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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC., et al.

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

**[PROPOSED] JOINT STIPULATED CASE
MANAGEMENT ORDER**

1 **[PROPOSED] JOINT STIPULATED CASE MANAGEMENT ORDER**

2 Plaintiff Federal Trade Commission (“FTC” or “Commission”) has met and conferred
3 with Defendants Meta Platforms, Inc. (“Meta”) and Within Unlimited, Inc. (“Within”)
4 (collectively, “Defendants”) as required under Civil Local Rule 16-3. The FTC, Meta, and
5 Within jointly submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED
6 ORDER pursuant to the Standing Order for All Judges of the Northern District of California and
7 Civil Local Rule 16-9:

8 **A. JURISDICTION AND SERVICE**

9 The parties agree that this Court has subject-matter jurisdiction over this case pursuant to
10 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.
11 There are no issues pending regarding personal jurisdiction. Defendants do not plan to contest
12 venue in this district. Defendants Meta and Within waived service on July 28, 2022.

13 **B. FACTS**

14 On October 22, 2021, Meta and Within signed an Agreement and Plan of Merger
15 (“Merger Agreement”) pursuant to which Meta, provider of virtual reality (“VR”) devices and
16 applications (“apps”) in the United States, proposes to acquire Within, a VR software company
17 that developed apps and sells the fitness app “Supernatural.” By its terms the Merger Agreement
18 requires the parties to close by April 22, 2023. The Merger Agreement will terminate if not
19 closed by that date.

20 Following an investigation of the proposed acquisition, the Commission, finding “reason
21 to believe” that Defendants were about to violate the antitrust laws, voted to authorize a
22 complaint seeking a temporary restraining order and a preliminary injunction from this Court to
23 preserve the status quo (a) “pending the issuance of a[n administrative] complaint by the
24 Commission,” 15 U.S.C. § 53(b); and (b) if such complaint is issued, while the Commission
25 adjudicates whether the proposed acquisition is unlawful under Section 7 of the Clayton Act, 15
26 U.S.C. § 18. The Commission issued its administrative complaint on August 11, 2022.

1 PLAINTIFF’S STATEMENT:

2 The FTC anticipates that the following issues will be disputed: (a) whether the VR
3 Dedicated Fitness App market or the VR Fitness App market alleged in Plaintiff’s Complaint
4 constitute relevant antitrust markets and, if so, the contours of those markets (Compl. ¶¶ 38-58);
5 (b) market shares and concentration in the relevant markets (Compl. ¶¶ 60-68); (c) whether it is
6 reasonably probable that Meta would have entered the VR Dedicated Fitness App Market
7 through alternative means absent the proposed acquisition (Compl. ¶¶ 71-101); (d) whether it is
8 reasonably probable that alternative entry by Meta would substantially deconcentrate the VR
9 Dedicated Fitness App market or have other procompetitive effects (Compl. ¶¶ 102-105); (e)
10 whether Within reasonably perceived Meta as a potential entrant to the VR Dedicated Fitness
11 App market (Compl. ¶¶ 106-110); (f) whether Meta’s presence as a perceived potential entrant
12 likely influences competition in the VR Dedicated Fitness App market (Compl. ¶¶ 111-116); (g)
13 whether Meta’s Beat Saber and Within’s Supernatural are competitors in the VR Fitness App
14 Market (Compl. ¶¶ 118-122); and (h) whether new entry or expansion by existing firms will be
15 timely, likely, or sufficient to offset any anticompetitive effects.

16 DEFENDANTS’ STATEMENT:

17 On October 22, 2021, Meta signed an Agreement and Plan of Merger (“Merger
18 Agreement”) to acquire Within, a software company that has developed a VR fitness app called
19 Supernatural. The acquisition is intended to grow the VR ecosystem by, among other things,
20 injecting investment into VR fitness and improving Meta’s VR platform for all VR fitness apps,
21 all to the benefit of consumers and developers alike. If this deal is allowed to go forward, Meta
22 intends to invest significant resources in growing Supernatural to bring more innovation to a new
23 and rapidly developing space, with room for many participants. This investment and innovation
24 is critical, as Meta and Within each face a wide range of competitors—both in VR and other
25 platforms—in an extremely dynamic space. By its terms the Merger Agreement requires Meta
26 and Within to close the transaction by April 22, 2023. The Merger Agreement will terminate if it
27 is not closed by that date.

1 The FTC, based on a 3-2 vote of the Commission, has filed this lawsuit seeking to block
2 Meta’s planned acquisition of Within based on ideology and speculation, not evidence.
3 Defendants will dispute the FTC’s factual allegations and anticipate that additional issues will be
4 disputed. For example, Meta anticipates that the parties will dispute, among other issues, the
5 bias of the FTC Chair, who has made public statements prejudging this matter and demonstrating
6 that she has determined to prevent any and all Meta acquisitions irrespective of the facts.

7 **C. LEGAL ISSUES**

8 **PLAINTIFF’S STATEMENT:**

9 This action presents the following legal issues for determination:

- 10 1. Whether, in an administrative proceeding, the Commission is likely to succeed
11 in showing that the effect of the proposed acquisition “may be substantially to
12 lessen competition, or tend to create a monopoly,” in violation of Section 7 of
13 the Clayton Act, 15 U.S.C. § 18; and
14 2. Whether the Commission has properly shown that, weighing the equities and
15 considering the Commission’s likelihood of ultimate success, a preliminary
16 injunction would be in the public interest.

17 **DEFENDANTS’ STATEMENT:**

- 18 1. Whether the FTC has a valid basis for proceeding under its claimed legal
19 theories on the grounds that the acquisition eliminates an actual “potential”
20 competitor or an actual “perceived” competitor; and
21 2. Whether the FTC can proceed, consistent with Due Process, to conduct an
22 administrative proceeding where its Chair, sitting as a judge, has demonstrated
23 bias and has prejudged this matter.

24 **D. MOTIONS**

25 On July 27, 2022, Plaintiff filed an Emergency Motion for a Temporary Restraining
26 Order. Dkt. No. 13. On August 3, 2022, the parties submitted a joint stipulation and proposed
27 order whereby Meta and Within agreed to “not close or consummate the Proposed Transaction

1 until after 11:59 PM Eastern Time on December 31, 2022, or until the first (1st) business day
2 after the District Court rules on the FTC’s request for a preliminary injunction pursuant to
3 Section 13(b) of the Federal Trade Commission Act, whichever occurs earlier in time.” Dkt. No.
4 53. On August 5, 2022, the Court granted the parties’ proposed order and denied Plaintiff’s
5 Emergency Motion for a Temporary Restraining Order as moot. Dkt. No. 56.

6 On July 27, 2022, with respect to the Complaint, Plaintiff filed an administrative motion
7 to consider whether another party’s confidential information should remain under seal. Dkt. No.
8 12. The Court denied Plaintiff’s motion on August 5, 2022 and invited Plaintiff to renew its
9 motion, Dkt. No. 57, which Plaintiff did on August 11, 2022. Dkt. No. 66. The Court has not yet
10 ruled on Plaintiff’s renewed motion to consider whether the information contained in the
11 Complaint that Meta and Within deemed confidential, see Dkt. Nos. 59 & 60, should remain
12 under seal.

13 **E. AMENDMENT OF PLEADINGS**

14 Pursuant to Fed. R. Civ. P. 15(a)(1)(B), the FTC may amend its complaint by August 17,
15 2022.

16 **F. EVIDENCE PRESERVATION**

17 The parties certify that they have reviewed the Guidelines Relating to the Discovery of
18 Electronically Stored Information, and that they met and conferred pursuant to Fed. R. Civ. P.
19 26(f) on August 12, 2022 regarding reasonable and proportionate steps taken to preserve
20 evidence relevant to the issues reasonably evident in this action. The parties further certify that
21 such steps are being taken.

22 **G. DISCLOSURES**

23 The parties will serve the other side with initial disclosures pursuant to Federal Rule of
24 Civil Procedure 26(a)(1) by August 19, 2022 at 5:00 p.m. Eastern time. The disclosures shall
25 include the name and, if known, the address and telephone number of each individual likely to
26 have discoverable information—along with the subjects of that information—that the disclosing
27 party may use to support its claim or defenses in this action. If the parties need to supplement or

1 correct their Rule 26(a)(1) disclosures during the pendency of this action, they will do so
2 pursuant to Federal Rule of Civil Procedure 26(e).

3 **H. DISCOVERY**

- 4 1. Discovery Propounded to Date. Plaintiff produced to Defendants non-party materials
5 and communications produced to the FTC in the course of the investigation of Meta's
6 proposed acquisition of Within, FTC File No. 221-0040, comprising the FTC's non-
7 privileged investigative file in this matter, excluding materials produced by Meta and
8 Within on August 8, 2022. Such production will be treated by the parties as "outside
9 counsel's eyes only" until the entry of a Protective Order in this matter. On or around
10 August 12, Meta propounded interrogatories and document requests on the FTC. No
11 further discovery has been propounded as part of this litigation to date. The parties
12 have satisfied their meet and confer obligations under Federal Rule of Civil Procedure
13 26(f) and Civil Local Rule 16-3 and agree as described below.
- 14 2. Timing of Fact Discovery. The parties shall commence fact discovery on August 12,
15 2022. The parties continue to negotiate the timing of fact and expert discovery and
16 agree to submit a proposed Discovery Plan to this Court by August 22, 2022.
- 17 3. Third-Party Discovery. No party issuing a third-party subpoena for the production of
18 documents or electronically stored information shall request a return date sooner than
19 seven (7) calendar days after service. Each party shall produce all materials received
20 pursuant to a third-party subpoena or other formal or informal request, including any
21 declarations, letters, or affidavits obtained from a third party, to the other party within
22 three (3) business days of receiving those materials. Production shall occur in the
23 format the materials were received, except that in the event a non-party produces
24 documents or electronic information that are non-Bates-stamped, the party receiving
25 the documents shall promptly Bates-stamp the documents or electronic information
26 and produce them in an appropriate timeframe.

- 1 4. Limitations on Party and Third-Party Declarations or Letters. No party may submit
2 as evidence a declaration, letter, or affidavit from a party or third-party witness if
3 such declaration or affidavit was executed or served less than four (4) business days
4 prior to his or her agreed-to deposition date. In any event, no party or third-party
5 declaration, letter, or affidavit may be submitted as evidence if it was executed or
6 served less than fourteen (14) calendar days before the close of fact discovery.
- 7 5. Document Requests and Production. The parties shall serve any objections to
8 requests for the production of documents no later than seven (7) calendar days after
9 the date of service of the document requests to which they assert objections. Within
10 three (3) calendar days of service of any such objections, the parties shall meet and
11 confer in a good faith attempt to resolve the objections. In response to any document
12 requests, the parties need not produce to each other in discovery in this case any
13 documents previously produced by Defendants to the FTC in the course of the
14 investigation of Meta's proposed acquisition of Within, FTC File No. 221-0040.

15 a) Document Productions shall be sent to the attention of:

16 i. To the FTC:

17 Abby L. Dennis
18 adennis@ftc.gov
19 (202) 326-2381

20 Peggy Bayer Femenella
21 pbayer@ftc.gov
22 (202) 326-3086

23 Josh Goodman
24 jgoodman@ftc.gov
25 (202) 326-3665

26 Jeanine Balbach
27 jbalbach@ftc.gov
28 (202) 326-2568

Terri Martin
TMartin@ftc.gov

1 (202) 326-3488

2 Brittany Hill
3 B Hill1@ftc.gov
(202) 326-2967

4 Federal Trade Commission
5 600 Pennsylvania Avenue, NW
Washington, DC 20580

6 ii. To Meta:

7 Chantale Fiebig
8 Chantale.fiebig@weil.com
9 (202) 682-7200
10 Daniel Nadratowski
Daniel.nadratowski@weil.com
11 (202) 682-7130
Weil, Gotshal & Manges LLP
12 2001 M Street NW, Suite 600
Washington, DC 20036

13 Eric S. Hochstadt
14 Eric.hochstadt@weil.com
(212) 310-8000
15 Weil, Gotshal & Manges LLP
New York, NY 10153

16 Bambo Obaro
17 Bambo.obaro@weil.com
18 (650) 802-3000
Weil, Gotshal & Manges LLP
19 201 Redwood Shores Parkway, 6th Floor
Redwood Shores, CA 94065

20 Geoffrey M. Klineberg
21 gklineberg@kellogghansen.com
22 (202) 326-7928
Ana Nikolic Paul
23 apaul@kellogghansen.com
(202) 326-7993
24 Kellogg Hansen Todd Figel & Frederick, P.L.L.C.
25 1615 M St NW #400
Washington, DC 20036

1 iii. To Within:
2 Chris Fitzpatrick
3 Chris.fitzpatrick@hoganlovells.com
4 (202) 637-3668

5 Nicole Lynch
6 nicole.lynch@hoganlovells.com
7 (703) 610-6162

8 Hogan Lovells US LLP
9 555 13th St. NW
10 Washington, DC 20004

11 6. Requests for Admission. The parties shall not serve any requests for admission, with
12 the exception of those related solely to the authenticity of a document.

13 7. Interrogatories. The parties shall serve objections and responses to interrogatories no
14 later than fourteen (14) calendar days after the date of service. Within three (3)
15 calendar days of service of any such objections, the parties shall meet and confer in a
16 good faith attempt to resolve the objections.

17 8. Deadline to Issue Written Discovery to Parties. The parties shall serve document
18 requests and interrogatories to parties by no later than September 12, 2022.

19 9. Exchange of Lists of Fact Witnesses to Appear at Hearing.

20 a) *Preliminary Fact Witness Lists:* Plaintiff shall serve its preliminary fact
21 witness lists no later than 5:00 p.m. Eastern time on September 2, 2022. The
22 Defendants shall serve their preliminary fact witness list no later than 5:00
23 p.m. Eastern time on September 8, 2022. Preliminary fact witness lists shall
24 be limited to fifteen (15) per side and summarize the general topics of each
25 witness's anticipated testimony. The preliminary fact witness list shall
26 include the name of the employer of each witness and a description of the
27 responsibilities of any third-party witness. Only a witness who appears on a
28 party's initial preliminary witness list may be included on that party's final

1 fact witness list, unless the opposing parties have been provided a reasonable
2 opportunity to take the witness's deposition.

3 b) *Final Fact Witness Lists*: The parties agree to meet and confer regarding the
4 timing and parameters of the exchange of final fact witness lists. No witness
5 shall be permitted at trial unless the opposing side had a reasonable
6 opportunity to depose the witness before trial.

7 10. Depositions. The parties agree that relief from the limitation on the number of
8 depositions set forth in Rule 30(a)(2) is necessary and appropriate. The parties agree
9 to work in good faith to negotiate a stipulated deposition protocol and to submit such
10 protocol with a proposed Discovery Plan to this Court by August 22, 2022.

11 a) Notice. The parties may not serve a deposition notice with fewer than seven
12 (7) calendar days' notice. The parties shall consult with each other prior to
13 confirming any deposition to coordinate the time and place of the deposition.
14 The parties shall use reasonable efforts to reduce the burden on witnesses
15 noticed for depositions and to accommodate the witness's schedule. If a party
16 serves a non-party subpoena for the production of documents or electronically
17 stored information and a subpoena commanding attendance at a deposition,
18 the deposition date must be at least seven (7) calendar days after the original
19 return date for the document subpoena.

20 b) Remote Depositions. The parties agree to meet and confer regarding remote
21 depositions and the protocol that would govern any such depositions.

22 11. Discovery Uses. All discovery taken in the above-captioned litigation can be used in
23 connection with any Part 3 administrative proceeding.

24 **I. CLASS ACTIONS**

25 There is no proposed class at issue in this matter.

26 **J. RELATED CASES**

27 There are no cases related to this matter.

1 **K. RELIEF**

2 PLAINTIFF’S STATEMENT:

3 Plaintiff requests that the Court enter, following an evidentiary hearing, a preliminary
4 injunction to prevent Defendants from taking any further steps to consummate the proposed
5 acquisition, or any other acquisition of stock, assets, or other interests of one another, either
6 directly or indirectly; retain jurisdiction and maintain the status quo until the administrative
7 proceeding initiated by the Commission is concluded; and award such other and further relief as
8 the Court may determine is appropriate, just, and proper.

9 DEFENDANTS’ STATEMENT:

10 Defendants request the Court deny Plaintiff’s requested relief as unsupported by fact and
11 unfounded as a matter of law, and award Defendants any relief the Court deems appropriate.

12 **L. SETTLEMENT AND ADR**

13 The parties have not engaged in formal settlement discussions and believe that ADR is
14 unlikely to resolve their differences.

15 **M. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

16 The parties decline to consent to proceed before a Magistrate Judge for all purposes; this
17 matter was assigned to U.S. District Court Judge Edward J. Davila on July 27, 2022.

18 **N. OTHER REFERENCES**

19 The parties agree this case is not suitable for reference to binding arbitration, a special
20 master or the JPML.

21 **O. NARROWING OF ISSUES**

22 The parties do not believe that it is possible to narrow the issues at this time.

23 **P. EXPEDITED TRIAL PROCEDURE**

24 The parties do not believe that this case is appropriate to be handled under the Expedited
25 Trial Procedure of General Order 64.

1 **Q. PROPOSED CASE SCHEDULE: MOTIONS AND BRIEFING SCHEDULE**

2 The parties agree to work in good faith to negotiate a pre- and post- hearing briefing
3 schedule and to submit a proposed schedule to this Court by August 22, 2022.

4 **R. TRIAL: PRELIMINARY INJUNCTION EVIDENTIARY HEARING**

5 The parties propose an evidentiary hearing of approximately fifteen (15) hours per side
6 commencing on or around December 5, 2022, if convenient for the Court. Plaintiff and
7 Defendants shall split the time available at the hearing evenly, with both direct examination and
8 cross-examination of witnesses counting against the party conducting the examination. Plaintiff
9 and Defendants will each tally the time consumed by each side and confer on a daily basis on the
10 total time each side has consumed. Plaintiff may reserve a portion of its time for rebuttal.
11 Unused time does not transfer to the other side.

12 **S. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

13 Pursuant to Civil Local Rule 3-15, Defendant Meta filed its Certification of Interested
14 Entities or Persons on August 3, 2022. Defendant Within filed its Certification of Interested
15 Entities or Persons on August 10, 2022.

16 **T. PROFESSIONAL CONDUCT**

17 All attorneys of record have reviewed the Guidelines for Professional Conduct for the
18 Northern District of California.

19 **U. OTHER MATTERS**

- 20 1. Service. Service of any documents not filed via ECF, including pleadings, discovery
21 requests, Rule 45 subpoenas for testimony or documents, expert disclosure, and
22 delivery of all correspondence, whether under seal or otherwise, shall be by electronic
23 mail to the following individuals designated by each party:

24 a) For Plaintiff:

25 Abby L. Dennis
26 adennis@ftc.gov
(202) 326-2381

27 Peggy Bayer Femenella

1 pbayer@ftc.gov
(202) 326-3086

2 Josh Goodman
3 jgoodman@ftc.gov
4 (202) 326-3665

5 Jeanine Balbach
6 jbalbach@ftc.gov
(202) 326-2568

7 Federal Trade Commission
8 600 Pennsylvania Avenue, NW
Washington, DC 20580

9 b) For Meta:

10 Chantale Fiebig
11 Chantale.fiebig@weil.com
(202) 682-7200
12 Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
13 Washington, DC 20036

14 Eric S. Hochstadt
15 Eric.hochstadt@weil.com
(212) 310-8000
16 Weil, Gotshal & Manges LLP
New York, NY 10153

17 Bambo Obaro
18 Bambo.obaro@weil.com
(650) 802-3000
19 Weil, Gotshal & Manges LLP
20 201 Redwood Shores Parkway, 6th Floor
Redwood Shores, CA 94065

21 Mark C. Hansen
22 mhansen@kellogghansen.com
(202) 326-7904
23 Geoffrey M. Klineberg
24 gklineberg@kellogghansen.com
(202) 326-7928
25 Kellogg Hansen Todd Figel & Frederick PLLC
1615 M St NW #400
26 Washington, DC 20036

1 c) For Within:

2 Charles Loughlin
3 Chuck.loughlin@hoganlovells.com
(202) 637-5661

4 Chris Fitzpatrick
5 Chris.fitzpatrick@hoganlovells.com
(202) 637-3668

6 Hogan Lovells US LLP
7 555 13th St. NW
8 Washington, DC 20004

9 In the event the volume of served materials is too large for email and requires
10 electronic data transfer by file transfer protocol or a similar technology, or overnight
11 delivery if agreed by the parties, the serving party will telephone or email the other
12 side’s principal designee when the materials are sent to provide notice that the
13 materials are being served. For purposes of calculating discovery response times
14 under the Federal Rules of Civil Procedure, electronic delivery shall be treated the
15 same as hand delivery.

16 2. Answer. Defendants shall answer the complaint on or before August 26, 2022 at
17 11:59 p.m. Eastern time.

18 3. Nationwide Service of Process. Good cause having been shown in view of the
19 geographic dispersion of potential witnesses in this action, the parties will be allowed
20 nationwide service of process of discovery and trial subpoenas pursuant to Federal
21 Rule of Civil Procedure 45 and 15 U.S.C. § 23, to issue from this Court that may run
22 into any other federal district requiring witnesses to attend this Court. The
23 availability of nationwide service of process, however, does not make a witness who
24 is otherwise “unavailable” for purposes of Federal Rule of Civil Procedure 32 and
25 Federal Rule of Evidence 804 available under these rules regarding the use at trial of
26 a deposition taken in this action.

1 4. Confidential Information. The parties agree that a protective order is necessary to
2 safeguard confidential and competitively sensitive information of Meta, Within, and
3 non-parties. The parties have tentatively agreed to submit a proposed Protective Order
4 to the Court by August 22, 2022. Any Party serving discovery requests, notices, or
5 subpoenas sent to a non-party shall provide the non-party with a copy of the
6 Protective Order.

7 5. Production of Protected Material. Pursuant to Federal Rules of Evidence 502(d), the
8 production or disclosure, in this litigation or during Plaintiffs pre-complaint
9 investigation, of any documents and accompanying metadata (“Protected Material”)
10 protected from discovery, including under the attorney-client privilege, work product
11 doctrine, opinion work product doctrine, the joint defense or common interest
12 privilege, privacy laws and regulations, deliberative process privilege, or any other
13 immunity from discovery (collectively “privilege or protection”), does not result in
14 the waiver of any privilege or protection, including subject matter waiver, associated
15 with such Protected Material as to the receiving party or any third parties in this or in
16 any other state or federal proceeding solely by virtue of such production or disclosure.
17 This SCMO provides the maximum protection allowed by Federal Rule of Evidence
18 502(d) with regard to Protected Material. Nothing contained herein requires the
19 production of Protected Material.

20 6. Electronically Stored Information. The parties agree as follows regarding the
21 preservation and production of electronically stored information (“ESI”):
22 a) All Parties have established litigation holds to preserve ESI that may be
23 relevant to the expected claims and defenses in this case. In addition, the
24 Parties have taken steps to ensure that automatic deletion systems will not
25 destroy any potentially relevant information.
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- 1 b) All Parties agree that the use of Technology Assisted Review tools may assist
2 in the efficient production of ESI. However, if a party desires to use such
3 technologies, it shall meet and confer with the other side and negotiate in
4 good faith on the reasonable use of such technology.
- 5 c) All parties will request ESI in the form or forms that facilitate efficient review
6 of ESI.

7 7. Evidentiary Presumptions.

- 8 a) Documents produced by non-parties from the non-parties' files shall be
9 presumed to be authentic within the meaning of Federal Rule of Evidence
10 901. Any good-faith objection to a document's authenticity must be provided
11 with the exchange of other objections to trial exhibits. If a party serves a
12 specific good-faith written objection to the document's authenticity, the
13 presumption of authenticity will no longer apply to that document and the
14 parties will promptly meet and confer to attempt to resolve any objection.
15 The Court will resolve any objections that are not resolved through this means
16 or through the discovery process.
- 17 b) All documents produced by a Defendant either in response to document
18 requests in this litigation or in the course of the FTC's pre-complaint
19 investigation of the proposed acquisition, FTC. File No. 221-0040, are
20 presumed to be authentic within the meaning of Federal Rule of Evidence
21 901.
- 22 c) Any party may challenge the authenticity or admissibility of a document, and
23 if necessary may take discovery related solely to authenticity or admissibility
24 of documents.

- 25 8. Modification of Scheduling and Case Management Order. Any party may seek
26 modification of this Order for good cause, except that the parties may also modify
27 discovery and expert disclosure deadlines by agreement.

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This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

PURSUANT TO STIPULATION, IT IS SO ORDERED, this _____ day of _____, 20_____.

Honorable Edward J. Davila
United States District Judge
Northern District of California

1 Dated: August 12, 2022

2 By: /s/ Abby L. Dennis

3 Abby L. Dennis
4 Peggy Bayer Femenella
5 Joshua Goodman
6 Jeanine Balbach
7 Michael Barnett
8 E. Eric Elmore
9 Justin Epner
10 Sean D. Hughto
11 Frances Anne Johnson
12 Andrew Lowdon
13 Lincoln Mayer
14 Kristian Rogers
15 Anthony R. Saunders
16 Timothy Singer

17 Federal Trade Commission
18 600 Pennsylvania Avenue, NW
19 Washington, DC 20580
20 Tel: (202) 326-2381

21 Erika Wodinsky
22 90 7th Street, Suite 14-300
23 San Francisco, CA 94103
24 Tel: (415) 848-5190

25 Attorneys for Plaintiff Federal Trade
26 Commission

By: /s/ Bambo Obaro

Bambo Obaro, CA Bar No. 267683
bambo.obaro@weil.com
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway, 6th Floor
Redwood Shores, CA 94065-1134
Telephone: (650) 802-3000

Chantale Fiebig, DC Bar No. 487671
chantale.fiebig@weil.com
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Telephone: (202) 682-7200

Eric S. Hochstadt, NY Bar No. 4222683
eric.hochstadt@weil.com
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8538

Mark C. Hansen, DC Bar No. 425930
mhansen@kelloggghansen.com
KELLOGG HANSEN TODD
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

By: /s/ Christopher J. Cox
Christopher J. Cox, CA Bar No. 151650
chris.cox@hoganlovells.com
Hogan Lovells US LLP
4085 Campbell Avenue
Suite 100
Menlo Park, CA 94025
Telephone: (650) 463-4000

Logan M. Breed, DC Bar No. 479628
Charles A. Loughlin, DC Bar No. 448219
Lauren Battaglia, DC Bar No. 1007093
logan.breed@hoganlovells.com

1 chuck.loughlin@hoganlovells.com
2 lauren.battaglia@hoganlovells.com
3 (202) 637-6407
4 (202) 637-5661
5 (202) 637-5761
6 Hogan Lovells US LLP
7 555 13th St. NW
8 Washington, DC 20004

Counsel for Defendant Within Unlimited, Inc.

9 **FILER'S ATTESTATION**

10 I, Abby L. Dennis, am the ECF User whose ID and password are being used to file this JOINT
11 CASE MANAGEMENT STATEMENT & PROPOSED ORDER. In compliance with Civil
12 Local Rule 5-1(h), I hereby attest that concurrence in the filing of this document has been
13 obtained from each of the other signatories.

14 By: /s/ Abby L. Dennis

15 Abby L. Dennis
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