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**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.

Case No. 3:16-cv-00151-SI

CLASS ACTION

**STATE COURT PLAINTIFFS' BRIEF IN
SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF SETTLEMENT,
CLASS CERTIFICATION, AND PLAN OF
ALLOCATION**

Date: April 20, 2018
Time: 10:00 a.m.
Judge: Hon. Susan Illston
Courtroom: 1 – 17th Floor

1 **I. PRELIMINARY STATEMENT**

2 Raul Rivera and Ana da Luz (collectively, the "State Court Plaintiffs"), plaintiffs in the
3 related consolidated putative class action pending in the Superior Court of the State of California,
4 County of San Francisco, captioned *In re Fitbit, Inc. Shareholder Litigation*, Lead Case No. CGC-
5 16-552062 (the "State Court Action"), respectfully submit this brief in support of the Motion for
6 Final Approval of Settlement, Class Certification, and Plan of Allocation (the "Motion") filed in
7 this action on March 16, 2018, by Lead Plaintiff Fitbit Investor Group, consisting of Plaintiffs and
8 Class Representatives Timothy Flynn, Jesse M. Koth, Kelley Koth, Viet Tran, and Mark
9 Cunningham. Dkt. No. 209. The proposed Settlement of this action, if approved, will resolve the
10 State Court Action.¹

11 The State Court Plaintiffs believe this Settlement is an excellent result, resulting from
12 arm's-length negotiations by highly experienced counsel on both sides. The State Court Plaintiffs
13 respectfully request that the Court grant final approval of the Settlement.

14 **II. THE STATE COURT ACTION**

15 On April 28, 2016, plaintiff Raul Rivera filed a complaint in Superior Court of California,
16 County of San Mateo, *Rivera v. Fitbit, Inc., et al.*, Case No. CIV 538403 ("*Rivera*"). On May 17,
17 2016, plaintiff Ana da Luz commenced her action, Case No. CGC-16-552062 ("*da Luz*"), in the
18 Superior Court of California, County of San Francisco ("State Court"). On May 27 and June 16,
19 2016, certain defendants removed *Rivera* and *da Luz*, respectively, to the U.S. District Court for
20 the Northern District of California. The State Court Plaintiffs filed motions to remand in their
21 respective cases, which this Court granted on July 27, 2016. Upon stipulation of the parties,
22 *Rivera* was transferred to the State Court on November 14, 2016. *Rivera* and *da Luz* were then
23 consolidated by the State Court, and the State Court Plaintiffs filed their amended consolidated
24 complaint on February 7, 2017. Defendants in the State Court Action filed demurrers to the
25 amended complaint, as well as motions to strike and stay the State Court Action.

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27 ¹ All capitalized terms, unless otherwise defined, have the same meaning herein as set forth in the
28 Stipulation and Agreement of Settlement filed January 18, 2018 (the "Stipulation"). Dkt. No. 203.

1 On April 7, 2017, the State Court entered an order sustaining in part and overruling in part
2 defendants' demurrers and subjecting the State Court Action to a general stay pending conclusion
3 of this Action. The parties to the State Court Action have been periodically updating the State
4 Court on the status of and developments in this Action.

5 **III. STATE COURT PLAINTIFFS BELIEVE THE PROPOSED SETTLEMENT IS AN**
6 **APPROPRIATE AND SUCCESSFUL CONCLUSION TO THE SECURITIES**
7 **LITIGATION**

8 The State Court Plaintiffs are parties to the Settlement and to the Stipulation. Stipulation at
9 1, 2-3, ¶14. The undersigned counsel for the State Court Plaintiffs were participants at the
10 September 14, 2017, mediation session at which an understanding in principle was reached to
11 settle the Action and to fully resolve all claims. The Stipulation provides that as part of the
12 Settlement, counsel for the State Court Plaintiffs will receive \$450,000 for fees and expenses
13 incurred in the prosecution of the State Court Action. Stipulation, ¶51; *see* Declaration of George
14 C. Aguilar in Support of State Court Plaintiffs' Brief in Support of Plaintiffs' Motion for Final
15 Approval of Settlement, Class Certification, and Plan of Allocation, ¶¶5, 7, filed herewith;
16 Declaration of Joshua M. Lifshitz in Support of Derivative Plaintiffs' Brief in Support of Class
17 Representative's Motion for Final Approval of Settlement, Class Certification, and Plan of
18 Allocation, ¶5, (Dkt. No. 225); Declaration of Adam T. Hoover in Support of Derivative Plaintiffs'
19 Brief in Support of Class Representative's Motion for Final Approval of Settlement, Class
20 Certification, and Plan of Allocation, ¶5, (Dkt. No. 224). The State Court Action will be resolved
21 through a motion for dismissal with prejudice within 14 days of the entry of the Judgment granting
22 final approval of the Settlement. Stipulation, ¶14.

23 The State Court Plaintiffs join in the motion for final approval and application for
24 attorneys' fees and expenses. Dkt. Nos. 209, 210. The Settlement is an outstanding result. The
25 Settlement provides the Settlement Class without almost 20% of reasonably recoverable damages,
26 significantly better than the historical norm for settlements in securities class actions. The State
27 Court Plaintiffs agree with Lead Counsel that the complexity of the facts at issue, the substantial
28 expenses if the actions were to proceed to trial, and the risks associated with summary judgment,

1 trial and appeals for all parties, weigh heavily in favor of approving the Settlement. The
2 Settlement provides a sizable, immediate, and certain benefit to the Settlement Class and is in its
3 best interests.

4 Furthermore, Plaintiffs' motion for attorneys' fees and expenses, and compensatory awards
5 for Plaintiffs should likewise be approved.² Lead Counsel's request for 25% of the gross
6 Settlement Fund is reasonable and well supported by similar cases and authorities within the Ninth
7 Circuit, and as a lodestar cross-check as detailed in Plaintiff's motion. Dkt. No. 210 at 3-9, 16-17.
8 Facing substantial uncertainty upon contingency retention that no recovery for the Settlement
9 Class could be realized, Lead Counsel has ably litigated the case to its present standing and
10 negotiated at arms-length an excellent result.

11 Finally, upon approval of the Settlement, the State Court Plaintiffs will move within
12 fourteen days of the Judgment to dismiss the State Court Action with prejudice and it is the
13 expectation of the parties that the State Court will so order.

14 **IV. CONCLUSION**

15 For the foregoing reasons and as stated in Plaintiffs' motions for final approval, fees,
16 expenses, and compensatory awards, all such motions should be granted with the resulting effect
17 that the State Court Actions will be dismissed with prejudice.

18 Dated: April 13, 2018

Respectfully submitted,

19 **ROBBINS ARROYO LLP**
20 **BRIAN J. ROBBINS**
GEORGE C. AGUILAR

21 */s/ George C. Aguilar*

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27 ² The State Court Plaintiffs are not included in the request for compensatory awards and do not
28 make any such request.

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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 13, 2018.

/s/ George C. Aguilar

GEORGE C. AGUILAR