

# EXHIBIT 1

1 LETITIA JAMES  
Attorney General State of New York  
2 Henry B. Smith  
California State Bar No. 313801  
3 Assistant Attorney General  
4 Henry.Smith@ag.ny.gov

5 Office of the New York Attorney General  
28 Liberty Street  
6 New York, NY 10005  
7 (212) 416-8627

8 *Counsel for Amicus Curiae State of New York*  
(Additional counsel listed in signature block)  
9

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**

13 FEDERAL TRADE COMMISSION,

14 *Plaintiff,*

15 v.

16 META PLATFORMS, INC., AND  
17 WITHIN UNLIMITED, INC.,

18 *Defendants.*

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

**[PROPOSED] BRIEF FOR THE STATES  
OF NEW YORK, ALASKA, CALIFORNIA,  
CONNECTICUT, DELAWARE, HAWAII,  
IDAHO, ILLINOIS, MARYLAND,  
MASSACHUSETTS, MINNESOTA,  
MISSISSIPPI, MONTANA, NEBRASKA,  
NEVADA, NEW JERSEY, NEW MEXICO,  
NORTH CAROLINA, NORTH DAKOTA,  
OREGON, RHODE ISLAND, UTAH, AND  
WASHINGTON, THE DISTRICT OF  
COLUMBIA, AND THE TERRITORY  
OF GUAM AS AMICI CURIAE IN  
SUPPORT OF PLAINTIFF’S MOTION  
FOR A PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

**Page**

1

2

3 TABLE OF AUTHORITIES ..... ii

4 INTRODUCTION AND INTEREST OF AMICI..... 1

5 ARGUMENT ..... 3

6 I. The Amici States’ Experience Demonstrates That the Equities and Public Interest

7 Favor a Preliminary Injunction of Meta’s Acquisition of Within..... 3

8 A. A Preliminary Injunction Is Necessary to Preserve the Status Quo While

9 the FTC Undertakes a Full Adjudication of Meta’s Acquisition of Within. .... 3

10 B. State Enforcement Efforts Underscore the Dangers That Acquisitions by

Digital Platforms Like Meta May Pose to Competition and Innovation. .... 4

11 C. Meta’s Acquisition of Within Poses Dangers to Competition and Innovation..... 8

12 II. The FTC Is Likely to Prevail on the Merits Because Meta’s Acquisition of Within

13 Likely Would Substantially Lessen Competition. .... 10

14 CONCLUSION..... 13

15

16

17

18

19

20

21

22

23

24

25

26

27

28

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Brown Shoe Co. v. United States</i> , 370 U.S. 294 (1962).....	12
<i>FTC v. Procter &amp; Gamble Co.</i> , 386 U.S. 568 (1967).....	12
<i>FTC v. Warner Commc'ns Inc.</i> , 742 F.2d 1156 (9th Cir. 1984) .....	3
<i>In re Google Digital Advert. Antitrust Litig.</i> , Nos. 21-md-3010, 21-cv-6841, 2022 WL 4226932 (S.D.N.Y. Sept. 13, 2022).....	2
<i>Massachusetts v. Microsoft Corp.</i> , 373 F.3d 1199 (D.C. Cir. 2004).....	1
<i>New York v. Facebook, Inc.</i> , 549 F. Supp. 3d 6 (D.D.C. 2021).....	4
<i>United States v. Marine Bancorporation, Inc.</i> , 418 U.S. 602 (1974).....	11-12
<i>United States v. Microsoft</i> , 253 F.3d 34 (D.C. Cir. 2001).....	1
<b>Laws</b>	
15 U.S.C.	
§ 18.....	10
§ 45.....	10
§ 53.....	3
<b>Miscellaneous Authorities</b>	
Ben Lang, <i>FTC Sues to Block Meta's Acquisition of Top VR Fitness App Developer</i> , Road to VR (July 27, 2022), <a href="https://www.roadtovr.com/meta-supernatural-within-acquisition-price-ftc-scrutiny-report/">https://www.roadtovr.com/meta-supernatural-within-acquisition-price-ftc-scrutiny-report/</a> .....	9
C. Scott Hemphill & Tim Wu, <i>Nascent Competitors</i> , 168 U. Pa. L. Rev. 1879 (2020), <a href="https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9715&amp;context=pen_n_law_review">https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9715&amp;context=pen_n_law_review</a> .....	6
Colleen Cunningham et al., <i>Killer Acquisitions</i> , 129 J. Pol. Econ. 649 (2021), <a href="https://www.journals.uchicago.edu/doi/epdf/10.1086/712506">https://www.journals.uchicago.edu/doi/epdf/10.1086/712506</a> .....	6

1	<b>Miscellaneous Authorities</b>	<b>Page(s)</b>
2	Comments from Att’y’s Gen. in Response to Request for Information on Merger	
3	Enforcement (Apr. 21, 2022), <a href="https://www.naag.org/wp-content/uploads/2022/08/Public-Comments-of-23-State-Attorneys-General-.pdf">https://www.naag.org/wp-</a>	
4	<a href="https://www.naag.org/wp-content/uploads/2022/08/Public-Comments-of-23-State-Attorneys-General-.pdf">content/uploads/2022/08/Public-Comments-of-23-State-Attorneys-General-.pdf</a> .....	2
5	Cristina Caffarra et al., “ <i>How Tech Rolls</i> ”: <i>Potential Competition and “Reverse”</i>	
6	<i>Killer Acquisitions</i> , Ctr. for Econ. Pol’y Rsch. (May 11, 2020),	
7	<a href="https://new.cepr.org/voxeu/blogs-and-reviews/how-tech-rolls-potential-competition-and-reverse-killer-acquisitions">https://new.cepr.org/voxeu/blogs-and-reviews/how-tech-rolls-potential-</a>	
8	<a href="https://new.cepr.org/voxeu/blogs-and-reviews/how-tech-rolls-potential-competition-and-reverse-killer-acquisitions">competition-and-reverse-killer-acquisitions</a> .....	6
9	Federal Trade Comm’n, <i>Non-HSR Reported Acquisitions by Select Technology Platforms, 2010-2019: An FTC Study</i> (Sept. 2021),	
10	<a href="https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf">https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-</a>	
11	<a href="https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf">technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf</a> .....	5
12	Jon Fingas, ‘ <i>Beat Saber</i> ’ Now Has an Official Song Designed to Keep You Fit, Engadget	
13	(Apr. 12, 2020), <a href="https://www.engadget.com/beat-saber-fitbeat-024917974.html">https://www.engadget.com/beat-saber-fitbeat-024917974.html</a> .....	9-10
14	<i>Meta Platforms, Inc. (META) CEO Mark Zuckerberg on Q2 2022 Results -</i>	
15	<i>Earnings Call Transcript</i> , Seeking Alpha (July 29, 2022),	
16	<a href="https://seekingalpha.com/article/4527416-meta-platforms-inc-meta-ceo-mark-zuckerberg-on-q2-2022-results-earnings-call-transcript">https://seekingalpha.com/article/4527416-meta-platforms-inc-meta-ceo-mark-</a>	
17	<a href="https://seekingalpha.com/article/4527416-meta-platforms-inc-meta-ceo-mark-zuckerberg-on-q2-2022-results-earnings-call-transcript">zuckerberg-on-q2-2022-results-earnings-call-transcript</a> .....	10
18	Nancy Schimelpfening, <i>I Tried It: ‘Supernatural’ VR Workout on Oculus Quest</i> ,	
19	Healthline (Mar. 4, 2021), <a href="https://www.healthline.com/health-news/i-tried-it-supernatural-vr-workout-on-oculus-quest#Supernatural-vs.-Beat-Saber">https://www.healthline.com/health-news/i-tried-it-</a>	
20	<a href="https://www.healthline.com/health-news/i-tried-it-supernatural-vr-workout-on-oculus-quest#Supernatural-vs.-Beat-Saber">supernatural-vr-workout-on-oculus-quest#Supernatural-vs.-Beat-Saber</a> .....	10
21	Press Release, Eur. Comm’n, <i>Mergers: Commission Fines Facebook €110 Million for</i>	
22	<i>Providing Misleading Information About WhatsApp Takeover</i> (May 18, 2017),	
23	<a href="https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1369">https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1369</a> .....	7
24	Simple Investing, <i>Meta: The Metaverse Is Becoming a Reality</i> , Seeking Alpha (Oct. 22, 2022),	
25	<a href="https://seekingalpha.com/article/4548312-meta-metaverse-becoming-reality">https://seekingalpha.com/article/4548312-meta-metaverse-becoming-reality</a> .....	10
26	Stigler Comm. on Digit. Platforms, Final Report (Sept. 2019),	
27	<a href="https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf">https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---</a>	
28	<a href="https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf">committee-report---stigler-center.pdf</a> .....	5
29	Tim Bajarin, <i>Could Fitness Be the Killer App for the Metaverse? Or Is It Gaming? Or</i>	
30	<i>Both?</i> , Forbes (Dec. 24, 2021),	
31	<a href="https://www.forbes.com/sites/timbajarin/2021/12/24/could-fitness-be-the-killer-app-for-the-metaverse-or-is-it-gaming-or-both/?sh=294291b1146f">https://www.forbes.com/sites/timbajarin/2021/12/24/could-fitness-be-the-killer-</a>	
32	<a href="https://www.forbes.com/sites/timbajarin/2021/12/24/could-fitness-be-the-killer-app-for-the-metaverse-or-is-it-gaming-or-both/?sh=294291b1146f">app-for-the-metaverse-or-is-it-gaming-or-both/?sh=294291b1146f</a> .....	9
33	Tim Wu & Stuart A. Thompson, <i>The Roots of Big Tech Run Disturbingly Deep</i> ,	
34	N.Y. Times (June 7, 2019),	
35	<a href="https://www.nytimes.com/interactive/2019/06/07/opinion/google-facebook-mergers-acquisitions-antitrust.html">https://www.nytimes.com/interactive/2019/06/07/opinion/google-facebook-</a>	
36	<a href="https://www.nytimes.com/interactive/2019/06/07/opinion/google-facebook-mergers-acquisitions-antitrust.html">mergers-acquisitions-antitrust.html</a> .....	7
37	Within (VR/AR), <i>Summary</i> , Crunchbase,	
38	<a href="https://www.crunchbase.com/organization/vrse/company/financials">https://www.crunchbase.com/organization/vrse/company/financials</a>	0

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.