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25 **UNITED STATES DISTRICT COURT**
26 **NORTHERN DISTRICT OF CALIFORNIA**
27 **SAN JOSE DIVISION**

28 FEDERAL TRADE COMMISSION,
Plaintiff,
v.
META PLATFORMS, INC., et al.,
Defendants.

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

**DEFENDANT WITHIN UNLIMITED, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES**

ANSWER AND AFFIRMATIVE DEFENSES OF WITHIN UNLIMITED, INC.

Defendant Within Unlimited, Inc. (“Within”), by and through its undersigned attorneys, hereby answers Plaintiff Federal Trade Commission’s (“Plaintiff” or “FTC”) Complaint for a Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act dated July 27, 2022 (the “Complaint”) as follows:

ANSWER

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

1. Within admits that Meta seeks to acquire Within. Within denies the remaining allegations in this paragraph.

2. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

3. Within admits that Meta acquired Oculus VR, Inc. in 2014 and that Meta’s Oculus 2 has been available for sale in the United States since its launch in 2020. Within lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

4. Within admits that the Quest Store is a distribution platform for VR software apps. Within further admits that Meta acquired Beat Games in November 2019 and that Meta owns a number of other VR apps. Within lacks knowledge sufficient to admit or deny the remaining allegations in the paragraph.

5. Within denies the allegations in the first sentence in this paragraph. Within lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

6. Within denies the allegations in this paragraph.

7. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

8. Within admits the second sentence of this paragraph references a document from

1 Within's files. However, Within denies the FTC's characterization of this document, which takes
 2 selected language out of context. Within denies the remaining allegations in this paragraph.

3 9. Within denies the allegations in this paragraph.

4 10. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph
 5 as they relate to Meta's intentions. Within denies the remaining allegations in this paragraph.

6 11. Within denies the allegations in this paragraph.

7 12. Within denies the allegations in this paragraph.

8 13. Within denies the allegations in this paragraph.

9 14. The allegations in this paragraph state legal conclusions as to which no response is
 10 required. To the extent a response is required, Within denies the allegations

11 15. The allegations in this paragraph state legal conclusions as to which no response is
 12 required. To the extent a response is required, Within denies the allegations

13 16. The allegations in this paragraph state legal conclusions as to which no response is
 14 required. To the extent a response is required, Within denies the allegations.

15 17. The allegations contained in this paragraph contain legal conclusions, as to which
 16 no response is required. To the extent a response is required, Within denies the allegations in this
 17 paragraph.

18 18. The allegations in this paragraph purport to state legal conclusions as to which no
 19 response is required. To the extent a response is required, Within respectfully refers the Court to
 20 15 USC § 53(b) for an accurate and complete statement of its text.

21 19. The allegations contained in this paragraph contain legal conclusions, as to which
 22 no response is required. To the extent a response is required, Within denies the allegations.

23 20. The allegations contained in this paragraph contain legal conclusions, as to which
 24 no response is required. To the extent a response is required, for the purposes of this current action,
 25 Within does not contest that venue in this district is proper.

26 21. The allegations contained in this paragraph contain legal conclusions, as to which
 27 no response is required. To the extent a response is required, for purposes of this current action,
 28 Within does not contest that assignment to the San Jose Division is proper.

22. The allegations in this paragraph state legal conclusions as to which no response is required. To the extent a response is required, Within admits the allegations in this paragraph but denies that the FTC is authorized under Section 7 of the Clayton Act, 15 U.S.C. § 18, or Section 5 of the FTC Act, 15 U.S.C. § 45, to proceed in this case.

23. Within admits the allegations in the first and second sentences of this paragraph. Within also admits that Meta offers for sale the Meta Quest 2 VR headset. Within also admits that Beat Saber was initially released by Beat Games, a studio that Meta acquired in 2019. Within lacks knowledge sufficient to admit or deny the allegations in the remaining sentences.

24. Within admits the allegations in the first and third sentences of this paragraph. Within lacks knowledge sufficient to admit or deny the remaining allegations.

25. Within admits the allegations in this paragraph.

26. Within admits the allegations in this paragraph.

27. Within denies the allegations in this paragraph.

28. Within admits that the VR industry is currently characterized by a high degree of innovation and growth. Within denies the remaining allegations.

29. Within admits that users may experience VR through a headset with displays in front of each eye. Within denies the allegations in the second sentence of this paragraph. Within further admits that VR allows users to experience different visual environments while remaining in their homes. Within lacks knowledge sufficient to admit or deny the remaining allegations.

30. Within lacks knowledge to admit or deny the allegations in this paragraph.

31. Within admits that the Meta Quest Store, App Lab, Valve's Steam Store, and SideQuest are application stores where users can download applications and content. Within lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

32. Within admits that developers of varying sizes create a wide range of VR content for the many VR headsets. Within denies the remaining allegations in the paragraph.

33. Within lacks knowledge to admit or deny to the allegations in the first sentence of the paragraph. Within admits that Meta acquired Beat Games, the developer of Beat Saber, in November 2019. Within lacks knowledge sufficient to admit or deny the remaining allegations in

1 this paragraph.

2 34. Within lacks knowledge to admit or deny the allegations in this paragraph.

3 35. Within admits that Meta has developed and released Horizon Worlds, Horizon
4 Workrooms, Horizon Venues, and Horizon Home. Within lacks knowledge sufficient to admit or
5 deny the remaining allegations in this paragraph.

6 36. Within admits that the second sentence of this paragraph references a document
7 from Within's files. However, Within denies the FTC's characterization of this document, which
8 takes selected language out of context. Within denies the remaining allegations in this paragraph.

9 37. The allegations contained in this paragraph contain legal conclusions, as to which
10 no response is required. To the extent a response is required, Within denies the allegations in this
11 paragraph.

12 38. The allegations contained in this paragraph contain legal conclusions, as to which
13 no response is required. To the extent a response is required, Within denies the allegations in this
14 paragraph.

15 39. Within lacks knowledge sufficient to admit or deny to the allegations in this
16 paragraph.

17 40. Within denies the allegations in this paragraph.

18 41. Within admits that Supernatural has a high energy expenditure. Within lacks
19 knowledge sufficient to admit or deny the allegations concerning third party ratings. Within denies
20 the remaining allegations in this paragraph.

21 42. Within lacks knowledge sufficient to admit or deny the allegations concerning views
22 of industry participants. Within denies the remaining allegations in this paragraph.

23 43. Within denies the allegations in this paragraph.

24 44. Within denies the allegations in this paragraph.

25 45. Within denies the allegations in this paragraph.

26 46. Within admits the last sentence of this paragraph references a document from
27 Within's files. However, Within denies the FTC's characterization of this document, which takes
28 selected language out of context. Within denies the remaining allegations.

47. Within admits that as of August 26, 2022, consumers can purchase a Supernatural Annual Membership for \$179.99/year or a Supernatural Monthly Membership for \$18.99/month on Meta's Quest Store. Within denies the remaining allegations in this paragraph.

48. Within denies the allegations in this paragraph.

49. Within denies the allegations in this paragraph.

50. Within denies the allegations in this paragraph.

51. Within denies the allegations in this paragraph.

52. Within denies the allegations in this paragraph.

53. To the extent that Plaintiff is quoting from documents, Within respectfully refers the Court to the documents for an accurate and complete statement of their contents. Within denies the allegations in this paragraph.

54. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

55. To the extent that Plaintiff is quoting from documents, Within respectfully refers the Court to the documents for an accurate and complete statement of their contents. Within denies the remaining allegations in this paragraph.

56. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

57. Within denies the allegations in the first sentence of this paragraph. Within admits the second sentence of this paragraph references a document from Within's files. However, Within denies the FTC's characterization of this document, which takes selected language out of context.

58. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph concerning unidentified studies. Within denies the remaining allegations in this paragraph.

59. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph concerning unidentified industry participants. Within denies the remaining allegations in this paragraph.

60. Within denies the allegations in this paragraph.

61. This paragraph purports to state conclusion of law to which no response is required. To the extent a response is required, Within respectfully refers the Court to the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines for an

1 accurate and complete statement of its contents.

2 62. This paragraph purports to state conclusions of law to which no response is required.
3 To the extent a response is required, Within respectfully refers the Court to the 2010 U.S.
4 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines for an
5 accurate and complete statement of its contents.

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

10 64. Within denies the allegations in this paragraph.

11 65. To the extent that the FTC is quoting from documents, Within respectfully refers
12 the Court to the documents for an accurate and complete statement of their contents. Within denies
13 the remaining allegations in this paragraph.

14 66. Within denies the allegations in this paragraph.

15 67. Within denies the allegations in this paragraph.

16 68. Within denies the allegations in this paragraph.

17 69. Within denies the allegations in this paragraph.

18 70. To the extent that Plaintiff is quoting from the 2010 U.S. Department of Justice and
19 Federal Trade Commission Horizontal Merger Guidelines, Within respectfully refers the Court to
20 the same for an accurate and complete statement of its contents. Within denies the remaining
21 allegations in this paragraph.

22 71. Within denies the allegations in this paragraph.

23 72. Within lacks knowledge sufficient to admit or deny the allegations in in this
24 paragraph.

25 73. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

26 74. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

27 75. Within lacks knowledge sufficient to admit or deny the allegations in the first
28 sentence in this paragraph. Within admits that Meta has previously developed VR apps. Within

1 denies the remaining allegations in the paragraph.

2 76. Within lacks knowledge sufficient to admit or deny the allegations concerning
3 documents in Meta's files. Within denies the remaining allegations in this paragraph.

4 77. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

5 78. Within admits that Meta developed Oculus Move, which among other things allows
6 users to track certain fitness-related metrics while using the Quest 2. Within denies the remaining
7 allegations in this paragraph.

8 79. Within admits that Meta owns Beat Games, the studio behind Beat Saber. Within
9 lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

10 80. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

11 81. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

12 82. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph
13 as they relate to Meta's motives for rebranding itself. Within denies all remaining allegations.

14 83. Within denies the allegations in this paragraph.

15 84. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

16 85. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

17 86. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph
18 concerning internal Meta strategy. Within denies the remaining allegations.

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

22 88. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

23 89. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

24 90. Within denies the allegations in this paragraph.

25 91. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

26 92. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

27 93. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

28 94. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

- 1 95. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.
- 2 96. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.
- 3 97. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph
- 4 concerning Meta's motives for any codename for the proposed acquisition. Within denies the
- 5 remaining allegations in this paragraph.
- 6 98. Within admits that Meta hired Within's head of product for Supernatural. Within
- 7 lacks knowledge sufficient to admit or deny the remaining allegations.
- 8 99. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.
- 9 100. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.
- 10 101. Within denies the allegation that the Acquisition is anticompetitive. Within lacks
- 11 knowledge sufficient to admit or deny the remaining allegations.
- 12 102. Within denies the allegations in this paragraph.
- 13 103. Within denies the first and third sentences of this paragraph. Within lacks
- 14 knowledge sufficient to admit or deny the allegations in the second sentence of the paragraph.
- 15 104. Within denies the allegations in this paragraph.
- 16 105. Within denies the allegations in this paragraph.
- 17 106. Within denies the allegations in this paragraph.
- 18 107. To the extent Plaintiffs are referring to Meta's earnings report, Within respectfully
- 19 refers the Court to the earnings report for an accurate statement of its contents. Within denies the
- 20 remaining allegations contained in this paragraph.
- 21 108. Within denies the allegations in this paragraph.
- 22 109. Within admits that both sentences in this paragraph reference documents from
- 23 Within's files. Within denies the FTC's characterization of these documents, which take selected
- 24 language out of context. Within denies the remaining allegations in this paragraph.
- 25 110. Within admits that its former head of product is currently employed at Meta. Within
- 26 denies the remaining allegations in this paragraph.
- 27 111. Within denies the allegations in this paragraph.
- 28 112. Within admits that the second and third sentences of this paragraph references a

1 document from Within's files. However, Within denies the FTC's characterization of this
 2 document, which takes selected language out of context. Within denies the remaining allegations
 3 in this paragraph.

4 113. Within admits that this paragraph references a document from Within's files.
 5 However, Within denies the FTC's characterization of this document, which takes selected
 6 language out of context. Within denies the remaining allegations in this paragraph.

7 114. Within admits that this paragraph references documents from Within's files.
 8 However, Within denies the FTC's characterization of these documents, which take selected
 9 language out of context. Within denies the remaining allegations in this paragraph.

10 115. Within denies the allegations in the first sentence. Within admits the second
 11 sentence of this paragraph references documents from Within's files. However, Within denies the
 12 FTC's characterization of this document, which takes selected language out of context. Within
 13 denies the remaining allegations in this paragraph.

14 116. Within denies the allegations in this paragraph.

15 117. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph
 16 concerning Meta's view of competition. Within denies the remaining allegations in this paragraph.

17 118. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph
 18 concerning Meta's view of competition. Within denies the remaining allegations in this paragraph.

19 119. To the extent that Plaintiff is relying on public webpages, Within respectfully refers
 20 the Court to the webpage(s) for an accurate and complete statement of their contents. Within denies
 21 the remaining allegations in this paragraph.

22 120. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

23 121. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph
 24 concerning Meta's view of Beat Saber's target market. Within admits the second sentence of this
 25 paragraph references a document from Within's files. However, Within denies the FTC's
 26 characterization of this document, which takes selected language out of context. Within lacks
 27 knowledge sufficient to admit or deny the allegations in the fourth sentence of this paragraph.
 28 Within denies the remaining allegations in this paragraph.

122. Within denies the allegations in the first sentence. Within admits that the second and third sentences of this paragraph reference a document from Within's files. However, Within denies the FTC's characterization of these documents, which takes selected language out of context. Within lacks knowledge sufficient to admit or deny the allegations in the fourth sentence of this paragraph.

123. Within denies the allegations in this paragraph.

124. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

125. Within denies the allegations in the first sentence of the paragraph. Within admits the second sentence of this paragraph references a document from Within's files. However, Within denies the FTC's characterization of this document, which takes selected language out of context.

126. Within denies the allegations in this paragraph.

127. Within denies the allegations in this paragraph.

128. Within denies the allegations in this paragraph.

129. Within denies the allegations in this paragraph.

130. Within denies the allegations in this paragraph.

131. Within denies the allegations in this paragraph.

132. To the extent the last sentence of this paragraph purports to reflect Meta's knowledge, Within lacks knowledge sufficient to admit or deny the allegations in this sentence. Within denies the remaining allegations in this paragraph.

133. Within lacks knowledge sufficient to admit or deny the allegations in this paragraph.

134. Within denies the allegations in this paragraph.

135. Within denies the allegations in this paragraph.

136. Within denies the allegations in this paragraph.

137. The allegations in this paragraph state legal conclusions as to which no response is required. To the extent a response is required, Within denies the allegations.

138. Within denies the allegations in this paragraph.

139. The allegations contained in this paragraph contain legal conclusions, as to which no response is required. To the extent a response is required, Within denies the allegations in this

1 paragraph and states that the FTC is not entitled to any relief.

2 140. The allegations contained in this paragraph contain legal conclusions, as to which
3 no response is required. To the extent a response is required, Within denies the allegations in this
4 paragraph and states that the FTC is not entitled to any relief. Further, Within states that it is entitled
5 to any relief that this Court may deem just or appropriate, in equity or at law.

6 141. Within states that the FTC is not entitled to any relief.

7 142. Within states that the FTC is not entitled to any relief.

8 143. Within states that the FTC is not entitled to any relief.

9 **AFFIRMATIVE AND OTHER DEFENSES**

10 Within asserts the following defenses, without assuming the burden of proof on such
11 defenses that would otherwise rest with the Plaintiffs. Within has not knowingly or intentionally
12 waived any applicable defenses, and it reserves the right to assert and rely upon other applicable
13 defenses that may become available or apparent throughout the course of the action. Within
14 reserves the right to amend, or seek to amend, its answer and affirmative defenses.

15 **FIRST AFFIRMATIVE DEFENSE**

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

17 **SECOND AFFIRMATIVE DEFENSE**

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

19 **THIRD AFFIRMATIVE DEFENSE**

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

21 **FOURTH AFFIRMATIVE DEFENSE**

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

23 **FIFTH AFFIRMATIVE DEFENSE**

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

25 **SIXTH AFFIRMATIVE DEFENSE**

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

27 **SEVENTH AFFIRMATIVE DEFENSE**

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

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EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

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

THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint reflects improper selective enforcement of antitrust laws.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

The FTC is not entitled to relief because none of Within'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 equitably estopped from asserting its claims.

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

Within incorporates by reference the affirmative defenses put forth by Meta in its Answer to the Plaintiff's Complaint.

PRAYER FOR RELIEF

WHEREFORE, Within 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 Within the costs it has incurred in defending this action and expenses;
- and
4. Awarding such other and further relief to Within as the Court may deem just and proper.

1 Dated: August 26, 2022

Respectfully submitted,

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