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18 (Additional Counsel Listed on Signature Page)

19 UNITED STATES DISTRICT COURT  
20  
21 NORTHERN DISTRICT OF CALIFORNIA  
22  
23 SAN JOSE DIVISION

24 FEDERAL TRADE COMMISSION,

25 Plaintiff,

26 v.

27 META PLATFORMS, INC., et al.,

28 Defendants.

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

**DEFENDANT META PLATFORMS, INC.'S  
ANSWER AND AFFIRMATIVE DEFENSES**

Dept.: Courtroom 4 – 5th Floor  
Judge: Honorable Edward J. Davila

1                   **ANSWER AND AFFIRMATIVE DEFENSES OF META PLATFORMS, INC.**

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

6                   **INTRODUCTION**

7                   Meta’s proposed acquisition of Within Unlimited, Inc. (“Within”) is good for consumers and for  
 8 competition. Meta is investing billions of dollars in virtual reality (“VR”) in order to grow the VR  
 9 ecosystem. Meta’s Quest headset is only one of many current and expected VR products, including those  
 10 from global electronics leaders, such as Apple, ByteDance, Samsung, Sony, and others. Meta seeks to  
 11 provide a robust, varied platform that appeals to a broad range of people, and to expand the platform  
 12 beyond its initial focus on gaming. Its acquisition of Within will improve and expand fitness offerings,  
 13 make the Quest headset more attractive to users, and increase opportunities for existing and new third-  
 14 party developers, all to the benefit of consumers, developers, and the overall VR ecosystem. This is the  
 15 kind of pro-competitive transaction that should be celebrated rather than challenged.

16                   The acquisition has been challenged here for improper reasons. Federal Trade Commission Chair  
 17 Lina Khan brought with her to the Commission a preset agenda; she has stated consistently and in blunt  
 18 terms that Meta should *never* be allowed to acquire any other company, regardless of the facts as to any  
 19 such transaction – and without regard to governing law. She has also made repeated and disparaging  
 20 references to Meta and its CEO, Mark Zuckerberg (whom she derides as “Marta Zuckerberg” in some  
 21 of her published commentary). Ignoring the FTC staff who conducted a review of this transaction and  
 22 determined that no enforcement action was warranted, Chair Khan engineered a 3-2 Commission vote  
 23 to overrule the staff and bring this case, with hers the decisive vote. She now sits as a judge in the  
 24 administrative case – which she has prejudged and cannot fairly adjudicate. Those administrative  
 25 proceedings are irrevocably tainted by due process and federal ethics violations, and can never result in  
 26 a legally valid decision.

27                   The FTC staff was entirely correct in finding no legitimate reason to bring this unprecedented

1 “potential competition” – Meta should not be allowed to acquire Within because Meta *might* otherwise  
 2 compete on its own with Within’s product, Supernatural. The claim fails for numerous reasons. The  
 3 alleged product market is artificial, excluding a wide range of competing fitness products on other  
 4 platforms. Meta had no plan to create its own VR fitness product; indeed, it had rejected the idea as  
 5 impractical, and Meta has no unique advantages in providing such a product – others are equally capable  
 6 of doing so. And actual entry by strong competitors into the very markets the FTC alleges, as well as  
 7 expected entry from others, precludes any colorable claim that Meta’s decision to compete by acquiring  
 8 a VR fitness app – rather than developing one from scratch – could harm consumers, even on the FTC’s  
 9 own suspect legal theory.

10 The FTC’s backup theory – that combining Within’s Supernatural with Meta’s Beat Saber leads  
 11 to too much power in an alleged “incidental fitness plus direct fitness” market – fails the straight-face  
 12 test: Meta’s Beat Saber game is quite different from Supernatural’s fitness app, including in its product  
 13 characteristics, pricing, audience, and just about any other aspect one could identify. Lumping them  
 14 together and leaving out all the other games and other products on all the other platforms against which  
 15 these two products compete makes no sense except as a thin rationalization for Chair Khan’s  
 16 determination to block Meta acquisitions irrespective of the facts or the law.

### 17 ANSWER

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

25 1. Meta admits that it is seeking to acquire Within, the maker of Supernatural. Meta denies  
 26 the remaining allegations contained in Paragraph 1.

27 2. Meta admits that the Facebook, Instagram, Messenger and WhatsApp applications are

1 Commission (“SEC”) annual filing for the year ending December 31, 2021, that the “[f]amily monthly  
2 active people (MAP) was 3.59 billion” as of December 31, 2021. Meta further admits that on June 9,  
3 2022, the company formerly known as Facebook was renamed “Meta Platforms, Inc.” Meta denies the  
4 remaining allegations contained in Paragraph 2.

5 3. Meta admits that it acquired Oculus VR, Inc. in 2014. Meta further admits that the Quest  
6 2 has been available for sale in the United States and worldwide since its launch in 2020. To the extent  
7 Plaintiff is quoting documents, Meta respectfully refers the Court to the documents for an accurate and  
8 complete statement of their contents. Meta denies the remaining allegations contained in Paragraph 3.

9 4. Meta admits that the Quest Store is a distribution platform for VR software apps. Meta  
10 further admits that it acquired Beat Games, the developer of Beat Saber, in November 2019; that Beat  
11 Saber is the highest earning app on Meta’s Quest Store to date by revenue; and that Beat Saber’s revenue  
12 in 2021 was greater than the next five highest-grossing apps combined. Meta further admits that it owns  
13 other VR apps. Meta denies the remaining allegations contained in Paragraph 4.

14 5. Meta denies the allegations contained in Paragraph 5.

15 6. Meta denies the allegations contained in Paragraph 6.

16 7. To the extent Plaintiff is quoting documents, Meta respectfully refers the Court to the  
17 documents for an accurate and complete statement of their contents. Meta denies the remaining  
18 allegations contained in Paragraph 7.

19 8. To the extent Plaintiff is quoting documents, Meta respectfully refers the Court to the  
20 documents for an accurate and complete statement of their contents. Meta denies the remaining  
21 allegations contained in Paragraph 8.

22 9. Meta denies the allegations contained in Paragraph 9.

23 10. Meta denies the allegations contained in Paragraph 10.

24 11. Meta denies the allegations contained in Paragraph 11.

25 12. Meta denies the allegations contained in Paragraph 12.

26 13. Meta denies the allegations contained in Paragraph 13.

27 14. Paragraph 14 purports to state conclusions of law to which no response is required. To  
28 the extent a response is required, Meta denies the allegations contained in Paragraph 14.

1           15. Paragraph 15 purports to state conclusions of law to which no response is required. To  
2 the extent a response is required, Meta denies the allegations contained in Paragraph 15.

3           16. Paragraph 16 purports to state conclusions of law to which no response is required. To  
4 the extent a response is required, Meta denies the allegations contained in Paragraph 16.

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

7           18. Paragraph 18 purports to state conclusions of law to which no response is required. To  
8 the extent a response is required, Meta respectfully refers the Court to 15 USC § 53(b) for an accurate  
9 and complete statement of its text.

10          19. Paragraph 19 purports to state conclusions of law to which no response is required. To  
11 the extent a response is required, Meta denies the allegations contained in Paragraph 19.

12          20. Paragraph 20 purports to state conclusions of law to which no response is required. To  
13 the extent a response is required, for purposes of this current action, Meta does not contest that venue in  
14 this district is proper.

15          21. Paragraph 21 purports to state conclusions of law to which no response is required. To  
16 the extent a response is required, for purposes of this current action, Meta does not contest that  
17 assignment to the San Jose Division is proper.

18          22. Paragraph 22 purports to state conclusions of law to which no response is required. To  
19 the extent a response is required, Meta admits the allegations contained in Paragraph 22 but denies that  
20 the FTC is authorized under Section 7 of the Clayton Act, 15 U.S.C. § 18, or Section 5 of the FTC Act,  
21 15 U.S.C. § 45, to proceed in this case.

22          23. Meta admits that it is a publicly traded company organized under the laws of Delaware  
23 with headquarters in Menlo Park, California; that it develops and sells VR and other extended reality  
24 hardware and software through its Reality Labs division; and that Meta reported its Reality Labs division  
25 generated \$2,274 million in revenue in 2021 and \$1,139 million in revenue in 2020, which it recorded  
26 in its SEC annual filing for the year ending December 31, 2021. Meta also admits that it offers for sale  
27 the Quest 2 VR headset, which is Meta's best-selling VR hardware product to date by units sold, and



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