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18 (Additional Counsel Listed on Signature Page)

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 FEDERAL TRADE COMMISSION,

23 Plaintiff,

24 v.

25 META PLATFORMS, INC., et al.,

26 Defendants.
27

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

**DEFENDANT META PLATFORMS, INC.’S
ANSWER AND AFFIRMATIVE DEFENSES**

Dept.: Courtroom 4 – 5th Floor
Judge: Honorable Edward J. Davila

1 “potential competition” – Meta should not be allowed to acquire Within because Meta *might* otherwise
2 compete on its own with Within’s product, Supernatural. The claim fails for numerous reasons. The
3 alleged product market is artificial, excluding a wide range of competing fitness products on other
4 platforms. Meta had no plan to create its own VR fitness product; indeed, it had rejected the idea as
5 impractical, and Meta has no unique advantages in providing such a product – others are equally capable
6 of doing so. And actual entry by strong competitors into the very markets the FTC alleges, as well as
7 expected entry from others, precludes any colorable claim that Meta’s decision to compete by acquiring
8 a VR fitness app – rather than developing one from scratch – could harm consumers, even on the FTC’s
9 own suspect legal theory.

10 The FTC’s backup theory – that combining Within’s Supernatural with Meta’s Beat Saber leads
11 to too much power in an alleged “incidental fitness plus direct fitness” market – fails the straight-face
12 test: Meta’s Beat Saber game is quite different from Supernatural’s fitness app, including in its product
13 characteristics, pricing, audience, and just about any other aspect one could identify. Lumping them
14 together and leaving out all the other games and other products on all the other platforms against which
15 these two products compete makes no sense except as a thin rationalization for Chair Khan’s
16 determination to block Meta acquisitions irrespective of the facts or the law.

17 ANSWER

18 Each paragraph below corresponds to the same-numbered paragraph in the Complaint. All
19 allegations not expressly admitted are denied. Meta does not interpret the headings or preamble in the
20 Complaint as well-pleaded allegations to which any response is required. To the extent a response is
21 required to the headings or preamble, Meta denies all such allegations in the headings and preamble.
22 Unless otherwise defined, capitalized terms refer to the capitalized terms defined in the Complaint, but
23 any such use is not an acknowledgment or admission of any characterization the FTC may ascribe to the
24 terms.

25 1. Meta admits that it is seeking to acquire Within, the maker of Supernatural. Meta denies
26 the remaining allegations contained in Paragraph 1.

27 2. Meta admits that the Facebook, Instagram, Messenger and WhatsApp applications are
28 referred to collectively as Meta’s “Family of Apps,” and Meta reported in its Securities and Exchange

1 Commission (“SEC”) annual filing for the year ending December 31, 2021, that the “[f]amily monthly
2 active people (MAP) was 3.59 billion” as of December 31, 2021. Meta further admits that on June 9,
3 2022, the company formerly known as Facebook was renamed “Meta Platforms, Inc.” Meta denies the
4 remaining allegations contained in Paragraph 2.

5 3. Meta admits that it acquired Oculus VR, Inc. in 2014. Meta further admits that the Quest
6 2 has been available for sale in the United States and worldwide since its launch in 2020. To the extent
7 Plaintiff is quoting documents, Meta respectfully refers the Court to the documents for an accurate and
8 complete statement of their contents. Meta denies the remaining allegations contained in Paragraph 3.

9 4. Meta admits that the Quest Store is a distribution platform for VR software apps. Meta
10 further admits that it acquired Beat Games, the developer of Beat Saber, in November 2019; that Beat
11 Saber is the highest earning app on Meta’s Quest Store to date by revenue; and that Beat Saber’s revenue
12 in 2021 was greater than the next five highest-grossing apps combined. Meta further admits that it owns
13 other VR apps. Meta denies the remaining allegations contained in Paragraph 4.

14 5. Meta denies the allegations contained in Paragraph 5.

15 6. Meta denies the allegations contained in Paragraph 6.

16 7. To the extent Plaintiff is quoting documents, Meta respectfully refers the Court to the
17 documents for an accurate and complete statement of their contents. Meta denies the remaining
18 allegations contained in Paragraph 7.

19 8. To the extent Plaintiff is quoting documents, Meta respectfully refers the Court to the
20 documents for an accurate and complete statement of their contents. Meta denies the remaining
21 allegations contained in Paragraph 8.

22 9. Meta denies the allegations contained in Paragraph 9.

23 10. Meta denies the allegations contained in Paragraph 10.

24 11. Meta denies the allegations contained in Paragraph 11.

25 12. Meta denies the allegations contained in Paragraph 12.

26 13. Meta denies the allegations contained in Paragraph 13.

27 14. Paragraph 14 purports to state conclusions of law to which no response is required. To
28 the extent a response is required, Meta denies the allegations contained in Paragraph 14.

1 15. Paragraph 15 purports to state conclusions of law to which no response is required. To
2 the extent a response is required, Meta denies the allegations contained in Paragraph 15.

3 16. Paragraph 16 purports to state conclusions of law to which no response is required. To
4 the extent a response is required, Meta denies the allegations contained in Paragraph 16.

5 17. Paragraph 17 purports to state conclusions of law to which no response is required. To
6 the extent a response is required, Meta denies the allegations contained in Paragraph 17.

7 18. Paragraph 18 purports to state conclusions of law to which no response is required. To
8 the extent a response is required, Meta respectfully refers the Court to 15 USC § 53(b) for an accurate
9 and complete statement of its text.

10 19. Paragraph 19 purports to state conclusions of law to which no response is required. To
11 the extent a response is required, Meta denies the allegations contained in Paragraph 19.

12 20. Paragraph 20 purports to state conclusions of law to which no response is required. To
13 the extent a response is required, for purposes of this current action, Meta does not contest that venue in
14 this district is proper.

15 21. Paragraph 21 purports to state conclusions of law to which no response is required. To
16 the extent a response is required, for purposes of this current action, Meta does not contest that
17 assignment to the San Jose Division is proper.

18 22. Paragraph 22 purports to state conclusions of law to which no response is required. To
19 the extent a response is required, Meta admits the allegations contained in Paragraph 22 but denies that
20 the FTC is authorized under Section 7 of the Clayton Act, 15 U.S.C. § 18, or Section 5 of the FTC Act,
21 15 U.S.C. § 45, to proceed in this case.

22 23. Meta admits that it is a publicly traded company organized under the laws of Delaware
23 with headquarters in Menlo Park, California; that it develops and sells VR and other extended reality
24 hardware and software through its Reality Labs division; and that Meta reported its Reality Labs division
25 generated \$2,274 million in revenue in 2021 and \$1,139 million in revenue in 2020, which it recorded
26 in its SEC annual filing for the year ending December 31, 2021. Meta also admits that it offers for sale
27 the Quest 2 VR headset, which is Meta's best-selling VR hardware product to date by units sold, and
28

1 that it acquired Beat Games, the creator of Beat Saber, in 2019, which is Meta’s best-selling VR software
2 product to date by revenue. Meta denies the remaining allegations contained in Paragraph 23.

3 24. Meta admits that Mark Zuckerberg is the founder, Chairman, CEO and controlling
4 shareholder of Meta and that Mr. Zuckerberg maintains an office at 1601 Willow Road, Menlo Park,
5 California, 94025. Meta denies the remaining allegations contained in Paragraph 24.

6 25. Paragraph 25 purports to state conclusions of law to which no response is required. To
7 the extent a response is required, Meta avers that it lacks knowledge or information sufficient to form a
8 belief as to the truth of the allegations contained in Paragraph 25, and therefore denies the same.

9 26. Meta admits that on October 22, 2021, Meta and Within entered into an agreement and
10 plan of merger, pursuant to which Meta would acquire all shares of Within.

11 27. Meta denies the allegations contained in Paragraph 27.

12 28. Meta admits that the VR industry is currently characterized by a high degree of innovation
13 and growth. Meta denies the remaining allegations contained in Paragraph 28.

14 29. Meta admits that users may experience VR through a headset with displays in front of
15 each eye. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court to
16 the documents for an accurate and complete statement of their contents. Meta denies the remaining
17 allegations contained in Paragraph 29.

18 30. Meta admits that its best-selling VR headset to date by unit measurement is the Quest 2.
19 Meta avers that it lacks knowledge or information sufficient to form a belief as to the truth of the
20 purported industry source estimates, and therefore denies the same. Meta denies the remaining
21 allegations contained in Paragraph 30.

22 31. Meta admits that the Meta Quest Store, App Lab, Valve’s Steam Store, and SideQuest
23 are application stores where users can download applications and content. Meta avers that it lacks
24 knowledge or information sufficient to form a belief as to the truth of the allegations concerning how
25 users get apps for VR headsets, and therefore denies the same. Meta denies the remaining allegations
26 contained in Paragraph 31.

27 32. Meta admits that VR software and studio companies, including Within, develop apps that
28 run on VR headsets. Meta denies the remaining allegations contained in Paragraph 32.

1 33. To the extent Plaintiff is quoting documents, Meta respectfully refers the Court to the
2 documents for an accurate and complete statement of their contents. Meta admits that it acquired Beat
3 Games, the developer of Beat Saber, in November 2019, and that since 2019 Beat Saber has been the
4 top-grossing app on Meta's Quest Store by revenue. Meta denies the remaining allegations contained in
5 Paragraph 33.

6 34. Meta admits that it has acquired the studios cited in Paragraph 34. Meta denies the
7 remaining allegations contained in Paragraph 34.

8 35. Meta admits that it has developed and released Horizon Worlds, Horizon Workrooms,
9 Horizon Venues, and Horizon Home. Meta denies the remaining allegations contained in Paragraph 35.

10 36. To the extent Plaintiff is quoting documents, Meta respectfully refers the Court to the
11 documents for an accurate and complete statement of their contents. Meta denies the remaining
12 allegations contained in Paragraph 36.

13 37. Meta denies the allegations contained in Paragraph 37.

14 38. Meta denies the allegations contained in Paragraph 38.

15 39. Meta denies the allegations contained in Paragraph 39.

16 40. Meta denies the allegations contained in Paragraph 40.

17 41. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
18 truth of the purported rankings by third parties, and therefore denies the same. Meta denies the remaining
19 allegations contained in Paragraph 41.

20 42. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations concerning industry participants, and therefore denies the same. Meta denies the
22 remaining allegations contained in Paragraph 42.

23 43. Meta denies the allegations contained in Paragraph 43.

24 44. Meta denies the allegations contained in Paragraph 44.

25 45. Meta denies the allegations contained in Paragraph 45.

26 46. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
27 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
28 allegations contained in Paragraph 46.

1 47. Meta admits that as of August 26, 2022, consumers can purchase a Supernatural Annual
2 Membership for \$179.99/year or a Supernatural Monthly Membership for \$18.99/month on Meta’s
3 Quest Store. Meta avers that it lacks knowledge or information sufficient to form a belief as to the truth
4 of the allegations concerning third parties contained in Paragraph 47, and therefore denies the same.
5 Meta denies the remaining allegations contained in Paragraph 47.

6 48. Meta denies the allegations contained in Paragraph 48.

7 49. Meta denies the allegations contained in Paragraph 49.

8 50. Meta denies the allegations contained in Paragraph 50.

9 51. Meta denies the allegations contained in Paragraph 51.

10 52. Meta denies the allegations contained in Paragraph 52.

11 53. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
12 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
13 allegations contained in Paragraph 53.

14 54. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in Paragraph 54, and therefore denies the same.

16 55. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
17 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
18 allegations contained in Paragraph 55.

19 56. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
20 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
21 allegations contained in Paragraph 56.

22 57. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
23 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
24 allegations contained in Paragraph 57.

25 58. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations concerning unidentified studies, and therefore denies the same. Meta denies the
27 remaining allegations contained in Paragraph 58.

1 59. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations concerning unidentified industry participants, and therefore denies the same. Meta
3 denies the remaining allegations contained in Paragraph 59.

4 60. Meta denies the allegations contained in Paragraph 60.

5 61. Paragraph 61 purports to state conclusions of law to which no response is required. To
6 the extent a response is required, Meta respectfully refers the Court to the 2010 U.S. Department of
7 Justice and Federal Trade Commission Horizontal Merger Guidelines for an accurate and complete
8 statement of its contents.

9 62. Paragraph 62 purports to state conclusions of law to which no response is required. To
10 the extent a response is required, Meta respectfully refers the Court to the 2010 U.S. Department of
11 Justice and Federal Trade Commission Horizontal Merger Guidelines for an accurate and complete
12 statement of its contents.

13 63. Paragraph 63 purports to state conclusions of law to which no response is required. To
14 the extent a response is required, Meta respectfully refers the Court to the 2010 U.S. Department of
15 Justice and Federal Trade Commission Horizontal Merger Guidelines for an accurate and complete
16 statement of its contents.

17 64. Meta denies the allegations contained in Paragraph 64.

18 65. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
19 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
20 allegations contained in Paragraph 65.

21 66. Meta denies the allegations contained in Paragraph 66.

22 67. Meta denies the allegations contained in Paragraph 67.

23 68. Meta denies the allegations contained in Paragraph 68.

24 69. Meta denies the allegations contained in Paragraph 69.

25 70. To the extent that Plaintiff is quoting from the 2010 U.S. Department of Justice and
26 Federal Trade Commission Horizontal Merger Guidelines, Meta respectfully refers the Court to the same
27 for an accurate and complete statement of its contents. Meta denies the remaining allegations contained
28 in Paragraph 70.

1 71. Meta denies the allegations contained in Paragraph 71.

2 72. Meta admits that it reported in Meta’s SEC annual filing for the year ending December
3 31, 2021, that its costs and expenses relating to Reality Labs were \$12,467 million for the year ending
4 December 31, 2021, and \$7,762 million for the year ending December 31, 2020. Meta further admits
5 that it reported in Meta’s SEC quarterly filing for the three months ending March 31, 2022, that its costs
6 and expenses relating to Reality Labs were \$3,655 million. Meta denies the remaining allegations
7 contained in Paragraph 72.

8 73. Meta denies the allegations contained in Paragraph 73.

9 74. Meta admits that it reported in Meta’s SEC annual filing for the year ending December
10 31, 2021, that its total income from operations for the year ending December 31, 2021 was \$46,753
11 million, and that the costs and expenses relating to Reality Labs for the year ending December 31, 2021
12 were \$12,467 million.

13 75. Meta admits that it continues to add features and content to the apps it has already
14 released; that it continues to develop and release new apps; and that Meta has previously developed VR
15 apps. Meta avers that it lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations concerning third parties, and therefore denies the same. The remaining allegations contained
17 in Paragraph 75 are vague and imprecise, and Meta therefore denies them on that basis.

18 76. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
19 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
20 allegations contained in Paragraph 76.

21 77. Meta admits that it has previously developed VR apps. Meta denies the remaining
22 allegations contained in Paragraph 77.

23 78. Meta admits that it developed Oculus Move, which among other things allows users to
24 track certain fitness-related metrics while using the Quest 2.

25 79. Meta admits that it owns seven VR development studios and that it employed
26 approximately 10,000 employees within its Reality Labs division as of March 2021. Meta denies the
27 remaining allegations contained in Paragraph 79.

28 80. Meta denies the allegations contained in Paragraph 80.

1 81. Meta admits that it determines what content is featured on Meta’s Quest Store. Meta
2 denies the remaining allegations contained in Paragraph 81.

3 82. Meta admits that the company name changed to “Meta Platforms, Inc.” in October 2021.
4 Meta denies the remaining allegations contained in Paragraph 82.

5 83. Meta denies the allegations contained in Paragraph 83.

6 84. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
7 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
8 allegations contained in Paragraph 84.

9 85. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
10 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
11 allegations contained in Paragraph 85.

12 86. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
13 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
14 allegations contained in Paragraph 86.

15 87. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
16 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
17 allegations contained in Paragraph 87.

18 88. Meta denies the allegations contained in Paragraph 88.

19 89. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
20 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
21 allegations contained in Paragraph 89.

22 90. Meta denies the allegations contained in Paragraph 90.

23 91. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
24 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
25 allegations contained in Paragraph 91.

26 92. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
27 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
28 allegations contained in Paragraph 92.

1 93. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
2 to the documents for an accurate and complete statement of their contents. Meta admits that Meta
3 developed “FitBeat” as a track for Beat Saber. Meta denies the remaining allegations contained in
4 Paragraph 93.

5 94. Meta admits that Beat Saber includes a 360-degree mode where targets come from all
6 sides and a no-fail mode that allows users to complete tracks despite missing blocks. To the extent that
7 Plaintiff is quoting from documents, Meta respectfully refers the Court to the documents for an accurate
8 and complete statement of their contents. Meta denies the remaining allegations contained in Paragraph
9 94.

10 95. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
11 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
12 allegations contained in Paragraph 95.

13 96. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
14 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
15 allegations contained in Paragraph 96.

16 97. Meta admits that the internal codename for the proposed acquisition of Within was
17 “Project Eden.” Meta denies the remaining allegations contained in Paragraph 97.

18 98. Meta admits that the former head of product for Supernatural is currently employed by
19 Meta. Meta denies the remaining allegations contained in Paragraph 98.

20 99. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
21 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
22 allegations contained in Paragraph 99.

23 100. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
24 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
25 allegations contained in Paragraph 100.

26 101. Meta denies the allegations contained in Paragraph 101.

27 102. Meta denies the allegations contained in Paragraph 102.

28 103. Meta denies the allegations contained in Paragraph 103.

1 104. Meta denies the allegations contained in Paragraph 104.

2 105. Meta denies the allegations contained in Paragraph 105.

3 106. Meta denies the allegations contained in Paragraph 106.

4 107. To the extent Plaintiff is referring to Meta’s earnings report, Meta respectfully refers the
5 Court to the earnings report for an accurate statement of its contents. Meta denies the remaining
6 allegations contained in Paragraph 107.

7 108. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in Paragraph 108, and therefore denies the same.

9 109. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
10 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
11 allegations contained in Paragraph 109.

12 110. Meta admits that the former head of product for Supernatural is currently employed by
13 Meta. Meta denies the remaining allegations contained in Paragraph 110.

14 111. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations concerning Within’s view of competition, and therefore denies the same. Meta
16 denies the remaining allegations contained in Paragraph 111.

17 112. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
18 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
19 allegations contained in Paragraph 112.

20 113. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
21 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
22 allegations contained in Paragraph 113.

23 114. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
24 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
25 allegations contained in Paragraph 114.

26 115. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
27 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
28 allegations contained in Paragraph 115.

1 116. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations concerning Within’s development strategy, and therefore denies the same. Meta
3 denies the remaining allegations contained in Paragraph 116.

4 117. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
5 truth of the allegations concerning Within’s view of competition, and therefore denies the same. Meta
6 denies the remaining allegations contained in Paragraph 117.

7 118. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations concerning Within’s view of competition, and therefore denies the same. Meta
9 denies the remaining allegations contained in Paragraph 118.

10 119. To the extent that Plaintiff is relying on public webpage(s), Meta respectfully refers the
11 Court to the webpage(s) for an accurate and complete statement of their contents. Meta denies the
12 remaining allegations contained in Paragraph 119.

13 120. Meta admits that the Quest Store has a search functionality that allows users to find apps.
14 Meta denies the remaining allegations contained in Paragraph 120.

15 121. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
16 truth of what Within views as Supernatural’s target market, and therefore denies the same. Meta denies
17 the remaining allegations contained in Paragraph 121.

18 122. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
19 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
20 allegations contained in Paragraph 122.

21 123. Meta denies the allegations contained in Paragraph 123.

22 124. Meta admits that it launched “FitBeat” in April 2022. Meta avers that it lacks knowledge
23 or information sufficient to form a belief as to the truth of how media coverage has attributed “FitBeat,”
24 and therefore denies the same. Meta denies the remaining allegations contained in Paragraph 124.

25 125. To the extent Plaintiff is quoting documents, Meta respectfully refers the Court to the
26 documents for an accurate and complete statement of their contents. Meta denies the remaining
27 allegations contained in Paragraph 125.

1 126. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in Paragraph 126, and therefore denies the same.

3 127. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in Paragraph 127, and therefore denies the same.

5 128. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in Paragraph 128, and therefore denies the same.

7 129. Meta avers that it lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in Paragraph 129, and therefore denies the same.

9 130. Meta denies the allegations contained in Paragraph 130.

10 131. Meta denies the allegations contained in Paragraph 131.

11 132. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
12 to the documents for an accurate and complete statement of their contents. Meta denies the remaining
13 allegations contained in Paragraph 132.

14 133. To the extent that Plaintiff is quoting from documents, Meta respectfully refers the Court
15 to the documents for an accurate and complete statement of their contents. The remaining allegations
16 contained in Paragraph 133 are vague and imprecise, and Meta therefore denies them on that basis.

17 134. Meta denies the allegations contained in Paragraph 134.

18 135. Meta denies the allegations contained in Paragraph 135.

19 136. Meta denies the allegations contained in Paragraph 136.

20 137. Paragraph 137 purports to state conclusions of law to which no response is required. To
21 the extent a response is required, Meta denies the allegations contained in Paragraph 137.

22 138. Meta denies the allegations contained in Paragraph 138.

23 139. Meta denies the allegations contained in Paragraph 139.

24 140. Meta denies that the FTC is entitled to any relief. To the extent Meta has not specially
25 admitted any allegation herein, it is denied. Further, Meta states that it is entitled to any relief that this
26 Court may deem just or appropriate, in equity or at law.

27 141. Meta denies that the FTC is entitled to the relief requested.

28 142. Meta denies that the FTC is entitled to the relief requested.

1 143. Meta denies that the FTC is entitled to the relief requested.

2 **AFFIRMATIVE AND OTHER DEFENSES**

3 Without assuming any burden of proof that it would not otherwise bear, Meta reasserts, without
4 limitation, all defenses raised in its other filings, whether or not separately re-pleaded herein. Meta also
5 asserts the following affirmative and other defenses. In listing the defenses below, Meta does not
6 knowingly or intentionally waive any defenses, including arguments about which issues fall within the
7 FTC's burden of proof. Meta also reserves the right to rely on any affirmative or other defense or claim
8 that may subsequently come to light, and expressly reserves the right to amend its Answer to assert such
9 additional defenses or claims.

10 **FIRST AFFIRMATIVE DEFENSE**

11 The Complaint fails to state a claim on which relief can be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 Granting the relief sought is inequitable and contrary to the public interest.

14 **THIRD AFFIRMATIVE DEFENSE**

15 The Complaint fails to allege a plausible relevant product market.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 The Complaint fails to allege a plausible relevant geographic market.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 The Complaint fails to allege undue share in any plausibly defined relevant market.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 The Complaint fails to allege any plausible harm to competition.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 The Complaint fails to allege any plausible harm to consumers.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 The Complaint fails to allege any plausible harm to consumer welfare.

26 **NINTH AFFIRMATIVE DEFENSE**

27 There will be no harm to competition, consumers, or consumer welfare because there is, and will
28 continue to be, entry and expansion by competitors, which is timely, likely, and sufficient.

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TENTH AFFIRMATIVE DEFENSE

The combination of the Defendants’ businesses will be procompetitive. The transaction will result in substantial acquisition-specific efficiencies, cost synergies, and other procompetitive effects that will directly benefit consumers. These benefits will greatly outweigh any and all proffered anticompetitive effects.

ELEVENTH AFFIRMATIVE DEFENSE

The alleged harm to potential competition is not actionable.

TWELFTH AFFIRMATIVE DEFENSE

The FTC cannot provide clear proof that Meta would provide VR fitness services but for the acquisition of Within.

THIRTEENTH AFFIRMATIVE DEFENSE

The FTC has failed to establish that Defendants exercise market power with respect to any relevant market.

FOURTEENTH AFFIRMATIVE DEFENSE

The Complaint reflects improper selective enforcement of the antitrust laws.

FIFTEENTH AFFIRMATIVE DEFENSE

The combination of Defendants’ businesses is not likely to substantially lessen competition applying the analytical framework set forth in the Merger Guidelines promulgated by the FTC and Department of Justice.

SIXTEENTH AFFIRMATIVE DEFENSE

The FTC is not entitled to relief because none of Meta’s conduct identified in the Complaint is actionable – either independently or in the aggregate – under the antitrust laws.

SEVENTEENTH AFFIRMATIVE DEFENSE

The FTC cannot proceed because it purports to exercise executive authority in violation of Article II of the United States Constitution.

EIGHTEENTH AFFIRMATIVE DEFENSE

The FTC is not entitled to relief because the Chair of the FTC is disqualified and her participation in adjudicating the related FTC administrative complaint irreparably taints both this action and the

1 administrative proceeding. Chair Khan has made numerous public statements that demonstrate her bias
 2 against Meta, and in particular its acquisitions, demonstrating her lack of impartiality with respect to
 3 Meta's proposed acquisition. She is not an impartial, unbiased Commissioner, but rather has prejudged
 4 Meta's conduct, as Meta explained in its Petition for Recusal filed with the FTC on July 25, 2022. Chair
 5 Khan's participation irrevocably taints the FTC's claim, including because its initiation and maintenance
 6 violates the Due Process Clause, U.S. Const. amend. V; the Federal Trade Commission Act, 5 U.S.C.
 7 §§ 41 et seq.; the Administrative Procedure Act, 5 U.S.C. §§ 1001 et seq.; FTC internal regulations, *see*,
 8 *e.g.*, 16 C.F.R. § 4.17; and federal ethics laws and regulations, *see, e.g.*, 5 C.F.R. § 2635.501(a); 5 C.F.R.
 9 § 2635.101(b)(14).

10 NINETEENTH AFFIRMATIVE DEFENSE

11 The FTC cannot proceed because it cannot demonstrate likelihood of success on the merits or
 12 that the balance of equities favors an injunction, as Chair Khan is disqualified. The FTC seeks to obtain
 13 a preliminary injunction while it pursues its administrative case. To do so, it must demonstrate likelihood
 14 of success on the merits. That means not simply success in its own home court, where it always succeeds,
 15 *see Axon Enter., Inc. v. FTC*, 986 F.3d 1173, 1187 (9th Cir. 2021), but success through appeal to a federal
 16 appellate court, *see FTC v. Simeon Mgmt. Corp.*, 532 F.2d 708, 715-16 (9th Cir. 1976). Chair Khan's
 17 participation necessarily makes any result in the administrative case she engineered and will judge
 18 invalid as a matter of law. *See Cinderella Career & Finishing Sch., Inc. v. FTC*, 425 F.2d 583, 591-92
 19 (D.C. Cir. 1970); *Am. Cyanamid Co. v. FTC*, 363 F.2d 757, 763-68 (6th Cir. 1966). Only by violating
 20 due process and federal ethics rules can the FTC ever obtain an agency decision against the transaction.

21 TWENTIETH AFFIRMATIVE DEFENSE

22 Because Chair Khan is disqualified, the FTC cannot seek, obtain, or enforce any equitable
 23 remedy under the doctrines of unclean hands, estoppel, or other equitable doctrines.

24 TWENTY-FIRST AFFIRMATIVE DEFENSE

25 The Due Process Clause of the United States Constitution barred the FTC from commencing this
 26 action against Meta and bars the FTC from continuing this action against Meta and from seeking a claim
 27 for relief.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

The FTC is not entitled to relief as a matter of law.

PRAYER FOR RELIEF

WHEREFORE, Meta respectfully requests that the Court enter judgment:

1. Denying the FTC’s requested relief;
2. Dismissing the Complaint in its entirety, with prejudice;
3. Awarding Meta the costs it has incurred in defending this action and expenses; and
4. Awarding such other and further relief to Meta as the Court may deem just and proper.

Dated: August 26, 2022

Respectfully submitted,

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By: /s/ Bambo Obaro

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