

UNITED STATES OF AMERICA
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 MOTION *IN LIMINE* TO EXCLUDE UNTIMELY
PRODUCED DECLARATIONS AND OTHER EVIDENCE CONCERNING UNTIMELY
DISCLOSED THIRD-PARTY WITNESSES**

Flouting the initial disclosure requirements of Rule 3.31, Respondents waited until November 4, 2022 to disclose third-party witnesses with discoverable knowledge whom Respondents knew were potential defense witnesses as far back as August 2022. These witnesses are third-party developers that have (or seek to have) virtual reality (“VR”) applications approved by Respondent Meta Platforms, Inc. for the Meta Quest Store, and that have received (or applied for) funding from Meta: Preston Lewis of Black Box VR, Jaime Pichardo Garcia of Odders Lab, and Eric Janszen of VirZoom (collectively, the “Third-Party Developer Witnesses”).

Respondents’ strategic, belated disclosure of these witnesses prejudiced Complaint Counsel’s ability to take account of those witnesses in discovery and violated Rule 3.31 and this Court’s Scheduling Order. The appropriate remedy for failure to disclose these witnesses is exclusion. *See In re Otto Bock HealthCare N. Am., Inc.*, 2018 FTC LEXIS 115, *8 (F.T.C. June

27, 2018); *see also In re POM Wonderful LLC*, 2011 FTC LEXIS 42, *8 (F.T.C. Mar. 16, 2011) (citing Fed. R. Civ. P. 37(c)(1)).

In addition, Paragraph 9 of the Scheduling Order in this case required that any third-party declaration must be produced by October 28, 2022. Although the parties agreed to extend that deadline to November 4, 2022, Respondents served four declarations after that deadline: the declaration of Mr. Lewis of Black Box VR (served November 5, 2022); and declarations of three entities that assisted in executing a survey on which Complaint Counsel’s expert Dr. Singer relied (collectively, the “Third-Party Survey Firm Witnesses”) (declarations served December 12-13, 2022).

Complaint Counsel respectfully requests that the Court exclude from this proceeding the declarations and all other evidence from the Third-Party Developer Witnesses and Third-Party Survey Firm Witnesses.

BACKGROUND

A. Respondents serve initial disclosures and their preliminary witness list without listing any third parties.

On August 19, 2022, Respondents served their initial disclosures in *Federal Trade Commission v. Meta Platforms Inc., et al.*, 5:22-cv-4325 (N.D. Cal.) (the “Federal Court Proceeding”), identifying Meta and Within employees. Ex. 1 (Initial Disclosures) at 2-3. Respondents identified no third parties. *Id.* On August 29, 2022, Respondents advised that the initial disclosures in the Federal Court Proceeding would serve as their initial disclosures in this Part 3 proceeding. Ex. 2 (Aug. 29, 2022 Letter). On September 16, 2022, Respondents served their Preliminary Witness List in this proceeding, identifying no third parties. Ex. 3 (Respondents’ Preliminary Witness List).

B. Respondents began to communicate with third-party developer witnesses to obtain declarations starting in August 2022.

Unbeknownst to Complaint Counsel, starting on August 23, 2022, Respondents began communicating with third-party witnesses from whom they would obtain declarations supporting their defenses, yet Respondents failed to update their initial disclosures until two and a half months later, and have yet to update their Preliminary Witness List.

Eric Janszen. Mr. Janszen is the CEO of third-party developer VirZoom. Ex. 4 (Janszen (VirZoom) Dep.) at 7:5-9. In August 2022, Meta’s counsel began communicating with Mr. Janszen, telling him that [REDACTED] [REDACTED] *Id.* at 55:8-14. Meta’s counsel continued to communicate with Mr. Janszen throughout September and October 2022, finalizing his declaration. Ex. 5 (PX833) at 3, 68-71.

Jaime Pichardo Garcia. Mr. Garcia is the Business Director for Odders Lab, a VR studio based in Spain. Ex. 6 (Garcia (Odders Lab) Dep.) at 12:13-19. In “early September” 2022, Meta’s counsel contacted Mr. Garcia about the prospect of submitting a declaration. *Id.* at 157:2-16. Thereafter, Meta’s counsel spoke with him “several” times, and obtained a declaration “over the course of a few calls.” *Id.* at 157:17-21, 17:8-22.

Preston Lewis. Mr. Lewis is the President and Co-Founder of Black Box VR. Ex. 7 (Lewis (Black Box VR) Dep.) at 14:16-19. On September 6, 2022, Meta’s counsel contacted Mr. Lewis in connection with this case. Ex. 8 (FTC-BLACKBOX-000002). As early as September, Meta’s counsel communicated with him about the prospect of a deposition, and, later, a declaration. Ex. 7 (Lewis (Black Box VR) Dep.) at 130:15-132:5.

C. Respondents reveal their intent to serve third-party declarations, but decline to supplement their initial disclosures.

On October 24, 2022, Complaint Counsel wrote to Respondents noting “[Respondents’] initial disclosures identify no third-party witnesses,” that Respondents’ correspondence “suggests [Respondents] have obtained, or are in the process of obtaining, declarations from third parties,” and that if so, “we expect [Respondents] to immediately amend their initial disclosures to include the names of those parties, so that [Complaint Counsel] can obtain discovery of them.” Ex. 10 (emails between L. Sullivan and J. Balbach). Respondents nonetheless refused to update their disclosures. *Id.*

D. Respondents serve belated supplemental disclosures.

Over two months after Respondents’ Initial Disclosures were due, on the evening of November 4, 2022, Respondents served Complaint Counsel with declarations and notices of deposition subpoenas in the Federal Court Proceeding for the following week for Messrs. Janszen and Garcia. Ex. 11 (Janszen Decl.); Ex. 12 (Garcia Decl.); Ex. 13 (Janszen subpoena); Ex. 14 (Garcia subpoena). The same evening, Respondents served Second Supplemental Initial Disclosures, including Messrs. Janszen and Garcia in their disclosures for the first time. Ex. 15 (Second Supplemental Initial Disclosures).

The next day, Saturday, November 5, 2022—*after* declarations were due—Respondents served a declaration from, and notice of subpoena for a deposition in the Federal Court Proceeding on November 10, 2022 of, Mr. Lewis. Ex. 16 (Lewis Decl.); Ex. 17 (Lewis subpoena). Along with that message, Respondents served their Third Supplemental Initial Disclosures, identifying Mr. Lewis for the first time. Ex. 18 (Third Supplemental Initial Disclosures). That morning, Respondents’ counsel advised Mr. Lewis by text message that “we

did miss the deadline” to submit a third-party declaration, but sought to confirm Mr. Lewis’s prior agreement to sit for a deposition on November 10. Ex. 19 (FTC-BLACKBOX-000001).

In the following days, Complaint Counsel promptly issued subpoenas to Messrs. Janszen, Garcia, and Lewis in the Federal Court Proceeding. Although Complaint Counsel obtained some correspondence between Respondents’ counsel and those third parties, Complaint Counsel was largely unable to obtain any meaningful document discovery from them before the close of discovery, and importantly, prior to the deposition dates that Respondents had set with them. Additionally, apart from the time constraint, because Mr. Garcia is based in Spain, Complaint Counsel was unable to compel Mr. Garcia to provide such discovery.

Respondents still have not identified Messrs. Lewis, Janszen, and Garcia on an updated Preliminary Witness List in this proceeding.

E. Complaint Counsel files a motion *in limine* to exclude disclosures of Third-Party Developers in the Federal Court Proceeding.

On November 21, 2022, Complaint Counsel filed in the Federal Court Proceeding a motion *in limine* to exclude all evidence from Messrs. Janszen, Garcia, and Lewis as untimely. On December 9, 2022, the district court granted in part and denied in part the motion. *FTC v. Meta Platforms Inc.*, No. 22-CV-04325-EJD, 2022 WL 17553006, *2 (N.D. Cal. Dec. 9, 2022). The district court denied Complaint Counsel’s motion as to Messrs. Janszen and Garcia, but granted the motion as to Mr. Lewis. *See id.*

F. Respondents serve additional declarations from Third-Party Survey Firms.

On December 12-13, 2022, Respondents served three additional declarations. On October 27, 2022, Complaint Counsel had served on Respondents in the Federal Court Proceeding the expert report of Complaint Counsel’s expert Dr. Singer, along with backup data that Dr. Singer

relied on for his report. Dr. Singer's report discussed a survey, which his report disclosed was conducted "[w]orking alongside the survey firm Qualtrics." On November 11, Respondents served four expert reports in the Federal Court Proceeding responding to Dr. Singer's report, including one from an expert claiming expertise in the design and analysis of surveys.

More than a month following service of Dr. Singer's report, and after fact discovery had closed, on November 25 and 30, 2022, Respondents served improper and out-of-time subpoenas in the Federal Court Proceeding on Qualtrics and on subcontractors of Qualtrics that Respondents' survey expert had identified based on the backup data Dr. Singer provided on October 27. *See* Ex. 9 (Cint Notice of Subpoena served Nov. 30, 2022); Ex. 21 (Dynata Notice of Subpoena served Nov. 30, 2022); and Ex. 22 (Qualtrics Notice of Subpoena served Nov. 25, 2022). On December 12-13, 2022, Respondents served declarations from those entities. *See* Ex. 23 (Decl. of Ricky Odello of Cint); Ex. 24 (Decl. of Steven Duncan of Dynata); and Ex. 25 (Decl. of Rachael McChrystal of Qualtrics).

ARGUMENT

I. Respondents' Untimely Disclosures of Third-Party Developer Witnesses Violates Rule 3.31(b) and (e)

Rule 3.31(b) requires parties, within five days of the filing of a respondent's answer to the complaint to disclose "[t]he name, and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent." 16 C.F.R. § 3.31(b). Rule 3.31(e)(1) requires parties to "supplement at appropriate intervals its mandatory

initial disclosures under § 3.31(b) if the party learns that in some material respect the information disclosed is incomplete or incorrect.” 16 C.F.R. § 3.31(e)(1).¹

As to the Third-Party Developers, Respondents’ obligation to update their disclosures was triggered, at the very latest, once Respondents’ counsel started grooming these witnesses to submit declarations and sit for depositions. The record is clear that those communications began in August and September 2022. *See* Decl. Ex. 6 (Garcia Dep.) at 157:2-16; Ex. 5 (PX833) at -063 (Janszen); Ex. 8 (FTC-BLACKBOX-000002) (Lewis).

There is no dispute that Respondents failed to identify Mr. Lewis to Complaint Counsel until November 5, 2022. *FTC v. Meta Platforms Inc.*, No. 22-CV-04325-EJD, 2022 WL 17553006, at *1 (N.D. Cal. Dec. 9, 2022).

The fact that Complaint Counsel had already been in contact with Messrs. Janszen and Garcia during its pre-complaint investigation—and listed them in its own initial disclosures—does not relieve Respondents of their basic disclosure obligations. Although the district court in the Federal Court Proceeding found otherwise in this instance, this Court has expressly rejected arguments that “catch-all,” categorical disclosures, including those cross-referencing individuals listed by an opposing party, are sufficient under Rule 3.31(b). *In re Otto Bock*, 2018 FTC LEXIS 115 at *8-9 (“categorical cross-referencing” insufficient).

¹ Under the Federal Rules of Civil Procedure, “the duty to disclose is not only limited to information a party is *certain* it will use, but *may* use to support its claims or defenses.” *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-02807, 2018 WL 11255772, at *3 (N.D. Ohio Apr. 17, 2018) (emphasis in original). If it were, “parties would be free to hide witnesses or evidence from the opposing party, arguing . . . they did not ‘intend’ to use it.” *Id.* at *4.

II. Respondents' Untimely Disclosures of Third-Party Developers Require Exclusion of Evidence

The appropriate remedy for Respondents' untimely disclosures is exclusion. *See In re Otto Bock*, 2018 FTC LEXIS 115 at *8 (granting motion to exclude).

This court in *POM Wonderful* endorsed the exclusion standard articulated in Federal Rule 37(c)(1). 2011 FTC LEXIS 42 at *8. Under Rule 37(c)(1), the “party facing sanctions bears the burden of proving that its failure to disclose the required information was substantially justified or is harmless.” *R & R Sails, Inc. v. Ins. Co. of Pennsylvania*, 673 F.3d 1240, 1246 (9th Cir. 2012); *accord*. Under Rule 37(c)(1), “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c). Rule 37(c)(1) thus provides “a self-executing, automatic sanction to provide a strong inducement for disclosure of material.” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

Courts applying Federal Rule 37(c)(1) routinely exclude late-disclosed witnesses. *See, e.g., Ollier v. Sweetwater Union*, 768 F.3d 843, 862-63 (9th Cir. 2014); *Montera v. Premier Nutrition Corp.*, No. 16-cv-06980, 2022 WL 1452756, at *2 (N.D. Cal. May 9, 2022); *Nunes v. Cnty. of Stanislaus*, No. 1:17-cv-00633, 2020 WL 1324808, at *4 (E.D. Cal. Mar. 20, 2020) (excluding witnesses disclosed four months before trial); *Lopez v. Lopez*, No. 18-cv-6473, 2020 WL 2043996, at *5 (C.D. Cal. Jan. 23, 2020) (excluding witnesses disclosed the day before fact discovery closed).

Respondents cannot show that their belated disclosures were substantially justified or harmless. The belated disclosures prevented Complaint Counsel from obtaining meaningful

discovery from those witnesses. Indeed, upon receipt of Complaint Counsel's request for documents, for example, on November 10, 2022, Mr. Garcia wrote, "I don't have too much available time in such a short notice." Ex. 20 (PX821) at 3. Moreover, the untimely disclosures precluded Complaint Counsel from taking account of these third parties during party discovery, which concluded in this proceeding on November 8, 2022. Complaint Counsel would have been able to make use of such discovery in its expert report, in depositions of those witnesses, and in preparation for the hearing.

III. Four of Respondents' Declarations Were Untimely under the Scheduling Order

The Court should also exclude evidence from Mr. Lewis and the Third-Party Survey Firms on the independent ground that they violate the Scheduling Order's deadline for third party declarations, even beyond the parties' agreed-upon extension to November 4, 2022. Respondents served the declaration for Mr. Lewis on November 5, 2022, and they served the declarations for the Third-Party Survey Firms on December 12-13, 2022.

Respondents cannot make the necessary "showing of good cause" to justify their untimely production of these declarations. Although in contact with Mr. Lewis since September, Respondents chose to wait until November 4, 2022 to attempt to secure his signature on his declaration. As to the Third-Party Survey Firms, Respondents received the information that prompted them to seek declarations from those entities at the time Complaint Counsel served the expert report of Dr. Singer and accompanying backup data on October 27, 2022.

CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that the Court exclude in this action any declaration, testimony, or other evidence from the following witnesses and entities: (1) Eric Janszen of VirZoom; (2) Preston Lewis of Black Box VR; (3) Jaime

Pichardo Garcia of Odders Lab; (4) Ricky Odello of Cint USA; (5) Steven Duncan of Dynata Inc.; and (6) Rachael McChrystal of Qualtrics.

Dated: December 29, 2022

Respectfully submitted,

s/ Adam Pergament
Adam Pergament

Abby L. Dennis
Peggy Bayer Femenella
Joshua Goodman
Jeanine Balbach
Michael Barnett
E. Eric Elmore
Justin Epner
Sean D. Hughto
Frances Anne Johnson
Andrew Lowdon
Lincoln Mayer
Erika Meyers
Susan Musser
Kristian Rogers
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Federal Trade Commission
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apergament@ftc.gov

*Counsel for Plaintiff Federal Trade
Commission*

UNITED STATES OF AMERICA
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

[PROPOSED] ORDER

Before the Court is Complaint Counsel's Motion *in Limine* to Exclude Untimely Declarations and Other Evidence Concerning Untimely Disclosed Witnesses. Based on a review of the parties' submissions, the Court GRANTS Plaintiff's Motion *in Limine*. The Court ORDERS that Respondents shall not submit any declaration, testimony, or other evidence from: (1) Eric Janszen of VirZoom; (2) Preston Lewis of Black Box VR; (3) Jaime Pichardo Garcia of Odders Lab; (4) Ricky Odello of Cint USA; (5) Steven Duncan of Dynata Inc.; or (6) Rachael McChrystal of Qualtrics.

SO ORDERED.

Dated: _____

D. Michael Chappell
Chief Administrative Law Judge

UNITED STATES OF AMERICA
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 MEET AND CONFER STATEMENT

Pursuant to the Court’s September 2, 2022 Scheduling Order, Complaint Counsel submits this statement in support of its Motion *in Limine* to Exclude Declarations and Other Evidence Concerning Untimely Disclosed Witnesses. Complaint Counsel attempted to confer with Respondents in good faith and did not reach agreement. Complaint Counsel contacted Respondents on December 20, 2022 and asked for Respondents’ position on the Motion. Respondents responded on December 21, 2022 that they intend to oppose the Motion *in Limine* to Exclude Declarations and Other Evidence Concerning Untimely Disclosed Witnesses.

Dated: December 21, 2022

Respectfully submitted,

s/ Adam Pergament
Adam Pergament

Abby L. Dennis
Peggy Bayer Femenella
Joshua Goodman
Jeanine Balbach
Michael Barnett

E. Eric Elmore
Justin Epner
Sean D. Hughto
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Andrew Lowdon
Lincoln Mayer
Erika Meyers
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Timothy Singer
James Weingarten

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apergement@ftc.gov

*Counsel for Plaintiff Federal Trade
Commission*

Exhibit 1

Confidential - Redacted in Entirety

Exhibit 2



Mergers II
Bureau of Competition

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

August 29, 2022

By Electronic Mail

Chantale Fiebig, Esq.
Weil, Gotshal & Manges LLP
2001 M Street, NW Suite 600
Washington, DC 20036

RE: *FTC v. Meta Platforms, Inc., et al.*, Case No. 5:22-cv-04325 (N.D. Cal.)

Dear Chantale:

I write regarding the Joint Initial Disclosure Statement that Defendants served on the FTC on August 19, 2022 at 5:38 p.m.

The Joint Initial Disclosure Statement fails to identify a specific individual from Meta who works within Defendant's own company with knowledge about "Virtual Reality Industry-Hardware" or "Virtual Reality Industry-Horizon." This is unreasonable given that this information is uniquely within Meta's possession, custody, or control. We ask that you amend your disclosures to name these individuals by August 31 so that the FTC can promptly seek discovery concerning those individuals and determine whether to include those individuals on its preliminary witness list. Otherwise, the FTC reserves all rights under the Federal Rules and governing caselaw, including the right to move to strike these undisclosed persons and the right to depose these persons, even if they are not named on either parties' preliminary witness list. *See Fed. R. Civ. P. 37(c)(1)* ("if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."); *Durand v. Stonehouse Court Assocs.*, 473 Fed. App'x 667, 669 (9th Cir. 2012).

Sincerely,

/s/ Frances Anne Johnson
Frances Anne Johnson
*Counsel for Plaintiff Federal Trade
Commission*

Exhibit 3

Confidential - Redacted in Entirety

Exhibit 4

Confidential - Redacted in Entirety

Exhibit 5

Confidential - Redacted in Entirety

Exhibit 6

Confidential - Redacted in Entirety

Exhibit 7

Confidential - Redacted in Entirety

Exhibit 8

11/8/22, 3:24 PM

Black Box VR Mail - FTC v. Meta



Preston Lewis <preston@blackbox-vr.com>

FTC v. Meta

4 messages

Obaro, Bambo <Bambo.Obaro@weil.com>

Tue, Sep 6, 2022 at 6:58 PM

To: "preston@blackbox-vr.com" <preston@blackbox-vr.com>

Cc: "Ryan, Liz" <Liz.Ryan@weil.com>, "Dahnke, Robert" <Robert.Dahnke@weil.com>

Good Afternoon Preston,

We represent Meta in the FTC v. Meta litigation filed in the Northern District of California on July 27, 2022 and in the related FTC administrative action relating to the proposed acquisition of Within Unlimited. We were hoping to schedule a call with you in the next day or two to get your thoughts on some of the issues raised in the FTC's complaint. Do you have availability tomorrow afternoon or Thursday morning PT to discuss?

Thank you,

**Bambo Obaro****Partner**

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The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

Preston Lewis <preston@blackbox-vr.com>

Thu, Sep 22, 2022 at 3:31 PM

To: "Obaro, Bambo" <Bambo.Obaro@weil.com>

Cc: "Ryan, Liz" <Liz.Ryan@weil.com>, "Dahnke, Robert" <Robert.Dahnke@weil.com>

Hi there, I am available next week if you are available. Please see the "book a meeting" in my email signature to find a time. :)

<https://mail.google.com/mail/u/0/?ik=e86374141d&view=pt&search=all&permthid=thread-f%3A1743270502666929518&simpl=msg-f%3A1743270502666929518..> 1/3

FTC-BLACKBOX-000002

11/8/22, 3:24 PM

Black Box VR Mail - FTC v. Meta



Preston Lewis
Co-Founder, President & CDO | Black Box VR

✉ preston@blackbox-vr.com

☎ (208) 631-9910

📅 [book a meeting](#)



[Quoted text hidden]

Dahnke, Robert <Robert.Dahnke@weil.com> Mon, Sep 26, 2022 at 4:49 PM
To: Preston Lewis <preston@blackbox-vr.com>, "Obaro, Bambo" <Bambo.Obaro@weil.com>
Cc: "Ryan, Liz" <Liz.Ryan@weil.com>

Hi, Preston –

Thank you for this reply. I do not see a link under “book a meeting” in your signature (it shows up as plain text here), but we are hoping you are available on **Thursday afternoon Pacific Time**. Are there windows that work for you then?

Many thanks.

Best,

Robert



Robert A. Dahnke
Pronouns: He/him/his

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[Quoted text hidden]
[Quoted text hidden]

Preston Lewis <preston@blackbox-vr.com> Tue, Sep 27, 2022 at 2:22 PM
To: "Obaro, Bambo" <Bambo.Obaro@weil.com>, "Dahnke, Robert" <Robert.Dahnke@weil.com>
Cc: "Ryan, Liz" <Liz.Ryan@weil.com>

11/8/22, 3:24 PM

Black Box VR Mail - FTC v. Meta

Hi there, here is the calendar link:


<https://tidycal.com/preston>




Preston Lewis

Co-Founder, President & CDO | Black Box VR

 preston@blackbox-vr.com

 (208) 631-9910

 [book a meeting](#)



[Quoted text hidden]

Exhibit 9

1 MICHAEL MOISEYEV (*pro hac vice*)
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 9 Princeton, NJ 08542
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 10 Facsimile: (609) 986-1199

11 Attorneys for Defendant META PLATFORMS, INC.

12 (Additional Counsel Listed on Signature Page)

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 FEDERAL TRADE COMMISSION,
 17
 18 Plaintiff,
 19 v.
 20 META PLATFORMS, INC., et al.,
 21 Defendants.

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

NOTICE OF SUBPOENA TO CINT USA, INC.

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

22 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE** that, pursuant to Rules 34 and 45 of the Federal Rules of Civil
 24 Procedure, Defendant Meta Platforms, Inc. in the above-captioned case will cause to be served upon
 25 CINT USA, INC. (“Cint”) the subpoena attached as **Exhibit A**, in addition to witness fees and mileage
 26 in accordance with applicable law, to command Cint’s appearance at the trial of this matter on
 27 December 14, 2022 at 10:00 a.m., and production of documents by December 2, 2022.
 28

1 Dated: November 30, 2022

Respectfully submitted,

WEIL, GOTSHAL & MANGES LLP

By: /s/ Bambo Obaro

5 MICHAEL MOISEYEV (*pro hac vice*)
6 michael.moiseyev@weil.com
7 CHANTALE FIEBIG (*pro hac vice*)
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22 Attorneys for Defendant META PLATFORMS,
23 INC.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 30, 2022 in Redwood Shores, California.

/s/ Morgan MacBride
Morgan MacBride

UNITED STATES DISTRICT COURT
for the
Northern District of California

FEDERAL TRADE COMMISSION

Plaintiff

v.

META PLATFORMS, INC., et al.

Defendant

Civil Action No. 5:22-cv-04325-EJD

SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A CIVIL ACTION

To: Cint USA, Inc.
280 Interstate North, Circle SE, Suite 526, Atlanta, GA, 30339

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Table with 2 columns: Place (San Jose Courthouse, 280 South 1st Street, San Jose, CA 95113) and Courtroom No. (Courtroom 4 - 5th Floor). Date and Time: 12/14/2022 10:00 am PST.

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The documents specified in Exhibit A, attached, by December 2, 2022.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/30/2022

CLERK OF COURT

OR

/s/ Bambo Obaro

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Meta Platforms, Inc.

, who issues or requests this subpoena, are:

Bambo Obaro, Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, 6th Floor, Redwood Shores, CA 94065-1134.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 5:22-cv-04325-EJD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) **For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) **For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A TO SUBPOENA TO CINT USA, INC.**DEFINITIONS**

1. “Action” refers to the action pending in the United States District Court for the Northern District of California, styled *Federal Trade Commission v. Meta Platforms, Inc., et al.*, Case No. 5:22-cv-04325 (EJD), as well as the Federal Trade Commission’s investigation of Meta Platform, Inc.’s proposed acquisition of Within Unlimited, Inc., FTC File No. 221-0040.
2. “Communication” is used in the broadest possible sense and includes without any limitation every conceivable manner or means of disclosure, transfer, or exchange of oral or written information between one or more persons, entities, devices, platforms, or systems, whether in the form of an original, a draft, or a copy, whether stored in hard copy, on tape, electronically or digitally, either orally, visually, or in writing, and includes but is not limited to conversations, correspondence, electronic mails or emails, telexes, facsimile transmissions, telecopies, recordings in any medium of oral, written, or typed communications, telephone or message logs, notes or memoranda relating to written or oral communications; and any translation thereof.
3. “Concerning,” “Reflecting,” “Regarding,” and “Relating To” are used in the broadest possible sense and mean, in whole or in part, addressing, analyzing, constituting, containing, commenting, in connection with, dealing with, discussing, describing, embodying, evidencing, identifying, pertaining, referring, reporting, stating, or summarizing. These definitions apply throughout these requests without regard to capitalization.
4. “Defendants” means Meta Platforms, Inc. and Within Unlimited Inc. and all of their predecessors, subsidiaries, parents, affiliates, and other organizational or operating units of them, all past and present directors, officers, employees, agents, representatives, employees, consultants, and attorneys of any of them, all entities acting in joint-venture or partnership relationships with any of them, and all others acting on behalf of any of them, respectively.
5. “Document” is used in the broadest possible sense consistent with the meaning given in Rule 34 of the Federal Rules of Civil Procedure and includes without limitation any written, printed, typed, photocopied, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, data, pictures, sounds or symbols, or any combination thereof. “Document” includes without limitation, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes of minutes of meetings or communications, electronic mail/messages and/or “e-mail,” text messages, social media communications, voice mail messages, instant messaging, any other electronically transmitted messages, questionnaires, surveys, charts, graphs, photographs, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by You through detection devices into usable form), including, without limitation, electromagnetically sensitive storage media such as CDs, DVDs, memory sticks, floppy disks, hard disks and magnetic tapes, and any preliminary versions, as well as drafts or revisions of any of the foregoing, regardless of who authored the Document.

- 1 6. “Including” is used to provide examples of certain types of information and should not be
2 construed as limiting a request in any way. The term “including” shall be construed as if followed
3 by the phrase “but not limited to.”
- 4 7. “Information” means Information in any form, including but not limited to documentary,
5 electronic, graphical, or tabular, and communicated by any means, including but not limited to
6 oral, written, or electronic Communications.
- 7 8. “Local Civil Rules” means the Local Civil Rules of the United States District Courts for the
8 Northern District of California.
- 9 9. “Meta Platforms, Inc.” means Meta Platforms, Inc., its subsidiaries, affiliates, divisions, either
10 collectively, individually, or in any subset; and the present and former officers, directors,
11 employees, agents, and other persons acting on behalf of Meta Platforms, Inc., its divisions,
12 subsidiaries and/or affiliates.
- 13 10. “Plaintiff” refers to the Federal Trade Commission.
- 14 11. “Qualtrics” refers to Qualtrics International Inc. and its divisions, business units, subsidiaries,
15 affiliates, predecessors, successors-in-interest, and companies under tis direct or indirect
16 management or control, as well as any of its present and former agents, directors, officers,
17 managers, analysts, accountants, attorneys, representatives, employees, consultants, or other
18 persons acting under its direction or control, including but not limited to any other firm that
19 Qualtrics used to field a panel for the Survey and conduct the Survey.
- 20 12. “Survey” means the survey that Dr. Hal Singer, retained by the Federal Trade Commission,
21 commissioned Qualtrics to undertake in *Federal Trade Commission v. Meta Platforms, Inc., et al.*,
22 Case No. 5:22-cv-04325-EJD (N.D. Cal.).
- 23 13. “Within Unlimited Inc.” means Within Unlimited Inc., its affiliates, divisions, either collectively,
24 individually, or in any subset; and the present and former officers, directors, employees, agents,
25 and other persons acting on behalf of Within Unlimited Inc., its divisions, subsidiaries, and/or
26 affiliates.
- 27 14. “You,” “Your,” and “Yourself” refers to Cint USA, Inc. and its divisions, business units,
28 subsidiaries, affiliates, predecessors, successors-in-interest, and companies under its direct or
indirect management or control, as well as any of its present and former agents, directors, officers,
managers, analysts, accountants, attorneys, representatives, employees, consultants, or other
persons acting under its direction or control, including but not limited to any other firm that Cint
used to field a panel for the Survey and conduct the Survey.

INSTRUCTIONS

1. You are requested to produce all Documents and Information described below that can be located by a reasonable search of materials within Your possession, custody or control, or in the possession, custody or control of Your officers, directors, agents, employees, representatives, affiliated or associated companies or any other person or entity acting or purporting to act on Your behalf.
2. Unless otherwise specified, the effective date for these requests is July 27, 2022 to the present.
3. If You object to part of a request, state the basis of Your objections in accordance with Rule 45 of the Federal Rules of Civil Procedure, and produce all responsive Documents and Information that are not within the scope of Your objection.
4. If there are no responsive Documents for a particular request, then so state in Your response.
5. You must produce a log, in accordance with Federal Rule of Civil Procedure 26(b)(5)(A), for any Document You withhold on the basis of any claimed privileged or immunity.
6. These requests shall be deemed continuing requests so as to require supplemental responses if You obtain or discover additional Documents between the time of initial production and the time of the trial. Such supplemental Documents must be produced promptly upon discovery. Defendants specifically reserve the right to seek supplementary responses and the additional supplementary production of Documents before trial.
7. Attached to this Subpoena is a copy of the Protective Order entered in *Federal Trade Commission v. Meta Platforms, Inc., et al.*, Case No. 5:22-cv-04325 (EJD). Documents produced pursuant to this Subpoena may be produced in accordance with the terms of that Protective Order. Note that You may designate documents that You produce “Confidential” or “Highly Confidential” per the terms of that Order.
8. Please contact Meta counsel Jeremy Cain at jeremy.cain@weil.com or 212-310-8498, or Christina Swiatowy at christina.swiatowy@weil.com or 202-682-7518 to discuss how You intend to produce the documents.

REQUESTS FOR PRODUCTION

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1. Documents sufficient to show the composition of the panel used for the Survey.
2. The email address of each person to whom the Survey was sent.
3. Documents sufficient to identify or show the specific email address associated with each of the persons who completed the Survey.
4. All Documents and Communications sent to Survey respondents, regardless of whether the respondent completed the Survey.
5. All Documents and Communications sent to, or received from, Qualtrics in relation to the Survey.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC.,

MARK ZUCKERBERG,

and

WITHIN UNLIMITED, INC.,

Defendants.

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

~~PROPOSED~~ PROTECTIVE ORDER
AS MODIFIED BY THE COURT

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

1 ~~PROPOSED~~ **PROTECTIVE ORDER**

2 For the purposes of protecting the interests of the parties and non-parties in the above-
3 captioned matter against the improper use and disclosure of confidential information submitted
4 or produced in connection with this matter:

5 IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all
6 Confidential and Highly Confidential Information, as hereafter defined.

7 1. As used in this Order, “Confidential Information” means any trade secret or other
8 confidential research, development, or commercial information, as such terms are used in Fed. R.
9 Civ. P. 26(c)(1)(G), or any Document, transcript, or other material containing such information
10 that has not been published or otherwise made publicly available. In addition, a designating party
11 may designate as Confidential any information or items made publicly available in violation of a
12 court order to keep such information confidential, that the designating party believes should
13 receive Confidential treatment. This includes (i) information copied or extracted, summarized or
14 compiled from Confidential Information, and (ii) testimony, conversations, or presentations that
15 might reveal Confidential Information.

16 2. As used in this Order, “Highly Confidential Information” shall only include
17 Confidential Information that, if disclosed, is likely to cause material and significant harm to the
18 party or non-party whose Highly Confidential Information is disclosed. Highly Confidential
19 Information includes trade secrets, including algorithms and source code; non-public,
20 commercially sensitive customer lists; non-public financial, marketing, or strategic business
21 planning information; current or future non-public information regarding prices, costs, or
22 margins; information relating to research, development, testing of, or plans for existing or
23 proposed future products; evaluation of the strengths and vulnerabilities of product offerings,
24 including non-public pricing and cost information; confidential contractual terms, proposed
25 contractual terms, or negotiating positions (including deliberations about negotiating positions)

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 taken with respect to Defendant(s) or competitors to Defendant(s); information relating to
2 pending or abandoned patent applications that have not been made available to the public;
3 personnel files; sensitive personally identifiable information; sensitive health information; and
4 communications that disclose any Highly Confidential Information. Highly Confidential
5 Information also includes information that a non-party believes would expose it or new business
6 ventures with which it is associated to potential retribution or harm if the information were
7 disclosed to Defendant(s).

8 3. As used in this Order, “Document” shall refer to any discoverable writing,
9 recording, transcript of oral testimony, or electronically stored information in the possession of a
10 party or non-party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any
11 of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons
12 retained as consultants or experts for purposes of this proceeding.

13 4. Any Document or portion thereof submitted by a Defendant or a non-party during
14 a Federal Trade Commission investigation (“Investigation Materials”) or during the course of
15 this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or
16 any other federal statute or regulation, or under any federal court or Commission precedent
17 interpreting such statute or regulation, as well as any information that discloses information that
18 has not been published or otherwise made publicly available, or the substance of the contents of
19 any Confidential or Highly Confidential Information derived from a Document subject to this
20 Order, shall be treated as Confidential or Highly Confidential Information for purposes of this
21 Order.

22 5. The parties and any non-parties, in complying with informal discovery requests,
23 disclosure requirements, or discovery demands in this proceeding may designate any responsive
24 Document or portion thereof as Confidential or Highly Confidential Information, including
25 Documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 6. The parties, in conducting discovery from non-parties, shall provide to each non-
2 party a copy of this Order so as to inform each such non-party of his, her, or its rights herein.

3 7. A designation of confidentiality shall constitute a representation in good faith and
4 after careful determination that the material is not reasonably believed to be already in the public
5 domain and that counsel believes the material so designated constitutes Confidential or Highly
6 Confidential Information as defined in Paragraph 1 of this Order.

7 8. Material may be designated as Confidential by placing on or affixing to the
8 Document containing such material (in such manner as will not interfere with the legibility
9 thereof), or if an entire folder or box of Documents is Confidential by placing or affixing to that
10 folder or box, the designation “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—
11 FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-EJD,” or any other appropriate
12 notice that identifies this proceeding, together with an indication of the portion or portions of the
13 Document considered to be Confidential Information. Confidential Information contained in
14 electronic Documents may also be designated as Confidential by placing the designation
15 “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—FTC v. Meta Platforms, Inc.,
16 et al., Case No. 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this
17 proceeding, on the face of the CD or DVD or other medium on which the Document is produced.
18 Masked or otherwise redacted copies of Documents may be produced where the portions masked
19 or redacted contain privileged matter, provided that the copy shall indicate at the appropriate
20 point that portions have been masked or redacted and the reasons therefor.

21 9. Material may be designated as Highly Confidential by placing on or affixing to
22 the Document containing such material (in such manner as will not interfere with the legibility
23 thereof), or if an entire folder or box of Documents is Highly Confidential by placing or affixing
24 to that folder or box, the designation “HIGHLY CONFIDENTIAL – FTC v. Meta/Within,”
25 “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 EJD,” or any other appropriate notice that identifies this proceeding, together with an indication
2 of the portion or portions of the Document considered to be Highly Confidential Information.
3 Highly Confidential Information contained in electronic Documents may also be designated as
4 Highly Confidential by placing the designation “HIGHLY CONFIDENTIAL – FTC v.
5 Meta/Within,” “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al., Case No.
6 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this proceeding, on the face
7 of the CD or DVD or other medium on which the Document is produced. Masked or otherwise
8 redacted copies of Documents may be produced where the portions masked or redacted contain
9 privileged matter, provided that the copy shall indicate at the appropriate point that portions have
10 been masked or redacted and the reasons therefor.

11 10. Defendants are not required to re-designate Investigation Materials as
12 Confidential or Highly Confidential: all Investigation Materials produced by Defendants
13 presumptively shall be treated as they were designated in the Investigation.

- 14 11. Confidential and Highly Confidential Information shall be disclosed only to:
- 15 (a) the Court presiding over this proceeding, personnel assisting the Court,
 - 16 Plaintiff and its employees, and personnel retained by Plaintiff as experts or
 - 17 consultants for this proceeding;
 - 18 (b) judges and other court personnel of any court having jurisdiction over any
 - 19 appellate proceedings involving this matter;
 - 20 (c) outside counsel of record for any Defendant, their associated attorneys and
 - 21 other employees of their law firm(s), provided they are not employees of any
 - 22 Defendant;
 - 23 (d) anyone retained to assist outside counsel in the preparation or hearing of this
 - 24 proceeding including consultants and testifying experts, provided they are not
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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 currently employed by a Defendant and have signed an agreement to abide by the
2 terms of the protective order;

3 (e) any witness or deponent who the examining attorney reasonably believes
4 either authored or received the information in question; and

5 (f) Defendant Meta and Defendant Within shall each, by August 24, 2022, inform
6 Plaintiff of the names of no more than three (3) in-house litigation counsel with
7 responsibilities for the litigation of this Action.

8 The in-house litigation counsel identified by Defendants may only access
9 declarations produced by Plaintiff, draft and final versions of pleadings, motions,
10 and other briefs, hearing transcripts and expert reports—including portions of
11 such filings, transcripts, or reports that quote or paraphrase confidential
12 material—but not exhibits to such filings, transcripts or reports or underlying
13 discovery material (other than declarations produced by Plaintiff), that have been
14 designated as Confidential or Highly Confidential Information. In preparation for
15 trial, the in-house counsel identified by Defendants may review documents or
16 other discovery material containing confidential material that are included in
17 Plaintiff's exhibit list or that are proposed by outside counsel for inclusion in
18 Defendants' exhibit lists. Before providing such materials to in-house counsel
19 identified by Defendants, Defendants shall redact all confidential material
20 included in their proposed exhibit lists that is not material to the proposed merger
21 or this litigation. The access designated in-house counsel may have to confidential
22 material is subject to reconsideration for good cause shown. The in-house counsel
23 identified by Defendants shall have access to such confidential material for the
24 purpose of defending this litigation only. The in-house counsel identified by
25 Defendants may access confidential material only in person at the offices of their
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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 outside counsel, or using a secure electronic data room or document review
2 platform using individual login identification and passwords. Plaintiff and
3 Defendants shall promptly report any confirmed or suspected unauthorized use or
4 disclosure of confidential material to the Court and opposing counsel. To qualify
5 for access under this subpart, in-house litigation counsel shall first execute an In-
6 House Counsel Agreement Concerning Confidentiality in the form of Appendix A
7 attached hereto (which executed versions shall be maintained by outside counsel
8 for the relevant Defendant and available for inspection upon the request of the
9 Court, any Party, or any non-party who provides Confidential or Highly
10 Confidential Information in this Action).

11 12. Disclosure of Confidential or Highly Confidential Information to any person
12 described in Paragraph 7 of this Order shall be only for the purposes of the preparation and
13 hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever.
14 Nothing herein shall be construed as prohibiting counsel for the Federal Trade Commission or
15 counsel for Meta from serving as counsel in *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590
16 (JEB) (D.D.C.), or any other investigation or litigation involving the Federal Trade Commission
17 and any of the Defendants.

18 13. In the event that any Confidential or Highly Confidential Information is contained
19 in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall
20 be so informed by the Party filing such papers, and such papers shall be filed under seal [^]. To the
21 extent that such material was originally submitted by a non-party, the party including the
22 material in its papers shall immediately notify the submitter of such inclusion. Confidential or
23 Highly Confidential Information contained in the papers shall remain under seal ^{only as provided by} ~~until further~~
24 order of the Court, provided, however, that such papers may be furnished to persons or entities
25 who may receive Confidential or Highly Confidential Information pursuant to Paragraph 7. ~~Upon~~

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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 ~~or after filing any paper containing Confidential or Highly Confidential Information, the filing~~
2 ~~party shall file on the public record a duplicate copy of the paper that does not reveal~~
3 ~~Confidential or Highly Confidential Information.~~ Further, if the protection for any such material
4 expires, a party may file on the public record a duplicate copy which also contains the formerly
5 protected material.

6 14. Within two business days of exchanging exhibit lists, the parties shall provide
7 notice to any party or non-party whose Confidential or Highly Confidential Information is on
8 that party's exhibit list for purposes of allowing that party or non-party to seek an order that the
9 document or transcript be granted in camera treatment. If that party or non-party wishes in
10 camera treatment for the document or transcript, the party or non-party shall file an appropriate
11 motion with the Court within five business days after it receives such notice. Except where such
12 an order is granted, all documents and transcripts shall be part of the public record. Where in
13 camera treatment is granted, a duplicate copy of such document or transcript with the
14 Confidential or Highly Confidential Information deleted therefrom may be placed on the public
15 record.

16 15. If any party receives a discovery request in any investigation or in any other
17 proceeding or matter that may require the disclosure of Confidential or Highly Confidential
18 Information submitted by another party or non-party, the recipient of the discovery request shall
19 promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an
20 order of a court, such notification shall be in writing and be received by the submitter at least ten
21 business days before production and shall include a copy of this Protective Order and a cover
22 letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as
23 requiring the recipient of the discovery request or anyone else covered by this Order to challenge
24 or appeal any order requiring production of Confidential or Highly Confidential Information,
25 subject itself to any penalties for non-compliance with any such order, or to seek any relief from
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27 ~~[PROPOSED]~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of
2 Confidential or Highly Confidential Information. In addition, nothing herein shall limit the
3 applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to
4 discovery requests in another proceeding that are directed to the Commission.

5 16. At the time that any consultant or other person retained to assist counsel in the
6 preparation of this action concludes participation in the action, such person shall return to
7 counsel all copies of Documents or portions thereof designated Confidential or Highly
8 Confidential that are in the possession of such person, together with all notes, memoranda or
9 other papers containing Confidential or Highly Confidential Information. Within 90 days after
10 the expiration of the time for appeal of an order, judgment, or decree terminating this litigation,
11 or any administrative proceeding, whichever is later, all persons having received information
12 designated as Highly Confidential Information or Confidential Information must either make a
13 good faith effort to return such material and all copies thereof to the producing person (or the
14 producing person's counsel if represented by counsel) that produced it; or certify that it has
15 destroyed or deleted all such Highly Confidential Information or Confidential Information in
16 writing to the producing person.

17 17. All Documents produced will be treated as Highly Confidential Information for
18 ten (10) business days from the date this Protective Order is filed, even if not designated in
19 accordance with this Protective Order. Any production of Documents not designated as
20 Confidential or Highly Confidential Information will not be deemed a waiver of any future claim
21 of confidentiality concerning such information if it is later designated as Confidential or Highly
22 Confidential Information. If at any time prior to the conclusion of this litigation, a Party or non-
23 party determines that it should have designated as Confidential or Highly Confidential
24 Information any Documents that the Party previously produced, it may so designate such
25 Documents by notifying the parties in writing. The parties shall thereafter treat the Documents

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 pursuant to the new designation under the terms of this Protective Order. No prior disclosure of
2 newly designated Confidential or Highly Confidential Information shall violate this Protective
3 Order, provided that the prior disclosure occurred more than ten (10) business days after the
4 production of that previously non-designated Confidential or Highly Confidential Information.
5 The disclosure of any information for which disclosure was proper when made will not be
6 deemed improper regardless of any such subsequent designation. Any Documents, data, or other
7 information produced to the Federal Trade Commission during its investigation and designated at
8 the time of production as confidential, highly confidential, proprietary, exempt from disclosure
9 under the Freedom of Information Act, or submitted under the HSR Act shall be deemed Highly
10 Confidential Information for purposes of this litigation.

11 18. The provision of this Protective Order, insofar as they restrict the communication
12 and use of confidential discovery material, shall, without written permission of the submitter or
13 further order of the Court, continue to be binding after the conclusion of this proceeding.

14 19. Any disputes arising under this Order shall be submitted to the undersigned in
15 accordance with the Court's standing order for Civil Discovery: [https://www.cand.uscourts.gov/
16 wp-content/uploads/judges/van-keulen-svk/
SVK_Civil_and_Discovery_Referral_Matters_STANDING_Order_11-15-2021.pdf](https://www.cand.uscourts.gov/wp-content/uploads/judges/van-keulen-svk/SVK_Civil_and_Discovery_Referral_Matters_STANDING_Order_11-15-2021.pdf).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: August 22, 2022

/s/ Abby L. Dennis

18 Attorney for Plaintiff Federal Trade Commission

19
20 DATED: August 22, 2022

/s/ Bambo Obaro

21 Attorney for Defendant Meta Platforms, Inc.

22
23 DATED: August 22, 2022

/s/ Christopher J. Cox

24 Attorney for Defendant Within Unlimited, Inc.

25
26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

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FILER'S ATTESTATION


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

By: /s/ Abby L. Dennis

Abby L. Dennis

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 Dated: August 24, 2022

3 
4 ~~Honorable Edward J. Davila~~
5 ~~United States District Judge~~
6 ~~Northern District of California~~
7 Honorable Susan van Keulen
8 United States Magistrate Judge

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~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

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APPENDIX A

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC., et al.,

Defendants.

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

**IN-HOUSE LITIGATION COUNSEL AGREEMENT CONCERNING
CONFIDENTIALITY**

I, _____, am employed as _____ by _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action, agree that in my role as in-house litigation counsel for the above Defendant company I meet the requirements of paragraph 11(f) of this Protective Order, and agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the Northern District

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

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of California solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

Exhibit 10

From: [Sullivan, Luke](#)
To: [Balbach, Jeanine](#); [Fiebig, Chantale](#); [Meta ALJ Case - Weil KH](#); [gklineberg@kelloggghansen.com](#); [dbird@kelloggghansen.com](#); [ZUCKERBERG-ALJ@lists.kelloggghansen.com](#); [Hardesty, Geneva](#); [Obaro, Bambo](#); [MacBride, Morgan](#); [Klinger, Liz](#); [Moiseyev, Mike](#); [Breed, Logan M.](#); [WithinFTC9411@hoganlovells.com](#)
Cc: [Barnett, Mike](#); [Elmore, E. Eric](#); [Goodman, Josh](#); [Epner, Justin](#); [Hughto, Sean D.](#); [Lowdon, Andrew](#); [Mayer, Lincoln](#); [Rogers, Kristian](#); [Dennis, Abby](#); [Saunders, Anthony R.](#); [Singer, Timothy](#); [Pergament, Adam](#); [Weingarten, James](#); [Bayer Femenella, Peggy](#); [Johnson, Frances Anne](#); [Musser, Susan](#)
Subject: RE: Docket 9411 - Meta/Zuckerberg/Within and Case 5:22-cv-04325-EJD Federal Trade Commission v. Meta Platforms Inc., et al
Date: Monday, October 31, 2022 2:08:09 PM

Counsel,

Thank you for your email. Meta is still evaluating which, if any, third parties it will rely on. To the extent we decide to rely on any third parties, we will let you know as soon as possible and no later than the November 4 third party declaration deadline.

Best,
Luke



Luke Sullivan

Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Luke.Sullivan@weil.com
+1 202 682 7006 Direct
+1 202 857 0940 Fax




From: Balbach, Jeanine <JBALBACH@ftc.gov>
Sent: Friday, October 28, 2022 12:04 PM
To: Sullivan, Luke <Luke.Sullivan@weil.com>; Fiebig, Chantale <Chantale.Fiebig@weil.com>; Meta ALJ Case - Weil KH <Meta.ALJ.Case-Weil.KH@weil.com>; gklineberg@kelloggghansen.com; dbird@kelloggghansen.com; ZUCKERBERG-ALJ@lists.kelloggghansen.com; Hardesty, Geneva <Geneva.Hardesty@weil.com>; Obaro, Bambo <Bambo.Obaro@weil.com>; MacBride, Morgan <Morgan.MacBride@weil.com>; Klinger, Liz <Elizabeth.Klinger@weil.com>; Moiseyev, Mike <Michael.Moiseyev@weil.com>; Breed, Logan M. <logan.breed@hoganlovells.com>; WithinFTC9411@hoganlovells.com
Cc: Barnett, Mike <MBARNETT@ftc.gov>; Elmore, E. Eric <EELMORE@ftc.gov>; jgoodman@ftc.gov; Epner, Justin <jepner@ftc.gov>; Hughto, Sean D. <SHUGHTO@ftc.gov>; Lowdon, Andrew <alowdon@ftc.gov>; Mayer, Lincoln <lmayer@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; adennis@ftc.gov; Saunders, Anthony R. <ASAUNDERS@ftc.gov>; Singer, Timothy <tsinger@ftc.gov>; apergament@ftc.gov; jweingarten@ftc.gov; Bayer Femenella, Peggy <PBAYERFEMENELLA@ftc.gov>; fjohnson@ftc.gov; Musser, Susan <smusser@ftc.gov>
Subject: RE: Docket 9411 - Meta/Zuckerberg/Within and Case 5:22-cv-04325-EJD Federal Trade

Commission v. Meta Platforms Inc., et al

Counsel,

We write to follow up regarding the correspondence below. Defendants' initial disclosures identify no third-party witnesses. The Federal Rules require identification of individuals "the disclosing party may use to support its claims or defenses." Fed. R. Civ. P. 26(a)(1)(A)(i). Your correspondence below suggests Defendants have obtained, or are in the process of obtaining, declarations from third parties. If that is the case, we expect Defendants to immediately amend their initial disclosures to include the names of those parties, so that the FTC can obtain discovery of them. We reserve all rights regarding any untimely identification of individuals and parties on whom Defendants may rely to support their defenses, including seeking to exclude such evidence at the PI hearing or administrative trial.

Best,
Jeanine Balbach

Jeanine K. Balbach
Attorney • Bureau of Competition, Mergers II Division • Federal Trade Commission
400 7th Street, SW, Washington D.C. 20024
 (202) 326-2568  jbalbach@ftc.gov  www.ftc.gov

From: Sullivan, Luke <Luke.Sullivan@weil.com>

Sent: Wednesday, October 26, 2022 1:42 PM

To: Balbach, Jeanine <JBALBACH@ftc.gov>; Fiebig, Chantale <Chantale.Fiebig@weil.com>; Meta ALJ Case - Weil KH <Meta.ALJ.Case-Weil.KH@weil.com>; gklineberg@kellogghansen.com; Bird, Daniel G. <dbird@kellogghansen.com>; ZUCKERBERG-ALJ@lists.kellogghansen.com; Hardesty, Geneva <Geneva.Hardesty@weil.com>; Obaro, Bambo <Bambo.Obaro@weil.com>; MacBride, Morgan <Morgan.MacBride@weil.com>; Klinger, Liz <Elizabeth.Klinger@weil.com>; Moiseyev, Mike <Michael.Moiseyev@weil.com>; Breed, Logan M. <logan.breed@hoganlovells.com>; WithinFTC9411@hoganlovells.com

Cc: Barnett, Mike <MBARNETT@ftc.gov>; Elmore, E. Eric <EELMORE@ftc.gov>; Goodman, Josh <jgoodman@ftc.gov>; Epner, Justin <jepner@ftc.gov>; Hughto, Sean D. <SHUGHTO@ftc.gov>; Lowdon, Andrew <alowdon@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; Mayer, Lincoln <lmayer@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; Dennis, Abby <adennis@ftc.gov>; Saunders, Anthony R. <ASAUNDERS@ftc.gov>; Singer, Timothy <tsinger@ftc.gov>; Pergament, Adam <apergament@ftc.gov>; Weingarten, James <jweingarten@ftc.gov>; Wodinsky, Erika <EWODINSKY@ftc.gov>; Bayer Femenella, Peggy <PBAYERFEMENELLA@ftc.gov>

Subject: RE: Docket 9411 - Meta/Zuckerberg/Within

Hi Jeanine –

Thank you. Respondents agree to the first condition below—that Complaint Counsel may depose any individual that submits a declaration in Part 3 until November 18 (14 days after the November 4 deadline).

Luke



Luke Sullivan

Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Luke.Sullivan@weil.com
+1 202 682 7006 Direct
+1 202 857 0940 Fax

From: Balbach, Jeanine <JBALBACH@ftc.gov>

Sent: Wednesday, October 26, 2022 10:45 AM

To: Sullivan, Luke <Luke.Sullivan@weil.com>; Fiebig, Chantale <Chantale.Fiebig@weil.com>; Meta ALJ Case - Weil KH <Meta.ALJ.Case-Weil.KH@weil.com>; gklineberg@kellogghansen.com; Bird, Daniel G. <dbird@kellogghansen.com>; ZUCKERBERG-ALJ@lists.kellogghansen.com; Hardesty, Geneva <Geneva.Hardesty@weil.com>; Obaro, Bambo <Bambo.Obaro@weil.com>; MacBride, Morgan <Morgan.MacBride@weil.com>; Klinger, Liz <Elizabeth.Klinger@weil.com>; Moiseyev, Mike <Michael.Moiseyev@weil.com>; Breed, Logan M. <logan.breed@hoganlovells.com>; WithinFTC9411@hoganlovells.com




Cc: Barnett, Mike <MBARNETT@ftc.gov>; Elmore, E. Eric <EELMORE@ftc.gov>; jgoodman@ftc.gov; Epner, Justin <jepner@ftc.gov>; Hughto, Sean D. <SHUGHTO@ftc.gov>; Lowdon, Andrew <alowdon@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; Mayer, Lincoln <lmayer@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; adennis@ftc.gov; Saunders, Anthony R. <ASAUNDERS@ftc.gov>; Singer, Timothy <tsinger@ftc.gov>; apergament@ftc.gov; jweingarten@ftc.gov; Wodinsky, Erika <EWODINSKY@ftc.gov>; Bayer Femenella, Peggy <PBAYERFEMENELLA@ftc.gov>

Subject: RE: Docket 9411 - Meta/Zuckerberg/Within

Counsel,

We agree that declarations timely produced in N.D. Cal, so by November 4, 2022, can be used in the Part 3 proceeding, provided that Complaint Counsel has the opportunity to depose the declarant. Our agreement is premised on your agreement that we can take the deposition of any declarant out of time after November 8th OR you provide us with the declarations 14 days prior to November 8th, which is this week. Please confirm you agree with these conditions that are based on the CMSO filed with Judge Davila, and the Scheduling Order entered by Judge Chappell on September 2, 2022, in the Part 3 proceeding.

Best,
Jeanine

Jeanine K. Balbach
Attorney • Bureau of Competition, Mergers II Division • Federal Trade Commission
400 7th Street, SW, Washington D.C. 20024
 (202) 326-2568  jbalbach@ftc.gov  www.ftc.gov

From: Sullivan, Luke <Luke.Sullivan@weil.com>

Sent: Monday, October 24, 2022 9:13 PM

To: Dennis, Abby <adennis@ftc.gov>; Bayer Femenella, Peggy <PBAYERFEMENELLA@ftc.gov>; Balbach, Jeanine <JBALBACH@ftc.gov>; Barnett, Mike <MBARNETT@ftc.gov>; Elmore, E. Eric <EELMORE@ftc.gov>; Goodman, Josh <jgoodman@ftc.gov>; Epner, Justin <jepner@ftc.gov>; Hughto, Sean D. <SHUGHTO@ftc.gov>; Lowdon, Andrew <alowdon@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; Mayer, Lincoln <lmayer@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; Saunders, Anthony R. <ASAUNDERS@ftc.gov>; Singer, Timothy <tsinger@ftc.gov>; Pergament, Adam <apergament@ftc.gov>; Weingarten, James <jweingarten@ftc.gov>; Wodinsky, Erika <EWODINSKY@ftc.gov>

Cc: Moiseyev, Mike <Michael.Moiseyev@weil.com>; Fiebig, Chantale <Chantale.Fiebig@weil.com>; Meta ALJ Case - Weil KH <Meta.ALJ.Case-Weil.KH@weil.com>; gklineberg@kellogghansen.com; Bird, Daniel G. <dbird@kellogghansen.com>; ZUCKERBERG-ALJ@lists.kellogghansen.com; Hardesty, Geneva <Geneva.Hardesty@weil.com>; Obaro, Bambo <Bambo.Obaro@weil.com>; MacBride, Morgan <Morgan.MacBride@weil.com>; Klinger, Liz <Elizabeth.Klinger@weil.com>

Subject: Docket 9411 - Meta/Zuckerberg/Within

Counsel,

We write to confirm that third-party declarations timely produced in the N.D. Cal. proceeding can also be used in the Part 3 proceeding. The Part 3 Scheduling Order contains ambiguity on this point because while it states that the third-party declaration deadline is October 28, 2022, it also states that “[a]ny discovery in the Northern District of California proceeding can be used as if it was taken in th[e] administrative proceeding.” Scheduling Order ¶ 7. We believe this ambiguity was unintentional and the latter language reflects the parties’ intent.

By Wednesday, October 26, can you please confirm Complaint Counsel agrees that declarations timely produced in N.D. Cal. (by November 4, 2022) can be used in the Part 3 proceeding? We are available to meet and confer as necessary. Thank you.

Best,
Luke



Luke Sullivan

Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Luke.Sullivan@weil.com
+1 202 682 7006 Direct
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Exhibit 11

Confidential - Redacted in Entirety

Exhibit 12

1 Jaime Pichardo Garcia
2 Avda. Santa Clara de Cuba, 4. Nave 18 41007
3 Sevilla, Spain
4 +34 687654210
5 jaimepichardo@odderslab.com

6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

9 FEDERAL TRADE COMMISSION,

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

10 Plaintiff,

DECLARATION OF JAIME PICHARDO GARCIA

11 v.

Complaint Filed: July 27, 2022

12 META PLATFORMS, INC., et al.,

Judge: Hon. Edward J. Davila

13 Defendants.

14 I, Jaime Pichardo Garcia, declare as follows:

15 1. I am the Business Director at Odders Lab, which has its corporate headquarters in
16 Seville, Spain. I have personal knowledge of all the facts stated within this Declaration, and if called
17 to testify, I could and would testify competently to these facts.

18 2. In 2014, I graduated with a degree in Accounting and Finance from Universidad de
19 Sevilla.

20 3. From June 2018 to April 2019, I was the CEO of Warbler Gaming, a game developer
21 that focused on gamified gambling apps.

22 4. I started working at Odders Lab in August 2019. I served as Business Developer
23 until September 2020, and from October 2020 through the present I have served as Business
24 Director.

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DECLARATION OF JAIME PICHARDO GARCIA

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



1 5. I submit this declaration on behalf of Odders Lab regarding Meta's proposed
2 acquisition of Within (the developer of Supernatural) (the "Proposed Acquisition") based on my
3 personal knowledge of the facts set forth herein.

4 *Odders Lab*

5 6. Odders Lab was founded as a separate company in 2019, owned by Oblumi. Oblumi
6 was an "internet of things" (IoT) development studio founded in 2014. Odders Lab has been
7 developing VR applications since 2019. Odders Lab now partners with Meta, HTC, PlayStation,
8 and Pico for VR.

9 7. Odders Lab develops a VR fitness application, Les Mills Body Combat, that is
10 available on the Meta Quest Store and the Pico Store. Odders Lab collaborates with Les Mills, an
11 established and successful fitness brand, to create Les Mills Body Combat. Les Mills Body Combat
12 is an immersive VR fitness application that offers an extensive workout portfolio, coaching from
13 Les Mills trainers, innovative mechanics, and different intensities for all levels of users.

14 8. Odders Lab also develops a VR game called OhShape, a VR rhythm game where
15 players go through, punch, or dodge walls to the beat of the music, and a VR app called Chess Club,
16 where users can play chess in VR environments. Both of these games are also available on the Meta
17 Quest Store, the Pico Store, and Steam. OhShape, like many VR applications, has fitness benefits
18 and is used for fitness. Indeed, OhShape won UploadVR's 2020 award in the Best VR for Fitness
19 category.

20 *Virtual Reality and the Fitness Use Case*

21 9. My view on the current state of VR is that VR is a nascent, rapidly evolving, and
22 dynamic technology space. Many companies have been investing heavily in developing their own
23 hardware solutions, and I expect there to be significant new hardware to be introduced in the next
24 few years.

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DECLARATION OF JAIME PICHARDO GARCIA

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

1 10. I also anticipate that the VR space will continue to attract more developers,
2 platforms, hardware providers, and users in the coming years.

3 11. Both consumers and developers alike currently have many different VR hardware
4 platforms to choose from, including: Sony PlayStation VR (PSVR), HTC Vive Pro 2 and Cosmos,
5 Valve Index VR, HP Reverb G2, Varjo Aero, Pico Neo 3 Pro, G2 4K, and Pico 4, among others.
6 Additionally, other major technology companies, like Apple and HTC, are widely and credibly
7 speculated to be releasing new and updated VR headsets in the near-term future.
8

9 12. So far, VR adoption has generally been driven by the gaming and entertainment use
10 cases. While fitness and wellness appears to be an interesting potential new use case, it is not yet
11 fully developed.

12 *Competition for Fitness Solutions is Broad*

13 13. I am aware that the FTC has alleged that there is a “market” limited to Supernatural
14 and several other “deliberate” or “dedicated” VR fitness apps. This is not consistent with what I
15 have seen and experienced in developing and producing Les Mills Body Combat. Odders Lab is
16 acutely aware of competition from a wide range of products, not merely from *some* of the VR apps.
17

18 14. Fitness is a broad industry, with an ever-increasing range of choices available to
19 consumers, including numerous at-home smart fitness solutions.

20 15. Consumer interest (and investment) remains high in products and services like
21 Peloton, Ergatta, Tonal, Mirror, Apple Fitness+, SoulCycle at Home, Hydrow, FightCamp, Les
22 Mills+, and many others.

23 16. Consumers also have a wide range of fitness options offered on traditional gaming
24 consoles. In fact, gaming consoles have offered a number of fitness options for many years,
25 including Nintendo’s launch of *Wii Fit* in 2007, and remain very popular among console users.
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DECLARATION OF JAIME PICHARDO GARCIA

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



1 17. This broad fitness market is where Odders Lab intends to compete. I believe VR
2 fitness apps compete closely with these other immersive fitness solutions, such as at-home smart
3 fitness equipment or apps (e.g., Peloton, Mirror, Tonal, Apple Fitness+, Zwift, ClassPass); fitness
4 solutions offered on gaming consoles like Nintendo Switch (e.g., Ring Fit Adventure, Fitness
5 Boxing), PlayStation (e.g., Yoga Master), and Xbox (e.g., Zumba Fitness: World Party, Your Shape
6 Fitness Evolved 2012, Nike+ Kinect Training); and fitness options offered on competing and
7 emerging VR systems (e.g., PlayStation VR, Valve Index and, eventually, the PSVR 2, HTC Vive
8 Air, and other new entrants to the VR headset space). We hope to offer consumers an alternative
9 to these products that they find compelling, and if they do not, I expect that they will opt for these
10 other products and services.
11

12 18. Odders Lab specifically considers the wide array of fitness options available to
13 consumers—including VR fitness apps, connected fitness solutions, immersive fitness solutions
14 available for gaming consoles, mixed-reality technologies, and smart TVs—as competition for user
15 engagement and time. This competition among VR fitness applications and other products is robust
16 and I expect it will only get more so in the coming months.
17

18 19. Even within a narrower extended reality segment, competition among VR fitness
19 applications is fierce. There have been at least 6 VR fitness applications introduced in the past three
20 years, and at least 2 in the past eight months. I expect that more will be introduced as early as this
21 coming year. What also adds to the competitive landscape is the fact that the incremental
22 development effort for making a VR application available on other VR platforms (like the Quest
23 Store, Pico Store, or Steam Store) once the VR application works on one platform is generally fairly
24 low.
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DECLARATION OF JAIME PICHARDO GARCIA

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

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Meta's Incentive to Grow the VR Ecosystem

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20. I am aware that the FTC has alleged that Meta seeks to acquire Within to obtain some kind of monopoly in "Dedicated VR Fitness" applications, and consequently to raise prices, restrict output, or degrade quality. This is not consistent with my experience, and I have not seen any evidence of this in my experience working with Meta as a developer.

21. Odders Lab has had a relationship with Meta for approximately four years. Odders Lab applied to an Oculus start-up program with OhShape, and it was eventually selected for support through the program and was able to launch on the Quest Store. Odders Lab then continued to receive support, financial and otherwise, from Meta, to improve and expand our product offerings. Odders Lab's relationship with Meta is friendly and positive.

22. Based on our experience working with Meta to bring OhShape, Chess Club, and Les Mills Body Combat to the Quest Store, Odders Lab believes Meta is earnest in their goal to grow the VR ecosystem as a whole, including growing VR fitness.

23. Meta's goal to grow the VR ecosystem is evidenced by Meta's provision of financial, marketing, and operational support to Odders Lab to help develop and improve our VR application offerings.

24. Odders Lab will continue to invest and collaborate with Meta based on our expectation that they will continue to provide this support after the acquisition of Within, as Meta has after other acquisitions of VR studios. I believe that this support is in Meta's interest, as the proliferation and success of VR applications will drive adoption and sales of VR devices.

25. Odders Lab does not believe that Meta's acquisition of Within would be detrimental to the VR ecosystem as a whole because the acquisition of Within could be a vote of confidence in VR generally, and in fitness applications in particular.

DECLARATION OF JAIME PICHARDO GARCIA

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



1 26. Odders Lab also does not believe that Meta's acquisition of Within would be
2 detrimental to the VR fitness application ecosystem because it serves as validation for the fitness
3 use case in VR and allows Odders Lab and other fitness VR developers to continue growing and
4 finding new audiences.

5 *Meta as a Potential VR Fitness Application Developer*

6 27. I am aware that the FTC has claimed that, if Meta had not acquired Within, it would
7 have offered its own first-party VR fitness application to compete more closely with Supernatural.
8 I saw no evidence that this was likely, and did not believe that Meta had the capabilities and
9 characteristics (for example, producing high quality fitness content) necessary to develop such a
10 product. This never entered into our thinking at Odders Lab, and we certainly did not make product
11 pricing or quality decisions based on concern that Meta might offer a new product, or modify an
12 existing product like Beat Saber to be more competitive with Supernatural.

13 28. Over my three years of being involved with VR, I have observed the development
14 of Meta's Quest platform and other VR platforms. I am familiar with the fact that while Meta has
15 brought some studio app development in-house through acquisition, none of which has been fitness-
16 focused, Meta has not released a VR fitness application built from scratch.

17 29. My involvement with developing VR fitness apps has given me insight into the
18 requirements of building and releasing this type of app. Before Odders Lab partnered with Les
19 Mills, Odders Lab had started to develop its own VR fitness application. From a pure application
20 development perspective, we had the necessary resources, but we lacked fitness expertise, access
21 to trainers, music licensing know-how, and other components that go into creating a VR fitness
22 application. Partnering with an established fitness brand like Les Mills brought these capabilities
23 and expertise to our product.
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DECLARATION OF JAIME PICHARDO GARCIA

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



1 30. Based on my experience, it takes a lot of effort to make a successful VR fitness
2 application because doing so involves a balance of fitness knowledge, knowledge of behavior
3 change, and the proper execution. I have not seen any evidence that Meta possesses any qualities,
4 characteristics, or abilities that uniquely position it to develop a virtual reality fitness application.

5 31. It is at least theoretically possible that large companies can develop apps like
6 Supernatural. It is similarly possible that such apps can and will be developed by small studios,
7 like Odders Lab. But I am not aware of any unique advantages that Meta would have in doing this.
8 While we are appropriately concerned that new products will be offered and will compete with our
9 app, we do not believe Meta was or is likely to be one of them, and we have never had particular
10 concern about Meta, which has been helpful to us (and itself) in developing the VR ecosystem.

11 32. Odders Lab has never believed, or even considered, that Meta would develop a VR
12 fitness application on its own, nor did it feel competitive pressure from the potential that it would.
13 Furthermore, Odders Lab does not believe that Meta will develop such an application after the
14 acquisition of Within.

15 33. Rather, Odders Lab's competitive concerns are chiefly centered on how to attract
16 users to VR fitness compared to more established alternatives, and how to ensure that its offerings
17 are competitive with possible entry by other fitness companies, like Peloton or Equinox, and VR
18 developers more broadly.
19

20
21 *Oligopoly*

22 34. It is my understanding that the FTC appears to allege that the "market" for VR fitness
23 is not competitive, and is characterized by "oligopolistic" behavior by Odders Lab. To the extent I
24 understand the term, "oligopoly" refers to a mature market, with a small number of competitors that
25 engage in parallel or interdependent behavior, all to the end of keeping profits high and preventing
26 competition. While it may be true that some VR fitness apps are currently more successful or
27

28
DECLARATION OF JAIME PICHARDO GARCIA

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



1 widely-known than others, due to their high quality, I do not believe that these more successful
2 applications act as an oligopoly. In fact, I have observed entry by new fitness applications over the
3 last couple of months, and expect additional new entry in the near future. I believe the entry barriers
4 for VR fitness applications are generally low.

5 35. Like the overall VR user base, the VR fitness application ecosystem is currently in
6 its infancy, but is rapidly expanding and new entrants are entering the space frequently. As such,
7 the VR fitness application ecosystem is highly competitive and dynamic, and I would not
8 characterize any firm as dominant. I do not believe it is fair or accurate to describe it as an
9 oligopoly.
10

11 I, Jaime Pichardo Garcia, declare under penalty of perjury under the laws of the United
12 States that the foregoing is true and correct and that this declaration was executed on November 2,
13 2022.

14
15 Signature: 

16 Printed Name: Jaime Pichardo Garcia

17 Address: Avda. Santa Clara de Cuba, 4. Nave 18 41007
18 Sevilla, Spain

19 Phone No.: +34 687654210
20
21
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26
27
28

Exhibit 13

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 2 AARON M. PANNER (*pro hac vice*)
 apanner@kellogghansen.com
 3 GEOFFREY M. KLINEBERG (*pro hac vice*)
 gklineberg@kellogghansen.com
 4 **KELLOGG, HANSEN, TODD, FIGEL &**
FREDERICK, P.L.L.C
 5 1615 M Street, N.W., Suite 400
 6 Washington, DC, 20036
 Telephone: (202) 326-7900
 7 Facsimile: (202) 326-7999

8 Attorneys for Defendant META PLATFORMS, INC.

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., et al.,

17 Defendants.

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

**DEFENDANT META PLATFORMS, INC.’S
 NOTICE OF NON-PARTY DEPOSITION
 SUBPOENA**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to Rules 30 and 45 of the Federal Rules of Civil
3 Procedure, Defendant in the above-captioned case will take the deposition upon oral examination of
4 Eric Janszen, by and through counsel, commencing on October 26, 2022, at 9:00 AM, or at a date and
5 time mutually agreed, at a location compliant with Federal Rule No. 45 and mutually agreed upon by
6 the parties. The deposition will be conducted according to the Federal Rules of Civil Procedure and
7 the Local Rules for the U.S. District Court for the Northern District of California before a Notary
8 Public or other officer authorized by law to administer oaths pursuant to Rule 28 of the Federal Rules
9 of Civil Procedure. The deposition will be taken by video link and will be recorded stenographically.

10
11 Dated: November 4, 2022

Respectfully submitted,

12 KELLOGG, HANSEN, TODD, FIGEL &
13 FREDERICK, P.L.L.C

14 By: /s/ Mark C. Hansen

15 MARK C. HANSEN (*pro hac vice*)
16 mhansen@kellogghansen.com
17 AARON M. PANNER (*pro hac vice*)
18 apanner@kellogghansen.com
19 GEOFFREY M. KLINEBERG (*pro hac vice*)
20 gklineberg@kellogghansen.com
21 **KELLOGG, HANSEN, TODD, FIGEL &**
22 **FREDERICK, P.L.L.C**
23 1615 M Street, N.W., Suite 400
24 Washington, DC, 20036
25 Telephone: (202) 326-7900
26 Facsimile: (202) 326-7999
27 Attorneys for Defendant
28 META PLATFORMS, INC.

UNITED STATES DISTRICT COURT

for the

Northern District of California

Federal Trade Commission

Plaintiff

v.

Meta Platforms, Inc. et al.

Defendant

Civil Action No. 5:22-cv-04325-EJD

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Eric Janszen
198 California Street, Unit 3, Newton, MA 02458
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Table with 2 columns: Place and Date and Time. Place: Remote Video Conference Or at such other place mutually determined. Date and Time: 11/10/2022 9:00 am ET

The deposition will be recorded by this method: Videotape, audiotape, real time transcription, and stenograph

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/03/2022

CLERK OF COURT

OR

/s/ James M. Webster

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Defendant Meta Platforms, Inc., who issues or requests this subpoena, are: James M. Webster, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., 1615 M Street, N.W., Suite 400, Washington, DC, 20036, jwebster@kellogghansen.com, (202) 326-7915

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 5:22-cv-04325-EJD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Print

Save As...

Add Attachment

Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2022, a true and correct copy of the foregoing Defendant’s Notice of Third-Party Subpoenas was served by e-mail on the following counsel:

ABBY L. DENNIS
adennis@ftc.gov
PEGGY BAYER FEMENELLA
pbayer@ftc.gov
JOSH GOODMAN
jgoodman@ftc.gov
JEANINE BALBACH
jbalbach@ftc.gov
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-2381

CHARLES LOUGHLIN
Chuck.loughlin@hoganlovells.com
CHRIS FITZPATRICK
Chris.fitzpatrick@hoganlovells.com
HOGAN LOVELLS US LLP
555 13th St. NW
Washington, DC 20004

/s/ Morgan MacBride
Morgan MacBride

Exhibit 14

1 MICHAEL MOISEYEV (*pro hac vice*)
 michael.moiseyev@weil.com
 2 CHANTALE FIEBIG (*pro hac vice*)
 chantale.fiebig@weil.com
 3 JEFFREY H. PERRY (*pro hac vice*)
 jeffrey.perry@weil.com
 4 WEIL, GOTSHAL & MANGES LLP
 5 2001 M Street, NW, Suite 600
 Washington, DC 20036
 6 Telephone: (202) 682-7000
 7 Facsimile: (202) 857-0940

8 DIANE P. SULLIVAN (*pro hac vice*)
 diane.sullivan@weil.com
 9 WEIL, GOTSHAL & MANGES LLP
 10 17 Hulfish Street, Suite 201
 Princeton, NJ 08542
 11 Telephone: (609) 986-1100
 Facsimile: (609) 986-1199

12 Attorneys for Defendant META PLATFORMS, INC.

13 (Additional Counsel Listed on Signature Page)

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 FEDERAL TRADE COMMISSION,
 19 Plaintiff,
 20 v.
 21 META PLATFORMS, INC., et al.,
 22 Defendants.

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

**NOTICE OF SUBPOENA TO JAIME
 PICHARDO GARCIA (ODDERS LAB)**

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

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE** that, pursuant to Rules 30 and 45 of the Federal Rules of Civil
 25 Procedure, Defendant in the above-captioned case will take the deposition upon oral examination of
 26 Jaime Pichardo Garcia, Business Director at Odders Lab, by and through counsel, commencing on
 27 November 16, 2022, at 12:00 PM EST via virtual deposition platform. The deposition will be
 28

1 conducted according to the Federal Rules of Civil Procedure and the Local Rules for the U.S. District
2 Court for the Northern District of California before a Notary Public or other officer authorized by law
3 to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure. The deposition will
4 be taken by video link and will be recorded stenographically.

5
6 Dated: November 4, 2022

Respectfully submitted,

7 WEIL, GOTSHAL & MANGES LLP

8
9 By: /s/ Bambo Obaro

10 MICHAEL MOISEYEV (*pro hac vice*)

michael.moiseyev@weil.com

11 CHANTALE FIEBIG (*pro hac vice*)

chantale.fiebig@weil.com

12 JEFFREY H. PERRY (*pro hac vice*)

jeffrey.perry@weil.com

WEIL, GOTSHAL & MANGES LLP

2001 M Street, NW, Suite 600

13 Washington, DC 20036

14 Telephone: (202) 682-7000

15 Facsimile: (202) 857-0940

16 DIANE P. SULLIVAN (*pro hac vice*)

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WEIL, GOTSHAL & MANGES LLP

17 17 Hulfish Street, Suite 201

18 Princeton, NJ 08542

Telephone: (609) 986-1100

19 Facsimile: (609) 986-1199

20 ERIC S. HOCHSTADT (*pro hac vice*)

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WEIL, GOTSHAL & MANGES LLP

21 767 Fifth Avenue

22 New York, NY 10153

Telephone: (212) 310-8000

23 Facsimile: (212) 310-8007

24 BAMBO OBARO (Bar No. 267683)

bambo.obaro@weil.com

WEIL, GOTSHAL & MANGES LLP

25 201 Redwood Shores Parkway, 6th Floor

26 Redwood Shores, CA 94065-1134

Telephone: (650) 802-3000

27 Facsimile: (650) 802-3100

28 Attorneys for Defendant META PLATFORMS,
INC.

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Weil, Gotshal & Manges LLP, whose address is 201 Redwood Shores Parkway, Redwood Shores, California 94065-1175 (hereinafter "WGM"). I am not a party to the within cause, and I am over the age of eighteen years and my email address is morgan.macbride@weil.com. I further declare that on November 4, 2022, I served a copy of the foregoing:

NOTICE OF SUBPOENA TO: JAIME PICHARDO GARCIA (ODDERS LAB),

BY ELECTRONIC SERVICE by electronically mailing a true and correct copy through

WGM's electronic mail system to the email addresses set forth in the service list below.

Abby L. Dennis Email: adennis@ftc.gov	Mark C. Hansen Email: mhansen@kellogghansen.com
Peggy Bayer Femenella Email: pbayer@ftc.gov	Geoffrey M. Klineberg Email: gklineberg@kellogghansen.com
Josh Goodman Email: jgoodman@ftc.gov	James M. Webster III Email: jwebster@kellogghansen.com
Jeanine Balbach Email: jbalbach@ftc.gov	Jacob E. Hartman Email: jhartman@kellogghansen.com
Terri Martin Email: tmartin@ftc.gov	Daniel G. Bird Email: dbird@kellogghansen.com
Frances Anne Johnson Email: fjohnson@ftc.gov	Hannah D. Carlin Email: hcarlin@kellogghansen.com
Rebecca Hyman Email: rhyman@ftc.gov	KELLOGG HANSEN TODD FIGEL & FREDERICK PLLC 1615 M Street, NW #400 Washington, DC 20036
Charles York Email: cyork@ftc.gov	
Adam Pergament Email: apergament@ftc.gov	Sonal N. Mehta Email: sonal.mehta@wilmerhale.com
James H. Weingarten Email: jweingarten@ftc.gov	WILMER CUTLER PICKERING HALE AND DORR LLP 2600 El Camino Real, Suite 400 Palo Alto, CA 94306
Erika Meyers emeyers@ftc.gov FEDERAL TRADE COMMISSION 600 Pennsylvania Avenue, NW Washington, DC 20580	<i>Co-counsel for Meta Platforms, Inc.</i>
<i>Attorneys for Plaintiffs</i>	Charles Loughlin Email: chuck.loughlin@hoganlovells.com
	Chris Fitzpatrick Email: chris.fitzpatrick@hoganlovells.com
	Nicole Lynch Email: nicole.lynch@hoganlovells.com
	Maxwell Hamilton

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Email: maxwell.hamilton@hoganlovells.com
HOGAN LOVELLS US LLP
555 13th Street, NW
Washington, DC 20004

Attorneys for Within Unlimited, Inc.

Executed on November 4, 2022 in Redwood Shores, California. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Morgan MacBride
Morgan MacBride

UNITED STATES DISTRICT COURT

for the

Northern District of California

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

META PLATFORMS, INC.

AND

WITHIN UNLIMITED, INC.

Defendants.

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

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Jaime Pichardo Garcia, Business Director, Odders Lab, Avda. Santa Clara de Cuba, 4. Nave 18, 41007
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

The Declaration of Jaime Pichardo Garcia, dated November 2, 2022

Table with 2 columns: Place: A location compliant with Federal Rule of Civil Procedure 45 that is mutually agreed upon by the parties will be determined in advance of the deposition. Date and Time: November 16, 2022, 12:00 PM EST

The deposition will be recorded by this method: Videotape, Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: N/A

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/4/2022
CLERK OF COURT

Signature lines for Clerk or Deputy Clerk and Attorney's signature (Bambo Obaro)

The name, address, e-mail address, and telephone number of the attorney representing Defendant Meta Platforms, Inc., is Bambo Obaro, Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, 6th Floor, Redwood Shores, CA 94065-1134.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to

whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-CV-04325-EJD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

*Server's
signature*

*Printed name and
title*

*Server's
address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
 - (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC.,

MARK ZUCKERBERG,

and

WITHIN UNLIMITED, INC.,

Defendants.

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

~~PROPOSED~~ PROTECTIVE ORDER
AS MODIFIED BY THE COURT

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

1 ~~PROPOSED~~ **PROTECTIVE ORDER**

2 For the purposes of protecting the interests of the parties and non-parties in the above-
3 captioned matter against the improper use and disclosure of confidential information submitted
4 or produced in connection with this matter:

5 IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all
6 Confidential and Highly Confidential Information, as hereafter defined.

7 1. As used in this Order, “Confidential Information” means any trade secret or other
8 confidential research, development, or commercial information, as such terms are used in Fed. R.
9 Civ. P. 26(c)(1)(G), or any Document, transcript, or other material containing such information
10 that has not been published or otherwise made publicly available. In addition, a designating party
11 may designate as Confidential any information or items made publicly available in violation of a
12 court order to keep such information confidential, that the designating party believes should
13 receive Confidential treatment. This includes (i) information copied or extracted, summarized or
14 compiled from Confidential Information, and (ii) testimony, conversations, or presentations that
15 might reveal Confidential Information.

16 2. As used in this Order, “Highly Confidential Information” shall only include
17 Confidential Information that, if disclosed, is likely to cause material and significant harm to the
18 party or non-party whose Highly Confidential Information is disclosed. Highly Confidential
19 Information includes trade secrets, including algorithms and source code; non-public,
20 commercially sensitive customer lists; non-public financial, marketing, or strategic business
21 planning information; current or future non-public information regarding prices, costs, or
22 margins; information relating to research, development, testing of, or plans for existing or
23 proposed future products; evaluation of the strengths and vulnerabilities of product offerings,
24 including non-public pricing and cost information; confidential contractual terms, proposed
25 contractual terms, or negotiating positions (including deliberations about negotiating positions)

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 taken with respect to Defendant(s) or competitors to Defendant(s); information relating to
2 pending or abandoned patent applications that have not been made available to the public;
3 personnel files; sensitive personally identifiable information; sensitive health information; and
4 communications that disclose any Highly Confidential Information. Highly Confidential
5 Information also includes information that a non-party believes would expose it or new business
6 ventures with which it is associated to potential retribution or harm if the information were
7 disclosed to Defendant(s).

8 3. As used in this Order, “Document” shall refer to any discoverable writing,
9 recording, transcript of oral testimony, or electronically stored information in the possession of a
10 party or non-party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any
11 of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons
12 retained as consultants or experts for purposes of this proceeding.

13 4. Any Document or portion thereof submitted by a Defendant or a non-party during
14 a Federal Trade Commission investigation (“Investigation Materials”) or during the course of
15 this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or
16 any other federal statute or regulation, or under any federal court or Commission precedent
17 interpreting such statute or regulation, as well as any information that discloses information that
18 has not been published or otherwise made publicly available, or the substance of the contents of
19 any Confidential or Highly Confidential Information derived from a Document subject to this
20 Order, shall be treated as Confidential or Highly Confidential Information for purposes of this
21 Order.

22 5. The parties and any non-parties, in complying with informal discovery requests,
23 disclosure requirements, or discovery demands in this proceeding may designate any responsive
24 Document or portion thereof as Confidential or Highly Confidential Information, including
25 Documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 6. The parties, in conducting discovery from non-parties, shall provide to each non-
2 party a copy of this Order so as to inform each such non-party of his, her, or its rights herein.

3 7. A designation of confidentiality shall constitute a representation in good faith and
4 after careful determination that the material is not reasonably believed to be already in the public
5 domain and that counsel believes the material so designated constitutes Confidential or Highly
6 Confidential Information as defined in Paragraph 1 of this Order.

7 8. Material may be designated as Confidential by placing on or affixing to the
8 Document containing such material (in such manner as will not interfere with the legibility
9 thereof), or if an entire folder or box of Documents is Confidential by placing or affixing to that
10 folder or box, the designation “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—
11 FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-EJD,” or any other appropriate
12 notice that identifies this proceeding, together with an indication of the portion or portions of the
13 Document considered to be Confidential Information. Confidential Information contained in
14 electronic Documents may also be designated as Confidential by placing the designation
15 “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—FTC v. Meta Platforms, Inc.,
16 et al., Case No. 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this
17 proceeding, on the face of the CD or DVD or other medium on which the Document is produced.
18 Masked or otherwise redacted copies of Documents may be produced where the portions masked
19 or redacted contain privileged matter, provided that the copy shall indicate at the appropriate
20 point that portions have been masked or redacted and the reasons therefor.

21 9. Material may be designated as Highly Confidential by placing on or affixing to
22 the Document containing such material (in such manner as will not interfere with the legibility
23 thereof), or if an entire folder or box of Documents is Highly Confidential by placing or affixing
24 to that folder or box, the designation “HIGHLY CONFIDENTIAL – FTC v. Meta/Within,”
25 “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 EJD,” or any other appropriate notice that identifies this proceeding, together with an indication
2 of the portion or portions of the Document considered to be Highly Confidential Information.
3 Highly Confidential Information contained in electronic Documents may also be designated as
4 Highly Confidential by placing the designation “HIGHLY CONFIDENTIAL – FTC v.
5 Meta/Within,” “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al., Case No.
6 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this proceeding, on the face
7 of the CD or DVD or other medium on which the Document is produced. Masked or otherwise
8 redacted copies of Documents may be produced where the portions masked or redacted contain
9 privileged matter, provided that the copy shall indicate at the appropriate point that portions have
10 been masked or redacted and the reasons therefor.

11 10. Defendants are not required to re-designate Investigation Materials as
12 Confidential or Highly Confidential: all Investigation Materials produced by Defendants
13 presumptively shall be treated as they were designated in the Investigation.

- 14 11. Confidential and Highly Confidential Information shall be disclosed only to:
- 15 (a) the Court presiding over this proceeding, personnel assisting the Court,
 - 16 Plaintiff and its employees, and personnel retained by Plaintiff as experts or
 - 17 consultants for this proceeding;
 - 18 (b) judges and other court personnel of any court having jurisdiction over any
 - 19 appellate proceedings involving this matter;
 - 20 (c) outside counsel of record for any Defendant, their associated attorneys and
 - 21 other employees of their law firm(s), provided they are not employees of any
 - 22 Defendant;
 - 23 (d) anyone retained to assist outside counsel in the preparation or hearing of this
 - 24 proceeding including consultants and testifying experts, provided they are not
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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 currently employed by a Defendant and have signed an agreement to abide by the
2 terms of the protective order;

3 (e) any witness or deponent who the examining attorney reasonably believes
4 either authored or received the information in question; and

5 (f) Defendant Meta and Defendant Within shall each, by August 24, 2022, inform
6 Plaintiff of the names of no more than three (3) in-house litigation counsel with
7 responsibilities for the litigation of this Action.

8 The in-house litigation counsel identified by Defendants may only access
9 declarations produced by Plaintiff, draft and final versions of pleadings, motions,
10 and other briefs, hearing transcripts and expert reports—including portions of
11 such filings, transcripts, or reports that quote or paraphrase confidential
12 material—but not exhibits to such filings, transcripts or reports or underlying
13 discovery material (other than declarations produced by Plaintiff), that have been
14 designated as Confidential or Highly Confidential Information. In preparation for
15 trial, the in-house counsel identified by Defendants may review documents or
16 other discovery material containing confidential material that are included in
17 Plaintiff's exhibit list or that are proposed by outside counsel for inclusion in
18 Defendants' exhibit lists. Before providing such materials to in-house counsel
19 identified by Defendants, Defendants shall redact all confidential material
20 included in their proposed exhibit lists that is not material to the proposed merger
21 or this litigation. The access designated in-house counsel may have to confidential
22 material is subject to reconsideration for good cause shown. The in-house counsel
23 identified by Defendants shall have access to such confidential material for the
24 purpose of defending this litigation only. The in-house counsel identified by
25 Defendants may access confidential material only in person at the offices of their
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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 outside counsel, or using a secure electronic data room or document review
2 platform using individual login identification and passwords. Plaintiff and
3 Defendants shall promptly report any confirmed or suspected unauthorized use or
4 disclosure of confidential material to the Court and opposing counsel. To qualify
5 for access under this subpart, in-house litigation counsel shall first execute an In-
6 House Counsel Agreement Concerning Confidentiality in the form of Appendix A
7 attached hereto (which executed versions shall be maintained by outside counsel
8 for the relevant Defendant and available for inspection upon the request of the
9 Court, any Party, or any non-party who provides Confidential or Highly
10 Confidential Information in this Action).

11 12. Disclosure of Confidential or Highly Confidential Information to any person
12 described in Paragraph 7 of this Order shall be only for the purposes of the preparation and
13 hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever.
14 Nothing herein shall be construed as prohibiting counsel for the Federal Trade Commission or
15 counsel for Meta from serving as counsel in *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590
16 (JEB) (D.D.C.), or any other investigation or litigation involving the Federal Trade Commission
17 and any of the Defendants.

18 13. In the event that any Confidential or Highly Confidential Information is contained
19 in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall
20 be so informed by the Party filing such papers, and such papers shall be filed under seal [^]. To the
21 extent that such material was originally submitted by a non-party, the party including the
22 material in its papers shall immediately notify the submitter of such inclusion. Confidential or
23 Highly Confidential Information contained in the papers shall remain under seal ^{only as provided by} ~~until further~~
24 order of the Court, provided, however, that such papers may be furnished to persons or entities
25 who may receive Confidential or Highly Confidential Information pursuant to Paragraph 7. ~~Upon~~

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 ~~or after filing any paper containing Confidential or Highly Confidential Information, the filing~~
2 ~~party shall file on the public record a duplicate copy of the paper that does not reveal~~
3 ~~Confidential or Highly Confidential Information.~~ Further, if the protection for any such material
4 expires, a party may file on the public record a duplicate copy which also contains the formerly
5 protected material.

6 14. Within two business days of exchanging exhibit lists, the parties shall provide
7 notice to any party or non-party whose Confidential or Highly Confidential Information is on
8 that party's exhibit list for purposes of allowing that party or non-party to seek an order that the
9 document or transcript be granted in camera treatment. If that party or non-party wishes in
10 camera treatment for the document or transcript, the party or non-party shall file an appropriate
11 motion with the Court within five business days after it receives such notice. Except where such
12 an order is granted, all documents and transcripts shall be part of the public record. Where in
13 camera treatment is granted, a duplicate copy of such document or transcript with the
14 Confidential or Highly Confidential Information deleted therefrom may be placed on the public
15 record.

16 15. If any party receives a discovery request in any investigation or in any other
17 proceeding or matter that may require the disclosure of Confidential or Highly Confidential
18 Information submitted by another party or non-party, the recipient of the discovery request shall
19 promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an
20 order of a court, such notification shall be in writing and be received by the submitter at least ten
21 business days before production and shall include a copy of this Protective Order and a cover
22 letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as
23 requiring the recipient of the discovery request or anyone else covered by this Order to challenge
24 or appeal any order requiring production of Confidential or Highly Confidential Information,
25 subject itself to any penalties for non-compliance with any such order, or to seek any relief from
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27 ~~[PROPOSED]~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of
2 Confidential or Highly Confidential Information. In addition, nothing herein shall limit the
3 applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to
4 discovery requests in another proceeding that are directed to the Commission.

5 16. At the time that any consultant or other person retained to assist counsel in the
6 preparation of this action concludes participation in the action, such person shall return to
7 counsel all copies of Documents or portions thereof designated Confidential or Highly
8 Confidential that are in the possession of such person, together with all notes, memoranda or
9 other papers containing Confidential or Highly Confidential Information. Within 90 days after
10 the expiration of the time for appeal of an order, judgment, or decree terminating this litigation,
11 or any administrative proceeding, whichever is later, all persons having received information
12 designated as Highly Confidential Information or Confidential Information must either make a
13 good faith effort to return such material and all copies thereof to the producing person (or the
14 producing person's counsel if represented by counsel) that produced it; or certify that it has
15 destroyed or deleted all such Highly Confidential Information or Confidential Information in
16 writing to the producing person.

17 17. All Documents produced will be treated as Highly Confidential Information for
18 ten (10) business days from the date this Protective Order is filed, even if not designated in
19 accordance with this Protective Order. Any production of Documents not designated as
20 Confidential or Highly Confidential Information will not be deemed a waiver of any future claim
21 of confidentiality concerning such information if it is later designated as Confidential or Highly
22 Confidential Information. If at any time prior to the conclusion of this litigation, a Party or non-
23 party determines that it should have designated as Confidential or Highly Confidential
24 Information any Documents that the Party previously produced, it may so designate such
25 Documents by notifying the parties in writing. The parties shall thereafter treat the Documents

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 pursuant to the new designation under the terms of this Protective Order. No prior disclosure of
2 newly designated Confidential or Highly Confidential Information shall violate this Protective
3 Order, provided that the prior disclosure occurred more than ten (10) business days after the
4 production of that previously non-designated Confidential or Highly Confidential Information.
5 The disclosure of any information for which disclosure was proper when made will not be
6 deemed improper regardless of any such subsequent designation. Any Documents, data, or other
7 information produced to the Federal Trade Commission during its investigation and designated at
8 the time of production as confidential, highly confidential, proprietary, exempt from disclosure
9 under the Freedom of Information Act, or submitted under the HSR Act shall be deemed Highly
10 Confidential Information for purposes of this litigation.

11 18. The provision of this Protective Order, insofar as they restrict the communication
12 and use of confidential discovery material, shall, without written permission of the submitter or
13 further order of the Court, continue to be binding after the conclusion of this proceeding.

14 19. Any disputes arising under this Order shall be submitted to the undersigned in
15 accordance with the Court's standing order for Civil Discovery: [https://www.cand.uscourts.gov/
16 wp-content/uploads/judges/van-keulen-svk/
SVK_Civil_and_Discovery_Referral_Matters_Standing_Order_11-15-2021.pdf](https://www.cand.uscourts.gov/wp-content/uploads/judges/van-keulen-svk/SVK_Civil_and_Discovery_Referral_Matters_Standing_Order_11-15-2021.pdf).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: August 22, 2022

/s/ Abby L. Dennis

Attorney for Plaintiff Federal Trade Commission

18
19
20 DATED: August 22, 2022

/s/ Bambo Obaro

Attorney for Defendant Meta Platforms, Inc.

21
22
23 DATED: August 22, 2022

/s/ Christopher J. Cox

Attorney for Defendant Within Unlimited, Inc.

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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

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FILER'S ATTESTATION

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

By: /s/ Abby L. Dennis
Abby L. Dennis

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 Dated: August 24, 2022

3 
4 ~~Honorable Edward J. Davila~~
5 ~~United States District Judge~~
6 ~~Northern District of California~~
7 **Honorable Susan van Keulen**
8 **United States Magistrate Judge**

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~~PROPOSED~~ PROTECTIVE ORDER

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

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APPENDIX A

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

META PLATFORMS, INC., et al.,

Defendants.

**IN-HOUSE LITIGATION COUNSEL AGREEMENT CONCERNING
CONFIDENTIALITY**

I, _____, am employed as _____ by _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action, agree that in my role as in-house litigation counsel for the above Defendant company I meet the requirements of paragraph 11(f) of this Protective Order, and agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the Northern District

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

1 of California solely for the purpose of enforcing the terms of the Protective Order
2 entered in the above-captioned action and freely and knowingly waive any right I may
3 otherwise have to object to the jurisdiction of said Court.

4

5 _____ SIGNATURE

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8 _____ DATE

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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

Exhibit 15

Confidential - Redacted in Entirety

Exhibit 16

1 Preston Lewis
2 851 W. Front St. #1501
3 Boise, ID. 83702
4 208-631-9910
5 preston@blackbox-vr.com

6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

9 FEDERAL TRADE COMMISSION,
10 Plaintiff,
11 v.
12 META PLATFORMS, INC., et al.,
13 Defendants.

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

DECLARATION OF PRESTON LEWIS

Complaint Filed: July 27, 2022

Judge: Hon. Edward J. Davila

14 I, Preston Lewis, declare as follows:

15 1. I am the co-founder, President, and Chief Design Officer of Black Box VR, which
16 has its corporate headquarters in Boise, Idaho. I have personal knowledge of all facts stated within
17 this Declaration, and if called to testify, I could and would testify competently to these facts.

18 2. In 2009, I obtained a Bachelor of Business Administration degree in International
19 Business from Boise State University. I have also attended the University of Washington, where I
20 studied business, and Northwest Nazarene University’s College of Business, where I studied
21 business and finance.

22 3. In 2010, I joined my current business partner, Ryan DeLuca, at Bodybuilding.com.
23 My last title there was Director of Product.

24 4. While at Bodybuilding.com, Ryan and I spent years building the Web site
25 Bodybuilding.com, which became the largest online nutritional supplement retailer in the world, to
26 our knowledge, with nearly \$500 million in annual sales. Collaborating with others, Ryan and I
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1 created some of the world's most recognized supplement brands, chart-topping fitness mobile
2 applications, award-winning health and fitness campaigns, and one of the world's largest online
3 fitness social networks.

4 5. In 2016, I co-founded the Idaho Virtual Reality Council. I am currently the Co-
5 Chairman of the Council. The Council's mission is to bring together people, technologies, and
6 companies to create a thriving virtual reality industry for the economic and social benefit of Idaho
7 citizens and families. The Council provides networking events and educational seminars to help
8 Idaho organizations learn faster, cooperate on projects, and promote virtual reality in Idaho.
9

10 6. In 2016, Ryan DeLuca and I founded Black Box VR. Ryan and I founded Black Box
11 VR with a mission to disrupt the fitness industry by creating innovative products and experiences
12 that would create lasting change in people's lives.

13 7. As President and Chief Design Officer of Black Box VR, my job responsibilities
14 include hiring, leading our various product teams, product creation (including ecommerce,
15 community, content, mobile, desktop, and hardware), product innovation, user experience design,
16 user interface design, and solving customer problems.
17

18 *Black Box VR*

19 8. Black Box VR is now a virtual reality gym that operates in six locations: San
20 Francisco, California; Boise, Idaho; Gilbert, Arizona; Tempe, Arizona; Oceanside, California, and
21 Peoria, Arizona.

22 9. When users exercise in our gyms, they enter a private work out space in which they
23 use a VR headset and a dynamic resistance machine in combination. The resistance machine we
24 invented is mapped into the virtual reality app and the player uses the machine to workout as their
25 fitness movements are mapped to in-game actions as they defend their "base" in the workout app.
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1 10. The workout app is set up like a game, where users are defending a “crystal,” which
2 is at a “base” that is in turn shielded by “gates,” all of which occurs in a battle arena within the app.
3 Throughout the workout, enemies in the app will attack the gate and the user can attack enemy
4 gates. Using the resistance machine for various exercises throughout the game (such as chest
5 presses or bicep curls), users can get points for breaking through opposing gates and destroying
6 enemy crystals.

7 11. Each work out session has a warm up period followed by as many rounds of exercise
8 as possible within a 30-minute time-period.
9

10 12. Within the app, users get points for destroying enemy gates and crystals to secure
11 wins. The more wins, then the more virtual trophies the user can obtain and the higher the user rises
12 in the ranks.

13 13. Although Black Box VR’s fitness app is currently only available in our gyms and
14 partner gyms, Black Box VR is working with Meta to produce a version of the app for sale on the
15 Quest Store. Instead of using the resistance machine, that version of the app will use body resistance
16 and cardio, and will require users to engage their full body to obtain fitness results.
17

18 14. Our goal is to release the app on the Quest Store in 2023 and we are on track to meet
19 that goal.

20 *Fitness in Virtual Reality*

21 15. With my six years of work at Black Box VR and many years in the virtual reality
22 industry generally, I have insights into the virtual reality industry and knowledge of how fitness
23 apps fit into the virtual reality industry.
24

25 16. Virtual reality is an emerging and dynamic technology space, with many companies
26 investing heavily in hardware and, according to industry reports, many companies poised to
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1 develop new virtual reality hardware and equipment. Virtual reality will continue to attract more
2 developers, platforms, hardware providers, and users in the coming years.

3 17. Virtual reality fitness is in its infancy and is a rapidly evolving technology. As more
4 developers enter the market, virtual reality fitness apps will continue to grow, improving the user
5 experience.

6 *Competition for Fitness Solutions is Broad*

7 18. In developing and producing our fitness product, we are acutely aware of
8 competition from a wide range of products, and not merely from *some* of the VR fitness apps.

9 19. As things currently stand, users have an ever-increasing range of choices for fitness
10 solutions, including physical locations like Black Box VR, Equinox, and other gyms, as well as at-
11 home connected and smart fitness solutions, such as Peloton, Mirror, and Apple Fitness+.

12 20. Virtual reality fitness applications offered on the Quest Store compete with all of
13 those options (both physical, at-home, and two-dimensional apps). This competition among virtual
14 reality fitness applications and other products is robust and I expect it will only get more so in
15 coming months. In VR fitness applications alone, there have been several new products introduced
16 in the past three years. I expect that more will be introduced within the next year (including Black
17 Box VR's app for the Quest Store). Virtual reality customers thus will continue to have numerous
18 choices and an expanding range of options for virtual reality fitness apps.

19 *Meta's Incentive to Grow the VR Ecosystem*

20 21. I am aware that the FTC has alleged that Meta seeks to acquire Within to obtain
21 some kind of monopoly in "Dedicated VR Fitness" apps, and consequently to raise prices, restrict
22 output or degrade quality. This makes no sense to me, and is inconsistent with my experience in
23 working with Meta as an app developer.
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1 22. With respect to the Black Box VR app for the Quest Store in particular, my
2 experience working with Meta has demonstrated that Meta is earnest in its stated goal to grow the
3 virtual reality ecosystem as a whole, including growing virtual reality fitness. Meta has provided
4 Black Box VR with financial support and agreed to provide marketing and operational support in
5 the future to develop and improve the Quest Store app in development.

6 23. I believe that Meta will continue to provide such support after it acquires Within. In
7 fact, Meta has continued to support outside gaming studios after it acquired gaming studios, as
8 shown by Meta's continued support of Black Box VR even after Meta announced its purchase of
9 Within. I believe that this support is in Meta's interest, as the proliferation and success of VR apps
10 will drive adoption and sales of VR devices.

11 24. Importantly, Meta's acquisition of Within is beneficial to the virtual reality users
12 and developers. In fact, blocking the Proposed Acquisition would likely harm competition. The
13 acquisition is a vote of confidence in VR generally and fitness apps in particular. It will encourage
14 others to develop such products, because it is important to entrepreneurs to see that successful
15 companies are investing, and are willing to acquire and grow apps in this space. Such a possible
16 "exit ramp" makes entry less risky for entrepreneurs and their financial backers.

17 25. Meta's acquisition of Within is beneficial to the virtual reality fitness app ecosystem
18 because it serves as validation for the fitness use case in virtual reality. It will help Black Box VR
19 to continue to grow and find new audiences. In fact, Black Box is currently in a funding round and
20 using Meta's acquisition of Within as support for our use case. This acquisition is helpful to show
21 investors how popular VR Fitness is becoming.

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24 *Meta as a Potential VR Fitness App Developer*

25 26. I am aware that the FTC has claimed that, if Meta had not acquired Within, it would
26 have offered its own first-party VR fitness app to compete more closely with Supernatural. I saw
27

1 no evidence that this was likely, and did not believe that Meta had the specialized expertise (for
2 example, high quality fitness content) necessary to develop such a product. This never entered into
3 our thinking at Black Box VR. We certainly did not make product pricing or quality decisions based
4 on concern that Meta might offer a new product, or modify an existing product (Beat Saber) to be
5 more competitive with Supernatural.

6 27. Additionally, when Black Box VR makes competitive decisions, such as decisions
7 about pricing, quality, or innovation, we have not made them based on any concern that Meta may
8 offer a new fitness app (or a modified version of a current app).

9 28. Since 2016, I have observed the development of Meta's Quest ecosystem and other
10 virtual reality ecosystems. While Meta has brought some studio application development in-house
11 through acquisition, Meta has not developed any virtual reality fitness application on its own.

12 29. Based on my experience, it takes a tremendous amount of effort to make a successful
13 fitness app because doing so involves a balance of fitness knowledge, knowledge of behavior
14 change, and proper execution. I have not seen anything to suggest that Meta possesses any qualities,
15 characteristics, or abilities that uniquely position it or give it an advantage to develop a better virtual
16 reality fitness application than another company. In fact, in the absence of established fitness IP,
17 Meta has more ground to make up when compared to established fitness brands.

18 30. It is at least theoretically possible that large companies can develop apps like
19 Supernatural. It is similarly possible that such apps can and will be developed by small studios,
20 like ours and Within's. But I am not aware of any unique advantages that Meta would have in
21 doing this with greater success than other companies. While we are appropriately concerned that
22 new products will be offered and will compete with our app, we don't believe Meta as an
23 independent developer was or is likely to be one of them, and we have never had particular concern
24 about Meta, which has been helpful to us (and itself) in developing the VR ecosystem.
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Exhibit 17

1 MICHAEL MOISEYEV (*pro hac vice*)
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 10 17 Hulfish Street, Suite 201
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 11 Telephone: (609) 986-1100
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12 Attorneys for Defendant META PLATFORMS, INC.

13 (Additional Counsel Listed on Signature Page)

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 FEDERAL TRADE COMMISSION,
 19 Plaintiff,
 20 v.
 21 META PLATFORMS, INC., et al.,
 22 Defendants.

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

**NOTICE OF SUBPOENA TO PRESTON
 LEWIS (BLACK BOX VR)**

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

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE** that, pursuant to Rules 30 and 45 of the Federal Rules of Civil
 25 Procedure, Defendant in the above-captioned case will take the deposition upon oral examination of
 26 Preston Lewis, President, and Chief Design Officer at Black Box VR, by and through counsel,
 27 commencing on November 10, 2022, at 12:00 PM EST via virtual deposition platform. The deposition
 28

1 will be conducted according to the Federal Rules of Civil Procedure and the Local Rules for the U.S.
2 District Court for the Northern District of California before a Notary Public or other officer authorized
3 by law to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure. The deposition
4 will be taken by video link and will be recorded stenographically.

5
6 Dated: November 5, 2022

Respectfully submitted,

7 WEIL, GOTSHAL & MANGES LLP

8
9 By: /s/ Bambo Obaro

10 MICHAEL MOISEYEV (*pro hac vice*)

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28 Attorneys for Defendant META PLATFORMS,
INC.

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Weil, Gotshal & Manges LLP, whose address is 201 Redwood Shores Parkway, Redwood Shores, California 94065-1175 (hereinafter “WGM”). I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on November 5, 2022, I served a copy of:

NOTICE OF SUBPOENA TO: PRESTON LEWIS (BLACK BOX VR)

BY ELECTRONIC SERVICE by electronically mailing a true and correct copy through WGM’s electronic mail system to the email addresses set forth in the service list below.

Abby L. Dennis

Email: adennis@ftc.gov

Peggy Bayer Femenella

Email: pbayer@ftc.gov

Josh Goodman

Email: jgoodman@ftc.gov

Jeanine Balbach

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FEDERAL TRADE COMMISSION

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HOGAN LOVELLS US LLP
555 13th Street, NW
Washington, DC 20004

Attorneys for Within Unlimited, Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 5, 2022 in Redwood Shores, California.

/s/ Morgan MacBride

Morgan MacBride

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UNITED STATES DISTRICT COURT

for the

Northern District of California

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC.

AND

WITHIN UNLIMITED, INC.

Defendants.

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

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

Preston Lewis, President, and Chief Design Officer of Black Box VR,

851 W. Front St. #1501 Boise, ID. 83702, Nave 18, 41007

To: (Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

The Declaration of Preston Lewis, dated November 4, 2022

Place: A location compliant with Federal Rule of Civil Procedure 45 that is mutually agreed upon by the parties will be determined in advance of the deposition.

Date and Time: November 10, 2022, 12:00 PM EST

The deposition will be recorded by this method: Videotape, Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: N/A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/5/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Bambo Obaro

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing Defendant Meta Platforms, Inc., is Bambo Obaro, Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, 6th Floor, Redwood Shores, CA 94065-1134.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-CV-04325-EJD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

*Server's
signature*

*Printed name and
title*

*Server's
address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC.,

MARK ZUCKERBERG,

and

WITHIN UNLIMITED, INC.,

Defendants.

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

~~PROPOSED~~ PROTECTIVE ORDER
AS MODIFIED BY THE COURT

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

1 ~~PROPOSED~~ **PROTECTIVE ORDER**

2 For the purposes of protecting the interests of the parties and non-parties in the above-
3 captioned matter against the improper use and disclosure of confidential information submitted
4 or produced in connection with this matter:

5 IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all
6 Confidential and Highly Confidential Information, as hereafter defined.

7 1. As used in this Order, “Confidential Information” means any trade secret or other
8 confidential research, development, or commercial information, as such terms are used in Fed. R.
9 Civ. P. 26(c)(1)(G), or any Document, transcript, or other material containing such information
10 that has not been published or otherwise made publicly available. In addition, a designating party
11 may designate as Confidential any information or items made publicly available in violation of a
12 court order to keep such information confidential, that the designating party believes should
13 receive Confidential treatment. This includes (i) information copied or extracted, summarized or
14 compiled from Confidential Information, and (ii) testimony, conversations, or presentations that
15 might reveal Confidential Information.

16 2. As used in this Order, “Highly Confidential Information” shall only include
17 Confidential Information that, if disclosed, is likely to cause material and significant harm to the
18 party or non-party whose Highly Confidential Information is disclosed. Highly Confidential
19 Information includes trade secrets, including algorithms and source code; non-public,
20 commercially sensitive customer lists; non-public financial, marketing, or strategic business
21 planning information; current or future non-public information regarding prices, costs, or
22 margins; information relating to research, development, testing of, or plans for existing or
23 proposed future products; evaluation of the strengths and vulnerabilities of product offerings,
24 including non-public pricing and cost information; confidential contractual terms, proposed
25 contractual terms, or negotiating positions (including deliberations about negotiating positions)

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 taken with respect to Defendant(s) or competitors to Defendant(s); information relating to
2 pending or abandoned patent applications that have not been made available to the public;
3 personnel files; sensitive personally identifiable information; sensitive health information; and
4 communications that disclose any Highly Confidential Information. Highly Confidential
5 Information also includes information that a non-party believes would expose it or new business
6 ventures with which it is associated to potential retribution or harm if the information were
7 disclosed to Defendant(s).

8 3. As used in this Order, “Document” shall refer to any discoverable writing,
9 recording, transcript of oral testimony, or electronically stored information in the possession of a
10 party or non-party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any
11 of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons
12 retained as consultants or experts for purposes of this proceeding.

13 4. Any Document or portion thereof submitted by a Defendant or a non-party during
14 a Federal Trade Commission investigation (“Investigation Materials”) or during the course of
15 this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or
16 any other federal statute or regulation, or under any federal court or Commission precedent
17 interpreting such statute or regulation, as well as any information that discloses information that
18 has not been published or otherwise made publicly available, or the substance of the contents of
19 any Confidential or Highly Confidential Information derived from a Document subject to this
20 Order, shall be treated as Confidential or Highly Confidential Information for purposes of this
21 Order.

22 5. The parties and any non-parties, in complying with informal discovery requests,
23 disclosure requirements, or discovery demands in this proceeding may designate any responsive
24 Document or portion thereof as Confidential or Highly Confidential Information, including
25 Documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 6. The parties, in conducting discovery from non-parties, shall provide to each non-
2 party a copy of this Order so as to inform each such non-party of his, her, or its rights herein.

3 7. A designation of confidentiality shall constitute a representation in good faith and
4 after careful determination that the material is not reasonably believed to be already in the public
5 domain and that counsel believes the material so designated constitutes Confidential or Highly
6 Confidential Information as defined in Paragraph 1 of this Order.

7 8. Material may be designated as Confidential by placing on or affixing to the
8 Document containing such material (in such manner as will not interfere with the legibility
9 thereof), or if an entire folder or box of Documents is Confidential by placing or affixing to that
10 folder or box, the designation “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—
11 FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-EJD,” or any other appropriate
12 notice that identifies this proceeding, together with an indication of the portion or portions of the
13 Document considered to be Confidential Information. Confidential Information contained in
14 electronic Documents may also be designated as Confidential by placing the designation
15 “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—FTC v. Meta Platforms, Inc.,
16 et al., Case No. 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this
17 proceeding, on the face of the CD or DVD or other medium on which the Document is produced.
18 Masked or otherwise redacted copies of Documents may be produced where the portions masked
19 or redacted contain privileged matter, provided that the copy shall indicate at the appropriate
20 point that portions have been masked or redacted and the reasons therefor.

21 9. Material may be designated as Highly Confidential by placing on or affixing to
22 the Document containing such material (in such manner as will not interfere with the legibility
23 thereof), or if an entire folder or box of Documents is Highly Confidential by placing or affixing
24 to that folder or box, the designation “HIGHLY CONFIDENTIAL – FTC v. Meta/Within,”
25 “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-
26

27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 EJD,” or any other appropriate notice that identifies this proceeding, together with an indication
2 of the portion or portions of the Document considered to be Highly Confidential Information.
3 Highly Confidential Information contained in electronic Documents may also be designated as
4 Highly Confidential by placing the designation “HIGHLY CONFIDENTIAL – FTC v.
5 Meta/Within,” “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al., Case No.
6 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this proceeding, on the face
7 of the CD or DVD or other medium on which the Document is produced. Masked or otherwise
8 redacted copies of Documents may be produced where the portions masked or redacted contain
9 privileged matter, provided that the copy shall indicate at the appropriate point that portions have
10 been masked or redacted and the reasons therefor.

11 10. Defendants are not required to re-designate Investigation Materials as
12 Confidential or Highly Confidential: all Investigation Materials produced by Defendants
13 presumptively shall be treated as they were designated in the Investigation.

- 14 11. Confidential and Highly Confidential Information shall be disclosed only to:
- 15 (a) the Court presiding over this proceeding, personnel assisting the Court,
 - 16 Plaintiff and its employees, and personnel retained by Plaintiff as experts or
 - 17 consultants for this proceeding;
 - 18 (b) judges and other court personnel of any court having jurisdiction over any
 - 19 appellate proceedings involving this matter;
 - 20 (c) outside counsel of record for any Defendant, their associated attorneys and
 - 21 other employees of their law firm(s), provided they are not employees of any
 - 22 Defendant;
 - 23 (d) anyone retained to assist outside counsel in the preparation or hearing of this
 - 24 proceeding including consultants and testifying experts, provided they are not
 - 25
 - 26

27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 currently employed by a Defendant and have signed an agreement to abide by the
2 terms of the protective order;

3 (e) any witness or deponent who the examining attorney reasonably believes
4 either authored or received the information in question; and

5 (f) Defendant Meta and Defendant Within shall each, by August 24, 2022, inform
6 Plaintiff of the names of no more than three (3) in-house litigation counsel with
7 responsibilities for the litigation of this Action.

8 The in-house litigation counsel identified by Defendants may only access
9 declarations produced by Plaintiff, draft and final versions of pleadings, motions,
10 and other briefs, hearing transcripts and expert reports—including portions of
11 such filings, transcripts, or reports that quote or paraphrase confidential
12 material—but not exhibits to such filings, transcripts or reports or underlying
13 discovery material (other than declarations produced by Plaintiff), that have been
14 designated as Confidential or Highly Confidential Information. In preparation for
15 trial, the in-house counsel identified by Defendants may review documents or
16 other discovery material containing confidential material that are included in
17 Plaintiff's exhibit list or that are proposed by outside counsel for inclusion in
18 Defendants' exhibit lists. Before providing such materials to in-house counsel
19 identified by Defendants, Defendants shall redact all confidential material
20 included in their proposed exhibit lists that is not material to the proposed merger
21 or this litigation. The access designated in-house counsel may have to confidential
22 material is subject to reconsideration for good cause shown. The in-house counsel
23 identified by Defendants shall have access to such confidential material for the
24 purpose of defending this litigation only. The in-house counsel identified by
25 Defendants may access confidential material only in person at the offices of their
26

27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 outside counsel, or using a secure electronic data room or document review
2 platform using individual login identification and passwords. Plaintiff and
3 Defendants shall promptly report any confirmed or suspected unauthorized use or
4 disclosure of confidential material to the Court and opposing counsel. To qualify
5 for access under this subpart, in-house litigation counsel shall first execute an In-
6 House Counsel Agreement Concerning Confidentiality in the form of Appendix A
7 attached hereto (which executed versions shall be maintained by outside counsel
8 for the relevant Defendant and available for inspection upon the request of the
9 Court, any Party, or any non-party who provides Confidential or Highly
10 Confidential Information in this Action).

11 12. Disclosure of Confidential or Highly Confidential Information to any person
12 described in Paragraph 7 of this Order shall be only for the purposes of the preparation and
13 hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever.
14 Nothing herein shall be construed as prohibiting counsel for the Federal Trade Commission or
15 counsel for Meta from serving as counsel in *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590
16 (JEB) (D.D.C.), or any other investigation or litigation involving the Federal Trade Commission
17 and any of the Defendants.

18 13. In the event that any Confidential or Highly Confidential Information is contained
19 in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall
20 be so informed by the Party filing such papers, and such papers shall be filed under seal [^]. To the
21 extent that such material was originally submitted by a non-party, the party including the
22 material in its papers shall immediately notify the submitter of such inclusion. Confidential or
23 Highly Confidential Information contained in the papers shall remain under seal ^{only as provided by} ~~until further~~
24 order of the Court, provided, however, that such papers may be furnished to persons or entities
25 who may receive Confidential or Highly Confidential Information pursuant to Paragraph 7. ~~Upon~~

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 ~~or after filing any paper containing Confidential or Highly Confidential Information, the filing~~
2 ~~party shall file on the public record a duplicate copy of the paper that does not reveal~~
3 ~~Confidential or Highly Confidential Information.~~ Further, if the protection for any such material
4 expires, a party may file on the public record a duplicate copy which also contains the formerly
5 protected material.

6 14. Within two business days of exchanging exhibit lists, the parties shall provide
7 notice to any party or non-party whose Confidential or Highly Confidential Information is on
8 that party's exhibit list for purposes of allowing that party or non-party to seek an order that the
9 document or transcript be granted in camera treatment. If that party or non-party wishes in
10 camera treatment for the document or transcript, the party or non-party shall file an appropriate
11 motion with the Court within five business days after it receives such notice. Except where such
12 an order is granted, all documents and transcripts shall be part of the public record. Where in
13 camera treatment is granted, a duplicate copy of such document or transcript with the
14 Confidential or Highly Confidential Information deleted therefrom may be placed on the public
15 record.

16 15. If any party receives a discovery request in any investigation or in any other
17 proceeding or matter that may require the disclosure of Confidential or Highly Confidential
18 Information submitted by another party or non-party, the recipient of the discovery request shall
19 promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an
20 order of a court, such notification shall be in writing and be received by the submitter at least ten
21 business days before production and shall include a copy of this Protective Order and a cover
22 letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as
23 requiring the recipient of the discovery request or anyone else covered by this Order to challenge
24 or appeal any order requiring production of Confidential or Highly Confidential Information,
25 subject itself to any penalties for non-compliance with any such order, or to seek any relief from
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27 ~~[PROPOSED]~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of
2 Confidential or Highly Confidential Information. In addition, nothing herein shall limit the
3 applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to
4 discovery requests in another proceeding that are directed to the Commission.

5 16. At the time that any consultant or other person retained to assist counsel in the
6 preparation of this action concludes participation in the action, such person shall return to
7 counsel all copies of Documents or portions thereof designated Confidential or Highly
8 Confidential that are in the possession of such person, together with all notes, memoranda or
9 other papers containing Confidential or Highly Confidential Information. Within 90 days after
10 the expiration of the time for appeal of an order, judgment, or decree terminating this litigation,
11 or any administrative proceeding, whichever is later, all persons having received information
12 designated as Highly Confidential Information or Confidential Information must either make a
13 good faith effort to return such material and all copies thereof to the producing person (or the
14 producing person's counsel if represented by counsel) that produced it; or certify that it has
15 destroyed or deleted all such Highly Confidential Information or Confidential Information in
16 writing to the producing person.

17 17. All Documents produced will be treated as Highly Confidential Information for
18 ten (10) business days from the date this Protective Order is filed, even if not designated in
19 accordance with this Protective Order. Any production of Documents not designated as
20 Confidential or Highly Confidential Information will not be deemed a waiver of any future claim
21 of confidentiality concerning such information if it is later designated as Confidential or Highly
22 Confidential Information. If at any time prior to the conclusion of this litigation, a Party or non-
23 party determines that it should have designated as Confidential or Highly Confidential
24 Information any Documents that the Party previously produced, it may so designate such
25 Documents by notifying the parties in writing. The parties shall thereafter treat the Documents

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 pursuant to the new designation under the terms of this Protective Order. No prior disclosure of
2 newly designated Confidential or Highly Confidential Information shall violate this Protective
3 Order, provided that the prior disclosure occurred more than ten (10) business days after the
4 production of that previously non-designated Confidential or Highly Confidential Information.
5 The disclosure of any information for which disclosure was proper when made will not be
6 deemed improper regardless of any such subsequent designation. Any Documents, data, or other
7 information produced to the Federal Trade Commission during its investigation and designated at
8 the time of production as confidential, highly confidential, proprietary, exempt from disclosure
9 under the Freedom of Information Act, or submitted under the HSR Act shall be deemed Highly
10 Confidential Information for purposes of this litigation.

11 18. The provision of this Protective Order, insofar as they restrict the communication
12 and use of confidential discovery material, shall, without written permission of the submitter or
13 further order of the Court, continue to be binding after the conclusion of this proceeding.

14 19. Any disputes arising under this Order shall be submitted to the undersigned in
15 accordance with the Court's standing order for Civil Discovery: [https://www.cand.uscourts.gov/
16 wp-content/uploads/judges/van-keulen-svk/
SVK_Civil_and_Discovery_Referral_Matters_Standing_Order_11-15-2021.pdf](https://www.cand.uscourts.gov/wp-content/uploads/judges/van-keulen-svk/SVK_Civil_and_Discovery_Referral_Matters_Standing_Order_11-15-2021.pdf).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: August 22, 2022

/s/ Abby L. Dennis

Attorney for Plaintiff Federal Trade Commission

18
19
20 DATED: August 22, 2022

/s/ Bambo Obaro

Attorney for Defendant Meta Platforms, Inc.

21
22
23 DATED: August 22, 2022

/s/ Christopher J. Cox

Attorney for Defendant Within Unlimited, Inc.

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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

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FILER'S ATTESTATION

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

By: /s/ Abby L. Dennis
Abby L. Dennis

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 Dated: August 24, 2022

3 
4 ~~Honorable Edward J. Davila~~
5 ~~United States District Judge~~
6 ~~Northern District of California~~
7 **Honorable Susan van Keulen**
8 **United States Magistrate Judge**

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~~PROPOSED~~ PROTECTIVE ORDER

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

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APPENDIX A

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

META PLATFORMS, INC., et al.,

Defendants.

**IN-HOUSE LITIGATION COUNSEL AGREEMENT CONCERNING
CONFIDENTIALITY**

I, _____, am employed as _____ by _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action, agree that in my role as in-house litigation counsel for the above Defendant company I meet the requirements of paragraph 11(f) of this Protective Order, and agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the Northern District

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

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of California solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

Exhibit 18

Confidential - Redacted in Entirety

Exhibit 19

To: +1 (718) 552-6473



iMessage
Saturday 7:11 AM

Hey Veronica, I woke up this morning and saw the pdf appearing to be stuck in my outbox. Hope that's a mistake and it came through, I hit send again this morning to make sure! Did we miss the deadline?!

This is Preston Lewis

Hey Preston, No we did not receive the pdf until this morning, so we did miss the deadline. Are you still willing to sit for a deposition on November 10th?

Of course

Crap so what happens since the pdf didn't come through?



I'll check in with Liz, but we just won't be able to submit the declaration. However, we can move forward with the deposition and send a notice of subpoena.



So sorry it got stuck in my outbox.

Delivered



I understand, thanks for reaching out this morning. We'll set up a time to connect early next week before the deposition on Thursday.



iMessage



Exhibit 20

Confidential - Redacted in Entirety

Exhibit 21

1 MICHAEL MOISEYEV (*pro hac vice*)
 michael.moiseyev@weil.com
 2 CHANTALE FIEBIG (*pro hac vice*)
 chantale.fiebig@weil.com
 3 WEIL, GOTSHAL & MANGES LLP
 4 2001 M Street, NW, Suite 600
 Washington, DC 20036
 5 Telephone: (202) 682-7000
 Facsimile: (202) 857-0940
 6

7 DIANE P. SULLIVAN (*pro hac vice*)
 diane.sullivan@weil.com
 8 WEIL, GOTSHAL & MANGES LLP
 17 Hulfish Street, Suite 201
 9 Princeton, NJ 08542
 Telephone: (609) 986-1100
 10 Facsimile: (609) 986-1199

11 Attorneys for Defendant META PLATFORMS, INC.

12 (Additional Counsel Listed on Signature Page)

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 FEDERAL TRADE COMMISSION,
 17 Plaintiff,
 18 v.
 19 META PLATFORMS, INC., et al.,
 20 Defendants.
 21

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

NOTICE OF SUBPOENA TO DYNATA, LLC

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

22 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE** that, pursuant to Rules 34 and 45 of the Federal Rules of Civil
 24 Procedure, Defendant Meta Platforms, Inc. in the above-captioned case will cause to be served upon
 25 DYNATA, LLC (“Dynata”) the subpoena attached as **Exhibit A**, in addition to witness fees and
 26 mileage in accordance with applicable law, to command Dynata’s appearance at the trial of this matter
 27 on December 14, 2022 at 10:00 a.m., and production of documents by December 2, 2022.
 28

1 Dated: November 30, 2022

Respectfully submitted,

WEIL, GOTSHAL & MANGES LLP

4 By: /s/ Bambo Obaro

5 MICHAEL MOISEYEV (*pro hac vice*)
6 michael.moiseyev@weil.com
7 CHANTALE FIEBIG (*pro hac vice*)
8 chantale.fiebig@weil.com
9 WEIL, GOTSHAL & MANGES LLP
2001 M Street, NW, Suite 600
Washington, DC 20036
Telephone: (202) 682-7000
Facsimile: (202) 857-0940

10 DIANE P. SULLIVAN (*pro hac vice*)
11 diane.sullivan@weil.com
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13 17 Hulfish Street, Suite 201
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Telephone: (609) 986-1100
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14 ERIC S. HOCHSTADT (*pro hac vice*)
15 eric.hochstadt@weil.com
16 WEIL, GOTSHAL & MANGES LLP
17 767 Fifth Avenue
New York, NY 10153
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18 BAMBO OBARO (Bar No. 267683)
19 bambo.obaro@weil.com
20 WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway, 6th Floor
Redwood Shores, CA 94065-1134
Telephone: (650) 802-3000
Facsimile: (650) 802-3100

22 Attorneys for Defendant META PLATFORMS,
23 INC.

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Weil, Gotshal & Manges LLP, whose address is 201 Redwood Shores Parkway, Redwood Shores, California 94065-1175 (hereinafter “WGM”). I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on November 30, 2022, I served a copy of:

NOTICE OF SUBPOENA TO: DYNATA, LLC

BY ELECTRONIC SERVICE by electronically mailing a true and correct copy through WGM’s electronic mail system to the email addresses set forth in the service list below.

Abby L. Dennis
Email: adennis@ftc.gov
Peggy Bayer Femenella
Email: pbayer@ftc.gov
Josh Goodman
Email: jgoodman@ftc.gov
Jeanine Balbach
Email: jbalbach@ftc.gov
Terri Martin
Email: tmartin@ftc.gov
Frances Anne Johnson
Email: fjohnson@ftc.gov
Rebecca Hyman
Email: rhyman@ftc.gov
Charles York
Email: cyork@ftc.gov
Adam Pergament
Email: apergament@ftc.gov
James H. Weingarten
Email: jweingarten@ftc.gov
Erika Meyers
emeyers@ftc.gov
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580

Mark C. Hansen
Email: mhansen@kellogghansen.com
Geoffrey M. Klineberg
Email: gklineberg@kellogghansen.com
James M. Webster III
Email: jwebster@kellogghansen.com
Jacob E. Hartman
Email: jhartman@kellogghansen.com
Daniel G. Bird
Email: dbird@kellogghansen.com
Hannah D. Carlin
Email: hcarlin@kellogghansen.com
KELLOGG HANSEN TODD FIGEL &
FREDERICK PLLC
1615 M Street, NW #400
Washington, DC 20036

Attorneys for Plaintiffs

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 30, 2022 in Redwood Shores, California.

/s/ Morgan MacBride
Morgan MacBride

UNITED STATES DISTRICT COURT
for the
Northern District of California

_____)
FEDERAL TRADE COMMISSION)

Plaintiff)

v.)

_____)
META PLATFORMS, INC., et al.)

Defendant)

Civil Action No. 5:22-cv-04325-EJD

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A CIVIL ACTION**

To: Dynata, LLC
4 Research Drive, Suite 300, Shelton, CT 06484

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: San Jose Courthouse 280 South 1st Street San Jose, CA 95113	Courtroom No.: Courtroom 4 - 5th Floor
	Date and Time: 12/14/2022 10:00 am PST

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

The documents specified in Exhibit A, attached, by December 2, 2022.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/30/2022

CLERK OF COURT

OR

/s/ Bambo Obaro

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Meta Platforms, Inc.

_____, who issues or requests this subpoena, are:

Bambo Obaro, Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, 6th Floor, Redwood Shores, CA 94065-1134.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 5:22-cv-04325-EJD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A)** within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i)** is a party or a party's officer; or
 - (ii)** is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A)** production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i)** At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i)** fails to allow a reasonable time to comply;
- (ii)** requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv)** subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i)** disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii)** ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i)** expressly make the claim; and
- (ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A TO SUBPOENA TO DYNATA, LLC**DEFINITIONS**

1. “Action” refers to the action pending in the United States District Court for the Northern District of California, styled *Federal Trade Commission v. Meta Platforms, Inc., et al.*, Case No. 5:22-cv-04325 (EJD), as well as the Federal Trade Commission’s investigation of Meta Platform, Inc.’s proposed acquisition of Within Unlimited, Inc., FTC File No. 221-0040.
2. “Communication” is used in the broadest possible sense and includes without any limitation every conceivable manner or means of disclosure, transfer, or exchange of oral or written information between one or more persons, entities, devices, platforms, or systems, whether in the form of an original, a draft, or a copy, whether stored in hard copy, on tape, electronically or digitally, either orally, visually, or in writing, and includes but is not limited to conversations, correspondence, electronic mails or emails, telexes, facsimile transmissions, telecopies, recordings in any medium of oral, written, or typed communications, telephone or message logs, notes or memoranda relating to written or oral communications; and any translation thereof.
3. “Concerning,” “Reflecting,” “Regarding,” and “Relating To” are used in the broadest possible sense and mean, in whole or in part, addressing, analyzing, constituting, containing, commenting, in connection with, dealing with, discussing, describing, embodying, evidencing, identifying, pertaining, referring, reporting, stating, or summarizing. These definitions apply throughout these requests without regard to capitalization.
4. “Defendants” means Meta Platforms, Inc. and Within Unlimited Inc. and all of their predecessors, subsidiaries, parents, affiliates, and other organizational or operating units of them, all past and present directors, officers, employees, agents, representatives, employees, consultants, and attorneys of any of them, all entities acting in joint-venture or partnership relationships with any of them, and all others acting on behalf of any of them, respectively.
5. “Document” is used in the broadest possible sense consistent with the meaning given in Rule 34 of the Federal Rules of Civil Procedure and includes without limitation any written, printed, typed, photocopied, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, data, pictures, sounds or symbols, or any combination thereof. “Document” includes without limitation, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes of minutes of meetings or communications, electronic mail/messages and/or “e-mail,” text messages, social media communications, voice mail messages, instant messaging, any other electronically transmitted messages, questionnaires, surveys, charts, graphs, photographs, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by You through detection devices into usable form), including, without limitation, electromagnetically sensitive storage media such as CDs, DVDs, memory sticks, floppy disks, hard disks and magnetic tapes, and any preliminary versions, as well as drafts or revisions of any of the foregoing, regardless of who authored the Document.

- 1 6. “Including” is used to provide examples of certain types of information and should not be
2 construed as limiting a request in any way. The term “including” shall be construed as if followed
3 by the phrase “but not limited to.”
- 4 7. “Information” means Information in any form, including but not limited to documentary,
5 electronic, graphical, or tabular, and communicated by any means, including but not limited to
6 oral, written, or electronic Communications.
- 7 8. “Local Civil Rules” means the Local Civil Rules of the United States District Courts for the
8 Northern District of California.
- 9 9. “Meta Platforms, Inc.” means Meta Platforms, Inc., its subsidiaries, affiliates, divisions, either
10 collectively, individually, or in any subset; and the present and former officers, directors,
11 employees, agents, and other persons acting on behalf of Meta Platforms, Inc., its divisions,
12 subsidiaries and/or affiliates.
- 13 10. “Plaintiff” refers to the Federal Trade Commission.
- 14 11. “Qualtrics” refers to Qualtrics International Inc. and its divisions, business units, subsidiaries,
15 affiliates, predecessors, successors-in-interest, and companies under tis direct or indirect
16 management or control, as well as any of its present and former agents, directors, officers,
17 managers, analysts, accountants, attorneys, representatives, employees, consultants, or other
18 persons acting under its direction or control, including but not limited to any other firm that
19 Qualtrics used to field a panel for the Survey and conduct the Survey.
- 20 12. “Survey” means the survey that Dr. Hal Singer, retained by the Federal Trade Commission,
21 commissioned Qualtrics to undertake in *Federal Trade Commission v. Meta Platforms, Inc., et al.*,
22 Case No. 5:22-cv-04325-EJD (N.D. Cal.).
- 23 13. “Within Unlimited Inc.” means Within Unlimited Inc., its affiliates, divisions, either collectively,
24 individually, or in any subset; and the present and former officers, directors, employees, agents,
25 and other persons acting on behalf of Within Unlimited Inc., its divisions, subsidiaries, and/or
26 affiliates.
- 27 14. “You,” “Your,” and “Yourself” refers to Dynata, LLC and its divisions, business units,
28 subsidiaries, affiliates, predecessors, successors-in-interest, and companies under its direct or
indirect management or control, as well as any of its present and former agents, directors,
officers, managers, analysts, accountants, attorneys, representatives, employees, consultants, or
other persons acting under its direction or control, including but not limited to any other firm
that Dynata used to field a panel for the Survey and conduct the Survey.

INSTRUCTIONS

1. You are requested to produce all Documents and Information described below that can be located by a reasonable search of materials within Your possession, custody or control, or in the possession, custody or control of Your officers, directors, agents, employees, representatives, affiliated or associated companies or any other person or entity acting or purporting to act on Your behalf.
2. Unless otherwise specified, the effective date for these requests is July 27, 2022 to the present.
3. If You object to part of a request, state the basis of Your objections in accordance with Rule 45 of the Federal Rules of Civil Procedure, and produce all responsive Documents and Information that are not within the scope of Your objection.
4. If there are no responsive Documents for a particular request, then so state in Your response.
5. You must produce a log, in accordance with Federal Rule of Civil Procedure 26(b)(5)(A), for any Document You withhold on the basis of any claimed privileged or immunity.
6. These requests shall be deemed continuing requests so as to require supplemental responses if You obtain or discover additional Documents between the time of initial production and the time of the trial. Such supplemental Documents must be produced promptly upon discovery. Defendants specifically reserve the right to seek supplementary responses and the additional supplementary production of Documents before trial.
7. Attached to this Subpoena is a copy of the Protective Order entered in *Federal Trade Commission v. Meta Platforms, Inc., et al.*, Case No. 5:22-cv-04325 (EJD). Documents produced pursuant to this Subpoena may be produced in accordance with the terms of that Protective Order. Note that You may designate documents that You produce “Confidential” or “Highly Confidential” per the terms of that Order.
8. Please contact Meta counsel Jeremy Cain at jeremy.cain@weil.com or 212-310-8498, or Christina Swiatowy at christina.swiatowy@weil.com or 202-682-7518 to discuss how You intend to produce the documents.

REQUESTS FOR PRODUCTION

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1. Documents sufficient to show the composition of the panel used for the Survey.
2. The email address of each person to whom the Survey was sent.
3. Documents sufficient to identify or show the specific email address associated with each of the persons who completed the Survey.
4. All Documents and Communications sent to Survey respondents, regardless of whether the respondent completed the Survey.
5. All Documents and Communications sent to, or received from, Qualtrics in relation to the Survey.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC.,

MARK ZUCKERBERG,

and

WITHIN UNLIMITED, INC.,

Defendants.

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

~~PROPOSED~~ PROTECTIVE ORDER
AS MODIFIED BY THE COURT

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

1 ~~PROPOSED~~ **PROTECTIVE ORDER**

2 For the purposes of protecting the interests of the parties and non-parties in the above-
3 captioned matter against the improper use and disclosure of confidential information submitted
4 or produced in connection with this matter:

5 IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all
6 Confidential and Highly Confidential Information, as hereafter defined.

7 1. As used in this Order, “Confidential Information” means any trade secret or other
8 confidential research, development, or commercial information, as such terms are used in Fed. R.
9 Civ. P. 26(c)(1)(G), or any Document, transcript, or other material containing such information
10 that has not been published or otherwise made publicly available. In addition, a designating party
11 may designate as Confidential any information or items made publicly available in violation of a
12 court order to keep such information confidential, that the designating party believes should
13 receive Confidential treatment. This includes (i) information copied or extracted, summarized or
14 compiled from Confidential Information, and (ii) testimony, conversations, or presentations that
15 might reveal Confidential Information.

16 2. As used in this Order, “Highly Confidential Information” shall only include
17 Confidential Information that, if disclosed, is likely to cause material and significant harm to the
18 party or non-party whose Highly Confidential Information is disclosed. Highly Confidential
19 Information includes trade secrets, including algorithms and source code; non-public,
20 commercially sensitive customer lists; non-public financial, marketing, or strategic business
21 planning information; current or future non-public information regarding prices, costs, or
22 margins; information relating to research, development, testing of, or plans for existing or
23 proposed future products; evaluation of the strengths and vulnerabilities of product offerings,
24 including non-public pricing and cost information; confidential contractual terms, proposed
25 contractual terms, or negotiating positions (including deliberations about negotiating positions)

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 taken with respect to Defendant(s) or competitors to Defendant(s); information relating to
2 pending or abandoned patent applications that have not been made available to the public;
3 personnel files; sensitive personally identifiable information; sensitive health information; and
4 communications that disclose any Highly Confidential Information. Highly Confidential
5 Information also includes information that a non-party believes would expose it or new business
6 ventures with which it is associated to potential retribution or harm if the information were
7 disclosed to Defendant(s).

8 3. As used in this Order, “Document” shall refer to any discoverable writing,
9 recording, transcript of oral testimony, or electronically stored information in the possession of a
10 party or non-party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any
11 of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons
12 retained as consultants or experts for purposes of this proceeding.

13 4. Any Document or portion thereof submitted by a Defendant or a non-party during
14 a Federal Trade Commission investigation (“Investigation Materials”) or during the course of
15 this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or
16 any other federal statute or regulation, or under any federal court or Commission precedent
17 interpreting such statute or regulation, as well as any information that discloses information that
18 has not been published or otherwise made publicly available, or the substance of the contents of
19 any Confidential or Highly Confidential Information derived from a Document subject to this
20 Order, shall be treated as Confidential or Highly Confidential Information for purposes of this
21 Order.

22 5. The parties and any non-parties, in complying with informal discovery requests,
23 disclosure requirements, or discovery demands in this proceeding may designate any responsive
24 Document or portion thereof as Confidential or Highly Confidential Information, including
25 Documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 6. The parties, in conducting discovery from non-parties, shall provide to each non-
2 party a copy of this Order so as to inform each such non-party of his, her, or its rights herein.

3 7. A designation of confidentiality shall constitute a representation in good faith and
4 after careful determination that the material is not reasonably believed to be already in the public
5 domain and that counsel believes the material so designated constitutes Confidential or Highly
6 Confidential Information as defined in Paragraph 1 of this Order.

7 8. Material may be designated as Confidential by placing on or affixing to the
8 Document containing such material (in such manner as will not interfere with the legibility
9 thereof), or if an entire folder or box of Documents is Confidential by placing or affixing to that
10 folder or box, the designation “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—
11 FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-EJD,” or any other appropriate
12 notice that identifies this proceeding, together with an indication of the portion or portions of the
13 Document considered to be Confidential Information. Confidential Information contained in
14 electronic Documents may also be designated as Confidential by placing the designation
15 “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—FTC v. Meta Platforms, Inc.,
16 et al., Case No. 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this
17 proceeding, on the face of the CD or DVD or other medium on which the Document is produced.
18 Masked or otherwise redacted copies of Documents may be produced where the portions masked
19 or redacted contain privileged matter, provided that the copy shall indicate at the appropriate
20 point that portions have been masked or redacted and the reasons therefor.

21 9. Material may be designated as Highly Confidential by placing on or affixing to
22 the Document containing such material (in such manner as will not interfere with the legibility
23 thereof), or if an entire folder or box of Documents is Highly Confidential by placing or affixing
24 to that folder or box, the designation “HIGHLY CONFIDENTIAL – FTC v. Meta/Within,”
25 “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 EJD,” or any other appropriate notice that identifies this proceeding, together with an indication
2 of the portion or portions of the Document considered to be Highly Confidential Information.
3 Highly Confidential Information contained in electronic Documents may also be designated as
4 Highly Confidential by placing the designation “HIGHLY CONFIDENTIAL – FTC v.
5 Meta/Within,” “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al., Case No.
6 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this proceeding, on the face
7 of the CD or DVD or other medium on which the Document is produced. Masked or otherwise
8 redacted copies of Documents may be produced where the portions masked or redacted contain
9 privileged matter, provided that the copy shall indicate at the appropriate point that portions have
10 been masked or redacted and the reasons therefor.

11 10. Defendants are not required to re-designate Investigation Materials as
12 Confidential or Highly Confidential: all Investigation Materials produced by Defendants
13 presumptively shall be treated as they were designated in the Investigation.

14 11. Confidential and Highly Confidential Information shall be disclosed only to:

15 (a) the Court presiding over this proceeding, personnel assisting the Court,
16 Plaintiff and its employees, and personnel retained by Plaintiff as experts or
17 consultants for this proceeding;

18 (b) judges and other court personnel of any court having jurisdiction over any
19 appellate proceedings involving this matter;

20 (c) outside counsel of record for any Defendant, their associated attorneys and
21 other employees of their law firm(s), provided they are not employees of any
22 Defendant;

23 (d) anyone retained to assist outside counsel in the preparation or hearing of this
24 proceeding including consultants and testifying experts, provided they are not
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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 currently employed by a Defendant and have signed an agreement to abide by the
2 terms of the protective order;

3 (e) any witness or deponent who the examining attorney reasonably believes
4 either authored or received the information in question; and

5 (f) Defendant Meta and Defendant Within shall each, by August 24, 2022, inform
6 Plaintiff of the names of no more than three (3) in-house litigation counsel with
7 responsibilities for the litigation of this Action.

8 The in-house litigation counsel identified by Defendants may only access
9 declarations produced by Plaintiff, draft and final versions of pleadings, motions,
10 and other briefs, hearing transcripts and expert reports—including portions of
11 such filings, transcripts, or reports that quote or paraphrase confidential
12 material—but not exhibits to such filings, transcripts or reports or underlying
13 discovery material (other than declarations produced by Plaintiff), that have been
14 designated as Confidential or Highly Confidential Information. In preparation for
15 trial, the in-house counsel identified by Defendants may review documents or
16 other discovery material containing confidential material that are included in
17 Plaintiff's exhibit list or that are proposed by outside counsel for inclusion in
18 Defendants' exhibit lists. Before providing such materials to in-house counsel
19 identified by Defendants, Defendants shall redact all confidential material
20 included in their proposed exhibit lists that is not material to the proposed merger
21 or this litigation. The access designated in-house counsel may have to confidential
22 material is subject to reconsideration for good cause shown. The in-house counsel
23 identified by Defendants shall have access to such confidential material for the
24 purpose of defending this litigation only. The in-house counsel identified by
25 Defendants may access confidential material only in person at the offices of their
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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 outside counsel, or using a secure electronic data room or document review
2 platform using individual login identification and passwords. Plaintiff and
3 Defendants shall promptly report any confirmed or suspected unauthorized use or
4 disclosure of confidential material to the Court and opposing counsel. To qualify
5 for access under this subpart, in-house litigation counsel shall first execute an In-
6 House Counsel Agreement Concerning Confidentiality in the form of Appendix A
7 attached hereto (which executed versions shall be maintained by outside counsel
8 for the relevant Defendant and available for inspection upon the request of the
9 Court, any Party, or any non-party who provides Confidential or Highly
10 Confidential Information in this Action).

11 12. Disclosure of Confidential or Highly Confidential Information to any person
12 described in Paragraph 7 of this Order shall be only for the purposes of the preparation and
13 hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever.
14 Nothing herein shall be construed as prohibiting counsel for the Federal Trade Commission or
15 counsel for Meta from serving as counsel in *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590
16 (JEB) (D.D.C.), or any other investigation or litigation involving the Federal Trade Commission
17 and any of the Defendants.

18 13. In the event that any Confidential or Highly Confidential Information is contained
19 in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall
20 be so informed by the Party filing such papers, and such papers shall be filed under seal [^]. To the
21 extent that such material was originally submitted by a non-party, the party including the
22 material in its papers shall immediately notify the submitter of such inclusion. Confidential or
23 Highly Confidential Information contained in the papers shall remain under seal ^{only as provided by} ~~until further~~
24 order of the Court, provided, however, that such papers may be furnished to persons or entities
25 who may receive Confidential or Highly Confidential Information pursuant to Paragraph 7. ~~Upon~~

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 ~~or after filing any paper containing Confidential or Highly Confidential Information, the filing~~
2 ~~party shall file on the public record a duplicate copy of the paper that does not reveal~~
3 ~~Confidential or Highly Confidential Information.~~ Further, if the protection for any such material
4 expires, a party may file on the public record a duplicate copy which also contains the formerly
5 protected material.

6 14. Within two business days of exchanging exhibit lists, the parties shall provide
7 notice to any party or non-party whose Confidential or Highly Confidential Information is on
8 that party's exhibit list for purposes of allowing that party or non-party to seek an order that the
9 document or transcript be granted in camera treatment. If that party or non-party wishes in
10 camera treatment for the document or transcript, the party or non-party shall file an appropriate
11 motion with the Court within five business days after it receives such notice. Except where such
12 an order is granted, all documents and transcripts shall be part of the public record. Where in
13 camera treatment is granted, a duplicate copy of such document or transcript with the
14 Confidential or Highly Confidential Information deleted therefrom may be placed on the public
15 record.

16 15. If any party receives a discovery request in any investigation or in any other
17 proceeding or matter that may require the disclosure of Confidential or Highly Confidential
18 Information submitted by another party or non-party, the recipient of the discovery request shall
19 promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an
20 order of a court, such notification shall be in writing and be received by the submitter at least ten
21 business days before production and shall include a copy of this Protective Order and a cover
22 letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as
23 requiring the recipient of the discovery request or anyone else covered by this Order to challenge
24 or appeal any order requiring production of Confidential or Highly Confidential Information,
25 subject itself to any penalties for non-compliance with any such order, or to seek any relief from
26

27 ~~[PROPOSED]~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of
2 Confidential or Highly Confidential Information. In addition, nothing herein shall limit the
3 applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to
4 discovery requests in another proceeding that are directed to the Commission.

5 16. At the time that any consultant or other person retained to assist counsel in the
6 preparation of this action concludes participation in the action, such person shall return to
7 counsel all copies of Documents or portions thereof designated Confidential or Highly
8 Confidential that are in the possession of such person, together with all notes, memoranda or
9 other papers containing Confidential or Highly Confidential Information. Within 90 days after
10 the expiration of the time for appeal of an order, judgment, or decree terminating this litigation,
11 or any administrative proceeding, whichever is later, all persons having received information
12 designated as Highly Confidential Information or Confidential Information must either make a
13 good faith effort to return such material and all copies thereof to the producing person (or the
14 producing person's counsel if represented by counsel) that produced it; or certify that it has
15 destroyed or deleted all such Highly Confidential Information or Confidential Information in
16 writing to the producing person.

17 17. All Documents produced will be treated as Highly Confidential Information for
18 ten (10) business days from the date this Protective Order is filed, even if not designated in
19 accordance with this Protective Order. Any production of Documents not designated as
20 Confidential or Highly Confidential Information will not be deemed a waiver of any future claim
21 of confidentiality concerning such information if it is later designated as Confidential or Highly
22 Confidential Information. If at any time prior to the conclusion of this litigation, a Party or non-
23 party determines that it should have designated as Confidential or Highly Confidential
24 Information any Documents that the Party previously produced, it may so designate such
25 Documents by notifying the parties in writing. The parties shall thereafter treat the Documents

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 pursuant to the new designation under the terms of this Protective Order. No prior disclosure of
2 newly designated Confidential or Highly Confidential Information shall violate this Protective
3 Order, provided that the prior disclosure occurred more than ten (10) business days after the
4 production of that previously non-designated Confidential or Highly Confidential Information.
5 The disclosure of any information for which disclosure was proper when made will not be
6 deemed improper regardless of any such subsequent designation. Any Documents, data, or other
7 information produced to the Federal Trade Commission during its investigation and designated at
8 the time of production as confidential, highly confidential, proprietary, exempt from disclosure
9 under the Freedom of Information Act, or submitted under the HSR Act shall be deemed Highly
10 Confidential Information for purposes of this litigation.

11 18. The provision of this Protective Order, insofar as they restrict the communication
12 and use of confidential discovery material, shall, without written permission of the submitter or
13 further order of the Court, continue to be binding after the conclusion of this proceeding.

14 19. Any disputes arising under this Order shall be submitted to the undersigned in
15 accordance with the Court's standing order for Civil Discovery: [https://www.cand.uscourts.gov/
16 wp-content/uploads/judges/van-keulen-svk/
SVK_Civil_and_Discovery_Referral_Matters_STANDING_Order_11-15-2021.pdf](https://www.cand.uscourts.gov/wp-content/uploads/judges/van-keulen-svk/SVK_Civil_and_Discovery_Referral_Matters_STANDING_Order_11-15-2021.pdf).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: August 22, 2022

/s/ Abby L. Dennis

18 Attorney for Plaintiff Federal Trade Commission

19
20 DATED: August 22, 2022

/s/ Bambo Obaro

21 Attorney for Defendant Meta Platforms, Inc.

22
23 DATED: August 22, 2022

/s/ Christopher J. Cox

24 Attorney for Defendant Within Unlimited, Inc.

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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

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FILER'S ATTESTATION


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

By: /s/ Abby L. Dennis

Abby L. Dennis

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 Dated: August 24, 2022

3 
4 ~~Honorable Edward J. Davila~~
5 ~~United States District Judge~~
6 ~~Northern District of California~~
7 Honorable Susan van Keulen
8 United States Magistrate Judge

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~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

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APPENDIX A

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC., et al.,

Defendants.

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

**IN-HOUSE LITIGATION COUNSEL AGREEMENT CONCERNING
CONFIDENTIALITY**

I, _____, am employed as _____ by _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action, agree that in my role as in-house litigation counsel for the above Defendant company I meet the requirements of paragraph 11(f) of this Protective Order, and agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the Northern District

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

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of California solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

Exhibit 22

1 MICHAEL MOISEYEV (*pro hac vice*)
 michael.moiseyev@weil.com
 2 CHANTALE FIEBIG (*pro hac vice*)
 chantale.fiebig@weil.com
 3 WEIL, GOTSHAL & MANGES LLP
 4 2001 M Street, NW, Suite 600
 Washington, DC 20036
 5 Telephone: (202) 682-7000
 Facsimile: (202) 857-0940
 6

7 DIANE P. SULLIVAN (*pro hac vice*)
 diane.sullivan@weil.com
 8 WEIL, GOTSHAL & MANGES LLP
 17 Hulfish Street, Suite 201
 9 Princeton, NJ 08542
 Telephone: (609) 986-1100
 10 Facsimile: (609) 986-1199

11 Attorneys for Defendant META PLATFORMS, INC.

12 (Additional Counsel Listed on Signature Page)

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 FEDERAL TRADE COMMISSION,
 17
 18 Plaintiff,
 19 v.
 20 META PLATFORMS, INC., et al.,
 21 Defendants.

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

NOTICE OF SUBPOENA TO QUALTRICS INTERNATIONAL INC.

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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

22 **PLEASE TAKE NOTICE** that, pursuant to Rules 34 and 45 of the Federal Rules of Civil
 23 Procedure, Defendant Meta Platforms, Inc. in the above-captioned case will cause to be served upon
 24 Qualtrics International Inc. (“Qualtrics”) the subpoena attached as **Exhibit A**, in addition to witness
 25 fees and mileage in accordance with applicable law, to command Qualtrics’ appearance at the trial of
 26 this matter on December 14, 2022 at 10:00 a.m., and production of documents by December 2, 2022.
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 28

1 Dated: November 25, 2022

Respectfully submitted,

2 WEIL, GOTSHAL & MANGES LLP

3
4 By: /s/ Bambo Obaro

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Attorneys for Defendant META PLATFORMS,
INC.

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Weil, Gotshal & Manges LLP, whose address is 201 Redwood Shores Parkway, Redwood Shores, California 94065-1175 (hereinafter “WGM”). I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on November 25, 2022, I served a copy of:

NOTICE OF SUBPOENA TO: QUALTRICS INTERNATIONAL INC.

BY ELECTRONIC SERVICE by electronically mailing a true and correct copy through WGM’s electronic mail system to the email addresses set forth in the service list below.

Abby L. Dennis
Email: adennis@ftc.gov

Peggy Bayer Femenella
Email: pbayer@ftc.gov

Josh Goodman
Email: jgoodman@ftc.gov

Jeanine Balbach
Email: jbalbach@ftc.gov

Terri Martin
Email: tmartin@ftc.gov

Frances Anne Johnson
Email: fjohnson@ftc.gov

Rebecca Hyman
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FEDERAL TRADE COMMISSION
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FREDERICK PLLC

1615 M Street, NW #400

Washington, DC 20036

Attorneys for Plaintiffs

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 25, 2022 in Redwood Shores, California.

/s/ Morgan MacBride
Morgan MacBride

UNITED STATES DISTRICT COURT
for the
Northern District of California

FEDERAL TRADE COMMISSION

Plaintiff

v.

META PLATFORMS, INC., et al.

Defendant

Civil Action No. 5:22-cv-04325-EJD

SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A CIVIL ACTION

To: Qualtrics International Inc.
333 W River Park Drive, Provo, Utah 84604

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Table with 2 columns: Place (San Jose Courthouse, 280 South 1st Street, San Jose, CA 95113) and Courtroom No. (Courtroom 4 - 5th Floor). Date and Time: 12/14/2022 10:00 am PST.

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The documents specified in Exhibit A, attached, by December 2, 2022.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/25/2022

CLERK OF COURT

OR

/s/ Bambo Obaro

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Meta Platforms, Inc.

, who issues or requests this subpoena, are:

Bambo Obaro, Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, 6th Floor, Redwood Shores, CA 94065-1134.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 5:22-cv-04325-EJD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) **For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) **For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A TO SUBPOENA TO QUALTRICS INTERNATIONAL INC.**DEFINITIONS**

1. “Action” refers to the action pending in the United States District Court for the Northern District of California, styled *Federal Trade Commission v. Meta Platforms, Inc., et al.*, Case No. 5:22-cv-04325 (EJD), as well as the Federal Trade Commission’s investigation of Meta Platform, Inc.’s proposed acquisition of Within Unlimited, Inc., FTC File No. 221-0040.
2. “Communication” is used in the broadest possible sense and includes without any limitation every conceivable manner or means of disclosure, transfer, or exchange of oral or written information between one or more persons, entities, devices, platforms, or systems, whether in the form of an original, a draft, or a copy, whether stored in hard copy, on tape, electronically or digitally, either orally, visually, or in writing, and includes but is not limited to conversations, correspondence, electronic mails or emails, telexes, facsimile transmissions, telecopies, recordings in any medium of oral, written, or typed communications, telephone or message logs, notes or memoranda relating to written or oral communications; and any translation thereof.
3. “Concerning,” “Reflecting,” “Regarding,” and “Relating To” are used in the broadest possible sense and mean, in whole or in part, addressing, analyzing, constituting, containing, commenting, in connection with, dealing with, discussing, describing, embodying, evidencing, identifying, pertaining, referring, reporting, stating, or summarizing. These definitions apply throughout these requests without regard to capitalization.
4. “Defendants” means Meta Platforms, Inc. and Within Unlimited Inc. and all of their predecessors, subsidiaries, parents, affiliates, and other organizational or operating units of them, all past and present directors, officers, employees, agents, representatives, employees, consultants, and attorneys of any of them, all entities acting in joint-venture or partnership relationships with any of them, and all others acting on behalf of any of them, respectively.
5. “Document” is used in the broadest possible sense consistent with the meaning given in Rule 34 of the Federal Rules of Civil Procedure and includes without limitation any written, printed, typed, photocopied, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, data, pictures, sounds or symbols, or any combination thereof. “Document” includes without limitation, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes of minutes of meetings or communications, electronic mail/messages and/or “e-mail,” text messages, social media communications, voice mail messages, instant messaging, any other electronically transmitted messages, questionnaires, surveys, charts, graphs, photographs, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by You through detection devices into usable form), including, without limitation, electromagnetically sensitive storage media such as CDs, DVDs, memory sticks, floppy disks, hard disks and magnetic tapes, and any preliminary versions, as well as drafts or revisions of any of the foregoing, regardless of who authored the Document.

- 1 6. “Including” is used to provide examples of certain types of information and should not be
2 construed as limiting a request in any way. The term “including” shall be construed as if followed
3 by the phrase “but not limited to.”
- 4 7. “Information” means Information in any form, including but not limited to documentary,
5 electronic, graphical, or tabular, and communicated by any means, including but not limited to
6 oral, written, or electronic Communications.
- 7 8. “Local Civil Rules” means the Local Civil Rules of the United States District Courts for the
8 Northern District of California.
- 9 9. “Meta Platforms, Inc.” means Meta Platforms, Inc., its subsidiaries, affiliates, divisions, either
10 collectively, individually, or in any subset; and the present and former officers, directors,
11 employees, agents, and other persons acting on behalf of Meta Platforms, Inc., its divisions,
12 subsidiaries and/or affiliates.
- 13 10. “Plaintiff” refers to the Federal Trade Commission.
- 14 11. “Survey” means the survey that Dr. Hal Singer, retained by the Federal Trade Commission,
15 commissioned Qualtrics to undertake in *Federal Trade Commission v. Meta Platforms, Inc., et al.*,
16 Case No. 5:22-cv-04325-EJD (N.D. Cal.).
- 17 12. “Within Unlimited Inc.” means Within Unlimited Inc., its affiliates, divisions, either collectively,
18 individually, or in any subset; and the present and former officers, directors, employees, agents,
19 and other persons acting on behalf of Within Unlimited Inc., its divisions, subsidiaries, and/or
20 affiliates.
- 21 13. “You,” “Your,” and “Yourself” refer to Qualtrics International Inc. and its divisions, business units,
22 subsidiaries, affiliates, predecessors, successors-in-interest, and companies under its direct or
23 indirect management or control, as well as any of its present and former agents, directors, officers,
24 managers, analysts, accountants, attorneys, representatives, employees, consultants, or other persons
25 acting under its direction or control, including but not limited to any other firm that Qualtrics used to
26 field a panel for the Survey and conduct the Survey.
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INSTRUCTIONS

1. You are requested to produce all Documents and Information described below that can be located by a reasonable search of materials within Your possession, custody or control, or in the possession, custody or control of Your officers, directors, agents, employees, representatives, affiliated or associated companies or any other person or entity acting or purporting to act on Your behalf.
2. Unless otherwise specified, the effective date for these requests is July 27, 2022 to the present.
3. If You object to part of a request, state the basis of Your objections in accordance with Rule 45 of the Federal Rules of Civil Procedure, and produce all responsive Documents and Information that are not within the scope of Your objection.
4. If there are no responsive Documents for a particular request, then so state in Your response.
5. You must produce a log, in accordance with Federal Rule of Civil Procedure 26(b)(5)(A), for any Document You withhold on the basis of any claimed privileged or immunity.
6. These requests shall be deemed continuing requests so as to require supplemental responses if You obtain or discover additional Documents between the time of initial production and the time of the trial. Such supplemental Documents must be produced promptly upon discovery. Defendants specifically reserve the right to seek supplementary responses and the additional supplementary production of Documents before trial.
7. Attached to this Subpoena is a copy of the Protective Order entered in *Federal Trade Commission v. Meta Platforms, Inc., et al.*, Case No. 5:22-cv-04325 (EJD). Documents produced pursuant to this Subpoena may be produced in accordance with the terms of that Protective Order. Note that You may designate documents that You produce “Confidential” or “Highly Confidential” per the terms of that Order.
8. Please contact Meta counsel Jeremy Cain at jeremy.cain@weil.com or 212-310-8498, or Christina Swiatowy at christina.swiatowy@weil.com or 202-682-7518 to discuss how You intend to produce the documents.

REQUESTS FOR PRODUCTION

1. The identity and contact information of the panel provider, as well as the project lead or manager, that distributed the Survey.
2. The email address of each person to whom the Survey was sent.
3. Documents sufficient to identify or show the specific email address associated with each of the 150 persons who completed the Survey.
4. Documents sufficient to show any quality checks to screen out low-quality responses from the Survey and to identify any Survey respondents who were screened out for low-quality responses based on each quality check.
5. Documents sufficient to show any screens for potential fraudulent responses to be excluded from the Survey and to identify any Survey respondents who were screened out for potentially fraudulent responses.
6. All Documents and Communications sent to Survey respondents, regardless of whether the respondent completed the Survey.
7. Documents sufficient to show the composition of the panel used for the Survey.
8. For each Survey question that used a randomized order of options for respondents to choose from, documents sufficient to show how often the specific position associated with each response was chosen in each such question, as well as summary-level information of the frequency that each position was selected for each such question.
9. Documents sufficient to show the results of any pre-test, pilot, or soft launch associated with the first 50 responses to the Survey, as well as the associated email addresses of those first 50 respondents.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC.,

MARK ZUCKERBERG,

and

WITHIN UNLIMITED, INC.,

Defendants.

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

~~PROPOSED~~ PROTECTIVE ORDER
AS MODIFIED BY THE COURT

~~PROPOSED~~ PROTECTIVE ORDER

CASE NO. 5:22-CV-04325-EJD

1 ~~PROPOSED~~ **PROTECTIVE ORDER**

2 For the purposes of protecting the interests of the parties and non-parties in the above-
3 captioned matter against the improper use and disclosure of confidential information submitted
4 or produced in connection with this matter:

5 IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all
6 Confidential and Highly Confidential Information, as hereafter defined.

7 1. As used in this Order, “Confidential Information” means any trade secret or other
8 confidential research, development, or commercial information, as such terms are used in Fed. R.
9 Civ. P. 26(c)(1)(G), or any Document, transcript, or other material containing such information
10 that has not been published or otherwise made publicly available. In addition, a designating party
11 may designate as Confidential any information or items made publicly available in violation of a
12 court order to keep such information confidential, that the designating party believes should
13 receive Confidential treatment. This includes (i) information copied or extracted, summarized or
14 compiled from Confidential Information, and (ii) testimony, conversations, or presentations that
15 might reveal Confidential Information.

16 2. As used in this Order, “Highly Confidential Information” shall only include
17 Confidential Information that, if disclosed, is likely to cause material and significant harm to the
18 party or non-party whose Highly Confidential Information is disclosed. Highly Confidential
19 Information includes trade secrets, including algorithms and source code; non-public,
20 commercially sensitive customer lists; non-public financial, marketing, or strategic business
21 planning information; current or future non-public information regarding prices, costs, or
22 margins; information relating to research, development, testing of, or plans for existing or
23 proposed future products; evaluation of the strengths and vulnerabilities of product offerings,
24 including non-public pricing and cost information; confidential contractual terms, proposed
25 contractual terms, or negotiating positions (including deliberations about negotiating positions)

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 taken with respect to Defendant(s) or competitors to Defendant(s); information relating to
2 pending or abandoned patent applications that have not been made available to the public;
3 personnel files; sensitive personally identifiable information; sensitive health information; and
4 communications that disclose any Highly Confidential Information. Highly Confidential
5 Information also includes information that a non-party believes would expose it or new business
6 ventures with which it is associated to potential retribution or harm if the information were
7 disclosed to Defendant(s).

8 3. As used in this Order, “Document” shall refer to any discoverable writing,
9 recording, transcript of oral testimony, or electronically stored information in the possession of a
10 party or non-party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any
11 of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons
12 retained as consultants or experts for purposes of this proceeding.

13 4. Any Document or portion thereof submitted by a Defendant or a non-party during
14 a Federal Trade Commission investigation (“Investigation Materials”) or during the course of
15 this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or
16 any other federal statute or regulation, or under any federal court or Commission precedent
17 interpreting such statute or regulation, as well as any information that discloses information that
18 has not been published or otherwise made publicly available, or the substance of the contents of
19 any Confidential or Highly Confidential Information derived from a Document subject to this
20 Order, shall be treated as Confidential or Highly Confidential Information for purposes of this
21 Order.

22 5. The parties and any non-parties, in complying with informal discovery requests,
23 disclosure requirements, or discovery demands in this proceeding may designate any responsive
24 Document or portion thereof as Confidential or Highly Confidential Information, including
25 Documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

26
27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 6. The parties, in conducting discovery from non-parties, shall provide to each non-
2 party a copy of this Order so as to inform each such non-party of his, her, or its rights herein.

3 7. A designation of confidentiality shall constitute a representation in good faith and
4 after careful determination that the material is not reasonably believed to be already in the public
5 domain and that counsel believes the material so designated constitutes Confidential or Highly
6 Confidential Information as defined in Paragraph 1 of this Order.

7 8. Material may be designated as Confidential by placing on or affixing to the
8 Document containing such material (in such manner as will not interfere with the legibility
9 thereof), or if an entire folder or box of Documents is Confidential by placing or affixing to that
10 folder or box, the designation “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—
11 FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-EJD,” or any other appropriate
12 notice that identifies this proceeding, together with an indication of the portion or portions of the
13 Document considered to be Confidential Information. Confidential Information contained in
14 electronic Documents may also be designated as Confidential by placing the designation
15 “CONFIDENTIAL – FTC v. Meta/Within,” “CONFIDENTIAL—FTC v. Meta Platforms, Inc.,
16 et al., Case No. 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this
17 proceeding, on the face of the CD or DVD or other medium on which the Document is produced.
18 Masked or otherwise redacted copies of Documents may be produced where the portions masked
19 or redacted contain privileged matter, provided that the copy shall indicate at the appropriate
20 point that portions have been masked or redacted and the reasons therefor.

21 9. Material may be designated as Highly Confidential by placing on or affixing to
22 the Document containing such material (in such manner as will not interfere with the legibility
23 thereof), or if an entire folder or box of Documents is Highly Confidential by placing or affixing
24 to that folder or box, the designation “HIGHLY CONFIDENTIAL – FTC v. Meta/Within,”
25 “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al. Case No. 5:22-cv-04325-
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27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 EJD,” or any other appropriate notice that identifies this proceeding, together with an indication
2 of the portion or portions of the Document considered to be Highly Confidential Information.
3 Highly Confidential Information contained in electronic Documents may also be designated as
4 Highly Confidential by placing the designation “HIGHLY CONFIDENTIAL – FTC v.
5 Meta/Within,” “HIGHLY CONFIDENTIAL—FTC v. Meta Platforms, Inc., et al., Case No.
6 5:22-cv-04325-EJD,” or any other appropriate notice that identifies this proceeding, on the face
7 of the CD or DVD or other medium on which the Document is produced. Masked or otherwise
8 redacted copies of Documents may be produced where the portions masked or redacted contain
9 privileged matter, provided that the copy shall indicate at the appropriate point that portions have
10 been masked or redacted and the reasons therefor.

11 10. Defendants are not required to re-designate Investigation Materials as
12 Confidential or Highly Confidential: all Investigation Materials produced by Defendants
13 presumptively shall be treated as they were designated in the Investigation.

- 14 11. Confidential and Highly Confidential Information shall be disclosed only to:
- 15 (a) the Court presiding over this proceeding, personnel assisting the Court,
 - 16 Plaintiff and its employees, and personnel retained by Plaintiff as experts or
 - 17 consultants for this proceeding;
 - 18 (b) judges and other court personnel of any court having jurisdiction over any
 - 19 appellate proceedings involving this matter;
 - 20 (c) outside counsel of record for any Defendant, their associated attorneys and
 - 21 other employees of their law firm(s), provided they are not employees of any
 - 22 Defendant;
 - 23 (d) anyone retained to assist outside counsel in the preparation or hearing of this
 - 24 proceeding including consultants and testifying experts, provided they are not
 - 25
 - 26

27 ~~PROPOSED~~ PROTECTIVE ORDER

28 CASE NO. 5:22-CV-04325-EJD

1 currently employed by a Defendant and have signed an agreement to abide by the
2 terms of the protective order;

3 (e) any witness or deponent who the examining attorney reasonably believes
4 either authored or received the information in question; and

5 (f) Defendant Meta and Defendant Within shall each, by August 24, 2022, inform
6 Plaintiff of the names of no more than three (3) in-house litigation counsel with
7 responsibilities for the litigation of this Action.

8 The in-house litigation counsel identified by Defendants may only access
9 declarations produced by Plaintiff, draft and final versions of pleadings, motions,
10 and other briefs, hearing transcripts and expert reports—including portions of
11 such filings, transcripts, or reports that quote or paraphrase confidential
12 material—but not exhibits to such filings, transcripts or reports or underlying
13 discovery material (other than declarations produced by Plaintiff), that have been
14 designated as Confidential or Highly Confidential Information. In preparation for
15 trial, the in-house counsel identified by Defendants may review documents or
16 other discovery material containing confidential material that are included in
17 Plaintiff's exhibit list or that are proposed by outside counsel for inclusion in
18 Defendants' exhibit lists. Before providing such materials to in-house counsel
19 identified by Defendants, Defendants shall redact all confidential material
20 included in their proposed exhibit lists that is not material to the proposed merger
21 or this litigation. The access designated in-house counsel may have to confidential
22 material is subject to reconsideration for good cause shown. The in-house counsel
23 identified by Defendants shall have access to such confidential material for the
24 purpose of defending this litigation only. The in-house counsel identified by
25 Defendants may access confidential material only in person at the offices of their
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1 outside counsel, or using a secure electronic data room or document review
2 platform using individual login identification and passwords. Plaintiff and
3 Defendants shall promptly report any confirmed or suspected unauthorized use or
4 disclosure of confidential material to the Court and opposing counsel. To qualify
5 for access under this subpart, in-house litigation counsel shall first execute an In-
6 House Counsel Agreement Concerning Confidentiality in the form of Appendix A
7 attached hereto (which executed versions shall be maintained by outside counsel
8 for the relevant Defendant and available for inspection upon the request of the
9 Court, any Party, or any non-party who provides Confidential or Highly
10 Confidential Information in this Action).

11 12. Disclosure of Confidential or Highly Confidential Information to any person
12 described in Paragraph 7 of this Order shall be only for the purposes of the preparation and
13 hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever.
14 Nothing herein shall be construed as prohibiting counsel for the Federal Trade Commission or
15 counsel for Meta from serving as counsel in *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590
16 (JEB) (D.D.C.), or any other investigation or litigation involving the Federal Trade Commission
17 and any of the Defendants.

18 13. In the event that any Confidential or Highly Confidential Information is contained
19 in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall
20 be so informed by the Party filing such papers, and such papers shall be filed under seal [^]. To the
21 extent that such material was originally submitted by a non-party, the party including the
22 material in its papers shall immediately notify the submitter of such inclusion. Confidential or
23 Highly Confidential Information contained in the papers shall remain under seal ~~until further~~ ^{only as provided by}
24 order of the Court, provided, however, that such papers may be furnished to persons or entities
25 who may receive Confidential or Highly Confidential Information pursuant to Paragraph 7. ~~Upon~~

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1 ~~or after filing any paper containing Confidential or Highly Confidential Information, the filing~~
2 ~~party shall file on the public record a duplicate copy of the paper that does not reveal~~
3 ~~Confidential or Highly Confidential Information.~~ Further, if the protection for any such material
4 expires, a party may file on the public record a duplicate copy which also contains the formerly
5 protected material.

6 14. Within two business days of exchanging exhibit lists, the parties shall provide
7 notice to any party or non-party whose Confidential or Highly Confidential Information is on
8 that party's exhibit list for purposes of allowing that party or non-party to seek an order that the
9 document or transcript be granted in camera treatment. If that party or non-party wishes in
10 camera treatment for the document or transcript, the party or non-party shall file an appropriate
11 motion with the Court within five business days after it receives such notice. Except where such
12 an order is granted, all documents and transcripts shall be part of the public record. Where in
13 camera treatment is granted, a duplicate copy of such document or transcript with the
14 Confidential or Highly Confidential Information deleted therefrom may be placed on the public
15 record.

16 15. If any party receives a discovery request in any investigation or in any other
17 proceeding or matter that may require the disclosure of Confidential or Highly Confidential
18 Information submitted by another party or non-party, the recipient of the discovery request shall
19 promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an
20 order of a court, such notification shall be in writing and be received by the submitter at least ten
21 business days before production and shall include a copy of this Protective Order and a cover
22 letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as
23 requiring the recipient of the discovery request or anyone else covered by this Order to challenge
24 or appeal any order requiring production of Confidential or Highly Confidential Information,
25 subject itself to any penalties for non-compliance with any such order, or to seek any relief from
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1 the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of
2 Confidential or Highly Confidential Information. In addition, nothing herein shall limit the
3 applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to
4 discovery requests in another proceeding that are directed to the Commission.

5 16. At the time that any consultant or other person retained to assist counsel in the
6 preparation of this action concludes participation in the action, such person shall return to
7 counsel all copies of Documents or portions thereof designated Confidential or Highly
8 Confidential that are in the possession of such person, together with all notes, memoranda or
9 other papers containing Confidential or Highly Confidential Information. Within 90 days after
10 the expiration of the time for appeal of an order, judgment, or decree terminating this litigation,
11 or any administrative proceeding, whichever is later, all persons having received information
12 designated as Highly Confidential Information or Confidential Information must either make a
13 good faith effort to return such material and all copies thereof to the producing person (or the
14 producing person's counsel if represented by counsel) that produced it; or certify that it has
15 destroyed or deleted all such Highly Confidential Information or Confidential Information in
16 writing to the producing person.

17 17. All Documents produced will be treated as Highly Confidential Information for
18 ten (10) business days from the date this Protective Order is filed, even if not designated in
19 accordance with this Protective Order. Any production of Documents not designated as
20 Confidential or Highly Confidential Information will not be deemed a waiver of any future claim
21 of confidentiality concerning such information if it is later designated as Confidential or Highly
22 Confidential Information. If at any time prior to the conclusion of this litigation, a Party or non-
23 party determines that it should have designated as Confidential or Highly Confidential
24 Information any Documents that the Party previously produced, it may so designate such
25 Documents by notifying the parties in writing. The parties shall thereafter treat the Documents

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1 pursuant to the new designation under the terms of this Protective Order. No prior disclosure of
2 newly designated Confidential or Highly Confidential Information shall violate this Protective
3 Order, provided that the prior disclosure occurred more than ten (10) business days after the
4 production of that previously non-designated Confidential or Highly Confidential Information.
5 The disclosure of any information for which disclosure was proper when made will not be
6 deemed improper regardless of any such subsequent designation. Any Documents, data, or other
7 information produced to the Federal Trade Commission during its investigation and designated at
8 the time of production as confidential, highly confidential, proprietary, exempt from disclosure
9 under the Freedom of Information Act, or submitted under the HSR Act shall be deemed Highly
10 Confidential Information for purposes of this litigation.

11 18. The provision of this Protective Order, insofar as they restrict the communication
12 and use of confidential discovery material, shall, without written permission of the submitter or
13 further order of the Court, continue to be binding after the conclusion of this proceeding.

14 19. Any disputes arising under this Order shall be submitted to the undersigned in
15 accordance with the Court's standing order for Civil Discovery: [https://www.cand.uscourts.gov/
16 wp-content/uploads/judges/van-keulen-svk/
SVK_Civil_and_Discovery_Referral_Matters_Standing_Order_11-15-2021.pdf](https://www.cand.uscourts.gov/wp-content/uploads/judges/van-keulen-svk/SVK_Civil_and_Discovery_Referral_Matters_Standing_Order_11-15-2021.pdf).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: August 22, 2022

/s/ Abby L. Dennis

18 Attorney for Plaintiff Federal Trade Commission

19
20 DATED: August 22, 2022

/s/ Bambo Obaro

21 Attorney for Defendant Meta Platforms, Inc.

22
23 DATED: August 22, 2022

/s/ Christopher J. Cox

24 Attorney for Defendant Within Unlimited, Inc.

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FILER'S ATTESTATION

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

By: /s/ Abby L. Dennis
Abby L. Dennis

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 Dated: August 24, 2022

3 
4 ~~Honorable Edward J. Davila~~
5 ~~United States District Judge~~
6 ~~Northern District of California~~
7 **Honorable Susan van Keulen**
8 **United States Magistrate Judge**

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APPENDIX A

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

META PLATFORMS, INC., et al.,

Defendants.

**IN-HOUSE LITIGATION COUNSEL AGREEMENT CONCERNING
CONFIDENTIALITY**

I, _____, am employed as _____ by _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action, agree that in my role as in-house litigation counsel for the above Defendant company I meet the requirements of paragraph 11(f) of this Protective Order, and agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the Northern District

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of California solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE

~~PROPOSED~~ PROTECTIVE ORDER

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

Exhibit 23

Confidential - Redacted in Entirety

Exhibit 24

Confidential - Redacted in Entirety

Exhibit 25

Confidential - Redacted in Entirety

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 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
600 Pennsylvania Ave., NW, Rm. H-113
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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(202) 682-7235
michael.moiseyev@weil.com
Meta.ALJ.Case-Weil.KH@weil.com

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WithinFTC9411@hoganlovells.com

Counsel for Within Unlimited, Inc.

By: s/ Adam Pergament
Adam Pergament

Counsel Supporting the Complaint