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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**META PLATFORMS, INC., et al.,**

Defendants.

Case No. 5:22-cv-04325-EJD

**STIPULATION AND [PROPOSED]  
ORDER TO AMEND COMPLAINT**

1 Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff Federal Trade Commission  
2 (“FTC”), and Defendants Meta Platforms, Inc. and Within Unlimited, Inc. (collectively,  
3 “Defendants”) through their undersigned counsel, hereby stipulate as follows:

4 WHEREAS, on July 27, 2022, the FTC filed a Complaint for a Temporary Restraining  
5 Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission  
6 Act (the “Complaint”) concerning the proposed acquisition of Within Unlimited, Inc. by Meta  
7 Platforms, Inc. (the “Proposed Transaction”), and on August 26, 2022, Defendants each  
8 answered the Complaint (the “Answers”);

9 WHEREAS, on August 4, 2022, the parties filed a Joint Stipulation and Proposed Order  
10 whereby Defendants agreed, *inter alia*, not to close or consummate the Proposed Transaction  
11 until after 11:59 PM Eastern Time on December 31, 2022, or until the first (1st) business day  
12 after the District Court rules on the FTC’s request for a preliminary injunction pursuant to  
13 Section 13(b) of the Federal Trade Commission Act, whichever occurs earlier in time;

14 WHEREAS, on August 5, 2022, the Court granted the parties’ Joint Stipulation and  
15 Proposed Order of August 4, 2022;

16 WHEREAS, on August 11, 2022, the FTC issued an administrative complaint regarding  
17 the Proposed Transaction;

18 WHEREAS, on August 23, 2022, the parties filed a Joint Stipulation of Dismissal of  
19 Mark Zuckerberg, whereby, *inter alia*, the FTC agreed voluntarily to dismiss the claims it had  
20 asserted against Mark Zuckerberg in the above-captioned case pursuant to Rule 41(a)(1)(A)(ii) of  
21 the Federal Rules of Civil Procedure, without prejudice;

22 WHEREAS, Plaintiff desires to amend the Complaint to (1) remove allegations  
23 concerning the VR Fitness App market, including any anticompetitive effects in that market  
24 should the Proposed Transaction occur; (2) remove Mark Zuckerberg as a named defendant,  
25 pursuant to the parties’ Joint Stipulation of August 23, 2022; and (3) conform the Complaint to  
26 the present procedural posture—specifically, that the FTC no longer seeks an emergency  
27 temporary restraining order and has filed a complaint in the administrative court;

1 WHEREAS, the stipulated amendment will not alter the date of any event or any deadline  
2 already fixed by Court order;

3 IT IS HEREBY STIPULATED AND AGREED by the parties, through their counsel, that  
4 pursuant to Federal Rule of Civil Procedure 15(a)(2), the FTC may file an Amended Complaint,  
5 a copy of which is attached hereto;

6 IT IS FURTHER STIPULATED that Defendants waive notice and service of the  
7 Amended Complaint. Defendants reserve their right to file a responsive pleading, including a  
8 motion to dismiss the Amended Complaint, but they shall not be required to answer the  
9 Amended Complaint and all denials, responses and affirmative defenses contained in  
10 Defendants' Answers to the Complaint shall be deemed responsive to the Amended Complaint.  
11

12 Dated: October 7, 2022

13 By: /s/ Abby L. Dennis

14 Abby L. Dennis  
15 Peggy Bayer Femenella  
16 Joshua Goodman  
17 Jeanine Balbach  
18 Michael Barnett  
19 E. Eric Elmore  
20 Justin Epner  
21 Sean D. Hughto  
22 Frances Anne Johnson  
23 Andrew Lowdon  
24 Lincoln Mayer  
25 Erika Meyers  
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27 Adam Pergament  
28 Kristian Rogers  
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Counsel for Defendant Within Unlimited, Inc.

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED, this \_\_\_\_\_ day of**

23 \_\_\_\_\_, 20\_\_\_\_.

25 \_\_\_\_\_  
26 Honorable Edward J. Davila  
27 United States District Judge  
28 Northern District of California

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**FILER'S ATTESTATION**

I, Abby L. Dennis, am the ECF User whose ID and password are being used to file this JOINT STIPULATION AND [PROPOSED] ORDER TO AMEND COMPLAINT. In compliance with Civil Local Rule 5-1(h), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Abby L. Dennis

Abby L. Dennis

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 2 Joshua Goodman, NY Bar (No Number)  
 Jeanine Balbach, MD Bar (No Number)  
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 4 Justin Epner, DC Bar No. 1028431  
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16 Attorneys for Plaintiff Federal Trade Commission

17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**  
 19 **SAN JOSE DIVISION**

20 **FEDERAL TRADE COMMISSION,**

21 Plaintiff,

22 v.

23 **META PLATFORMS, INC., et al.,**

24 Defendants.

25 Case No. 5:22-cv-04325-EJD

26 **AMENDED COMPLAINT FOR A**  
**PRELIMINARY INJUNCTION**  
**PURSUANT TO SECTION 13(B) OF THE**  
**FEDERAL TRADE COMMISSION ACT**

27 **REDACTED VERSION OF DOCUMENT**  
**SOUGHT TO BE SEALED**

1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated  
2 attorneys, petitions this Court for a preliminary injunction enjoining Defendants Meta  
3 Platforms, Inc., and its subsidiaries (collectively “Meta”) from consummating its proposed  
4 acquisition (the “Acquisition”) of Within Unlimited, Inc. (“Within”). The Commission seeks  
5 this relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15  
6 U.S.C. § 53(b). Absent such relief, Meta and Within (collectively, “Defendants”) have  
7 represented that they would be free to consummate the Acquisition after 11:59 p.m. Eastern  
8 Time (or 8:59 p.m. Pacific Time) on December 31, 2022.

9 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever  
10 it has reason to believe that a proposed merger is unlawful, to seek preliminary injunctive relief  
11 to prevent consummation of a merger until the Commission has had an opportunity to  
12 adjudicate the merger’s legality in an administrative proceeding. Preliminary injunctive relief is  
13 imperative to preserve the *status quo* and to protect competition while the Commission  
14 adjudicates whether the Acquisition is unlawful. The Commission initiated the administrative  
15 proceeding on the legality of the Acquisition under antitrust law, pursuant to Sections 7 and 11  
16 of the Clayton Act, 15 U.S.C. §§ 18, 21, and Section 5 of the FTC Act, 15 U.S.C. § 45, by filing  
17 an administrative complaint on August 11, 2022. Pursuant to FTC regulations, the  
18 administrative trial will begin on January 19, 2023. Allowing the Acquisition to proceed would  
19 harm competition and consumers and undermine the Commission’s ability to remedy the  
20 anticompetitive effects of the Acquisition if the Commission issues an administrative complaint  
21 and the Acquisition is found unlawful after a full administrative trial on the merits and any  
22 subsequent appeals.

### 23 **NATURE OF THE CASE**

24 1. Meta, one of the largest technology companies in the world and the leading  
25 provider of virtual reality (“VR”) devices and applications (“apps”) in the United States, seeks  
26 to acquire Within, a software company that develops apps for VR devices, including the highly  
27 popular and rapidly growing fitness app “Supernatural.” If consummated, the Acquisition would

1 substantially lessen competition, or tend to create a monopoly, in the relevant market for VR  
2 dedicated fitness apps. That lessening of rivalry may yield multiple harmful outcomes,  
3 including less innovation, lower quality, higher prices, less incentive to attract and keep  
4 employees, and less consumer choice.

5 2. A global technology behemoth, Meta reaches into every corner of the world  
6 through its “Family of Apps”—Facebook, Instagram, Messenger, and WhatsApp—with more  
7 than three billion regular users. Seeking to expand its empire even further, Meta in recent years  
8 has set its sights on building, and ultimately controlling, a VR “metaverse.” One need look no  
9 further than the rebranding of the company from Facebook to “Meta” in 2021 to understand its  
10 vision—and its priorities—for the future. And Meta is serious about its goals: it has become the  
11 largest provider of VR devices and apps to customers in the United States.

12 3. Meta’s campaign to conquer VR began in 2014 when it acquired Oculus VR,  
13 Inc., a VR headset manufacturer. Since then, Meta’s VR headsets have become the cornerstone  
14 of its growth in the VR space: its current generation headset, the Meta Quest 2, is by far the  
15 most widely used VR headset today, with a significant majority of headset sales in 2021 and  
16 2022. Meta CEO Mark Zuckerberg has publicly stated that Meta subsidizes its VR devices or  
17 sells them at cost in order to attract users.

18 4. And Meta’s Quest Store (formerly Oculus Store) has become the leading  
19 distribution platform for VR software apps in the United States, connecting app developers and  
20 VR users in an online marketplace through which developers can offer their products to users  
21 for download onto their individual VR devices. Meta controls the wildly popular app Beat  
22 Saber, which it acquired by purchasing Beat Games in November 2019. Beat Saber [REDACTED]

23 [REDACTED]  
24 [REDACTED] In addition to Beat Games, Meta owns a number of other VR  
25 apps, some of which it developed in-house but most of which it acquired by rolling up other app  
26 studios.



1           5.       Meta has thus become a key player at each level of the VR ecosystem: in  
2 hardware with its Meta Quest 2 headset, in app distribution with the Quest Store, and in apps  
3 with Beat Saber and several other popular titles. This is not by accident; Meta has an explicit  
4 strategy of harnessing strong network effects in VR to ensure its leading status in this growing  
5 industry. Meta could have chosen to try to compete with Within on the merits; instead, Meta  
6 decided it preferred to simply buy the ██████████ in a vitally important, ██████████  
7 ██████████

8           6.       As Meta fully recognizes, network effects on a digital platform can cause the  
9 platform to become more powerful—and its rivals weaker and less able to seriously compete—  
10 as it gains more users, content, and developers. The acquisition of new users, content, and  
11 developers each feed into one another, creating a self-reinforcing cycle that entrenches the  
12 company’s early lead. This market dynamic can spur companies to compete harder in beneficial  
13 ways by, for example, adding useful product features or hiring additional employees. But it can  
14 also make anticompetitive strategies more attractive.

15           7.       Meta seeks to exploit the network-effects dynamic in VR. Indeed, Mr.  
16 Zuckerberg has made clear that his aspiration for the VR space is control of the *entire*  
17 ecosystem. As early as 2015, Mr. Zuckerberg instructed key Facebook executives that his vision  
18 for “the next wave of computing” was control of apps *and* the platform on which those apps  
19 were distributed, making clear in an internal email to key Facebook executives that a key part of  
20 this strategy was for his company to be “completely ubiquitous in killer apps”—i.e., in  
21 significant VR apps that prove the value of the technology. In that same email, Mr. Zuckerberg  
22 told his executives that Facebook should “us[e] acquisitions opportunistically.”

23           8.       The proposed acquisition of Within would be one more step along that path  
24 toward dominance. According to Within’s co-founder and CEO, “Fitness is the killer use case  
25 for VR.” But instead of choosing to compete on the merits through its own VR dedicated fitness  
26 app, Meta has resorted to proposing this unlawful acquisition.

1           9.       If Meta is able to proceed with this proposed acquisition of Within, the merger  
2 poses a reasonable likelihood of substantially lessening competition in the market for VR  
3 dedicated fitness apps, where Supernatural is [REDACTED]

4           10.       Having simply bought up the [REDACTED] Meta would no longer have  
5 any incentive to develop its own competing app from scratch, add new features to Beat Saber or  
6 other existing Meta apps to compete with Supernatural on the merits, or acquire a small  
7 generalist studio that could supplement Meta’s considerable existing resources and VR know-  
8 how to develop an app to compete with Supernatural. Instead of adding a significant new rival  
9 to the mix, the Acquisition would simply let Meta assume total control of the [REDACTED]  
10 overnight. That lessening of competition violates the antitrust laws.

11           11.       Moreover, a company poised on the edge of a market may exert competitive  
12 pressure on existing participants. Regardless of whether such a company actually intends to  
13 enter, the possibility that it may do so can spur other companies already in the market to  
14 proactively ramp up their own competitive efforts. Meta, poised on the edge of the VR  
15 dedicated fitness app market with its popular Beat Saber app, and with all its vast resources and  
16 unique strategic advantages, exerts such an influence. That pressure spurs the market leader,  
17 Within, to add new features, retain employees, continue innovating, and generally compete  
18 harder in order to stay a step ahead of Meta in the event it decides to enter. The Acquisition  
19 would eliminate that incentive for market participants to compete, again in contravention of the  
20 antitrust laws.

21           12.       Accordingly, this Acquisition poses a reasonable probability of eliminating  
22 competition. That lessening of competition may result in reduced innovation, quality, and  
23 choice, less pressure to compete for the most talented app developers, and potentially higher  
24 prices for VR dedicated fitness apps. And Meta would be one step closer to its ultimate goal of  
25 owning the entire “Metaverse.”

26           13.       The Commission voted to file this Complaint seeking preliminary relief pursuant  
27 to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Commission is entitled to preliminary  
28

1 relief in this Court because of its likelihood of success on the merits and the weight of the  
2 equities. To succeed on the merits, the FTC must prove that the Acquisition violates Section 7  
3 of the Clayton Act, which prohibits mergers the effect of which “may be substantially to lessen  
4 competition, or tend to create a monopoly.” For the reasons described below, the FTC is likely  
5 to succeed in proving an antitrust violation, and the equities weigh strongly in favor of  
6 enforcing the antitrust laws.

7 14. On August 11, 2022, the Commission found reason to believe that the Acquisition  
8 would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. §  
9 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. On August 11, 2022, the Commission  
10 commenced an administrative adjudication proceeding to determine whether the Acquisition is  
11 unlawful. An administrative trial before an Administrative Law Judge, is scheduled to begin on  
12 January 19, 2023. The ongoing administrative trial provides a forum for all parties to conduct  
13 discovery, followed by a merits trial with up to 210 hours of live testimony. *See* 16 C.F.R. §  
14 3.41. The decision of the Administrative Law Judge is subject to appeal to the full Commission,  
15 which, in turn, is subject to judicial review by a United States Court of Appeals.

16 15. Preliminary injunctive relief restraining Defendants from proceeding with the  
17 Acquisition is necessary to prevent interim harm to competition during the pending  
18 administrative proceeding. Absent preliminary relief, Defendants can close the Acquisition and  
19 combine Meta’s and Within’s operations. Allowing Defendants to consummate the Acquisition  
20 before any administrative proceeding has concluded is likely to cause immediate harm to  
21 competition and consumers and would undermine the Commission’s ability to remedy the  
22 anticompetitive effects of the Acquisition if it is found unlawful after a full trial on the merits  
23 and any subsequent appeals.

## 24 **JURISDICTIONAL STATEMENT**

### 25 **A. Jurisdiction**

26 16. This Court’s jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. §  
27 53(b), and 28 U.S.C. §§ 1331, 1337, and 1345. This is a civil action arising under Acts of

1 Congress protecting trade and commerce against restraints and monopolies and is brought by an  
2 agency of the United States authorized by an Act of Congress to bring this action.

3 17. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

4 Whenever the Commission has reason to believe—

5 (1) that any person, partnership, or corporation is violating, or is about to  
6 violate, any provision of law enforced by the Federal Trade Commission, and

7 (2) that the enjoining thereof pending the issuance of a complaint by the  
8 Commission and until such complaint is dismissed by the Commission or set  
9 aside by the court on review, or until the order of the Commission made  
10 thereon has become final, would be in the interest of the public—

11 the Commission by any of its attorneys designated by it for such purpose  
12 may bring suit in a district court of the United States to enjoin any such  
13 act or practice. Upon a proper showing that, weighing the equities and  
14 considering the Commission’s likelihood of ultimate success, such action  
15 would be in the public interest, and after notice to the defendant, a  
16 temporary restraining order or a preliminary injunction may be granted  
17 without bond. . . .

18 18. Defendants and their relevant operating entities and subsidiaries are, and at all  
19 relevant times have been, engaged in activities affecting “commerce” as defined in Section 4 of  
20 the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

21 **B. Venue**

22 19. Venue in the Northern District of California is proper under Section 13(b) of the  
23 FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391(b) and (c). Defendants are found, reside,  
24 and/or transact business in this state and district, and are subject to personal jurisdiction therein.

25 **C. Intradistrict Assignment**

26 20. Assignment to the San Francisco Division is proper. This action arises in San  
27 Mateo County because a substantial part of the events giving rise to these claims occurred in  
28 San Mateo County, where Defendant Meta is headquartered.

**THE PARTIES AND PROPOSED ACQUISITION**

21 21. Plaintiff, the Commission, is an administrative agency of the United States  
22 government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 *et*  
23 *seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

1 The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7  
2 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

3 22. Defendant Meta is a publicly traded company organized under the laws of  
4 Delaware with headquarters in Menlo Park, California. Meta develops and sells VR and other  
5 extended reality hardware and software through its “Reality Labs” division. Reality Labs has  
6 been growing at breakneck speed: it generated revenues of \$2.274 billion in 2021, which  
7 reflected a 127% jump from 2019 and a 100% increase since 2020. Meta’s best-selling VR  
8 hardware product to date is the Meta Quest 2, while its best-selling VR software product is the  
9 wildly popular Beat Saber, which was initially released by Beat Games, a studio that Meta  
10 acquired in 2019. Meta continues to add new downloadable content to Beat Saber; for example,  
11 it recently added a “Lady Gaga Music Pack” available for a \$12.99 add-on fee.

12 23. Defendant Within is a privately held virtual and augmented reality company  
13 organized under the laws of Delaware with headquarters—and its principal business—in Los  
14 Angeles, California. Founded by Chris Milk and Aaron Koblin, Within’s flagship product is  
15 Supernatural, a VR subscription fitness service. Supernatural offers over 800 fully immersive  
16 VR workouts, each set to music and located in a virtual setting like the Galapagos Islands or the  
17 Great Wall of China. Through deals with major music studios, Supernatural continues to grow  
18 its catalog, which includes songs from A-list artists like Katy Perry, Imagine Dragons, Lady  
19 Gaga, and Coldplay. Supernatural’s workouts are fitness classes that customers can access by  
20 paying a monthly subscription fee of \$18.99, or a yearly subscription fee of \$179.99.  
21 Supernatural is presently only available on the Meta Quest and Quest 2 and is sold in the United  
22 States and Canada.

23 24. On October 22, 2021, Meta and Within signed an Agreement and Plan of  
24 Merger, pursuant to which Meta would acquire all shares of Within in a transaction valued at

25 

**INDUSTRY BACKGROUND**

1  
2           25.     The VR industry is currently characterized by a high degree of innovation and  
3 growth. Global sales are predicted to more than double in just three years, from \$5 billion in  
4 2021 to more than \$12 billion in 2024.

5           26.     Users typically engage with the VR experience through a headset with displays  
6 in front of each eye to place a user in a fully rendered, three-dimensional environment. Cutting-  
7 edge VR technology creates an immersive digital experience like no other. VR users can  
8 instantly be transported anywhere in the world, backward or forward in time, into outer space or  
9 fictional lands—all from the comfort and safety of their own homes. Unlike a game, video, or  
10 app on a tablet, phone, or monitor, the three-dimensional VR environment creates the  
11 perception of completely surrounding the user, allowing the user to move around in the  
12 projected space. As Mark Zuckerberg explains, “you’re right there with another person or in  
13 another place and that’s very different from every experience of technology that we’ve had  
14 before. . . .”

15           27.     Meta’s Quest 2 is the best-selling VR headset and has been since shortly after its  
16 launch in 2020. In 2020, Meta shipped more than 62% of all VR headsets sold worldwide. That  
17 percentage surged to 78% in 2021, when industry sources estimate that Meta sold more than 8.7  
18 million Quest 2 headsets.

19           28.     The majority of users get apps for VR headsets from online app stores, which  
20 distribute products for use on individual VR devices. Meta controls its own app store called the  
21 “Meta Quest Store,” with more than 400 apps available for download. Meta also offers the  
22 “App Lab,” a Meta-produced tool that allows third-party developers to distribute apps not  
23 present in the Meta Quest Store directly to consumers. Other VR app stores include Valve’s  
24 Steam Store and SideQuest, but the Meta Quest Store is the leading VR app store in the United  
25 States.

1           29.     VR software and studio companies like Within develop the apps that run on VR  
2 headsets. These apps run the gamut of genres from rhythm games to shooters to e-sports to  
3 creation and exploration and more.

4           30.     [REDACTED] Meta’s Beat Saber, an  
5 enormously popular rhythm game “where you slash the beats of adrenaline-pumping music as  
6 they fly towards you, surrounded by a futuristic world.” Meta acquired control of Beat Saber  
7 through its purchase of Beat Games [REDACTED] in  
8 November 2019.

9           31.     Since its acquisition of Beat Games, Meta has continued to acquire a series of  
10 studios behind many popular VR apps, and now boasts one of the largest first-party VR content  
11 organizations in the world:

- 12           a.     In January 2020, Meta acquired Sanzaru games, maker of the fantasy Viking  
13                combat game Asgard’s Wrath.
- 14           b.     In May 2020, Meta acquired Ready at Dawn Studios, maker of Lone Echo II, a  
15                zero-gravity adventure game, and Echo VR, an online team-based sports game.
- 16           c.     In April 2021, Meta acquired Downpour Interactive, maker of Onward, a team-  
17                based first-person shooter.
- 18           d.     In May 2021, Meta acquired BigBox VR, maker of Population One, a  
19                multiplayer first-person arena shooter.
- 20           e.     In June 2021, Meta acquired Unit 2 Games, the maker of Crayta, a collaborative  
21                platform that allows users to create and play their own games.
- 22           f.     And, in November 2021, Meta acquired Twisted Pixel, a studio that makes  
23                various games, including Path of the Warrior (a fighting game), B-Team (a first-  
24                person shooter), and Wilson’s Heart (a mystery noir thriller game).

25           32.     In addition to the aforementioned acquisitions, Meta has developed and released  
26 its own VR apps. These include:

- a. Horizon Worlds, a Massively Multiplayer Online game that allows users to build, share, and interact in virtual worlds;
- b. Horizon Workrooms, a productivity app that lets teams of people share their computer screens, collaborate on virtual whiteboards, and more;
- c. Horizon Venues, a live-events app that lets users experience concerts, sporting events, and more; and
- d. Horizon Home, a social-space app that lets users hang out with their friends, watch videos together, and join multiplayer VR games together.

33. Among VR apps, dedicated or deliberate fitness is [REDACTED]

[REDACTED] As Within’s co-founder and CEO puts it, “Fitness is the killer use case for VR.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

platform-level tools such as Oculus Move, a calorie and time counter that runs in the background of other Quest apps and displays to users data about their activity levels while in VR. [REDACTED]

**THE RELEVANT ANTITRUST MARKET**

34. The Acquisition would substantially lessen competition or tend to create a monopoly in the relevant antitrust market for VR dedicated fitness apps in the United States (“VR Dedicated Fitness App market”).

**A. The VR Dedicated Fitness App Market**

35. The VR Dedicated Fitness App market is the relevant product market. The market consists of VR apps, like Within’s Supernatural app, that are designed so that users can exercise through a structured physical workout in their own homes.



1 36. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 37. Dedicated fitness apps offer distinct functionality when compared to other VR  
5 apps, including apps, such as rhythm and active sports games, that provide an incidental fitness  
6 benefit (“incidental fitness apps”). For example, they may feature adjusting difficulty so that  
7 users never “fail” a workout; they may feature workouts designed by trainers or fitness experts;  
8 they are designed to maximize exertion and physical movement for the purpose of exercise; and  
9 they may feature classes or other active coaching.

10 38. VR Fitness App market participants distinguish VR dedicated fitness apps from  
11 VR incidental fitness apps like rhythm and sports games that offer fitness benefits simply  
12 because they require users to move and physically exert themselves while engaging with the  
13 app. Dedicated fitness apps typically entail a higher degree of physical exertion than incidental  
14 fitness apps. According to the Virtual Reality Institute of Health and Exercise, which rates  
15 energy expenditures during VR app usage, Within’s Supernatural currently has the highest  
16 energy expenditure, at 12–13 calories per minute.

17 39. VR dedicated fitness apps are also typically offered using a distinct,  
18 subscription-based pricing model. Industry participants recognize that this is a distinguishing  
19 characteristic of dedicated fitness VR apps when compared to other VR apps, including  
20 incidental fitness apps.

21 40. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 41. The VR Dedicated Fitness App market does not include other products that are  
27 neither close substitutes for, nor offered under similar competitive conditions as, VR dedicated  
28

1 fitness apps. For example, it does not include non-VR at-home smart fitness solutions, such as  
2 digitally connected exercise bikes, treadmills, weight machines, mobile phone apps, video  
3 games, or workout videos.

4 42. Functional, practical, technological, and price differences show that non-VR at-  
5 home smart fitness solutions and at-home exercise products are distinct from VR dedicated  
6 fitness apps.

7 43. VR offers a level of immersion that other at-home fitness experiences do not, and  
8 cannot, offer. VR technology allows users to exercise from the comfort, privacy, and safety of  
9 home with the feeling and visuals of being somewhere else—atop a mountain, on a tropical  
10 island, in a futuristic world, virtually anywhere. The sensors in a VR headset and controllers  
11 also allow for a degree of tracking, adjustment, and feedback that non-immersive exercise  
12 programs cannot match. As Within’s co-founder and CEO explained, “[W]orking out in  
13 Supernatural feels like you’re a champion of a sport from the future. I love that and haven’t felt  
14 that sense of athleticism ever on a treadmill or an exercise bike.”

15 44. There also tend to be substantial price differences between VR fitness and smart  
16 at-home fitness products. Most smart at-home fitness solutions have much higher up-front costs  
17 and much higher ongoing costs than current VR fitness apps. A Peloton smart bicycle, for  
18 example, costs over \$1,000, with an additional \$44 per month subscription cost, compared to  
19 the cost of a \$299 Meta Quest 2 plus \$18.99 per month for Supernatural. It also weighs 135  
20 pounds.

21 45. In addition to Supernatural, other apps in the VR Dedicated Fitness App market  
22 include FitXR, Holofit from Holodia, VZFit from Virzoom, and Les Mills Body Combat from  
23 Odders Lab.

24 46. [REDACTED]  
25 [REDACTED] Other than Supernatural and FitXR, [REDACTED]  
26 [REDACTED]

**B. The Relevant Geographic Market**

47. The relevant geographic market in which to analyze the competitive effects of the Acquisition is the United States. While VR app suppliers may be located outside the United States, customers in the relevant markets affected by the Acquisition are located in the United States. The availability of VR apps and headsets for consumers varies by country, and VR consumers in the United States can only buy headsets and apps that are available in the United States. Industry participants recognize the United States as a market.

**MARKET CONCENTRATION**

48. The VR Dedicated Fitness App market is highly concentrated.

49. Market concentration within a properly defined relevant antitrust market is a useful indicator of the competitive effects of a merger. The 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”) measure market concentration using the Herfindahl–Hirschman Index (“HHI”). The Merger Guidelines outline the principal analytical techniques, practices, and enforcement policy of the FTC and Department of Justice with respect to mergers involving competitors. Though the Merger Guidelines are not binding on the courts, courts frequently cite the Merger Guidelines as persuasive authority.

50. The HHI for a given market is calculated by summing the squares of the individual firms’ market shares. HHIs range from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). A market HHI above 2,500 is classified as highly concentrated.

51. If a merger combines two participants in a relevant market, thereby increasing the HHI by more than 200 points and resulting in a highly concentrated market, it is presumed to enhance market power and is, therefore, presumptively unlawful.

52. The market for VR Dedicated Fitness Apps is highly concentrated, [REDACTED]

[REDACTED]

[REDACTED]

1 53. Supernatural [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 54. The VR Dedicated Fitness App market HHI has been well above the thresholds  
9 for a market to be considered “concentrated” or “highly concentrated” under the Merger  
10 Guidelines.

11 **EVIDENCE OF LIKELY ANTICOMPETITIVE EFFECTS**

12 55. In addition to this presumption of illegality, additional evidence indicates that the  
13 Acquisition may substantially lessen competition in the relevant market for VR dedicated  
14 fitness apps.

15 **A. Anticompetitive Effects in the VR Dedicated Fitness App Market**

16 56. The Acquisition would cause anticompetitive effects by eliminating potential  
17 competition from Meta in the relevant market for VR dedicated fitness apps. These include  
18 eliminating any probability that Meta would enter the market through alternative means absent  
19 the Acquisition, as well as eliminating the likely and actual beneficial influence on existing  
20 competition that results from Meta’s current position, poised on the edge of the market. As the  
21 Merger Guidelines explain, “A merger between an incumbent and a potential entrant can raise  
22 significant competitive concerns.”

23 **1. It Is Reasonably Probable That Meta Would Have Entered the VR**  
24 **Dedicated Fitness App Market Through Alternative Means Absent This**  
25 **Acquisition**

26 57. Meta has the economic characteristics, size, resources, capabilities, advantages,  
27 and incentives to enter the VR Dedicated Fitness App market—and it has seriously considered

1 doing so—by means other than this Acquisition. Meta could have chosen to build a VR  
2 dedicated fitness app from scratch, add dedicated fitness functionality to an existing app, and/or  
3 acquire a smaller studio that could support and supplement Meta’s existing strengths to  
4 facilitate its entry.

5 58. Consistent with its long-term strategy for its VR devices to become a widely  
6 used platform that it ultimately will control, Meta has committed tens of billions of dollars to its  
7 Reality Labs division, which develops its VR and AR products, including more than \$7.7 billion  
8 in 2020, \$12.4 billion in 2021, and \$3.6 billion in the three-month period ending in March 2022.  
9 Meta is already well on the way to realizing Mr. Zuckerberg’s goals of owning both the  
10 dominant platform and the “killer apps” on that platform. Meta already produces the best-selling  
11 VR headset in the United States by a wide margin. Meta’s Quest Store is the leading  
12 distribution platform of VR apps. And Meta is the leading seller of VR apps, with a portfolio  
13 that includes Beat Saber, the market-leading VR fitness app, and Horizon Worlds, a massive  
14 social app that features its own game-creation tools for users.

15 59. Meta has the financial resources to develop a dedicated fitness app on its own—  
16 either by creating a new app or by adding new features to an existing app such as Beat Saber. It  
17 also has more than enough resources to enter the market through acquiring a generalist studio  
18 that could supplement Meta’s formidable first-party studios group in developing a VR dedicated  
19 fitness app.

20 60. In 2021, Meta had an annual profit of \$46.7 billion, and spent more than \$12  
21 billion on its Reality Labs division.

22 61. With its vast financial resources, Meta continues to add features and content to  
23 the apps it has already released, and to develop and release new apps. Meta has also developed  
24 multiple full-featured VR apps in-house. What’s more, the [REDACTED] it proposes to spend on  
25 this acquisition is [REDACTED]

26 [REDACTED] During that time and on that budget, Within built  
27 Supernatural from the ground up into the [REDACTED] VR dedicated fitness app.

1           62. Meta could build instead of buy within a reasonable period of time if it could not  
2 proceed with this Acquisition. Indeed, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7           63. Meta has developed multiple VR apps from scratch before, including the  
8 ambitious Horizon Worlds, which allows users to create and explore virtual worlds; Horizon  
9 Workrooms, an app that lets Meta test out new use-cases and platform-level features in the  
10 emerging VR productivity category and allows users to connect and collaborate in real-time; the  
11 Horizon Venues live-events app; and the Horizon Home social-space app.

12           64. Meta has also developed and released Oculus Move, a platform-level fitness  
13 tracker on the Oculus Quest that allows users to track active time and calories burned across  
14 apps.

15           65. Through its string of prior acquisitions, Meta already owns seven of the most  
16 successful VR development studios in the world, including Beat Games, the studio behind Beat  
17 Saber. And, as of March 2021, Meta had nearly 10,000 employees housed within Reality Labs,  
18 its division devoted to virtual reality.

19           66. Meta’s control over the Quest platform also gives it unique access to VR user  
20 data, which it uses to inform strategic decisions.

21           67. In addition, Meta controls which VR apps appear and are featured in its Quest  
22 Store. This control guarantees that Meta could reach millions of existing VR users with a built-  
23 from-scratch or expanded app through an especially important avenue for consumer discovery.

24           68. Meta—formerly known as “Facebook Inc.”—rebranded its entire business as  
25 “Meta” to reflect its focus on VR. Its brands, including Meta and Quest, are well-known to VR  
26 users. Meta also has substantial marketing experience as to a wide range of VR apps, including  
27 Beat Saber, that it could leverage to enter the VR Dedicated Fitness App market. Indeed, users

1 already associate Meta’s Beat Saber app with incidental fitness. This “name awareness” would  
2 facilitate Meta’s organic entry into the VR Dedicated Fitness App market, as a dedicated  
3 fitness-oriented version of Beat Saber would be in line with users’ understanding of the Beat  
4 Saber brand.

5 69. Meta also has incentives to enter the VR Dedicated Fitness App market.

6 70. [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 71. Meta is well aware that fitness VR apps could enable it to reach new categories  
10 of consumers. [REDACTED]  
11 [REDACTED]

12 72. [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 73. [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 74. [REDACTED]  
27 [REDACTED]

1 75. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 76. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 77. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 78. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 79. Thus, not surprisingly, after Meta’s acquisition of Beat Games and immediately  
20 prior to the launch of Supernatural, Beat Saber released a new track called “FitBeat,” which  
21 included virtual “walls” or “obstacles” that users would have to dodge. [REDACTED]

22 [REDACTED] Obstacles also appear on other tracks, forcing users to  
23 duck and dodge, but they can be turned off.

24 80. [REDACTED]

25 [REDACTED] has already included both a 360-degree mode where targets come  
26 from all sides and a no-fail mode that allows users to complete tracks despite missing blocks in  
27



1 recent updates—a feature that fitness-focused users can adopt to ensure an uninterrupted  
2 workout.

3 81. [REDACTED]

10 82. [REDACTED]

15 83. In fact, Meta’s internal codename for the proposed acquisition of Within was  
16 “Project Eden,” a reference to its belief that Apple was also interested in acquiring Within.

17 84. Meta also hired away the head of product for Supernatural at Within to work at  
18 Meta following the Supernatural launch. That individual’s portfolio at Meta included expanding  
19 Meta’s presence into new verticals, including the VR fitness vertical.

20 85. [REDACTED]

24 86. [REDACTED]

1           87.     Accordingly, absent this anticompetitive Acquisition, there is a reasonable  
2 probability that Meta would have exercised one of its other available options to enter the VR  
3 Dedicated Fitness App market.

4                   **2. It is Reasonably Probable That Alternative Entry by Meta Would**  
5                   **Substantially Deconcentrate the Market and Have Other Procompetitive**  
6                   **Effects**

7           88.     Meta’s entry into the VR Dedicated Fitness App market—whether by adding  
8 new features to one of its existing apps or developing a new VR dedicated fitness app from  
9 scratch—would have the effect of substantially deconcentrating and increasing competition in  
10 the market.

11           89.     Building instead of buying would entail developing additional expertise,  
12 undertaking product research and design, hiring more employees, and making other key  
13 investments. Meta recognizes that building its own VR dedicated fitness app would require  
14 time, additional developer talent, and effort. But such efforts would reflect the very essence of  
15 competition, the dynamic that the antitrust laws seek to protect and promote.

16           90.     Alternative entry by Meta would introduce a new competitor into the market  
17 with the backing of one of the world’s largest, most well-resourced, and most experienced VR  
18 industry participants. Such entry would increase consumer choice, increase innovation, spur  
19 additional competition to attract the best employees, and yield a host of other competitive  
20 benefits. Crucially, it would *also* maintain the independent presence and competitive vitality of  
21 the ██████████ VR dedicated fitness app ██████████ Supernatural.

22           91.     The Acquisition would eliminate the probability of such entry, potentially  
23 dampening future innovation and leading to a market with less beneficial rivalry and  
24 competitive pressure.

**3. Within Reasonably Perceived Meta as a Potential Entrant to the VR Dedicated Fitness App Market**

92. In light of Meta’s economic characteristics, size, resources, capabilities, advantages, and incentives, it would be eminently reasonable for a VR dedicated fitness app market participant to perceive Meta as a potential entrant.

93. As explained in detail above, Meta is a massive, wealthy company with extensive control over and experience in various aspects of the VR industry. It has recently expanded into a variety of VR-related areas, including by acquiring the most popular VR incidental fitness app (Beat Saber) and by internally developing a system-level fitness tracking tool that can run in the background of other apps (Oculus Move). In a recent earnings report, Meta announced that it anticipated spending some \$10 billion across its Reality Labs division, which has found its biggest success to date with the Quest 2 Headset and Quest Store, and that it is committed to increasing those investments over the next several years. The VR dedicated fitness app market is especially attractive for a host of reasons, giving Meta a strong incentive to enter it. And Meta internally identified multiple means of entering the VR dedicated fitness app market.

94. [REDACTED]

95. [REDACTED]

96. Meta also lured away Within’s head of product for Supernatural shortly after Supernatural’s launch.

**4. Meta’s Presence as a Perceived Potential Entrant Likely Influences  
Competition in the VR Dedicated Fitness App Market**

97. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Acquisition would

eliminate that competitive influence.

98. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

99. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

100. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

101. [REDACTED]

[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 102. [REDACTED]  
4 [REDACTED] That competitive  
5 pressure—and all of the benefits it yields—would be eliminated by the Acquisition.  
6

7 **LACK OF COUNTERVAILING FACTORS**

8 103. Defendants cannot demonstrate that new entry or expansion by existing firms  
9 will be timely, likely, or sufficient to offset the anticompetitive effects.

10 104. There are multiple barriers to entering or expanding in the relevant market,  
11 including time, network effects, ongoing development and content creation costs, post-launch  
12 support, capital, brand recognition, and the need for consumers to be able to discover the app.  
13 Developing a high-quality entrant also requires hiring the “talent needed to create true triple-A  
14 VR experiences,” talent that Meta acknowledges is increasingly scarce.

15 105. To be sold on the Quest store, Meta itself must decide to approve an app through  
16 a technical review and a curation process by Meta that examines “quality, polish, entertainment,  
17 value, and utility.” This can be a lengthy process and there is no guarantee any third-party app  
18 will ultimately be approved.

19 106. No other company has the combination of resources, VR know-how, and control  
20 over the leading app store and the overall Quest VR experience that Meta has.

21 107. Once Meta—which also owns the Quest platform and app store—entrenches [REDACTED]  
22 [REDACTED] in VR dedicated fitness through the Acquisition, it will effectively raise  
23 barriers to entry and expansion as other companies interested in the space will understand that  
24 they need to compete with a deep-pocketed platform operator that owns the [REDACTED] VR  
25 dedicated fitness app.

26 108. Defendants cannot demonstrate cognizable, verifiable, transaction-specific  
27 efficiencies that would be sufficient to reverse the strong presumption and evidence of the  
28 Acquisition’s likely significant anticompetitive effects.

**LIKELIHOOD OF SUCCESS ON THE MERITS,**

**BALANCE OF THE EQUITIES, AND NEED FOR RELIEF**

1  
2  
3 109. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission,  
4 whenever it has reason to believe that a proposed merger is unlawful, to seek preliminary  
5 injunctive relief to prevent consummation of a merger until the Commission has had an  
6 opportunity to adjudicate the merger's legality in an administrative proceeding. In deciding  
7 whether to grant relief, the Court must balance the likelihood of the Commission's ultimate  
8 success on the merits against the equities, using a sliding scale. The principal equity in cases  
9 brought under Section 13(b) is the public's interest in effective enforcement of the antitrust  
10 laws. Private equities affecting only Defendants' interests cannot tip the scale against a  
11 preliminary injunction.

12 110. The Commission is likely to succeed in proving that the effect of the Acquisition  
13 may be substantially to lessen competition or tend to create a monopoly in violation of Section 7  
14 of the Clayton Act or Section 5 of the FTC Act.

15 111. Preliminary relief is warranted and necessary. Should the Acquisition ultimately  
16 be adjudicated unlawful, reestablishing the status quo would be difficult, if not impossible, if  
17 the Acquisition has already occurred in the absence of preliminary relief. Allowing the  
18 Acquisition to close before the completion of the administrative proceeding would cause  
19 irreparable harm by, among other things, enabling the combined firm to begin altering Within's  
20 operations and business plans, accessing Within's sensitive business information, eliminating  
21 key Within personnel, changing Within's product development efforts, and preventing Within  
22 from raising the funding necessary to continue operations and maintain its growth trajectory. In  
23 the absence of relief from this Court, substantial harm to competition would occur in the  
24 interim.

25 112. Accordingly, the equitable relief requested here is in the public interest. The  
26 Commission respectfully requests that the Court:

1           113. Preliminarily enjoin Defendants from taking any further steps to consummate the  
2 Acquisition, or any other acquisition of stock, assets, or other interests of one another, either  
3 directly or indirectly;

4           114. Retain jurisdiction and maintain the *status quo* until the administrative  
5 proceeding initiated by the Commission is concluded; and

6           115. Award such other and further relief as the Court may determine is appropriate,  
7 just, and proper.

8  
9 Dated: October 7, 2022

Respectfully submitted,

10  
11 Of counsel:

/s/ Abby L. Dennis

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