

1 Abby L. Dennis, DC Bar No. 994476
 Peggy Bayer Femenella, DC Bar No. 472770
 2 Joshua Goodman, NY Bar (No Number)
 Jeanine Balbach, MD Bar (No Number)
 3 Michael Barnett, TX Bar No. 24006801
 E. Eric Elmore, NY Bar (No Number)
 4 Justin Epner, DC Bar No. 1028431
 Sean D. Hughto, DC Bar No. 421224
 5 Frances Anne Johnson, MD Bar (No Number)
 Andrew Lowdon, DC Bar No. 230095
 6 Kristian Rogers, MA Bar No. 675951
 Anthony R. Saunders, NJ Bar No. 008032001
 7 Timothy Singer, DC Bar No. 1048769
 Federal Trade Commission
 8 600 Pennsylvania Avenue, NW
 Washington, DC 20580
 9 Tel: (202) 326-2381
adennis@ftc.gov; pbayer@ftc.gov;
 10 *jgoodman@ftc.gov; jbalbach@ftc.gov;*
mbarnett@ftc.gov; eelmore@ftc.gov;
 11 *jepner@ftc.gov; shughto@ftc.gov;*
fjohnson@ftc.gov; alowdon@ftc.gov;
 12 *krogers@ftc.gov; asaunders@ftc.gov;*
tsinger@ftc.gov

13 Erika Wodinsky, CA Bar No. 091700
 14 90 7th Street, Suite 14-300
 San Francisco, CA 94103
 15 Tel: (415) 848-5190
ewodinsky@ftc.gov

16 Attorneys for Plaintiff Federal Trade Commission

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

20 **FEDERAL TRADE COMMISSION,**
 21 Plaintiff,
 22 v.
 23 **META PLATFORMS, INC.,**
 24 **MARK ZUCKERBERG,**
 25 and
 26 **WITHIN UNLIMITED, INC.,**
 27 Defendants.

Case No. _____

**COMPLAINT FOR A TEMPORARY
 RESTRAINING ORDER
 AND PRELIMINARY INJUNCTION
 PURSUANT TO SECTION 13(B)
 OF THE FEDERAL TRADE
 COMMISSION ACT**

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

28 COMPLAINT FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION PURSUANT TO SECTION 13(B) OF THE FEDERAL TRADE COMMISSION ACT

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

10 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever
11 it has reason to believe that a proposed merger is unlawful, to seek preliminary injunctive relief
12 to prevent consummation of a merger until the Commission has had an opportunity to issue an
13 administrative complaint, and if such complaint is issued, adjudicate the merger’s legality in an
14 administrative proceeding. The Commission therefore seeks this preliminary relief “pending the
15 issuance of a[n administrative] complaint by the Commission and until such complaint is
16 dismissed by the Commission or set aside by the court on review, or until the order of the
17 Commission made thereon has become final.” 15 U.S.C. § 53(b)(2). Pursuant to 15 U.S.C. §
18 53(b)(2), such an administrative complaint must be filed no later than 20 days after this Court
19 grants a temporary restraining order.

20 A temporary restraining order enjoining the Acquisition is necessary to preserve this
21 Court’s ability to provide full and effective relief after considering the Commission’s motion for
22 a preliminary injunction. Preliminary injunctive relief is imperative to preserve the *status quo*
23 and to protect competition “pending the issuance of a[n administrative] complaint by the
24 Commission,” and if such complaint is issued, while the Commission adjudicates whether the
25 Acquisition is unlawful. Allowing the Acquisition to proceed would harm competition and
26 consumers and undermine the Commission’s ability to remedy the anticompetitive effects of the
27

1 Acquisition if the Commission issues an administrative complaint and the Acquisition is found
2 unlawful after a full administrative trial on the merits and any subsequent appeals.

3 **NATURE OF THE CASE**

4 1. Meta, one of the largest technology companies in the world and [REDACTED]
5 provider of virtual reality (“VR”) devices and applications (“apps”) in the United States, seeks
6 to acquire Within, a software company that develops apps for VR devices, including the highly
7 popular [REDACTED] fitness app “Supernatural.” If consummated, the Acquisition would
8 substantially lessen competition, or tend to create a monopoly, in the relevant market for VR
9 dedicated fitness apps and the broader relevant market for VR fitness apps. That lessening of
10 rivalry may yield multiple harmful outcomes, including less innovation, lower quality, higher
11 prices, less incentive to attract and keep employees, and less consumer choice.

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

19 3. Meta’s campaign to conquer VR began in 2014 when it acquired Oculus VR,
20 Inc., a VR headset manufacturer. Since then, Meta’s VR headsets have become the cornerstone
21 of its growth in the VR space: its current generation headset, the Meta Quest 2, is by far [REDACTED]
22 [REDACTED] with a significant majority of headset sales in 2021 and
23 2022. Meta CEO Mark Zuckerberg has publicly stated that Meta subsidizes its VR devices or
24 sells them at cost in order to attract users.

25 4. And Meta’s Quest Store (formerly Oculus Store) has become [REDACTED]
26 distribution platform for VR software apps in the United States, connecting app developers and
27 VR users in an online marketplace through which developers can offer their products to users

1 significant VR apps that prove the value of the technology. In that same email, Mr. Zuckerberg
2 told his executives that Facebook should “us[e] acquisitions opportunistically.”

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

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

10 10. Having simply bought up the [REDACTED], Meta would no longer have
11 any incentive to develop its own competing app from scratch, add new features to Beat Saber or
12 other existing Meta apps to compete with Supernatural on the merits, or [REDACTED]

13 [REDACTED]
14 [REDACTED] develop an app to compete with Supernatural. Instead of adding a significant new rival
15 to the mix, the Acquisition would simply let Meta assume total control of [REDACTED]
16 overnight. That lessening of competition violates the antitrust laws.

17 11. Moreover, a company poised on the edge of a market may exert competitive
18 pressure on existing participants. Regardless of whether such a company actually intends to
19 enter, the possibility that it may do so can spur other companies already in the market to
20 proactively ramp up their own competitive efforts. Meta, poised on the edge of the VR
21 dedicated fitness app market with its popular Beat Saber app, and with all its vast resources and
22 unique strategic advantages, exerts such an influence. [REDACTED]

23 [REDACTED]
24 [REDACTED]. The Acquisition
25 would eliminate that incentive for market participants to compete, again in contravention of the
26 antitrust laws.

1 12. When viewed against the backdrop of the broader VR fitness app market, which
2 includes both dedicated or deliberate fitness apps (“dedicated fitness apps”) and apps, such as
3 rhythm and active sports games, that provide an incidental fitness benefit (“incidental fitness
4 apps”), the merger is no less anticompetitive. Letting Meta acquire Supernatural would combine
5 the makers of two of the most significant VR fitness apps, thereby eliminating beneficial rivalry
6 between Meta’s Beat Saber app and Within’s Supernatural app.

7 13. Accordingly, this Acquisition poses a reasonable probability of eliminating both
8 present and future competition. That lessening of competition may result in reduced innovation,
9 quality, and choice, less pressure to compete for the most talented app developers, and
10 potentially higher prices for VR fitness apps. And Meta would be one step closer to its ultimate
11 goal of owning the entire “Metaverse.”

12 14. The Commission voted to file this Complaint seeking preliminary relief
13 pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Commission is entitled to
14 preliminary relief in this Court because of its likelihood of success on the merits and the weight
15 of the equities. To succeed on the merits, the FTC must prove that the Acquisition violates
16 Section 7 of the Clayton Act, which prohibits mergers the effect of which “may be substantially
17 to lessen competition, or tend to create a monopoly.” For the reasons described below, the FTC
18 is likely to succeed in proving an antitrust violation, and the equities weigh strongly in favor of
19 enforcing the antitrust laws.

20 15. Preliminary injunctive relief restraining Defendants from proceeding with the
21 Acquisition is necessary to prevent interim harm to competition “pending the issuance of a[n
22 administrative] complaint by the Commission,” and if such complaint is issued, during any
23 subsequent administrative proceeding. Absent preliminary relief, Defendants can close the
24 Acquisition and combine Meta’s and Within’s operations. Allowing Defendants to consummate
25 the Acquisition before the Commission issues an administrative complaint, and before any
26 administrative proceeding has concluded, is likely to cause immediate harm to competition and
27 consumers and would undermine the Commission’s ability to remedy the anticompetitive

1 effects of the Acquisition if it is found unlawful after a full trial on the merits and any
2 subsequent appeals.

3 16. A temporary restraining order enjoining the Acquisition is necessary to preserve
4 the status quo and protect competition while the Court considers Plaintiff’s application for a
5 preliminary injunction. Unless temporarily restrained by the Court, Defendants would be free to
6 consummate the Acquisition on or after August 1, 2022.

7 **JURISDICTIONAL STATEMENT**

8 **A. Jurisdiction**

9 17. This Court’s jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. §
10 53(b), and 28 U.S.C. §§ 1331, 1337, and 1345. This is a civil action arising under Acts of
11 Congress protecting trade and commerce against restraints and monopolies and is brought by an
12 agency of the United States authorized by an Act of Congress to bring this action.

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

14 Whenever the Commission has reason to believe—

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

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

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

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

1 **B. Venue**

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

5 **C. Intradistrict Assignment**

6 21. Assignment to the San Francisco Division is proper. This action arises in San
7 Mateo County because a substantial part of the events giving rise to these claims occurred in
8 San Mateo County, where Defendant Meta is headquartered.

9 **THE PARTIES AND PROPOSED ACQUISITION**

10 22. Plaintiff, the Commission, is an administrative agency of the United States
11 government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 *et*
12 *seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.
13 The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7
14 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

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

24 24. Defendant Mark Zuckerberg is the founder, Chairman, CEO, and controlling
25 shareholder of Defendant Meta. Mark Zuckerberg ultimately controls Meta. His offices are
26 located at 1601 Willow Road, Menlo Park, California, 94025.

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

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

14 

15 27. Unless this Court grants Plaintiff’s temporary restraining order, Defendants are
16 free to close the proposed Acquisition after 11:59 PM Eastern Time (or 8:59 p.m. Pacific Time)
17 on July 31, 2022.

18 **INDUSTRY BACKGROUND**

19 28. The VR industry is currently characterized by a high degree of innovation and
20 growth. Global sales are predicted to more than double in just three years, from \$5 billion in
21 2021 to more than \$12 billion in 2024.

22 29. Users typically engage with the VR experience through a headset with displays
23 in front of each eye to place a user in a fully rendered, three-dimensional environment. Cutting-
24 edge VR technology creates an immersive digital experience like no other. VR users can
25 instantly be transported anywhere in the world, backward or forward in time, into outer space or
26 fictional lands—all from the comfort and safety of their own homes. Unlike a game, video, or
27 app on a tablet, phone, or monitor, the three-dimensional VR environment creates the

1 perception of completely surrounding the user, allowing the user to move around in the
2 projected space. As Mark Zuckerberg explains, “you’re right there with another person or in
3 another place and that’s very different from every experience of technology that we’ve had
4 before. . . .”

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

9 31. The majority of users get apps for VR headsets from online app stores, which
10 distribute products for use on individual VR devices. Meta controls its own app store called the
11 “Meta Quest Store,” with more than 400 apps available for download. Meta also offers the
12 “App Lab,” a Meta-produced tool that allows third-party developers to distribute apps not
13 present in the Meta Quest Store directly to consumers. Other VR app stores include Valve’s
14 Steam Store and SideQuest, [REDACTED]

15 [REDACTED]
16 32. VR software and studio companies like Within develop the apps that run on VR
17 headsets. These apps run the gamut of genres from rhythm games to shooters to e-sports to
18 creation and exploration and more.

19 33. [REDACTED] Meta’s Beat Saber, an
20 enormously popular rhythm game “where you slash the beats of adrenaline-pumping music as
21 they fly towards you, surrounded by a futuristic world.” Meta acquired control of Beat Saber
22 through its purchase of Beat Games [REDACTED] in
23 November 2019.

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

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

35. In addition to the aforementioned acquisitions, Meta has developed and released 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.

36. Among VR apps, dedicated fitness [REDACTED]

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

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

6 **THE RELEVANT ANTITRUST MARKETS**

7 37. The Acquisition would substantially lessen competition or tend to create a
8 monopoly in the relevant antitrust market for VR dedicated fitness apps in the United States
9 (“VR Dedicated Fitness App market”). The Acquisition would also substantially lessen
10 competition or tend to create a monopoly in the broader relevant antitrust market of VR fitness
11 apps in the United States (“VR Fitness App market”) that includes both dedicated fitness apps
12 and incidental fitness apps.

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

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

17 39. [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 40. Dedicated fitness apps offer distinct functionality when compared to other VR
21 apps, including VR incidental fitness apps. For example, they may feature adjusting difficulty
22 so that users never “fail” a workout; they may feature workouts designed by trainers or fitness
23 experts; they are designed to maximize exertion and physical movement for the purpose of
24 exercise; and they may feature classes or other active coaching.

25 41. [REDACTED]
26 [REDACTED]
27 [REDACTED]

1 [REDACTED] Dedicated fitness apps typically entail a higher degree of physical exertion than incidental
2 fitness apps. According to the Virtual Reality Institute of Health and Exercise, which rates
3 energy expenditures during VR app usage, Within’s Supernatural currently has the highest
4 energy expenditure, at 12–13 calories per minute.

5 42. VR dedicated fitness apps are also typically offered using a distinct,
6 subscription-based pricing model. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 43. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 44. The VR Dedicated Fitness App market does not include other products that are
15 neither close substitutes for, nor offered under similar competitive conditions as, VR dedicated
16 fitness apps. For example, it does not include non-VR at-home smart fitness solutions, such as
17 digitally connected exercise bikes, treadmills, weight machines, mobile phone apps, video
18 games, or workout videos.

19 45. Functional, practical, technological, and price differences show that non-VR at-
20 home smart fitness solutions and at-home exercise products are distinct from VR dedicated
21 fitness apps.

22 46. VR offers a level of immersion that other at-home fitness experiences do not, and
23 cannot, offer. VR technology allows users to exercise from the comfort, privacy, and safety of
24 home with the feeling and visuals of being somewhere else—atop a mountain, on a tropical
25 island, in a futuristic world, virtually anywhere. The sensors in a VR headset and controllers
26 also allow for a degree of tracking, adjustment, and feedback that non-immersive exercise
27 programs cannot match. As Within’s co-founder and CEO explained, “[W]orking out in

1 Supernatural feels like you're a champion of a sport from the future. I love that and haven't felt
2 that sense of athleticism ever on a treadmill or an exercise bike."

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

9 48. In addition to Supernatural, other apps in the VR Dedicated Fitness App market
10 include FitXR, Holofit from Holodia, VZFit from Virzoom, and Les Mills Body Combat from
11 Odders Lab.

12 49. [REDACTED]

13 [REDACTED] Other than Supernatural and FitXR, [REDACTED]
14 [REDACTED]

15 **B. The VR Fitness App Market**

16 50. The VR Fitness App market comprises VR apps that are recognized and
17 marketed as providing a fitness benefit to the user. This broader market includes both VR
18 dedicated fitness apps and incidental fitness apps, such as rhythm and active sports games—
19 including Meta's [REDACTED] Beat Saber.

20 51. The incidental fitness category includes VR apps whose primary focus is not
21 fitness, but that allow users to get a workout as a byproduct of their use because of the
22 physically active nature of these apps. This category includes "rhythm" games like Beat Saber,
23 Pistol Whip, and OhShape, where a user must dodge, strike, or shoot targets along to music, as
24 well as active sports games like Thrill of the Fight, a boxing simulator.

25 52. [REDACTED]
26 [REDACTED]
27 [REDACTED]

1 53. Publicly, Meta has acknowledged a VR Fitness App market comprising both
2 dedicated and incidental fitness apps. Meta includes Beat Saber in this market. In a post on the
3 Oculus website entitled “Exercise By Accident: VR Games to Help You Work Out At Home,”
4 Meta extols the virtues of rhythm and sports games for physical exercise: “while our first port of
5 call for VR fitness is dedicated fitness apps like Supernatural and FitXR, you can get a
6 surprising amount of exercise ‘by accident’ with a bunch of the games below,” including Meta’s
7 own Beat Saber app. Meta classified the type of exercise offered by Beat Saber as “Full-body,
8 Aerobic”—the exact same type of exercise it listed for both Supernatural and FitXR.

9 54. Technology and fitness reviewers also recognize the VR Fitness App market.
10 Publications reviewing VR fitness options often include incidental fitness apps alongside
11 dedicated fitness apps, with Beat Saber featuring prominently. Many reviews of Supernatural
12 compare it to Beat Saber specifically, noting the similarities in game mechanics, comparing the
13 exercise effect of each app, and comparing value for the price.

14 55. For the reasons stated above with respect to the VR Dedicated Fitness App
15 market, the VR Fitness App market also does not include non-VR at-home smart fitness
16 solutions like digitally connected exercise bikes, treadmills, weight machines, mobile phone
17 apps, video games, or workout videos. VR fitness apps offer their users all of the broader
18 benefits of VR: they can exercise in fully immersive, 360-degree environments without any of
19 the cost, discomfort, or risk of actually traveling to those environments. Again, as Mark
20 Zuckerberg has explained, VR is “very different from every experience of technology that
21 we’ve had before.”

22 56. Indeed, Meta advertises the immersive nature of VR, touting the ability to do
23 “jabs on a glacier, [and] lunges on a volcano, all while getting the best workout of your life.”

24 57. Moreover, unlike “flat” or two-dimensional at-home workout content, VR apps
25 can also be fully interactive, providing guided motion and haptic feedback in real time in three-
26 dimensional space. Because of the cameras in the headset and sensors in the controllers, the VR
27

1 tracking system means that VR fitness apps “know how your body is moving through space at
2 all times,” as Within co-founder and CEO put it.

3 58. Nor does the VR Fitness App market include VR apps that do not provide an
4 exercise benefit and are neither marketed nor sought by users on that basis. Although many VR
5 apps make use of some physical movement by the user to navigate the app or present an
6 immersive experience to the user, not all VR apps involve physical movement that generates an
7 exercise effect. Indeed, studies recognize the wide range of exercise effect that can be provided
8 by different VR apps. [REDACTED]

9 [REDACTED]. VR apps that provide a lower or negligible
10 exercise effect accordingly do not compete in this market.

11 **C. The Relevant Geographic Market**

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

18 **MARKET CONCENTRATION AND**

19 **THE ACQUISITION’S PRESUMPTIVE ILLEGALITY**

20 60. Both the VR Dedicated Fitness App market and the broader VR Fitness market
21 are highly concentrated.

22 61. Market concentration within a properly defined relevant antitrust market is a
23 useful indicator of the competitive effects of a merger. The 2010 U.S. Department of Justice and
24 Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”) measure
25 market concentration using the Herfindahl–Hirschman Index (“HHI”). The Merger Guidelines
26 outline the principal analytical techniques, practices, and enforcement policy of the FTC and
27 Department of Justice with respect to mergers involving competitors. Though the Merger

1 Guidelines are not binding on the courts, courts frequently cite the Merger Guidelines as
2 persuasive authority.

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

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

10 **A. The VR Dedicated Fitness App Market is Highly Concentrated**

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

12 [REDACTED]
13 [REDACTED]

14 65. Supernatural [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 66. The VR Dedicated Fitness App market HHI [REDACTED]

22 [REDACTED] "concentrated" or "highly concentrated" under the Merger
23 Guidelines.

24 **B. The Acquisition Is Presumptively Illegal with Respect to the VR Fitness App**
25 **Market**

26 67. When analyzed within the broader market for VR fitness apps, in which both
27 Meta's Beat Saber and Within's Supernatural compete, the Acquisition is presumed likely to

1 enhance market power because it would significantly increase concentration and result in a
2 highly concentrated relevant market. This suffices to establish a prima facie case that the
3 Acquisition is unlawful.

4 68. In the VR Fitness App market, the Acquisition would increase HHI levels by
5 [REDACTED]. The Acquisition is thus
6 presumed likely to create or enhance market power and is presumptively unlawful under
7 Section 7 of the Clayton Act, 15 U.S.C. § 18.

8 **EVIDENCE OF LIKELY ANTICOMPETITIVE EFFECTS**

9 69. In addition to this presumption of illegality, additional evidence indicates that the
10 Acquisition may substantially lessen competition in the relevant markets for VR dedicated
11 fitness apps and for VR fitness apps.

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

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

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

23 71. Meta has the economic characteristics, size, resources, capabilities, advantages,
24 and incentives to enter the VR Dedicated Fitness App market—and it has seriously considered
25 doing so—by means other than this Acquisition. Meta could have chosen to build a VR
26 dedicated fitness app from scratch, add dedicated fitness functionality to an existing app, [REDACTED]

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

13 73. Meta has the financial resources to develop a dedicated fitness app on its own—
14 either by creating a new app or by adding new features to an existing app such as Beat Saber. [REDACTED]
15 [REDACTED]
16 [REDACTED] Meta’s formidable first-party studios group in developing a VR dedicated
17 fitness app.

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

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

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

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

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

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

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

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

17 80. Meta's control over the Quest platform [REDACTED]
18 [REDACTED].

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

22 82. Meta—formerly known as “Facebook Inc.”—rebranded its entire business as
23 “Meta” to reflect its focus on VR. Its brands, including Meta and Quest, are well-known to VR
24 users. Meta also has substantial marketing experience as to a wide range of VR apps, including
25 Beat Saber, that it could leverage to enter the VR Dedicated Fitness App market. Indeed, users
26 already associate Meta's Beat Saber app with incidental fitness. This “name awareness” would
27 facilitate Meta's organic entry into the VR Dedicated Fitness App market, as a dedicated
28

1 fitness-oriented version of Beat Saber would be in line with users' understanding of the Beat
2 Saber brand.

3 83. Meta also has incentives to enter the VR Dedicated Fitness App market.

4 84. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 85. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 86. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 87. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 88. [REDACTED]

25 [REDACTED]

26 89. [REDACTED]

27 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

90. [REDACTED]

[REDACTED]

91. [REDACTED]

[REDACTED]

92. [REDACTED]

[REDACTED]

93. [REDACTED], after Meta’s acquisition of Beat Games and immediately prior to the launch of Supernatural, Beat Saber released a new track called “FitBeat,” which included virtual “walls” or “obstacles” that users would have to dodge. [REDACTED]

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

94. [REDACTED]

[REDACTED] has already included both a 360-degree mode where targets come from all sides and a no-fail mode that allows users to complete tracks despite missing blocks in recent updates—a feature that fitness-focused users can adopt to ensure an uninterrupted workout.

1 95. [REDACTED]

8 96. [REDACTED]

13 97. [REDACTED]

15 98. Meta also hired away the head of product for Supernatural at Within to work at
16 Meta following the Supernatural launch. [REDACTED]

18 99. [REDACTED]

22 100. [REDACTED]

25 101. Accordingly, absent this anticompetitive Acquisition, there is a reasonable
26 probability that Meta would have exercised one of its other available options to enter the VR
27 Dedicated Fitness App market.

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

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

8 103. Building instead of buying would entail developing additional expertise,
9 undertaking product research and design, hiring more employees, and making other key
10 investments. [REDACTED]

11 [REDACTED]. But such efforts would reflect the very essence of
12 competition, the dynamic that the antitrust laws seek to protect and promote.

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

19 105. The Acquisition would eliminate the probability of such entry, potentially
20 dampening future innovation and leading to a market with less beneficial rivalry and
21 competitive pressure.

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

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

1 107. As explained in detail above, Meta is a massive, wealthy company with
2 extensive control over and experience in various aspects of the VR industry. It has recently
3 expanded into a variety of VR-related areas, including by acquiring the [REDACTED] popular VR
4 incidental fitness app (Beat Saber) and by internally developing a system-level fitness tracking
5 tool that can run in the background of other apps (Oculus Move). In a recent earnings report,
6 Meta announced that it anticipated spending some \$10 billion across its Reality Labs division,
7 which has found its biggest success to date with the Quest 2 Headset and Quest Store, and that it
8 is committed to increasing those investments over the next several years. [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 108. [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 109. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

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

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

25 111. [REDACTED]
26 [REDACTED]
27 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED] The Acquisition would eliminate that competitive influence.

112. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

113. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

114. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

115. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

116. [REDACTED]

[REDACTED] That competitive pressure—and all of the benefits it yields—would be eliminated by the Acquisition.

B. Anticompetitive Effects in the VR Fitness App Market

117. When viewed against the broader backdrop of the VR Fitness App market, the Acquisition is no less illegal. The Acquisition, if allowed to proceed, would see the maker of [REDACTED]. Beat Saber and Supernatural have been close competitors in this broader market, with [REDACTED]. [REDACTED]. The Acquisition would eliminate that competitive pressure between Defendants.

1. Beat Saber and Supernatural Are Competitors in the VR Fitness App Market

118. Beat Saber and Supernatural compete in the highly concentrated VR Fitness App market. [REDACTED]

119. In part of 2021 and throughout most of the first half of 2022, Meta maintained a “fitness” landing webpage for its Quest and Quest 2 headsets. The link to the landing page was prominently displayed as part of the front page heading on Oculus.com. That fitness landing page featured Supernatural and Beat Saber, among other apps.

120. The Quest Store itself has a search functionality that allows users to find apps. As of June 2022, a search in the United States for the keyword “exercise” returns 15 apps, including both Supernatural and Beat Saber.

121. Both Within and Meta [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 122. [REDACTED] Beat Saber and Supernatural, [REDACTED]

4 [REDACTED] both employ the same “slashing” mechanic, in
5 which the player uses virtual bats or swords to hit incoming targets timed to music. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 **2. Competition Between Beat Saber and Supernatural Has Been Beneficial**
12 **to VR Fitness App Users**

13 123. The ongoing competition between Beat Saber and Supernatural has [REDACTED]

14 [REDACTED]

15 benefited consumers.

16 124. Meta has added fitness features to Beat Saber to better compete for users seeking
17 an exercise effect. For example, in April 2020—just before Supernatural’s launch—Meta
18 released “FitBeat,” a song for Beat Saber designed for fitness-focused beat maps. Media
19 coverage has attributed “FitBeat” as a reaction to Supernatural’s release. [REDACTED]

20 [REDACTED]

21 125. Similarly, Within has taken [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 126. Moreover, prior to launching Supernatural, [REDACTED]

26 [REDACTED]

27 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED].

5 127. [REDACTED]

6 [REDACTED]

7 128. [REDACTED].

8 129. [REDACTED]

9 [REDACTED]

10 130. This competition between Supernatural and Beat Saber in the VR Fitness App
11 market leads to innovations, new features, and consumer choice—and it will be eliminated as a
12 result of the Acquisition.

13 **LACK OF COUNTERVAILING FACTORS**

14 131. Defendants cannot demonstrate that new entry or expansion by existing firms
15 will be timely, likely, or sufficient to offset the anticompetitive effects.

16 132. There are multiple barriers to entering or expanding in the relevant markets,
17 including time, network effects, ongoing development and content creation costs, post-launch
18 support, capital, [REDACTED] and the need for consumers to be able to discover the app.
19 Developing a high-quality entrant also [REDACTED]

20 [REDACTED]

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

25 134. No other company has the combination of resources, VR know-how, and control
26 over the [REDACTED] app store and the overall Quest VR experience that Meta has.

1 135. Once Meta—which also owns the Quest platform and app store—entrenches [REDACTED]
2 [REDACTED] VR dedicated fitness through the Acquisition, it will effectively raise
3 barriers to entry and expansion as other companies interested in the space will understand that
4 they need to compete with a deep-pocketed platform operator that owns the [REDACTED] VR
5 fitness app *and* the [REDACTED] VR dedicated fitness app.

6 136. Defendants cannot demonstrate cognizable, verifiable, transaction-specific
7 efficiencies that would be sufficient to reverse the strong presumption and evidence of the
8 Acquisition’s likely significant anticompetitive effects.

9 **LIKELIHOOD OF SUCCESS ON THE MERITS,**

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

11 137. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission,
12 whenever it has reason to believe that a proposed merger is unlawful, to seek preliminary
13 injunctive relief to prevent consummation of a merger until the Commission has had an
14 opportunity to issue an administrative complaint, and if such complaint is issued, adjudicate the
15 merger’s legality in an administrative proceeding. In deciding whether to grant relief, the Court
16 must balance the likelihood of the Commission’s ultimate success on the merits against the
17 equities, using a sliding scale. The principal equity in cases brought under Section 13(b) is the
18 public’s interest in effective enforcement of the antitrust laws. Private equities affecting only
19 Defendants’ interests cannot tip the scale against a preliminary injunction.

20 138. The Commission is likely to succeed in proving that the effect of the Acquisition
21 may be substantially to lessen competition or tend to create a monopoly in violation of Section 7
22 of the Clayton Act or Section 5 of the FTC Act.

23 139. Preliminary relief is warranted and necessary. Should the Acquisition ultimately
24 be adjudicated unlawful, reestablishing the status quo would be difficult, if not impossible, if
25 the Acquisition has already occurred in the absence of preliminary relief. Allowing the
26 Acquisition to close before the Commission issues an administrative complaint and the
27 completion of any administrative proceeding would cause irreparable harm by, among other

1 things, enabling the combined firm to begin altering Within's operations and business plans,
2 accessing Within's sensitive business information, eliminating key Within personnel, changing
3 Within's product development efforts, and preventing Within from raising the funding
4 necessary to continue operations and maintain its growth trajectory. In the absence of relief
5 from this Court, substantial harm to competition would occur in the interim.

6 140. Accordingly, the equitable relief requested here is in the public interest. The
7 Commission respectfully requests that the Court:

8 141. Enter the temporary restraining order and preliminarily enjoin Defendants from
9 taking any further steps to consummate the Acquisition, or any other acquisition of stock,
10 assets, or other interests of one another, either directly or indirectly;

11 142. Retain jurisdiction and maintain the *status quo* until the Commission issues an
12 administrative complaint and any administrative proceeding initiated by the Commission is
13 concluded; and

14 143. Award such other and further relief as the Court may determine is appropriate,
15 just, and proper.

16
17 Dated: July 27, 2022

Respectfully submitted,

18
19 Of counsel:

/s/ Abby L. Dennis

ABBY L. DENNIS
Senior Trial Counsel

20 HOLLY VEDOVA
Director
Bureau of Competition

PEGGY BAYER FEMENELLA
Acting Assistant Director

21 JOHN M. NEWMAN
Deputy Director
Bureau of Competition

JOSHUA GOODMAN
Acting Deputy Assistant Director

22
23 JEANINE BALBACH
MICHAEL BARNETT
24 E. ERIC ELMORE
JUSTIN EPNER
25 SEAN D. HUGHTO
FRANCES ANNE JOHNSON
26 ANDREW LOWDON
KRISTIAN ROGERS
27 ANTHONY R. SAUNDERS

TIMOTHY SINGER
ERIKA WODINSKY
Attorneys

Bureau of Competition

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28