

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

In the Matter of

**Meta Platforms, Inc.,
a corporation,**

**Mark Zuckerberg,
a natural person,**

and

**Within Unlimited, Inc.,
a corporation.**

DOCKET NO. 9411

COMPLAINT COUNSEL'S UNOPPOSED MOTION TO AMEND COMPLAINT

Pursuant to Section 3.15 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.15, Complaint Counsel hereby moves to amend the Complaint. The proposed amendment is intended to bring up to date the original Complaint by incorporating developments that have occurred since the Commission issued the Complaint on August 11, 2022, namely by removing the Complaint's allegations of likely anticompetitive effects in the VR Fitness App market.¹ The amendment reflects information obtained during discovery since the filing of the original Complaint and is intended to narrow the issues of dispute before the Court. In conjunction with this proposed amendment, Complaint Counsel is also seeking to remove the corresponding allegations in the preliminary injunction proceeding in the U.S. District Court for the Northern District of California. The proposed amendment should neither affect the timing of this proceeding nor unfairly prejudice Respondents because the proposed amendments are within the scope of the original Complaint. *See* 16. C.F.R. § 3.15(a)(1).

¹ Complaint Counsel's proposed Amended Complaint is attached as Exhibit A.

Respondents do not oppose Complaint Counsel's motion to amend the complaint. Complaint Counsel and Respondents have stipulated that Respondents shall not be required to answer the Amended Complaint and that all denials, responses, and affirmative defenses contained in Respondents' Answers to the Complaint shall be deemed responsive to the Amended Complaint, although Respondents reserve their right to file a responsive pleading, including a motion to dismiss the Amended Complaint.

In conclusion, Complaint Counsel respectfully moves that the Complaint be amended as requested.

Dated: October 12, 2022

Respectfully submitted,

s/ Abby L. Dennis

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[PROPOSED] ORDER

Upon consideration of Complaint Counsel's Unopposed Motion to Amend Complaint, it is hereby

ORDERED that, pursuant to Rule 3.15 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.15, Complaint Counsel's Motion to Amend Complaint is GRANTED. It is further ORDERED, that Respondents may file a responsive pleading, including a motion to dismiss the Amended Complaint, but they shall not be required to answer the Amended Complaint and that all denials, responses, and affirmative defenses contained in Respondents' Answers to the Complaint shall be deemed responsive to the Amended Complaint.

Date: _____

D. Michael Chappell
Chief Administrative Law Judge

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of:

**Meta Platforms, Inc.,
a corporation,**

**Mark Zuckerberg,
a natural person,**

and

**Within Unlimited, Inc.,
a corporation.**

Docket No. 9411

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Meta Platforms, Inc. (“Meta”), a corporation controlled by Respondent Mark Zuckerberg, has agreed to acquire Within Unlimited, Inc. (“Within”), in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

NATURE OF THE CASE

1. Meta, one of the largest technology companies in the world and the leading provider of virtual reality (“VR”) devices and applications (“apps”) in the United States, seeks to acquire Within, a software company that develops apps for VR devices, including the highly popular and rapidly growing fitness app “Supernatural.” If consummated, the Proposed

Acquisition would substantially lessen competition, or tend to create a monopoly, in the relevant market for VR dedicated fitness apps. That lessening of rivalry may yield multiple harmful outcomes, including less innovation, lower quality, higher prices, less incentive to attract and keep employees, and less consumer choice.

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

3. Meta’s campaign to conquer VR began in 2014 when it acquired Oculus VR, Inc., a VR headset manufacturer. Since then, Meta’s VR headsets have become the cornerstone of its growth in the VR space: its current generation headset, the Meta Quest 2, is by far the most widely used VR headset today, with a significant majority of headset sales in 2021 and 2022. Meta CEO Mark Zuckerberg has publicly stated that Meta subsidizes its VR devices or sells them at cost in order to attract users. One day before a complaint was filed in federal court to preliminarily enjoin the Proposed Acquisition, Meta announced that it was raising the price of all new Quest 2 headsets by \$100.

4. And Meta’s Quest Store (formerly Oculus Store) has become the leading distribution platform for VR software apps in the United States, connecting app developers and VR users in an online marketplace through which developers can offer their products to users for download onto their individual VR devices. Meta controls the wildly popular app Beat Saber, which it acquired by purchasing Beat Games in November 2019. Beat Saber { [REDACTED]

[REDACTED] } Along with Meta’s recent announcement that it was increasing headset prices, it also announced that, for a limited time, every new headset purchase will include an offer to download Beat Saber without paying any separate download fees. In addition to Beat Games, Meta owns a number of other VR apps, some of which it developed in-house but most of which it acquired by rolling up other app studios.

Along with Meta’s recent announcement that it was increasing Quest 2 headset prices, it also announced that for a limited time, every new headset purchase will include an offer to download Beat Saber without paying a separate download fee.

5. Meta has thus become a key player at each level of the VR ecosystem: in hardware with its Meta Quest 2 headset, in app distribution with the Quest Store, and in apps with Beat Saber and several other popular titles. This is not by accident; Meta has an explicit strategy of harnessing strong network effects in VR to ensure its leading status in this growing industry. Meta could have chosen to try to compete with Within on the merits; instead, Meta decided it preferred to simply buy the { [REDACTED] } in a vitally important, { [REDACTED] } category.

6. As Meta fully recognizes, network effects on a digital platform can cause the platform to become more powerful—and its rivals weaker and less able to seriously compete—as it gains more users, content, and developers. The acquisition of new users, content, and developers each feed into one another, creating a self-reinforcing cycle that entrenches the company’s early lead. This market dynamic can spur companies to compete harder in beneficial ways by, for example, adding useful product features or hiring additional employees. But it can also make anticompetitive strategies more attractive.

7. Meta seeks to exploit the network-effects dynamic in VR. Indeed, Mr. Zuckerberg has made clear that his aspiration for the VR space is control of the *entire* ecosystem. As early as 2015, Mr. Zuckerberg instructed key Facebook executives that his vision for “the next wave of computing” was control of apps *and* the platform on which those apps were distributed, making clear in an internal email to key Facebook executives that a key part of this strategy was for his company to be “completely ubiquitous in killer apps”—i.e., in significant VR apps that prove the value of the technology. In that same email, Mr. Zuckerberg told his executives that Facebook should “us[e] acquisitions opportunistically.”

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

9. If Meta is able to proceed with the Proposed Acquisition, the merger poses a reasonable likelihood of substantially lessening competition in the market for VR dedicated fitness apps, where Supernatural { [REDACTED] }.

10. Having simply bought up the { [REDACTED] }, Meta would no longer have any incentive to develop its own competing app from scratch, add new features to Beat Saber or other existing Meta apps to compete with Supernatural on the merits, or acquire a small generalist studio that could supplement Meta’s considerable existing resources and VR know-how to develop an app to compete with Supernatural. Instead of adding a significant new rival to the mix, the Acquisition would simply let Meta assume total control of the { [REDACTED] } overnight. That lessening of competition violates the antitrust laws.

11. Moreover, a company poised on the edge of a market may exert competitive pressure on existing participants. Regardless of whether such a company actually intends to enter, the possibility that it may do so can spur other companies already in the market to proactively ramp up their own competitive efforts. Meta, poised on the edge of the VR dedicated fitness app market with its popular Beat Saber app, and with all its vast resources and unique strategic advantages, exerts such an influence. That pressure spurs the market leader, Within, to add new features, retain employees, continue innovating, and generally compete harder in order to stay a step ahead of Meta in the event it decides to enter. The Proposed Acquisition would eliminate that incentive for market participants to compete, again in contravention of the antitrust laws.

12. Accordingly, the Proposed Acquisition poses a reasonable probability of eliminating competition. That lessening of competition may result in reduced innovation, quality,

and choice, less pressure to compete for the most talented app developers, and potentially higher prices for VR dedicated fitness apps. And Meta would be one step closer to its ultimate goal of owning the entire “Metaverse.”

JURISDICTION

13. Respondents Meta and Within are each “corporations” as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and in Section 1 of the Clayton Act, 15 U.S.C. § 12.

14. Respondent Mark Zuckerberg is a natural person and a “person” within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12(a), and Section 7 of the Clayton Act, 15 U.S.C. § 18.

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

16. The Proposed Transaction constitutes a transaction subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

RESPONDENTS AND PROPOSED ACQUISITION

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

18. Respondent Mark Zuckerberg is the founder, Chairman, CEO, and controlling shareholder of Respondent Meta. Mark Zuckerberg is the Ultimate Parent Entity of and ultimately controls Respondent Meta. His offices are located at 1601 Willow Road, Menlo Park, California, 94025.

19. Respondent Within is a privately held virtual and augmented reality company organized under the laws of Delaware with headquarters—and its principal business—in Los Angeles, California. Founded by Chris Milk and Aaron Koblin, Within’s flagship product is Supernatural, a VR subscription fitness service. Supernatural offers over 800 fully immersive VR workouts, each set to music and located in a virtual setting like the Galapagos Islands or the Great Wall of China. Through deals with major music studios, Supernatural continues to grow its catalog, which includes songs from A-list artists like Katy Perry, Imagine Dragons, Lady Gaga, and Coldplay. Supernatural’s workouts are fitness classes that customers can access by paying a monthly subscription fee of \$18.99, or a yearly subscription fee of \$179.99. Supernatural is

presently only available on the Meta Quest and Quest 2 and is sold in the United States and Canada.

20. On October 22, 2021, Meta and Within signed an Agreement and Plan of Merger, pursuant to which Meta would acquire all shares of Within in a transaction valued at [REDACTED].

INDUSTRY BACKGROUND

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

22. Users typically engage with the VR experience through a headset with displays in front of each eye to place a user in a fully rendered, three-dimensional environment. Cutting-edge VR technology creates an immersive digital experience like no other. VR users can instantly be transported anywhere in the world, backward or forward in time, into outer space or fictional lands—all from the comfort and safety of their own homes. Unlike a game, video, or app on a tablet, phone, or monitor, the three-dimensional VR environment creates the perception of completely surrounding the user, allowing the user to move around in the projected space. As Mark Zuckerberg explains, “you’re right there with another person or in another place and that’s very different from every experience of technology that we’ve had before. . . .”

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

24. The vast majority of users get apps for VR headsets from online app stores, which distribute products for use on individual VR devices. Meta controls its own app store called the “Meta Quest Store,” with more than 400 apps available for download. Meta also offers the “App Lab,” a Meta-produced tool that allows third-party developers to distribute apps not present in the Meta Quest Store directly to consumers. Other VR app stores include Valve’s Steam Store and SideQuest, but the Meta Quest Store is the leading VR app store in the United States.

25. VR software and studio companies like Within develop the apps that run on VR headsets. These apps run the gamut of genres from rhythm games to shooters to e-sports to creation and exploration and more.

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

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

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

28. In addition to the aforementioned acquisitions, Meta has developed and released its own VR apps. These include:

- a. Horizon Worlds, a Massively Multiplayer Online game that allows users to build, share, and interact in virtual worlds;
- b. Horizon Workrooms, a productivity app that lets teams of people share their computer screens, collaborate on virtual whiteboards, and more;
- c. Horizon Venues, a live-events app that lets users experience concerts, sporting events, and more; and
- d. Horizon Home, a social-space app that lets users hang out with their friends, watch videos together, and join multiplayer VR games together.

29. Among VR apps, dedicated or deliberate fitness is { [REDACTED] }. As Within's co-founder and CEO puts it, [REDACTED] platform-level tools such as Oculus Move, a calorie and time counter that runs in the background of other Quest apps and displays to users data about their activity levels while in VR. { [REDACTED] }

THE RELEVANT ANTITRUST MARKET

30. The Proposed Acquisition would substantially lessen competition or tend to create a monopoly in the relevant antitrust market for VR dedicated fitness apps in the United States (“VR Dedicated Fitness App market”).

A. The Relevant Product Market

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

32. [REDACTED]

33. Dedicated fitness apps offer distinct functionality when compared to other VR apps, apps, such as rhythm and active sports games, that provide an incidental fitness benefit (“incidental fitness apps”). For example, they may feature adjusting difficulty so that users never “fail” a workout; they may feature workouts designed by trainers or fitness experts; they are designed to maximize exertion and physical movement for the purpose of exercise; and they may feature classes or other active coaching.

34. VR Fitness App market participants distinguish VR dedicated fitness apps from VR incidental fitness apps like rhythm and sports games that offer fitness benefits simply because they require users to move and physically exert themselves while engaging with the app. Dedicated fitness apps typically entail a higher degree of physical exertion than incidental fitness apps. According to the Virtual Reality Institute of Health and Exercise, which rates energy expenditures during VR app usage, Within’s Supernatural currently has the highest energy expenditure, at 12–13 calories per minute.

35. VR dedicated fitness apps are also typically offered using a distinct, subscription-based pricing model. Industry participants recognize that this is a distinguishing characteristic of dedicated fitness VR apps when compared to other VR apps, including incidental fitness apps.

36. [REDACTED]

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

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

39. VR offers a level of immersion that other at-home fitness experiences do not, and cannot, offer. VR technology allows users to exercise from the comfort, privacy, and safety of home with the feeling and visuals of being somewhere else—atop a mountain, on a tropical island, in a futuristic world, virtually anywhere. The sensors in a VR headset and controllers also allow for a degree of tracking, adjustment, and feedback that non-immersive exercise programs cannot match. As Within’s co-founder and CEO explained, “[W]orking out in Supernatural feels like you’re a champion of a sport from the future. I love that and haven’t felt that sense of athleticism ever on a treadmill or an exercise bike.”

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

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

42. [REDACTED] } Other than Supernatural and FitXR, {
[REDACTED] }

B. The Relevant Geographic Market

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

MARKET CONCENTRATION

44. The VR Dedicated Fitness App market is highly concentrated.

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

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

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

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

48. The market for VR Dedicated Fitness Apps is highly concentrated, § [REDACTED]

49. Supernatural [REDACTED]

50. The VR Dedicated Fitness App market HHI has been well above the thresholds for a market to be considered "concentrated" or "highly concentrated" under the Merger Guidelines.

EVIDENCE OF LIKELY ANTICOMPETITIVE EFFECTS

51. In addition to this presumption of illegality, additional evidence indicates that the Proposed Acquisition may substantially lessen competition in the relevant market for VR dedicated fitness apps.

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

A. It Is Reasonably Probable That Meta Would Have Entered the VR Dedicated Fitness App Market Through Alternative Means Absent The Proposed Acquisition

53. Meta has the economic characteristics, size, resources, capabilities, advantages, and incentives to enter the VR Dedicated Fitness App market—and it has seriously considered doing so—by means other than this Proposed Acquisition. Meta could have chosen to build a VR dedicated fitness app from scratch, add dedicated fitness functionality to an existing app, and/or acquire a smaller studio that could support and supplement Meta’s existing strengths to facilitate its entry.

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

55. Meta has the financial resources to develop a dedicated fitness app on its own—either by creating a new app or by adding new features to an existing app such as Beat Saber. It also has more than enough resources to enter the market through acquiring a generalist studio that could supplement Meta’s formidable first-party studios group in developing a VR dedicated fitness app.

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

57. With its vast financial resources, Meta continues to add features and content to the apps it has already released, and to develop and release new apps. Meta has also developed multiple full-featured VR apps in-house. What’s more, the { } it proposes to spend on this acquisition { } During that time and on that budget, Within built Supernatural from the ground up into the { } VR dedicated fitness app.

58. Meta could build instead of buy within a reasonable period of time if it could not proceed with the Proposed Acquisition. Indeed, { }
{ }
{ }
{ }
{ }

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

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

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

62. Meta’s control over the Quest platform also gives it unique access to VR user data, which it uses to inform strategic decisions.

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

64. Meta—formerly known as “Facebook Inc.”—rebranded its entire business as “Meta” to reflect its focus on VR. Its brands, including Meta and Quest, are well-known to VR users. Meta also has substantial marketing experience as to a wide range of VR apps, including Beat Saber, that it could leverage to enter the VR Dedicated Fitness App market. Indeed, users already associate Meta’s Beat Saber app with incidental fitness. This “name awareness” would facilitate Meta’s organic entry into the VR Dedicated Fitness App market, as a dedicated fitness-oriented version of Beat Saber would be in line with users’ understanding of the Beat Saber brand.

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

66. [REDACTED]

67. Meta is well aware that fitness VR apps could enable it to reach new categories of consumers. [REDACTED]

68. [REDACTED]

69. [REDACTED]

70. [REDACTED]

71. [REDACTED]

72. [REDACTED]

73. [REDACTED]

74. [REDACTED]

75. Thus, not surprisingly, after Meta’s acquisition of Beat Games and immediately prior to the launch of Supernatural, Beat Saber released a new track called “FitBeat,” which included virtual “walls” or “obstacles” that users would have to dodge. [REDACTED] [REDACTED] Obstacles also appear on other tracks, forcing users to duck and dodge, but they can be turned off.

76. [REDACTED] has already included both a 360-degree mode where targets come from all sides and a no-fail mode that allows users to complete tracks despite missing

blocks in recent updates—a feature that fitness-focused users can adopt to ensure an uninterrupted workout.

77. [REDACTED]

78. [REDACTED]

79. In fact, Meta’s internal codename for the proposed acquisition of Within was “Project Eden,” a reference to its belief that Apple was also interested in acquiring Within.

80. Meta also hired away the head of product for Supernatural at Within to work at Meta following the Supernatural launch. That individual’s portfolio at Meta included expanding Meta’s presence into new verticals, including the VR fitness vertical.

81. [REDACTED]

82. [REDACTED]

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

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

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

85. Building instead of buying would entail developing additional expertise, undertaking product research and design, hiring more employees, and making other key

investments. Meta recognizes that building its own VR dedicated fitness app would require time, additional developer talent, and effort. But such efforts would reflect the very essence of competition, the dynamic that the antitrust laws seek to protect and promote.

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

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

C. Within Reasonably Perceived Meta as a Potential Entrant to the VR Dedicated Fitness App Market

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

89. As explained in detail above, Meta is a massive, wealthy company with extensive control over and experience in various aspects of the VR industry. It has recently expanded into a variety of VR-related areas, including by acquiring the most popular VR incidental fitness app (Beat Saber) and by internally developing a system-level fitness tracking tool that can run in the background of other apps (Oculus Move). In a recent earnings report, Meta announced that it anticipated spending some \$10 billion across its Reality Labs division, which has found its biggest success to date with the Quest 2 Headset and Quest Store, and that it is committed to increasing those investments over the next several years. The VR dedicated fitness app market is especially attractive for a host of reasons, giving Meta a strong incentive to enter it. And Meta internally identified multiple means of entering the VR dedicated fitness app market.

90. [REDACTED]

91. [REDACTED]

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

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

93. [REDACTED]

The Proposed Acquisition would eliminate that competitive influence.

94. [REDACTED]

95. [REDACTED]

96. [REDACTED]

97. [REDACTED]

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

LACK OF COUNTERVAILING FACTORS

99. Respondents cannot demonstrate that new entry or expansion by existing firms will be timely, likely, or sufficient to offset the anticompetitive effects of the Proposed Acquisition.

100. There are multiple barriers to entering or expanding in the relevant market, including time, network effects, ongoing development and content creation costs, post-launch support, capital, brand recognition, and the need for consumers to be able to discover the app. Developing a high-quality entrant also requires hiring the “talent needed to create true triple-A VR experiences,” talent that Meta acknowledges is increasingly scarce.

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

102. No other company has the combination of resources, VR know-how, and control over the leading app store and the overall Quest VR experience that Meta has.

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

104. Respondents cannot demonstrate cognizable, verifiable, transaction-specific efficiencies that would be sufficient to reverse the strong presumption and evidence of the Proposed Acquisition’s likely significant anticompetitive effects.

VIOLATION

COUNT I – Illegal Acquisition

105. The allegations above in paragraphs 1 to 104 are incorporated by reference as though fully set forth.

106. The Proposed Acquisition, if consummated, may substantially lessen competition or tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and is an unfair method of competition that violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the 19 day of January, 2023, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. A prohibition against any transaction between Respondents that combines their business, except as may be approved by the Commission.
2. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate businesses, with the ability to offer such products and services as Meta and Within were offering and planning to offer prior to the Acquisition.
3. A requirement that, for a period of time, Respondents shall not, without giving prior notice to and obtaining the prior approval of the Commission, acquire, merge with, consolidate, or combine their businesses with any other company engaged in business activity in the relevant markets and, if necessary, in related business activity and markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Requiring that Respondents' compliance with the order may be monitored at Respondents' expense by an independent monitor, for a term to be determined by the Commission.
6. Any other relief to correct or remedy the anticompetitive effects of the Acquisition or to restore Within as an independent business.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, DC, this ___ day of October, 2022.

By the Commission.

April J. Tabor
Secretary

SEAL:

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2022, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
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Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

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

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Counsel Supporting the Complaint