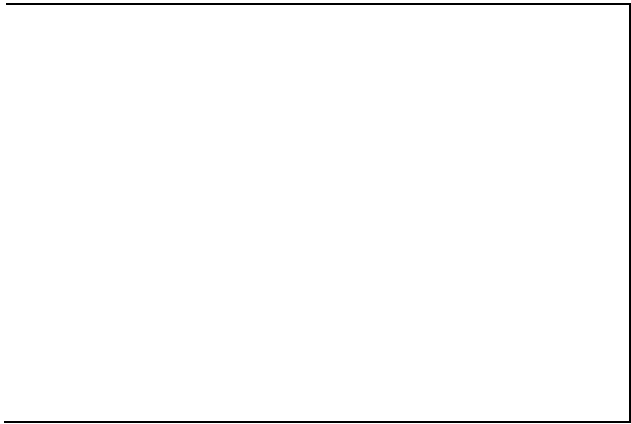


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1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated
2 attorneys, petitions this Court for a preliminary injunction enjoining Defendants Meta
3 Platforms, Inc., and its subsidiaries (collectively “Meta”) from consummating its proposed
4 acquisition (the “Acquisition”) of Within Unlimited, Inc. (“Within”). The Commission seeks
5 this relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15
6 U.S.C. § 53(b). Absent such relief, Meta and Within (collectively, “Defendants”) have
7 represented that they would be free to consummate the Acquisition after 11:59 p.m. Eastern
8 Time (or 8:59 p.m. Pacific Time) on December 31, 2022.

9 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever
10 it has reason to believe that a proposed merger is unlawful, to seek preliminary injunctive relief
11 to prevent consummation of a merger until the Commission has had an opportunity to
12 adjudicate the merger’s legality in an administrative proceeding. Preliminary injunctive relief is
13 imperative to preserve the *status quo* and to protect competition while the Commission
14 adjudicates whether the Acquisition is unlawful. The Commission initiated the administrative
15 proceeding on the legality of the Acquisition under antitrust law, pursuant to Sections 7 and 11
16 of the Clayton Act, 15 U.S.C. §§ 18, 21, and Section 5 of the FTC Act, 15 U.S.C. § 45, by filing
17 an administrative complaint on August 11, 2022. Pursuant to FTC regulations, the
18 administrative trial will begin on January 19, 2023. Allowing the Acquisition to proceed would
19 harm competition and consumers and undermine the Commission’s ability to remedy the
20 anticompetitive effects of the Acquisition if the Commission issues an administrative complaint
21 and the Acquisition is found unlawful after a full administrative trial on the merits and any
22 subsequent appeals.

23
24 1. Meta, one of the largest technology companies in the world and the leading
25 provider of virtual reality (“VR”) devices and applications (“apps”) in the United States, seeks
26 to acquire Within, a software company that develops apps for VR devices, including the highly
27 popular and rapidly growing fitness app “Supernatural.” If consummated, the Acquisition would

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

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

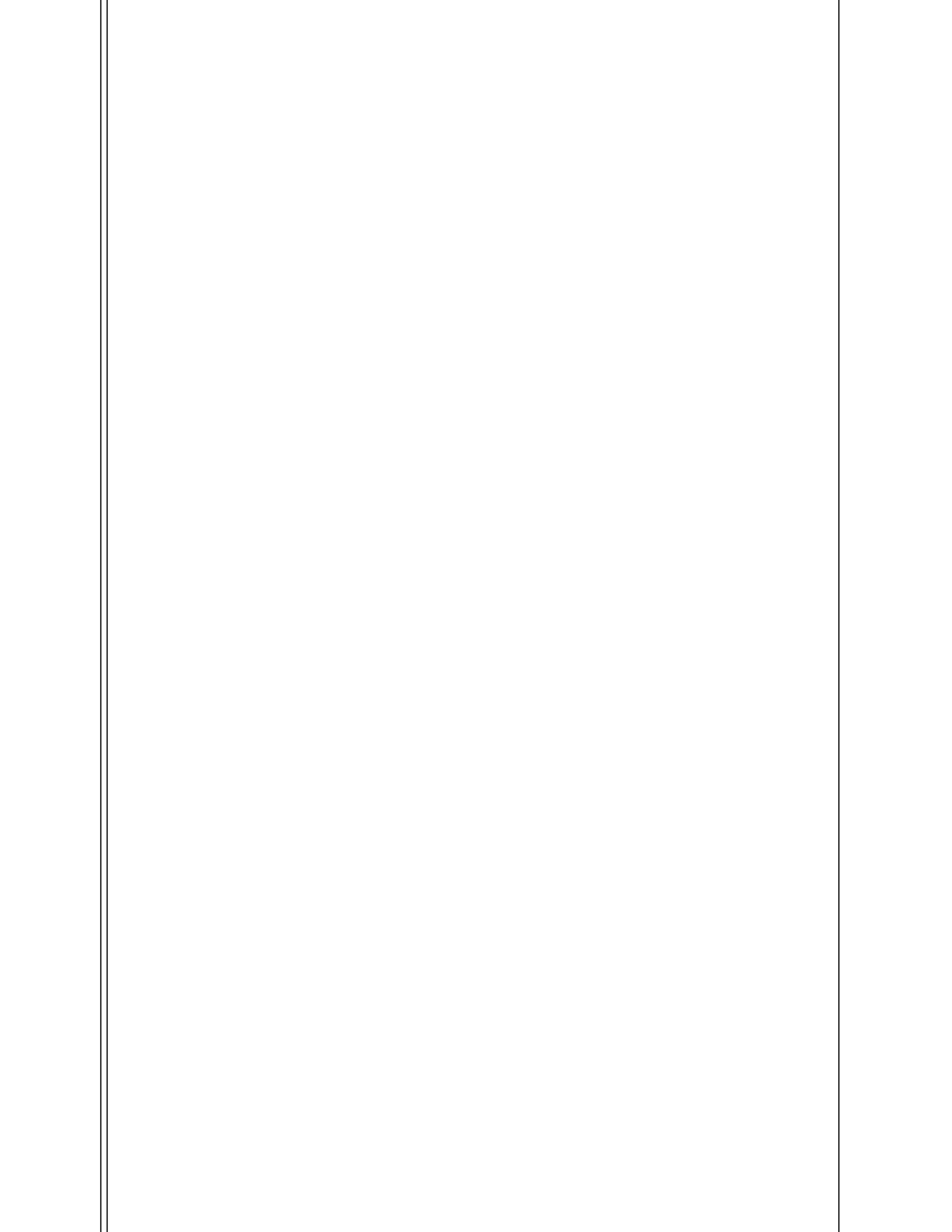
12 3. Meta’s campaign to conquer VR began in 2014 when it acquired Oculus VR,
13 Inc., a VR headset manufacturer. Since then, Meta’s VR headsets have become the cornerstone
14 of its growth in the VR space: its current generation headset, the Meta Quest 2, is by far the
15 most widely used VR headset today, with a significant majority of headset sales in 2021 and
16 2022. Meta CEO Mark Zuckerberg has publicly stated that Meta subsidizes its VR devices or
17 sells them at cost in order to attract users.

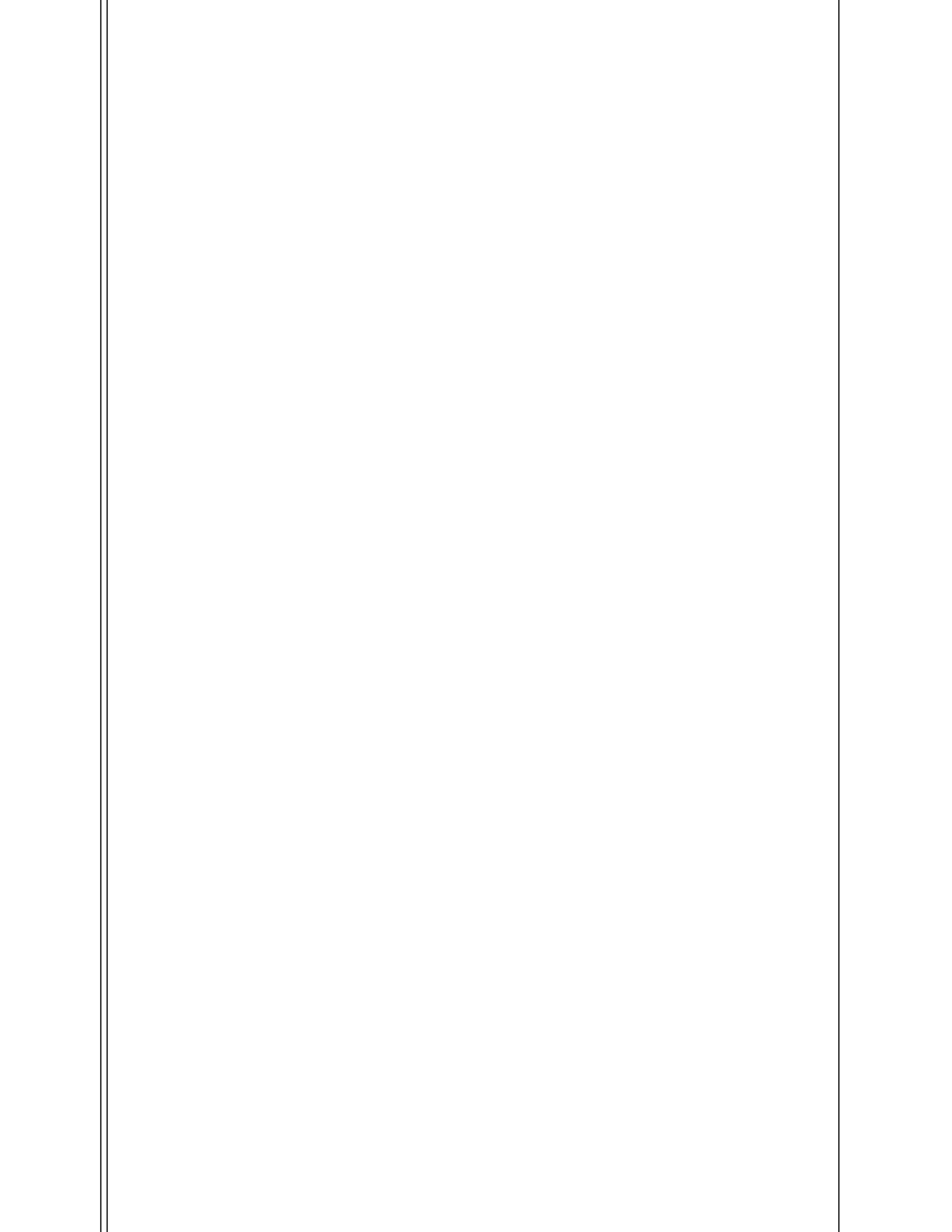
18 4. And Meta’s Quest Store (formerly Oculus Store) has become the leading
19 distribution platform for VR software apps in the United States, connecting app developers and
20 VR users in an online marketplace through which developers can offer their products to users
21 for download onto their individual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

23 [REDACTED]
24 [REDACTED] In addition to Beat Games, Meta owns a number of other VR
25 apps, some of which it developed in-house but most of which it acquired by rolling up other app
26 studios.

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1 Congress protecting trade and commerce against restraints and monopolies and is brought by an
2 agency of the United States authorized by an Act of Congress to bring this action.

3 17. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

4 Whenever the Commission has reason to believe—

5 (1) that any person, partnership, or corporation is violating, or is about to
6 violate, any provision of law enforced by the Federal Trade Commission, and

7 (2) that the enjoining thereof pending the issuance of a complaint by the
8 Commission and until such complaint is dismissed by the Commission or set
9 aside by the court on review, or until the order of the Commission made
10 thereon has become final, would be in the interest of the public—

11 the Commission by any of its attorneys designated by it for such purpose
12 may bring suit in a district court of the United States to enjoin any such
13 act or practice. Upon a proper showing that, weighing the equities and
14 considering the Commission’s likelihood of ultimate success, such action
15 would be in the public interest, and after notice to the defendant, a
16 temporary restraining order or a preliminary injunction may be granted
17 without bond. . . .

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

21 **B. Venue**

22 19. Venue in the Northern District of California is proper under Section 13(b) of the
23 FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391(b) and (c). Defendants are found, reside,
24 and/or transact business in this state and district, and are subject to personal jurisdiction therein.

25 **C. Intradistrict Assignment**

26 20. Assignment to the San Francisco Division is proper. This action arises in San
27 Mateo County because a substantial part of the events giving rise to these claims occurred in
28 San Mateo County, where Defendant Meta is headquartered.

THE PARTIES AND PROPOSED ACQUISITION

21 21. Plaintiff, the Commission, is an administrative agency of the United States
22 government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 et

1 The Commission is vested with authority and responsibility for enforcing, inter alia, Section 7
2 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

3 22. Defendant Meta is a publicly traded company organized under the laws of
4 Delaware with headquarters in Menlo Park, California. Meta develops and sells VR and other
5 extended reality hardware and software through its “Reality Labs” division. Reality Labs has
6 been growing at breakneck speed: it generated revenues of \$2.274 billion in 2021, which
7 reflected a 127% jump from 2019 and a 100% increase since 2020. Meta’s best VR
8 hardware product to date is the Meta Quest 2, while its best-selling VR software product is the

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INDUSTRY BACKGROUND

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

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

27. Meta’s Quest 2 is the best-selling VR headset in the world.

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

4 30. [REDACTED] Meta's Beat Saber, an
5 enormously popular rhythm game "where you slash the beats of adrenaline-pumping music as
6 they fly towards you, surrounded by a futuristic world." Meta acquired control of Beat Saber
7 through its purchase of Beat Games [REDACTED] in
8 November 2019.

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

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

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



1 36. [REDACTED]

2 [REDACTED]

3 [REDACTED]

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

10 38. VR Fitness App market participants distinguish VR dedicated fitness apps from
11 VR incidental fitness apps like rhythm and sports games that offer fitness benefits simply
12 because they require users to move and physically exert themselves while engaging with the
13 app. Dedicated fitness apps typically entail a higher degree of physical exertion than incidental
14 fitness apps. According to the Virtual Reality Institute of Health and Exercise, se, se, s se, rloTc /h4 (f)-

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1 fitness apps. For example, it does not include VR at-home smart fitness solutions, such as
2 digitally connected exercise bikes, treadmills, weight machines, mobile phone apps, video
3 games, or workout videos.

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

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

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

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

24 46. [REDACTED]

25 [REDACTED] Other than Supernatural and Fit [REDACTED]

26 [REDACTED]

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B.

1 53. Supernatural [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 54. The VR Dedicated Fitness App market HHI has been well above the thresholds

9 for a market to be considered “concentrated” or “highly concentrated” under the Merger

10 Guidelines.

11 EVIDENCE OF LIKELY ANTICOMPETITIVE EFFECTS

12 55. In addition to this presumption of illegality, additional evidence indicates that the

13 Acquisition may substantially lessen competition in the relevant market for VR dedicated

14 fitness apps.

15 A. Anticompetitive Effects in the VR Dedicated Fitness App Market

16 56. The Acquisition would cause anticompetitive effects by eliminating potential

17 competition from Meta in the relevant market for VR dedicated fitness apps. These include

18 eliminating any probability that Meta would enter the market through alternative means absent

19 the Acquisition, as well as eliminating the likely and actual beneficial influence on existing

20 competition that results from Meta’s current position, poised on the edge of the market. As the

21 Merger Guidelines explain, “A merger between an incumbent and a potential entrant can raise

22 significant competitive concerns.”

23 1. It Is Reasonably Probable That Meta Would Have Entered the VR

24 Dedicated Fitness App Market Through Alternative Means Absent This

25 Acquisition

26 57. Meta has the economic characteristics, size, ~~resources~~, capabilities, advantages,

27 and incentives to enter the VR Dedicated Fitness App market—and it has seriously considered

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1 62. Meta could build instead of buy within a reasonable period of time if it could not
2 proceed with this Acquisition. Indeed [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 63. Meta has developed multiple VR apps from scratch before, including the
8 ambitious Horizon Worlds, which allows users to create and explore virtual worlds; Horizon
9 Workrooms, an app that lets Meta test out new uses and platform-level features in the
10 emerging VR productivity category and allows users to connect and collaborate in real time; the

11 Horizon Venues live-events app; and app(ng 6 (at)3 (m)]TJ 0 T 1 /GS0 gs 12 (ng V)2 p0 (evDnd c)4 (

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1 already associate Meta's Beat Saber app with incidental fitness. This "name awareness" would
2 facilitate Meta's organic entry into the VR Dedicated Fitness App market, as a dedicated
3 fitness-oriented version of Beat Saber would be in line with users' understanding of the Beat
4 Saber brand.

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

6 70. [REDACTED]

7 [REDACTED]

8 [REDACTED]

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

11 [REDACTED]

12 72. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 73. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

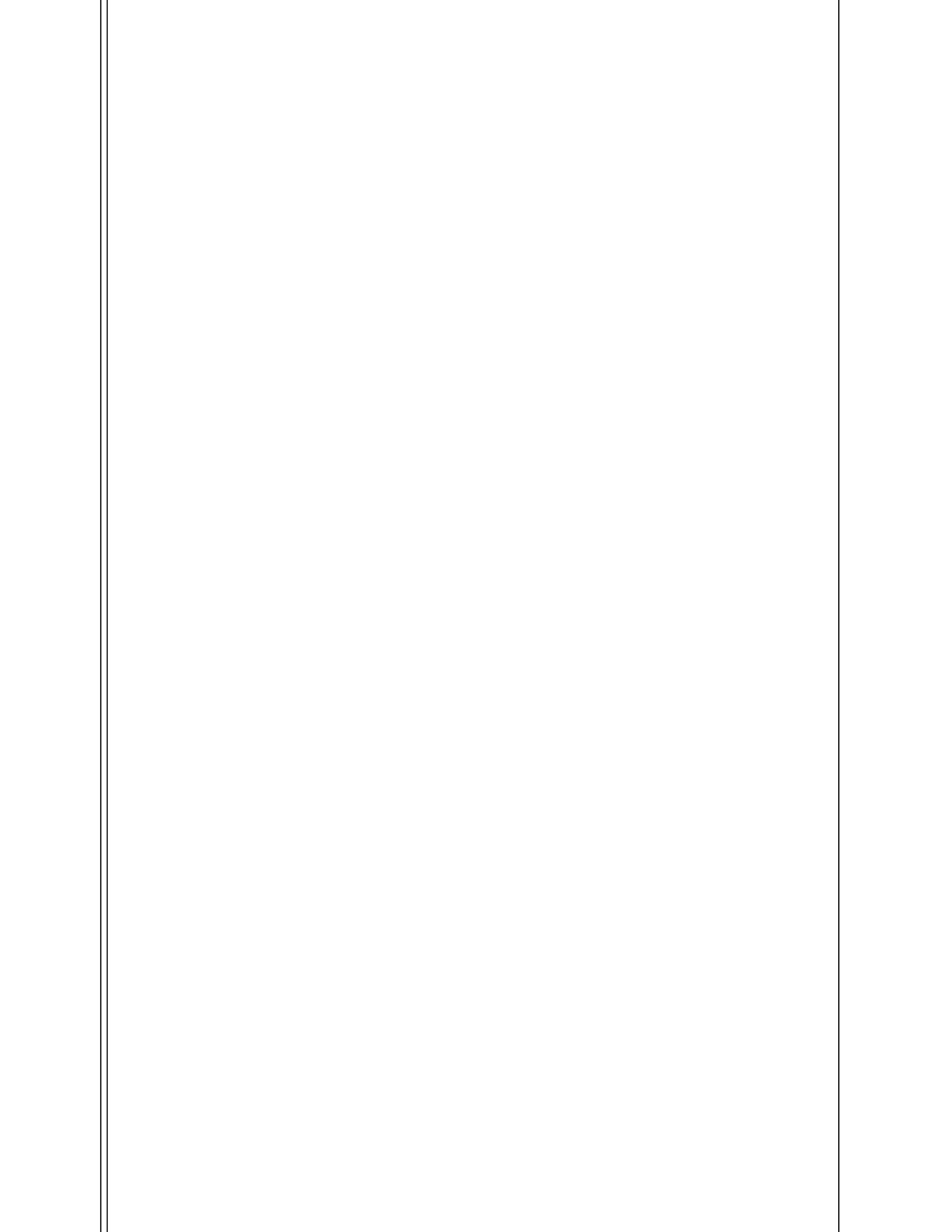
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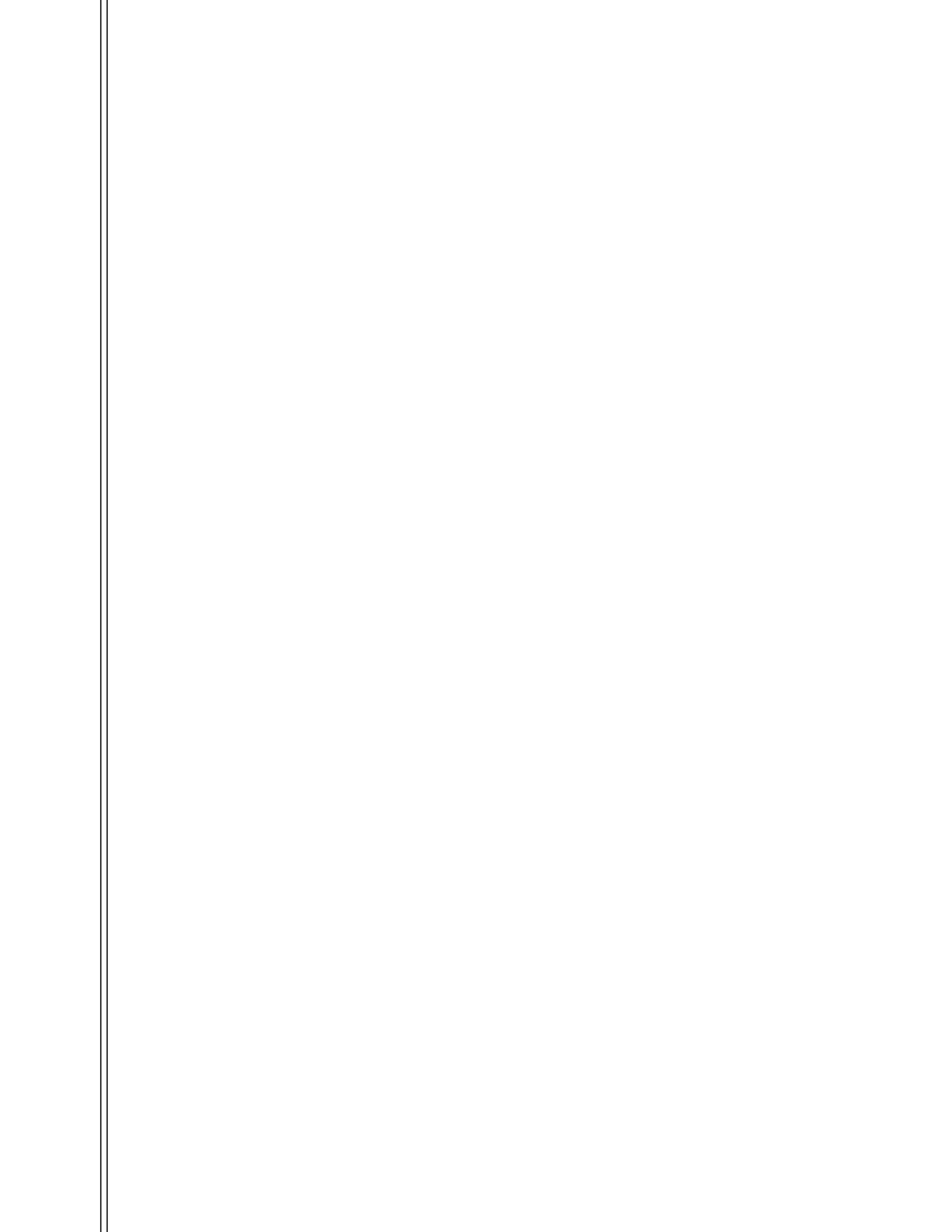
25 [REDACTED]

26 74. [REDACTED]

27 [REDACTED]



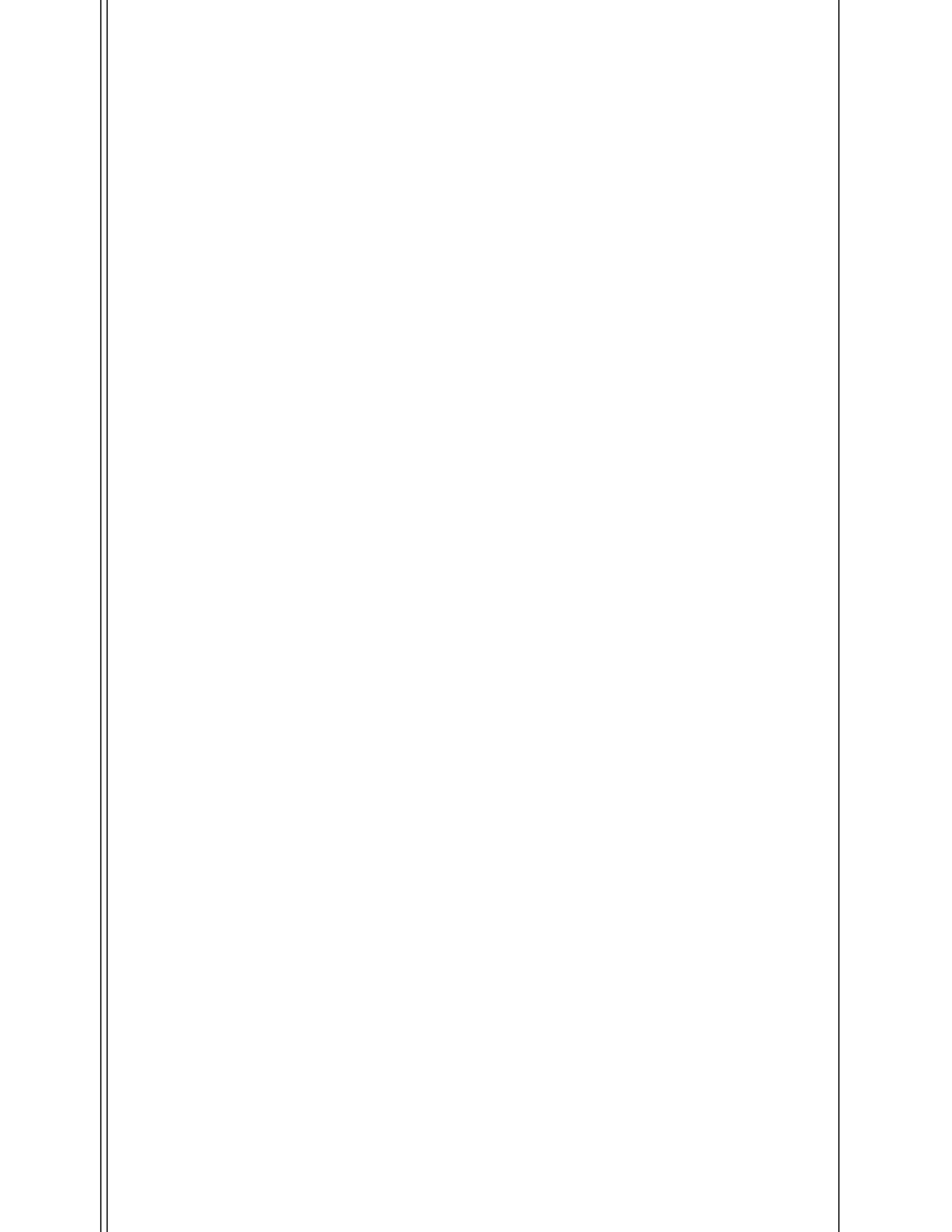
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1 3. Within Reasonably Perceived Meta as a Potential Entrant to the VR
2 Dedicated Fitness App Market

3 92. In light of Meta's economic characteristics, size, resources, capabilities,
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1 113. Preliminarily enjoin Defendants from taking any further steps to consummate the
2 Acquisition, or any other acquisition of stock, assets, or other interests of one another, either
3 directly or indirectly;

4 114. Retain jurisdiction and maintain the *status quo* until the administrative
5 proceeding initiated by the Commission is concluded; and

6 115. Award such other and further relief as the Court may determine is appropriate,
7 just, and proper.

8
9 Dated: October 7, 2022

Respectfully submitted,

10
11 Of counsel:

/s/ Abby L. Dennis

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14 JOHN M.
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