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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.

No. 3:16-cv-00151-SI

**DECLARATION OF GARTH A.
SPENCER, ESQ. IN SUPPORT OF
(1) PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
SETTLEMENT, CLASS
CERTIFICATION AND PLAN OF
ALLOCATION, AND (2)
PLAINTIFFS' MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND COMPENSATORY AWARDS
FOR PLAINTIFFS**

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

1 Pursuant to 28 U.S.C. §1746, I, Garth A. Spencer, hereby declare as follows:

2 1. I am over twenty-one years of age and I am fully competent to make this
3 Declaration. I have personal knowledge of the facts set forth in this Declaration, and if called
4 upon, could and would testify thereto.

5 2. I am an Associate of the law firm of Glancy Prongay & Murray LLP (“GPM”),
6 Court-appointed Co-Lead Counsel and counsel for the Settlement Class, and counsel for Lead
7 Plaintiff and Class Representative Fitbit Investor Group (comprised of Timothy Flynn, Jesse M.
8 Koth and Kelley Koth, Viet Tran, and Mark Cunningham) in the above-captioned Action.¹

9 3. I make this Declaration in support of Plaintiffs’ Motion for Final Approval of
10 Settlement, Class Certification and Plan of Allocation, and in support of Plaintiffs’ Motion for
11 Award of Attorneys’ Fees, Reimbursement of Expenses and Compensatory Awards for
12 Plaintiffs.

13 4. On April 2, 2018 I and other counsel of record for the Parties in the Action
14 received an email which included as an attachment a .pdf file containing a document titled
15 Objection of Jeff M. Brown Pro Se to the Proposed Settlement and Notice of Intent Not to
16 Appear, which was signed by Jeff M. Brown and dated April 2, 2018. That document appears to
17 be identical to the document later filed by the Court at ECF No. 223 on April 12, 2018.

18 5. The April 2 email did not contain any details about or documentation of Jeff M.
19 Brown’s ownership of Fitbit securities, other than the statement in the objection that “Objector
20 states that he is a class member,” and other statements in the objection to similar effect.

21 6. The April 2 email was sent from the account eb5venturesllc@gmail.com, and
22 displayed the name “Patrick Sweeney” next to the email address in the sender field. The body of
23 the email however was signed “Regards, Jeff M. Brown.”

24 7. After researching Patrick Sweeney and Jeff M. Brown I concluded that these
25

26
27 ¹ Unless otherwise defined, all capitalized terms herein have the same meaning as
28 assigned in the Stipulation and Agreement of Settlement dated January 18, 2018 (Dkt No. 203)
and exhibits thereto (collectively, the “Stipulation”).

1 individuals are serial objectors to class action settlements, and that Mr. Brown often failed to
2 demonstrate standing to make his objections. For this reason GPM and Pomerantz decided to
3 subpoena Jeff M. Brown to provide documents and a deposition relating to, *inter alia*, his
4 objection and his standing to object.

5 8. On April 3 I replied to the April 2 email, attaching copies of two subpoenas, one
6 noticing document production for April 11, and one noticing a deposition for April 12. These
7 subpoenas were delivered by a process server to Mr. Brown's residence on April 5, along with
8 the required deposition attendance fee in the amount of \$100.

9 9. From April 3 to April 10 I was in intermittent communication with Patrick
10 Sweeney and Jeff Brown by phone and email regarding the subpoenas and Mr. Brown's
11 objection.

12 10. On the evening of April 10, Jeff Brown offered in a phone call to withdraw his
13 objection in return for GPM's withdrawal of its subpoenas. I agreed to this proposal on behalf of
14 GPM.

15 11. On the morning of April 11 Jeff Brown sent me an email to confirm withdrawal
16 of his objection. A true and correct copy of that email is attached hereto as Exhibit A.

17 12. At no point did I or anyone else to my knowledge offer or provide any
18 consideration to Mr. Sweeney or Mr. Brown (with the exception of the deposition attendance
19 fee enclosed with the subpoena), either in exchange for the withdrawal of the objection or
20 otherwise.

21 13. At no point in our communications did Mr. Sweeney or Mr. Brown provide the
22 requested details about or documentation of Jeff M. Brown's ownership of Fitbit securities,
23 other than to state that the records would be or had been obtained from Morgan Stanley.

24 14. On April 12 the Court filed Mr. Brown's objection at ECF No. 223.

25 15. On April 12 I emailed Mr. Brown, and unsuccessfully tried to reach him by
26 phone, to ask him to inform the Court that he had withdrawn his objection. As of my signing of
27 this declaration in the early afternoon on April 13, I have yet to hear back from Mr. Brown
28 about that request.

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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 13 April, 2018 at New York, New York.

/s/ Garth A. Spencer
Garth A. Spencer

Exhibit A

Garth Spencer

From: Jeff Brown <jbrown@lavallebrown.com>
Sent: Wednesday, April 11, 2018 10:02 AM
To: Patrick Sweeney; Garth Spencer; eb5enturesllc@gmail.com
Cc: Jeff Brown
Subject: RE: Fit Bit

I'm in agreement . I withdraw my objection and confirm cancellation of the deposition.

Regards,
Jeff Brown

Lavalle, Brown & Ronan, P.A. | 750 South Dixie Highway | Boca Raton, FL 33432
Telephone: 561-395-0000 or 855-BOCA-LAW | Facsimile: 561-395-9093
email: JBrown@lavallebrown.com
www.bocalaw.com



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From: Patrick Sweeney [<mailto:eb5venturesllc@gmail.com>]
Sent: Tuesday, April 10, 2018 9:00 PM
To: Garth Spencer <GSpencer@glancylaw.com>; Jeff Brown <jbrown@lavallebrown.com>; eb5enturesllc@gmail.com
Subject: Re: Fit Bit

Hello Garth and Jeff

Confirming our 3 way telephone conversation just now whereby You and Jeff agreed that Jeff will withdraw his objection and is thereby dismissed from the case and as a result Jeff' s depo is cancelled.

Jeff will reply to this email tommorow morning confirming this understanding.

Thanks.
Patrick

On Mon, Apr 9, 2018, 1:06 PM Garth Spencer <GSpencer@glancylaw.com> wrote:

Patrick and Jeff,

Some of the defense counsel would like to join Jeff's deposition this Thursday by phone. Please confirm that you will have a speaker phone available in the conference room we will be using for the deposition.

Also, when do you expect to send us Jeff's Fitbit securities transaction records? I understood from last week's call that you expected to have those records "momentarily".

Finally, I note that Jeff's objection still has not appeared on the court's docket. Please confirm that the objection was in fact sent to the court on April 2, and please provide the tracking information you referred to in last week's phone call.

Best,

Garth

Garth Spencer

Glancy Prongay & Murray LLP

230 Park Avenue, Suite 530

New York, NY 10169

646-455-1657

From: Garth Spencer

Sent: Thursday, April 05, 2018 5:43 PM

To: 'Michael S.'; 'Patrick Sweeney'

Cc: 'Camille Martin'; Brian Murray; 'jalieberman@pomlaw.com'; 'mjsteven@pomlaw.com'; 'Aatif Iqbal'

Subject: RE: Fit Bit

Patrick and Jeff,

Following up on our call this afternoon I confirm that we agree to hold Mr. Brown's deposition beginning at 10:00 a.m. on Thursday April 12, at the offices of Lavalley Brown & Ronan at 750 South Dixie Highway, Boca Raton, Florida.

I understand from our call that Mr. Brown expects to produce his Fitbit securities transaction records shortly. We would appreciate if you could provide those records and all the other documents requested in our subpoena by email on a rolling basis as soon as they become available, and no later than the morning of Wednesday April 11 as noticed in the subpoena.

Thanks for your cooperation.

Best,

Garth

Garth Spencer

Glancy Prongay & Murray LLP

230 Park Avenue, Suite 530

New York, NY 10169

646-455-1657

From: Garth Spencer

Sent: Thursday, April 05, 2018 12:08 PM

To: 'Michael S.'

Cc: Camille Martin; 'Patrick Sweeney'; Brian Murray; jalieberman@pomlaw.com; mjsteven@pomlaw.com; 'Aatif Iqbal'

Subject: RE: Fit Bit

Patrick,

Thanks, we are available at 4:00 pm today. Please use the following:

Dial-in: 701-801-1211

Code: 444-737-033

Looking forward to speaking with you then.

Best,

Garth

Garth Spencer

Glancy Prongay & Murray LLP

230 Park Avenue, Suite 530

New York, NY 10169

646-455-1657

From: Michael S. [<mailto:eb5ventruesllc2@gmail.com>]

Sent: Thursday, April 05, 2018 11:57 AM

To: Garth Spencer

Cc: Camille Martin

Subject: Fit Bit

Garth

Patrick here. Jeff can be available at 4 pm EDT today.

I assume you will have others join the call. We will also have others join in at least probably me and Jeff's assistant. Given that it probably makes sense to use a call in number. If you have one send it off to me and I can coordinate our side. I trust you will coordinate your side.

Thanks.

Patrick