

GLANCY PRONGAY & MURRAY LLP

Brian P. Murray (pro hac vice)
Garth A. Spencer (pro hac vice)
230 Park Ave., Suite 530
New York, New York 10169
Telephone: (212) 682-5340
Facsimile: (212) 884-0988
Email: bmurray@glancylaw.com
gspencer@glancylaw.com

POMERANTZ LLP

Jeremy A. Lieberman (pro hac vice)
Murielle J. Steven Walsh (pro hac vice)
Aatif Iqbal (pro hac vice)
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665
Email: mjsteven@pomlaw.com
aiqbal@pomlaw.com

Lead Counsel for Plaintiffs
[Additional counsel on signature page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BRIAN H. ROBB, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT INC., JAMES PARK, WILLIAM
R. ZERELLA, ERIC N. FRIEDMAN,
JONATHAN D. CALLAGHAN,
STEVEN MURRAY, CHRISTOPHER
PAISLEY, MORGAN STANLEY & CO.
LLC, DEUTSCHE BANK SECURITIES
INC., and MERRILL LYNCH, PIERCE,
FENNER & SMITH INC.,

Defendants.

No. 3:16-cv-00151-SI

CLASS ACTION

**NOTICE OF UNOPPOSED MOTION
AND UNOPPOSED MOTION FOR
DISTRIBUTION OF CLASS
SETTLEMENT FUNDS**

Date: June 7, 2019
Courtroom: 1-17th Floor
Time: 10:00 a.m.
Judge: Hon. Susan Illston

PRELIMINARY STATEMENT

1
2 **PLEASE TAKE NOTICE** that on June 7, 2019 at 10:00 a.m. before the Honorable
3 Susan Illston in Courtroom 1 – 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102,
4 Class Representatives Timothy Flynn, Jesse M. Koth III, Kelley S. Koth, Viet Tran, and Mark
5 Cunningham (“Class Representatives”), through their counsel, will, and do move this Court for
6 an Order: (a) approving the administrative determinations of Angeion Group (“Angeion”),
7 accepting and rejecting the claims submitted as recommended herein and in the Declaration of
8 Brian Manigault in Support of Plaintiffs’ Motion For Distribution of Class Settlement Funds
9 (the “Manigault Declaration”); (b) authorizing payment to Angeion of reasonable administrative
10 expenses; and (c) directing distribution of the Net Settlement Fund to Authorized Claimants.

11 In support of this Motion, Class Representatives submit the following Memorandum of
12 Points and Authorities, the Declaration of Brian P. Murray, Esq., the Manigault Declaration,
13 and a Proposed Order.

14 Defendants do not oppose this motion.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On January 19, 2018 the Court signed the Preliminary Approval Order (Docket No. 207). On May 15, 2019, the Court signed the Amended Order and Final Judgment (the “Final Judgment”) (Docket No. 242).

Class Counsel¹ has been advised by the court-appointed Settlement Administrator, Angeion Group (“Angeion”), that it has completed all analyses and accounting procedures in connection with the proofs of claim submitted by those persons who responded to the Notice, and has determined which of those persons are Authorized Claimants. *See* Declaration of Brian Manigault in Support of Plaintiffs’ Motion for Distribution of Class Settlement Funds (the “Manigault Declaration” or “Manigault Decl.”) at ¶¶ 6-41.

All that remains to complete the Settlement process is to distribute the Net Settlement Fund to the Authorized Claimants. Thus, Class Counsel requests that the Court authorize the distribution of the Net Settlement Fund to the Authorized Claimants.

The proposed distribution will result in participating Authorized Claimants receiving a *pro rata* share of approximately \$27.1 million, calculated as follows:

Settlement proceeds from Defendants	\$33,000,000.00
<i>less</i>	
Attorney fees paid to date	\$5,540,000.00
Attorney expenses paid to date	\$236,552.79
Lead plaintiff compensatory awards	\$6,025.00
Administrative fees paid to date	\$500,000.00
Additional administrative fees requested	\$214,503.68
<i>plus</i>	
Interest	\$628,404.92
TOTAL	\$27,131,323.45

Declaration of Brian P. Murray, Esq. in Support of Plaintiffs’ Motion for Distribution of Class

¹ All capitalized terms herein, unless otherwise indicated, have the same meaning and definition as given to them in the Stipulation and Agreement of Settlement and the exhibits thereto, filed with the Court on January 18, 2018 (the “Stipulation”) (Dkt No. 203).

1 Settlement Funds (“Murray Declaration” or “Murray Decl.”) at ¶ 4.

2 **II. DETERMINATION OF ELIGIBLE CLAIMS**

3 Pursuant to the Preliminary Approval Order, Class Members wishing to participate in
4 the Settlement were initially required to submit Proofs of Claim no later than April 15, 2018.
5 Preliminary Approval Order ¶ 17. Per Lead Counsel’s request, the Court ordered the extension
6 of the Claim submission deadline to August 1, 2018. (Docket No. 245). As a result of an
7 effective notice program, through November 27, 2018, the Settlement Administrator has
8 received 37,024 Proofs of Claim, including 14,299 hard-copy paper Claim Forms and 22,275
9 electronically filed claims. Manigault Declaration ¶¶ 10-11. Angeion reviewed all 37,024 Proofs
10 of Claim and has now finalized its determination of which claims are authorized and which are
11 ineligible. *Id.* ¶¶ 20-28.

12 **A. Properly Documented Claims**

13 Angeion has determined, following an analysis of the 37,024 Proofs of Claim received
14 through November 27, 2018, that 18,553 valid and properly-documented claims were received
15 that had Recognized Claim amounts greater than zero. *See* Manigault Declaration ¶¶ 21-22. Of
16 these 18,553 claims, 13,598 were timely (*i.e.* postmarked no later than August 1, 2018)
17 (“Timely Valid Claims”) and 4,955 were postmarked after August 1, 2018 but received on or
18 before November 27, 2018 (“Late Valid Claims”). *Id.* These valid claims represented
19 Recognized Losses of \$176,347,648.64. *Id.* ¶ 24. This amount includes Recognized Losses for
20 Timely Valid Claims of \$100,811,332.98 and Recognized Losses for Late Valid Claims of
21 \$75,536,315.66. *Id.* ¶¶ 21-22.

22 A main reason for the substantial proportion of claims with Recognized Claim amounts
23 equal zero is that many claimants who purchased Fitbit stock during the Exchange Act Class
24 Period of June 18, 2015 to May 19, 2016 did not hold that stock on either of the two corrective
25 disclosure dates taken into account by the Plan of Allocation as set forth in the Notice (Dkt No.
26 203-2) and approved by this Court. Those two dates are January 5, 2016 and February 23, 2016.
27 Claimants who did not hold on either of the corrective disclosure dates are “in and out”
28 purchasers with no recognizable loss.

1 Class Representatives request that the Court accept all 18,553 valid claims received
2 through November 27, 2018 that had a Recognized Claim amount greater than zero, including
3 the 13,598 Timely Valid Claims and the 4,955 Late Valid Claims. The Late Valid Claims have
4 not caused significant delay to the distribution of the Net Settlement Fund or otherwise
5 prejudiced any Authorized Claimant, and Class Representatives believe that it would be unfair
6 to prevent an otherwise valid claim from participating in the Net Settlement Fund solely
7 because it was submitted after the August 1, 2018 submission deadline but while claims were
8 still being processed. *See Lemus v. H & R Block Enterprises, LLC*, No. 09-cv-3179-SI, 2013
9 WL 3831866, at *2 (N.D. Cal. July 23, 2013) (Illston, J.) (“A district court has discretion to
10 allow late claims to a settlement fund”); *In re TASER Int’l, Inc. Sec. Litig.*, No. 05-cv-115, 2009
11 WL 10707825, at *2 (D. Ariz. July 15, 2009) (allowing claims filed over a period of more than
12 fifteen months, including late claims); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246
13 F.3d 315, 321 (3d Cir. 2001) (court allowing late claim on “finite pool of assets”).

14 Accordingly, Class Representatives respectfully request that the Court approve the
15 18,553 properly documented claims received by the Settlement Administrator by November
16 27, 2018, that had Recognized Claim amounts greater than zero, as listed in Parts One and Two
17 of Exhibit C of the Manigault Declaration.

18 **B. Deficient and Ineligible Claims**

19 **1. Inadequately Documented Claims**

20 Angeion initially identified 762 paper claims that were missing pertinent information
21 and/or documentation, in whole or in part, necessary to calculate a Recognized Claim.
22 Manigault Declaration ¶ 13. Angeion sent 772 deficiency notices or denied claim notices to 762
23 inadequately documented claimants who filed paper claims to advise them of the nature of their
24 deficiency and providing an opportunity to cure (“Ineligible Notices”). *Id.*; *id.* at Exhibit A
25 (sample Ineligible Notice). Electronic filers and banks or other nominees who sent data files
26 were notified of any deficient conditions or rejection of their claim via a Transaction Report that
27 annotated which portions of the information were incorrect or incomplete. *Id.* at ¶ 16; *id.* at
28 Exhibit B (sample Transaction Report). In all, Angeion sent Transaction Reports corresponding

1 to 728 electronic claims that were deemed to be deficient or denied. *Id.* The Ineligible Notices
2 and Transaction Reports advised claimants that they had fourteen days to submit a response to
3 correct their claim. *Id.* at ¶ 17.

4 Angeion received and processed responses to documentation and information requests,
5 including correspondence that, in some cases, cured deficient claims, in whole or in part. *Id.* ¶
6 18. As a result of Angeion performing final quality assurance reviews and processing responses
7 to Ineligible Notices, 347 claims previously determined to be deficient or denied were deemed
8 to be eligible. *Id.*

9 2. Rejected Claims

10 Angeion identified 397 claims that were rejected, in whole or in part. Manigault
11 Declaration ¶ 25. The reasons for rejection were: (i) 211 claims that did not involve transactions
12 during the Class Period; (ii) 148 claims that were duplicative, or were withdrawn by the
13 claimant; (iii) 18 claims that had uncured deficiencies; and (iv) 20 claims that had no beneficial
14 owner provided. *Id.* Angeion notified each of the 397 rejected claimants of the disposition of
15 their claims with an Ineligible Notice for paper claims, or a Transaction Report for claims filed
16 electronically. *Id.* ¶ 26.

17 Angeion identified 18,074 claims having a Recognized Claim amount of zero as
18 calculated under the Plan of Allocation. Manigault Declaration ¶ 27; *id.* at Exhibit C, Part 4 (list
19 of no loss claims). Angeion will send no-loss notices advising such claimants of Angeion's
20 determination. *Id.* at ¶ 27; *id.* at Exhibit D (sample No Loss Notice).

21 A main reason for the substantial proportion of claims with Recognized Claim amounts
22 equal zero is that many claimants who purchased Fitbit stock during the Exchange Act Class
23 Period of June 18, 2015 to May 19, 2016 did not hold that stock on either of the two corrective
24 disclosure dates taken into account by the Plan of Allocation as set forth in the Notice (Dkt No.
25 203-2) and approved by this Court. Those two dates are January 5, 2016 and February 23, 2016.
26 Claimants who did not hold on either of the corrective disclosure dates are "in and out"
27 purchasers with no recognizable loss.

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1 **III. ADDITIONAL EXPENSES INCURRED BY THE SETTLEMENT**
2 **ADMINISTRATOR**

3 As described in the Manigault Declaration, to date the Court has approved, and the
4 Settlement Administrator has received, \$500,000 in reimbursement for reasonable settlement
5 administration expenses. Manigault Decl. ¶¶ 33-35. The Settlement Administrator has prepared
6 invoices for an additional \$167,073.60 of settlement administration expenses already incurred
7 but not yet reimbursed. *Id.* at ¶ 36; *id.* at Ex. E. The Settlement Administrator expects that it will
8 incur additional costs through distribution of the Net Settlement Fund and completion of
9 administration, which costs have not yet been reimbursed and are not covered by the Settlement
10 Administrator's invoices, in the estimated amount of \$47,430.08. *Id.* at ¶ 38; *id.* at Ex. F. Of
11 these \$47,430.08, \$23,749.11 is estimated costs for printing and mailing the distribution checks.
12 *See id.* at Ex. F.

13 Of these additional anticipated costs, \$10,170.33 are estimates based on the Settlement
14 Administrator's prior experience and incorporate assumptions regarding the amount of time
15 necessary to complete certain tasks (*e.g.*, 15 hours for "Generate Distribution list and Post
16 Distribution Services," *see* Exhibit F) or the percentage of checks that will be returned by the
17 postal service (*e.g.*, "Process checks returned as undeliverable," for an estimated 1,594 checks,
18 *see* Exhibit F). Another \$5,725.00 of these additional anticipated costs are estimates based on
19 the assumption that administration of the settlement will require 12 months to complete (*e.g.*, 12
20 months of call center "Monthly Maintenance Fee," *see* Exhibit F). Finally, \$31,534.75 of these
21 additional anticipated costs are reasonably certain based on known information such as the
22 numbers of no loss notices to be printed and mailed, the numbers of checks to be initially
23 printed and mailed, or the cost of tax return preparation (*e.g.*, "Postage for mailing checks," for
24 15,939 checks, *see* Exhibit F).

25 The Settlement Administrator and Class Counsel respectfully request that the Court
26 authorize payment to the Settlement Administrator of \$167,073.60 in satisfaction of the
27 settlement administration expenses reflected in the invoices submitted as Exhibit E to the
28 Manigault Declaration, and an additional \$47,430.08 for the estimated reasonable
administration expenses expected to be incurred through distribution of the Net Settlement Fund

1 and completion of administration as reflected in Exhibit F to the Manigault Declaration.

2 **IV. DISTRIBUTION OF THE NET SETTLEMENT FUND**

3 Pursuant to the Stipulation, “[t]he Settlement Administrator shall administer the
4 Settlement, including but not limited to the process of receiving, reviewing, and approving or
5 denying Proofs of Claim, subject to the jurisdiction of the Court.” Stipulation ¶ 25. Class
6 Counsel now seeks to distribute the Net Settlement Fund to the Settlement Class Members
7 whose 18,553 claims have been accepted as set forth in Parts One and Two of Exhibit C of the
8 Manigault Declaration, in proportion to their Recognized Claims as shown therein.

9 According to the Stipulation, “[a]fter the initial distribution of the Net Settlement Fund,
10 the Settlement Administrator shall make reasonable and diligent efforts to have Authorized
11 Claimants cash their distribution checks. To the extent any monies remain in the fund nine (9)
12 months after the initial distribution, if Lead Counsel, in consultation with the Settlement
13 Administrator, determines that it is cost-effective to do so, the Settlement Administrator shall
14 conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses
15 incurred in administering the Settlement, including for such redistribution, to Authorized
16 Claimants who have cashed their initial distributions and who would receive at least \$10.00
17 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed
18 their prior checks and who would receive at least \$10.00 on such additional redistributions may
19 occur thereafter if Lead Counsel, in consultation with the Settlement Administrator, determines
20 that additional re-distributions, after the deduction of any additional fees and expenses incurred
21 in administering the Settlement, including for such re-distributions, would be cost-effective. At
22 such time as it is determined that the re-distribution of funds remaining in the Net Settlement
23 Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-
24 profit organization(s), to be recommended by Lead Counsel and approved by the Court.”
25 Stipulation ¶ 42.

1 **V. CONCLUSION**

2 Based on the foregoing, Class Representatives respectfully request that the Court decide
3 the within motion on the papers, and approve and enter the [Proposed] Order Authorizing
4 Distribution of Class Settlement Funds.

5 Dated: April 29, 2019

6 **GLANCY PRONGAY & MURRAY LLP**

7 By: /s/ Brian P. Murray
8 Brian P. Murray (*pro hac vice*)
9 Garth A. Spencer (*pro hac vice*)
230 Park Ave., Suite 530
New York, New York 10169
10 Telephone: (212) 682-5340
11 Facsimile: (212) 884-0988
Email: bmurray@glancylaw.com
12 gspencer@glancylaw.com

13 **POMERANTZ LLP**

14 Jeremy A. Lieberman (*pro hac vice*)
Murielle J. Steven Walsh (*pro hac vice*)
15 Aatif Iqbal (*pro hac vice*)
600 Third Avenue, 20th Floor
16 New York, New York 10016
17 Telephone: (212) 661-1100
Facsimile: (917) 463-1044
18 Email: jalieberman@pomlaw.com
mjsteven@pomlaw.com
19 aiqbal@pomlaw.com

20 **POMERANTZ LLP**

21 Patrick V. Dahlstrom (*pro hac vice*)
10 South La Salle Street, Suite 3505
22 Chicago, Illinois 60603
23 Telephone: (312) 377-1181
Facsimile: (312) 377-1184
24 Email: pdahlstrom@pomlaw.com

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POMERANTZ LLP
Jennifer Pafiti (SBN #282790)
468 North Camden Drive
Beverly Hills, California 90210
Telephone: (818) 532-6449
Email: jpafiti@pomlaw.com

Lead Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on April 29, 2019.

/s/ Brian P. Murray _____
Brian P. Murray