,999. (Unintelligible)

1
2 here is on sale. Everything else is,
3 the Tempur-Pedic -- we're not allowed
4 to sell it below this.

5 SUSAN WHITE: What would happen
6 if you did?

7 SALESPERSON: They might pull
8 our license.

9 (Unintelligible.)

10 SUSAN WHITE: So all the stores
11 have the same price and --

12 SALESPERSON: Um, all the stores
13 can't sell it below this price.

14 SUSAN WHITE: Okay.

15 SALESPERSON: Most stores don't
16 advertise it at that price. Most of
17 them try to (unintelligible) it and
18 say okay, we'll give you a sale price.

19 SUSAN WHITE: Okay.

20 SALESPERSON: It will never be
21 lower than that. Okay? And we'll
22 give you two free neck pillows.

23 SUSAN WHITE: Two free neck
24 pillows?

25 SALESPERSON: Um-hm.

1
2 SUSAN WHITE: Okay. On-line,
3 sir, are they the same price?

4 SALESPERSON: Um-hm.

5 SUSAN WHITE: So
6 (unintelligible) directly or --
7 (unintelligible).

8 SALESPERSON: On-line, I think
9 -- I believe they charge 199 to
10 deliver. But we don't -- we deliver
11 it local.

12 SUSAN WHITE: So delivery is
13 (unintelligible) okay.

14 (Noise.)

15 SUSAN WHITE: And if you can
16 give me a card and --

17 SALESPERSON: Um-hm.

18 SUSAN WHITE: -- I'll have to
19 talk it over with my husband see.

20 SALESPERSON: (Unintelligible)
21 right up on it. Don't worry about it.
22 You can tell by sitting on it.

23 SUSAN WHITE: And you pay the
24 same thing?

25 SALESPERSON: I'll throw in the

1
2 neck pillows. These are
3 (unintelligible).

4 SUSAN WHITE: Okay.

5 SALESPERSON: Listen
6 (unintelligible) step away from it
7 (unintelligible).

8 (Noise)

9 (Background music)

10 SUSAN WHITE: (Unintelligible)

11 SALESPERSON: (Unintelligible)
12 they get no special (unintelligible)
13 the way the (unintelligible).

14 SUSAN WHITE: (Unintelligible)
15 All right, well, thank you very much.

16 SALESPERSON: Okay. You're very
17 welcome.

18 (Background music)

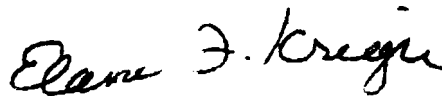
19 (Noise)

20 * * * *

21 SUSAN WHITE: It is now 1:55 and
22 I am ending the tape.
23
24
25

C E R T I F I C A T I O N

I, Elaine Krieger, a notary
public within and for the State of New
York, hereby certify the above and
foregoing to be an accurate transcript
of the audio tape presented to me, to
the best of my ability.



Elaine Krieger

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

In Re: Tempur-Pedic Investigation

No. IEN-07-028

AUDIO TAPE TRANSCRIPT
NEW YORK MATTRESS FACTORY
10-4-07

1
2 SUSAN WHITE: This is
3 investigator Susan White. Today is
4 October 4, 2007. I am on an
5 undercover assignment, case number
6 IEN-07-028, Tempur-Pedic mattress. I
7 am going into the New York Mattress
8 Factory at 1529 Central Avenue,
9 Albany, New York.

10 The time is now 12:38 p.m. and I
11 am entering the New York Mattress
12 Factory.

13 * * *

14 (Noise.)

15 (No audible conversation.)

16 (Conversation unintelligible.)

17 (Noise.)

18 SALESPERSON: (Unintelligible)
19 and then we have comfort coils, then
20 we have like (unintelligible).

21 SUSAN WHITE: (Unintelligible).

22 SALESPERSON: Uh, all the coils
23 are individually wrapped so they're
24 not all tied together so you don't
25 (unintelligible). It's just a feel,

1
2 depends on what you like.

3 (Unintelligible) on the comfort coils,
4 there's two of them (unintelligible)
5 the memory foam. Uh, it's -- it's --
6 the memory foam usually
7 (unintelligible) without any need for
8 (unintelligible) so that
9 (unintelligible) works better than
10 (unintelligible). Um, we also have
11 the ultra (unintelligible) which is
12 the one -- one of the comfort coils
13 (unintelligible) sells for 2,299.

14 (Noise.)

15 SALESPERSON: (Unintelligible)
16 possibly about 2:00 (unintelligible)

17 (Noise.)

18 SALESPERSON: (Unintelligible)
19 you know, if you would
20 (unintelligible)

21 (Noise.)

22 (Completely unintelligible
23 voice.)

24 SALESPERSON: Um, this one
25 (unintelligible) added so much here,

1
2 from the box spring (unintelligible),
3 and so (unintelligible). That one
4 (unintelligible) 1,600.

5 (Noise.)

6 SUSAN WHITE: That one?

7 SALESPERSON: Hold on one
8 second.

9 SUSAN WHITE: Is there anybody
10 else here that could help me?

11 SALESPERSON: No, it's just me
12 right now (unintelligible) that
13 direction.

14 SUSAN WHITE: Well, I see that
15 now, but I just have some questions.

16 SALESPERSON: Oh, okay. Um,
17 (unintelligible).

18 SUSAN WHITE: Okay.

19 SALESPERSON: (Unintelligible)
20 Right. (Unintelligible). Yeah. Yes.
21 Well, you might need -- you might need
22 (unintelligible). You might need a
23 (unintelligible). Uh, you know, when
24 you shop the street, you're supposed
25 to (unintelligible) they give you an

1
2 (unintelligible).

3 (Noise.)

4 (Unintelligible voices.)

5 SALESPERSON: What are you
6 interested in?

7 SUSAN WHITE: Uh, I was
8 interested in a Tempur-Pedic mattress.

9 SALESPERSON: (Unintelligible)
10 see a model or just (unintelligible).

11 SUSAN WHITE: Well, I heard
12 advertisements on the radio and I got
13 this ad in Sunday's paper. And I did
14 look on-line a little bit. So, uh --

15 SALESPERSON: These are the five
16 models we carry.

17 SUSAN WHITE: Okay.

18 SALESPERSON: Um,
19 (unintelligible) giving you a little
20 moore foam, as you walk through
21 (unintelligible) a little bit better
22 as you go up the line. Um, it really
23 comes down to comfort
24 (unintelligible). They all have the
25 foam in them (unintelligible) foam.

1
2 Tempur-Pedic has the highest quality
3 memory foam in the industry. But, uh,
4 you have a preference? Do you want
5 firm or soft?

6 SUSAN WHITE: Um, probably right
7 in between, so, you know -- I don't
8 like soft --

9 SALESPERSON: Um, did you try
10 this one out?

11 SUSAN WHITE: Uh. I sat a little
12 bit on it.

13 SALESPERSON: Um, this one is
14 (unintelligible) little softer, like
15 the one on the, um, the classic. I
16 think this is the original one they
17 came out with, and then they
18 (unintelligible) about 15 years ago.
19 And now there's a new original, these
20 are all the (unintelligible).

21 SUSAN WHITE: Um-hm.

22 SALESPERSON: Have you slept on
23 a (unintelligible) before?

24 SUSAN WHITE: Actually, yeah,
25 one time when I was away. Now, what

1
2 about, uh, the price? Are they -- is
3 this the price that's listed or --

4 SALESPERSON: (Unintelligible).

5 SUSAN WHITE: -- discounted at
6 all or on sale at all?

7 SALESPERSON: It's actually a
8 fixed pricing system. So -- do you
9 know what size you're looking for?

10 SUSAN WHITE: Queen.

11 SALESPERSON: Queen?

12 SUSAN WHITE: Queen size.

13 SALESPERSON: The regular queen
14 set would be 1,999 for this model.
15 And that's would be the mattress and
16 box, and we throw in a free frame, we
17 could throw in two free pillows, which
18 are usually \$150 each. But
19 Tempur-Pedic has a fixed pricing
20 system, so no matter where you go,
21 it's exactly the same price and
22 there's never any sales on them.

23 SUSAN WHITE: There's never any
24 sales?

25 SALESPERSON: No. They never

1
2 have sales. They're the same no
3 matter where you go.

4 SUSAN WHITE: Oh.

5 SALESPERSON: Kind of like --
6 there's certain car dealers -- car
7 companies that (unintelligible) you
8 know, the base number and then
9 whatever else you want to add to it,
10 goes up from there.

11 SUSAN WHITE: So there's never a
12 sale, never a discount, even at
13 another store?

14 SALESPERSON: No, they don't --
15 they don't allow us to.

16 SUSAN WHITE: They don't allow
17 you go?

18 SALESPERSON: No, unless the
19 store wants to risk losing -- losing
20 their -- dealing with Tempur-Pedic --

21 SUSAN WHITE: Oh. Okay. What
22 about on-line, are they the same price
23 on-line?

24 SALESPERSON: Same price, that's
25 not (unintelligible) something else

1
2 they get, but yeah, on-line it would
3 be the same. (Unintelligible) you can
4 look up any Tempur-Pedic. Look up any
5 Tempur-Pedic web site, and they should
6 have all the same thing.

7 SUSAN WHITE: Oh. Okay. I just
8 wondered. I know you guys take the
9 lowest possible prices, so whatever
10 you're selling, if I went to another
11 store, it would be the same?

12 SALESPERSON: Yeah, it should
13 be, but -- unless -- unless they're
14 selling them under, they should be.

15 SUSAN WHITE: What would happen
16 if you sold them --

17 SALESPERSON: Uh, well, they
18 probably wouldn't -- everybody's
19 keeping everybody else honest, so
20 usually if we were to drop the price,
21 we would have (unintelligible) in a
22 couple days. But, uh --

23 SUSAN WHITE: They would do
24 what?

25 SALESPERSON: Probably call

1
2 Tempur-Pedic on us.

3 SUSAN WHITE: Oh, okay.

4 SALESPERSON: Since we're not
5 allowed to go down and somebody else
6 does have down and (unintelligible)
7 want to take a gamble.

8 SUSAN WHITE: Right. So it's a
9 written policy to you, that --

10 SALESPERSON: Yes. It's a fixed
11 price and we're not allowed to
12 (unintelligible) the prices.

13 SUSAN WHITE: Um-hm. All right.
14 Okay. So let's get this paperwork and
15 --

16 SALESPERSON: There's two beds
17 that we don't have here in there store
18 but we can order, if you like them,
19 you know.

20 SUSAN WHITE: Okay. Do you have
21 a business card or anything that --

22 (Noise.)

23 SALESPERSON: (Unintelligible)
24 up here in the north, so you can call
25 any other stores, if you'd like to.

1
2 SUSAN WHITE: So if a customer
3 calls in after, they would tell us the
4 same,
5 no --

6 SALESPERSON: Yes, they should.

7 SUSAN WHITE: Okay. Okay.
8 Well, thank you very much.

9 SALESPERSON: You're welcome.

10 SUSAN WHITE: Bye-bye. I'm
11 sorry. I didn't get your name.

12 SALESPERSON: My name is Tom.

13 SUSAN WHITE: Tom? Okay.
14 Thanks, Tom.

15 * * *

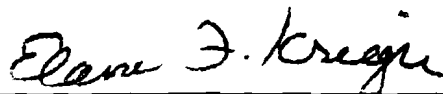
16 SUSAN WHITE: It is 5:00 p.m. and I am
17 ending this recording at New York
18 Mattress Factory.

19 (End of tape.)

20 * * *

C E R T I F I C A T I O N

I, Elaine Krieger, a notary
public within and for the State of New
York, hereby certify the above and
foregoing to be an accurate transcript
of the audio tape presented to me, to
the best of my ability.



Elaine Krieger

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

In Re: Tempur-Pedic Investigation

No. IEN-07-028

AUDIO TAPE TRANSCRIPT

BOSCOV'S

10-11-07

1
2 SUSAN WHITE: Today is October
3 11, 2007. This is Investigator Susan
4 White. This recording is being made
5 for Tempur-Pedic case number
6 IEN-07-028. I will be going into the
7 Boscov's Department Store in Crescent
8 Park, New York.

9 (Pause.)

10 SW: It is 4:15 and I am
11 entering the Boscov's Department
12 Store.

13 (Noise.)

14 (Static.)

15 (Unintelligible voices.)

16 (Noise.)

17 (Unintelligible voices.)

18 (Sounds on PA system.)

19 (Noise.)

20 (Unintelligible voices.)

21 SW: Can you help me with some
22 mattresses, please?

23 SP: Why, sure.

24 SW: I'm okay.

25 SP: Yup. (Unintelligible).

1

2

SW: Tempur-Pedic.

3

4

SP: Have you laid on one
before?

5

6

SW: Yeah, I have. And I
(unintelligible).

7

(Laughter.)

8

9

SP: This one (unintelligible)
another style, so you can get a

10

(unintelligible).

11

(Unintelligible).

12

SP: Were you here

13

(unintelligible) before or how --

14

15

SW: Uh, I looked at them in
another store. I just -- um -- like a

16

clearance model. That wasn't --

17

um --

18

(Unintelligible).

19

SW: Are they on sale at all?

20

21

SP: They're not -- Tempur-Pedic
will not allow for sales. And at one

22

point they allowed us to give two

23

pillows with a mattress away. That

24

stopped and -- they put a stop to it.

25

So now, um, we're offering a

1
2 three-year payment plan with no
3 interest. You just make your minimum
4 payment but you have three years to
5 pay it off. And that's all we can
6 offer other than the wonderful
7 (unintelligible)

8 (Voices talking over each
9 other.)

10 (Unintelligible.)

11 SP: Now it's all on the
12 (unintelligible.)

13 (Voices talking over each
14 other.)

15 SP: So I'll (unintelligible)
16 this memory foam in the mattress,
17 which it just doesn't feel the same.
18 I know -- I mean, we have all foam
19 mattresses with Visco in them, but
20 they just don't feel the same. So I
21 guess that's pretty much what you're
22 paying for (unintelligible). That may
23 be a good thing if you
24 (unintelligible) sell on the open
25 market (laughter) black market

1
2 (laughter). But, um --

3 SW: I guess I'll bring my
4 husband in and we'll (unintelligible)
5 be sure --

6 SP: When you (unintelligible),
7 you need to lay on a mattress for at
8 least 15 minutes.

9 SW: Oh, really?

10 SP: In order -- like if you're
11 a side sleeper, lay on the side, you
12 know, just so you know how it's gonna
13 feel after about 15 minutes, and if
14 you're so uncomfortable on it, then
15 (unintelligible).

16 SW: No.

17 SP: And I actually saw it work
18 for a customer who was about to buy a
19 mattress and they were
20 (unintelligible) one --

21 SW: Right.

22 SP: -- and he (unintelligible)
23 after laying on it for about 12
24 minutes (unintelligible).

25 (Voices talking over each

1
2 other.)

3 SP: It does work --

4 SW: Okay.

5 SP: (Unintelligible) at least
6 in her case (unintelligible).

7 (Noise.)

8 SW: Okay.

9 SP: At least it made me feel
10 good that, you know, that
11 (unintelligible).

12 SW: Okay.

13 SP: She was (unintelligible).

14 (Noise.)

15 SP: They're gonna tell you why
16 they call it (unintelligible).

17 SW: Right.

18 SP: So if I get some customer
19 that's (unintelligible).

20 (Noise.)

21 SP: (Unintelligible) and I'll
22 give you my card.

23 SW: Yes, give me your card.

24 What's your name?

25 SP: I'm Robin.

1
2 SW: Hi, Robin. Nice to meet
3 you.

4 SP: Um, this one could have a
5 different feel. Did you lay on all
6 three or did you already like narrow
7 it down at the other store or --

8 SW: No, I (unintelligible).

9 (Noise.)

10 SW: (Unintelligible) not really
11 sure.

12 SP: This one is right in the
13 middle.

14 SW: Is it? Okay.

15 SP: Yes. You might want to try
16 this (unintelligible). This comes in
17 -- what happens is, the more layers
18 it's called (unintelligible) inch
19 thick.

20 SW: Oh.

21 SP: The fact, this one, if you
22 sink deeper into the bed, I don't know
23 how your husband, if he's a bigger
24 guy, but he's gonna be deeper in the
25 bed. You might want to go with

1
2 another layer of (unintelligible)
3 foam.

4 SW: Okay.

5 SP: Okay. So that's the same
6 (unintelligible) price. You're gonna
7 go from an A bed down to
8 (unintelligible) and one inch of Visco
9 foam on a queen-size, on 60 by 80,
10 increases the price by \$600.

11 SW: Okay.

12 SP: You know, so - one pillow
13 is \$135. So that's about -- so, you
14 know -- so it does (unintelligible) so
15 you really want to lay on all of them,
16 because if you like this one
17 (unintelligible) so (unintelligible)
18 but you should lay on it, too.
19 Because you might -- it's gonna feel
20 different for you on it.

21 SW: Right.

22 SP: But, um -- so I would
23 recommend, give yourself a good hour
24 to try them out, okay? 'Cause you
25 don't want to just take any --

1

2

SW: No. No.

3

SP: I'm gonna give you my card,

4

okay?

5

SW: Okay.

6

SP: One second.

7

(Noise.)

8

(Unintelligible background

9

voices.)

10

(Static.)

11

SW: Yes, everything. That'll

12

work.

13

SP: And we do have free

14

delivery, free removal and

15

(unintelligible.)

16

(Noise.)

17

SP: And if you open a charge

18

you'll save a hundred dollars.

19

SW: (Unintelligible.)

20

SP: Well, does your husband?

21

SW: So, (unintelligible) when

22

you open it (unintelligible).

23

SW: No, actually I think we

24

have two separate ones.

25

SP: (Unintelligible.)

1

2

(Noise.)

3

SW: That's right.

4

5

SP: Okay. So you're gonna take
the (unintelligible) this here, and

6

then this (unintelligible) this is

7

your original, this is the classic,

8

which is this one.

9

SW: Okay. Was the one

10

(unintelligible).

11

SP: I slept on this one

12

(unintelligible) I was amazed at how

13

(unintelligible).

14

(Noise.)

15

(Background music.)

16

(Unintelligible voices.)

17

(Noise.)

18

SP: But don't dress up so much

19

when you (unintelligible).

20

SW: Okay. Thank you. Thanks

21

for your time.

22

SP: You're very welcome. I'll

23

be here (unintelligible) when you come

24

in.

25

SW: Okay. All right. Thank

1
2 you.

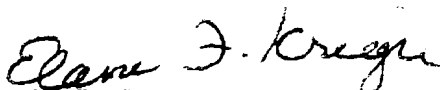
3 (Noise.)

4 SW: It's 4:30 and I'm ending
5 this tape recording.

6 (END OF TAPE.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Elaine Krieger, a notary
public within and for the State of New
York, hereby certify the above and
foregoing to be an accurate transcript
of the audio tape presented to me, to
the best of my ability.



Elaine Krieger