

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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In the Matter of	)	
	)	
Meta Platforms, Inc.,	)	
a corporation,	)	
	)	Docket No. 9411
Mark Zuckerberg,	)	
a natural person, and	)	
	)	
Within Unlimited, Inc.,	)	
a corporation,	)	
	)	
Respondents.	)	

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**RESPONDENT MARK ZUCKERBERG’S  
ANSWER AND AFFIRMATIVE DEFENSES TO PETITIONER’S COMPLAINT**

Pursuant to Rule 3.12 of the Federal Trade Commission’s (“Commission” or “FTC”) Rules of Practice for Adjudicative Proceedings, Respondent Mark Zuckerberg (“Mr. Zuckerberg”), by and through his attorneys, admits, denies, and avers as follows with respect to the Administrative Complaint (“Complaint”) filed by the Commission as follows:

**GENERAL RESPONSE TO COMMISSION’S ALLEGATIONS**

Each paragraph below corresponds to the same-numbered paragraph in the Complaint. All allegations not expressly admitted are denied. Mr. Zuckerberg 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, Mr. Zuckerberg denies all such allegations. 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 Commission may ascribe to the terms.

## **SPECIFIC RESPONSES TO COMMISSION’S ALLEGATIONS**

1. Mr. Zuckerberg admits that Meta Platforms, Inc. (“Meta”) is seeking to acquire Within Unlimited, Inc. (“Within”), the maker of Supernatural. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 1.

2. Mr. Zuckerberg admits that the Facebook, Instagram, Messenger, and WhatsApp applications are referred to collectively as Meta’s “Family of Apps,” and Meta reported in its Securities and Exchange Commission (“SEC”) annual filing for the year ending December 31, 2021, that the “[f]amily monthly active people (MAP) was 3.59 billion” as of December 31, 2021. Mr. Zuckerberg further admits that on June 9, 2022, the company formerly known as Facebook was renamed “Meta Platforms, Inc.” Mr. Zuckerberg denies the remaining allegations contained in Paragraph 2.

3. Mr. Zuckerberg admits that Meta acquired Oculus VR, Inc. in 2014; that the Quest 2 has been available for sale in the United States and worldwide since its launch in 2020; and that Meta announced its intent to increase the sale price of the Quest 2 headset on or around July 26, 2022. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 3.

4. Mr. Zuckerberg admits that the Quest Store is a distribution platform for VR software apps. Mr. Zuckerberg further admits that Meta acquired Beat Games, the developer of Beat Saber, in November 2019; that on or around July 26, 2022, Meta announced that, for a limited time, every new headset purchase will include an offer to download Beat Saber without paying any separate download fees; and that Meta owns other VR apps. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 4.

5. Mr. Zuckerberg denies the allegations contained in Paragraph 5.

6. Mr. Zuckerberg denies the allegations contained in Paragraph 6.

7. To the extent the Complaint is quoting documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents.

Mr. Zuckerberg denies the remaining allegations contained in Paragraph 7.

8. To the extent the Complaint is quoting documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents.

Mr. Zuckerberg denies the remaining allegations contained in Paragraph 8.

9. Mr. Zuckerberg denies the allegations contained in Paragraph 9.

10. Mr. Zuckerberg denies the allegations contained in Paragraph 10.

11. Mr. Zuckerberg denies the allegations contained in Paragraph 11.

12. Mr. Zuckerberg denies the allegations contained in Paragraph 12.

13. Mr. Zuckerberg denies the allegations contained in Paragraph 13.

14. Paragraph 14 purports to state conclusions of law to which no response is required.

15. Mr. Zuckerberg admits that he is a natural person. Paragraph 15 otherwise purports to state conclusions of law to which no response is required.

16. Paragraph 16 purports to state conclusions of law to which no response is required.

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

18. Mr. Zuckerberg admits that Meta is a publicly traded company organized under the laws of Delaware with headquarters in Menlo Park, California; that Meta develops and sells VR and other extended reality hardware and software through its Reality Labs division; and that

Meta reported its Reality Labs division generated \$2,274 million in revenue in 2021 and \$1,139 million in revenue in 2020, which Meta recorded in its SEC annual filing for the year ending December 31, 2021. Mr. Zuckerberg also admits that Meta offers for sale the Quest 2 VR headset, which is Meta's best-selling VR hardware product to date by units sold, and that Meta acquired Beat Games, the creator of Beat Saber, in 2019, which is Meta's best-selling VR software product to date by revenue. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 18.

19. Mr. Zuckerberg admits that he is the founder, Chairman, CEO and controlling shareholder of Meta and that he maintains an office at 1601 Willow Road, Menlo Park, California, 94025. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 19.

20. Paragraph 20 purports to state conclusions of law to which no response is required. To the extent a response is required, Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20, and therefore denies the same.

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

22. Mr. Zuckerberg admits that the VR industry is currently characterized by a high degree of innovation and growth. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 22.

23. Mr. Zuckerberg admits that users may experience VR through a headset with displays in front of each eye. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete

statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 23.

24. Mr. Zuckerberg admits that Meta's best-selling VR headset to date by unit measurement is the Quest 2. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the purported industry source estimates, and therefore denies the same. Mr. Zuckerberg remaining denies the allegations contained in Paragraph 24.

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

26. Mr. Zuckerberg admits that VR software and studio companies, including Within, develop apps that run on VR headsets. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 26.

27. To the extent the Complaint is quoting documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg admits that Meta acquired Beat Games, the developer of Beat Saber, in November 2019, and that since 2019 Beat Saber has been the top-grossing app on Meta's Quest Store by revenue. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 27.

28. Mr. Zuckerberg admits that Meta has acquired the studios cited in Paragraph 28. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 28.

29. Mr. Zuckerberg admits that Meta has developed and released Horizon Worlds, Horizon Workrooms, Horizon Venues, and Horizon Home. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 29.

30. To the extent the Complaint is quoting documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 30.

31. Mr. Zuckerberg denies the allegations contained in Paragraph 31.

32. Mr. Zuckerberg denies the allegations contained in Paragraph 32.

33. Mr. Zuckerberg denies the allegations contained in Paragraph 33.

34. Mr. Zuckerberg denies the allegations contained in Paragraph 34.

35. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the purported rankings by third parties, and therefore denies this. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 35.

36. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning industry participants, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 36.

37. Mr. Zuckerberg denies the allegations contained in Paragraph 37.

38. Mr. Zuckerberg denies the allegations contained in Paragraph 38.

39. Mr. Zuckerberg denies the allegations contained in Paragraph 39.

40. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 40.

41. Mr. Zuckerberg 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. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning third parties contained in Paragraph 41, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 41.

42. Mr. Zuckerberg denies the allegations contained in Paragraph 42.

43. Mr. Zuckerberg denies the allegations contained in Paragraph 43.

44. Mr. Zuckerberg denies the allegations contained in Paragraph 44.

45. Mr. Zuckerberg denies the allegations contained in Paragraph 45.

46. Mr. Zuckerberg denies the allegations contained in Paragraph 46.

47. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 47.

48. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48, and therefore denies the same.

49. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 49.

50. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations of Paragraph 50.

51. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 51.

52. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning unidentified studies, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 52.

53. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning unidentified industry participants, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 53.

54. Mr. Zuckerberg denies the allegations contained in Paragraph 54.

55. Paragraph 55 purports to state conclusions of law to which no response is required. To the extent a response is required, Mr. Zuckerberg respectfully refers the Court to the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines for an accurate and complete statement of its contents.

56. Paragraph 56 purports to state conclusions of law to which no response is required. To the extent a response is required, Mr. Zuckerberg respectfully refers the Court to the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines for an accurate and complete statement of its contents.

57. Paragraph 57 purports to state conclusions of law to which no response is required. To the extent a response is required, Mr. Zuckerberg respectfully refers the Court to the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines for an accurate and complete statement of its contents.

58. Mr. Zuckerberg denies the allegations contained in Paragraph 58.

59. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 59.

60. Mr. Zuckerberg denies the allegations contained in Paragraph 60.

61. Mr. Zuckerberg denies the allegations contained in Paragraph 61.

62. Mr. Zuckerberg denies the allegations contained in Paragraph 62.

63. Mr. Zuckerberg denies the allegations contained in Paragraph 63.

64. To the extent that the Complaint is quoting from the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Mr. Zuckerberg respectfully refers the Court to the same for an accurate and complete statement of its contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 64.

65. Mr. Zuckerberg denies the allegations contained in Paragraph 65.

66. Mr. Zuckerberg admits that Meta reported in its SEC annual filing for the year ending December 31, 2021, that Meta's costs and expenses relating to Reality Labs were \$12,467 million for the year ending December 31, 2021, and \$7,762 million for the year ending December 31, 2020. Mr. Zuckerberg further admits that Meta reported in its SEC quarterly filing for the three months ending March 31, 2022, that Meta's costs and expenses relating to Reality Labs were \$3,655 million. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 66.

67. Mr. Zuckerberg denies the allegations contained in Paragraph 67.

68. Mr. Zuckerberg admits that Meta reported in its SEC annual filing for the year ending December 31, 2021, that Meta's total income from operations for the year ending December

31, 2021 was \$46,753 million, and that the costs and expenses relating to Reality Labs for the year ending December 31, 2021 were \$12,467 million.

69. Mr. Zuckerberg admits that Meta continues to add features and content to the apps Meta has already released; that Meta continues to develop and release new apps; and that Meta has previously developed VR apps. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning third parties, and therefore denies the same. The remaining allegations contained in Paragraph 69 are vague and imprecise, and Mr. Zuckerberg therefore denies them on that basis.

70. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 70.

71. Mr. Zuckerberg admits that Meta has previously developed VR apps. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 71.

72. Mr. Zuckerberg admits that Meta developed Oculus Move, which among other things allows users to track certain fitness-related metrics while using the Quest 2.

73. Mr. Zuckerberg admits that Meta owns seven VR development studios and that Meta employed approximately 10,000 employees within its Reality Labs division as of March 2021. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 73.

74. Mr. Zuckerberg denies the allegations contained in Paragraph 74.

75. Mr. Zuckerberg admits that Meta determines what content is featured on Meta's Quest Store. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 75.

76. Mr. Zuckerberg admits that the company name formally known as Facebook was renamed “Meta Platforms, Inc.” in October 2021. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 76.

77. Mr. Zuckerberg denies the allegations contained in Paragraph 77.

78. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 78.

79. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the allegations contained in Paragraph 79.

80. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the allegations contained in Paragraph 80.

81. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 81.

82. Mr. Zuckerberg denies the allegations contained in Paragraph 82.

83. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 83.

84. Mr. Zuckerberg denies the allegations contained in Paragraph 84.

85. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the allegations contained in Paragraph 85.

86. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 86.

87. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg admits that Meta developed “FitBeat” as a track for Beat Saber. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 87.

88. Mr. Zuckerberg admits that Beat Saber includes a 360-degree mode where targets come from all sides and a no-fail mode that allows users to complete tracks despite missing blocks. Mr. Zuckerberg denies the allegations contained in Paragraph 88.

89. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 89.

90. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 90.

91. Mr. Zuckerberg admits that the internal codename for the proposed acquisition of Within was “Project Eden.” Mr. Zuckerberg denies the remaining allegations contained in Paragraph 91.

92. Mr. Zuckerberg admits that the former head of product for Supernatural is currently employed by Meta. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 92.

93. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 93.

94. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 94.

95. Mr. Zuckerberg denies the allegations contained in Paragraph 95.

96. Mr. Zuckerberg denies the allegations contained in Paragraph 96.

97. Mr. Zuckerberg denies the allegations contained in Paragraph 97.

98. Mr. Zuckerberg denies the allegations contained in Paragraph 98.

99. Mr. Zuckerberg denies the allegations contained in Paragraph 99.

100. Mr. Zuckerberg denies the allegations contained in Paragraph 100.

101. To the extent the Complaint is referring to Meta's earnings report, Mr. Zuckerberg respectfully refers the Court to the earnings report for an accurate statement of its contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 101.

102. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102, and therefore denies the same.

103. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 103.

104. Mr. Zuckerberg admits that the former head of product for Supernatural is currently employed by Meta. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 104.

105. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Within's view of competition, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 105.

106. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 106.

107. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 107.

108. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 108.

109. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 109.

110. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Within's development strategy, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 110.

111. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Within's view of competition, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 111.

112. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Within's view of competition, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 112.

113. To the extent that the Complaint is relying on public webpages, Mr. Zuckerberg respectfully refers the Court to the webpage(s) for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 113.

114. Mr. Zuckerberg admits that the Quest Store has a search functionality that allows users to find apps. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 114.

115. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of what Within views as Supernatural's target market, and therefore denies the same. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 115.

116. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 116.

117. Mr. Zuckerberg denies the allegations contained in Paragraph 117.

118. Mr. Zuckerberg admits that Meta launched "FitBeat" in April 2022. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of how media coverage has attributed "FitBeat," and therefore denies this. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 118.

119. To the extent the Complaint is quoting documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents.

Mr. Zuckerberg denies the remaining allegations contained in Paragraph 119.

120. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 120, and therefore denies the same.

121. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121, and therefore denies the same.

122. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 122, and therefore denies the same.

123. Mr. Zuckerberg avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123, and therefore denies the same.

124. Mr. Zuckerberg denies the allegations contained in Paragraph 124.

125. Mr. Zuckerberg denies the allegations contained in Paragraph 125.

126. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. Mr. Zuckerberg denies the remaining allegations contained in Paragraph 126.

127. To the extent that the Complaint is quoting from documents, Mr. Zuckerberg respectfully refers the Court to the documents for an accurate and complete statement of their contents. The remaining allegations in Paragraph 127 are vague and imprecise, and Mr. Zuckerberg therefore denies them on that basis.

128. Mr. Zuckerberg denies the allegations contained in Paragraph 128.

129. Mr. Zuckerberg denies the allegations contained in Paragraph 129.

130. Mr. Zuckerberg denies the allegations contained in Paragraph 130.

131. Mr. Zuckerberg avers that no response is required to the allegations contained in Paragraph 131.

132. Paragraph 132 purports to state conclusions of law to which no response is required. To the extent a response is required, Mr. Zuckerberg denies the allegations contain in Paragraph 132.

### **AFFIRMATIVE AND OTHER DEFENSES**

Without assuming any burden of proof that he would not otherwise bear, Mr. Zuckerberg reasserts, without limitation, all defenses raised in his other filings, whether or not separately repleaded herein. Mr. Zuckerberg also asserts the following affirmative and other defenses. In listing the defenses below, Mr. Zuckerberg does not knowingly or intentionally waive any defenses, including arguments about which issues fall within the Complaint Counsel's burden of proof. Mr. Zuckerberg also reserves the right to rely on any affirmative or other defense or claim that may subsequently come to light, and expressly reserves the right to amend his Answer to assert such additional defenses or claims.

#### **FIRST AFFIRMATIVE DEFENSE**

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

#### **SECOND AFFIRMATIVE DEFENSE**

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

#### **THIRD AFFIRMATIVE DEFENSE**

The Complaint fails to allege a plausible relevant product market.

#### **FOURTH AFFIRMATIVE DEFENSE**

The Complaint fails to allege a plausible relevant geographic market.

#### **FIFTH AFFIRMATIVE DEFENSE**

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

SIXTH AFFIRMATIVE DEFENSE

The Complaint fails to allege any plausible harm to competition.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to allege any plausible harm to consumers.

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 Meta's and Within's businesses will be procompetitive. The transaction will result in substantial acquisition-specific efficiencies, 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 Meta and Within 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 Meta's and Within's 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

Because Chair Khan is disqualified, the initiation and maintenance of this action violates the Due Process Clause, U.S. Const. amend V; the Federal Trade Commission Act, 5 U.S.C. §§ 41 et seq.; the Administrative Procedure Act, 5 U.S.C. §§ 1001 et seq.; Federal Trade Commission internal regulations, *see, e.g.*, 16 C.F.R. § 4.17; and federal ethics laws and regulations, *see, e.g.*, 28 U.S.C. § 455; 5 C.F.R. § 2635.501(a); 5 C.F.R. § 2635.101(b)(14).

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

The FTC is equitably estopped from asserting its claims.

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

PRAYER FOR RELIEF

WHEREFORE, Mr. Zuckerberg 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 Mr. Zuckerberg costs incurred in defending this action and expenses;  
and
4. Awarding such other and further relief as the Court may deem just and proper.

Date: August 29, 2022

Respectfully submitted,

*s/ Geoffrey M. Klineberg*

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Mark C. Hansen

John Thorne

Geoffrey M. Klineberg

KELLOGG, HANSEN, TODD, FIGEL &

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*Counsel for Respondents Meta Platforms, Inc.  
and Mark Zuckerberg*

## CERTIFICATE OF SERVICE

I hereby certify that, on August 29, 2022, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

April J. Tabor  
Secretary of the Federal Trade Commission  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, D.C. 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Administrative Law Judge  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, D.C. 205080  
OALJ@ftc.gov

I also certify that I caused the foregoing document to be served via email to:

Abby Dennis  
Peggy Bayer Femenella  
Jeanine Balbach  
Michael Barnett  
E. Eric Elmore  
Justin Epner  
Joshua Goodman  
Sean D. Hughto  
Frances Anne Johnson  
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### **CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the original filing, and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

*s/ Geoffrey M. Klineberg*  
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